

From ‘Rustless Screws’ to ‘Nail Houses’: The Evolution of Property Rights in China

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Abstract: This article addresses property rights in China under four headings. I begin by placing the Chinese case within the larger context of property rights literature. The second section reviews the existing scholarship on property rights in China and identifies existing lacunae. The third section provides the broad contours of the contemporary Chinese intellectual and political discourse over property rights in China. And finally, I offer several cases of property rights that illustrate the variation in the scope of the concept of property rights in China and suggest possible avenues for future research.

The right of property is the guardian of every other right, and to deprive the people of this is in fact to deprive them of their liberty.

– Arthur Lee, Virginia, 1775

You reproach us with planning to do away with your property. Precisely so; that is just what we intend.

– Karl Marx and Friedrich Engels¹

I would like to thank Wang Jiejia and Lan Lan for their able assistance. I also wish to thank Stephen Haggard, Gary Miller, Barry Naughton and Douglass North for their useful comments on an earlier draft.

¹ Karl Marx and Friedrich Engels, *The Communist Manifesto*. (New York, NY: Signet Classics, 1998), p. 69.

The fact that a legal or economic model does not exist for an activity or a behavior is no reason to oppose it, because the laws can develop out of experience and practice.

– Wu Guoping, Yangtze Water Resources Commission²

In the China of Mao Zedong, from the mid-1960s onward, citizens were exhorted to learn from model soldier Lei Feng and to adopt the unfortunately-termed “screw spirit” (*luosiding jingshen*), in which people were urged to follow Lei Feng’s example of being anonymous, rust-free screws in the great revolutionary machine. Similarly, they were told to internalize “the spirit of the nail” (*dingzi jingshen*), that is, to throw themselves into revolutionary theory like a nail being driven into a piece of wood. In 2007, another hardware-related metaphor gained prominence in China, as the story of Chongqing’s “nail house” (*dingzi hu*) gripped the Chinese public.³ Wu Ping, a homeowner in Chongqing, refused to give up rights of return on her property when she was offered what she considered insufficient compensation from developers. They wanted to build a luxury apartment complex on her land. Wu and her husband, Yang Wu, held out for three years until their house, perched on a lone column of land surrounded by the excavation site, was finally demolished in April 2007. Wu’s “nail-like” tenacity transformed her into a folk hero for many, displacing officially-sanctioned role models like Lei Feng. Instead, a new type of unofficial “model citizen” seems to be emerging: ordinary individuals willing to hold the state accountable in protecting the private property of its citizens.

While these events were unfolding in Chongqing, China’s National People’s Congress (NPC) was debating China’s Property Law (*wuquan fa*). On March 16, 2007, the law passed overwhelmingly with 2,799 lawmakers voting for and only 52 against (with 37 abstentions, and one non vote).⁴ The speedy passage of the law (“it took less than a minute,” gushed *China View*) by means of the largely *pro forma* ratification process belies the controversy that continues to surround the law. Proponents assert that under the policies of the reform era, China’s economy has reached a new phase of development requiring a better specification of property rights than was previously the case.

²Timothy Hildebrandt and Jennifer Turner, *Water Conflict Resolution in China*, 2004 China Environment Forum Meeting, Jan 28, 2004, in 7 China Environment Series 99-101 (2005), cited in Beth E. Kinne, “Developing Property Rights in Water in Modern China,” unpublished L.L.M. thesis, Seattle, University of Washington School of Law, 2005.

³This is not the first time that “nail houses” have been mentioned in Chinese discourse; but it is arguably one of the most high-profile instances of it. The entry in the De Francis ABC Dictionary translates *dingzi hu* as “household resisting eminent domain.” And O’Brien and Li place *dingzi hu* in their typology of resistance as “recalcitrants” or “nail-like persons”; Kevin J. O’Brien and Lianjiang Li, *Rightful Resistance in Rural China*, (New York, NY: Cambridge University Press, 2006), p. 2.

⁴“Top Legislature Adopts Landmark Property Law,” *China View*, March 17, 2007.

Although there had been specific references to—and regulations on—property rights in existing laws,⁵ they were not sufficient to regulate ownership relations. In the absence of a comprehensive property rights law, supporters argued, administrative agencies are able to exploit the gaps and interfere in areas that should be squarely in the commercial and civil law domain.

Arguing from the other side are scholars like People's University professor Gong Xiantian who contends that such an embrace of private property is not only unconstitutional, it is a betrayal of socialism. Others, like Gong's colleague, Yang Xiaoqing, argue that ownership will change hands from "the whole people" to the government, giving the latter full legal property rights, including the right to occupy, use, gain from and dispose of state-owned capital. State organs, local governmental offices, public service units, and SOEs could sell state-owned capital directly to individuals or even foreigners without the consent of the people. In addition, ambiguities could make such a law regime a handmaiden to criminal activities.⁶

Property rights (*chanquan*⁷)—the rules that govern ownership—define the nature of a state's political economy, and often delineate the political process itself. Although today 60 percent of China's economy is in private hands, that statistic tells us very little. The discussion above suggests at least three points along an increasingly diverse social continuum that exhibits vastly different views over the concept of property rights in China. Thus, we can observe a number of demands upon the evolving Chinese state as represented by opponents of the notion of private property (professors Gong and Yang), proponents of the law (the top leadership and the NPC), and those citizens who have actually tested the limits of the law (Wu Ping and Yang Wu).

Property Rights Theory

Property can include an object (i.e., a factory or home), a resource (i.e., land), knowledge and information (i.e., intellectual property), or someone's personal faculty (i.e., the spectrum from slavery to independent contracting). Specification of ownership (i.e., by a person, a school, a government, etc.) is

⁵These include the General Rules of the Civil Law, the Land Management Law (*tudi guanli fa*), the Urban Real Estate Law (*chengshi fangdichan guanli fa*), Assurance Law (*danbao fa*).

⁶Yang Xiaoqing, "Why Don't We Want This Type of Property Law?" (*Women weihe buyao zheyang yibuwuquan fa?*) <http://economy.guoxue.com/article.php/12824> (accessed January 15, 2009).

⁷I discuss the various Chinese configurations of specific types of property rights in subsequent sections. According to Kinne, "[f]rom a legal standpoint, *chanquan* is the same as *caichanquan* [a property right in assets or in the value of something], and even when it is used in laws and regulations instead of *caichanquan*, it has the same meaning. . . . However, *chanquan* is technically a term from the field of economics, and as such it represents the right to the economic value of an asset, with respect to social valuation and compensation. It is usually translated into English as 'property right.'" Kinne, p. 11.

an important dimension of property rights. A third dimension has to do with “what the owner is entitled to do.” This idea includes rights to residual income, such as renting or licensing out such rights; rights of alienation or the ability to transfer such rights through sale or inheritance; and the rights to control and manage such property.⁸

The relationships contained within this third dimension are perhaps best summarized by Boycko *et al* in *Privatizing Russia* as falling under one of two categories: control rights and income rights.⁹ With regard to control rights, consider a productive asset, such as a piece of land. Control rights include all rights to make decisions about how to use the land: to grow vegetables or wheat, to turn it into pasture, to build an airport, or even to leave it idle. In addition, control rights include the rights to make transactions with the land: to lease it, sell it, or give it away. Income (or cash flow) rights are rights to earn benefits and pay costs that result from the particular use of an asset. In the land example, cash flow rights include the right to proceeds from selling vegetables, to rental income, and the obligation to pay real estate taxes.

The *Coase Theorem* famously states that in the absence of transaction costs, and as long as property rights are efficiently protected and properly enforced, actual ownership structure does not matter. The problem with this approach, according to Boycko et al., is that institutional shortcomings may make it difficult to resolve inefficiently distributed property rights, resulting in suboptimal protection of property rights and contract enforcement. Within the context of changing property relations in transitional economies, transaction costs can rise exponentially. This process in turn necessitates a discussion of “what constrains the owner in exercising property rights,” whether through laws, norms, or raw power;¹⁰ in short, a discussion of the state.¹¹

John Locke argued that property rights—natural rights dictated by reason, but biased in the presence of scarcity—are thus not *created* by the government, but that it is the government’s role to enforce them. However, given the degree of power necessary for such enforcement, it appears that such rights are anything but “natural,”¹² something that Locke himself concedes.¹³ In Thomas Hobbes’ state of nature, people are willing to exchange responsibility of their individual rights to a sovereign entity. But there are two flaws with this approach. First, this assumes the existence of a benevolent (at

⁸ Janos Kornai, *The Socialist System: The Political Economy of Communism*, (Princeton, NJ: Princeton University Press, 1992), pp. 62-66.

⁹ Maxim Boycko, Andrei Shleifer, and Robery Vishny, *Privatizing Russia*, (Cambridge, MA: the MIT Press), 1997.

¹⁰ *Ibid.*

¹¹ Itai Sened, *The Political Institution of Private Property*, (New York, NY: Cambridge University Press, 1997), p. 11.

¹² *Ibid.*, p. 13.

¹³ Locke as quoted in Sened.

least relative to profit-maximizing individuals within a state of nature) sovereign.¹⁴ Second, as articulated by Douglass North, when we juxtapose wealth maximization with the Hobbesian state of nature, we are faced with a contradiction: “[i]f individuals are acting rationally with respect to the first assumption, they are acting irrationally with respect to the second.”¹⁵ In other words, when the prospect of individual gain arises, the rational economic individual will be likely to undertake such activity, irrespective of the social costs it will impose.

North suggests that the resulting collective action problems can be mitigated by the establishment and acceptance of a normative “ideology,” in which “[s]trong moral and ethical codes of a society is the cement of social stability which makes an economic system viable.”¹⁶ This ideology can take root within the fissures of imperfect institutions and provide a far less costly means of property rights regulation, not unlike the nationalism that arose parallel to Napoleon’s *levee en masse*, or the substitution of conscription in place of mercenary warfare.

The Case of China

The problem is that post-Mao China does not yet possess such an ideology, or, rather that the form of ideology that does exist today—as seen as a set of informal institutions—is often in conflict (or at least in competition) with formal and informal institutional norms. As a result, North’s analysis remains a long-term *prescription* but not a contemporary description or conceptual analysis of the property rights problems in China today. Indeed, a shortcoming of North’s body of work more generally is that he provides an excellent reason for why countries are successful in efficient economic organization, but cannot explain those countries that fail at such a task.

China’s current situation is perhaps better explained by Yoram Barzel, who argues that the “distinction between agreements enforced by the state and those enforced by third parties, such as firms or religious institutions, determines the scope of the state” and that the “nature of enforcement varies sharply between rule-of-law states and dictatorships.”¹⁷ Starting from a Hobbesian perspective, Barzel argues that rulers are not benign, that they are as predatory as anyone else in society. But dictatorial powers are faced with a dilemma. On the one hand, the dictator, while not constrained by “the incentive problems of the employed protector” nevertheless fears rebellion

¹⁴ Sened, p. 15.

¹⁵ Douglass C. North, *Structure and Change in Economic History*, (New York, NY: Norton, 1981), p. 45.

¹⁶ North, p. 47.

¹⁷ Yoram Barzel, *A Theory of the State: Economic Rights, Legal Rights, and the Scope of the State*, (New York, NY: Cambridge University Press, 2002), p. 2.

and, thus, does what it can to minimize the possibilities for such an occurrence, mostly by dismantling the third-party enforcement mechanisms that are a feature of rule-of-law societies. On the other hand, “as a dictatorial regime gains stability, the dictator can enrich himself by curbing his own confiscatory ability.”¹⁸

If we view China as a unitary state, this description aptly sums up the leadership dilemma. But China is *not* a unitary state. There is yet another dimension to the property rights issue: the complex network of actors, authority relations, and incentives that exist throughout the system and which routinely undermine control and income rights of state and societal actors in China.

Property Rights in Traditional Socialist Regimes vs. Pre-Reform China

The Urban Areas. Even before 1978, there were several forms of ownership that bled into the reform-era evolution of China’s political economy. The first of these is the state-owned enterprise (SOE). Residual income from the use of the property

is of an economic magnitude set arbitrarily by the bureaucracy. But once it has been set (in the technical terms set by fiscal management) it flows into the central budget of the state, and in that sense the owner is the “state coffers.” So one must rephrase the question to ask: Who has control over the state budget? And who sets all the economic parameters (prices, wages, taxes, etc.) that have just been established to be the factors determining the size of residual income? The answer to both questions is the same: this right of disposal belongs to the bureaucracy.¹⁹

Thus, the control rights over the SOE are held by “the bureaucracy” or “the state.” A frequent problem is that *which* particular state institution (i.e. bureaucracy or local government) is not well-specified. In the Soviet Union, which was more vertical than horizontal, the answer was often within the vertical, functional bureaucracies. But since the early days of reform—indeed, even during the Mao era—this was not necessarily the case.²⁰ Kornai argues that “the activities are controlled by a hierarchical bureaucracy within the state-owned firm.”²¹ But as Steinfeld has persuasively argued about China’s steel sector, during the reform era these activities were, in fact, contested by many predatory bureaucratic agencies external to the SOE in question.²²

¹⁸ Ibid., p. 7.

¹⁹ Kornai, p. 73.

²⁰ Yasheng Huang, “Information, Bureaucracy, and Economic Reforms in China and the Soviet Union,” *World Politics* 47 (1) 1994: 102–134.

²¹ Kornai, p. 74.

²² Edward S. Steinfeld, *Forging Reform in China: The Fate of State-Owned Industry*, (New York, NY: Cambridge University Press, 1998).

Under a strictly socialist system, SOEs cannot be bought, sold, or even leased. But this has changed in contemporary China. Now, under the banner of the “Three Represents,” capitalists have been invited to join the Chinese Communist Party.²³ Even before this time, leasing arrangements have naturally arisen from various local economic relationships.²⁴ And this may force us to confront a new form of property rights relationship contingent upon the specific economic and political environment that is emerging in China.²⁵

Another institution that Kornai identifies is the “budgetary institution,” that is “not obliged to even nominally make its income cover its expenditure.” This includes entities such as institutions of higher learning and hospitals. In reform-era China, however, these are precisely the types of institutions that are referred to as *shiye danwei*, “social affairs units” that provide their host unit (i.e., a given government agency) with extra budgetary income. Moreover, knowing this, the number of *shiye danwei* under increasing government agencies has mushroomed dramatically to include enforcement teams, cadre training centers, and even the entire State Patent Bureau.²⁶

The Rural Areas. Agriculture has its own property rights arrangements under socialism. Although land reform in China redistributed land among the peasantry, by 1956 this same land was being rapidly collectivized to raise production output by introducing economies of scale to agriculture. This culminated in the people’s communes of the late 1950s (which endured into the early 1980s). Kornai’s description of cooperatives underscores the lack of personal, let alone individual, property rights:

[Peasants] cannot choose freely whether (1) to leave the cooperative (or, if they have never been a member, to refrain from joining) and work in a family undertaking based on private property instead; (2) to employ permanent outside labor in their own agricultural undertaking if they can afford it; or (3) to join the cooperative on a voluntary basis (or, if they are already members, to remain voluntary members). Anyone wanting to work on the land must be a cooperative member (or at least an employee of a state farm).²⁷

²³Jiang Zemin, Speech at the Rally in Celebration of the 80th Anniversary of the Founding of the Communist Party of China, July 1, 2001.

²⁴See Gregory A. Ruff, “Collective Enterprise and Property Rights in a Sichuan Village: The Rise and Decline of Managerial Corporatism,” in Jean C. Oi and Andrew G. Walder, eds., *Property Rights and Economic Reform in China*, (Stanford, CA: Stanford University Press, 1999), pp. 27-48.

²⁵Barry Naughton, “SASAC Rising,” *China Leadership Monitor*, Spring 2005.

²⁶And this has increased in the age of government downsizing. See Dali L. Yang, *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*, (Stanford, CA: Stanford University Press, 2004).

²⁷Kornai, p. 79.

In China, where labor mobility was always far more strictly regulated than in the Soviet Union, the idea that anyone who wants to work on the land could was largely irrelevant. The *hukou* system ensured that those people without urban residencies (or who were not in the army), by default, were to work on the land.²⁸

In the Mao era, private plots, when allowed, made up a very small part of one's overall rural labor. Under reform, there has been an impermanent but often stable distribution of property rights between the state and the peasantry. The peasant has the right of residual income as specified in the contracting arrangements of the land, which includes stipulations for fulfilling public duties (sales to the state at state-determined prices). The state, by contrast, has the sole right to transfer the land, although subleasing is possible under certain conditions. "The right of control is where much of the current controversies have erupted: formal constraints (or administrative interference) under which the village collective and farming households share property rights generate ambiguities with respect to control... [and] give local governments considerable leeway to manipulate and impose conditions on the land contracts."²⁹

The 'Private' Sector under Socialism

Even within traditional socialist regimes, a narrow stretch of "private" or "quasi-private" ownership has always existed. In East Germany, Hungary, and Poland, small-scale private industry and commerce were allowed to function. In China, during the consolidation period just after 1949 and again in the early 1960s following the calamitous Great Leap Forward (1958-1961), there were efforts to nourish a limited private sector. These initiatives were almost completely swallowed up by the extensive development during the First Five Year Plan (1953-1957) and by the Cultural Revolution's radical politics (1966-1977). Such private industry has made a comeback in the reform era. Although state banks provide less than one percent of their loans to private entrepreneurs, according to some pundits, there are a staggering 85 million private businesses in China today.³⁰ In addition, since 1999, the plan has been for the *shiye danwei* to become financially independent from their host unit in three years (*sannian yibou duannai*). Although Chinese cadres have admitted to me that this has proved too ambitious a target, the trend continues in that direction.

²⁸ Fei-Ling Wang, *Organizing Through Division and Exclusion: China's Hukou System*, (Stanford, CA: Stanford University Press, 2005).

²⁹ Xiaolin Guo, "The Role of Local Government in Creating Property Rights: A Comparison of Two Townships in Northwest Yunnan," in Oi and Walder, eds., p. 75.

³⁰ <http://transcripts.cnn.com/TRANSCRIPTS/0502/16/lt.01.html> (accessed on April 27, 2007).

Finally, wherever market inefficiencies exist, informal economies inevitably appear. Such shadow economies can sometimes be open, such as the market for goods in latter-day socialist Hungary that could only be bought with Deutschmarks, as well as the booming black and/or gray markets for goods in other socialist regimes.

China's Evolving Property Rights Regime

Steinfeld argues that blindly seeking to privatize property relations is actually counterproductive without a clear division of managers from government officials. Both groups have separate incentives that can easily collapse into a moral hazard when the banks are charged by administrative fiat to bail out hemorrhaging SOEs rather than risk social unrest. Moreover, as SOEs become increasingly vulnerable to bureaucratic predation, other bureaucracies enter the fray, rapidly stripping the SOE of its assets. Steinfeld's cases suggest that rather than specify private property rights as a panacea, the successful SOE may be so precisely because it signals its proximity to a powerful patron which can deter subordinate bureaucracies from field stripping the SOE in question. Such *de facto* property rights may actually induce behavior consistent with *de jure* property rights and hard budget constraints.³¹

Oi and Walder present an extensive study on property rights as they relate to China's political economy. They trace patterns of change (contracting of public firms, the outright sale of government assets, private gains for officials controlling public firms, *shiye danwei*, and private startups); regional variation (the "corporatism" of township and village enterprises and "littoral" patterns of economic growth in rural industry as a function of factor endowments); and a "hollowing out of public ownership" in which officials either "transform [a property] imperceptibly into an asset that takes on the features of family property" or spin off "private" enterprises from state ones.³²

Their conclusions are couched in terms of dynamic evolutionary change, given the experimental nature of reforms, as well as the heterogeneity of resource endowments, political preferences, and market access. They provide an important clue as to why neoclassical economic theories, including those of property rights, are of limited use to China: the relative effectiveness of efficiency. Walder concludes that in China there are the "utility of solutions that are suboptimal in theory." In other words, even those solutions that deviate substantially from neoclassical economic theory have positive and robust empirical effects. Although one can say that this may provide a fork in the road whereby China can either move towards the neoclassical ideal or,

³¹ Steinfeld.

³² Andrew G. Walder and Jean C. Oi, "Property Rights in the Chinese Economy: Contours of the Process of Change," in Oi and Walder, eds., pp. 1-24.

alternatively, devolve into a quagmire of corruption, Oi and Walder make a strong case that the outcome need not be—indeed, is unlikely to be—so starkly binomial. In fact, although likely to meet with skepticism by non-area specialists, Oi and Walder have opened up a far-reaching research agenda.

On the other hand, non-specialists have made theoretical applications of property rights theory to China which suffer from “conceptual stretching,” yet remain dominant in the literature. The widely-cited article by Montinola et al. on market-preserving federalism³³ (MPF) in China places property rights at the center of its case for China being a quasi-federalist system. According to Montinola et al., market-preserving federalism rests on the idea that decentralization arrangements at the local level are accompanied by political “durability” that is difficult for the central government to undo. Montinola et al. argue that market-preserving federalism has five key characteristics:

1.) A *hierarchy* of governments with a *delineated scope of authority*. . .exists so that each government is autonomous within its own sphere of authority.

2.) The subnational governments have primary *authority over the economy* within their jurisdictions.

3.) The national government has the authority to police the *common market* and to ensure the mobility of goods and factors across subgovernmental jurisdictions.

4.) Revenue sharing among governments is limited and borrowing by governments is constrained so that all governments face *hard budget constraints*.

5.) The allocation of authority and responsibility has an *institutionalized degree of durability* so that it cannot be altered by the national government either unilaterally or under pressure from subnational governments.³⁴

The first, fifth, and to some degree the third conditions are undermined by recent efforts to centralize a number of Chinese bureaucracies.³⁵ The third requirement appears to be contradicted by Walder and Oi’s empirical evidence that barriers to entry in certain markets lead to very different types of property rights. Finally, when “hard budget constraints” are understood as a proxy for property rights, both the foregoing discussion and the case studies below auger ill for credible assertions that property rights in China are close to being in place.

³³ Gabriella Montinola, Yingqi Qian, and Barry Weingast, “Federalism, Chinese Style: The Political Basis for Economic Success in China,” *World Politics* 48 (1) 1995: pp.50-81.

³⁴ *Ibid.*, p. 55 (italics in original).

³⁵ Mertha, “China’s ‘Soft’ Centralization: Shifting *Tiao/Kuai* Authority Relations,” *The China Quarterly*, December 2005, pp. 791-81.

The Legal Regime

The legal regime governing property rights is also under-developed, although that has been changing, especially with the March 2007 Property Law. Nevertheless, no complete civil code (*minfadian*) exists in China today. Although the *General Rules of the Civil Law (minfa tongze)* of 1986 established the overall principle and the form of civil law, the actual body of what is commonly placed under the general heading of “civil law” is simply the collection of separate laws.

The lack of a civil code has created several problems. First, the principles of the *General Rules* are simplistic and vague. They are insufficient to settle real-world disputes or clarify the ownership relationships. Second, the discrete laws on the books are inconsistent and they lack coordination among one another. Many of the laws and regulations are created by individual administrative institutions, and all too often, these separate laws contradict the basic law as well as each other. Third, due to the limitations of theoretic level of jurisprudence in China, many of the property rights regulations are incompatible with the modern legal theories. Fourth, there is a considerable tendency for administrative units to interfere as many of the laws are issued as administrative regulations (i.e., the land management and the real estate management laws).

In addition, there are too many technical and otherwise difficult terms in the existing laws, undermining their applicability. This is especially true with property rights. Beth Kinne provides a useful typology of the pantheon of property rights types that underscores this last point. *Caichan quan* is perhaps the broadest type of property rights, including several more specific categories, such as *wu quan*, *suoyou quan*, *jicheng quan* (rights of inheritance), and *zhishi quan* (knowledge rights) or *zhishi chanquan* (intellectual property rights). *Caichan quan* simply refers to rights over assets or over the value of something. *Wuquan*, which refers to a concrete property right, is also “a right to a direct allocation of concrete assets, and a priority right in a thing”³⁶ that belongs to another person, as long as the property is not damaged), which is generally related to land.

The recently-promulgated Property Law is meant to specify the scope of these rights, but its treatment of property rights remains uneven. Part Two of the law (articles 39 through 116) addresses the rights of ownership, or *suoyou quan*. Part Three covers the rights of usufruct (*yongyi wuquan*) in articles 117 through 169. Operating rights (*jingying quan*) are covered under the provisions for usufruct and land contractual operating rights, as well as under general mortgage (which is the only place where the term *tudi shiyong quan* appears, in article 184). Voluntary easements (*diyi quan*) are covered in articles 156 through 169.

³⁶ Kinne, p. 10.

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The legal commentaries on the law are just beginning. Meanwhile, outside of the corridors of power and the academic salons, the actual scope of property rights is being contested along a number of dimensions.

Frontiers of Property Rights Research In China

Three case studies highlight the problems that the Property Law are supposed to remedy, as well as the various contentious points in the wider academic and policy debates. These cases, suggest the breadth of interests, applications, and scope of property rights in China today.

*Poorly-Specified Land Rights: Resettlement at Pubugou.*³⁷ One of the most contentious issues in China at present concerns the forcible resettlement of entire villages and towns to make way for large-scale real estate, energy, and other infrastructure projects—particularly in rural areas. Property rights are at the root of the controversy: poorly-specified property rights can lead to corruption and/or social protest, both of which quickly transform academic debates over property rights into flesh and blood issues of political control.

In 2004, compensation claims drove up to 100,000 peasants to the streets in Hanyuan county to protest their inadequate compensation for the transfer of their property rights to build the Pubugou dam and hydropower station in rural Sichuan province.

It was administratively, politically, and economically quite difficult to establish a standard that would satisfy all the parties involved. On the one hand, because of the land's richness and the good weather, peasants in Hanyuan enjoyed relatively high living standards: "farmland here is so fertile that in one year we can grow enough to last us three years," claimed one villager.³⁸ On the other hand, for the Sichuan government to justify the project on economic development (i.e., policy) grounds, it had to demonstrate that the land, and thus the associated property levels of the peasants were actually quite poor.³⁹ Thus, there were powerful incentives to push compensation levels downward. It is estimated that the difference between the compensation package (based on fourteen-year-old standards⁴⁰) offered and contemporary national standards for compensation is

³⁷ Mertha, *China's Water Warriors: Citizen Action and Policy Change*, (Ithaca, NY: Cornell University Press, 2008).

³⁸ Shi Jiangtao, "Peasants in Upstream Fight to Halt Dam," *South China Morning Post*, January 5, 2005.

³⁹ Interview 05CD02, July 8, 2005.

⁴⁰ "Massive Protest by Sichuan Farmers Squashed by Police," *The Epoch Times*, November 10, 2004.

in the neighborhood of 1.2 billion RMB (\$143 million).⁴¹ As this discrepancy entailed a substantial reduction in operating costs, the hydropower company Guodian was happy to oblige, labeling the Hanyuan reservoir area as “deep valleys and high [barren] mountains”—and not the more accurate standard of high yield farmland—during the approval process for Pubugou power station.⁴²

To justify such low compensation rates, supplementary materials, such as the “Relocation Questions and Answers,” stipulated that the relocation should follow the “Large and Medium Size Hydropower Station Projects Condemnation and Relocation Regulations” issued on May 1, 1991. But the resettlers (*yimin*) objected to the fourteen-year-old standard for compensation. According to villager Song Yuanqing, the political negotiation representative for Hanyuan County, in 1991 a Hanyuan Village cadre’s income subsidy was 7 RMB, while in 2003 it was 50 RMB. In 1991, the bus ticket from Fulin to Wusi was 1.2 RMB, in 2004 it was 9 RMB. In 1991 Hanyuan had tax revenue of 3 million RMB from local businesses, while in 2003 the figure had risen to 40 million RMB.⁴³ These issues were left hanging, as peasants were being readied for resettlement.

The May 2005 final compensation package was little better. In addition to a one-time moving expenses (*banjia fei*) of 1,000 RMB per household for relocation within the county and 2,000 RMB for outside the county (none were moved out of Sichuan province), compensation per *mu*⁴⁴ was established arbitrarily by the Sichuan provincial government at 1,659 RMB. No discussion was held with the *yimin*; the amount was decided upon unilaterally by the Sichuan authorities. This 1,659 RMB was multiplied by sixteen in a onetime payout, bringing the total payout per *mu* of 26,544 RMB.

But this settlement had several problems. First, the base estimate of 1,659 RMB was considered too low. Second, the multiple of 16 was far below the minimum standard of 30 as per the December 3, 2004 “Opinion Regarding the Completion of Rural Compensation Allocation System Directive” (*guanyu wanshan zhengdi buchang anzhi zhidu de zhidao yijian*). The Sichuan government was unmoved and said the absolute highest compensation it could afford. Third, out of this 26,544 RMB, the people only received 8,000 RMB. The remainder (some 18,000 RMB per *mu*) was kept by the local authorities to purchase land and to build housing.

⁴¹ “Outrage Emerges over Pubugou Hydropower Project in Sichuan: Residents Forced to Move to Make Way for a Dam on the Dadu River are Angry about the Meagre Compensation Offered,” *Interfax*, October 28, 2004.

⁴² Tan, “Enormous Hydropower Compensation Benefits of Dadu River *Yimin* Washed Away.” (*Dadu he shuidian yimin ju’e liyi liushi*), *China Youth Daily*, October 27, 2004.

⁴³ *Ibid.*, and Christopher Bodeen, “One Killed in Mass Protest over Dam in Western China,” *Associated Press*, November 1, 2004. This is far from an uncommon practice (see Shi Jiangtao).

⁴⁴ One *mu* is roughly equal to .16 acres.

*The Problem of Enforcement: Intellectual Property Rights.*⁴⁵ Even if property rights are clearly specified, it does not follow that the enforcement infrastructure exists in China. Interestingly, although property rights have not been defined, a politically-charged subfield—intellectual property rights—*have* been. However, rather than provide a guide for how property rights are likely to be protected in the future, China’s experience with intellectual property rights underscores the problems of enforcing rights that are clearly specified within China’s extensive legal and regulatory regime.

The Copyright Department (*banquan chu*) at the provincial level (that is, one level down from the Center) is subordinate to the Provincial Press and Publications Administration (*xinwen chuban ju*). The Press and Publications Administration makes all the decisions regarding personnel, budgetary, and any additional *ad hoc* resources that are to be allocated to the Copyright Department (direct communication between the Copyright Department and the provincial government would be a significant breach of organizational reporting relationships). This embeddedness forces the copyright enforcement agencies to be dependent on their host units, creating problems when the other units’ priorities diverge from copyright enforcement.

Below the provincial level, the logic of organizational consolidation is even more pronounced. Corresponding units of the Press and Publications Administration and the Copyright Department are merged within, and subsumed under, the bureaucracy headed at the national level by the Ministry of Culture. These sub-provincial units combine press, publications, and copyright responsibilities with the local organizational goals of the Ministry of Culture bureaucratic system. The division of these three sets of responsibilities is often skewed to favor the priorities of the Culture bureaucracy, particularly the local Cultural Market Management (*wenbua shichang guanli*) units. These units are charged with supervising the cultural market, which encompasses movies, live performances, books and periodicals, audio-visual products, arts & crafts and fine arts, gaming establishments, restaurants and karaoke parlors, and recreation centers in China. The specific targets of Cultural Market Management enforcement are anti-Communist Party, antigovernment, or overtly pornographic products within the cultural market. Only a very small percentage of copyright-violating merchandise falls into these categories; pirated works deemed “nonpolitical,” such as most motion pictures, computer software, and video games are given a low priority as far as enforcement is concerned.

For these reasons—and despite the generally well-accepted copyright laws and regulations that have existed on China’s books for almost two decades—enforcement, without an autonomous and powerful enforcement

⁴⁵ For a thorough discussion of the bureaucratic politics of intellectual property in China, see Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China*, (Ithaca, NY: Cornell University Press, 2005).

institutional infrastructure, remains woefully inadequate.⁴⁶ This is also the case for patents. However, the news is a bit more positive for the third leg of the IPR tripod, trademarks. But this has to do with bureaucratic idiosyncrasies peculiar to the trademark enforcement environment.⁴⁷ Indeed, the sad state of copyright enforcement is more representative of administrative enforcement of property rights more generally.

Revisiting Wu Ping and Yang Wu's 'Nail House'

On April 3, 2007, the home of Wu Ping and her husband Yang Wu was finally demolished. The house, which had gained cult status as Chongqing's "nail house," had stood for three years while Wu and Yang held out for a compensation package they deemed fair market value from the Chongqing Zhengsheng Real Estate Company, which planned to build a luxury apartment complex ("Broadway Square") on the site. Although almost three hundred neighbors had already reached agreement with the developers, the couple refused to budge until they received what they deemed fair compensation. In the process, they became folk heroes among China's chat rooms and blogs, with Yang receiving the nicknames of "Superman," "Spiderman," and, even "Lady Liberty" or the French "Marianne."⁴⁸

But their legal ground was no less precarious than the perch from which their house looked over the construction site. Although the court's ruling of mandatory demolition went against the Constitution of the PRC, according to one commentator, the developers had secured the proper usage rights certificates. Indeed, as he went on to argue, even if this was not the case,

The criterion by which it is found to be illegal is that it lacked a legal basis or had breached statutory procedures, and not that it violated private rights. To the degree that private rights were violated, this merely forms the basis for compensation, and not the basis for determining whether the administrative act was legal or not.⁴⁹

Where the houses and other immovables of an entity or individual are expropriated, relocation compensation shall be paid under the law, and the lawful rights and interests of the person subject to expropriation shall

⁴⁶ Martin L. Dimitrov makes the distinction that while the volume of copyright enforcement is quite high, the quality is poor. See Dimitrov, *Piracy and the State: the Politics of Intellectual Property in China*, (New York, NY: Cambridge University Press, forthcoming).

⁴⁷ See Mertha, "Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China," *Comparative Politics*, April 2006, pp. 295-316.

⁴⁸ Ching-Ching Ni, "Wrecking Ball Brings Down Chinese Pair's 'Nail House,'" *The Los Angeles Times*, April 3, 2007.

⁴⁹ Yang Zhizhi, "Wuquan Fa baobu 'zuiniu dingzibu?'" ("Does the Property Law Protect the 'Most In-Your-Face Recalcitrant?"), *Yezhu zhibheng*, March 27, 2007.

be safeguarded; where an individual's dwelling unit is expropriated, the dwelling condition of the person subject to expropriation shall also be assured.

And given that the avenues for redress through the local courts brings in the usual situation of interference by the local government, especially when supporting such calls induce opportunity costs for the government, the prospects for the plaintiffs are usually quite slim, even nonexistent. When I interviewed a Chongqing lawyer and asked her what legal advice she would give if I wished to file a claim against a local government agency under the Administration Law, she replied that her counsel would be to determine how much power the administrative agency in question has vis-à-vis the court that would hear the case. If it was relatively high, she would advise to settle, if not avoid bringing the suit altogether; if low, she might recommend taking the case to court.⁵⁰

Eventually, in the case of the Chongqing “nail house,” a compromise was reached, in which the couple would receive an apartment of the same size, but in a different part of town and not within the apartment complex that is to be built on site of their old house. Yet, the obvious question is: why did Wu Ping and Yang Wu prevail (at least to some degree) when the residents in the Pubugou case above did not?

We may never know the full answer. In this case, the individuals were sufficiently colorful that they were able to keep the story alive. Yang Wu is a local martial arts expert and Wu Ping is an outspoken restaurateur whose good looks and flashy garb made her particularly photogenic.⁵¹

However, this, if anything, underscores the fact that this case has largely been fought outside proper legal channels. On the one hand, administrative regulations seem to trump legal formulations. On the other hand, Wu Ping and Yang Wu have undertaken spectacular extra-legal measures by mobilizing the media, to leverage the government. More generally, this case underscores that property rights in China remains contentious, controversial, and in flux. Property rights will continue to evolve and will help define the contours of the similarly evolving Chinese state more broadly.

Conclusion

Very often, the most accurate answer to an “either. . .or” question regarding China is “yes.” Some people argue that it is precisely the fuzziness of its property rights regime that has promoted China's economic growth. I remain unconvinced. As the foregoing makes clear, the China scholarly

⁵⁰ Chongqing Interview, September 4, 1998.

⁵¹ At the same time, it should be said that the State Council Information Office issued an urgent notice forbidding any more reporting on the Chongqing nail house on March 24, 2007. Moreover, it should also be noted that not all Chinese blogs were uniformly behind Wu Ping and Yang Wu.

community has barely begun to mine the issue of property rights in China. This presents both challenges and opportunities. First, very often it is difficult to derive an accurate understanding of property rights because of the disconnect between formal laws and regulations and the actual processes unfolding on the ground. Second, these processes are often couched in layers of ambiguity that result in a phenomenon that is at best opaque. Third, even if we were able to discern a pattern, it is likely that such an arrangement is unsystematic and subject to sectoral, regional, and other variations. Finally, China itself is changing so rapidly that in the time it takes the researcher to arrive at a credible finding, the ground has already shifted and the fruit of his or her labor is already somewhat out-of-date.

Nevertheless, China scholars should not be deterred because the subject is of such importance. It requires our sustained attention. Property rights are the linchpin in our understanding of the political economy of any state. Moreover, it is also a key dimension in defining the interaction of social sphere with its political and economic counterparts. We do ourselves no favors by limiting our approach to one that is based on a narrow legal definition of the concept or to an impressionistic understanding of one or more components in isolation from the overall structure, process, and meaning of property rights as they continue to evolve in China today. Wu Guoping's quote at the beginning of this article, therefore, must be read as a challenge: "The fact that a legal or economic model does not exist for an activity or a behavior is no reason to oppose it, because the laws can develop out of experience and practice."

