Rhetoric, Rights, and Reform:
The Politics of Property in China
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I. Introduction

"Humanity's history is a history of respect being gradually paid to private property," explains Sun Xianzhong of the Chinese Academy of Social Sciences.¹ China’s history, however, is unique; it is a history of stubborn refusal to acknowledge the importance of property rights. Indeed, the notion of private property to this day remains somewhat anathema to the philosophy of the Chinese Communist Party. But the dilemma is that economic reality demands a healthy, functioning institution of private property protection. An issue of fundamental importance to the future growth of China, and the focus of this paper, is the country’s trend of ideological concessions in the name of economic prudence. This paper will investigate the present circumstances of property law in China, as well as the liberal reforms currently underway. This should allow for a fair but critical evaluation of the ideological conflict inherent in the country’s modernization. The future of China will be influenced a great deal by the state’s willingness to set aside ideological prejudice in order to establish a more just and thriving economy.

II. Historical Background

Before the Communists wrested power from the Nationalists in 1949, wealthy landowners under the legal protection of the Nationalist government owned most land in China. The land reforms of Mao Zedong, from 1949 to 1951, encouraged peasants, tenants of the landowners, to coercively expropriate the land. Ultimately, with the landowners ostracized and reduced to shambles, the land of China was redistributed to the formerly landless peasants.² This can be thought of as the beginning of Chinese disdain for the institution of private property.

With Mao Zedong came the idea that property was a bourgeois tool of oppression not to be recognized by the enlightened and newly established Communist Party. Mao continued reforming with such policies as farm collectivization. All of Mao’s subsequent economic meddling, however, was strictly anti-capitalist and anti-private-property.

Following the death of Mao in 1976, a new leader took the reins. Deng Xiaoping, with a view of politics less provincial than Mao’s, carefully redirected the course set by his predecessor. Faced with staggering food shortages, Deng launched a policy known as the responsibility system. In this system, members of a collective were permitted to lease from the collective land and tools and were then considered responsible for their own work. Deng, however, carefully couched this capitalist-oriented policy shift in socialist rhetoric, lest his move be viewed as deviating from Maoism. This is one of the first instances of China foregoing ideological commitments in the name of practicality. Deng’s commitment to socialist rhetoric beside the implementation of capitalist property institutions is one of the first examples of a technique still used by Chinese statesmen today. As exemplified, and perhaps begun by Deng, rhetorical denial seems to be the method favored by China to reconcile ideological commitments and economic necessities.

Deng’s economic reforms were very successful. This, however, was as much a problem as it was a solution. Although the people were far better off, this kind of liberal reform comes dangerously close to vindicating the institution of private property and therefore discrediting Mao and Communism. This conundrum of balancing socialist ideals with practical and effective liberal reforms is precisely the problem faced by China currently.

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3 Ibid., p. 12.
III. The Challenge of the Twenty-First Century

In China, there exists very little formal recognition of property ownership. Most business is conducted by informal cooperation between citizens and government officials. Village and township operations are vaguely defined by law, but essentially structured and supported by local social norms, common notions of ethics, and generally accepted modes of behavior. The current system of informal protections and irregular enforcement functions well enough to provide at least a rough foundation for economic activity, yet there remains a great deal of legal patchwork to be done. The transformation of China’s informal and unstable system of property rights into a strong and objective legal framework is increasingly necessary if the country’s economic growth is to be sustained. An analysis of the particular problems, followed by a discussion of current reforms will help explain both the status quo and the government’s plan of action.

It should prove instructive to explain more thoroughly the informal system of property rights that now exists in China. First, Chinese business operates in an institutional environment plagued by what many foreigners would call widespread corruption. The notion of corruption, however, doesn’t quite capture the Chinese understanding of private-public relations. In China, what any Western student of politics would call corruption, a Chinese scholar would call “networking.”

Bribery and cronyism, for instance, is both pervasive and widely accepted. To earn official protection of assets and to minimize uncertainties, a company must “access” government

recognition. David L. Wank explains, “Access hinges on strategies of reciprocity. Reciprocity can involve quid pro quo exchanges of commercial wealth for official discretion; these are idiomatically called money connections (jinqian guanxi). Reciprocity can also be less blatantly instrumental discharges of obligations rooted in affective bonds of kinship and familiarity, called emotive connections (ganqing guanxi).”

Such a system has its obvious problems. One result is that rightfully owned property is not consistently protected. Quite the contrary, rightful but unconnected property owners are often victimized by unscrupulous government officials. “This stems in part from the self-serving manner in which local governments enforce laws and regulations,” Wank explains, “Officials often put pressure on entrepreneurs for payoffs and shares in their firms, while successful private companies can be forced to sell out to local governments. Uncertainty in regard to legal rights is exacerbated by the lack of impartial courts to enforce legal rights to private property.”

Because ownership rights are often not legally recognized, government usurpation of rightfully owned land is welcome. The violation of rights and the harm to personal economic development that results from arbitrary government expropriation ought to be, and is becoming, an important concern. A recent example that has gained a good deal of publicity shines light on this lack of legal protection. In 2003, in the cities of Yulin and Yanan, government officials seized more than five thousand privately owned oil fields after urging private investors to develop the properties.

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6 Ibid., p. 251.
7 Ibid., p. 251.
In addition to, and perhaps aiding the execution of, pernicious government abuse is the general problem of legal ambiguity. The law is simply not clear enough in certain areas; the distinction between legal and illegal activity is often too blurry to adjudicate fairly. During the second half of the 1980s, for example, there was controversy over a number of particularly obscure legal questions. Should business commissions be considered reasonable and legal incentives or unethical and illegal kickbacks? Are the operators of cooperative firms justified in using private capital for social gains such as providing employment? More recently, in the 1990s debates raged over the legality of certain accounting practices dealing with the corporatization of formerly public firms.9 The ambiguity of the law therefore allows businessmen to exploit statutory gaps and similarly allows government officials to supersede the proper boundaries rightful ownership.

Chinese idiom might aid understanding. “Exploiting loopholes” (zuan kongzi) and “walking on the edge of the policy” (zou zai zhengce de bianhang) are commonly used phrases among businessmen and entrepreneurs. Also pervasive is the idea that “if you operate within the bounds of the policy, you will never become rich.”10

The ambiguity of legal claims to property and the commensurate government expropriation illustrates a dangerous disregard for the property claims of citizens. The volatility that such actions add to the Chinese business environment discourages domestic private investment as it puts into question the returns of investment expenditure. The city of Yueqing in Wenzhou, for example, provides an interesting case-study. In the 1980s, when the city was first showing signs of an emerging private sector, the local economy functioned according to a regulatory system consisting only of extralegal, informal support from local officials – a scenario

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10 Ibid.
governed by the informal rules described above. The informal supports, however, produced predictable results. Because there was no explicit documentation and recognition of asset ownership, entrepreneurs could not be confident in the security of their operations. Furthermore, the lack of meaningful licensing and documentation also meant that it was exceedingly difficult for business owners to access unstable and overly bureaucratized markets for goods and factors of production.\(^\text{11}\) Beyond the hindrance of domestic enterprise, potential foreign investors, for the same reasons, naturally stay away from locales in which any private operation is susceptible to government seizure. At the point the Chinese government’s lax attitude toward the sanctity of property creates instability in the business environment, the economic consequences become a serious concern.

Business is not the only area that suffers from these problems; individual households are equally vulnerable to the same harms. Global strategist Christopher Lingle comments, “Most farm families do not have a deed or formal title for the land they occupy, so it can be taken from them with little or no compensation for their loss.”\(^\text{12}\) Without formal and officially recognized claims to land, individuals have no way to prove the legitimacy of their dwelling and therefore no meaningful claim against abusive government officials. This is most important in rural areas where families have little more than the land on which they live. In northern Qiaolou, the Meishan County government once seized several acres of land in order to build a road.


However, no remuneration was provided to those who were displaced.\textsuperscript{13} Aside from the egregiousness of the rights violation, this kind of government abuse poses a serious problem for both the economic progress of individuals and the people’s confidence in the legitimacy of the Communist Party.

There remains yet another economic impact. Particularly for rural farmers, the ability to use one’s land and other property as collateral for loans is a necessary step towards the expansion of enterprise, growth, and capital accumulation. It is not for want of motivation and ingenuity that rural workers are unable to express their entrepreneurial spirit. The problem is that the property individuals have \textit{de facto} control over is not officially recognized as theirs and is therefore not documented as such. The result, then, is that most property can not fulfill its economic potential. Nobody is quite sure who owns what, who is accountable for risks, losses, or profits, or what mechanisms can be used to enforce contracts. The result is, in the words of Hernando de Soto, “a world where assets’ potentially useful economic attributes have not been described or organized; where they cannot be used to obtain surplus value through multiple transactions because their unfixed nature and uncertainty leave too much room for misunderstanding, faulty recollection, and reversal of agreement – where most assets, in short, are dead capital.”\textsuperscript{14} As of 1997, the amount of dead capital in China, NIS, and Eastern Europe amounts to $2.96 trillion.\textsuperscript{15} China’s share of that figure should not be underestimated. A thorough and objective institution of private property is the only way to unleash this economic potential.


\textsuperscript{15} Ibid., p. 36.
IV. Current Reforms

The prospect of a complete legal foundation for private property rights, while perhaps appearing as a simple and obvious prescription for China’s property problems, is up against the forces of history, ideology, and socialist rhetoric. Recently, however, the Chinese has shown its willingness to acknowledge the importance of property rights. First, it appears that capitalist rhetoric is becoming less taboo as government reports openly discuss the issue. Moreover, the government has recently made two serious concessions to those clamoring for property rights: amending the constitution and drafting of the Law of Property Rights.

In 2003, the Development and Research Centre under the State Council wrote: “To solve current problems in the rural financial system, it is urgent for the country to clarify property rights in rural credit co-operatives to reduce none-performing loans.”

Until as late as the mid 1980s, public ownership was overwhelmingly considered a sacred and irrevocable mainstay of Chinese society. Constitutional amendments passed in 1982 reflected this attitude, as private property was not even nominally recognized. The 1988 Constitutional amendments marked a rhetorical, if not actual, turning point by recognizing the private sector as a “complement” to the public sector. Further acceptance of free-market doctrine is illustrated by the capitalist rhetoric of the 1999 amendments. These amendments raised the status of the private sector to the level of “major component” of the socialist economy. Most of these changes, although meaningful as proxies for attitudinal evolution, were almost purely rhetorical; they did not spur economic developments so much as they simply


recognized the development of decentralized, informal changes taking place in the economic environment at the time.

More recently, and with more impact, in March 2004 the constitution was amended to include language more explicit than ever. A part of the amendments reads: “The lawful private property of citizens shall not be encroached upon. The state protects by law the right of citizens to own private property and the right to inherit private property.” The amendments also protect individuals from expropriation without just remuneration. Any individual denied fair compensation now has a valuable legal claim.

Xia Chaojia, a Sichuan NPC deputy and director of the large private firm Jiahe Group comments, "We will never feel discriminated against. Now we can fully focus on our business instead of worrying about our social status." But whether the Jiahe Group is actually safe depends on the government’s commitment to follow through on the promises outlined in the new amendment. The rhetorical shift encapsulated in the amendment, while significant, will not necessarily protect anyone’s claim. The mandates of the amendment must be carried out through legislative action, and furthermore, courts must recognize the new changes. The legislative and judicial follow-up will be the true test of China’s commitment to property rights.

To that end, the Chinese government has recently drafted what is known as the Law of Property Rights. At this point, the law has not moved beyond the draft phase as the government is currently seeking opinion on the statute.

“Attaching great importance to public properties,” Xinhua reports, “the Chinese have for long failed to treat private and public properties on an equal footing. They even felt shameful to

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talk about private properties several decades ago." The Law of Property Rights, if eventually adopted and enforced would be a step towards treating private property with the concern now given to public property.

Specifically, the law outlines basic protection of property ownership from arbitrary government abuse. With construction projects appearing across the nation, village heads often sell land without just recognition of those families living on it. The Law of Property Rights would give farmers a legal claim to just compensation for land taken from them.

"The most important function of the law on real rights is to clarify ownership and put down disputes over properties," said Yao Hong, director of the civil law division of the Legislative Affairs Commission under the NPC Standing Committee.

Individuals treated unfairly by government officials now have legal recourse to defend their property. Prof. Cai Dingjian with the Politics and Law University of China based in Beijing explains, "The Law of Property Rights is closely related with the daily lives of the masses of people. Once it is enacted, it will become a powerful and useful weapon for individuals to protect private property."

It would also help ameliorate the economic maladies described above. "Once the State values the property of individuals, the public's aspirations to wealth will be inspired, and social and economic development in the country will be motivated constantly," Sun said. The statute would be a concrete implementation of the mandates currently ensconced in the constitutional amendments.

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20 Xinhua Op. Cit.
21 Ibid.
24 Ibid.
V. Conclusion

China has come a long way from Mao’s land reform to a healthy, bustling market economy. The prospect of establishing a comprehensive scheme of property rights, difficult and slow though the process may be, is almost a reality. Such an achievement would yield substantial economic, political, and moral benefits. The philosophy of socialism that has been weighing heavily on the historical progress of modern China, while still very much alive, seems to be losing favor to more realistic capitalist ideas. Today, Chinese citizens have little recourse to law for the protection of their land, belongings, and livelihood. But if recent history is to be a guide, China may very soon boast a full and fair institution of property rights.