Law, Governance and Development:  
The Transformation of Property Rights in Land 
and Property Law in China  
CEAL-CCS Workshop, SOAS, May 11-12, 2012

Abstracts of papers to be presented

Home Ownership, Home Finance, Divorce, Inheritance

Tim Murphy

From the early twentieth century, and especially since the 1950s, the UK has luxuriated in the dream of a “property-owning democracy”. Key to this was the growth of nineteenth century provident institutions which evolved into “building societies”. Since the financial revolution of the 1980s, these have merged, disappeared or been transformed into banks. The USA, more recently, experimented with the mass dissemination of a somewhat analogous idea --- this came to provide part of the underpinning of the “sub-prime” crisis. Comparing the impact of the rise of owner-occupation on the politics of different economies and states is complex. This paper seeks to explore some of the features which make the Chinese embrace of owner-occupation distinctive, while exploring at the same time some of the emerging problems which are “prefigured” in the history of owner-occupation in the West. This requires attention to the financing of home acquisition and the treatment of family assets on divorce. The paper concludes with a question for China’s future: the impact of this propertization of China (and the one-child policy) on wealth distribution and inequalities over the longer term.

Land Law and Urbanization

Athar Hussain and Wei Gong

Land law refers to the collection of legal documents concerning the ownership and use rights in land and transactions in these. In the Chinese context the collection includes a diverse range of items: selected articles of the constitution, specific laws passed by the National People’s Congress, regulations (xingzheng fagui) made by the State Council and rules (guizhang) made by territorial governments and state bureaus. The object of the paper is to outline and analyze the web of links between land law and urbanization, which, as elsewhere, takes two forms: first, the expansion of the towns and cities and, second, the increase in the percentage of the urban population in the total. The second is driven by rural-to-urban migration and the consequent re-designation of rural population as urban dwellers. The paper will focus on three processes that are of special importance in the Chinese context:

- Acquisition of rural land for urban development and compensation to the affected rural population
- Regrouping of the rural population into higher density settlements
- Rural-to-urban migration and the issue of the integration of migrants
A Third Land Reform? New Changes to Rural Land Use Rights

Ting Xu

Post-1950 rural China has witnessed two major land reforms. The first reform, a project of ‘land-to-the-tillers’, was launched by the CPC after the founding of the PRC in the period 1949-1952. The second rested on the introduction of the household responsibility system (HRS) after the People’s Communes were dismantled in the late 1970s and early 1980s. However, this reform did not give farmers full private ownership of land. According to the Property Law (2007), farmers’ land use rights belong to usufructuary rights (yongyi wuquan), that is, the rights to possess, use and benefit from property that belongs to another person, but not to the right to dispose of the property. As a result, farmers’ land use rights cannot be freely circulated in the market. Thus land acquisition by the state has become the only way to allow such rights to enter into the market, a process that has presented many rent-seeking opportunities for local governments. Whether to introduce a third land reform is an issue currently being debated. One solution given much support within China is the idea that greater privatisation would help to solve many problems. This suggested solution, particularly as regards rural land issues is still being debated by scholars. At the same time, farmers themselves appear to have provided their own answer. The contemporary trends in rural China have been toward transforming into ‘the new collective system’, namely, re-collectivisation after the disintegration of rural communes. For instance, farmers at Xiaoqiang Village in Fenyang County, Anhui Province, the first place that adopted the HRS, have now recollectivised their separate land use rights for more efficient use and management of land. Furthermore, the HRS co-exists with the post-collective system (hou jiti zhuyi), a system in which industrialisation has been achieved through collective ownership. The hybrid result, unexpected though it may be, may be termed ‘clan capitalism’. The paper argues that the key issue involved in rural land ownership is not whether rural land should be collectively-owned or privately-owned but rather the effective enforcement of ownership rights. In many cases, farmers are willing to sell their land use rights. Disputes are usually focused on compensation rather than the transfer of ownership itself. The paper examines empirical examples in Guangdong, Anhui, Chongqing and Henan provinces, which exemplify new changes in rural land use rights. Experiments have been made to strengthen the circulation (liuzhuan) of contractual management rights, including subcontracting (zhuangbao), leasing (chuzu), exchanging (huhuan), transferring (zhuanrang) and shareholding cooperatives (gufen hezuo). Although many problems remain unresolved, these experiments are important steps towards integrating elements of private ownership into the collective system. The paper concludes with a review of the shifting public-private divide in rights to land, an issue which underlies many of the difficulties surrounding rural land ownership in contemporary China.

Property Rights Protection through Litigation: Ownership Bias and the Role of Political Connections

Haitian Lu, Hongbo Pan, Chenying Zhang

In the research on which this paper is based, we use adversarial corporate litigation between state owned and private owned firms in China to examine the strength of state provided formal institutions in protecting private property rights. Based on a unique dataset from 3,323 court rulings and 272 court-directed settlements that involved Chinese listed companies during 1998 to 2010, we show that state owned firms have a win rate that is 8.6% higher than the private owned ones. The advantages of state owned firms in litigation are most significant in cases with straight forward merits, in provinces where the local legal institutions are weak, and when cases are tried in their home provinces. Nevertheless, private owned firms can, through establishing political ties, increase
their win rate in court and partially correct the ownership disadvantages when faced with state owned enterprises. Our empirical results remain robust subject to our tests against the selection of disputes for litigation, plaintiff effect, lenders effect, and an array of party and case idiosyncrasies. (JEL P14, K41)

**Conflicting values between private and public property in China: informal discretion in the process of expropriation, compensation and subsequent allocation of land use rights.**

**Emilio Ramos**

The paper will explore what appears to be the conception of property in the context of the Chinese legal system by evaluating the underlying conflicting values between private and public property. It will intend to answer the question of to what extent it is arguable that land use rights in China might be adjudicated by means of the rule by law and not through the rule of law. It will concern therefore with property protection whilst reflecting this tension between private and public ownership. Put in a different way, there are not always clear private property rights and the allocation of land use rights might involve arbitrariness arising from vagueness or openness in the wording of the laws. While it is arguable that neither vagueness in law nor discretion necessarily affect the rule of law; there may be, however, a deficit in the rule of law if government officials act using informal discretion or, according to Endicott, they exempt their actions ‘from the reason of the law.’ Accordingly, this paper will attempt to identify implicit normative options and consequent actions that government officials might take whilst acting arbitrarily (i.e. informal discretion) once these values in conflict are examined in the light of some aspects of linguistic imprecision of property laws in China. Hence, the paper will discuss as to whether particular discretionary acts derived from vagueness in property laws could affect the rule of law by pointing out concrete examples whereby government officials discretionarily expropriate, compensate and subsequently allocate expropriated land use rights. Precisely, underlying the allocation process are, on one hand, arguments of policy justifying corresponding goals of the central and local governments; along with, on the other hand, arguments of principle which arbitrarily secure some group rights against third parties' ill defined property rights. Finally the paper will argue that local governments seem to replace the market mechanism by relocating land use rights to developers as a result of such random expropriation process.

**The role and nature of farmers’ land rights in post-Mao China**

**Zhang Lei**

Looking into the history of China, the concept of private property was never fully developed. The establishment of the People’s Republic of China, adopting the socialist ideology, wiped out any residue of private property rights. However, since the economic reform that took place after 1978, the recognition and protection of private property has been put into the legislative agenda. The rural commune was decollectivized. Instead of the commune system that demotivated the peasants, the introduction of the Household Contract Responsibility System allowed farmers to lease rural land thus the lessees own the profit derived from their work. In addition, the revised Land Administration Law 1998 provided the legal basis for the re-lease of such land. During the second round of lease farmers were issued individual, standard and notarized contracts. Further, such a lease is transferrable in accordance with the law. For the first time, farmers possessed a property
right that is stipulated by law. On the other hand, the envisaged land rights system is circumscribed by the current Marx-Leninist framework. China is taking a unique path of land reform: a government-owned and controlled land market that does not permit private ownership of land nor a free land market, yet with the ideological compromise of paid lease and transfer of use rights. Moreover, rapid urbanization and industrialization is resulting in substantial losses of arable land. Lands are expropriated for economic needs. Subsequently commercial developers and local government meet the resistance from people whose legal interests are infringed. Social conflicts escalate and the creditability of the local government slides down. What, then, are the roles and nature of farmers’ land rights in the socialist China? The paper reviews and analyses the debates and concerns surrounding the concept of private property and land policies of China. It examines the institutional and conceptual development of a post-collective institutional framework for land rights by investigating the policy and law-making processes. The paper then explores the underlying problems of the national legal-political framework for land rights. It provides an insight to the land tenure system of post-Mao China and concludes with an objective evaluation of the merits and faults of the land policy in catering for long-term economic growth as well as in protecting the farmers’ interests.

Law and Policy in the context of China’s Social Change (1978-2008)

GAO Yuanzhi

Since 1949, the year of the birth of People’s Republic of China, China has undergone 60 years of stumbled development and tremendous social change which could be divided into two periods: the radical era of Maoism in the first 30 years (1949-1976) and developing era of reform of the followed 30 years (1977-now). After the end of Chinese Cultural Revolution in 1976, Beijing authority determined to transfer their attention from ideology (class fight) to economic development. During this period, Chinese economic law had to transform from previous ideological law to the refreshed pragmatic law as well. But Chinese policy-makers had no experience to set a new, practical and reformed economic law at the beginning, so they acquiesced people to carry on some spontaneous economic actions which were abandoned by previous law, such as price-fixing, right to employ, right to decide what to cultivate by themselves, the right to transfer the right to use, etc. Most of these economic behaviours was regarded as illegal at first, then silently permitted, and later recognized in policy documents issued by Central Government. Although all of these actions and policy were illegal in the context of law, they were actually carried on in practice. Hence, during this period, there was a so-called “vacuum of law”. After several years of practicing and adjusting, when the authority felt that this kind of economical action / policy were workable and had been matured, they would promulgate the official written law to confirm it. During this process, many subordinate rights which constitute property right were removed one by one from authority to the individual / enterprise. Finally, the original property rights were just left as a nearly empty socialist shell, and its contents were belonged to countless personnel and entrepreneurs. I want to research how the property rights were transferred from [state authority?] authority to individual / enterprise step by step for economic development during the period of “vacuum of law”, how the people’s spontaneous economic action and policy finally were transformed into the written law and how some workable spontaneous economical actions would not be successfully transformed because of some remains of previous ideological law. The research for this paper is based on documentary / archive analysis and case studies and is structured by interpretive methods.
The Politics of the Re-Emergence of Private Landholding in Russia

Jane Henderson

In Russia, private land ownership remains an emotive issue. Longstanding tradition abhors the possibility of an individual and their heirs tying up forever the most fundamental resource – mother earth. Historically, social control through land ownership endured through both Imperial and Soviet Russia. Tsar and boyars tussled over land tenure in return for state service, while the majority of the population, the serfs, did not own land but were bought and sold with it. After emancipation in 1861 the former serfs held land communally, with periodic reallocation as family size changed; the 1906 Stolypin reforms to replace communal tenure with private landholding were never fully realised. Lenin’s April 1917 promise of ‘Bread, Peace and Land’ struck a chord, but despite the early post-revolutionary abolition of land ownership and subsequent transfer in 1918 of land ‘to the use of the whole toiling population’, the reality was centralised state ownership of all land and natural resources. Forced collectivisation of the late 1920s-early 1930s reduced Soviet agricultural workers to an equivalent of serfdom, with limitations on internal travel. Post-Stalin reforms ameliorated that restriction, and during perestroika inheritable life tenure of land become possible, but reforms which would have diversified land ownership to different levels of state were never realized. ‘Private ownership’ (chastnaia sobstvennost’) remained anathema until December 1992. Russia’s first president, Boris Yeltsin, was determined to encourage individual landownership to ensure the death knell of communist ideology. He also hoped a renaissance of family farming would increase agricultural output from the abject level of the soviet collective and state farms (kolkhozy and sovkhozy). Effectively, he aspired to undo collectivisation. However, the federal legislature was resistant. Despite the 1993 Constitution guaranteeing individual landownership, no federal law was passed, so in 1996 Yeltsin issued a presidential decree allowing farmland to be bought, sold and mortgaged. Eventually the change of regime to Putin’s first presidency, with a revised first legislative chamber from 1999 and a reformed second chamber in 2000, allowed a Land Code to be passed in 2001. In 2002, a separate law forbade foreigners from owning agricultural land. This paper will explore the link between politics and landholding in Russia, which hindered the introduction, arguably for the first time, of a right of private property in land.

Shenzhen Special Economic Zone: A Policy Reform Incubator for Urban Land Market Development in China

Xiaofang SHEN and Songming XU

Land market reform has been an essential part of China’s economic transition since 1979, and, as one of the country’s first special economic zones (SEZ), Shenzhen has played a trailblazing role in the country’s urban land market development. Unlike many transition economies, which started land reforms with ‘big bang’ privatization programs, China chose to use long-term leasing as an alternative for divesture of state lands for private use. China also opted to pilot politically sensitive changes in delimited SEZs, initially targeting investment, and, gradually spread the changes across the country for the benefits of all citizens. This paper reviews the journey Shenzhen travelled in leading China’s urban land market transition, emphasizing the vision, political will, and pragmatism the early reformers displayed in overcoming the initial hurdles. It also highlights some of the problems imbedded in reforms set in a ‘less than ideal’ legal environment and the cost related to it. The lessons drawn from this experience remain important to China today as it faces continued land market reform challenges. Some of the lessons are useful to other developing and transition economies where similar reforms are needed.
Access to Justice in Urban Housing Demolition and Relocation Disputes in China

Laura Zhou

Largely due to increasing demand for commercial use land in urban areas, new policies have been elaborated on housing demolition and relocation since the 1990s in China. During the relocation process, a large number of disputes have occurred as citizens have been forced to move by firm government measures, while often failing to obtain appropriate compensation and being relocated to unsatisfactory residences. However, existing judicial and related remedies fall short of protecting the individual’s vital interests and ‘quelling the anger of the masses’. As a result, petitions have frequently been made to superior authorities, and some local conflicts have escalated into so-called ‘mass incidents’. This paper examines the reasons that why it is so difficult to secure access to justice in housing demolition and relocation in China today, and in what ways might access to justice be enhanced so as to make the system fairer for ordinary citizens. It is of great significance and a matter of priority in China therefore to establish an effective and legitimate dispute resolution system in order to ensure proper access to justice in demolition and relocation process.

Property Law in the People’s Republic of China Between Economic Growth and Rule of Law

Caterina Mugelli

Property law had, and still has, a great impact on the basic rights of every citizen. For this reason it has become through the years one of the basic rights within a given society. In the People’s Republic of China, this had occurred before the 1999 Constitutional amendment which introduced the rule of law concept. In fact, through a clever guile, the in 1988, the Chinese government maintained the principle according to which the land remained of the whole people (a euphemism which means public), but the right to the use of land can be transferred between citizens and economically evaluated. This manoeuvre had a huge impact on China’s economic growth, in particular in the development of the real estate market and, for several years, the ambiguity and vagueness of the provisions related to public and collective ownership permitted a flexibility of action to the central government and other local authorities. In this paper I will discuss the importance of the last Constitutional amendment in China (2004) which established that even the private property of citizens is inviolable, can be inherited and the state may expropriate it for the public interest by paying compensation in accordance with the law. Furthermore, I will underline the potentiality of the 2007 Real Rights Law and its ability to affect Chinese citizens and peasants by a growing consciousness of property rights in a context in which the central government is apparently trying to strive for judicial independence and judicial professionalism. It could be possible that the effective implementation of the rights stated in the 2007 law could be considered a further rule of law development even if the variant is always constituted by the amount of ‘Chinese characteristics’ that will affect it and by the widespread corruption and local protectionism.
Making the Difference: Low-income Housing Projects in China

Jing BIAN

In establishing an effective system of settlement of the housing difficulties, the Chinese government has adopted various approaches. While progressively restructuring the traditional housing system, market-led reforms were started in the 1990’s. As a result of these reforms, the commercial houses (the uncompleted or completed houses developed and opening to sell by the real estate development enterprises), affordable houses (indemnificatory policy-based houses for which the government offers preferential policies and sets limits on the construction size and sales prices and which are build according to reasonable standards and are supplied for urban low-income families with housing difficulties) and low rent houses (provided by government through granting renting subsidies or house space guarantee to the families which meet the minimum urban residents’ living standards and with housing difficulties) compose the current housing provision system in China. Without any doubt, the fast economic development, industrialisation and urbanization, have made the housing market in China flourish. However, the low-income class continues to face economic challenges in entering the housing market. Considering the large population of China, this phenomenon has led to certain negative social impacts. In order to resolve the dilemma, a series of housing projects has been introduced. These measures have brought significant benefits to those of low-income. Nevertheless, being a new system, the actual application of it needs to be examined. The operational structure is not yet complete. In addition, the legal and regulatory framework of the low-income housing projects needs to be further improved. According to the National Audit Office (NAO), in 2010, the number of misused and uninhabited low-rent housing projects accounted for 3.49 percent of the total number of audited low-income housing projects in the 16 largest cities. The paper examines the development of low-income housing system in China; for instance, the legal framework, application and allocation procedure, the interaction between different market players, and the government’s strategy. Furthermore, as one of the central issues, the financing for this system will be analysed: can the Real Estate Investment Trusts (REITS) be introduced as a mean of financing and if it can, how would it operate under the current legal framework and economic situation? Based on a comparative study, in particular, the operation of “Council House” system in the United Kingdom and the “Home Ownership Scheme” in Hong Kong SAR, suggestions which target “proper use of property” will be made.

Chinese Prometheus Unbound? Exploring the implications of rural land tenure transferability in China

HAN Yongqiang

The sparks of both the pre-1949 communist revolution in China and the post-1978 economic reform starting from the establishment of HRS (Household Responsibility System) were ignited by Chinese agro-citizens. In this sense, Chinese agro-citizens can be compared to Prometheus. However, over the past 30 years, the HRS agro-production in China has been undergoing significant changes due to the rapid urban economic development. More recently, the agro-land tenure has become transferrable under the Chinese land law. These changes have been eulogized as ‘the third liberation of the Chinese agro-citizens.’ But, to what extent is the Chinese Prometheus unbound, if at all? This paper expounds on the impact of the transferability of Chinese rural land tenure on the livelihood and living conditions of the agro-citizens. The first part introduces the key sections in the Agro-land Tenure Act 2002 and other relevant statutory instruments which provide that rural land tenure can be transferred voluntarily subject to law. The second part describes the impact of residential-land
tenure transfer. The immediate impact is that suburban villagers soon upgraded their accommodation from huts to flats. Large scale transfer of residential-land also boosts industrialization of village areas. As a result of the local industrialization, some more skilled agro-citizens become employees of the local industry, while others are equally glad to live on rents derived from their flats leased to migrant workers. The third part describes the impact of agro-land tenure transfer on the lives of agro-citizens. The impact is threefold: ‘landlord’ which had been crushed as a social class by early 1960 seems to be resurrected in a new form; there are a growing number of non-farming agro-citizens most of whom are neither willing nor able to farm in ‘their’ tenured land; the household–based agro-land tenure and production since early 1980s is not far from its demise. It seems that more and more agro-citizens are not so much bound by ‘their’ land as their ancestors for not having to farm and labour in the fields. But upon scrutiny in the fourth part, it is perceived that this is only true, if at all, of suburban agro-citizens who can have non-farming occupation as their livelihood near their home. For the majority of strictly rural agro-citizens who have to migrate tens or hundreds of miles to work in cities --- hence aka ‘migrant workers’ --- they are doomed to return to their tenured land and be rebound thereto when they grow older and older. As far as the Hukou system is concerned, they are never unbound by ‘their’ land in that their birth in rural land by their rural parents give them the agro-citizenship which under the Hukou system deprives them of much of that to which they should have been entitled. Unfortunately for the Chinese agro-citizens, this is most likely to continue to remain so in the first several decades of the 21st century in China.

**Integrating private and collective land rights: can China achieve the impossible?**

**Alison Clarke**

The property rights structure formally put in place by China’s 2007 Property Rights Law, endorsing the place of private property within the Chinese system, takes as its model the German civil law. However, private property as it is emerging in China looks very different from the German private ownership model. As far as land-related rights are concerned, the 2007 Act appears to be endorsing, within this civil law structure, a pragmatic process by which various land usages have, over a number of years, been acquiring, piecemeal, private-property like attributes, a fragmentation of ownership process more closely resembling an evolutionary common law model. However, where China’s developing private land rights system differs from both the civil law and the modern common law models is that China appears to be intent on accommodating private property rights within an overall framework of state and collective rights. In both civil law and modern common law property systems the basic unit of rights-holding is the individual, and whilst neither system has difficulty in accommodating state ownership, there are real difficulties in adapting or importing private property systems of either variety so that they co-exist with collective resource rights systems. This has been amply demonstrated in post-colonial states whose indigenous populations traditionally hold land and other resource rights collectively. For a variety of complex and ill-understood reasons, most attempts to stimulate economic development in these states by privatising land holdings have failed miserably. The context of privatisation of land rights is very different in China. Nevertheless, if China is able to develop a complex property rights system which successfully integrates private and collective rights in land and other natural resources, whilst also maintaining economic growth, this may throw some light on why the problem is proving to be so intractable in other states.