Property: Real and Intellectual

Property law probably represents the most dramatic legal change in China. It was not too long ago that China considered the very notion of private property as completely foreign. Today, China continually makes fundamental changes in its property law. Intellectual Property (IP) makes a perfect companion to real property law, as it raises fundamental questions about whether it makes sense to have property rights in ideas and their applications.

A. Property Law

In 2011, Wukan, a small fishing village of 20,000 people in Guangdong Province, became the unexpected center of a Chinese political crisis that made headlines across the world and even threatened the legitimacy of government rule. The scandal began with protests against local officials accused of illegally seizing village land and selling it to commercial developers for massive profits. When officials later announced that one of the protest leaders had died in police custody, the protests escalated into an outright revolt. The villagers forced the police and local officials out of the town and placed barriers to prevent their reentry.¹ The blockade crisis ended only after the government admitted wrongdoing and agreed to release several imprisoned villagers, provide for free elections, and investigate the alleged land grabs.²

Although the land dispute in Wukan represents an extreme example, land grabs by government officials have become distressingly common in China. According to a 2011 estimate by Yu Jianrong, a professor at the Chinese Academy of Social Sciences, Chinese government officials, particularly local officials, have seized about 16.6 million acres of rural land since 1990 and undercompensated farmers by about two trillion RMB (approximately US $322 billion). China’s Land Ministry has even warned that land grabs could threaten China’s agricultural supply by diverting the usage of much-needed

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The problem persists despite the fact that the protection of Chinese citizens’ property rights is guaranteed in the Chinese constitution and in various pieces of legislation.

The importance of property law in a nation’s economic and social development cannot be overstated. For years, scholars and international organizations have recognized that the protection of private property rights is crucial to developing markets, attracting investment, and maintaining economic growth. In China, the interplay between property rights and economic growth has played out in spectacular form. Over the past few decades, the government of the PRC has worked to strengthen property rights, resulting in a decades-long period of sustained economic growth. Some scholars have even theorized that China’s property law reforms have been crucial to China’s gradual acceptance of international human rights norms, since promoting human rights prevents instability that could otherwise disrupt China’s burgeoning market economy. However, events such as the Wukan protests serve as painful reminders that property reform in China remains an incomplete, and at times contentious, process.

History and Sources of Law

Despite the central role that property law has played in China’s recent development, the idea of “property” as a discrete area of law is a relatively new concept in China. Before the introduction of Western law in the twentieth century, China had no codified property law. All property rights emanated from the state, which had the power to confiscate and transfer property. These confiscations and transfers were not uncommon, particularly when there was a change in the ruling dynasty. Even when the state did not confiscate private property, citizens faced considerable restrictions to their property rights. One particularly strict area of property law dealt with inheritance. Personal property was legally required to pass through the patriarchal line at death, and transferring property through a will was a rare exception.

During the KMT rule, China codified its first property law (1929–1930), the Civil Code, which largely drew from the German Civil Code and included a section titled “Rights over Things” (wuquan). In the end, however, the Civil Code had little practical effect. Soon after the passage of the Civil Code, KMT rule was interrupted by Japanese occupation, the Chinese war with Japan, and finally China’s civil war, which resulted in the eventual ouster of the KMT and the founding of the PRC in 1949. Following the establishment of the PRC, the philosophical basis for property law changed as the new government began incorporating socialist