

## **Property Rights on Imperial China's Frontiers**

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### **Abstract**

Many people still think that imperial China was a despotic state, where peasants had no private property rights in land. This theory of Oriental Despotism has a long history, going back to Western biases about Asian societies. By looking at how China's Qing dynasty handled several cases of land settlement in the eighteenth century, I show that the state did respect private property rights, but it intervened to change rights to land for political and economic purposes. In Taiwan, officials first tried to prevent immigration, to ensure security on the island, but later promoted active colonization, while trying to protect the rights of the aboriginal population. In Northwest China [Gansu and Xinjiang], officials encouraged very active Han Chinese settlement, in order to maintain control of a newly conquered region. Each of these settlement policies had very significant impacts on the agrarian environment, and I discuss the sustainability of the agriculture settlements created in these regions.

Some environmental writers have also called attention to the value of community property rights for preserving natural resources. I discuss in the conclusion to what extent imperial China could ensure local community control of resources like water and land in the face of commercial and political pressures.

In each case, examining China's experience with property rights helps to highlight the limitations of general theories based on the Western experience alone.

## Introduction

Property rights approaches have become a powerful tool for analyzing social and economic change. (Barzel 1989; Bromley 1991; North 1973, 1977, 1981; Feeny 1989) Several scholars have used the model to analyze landed property relations in imperial China. (Buoye 1993; Myers 1976, 1982; Yang 1987) But debates over Chinese property rights long precede these attempts. In this chapter, I criticize some applications to China of the property rights model and offer suggestions for improving its use, especially as connected with environmental change and land use.

Ever since seventeenth-century Jesuit visitors began reporting back to Europe about the Chinese empire, the nature of Chinese property rights in land have been a central focus of debate. French Enlightenment writers argued about the relationship between state and society in imperial China. The Physiocrats, especially Francois Quesnay, argued that the emperor's rights over land were limited by "natural law" :

I have concluded from the reports about China that the Chinese constitution is founded upon wise and irrevocable laws which the emperor enforces and which he carefully observes himself. (Quesnay 1946, cited in Perdue 1987, p.1)

They held up China as a model for Europe. They approved of the Chinese view that land was the true basis of all wealth, and that promotion of agricultural production was the primary goal of a well-governed state. Low taxes and secure rights of possession provided incentives for farmers to invest effort, improve productivity, and create agricultural abundance.

Others, like Montesquieu , by contrast, saw China as a pure despotism, where the emperor held title to all the land. Because complete state control of land removed incentives for private owners to improve production, China remained backward and poor. Montesquieu systematized the concept of China and other Asian empires as "Oriental despotisms" . China for him, was the negative model for Europe, an image of what

absolutist regimes might become if individual rights to land were not protected against an all-powerful state. He promoted individual rights protected by formal constitutional guarantees in order to distinguish the free West from Asia. Marx adopted the Montesquieu view of Asia and incorporated other elements to create his model of the Asiatic Mode of Production, a society unchanging at its base beneath the rise and fall of imperial regimes: (Anderson 1979)

The same debates have continued today. Some scholars stress the limited control of the imperial state over landed property and point to its encouragement of productive investment, its support for land contracts, and its encouragement of trade. Others, especially Chinese scholars, continue to promote the despotism view of imperial China as a backward, self-sufficient economy dominated by an oppressive, all-controlling state. The entire imperial era, from the second century B.C. to the collapse of the final Chinese dynasty, the Qing, in 1911 A.D., is seen as an era of "stagnation", during which "the system .. remain[ed] basically the same for the whole of imperial history". (Yang, citing Pye, 1968: 12-16).

These theorists have rejected the orthodox vulgar Marxist interpretation, which viewed the period as one of "feudalism", a socio-economic formation dominated by private property land rights held by landlords. The imperial state was merely a servant of the landlord class, protecting its interests against rebellion by the exploited peasantry. Feudalism as a social formation contains the seeds of change within it, which sporadically produced "sprouts of capitalism" in either the tenth, sixteenth, or eighteenth century, depending on the analyst. Because private property systems create exploitation and class conflict, they will change, driven by the class conflict, but the Oriental despotic system which features the "universal serfdom" of all to the state, has no dynamic of change.

All of these analysts were primarily concerned with the link between economic growth and property rights. They seldom considered the environmental consequences of

growth. If we ask about the sustainability of socio-economic structures, old questions about Chinese property rights appear in new guise. We are led to ask not merely whether farmers in imperial China had independent rights to land autonomous from the state and whether they had incentives to improve production, but whether the ultimate consequences were so damaging as to make the continuation of agrarian life impossible. In Marxist analysis, "sustainability" depends only on the resolution of conflict between humans. The relationship of humans to the natural world is not a contradictory one, unlike the class struggle of property owners vs. the exploited.

. This question has gained new urgency after the dramatic Chinese agrarian reforms of the 1990s. These reforms have produced a massive shift of control over land use to peasant proprietors, freeing them from the many restrictions imposed by the Communist state since 1949. One of the consequences has been extraordinarily rapid economic growth, but the environmental outcome is uncertain. Vaclav Smil argues that the reforms have exacerbated severe environmental strains, which may lead to ecological and economic disaster. (Smil, 1992, 1993) Some go farther, predicting massive political and social collapse produced by environmental crisis (Goldstone, 1992). William Hinton defends the collective property regime that ruled from the 1950s to 1980 as having provided much more effective protection for public goods like the environment than the private property regime now spreading today. (Hinton, 1983). Lester Ross, by contrast, argues that effective laws for protection of the environment can only take effect after private property rights are secure, and only during the reform period have genuine limits on environmental destruction been enforced. (Ross, 1988)

Examining the opposing sides in these historical and contemporary debates, I have a frustrating sense of inconclusiveness. These theories suffer from excessive abstraction from the Chinese physical, economic, and social environment. Their proponents outline global models which ignore variations of time and space. Hence confusion persists. A social history approach begins with sensitivity to local variations

and change over time, and with the premise that the environmental consequences of property rights changes can only be profitably analyzed in local contexts. I begin with a critique of some of the prevailing models, then outline some case studies suggesting the value of the social historical approach.

### **Wrong Turns in the Study of Chinese Property Rights**

A Man of Sung decided to help his crops grow. He went into his fields and pulled on each of the sprouts, hoping to make them grow taller. The next morning he returned and found all of his plants dead. -- Mencius

Grau, mein Freund, ist aller Theorie; doch grün des Lebens teurer Baum -- Goethe. (All theory, my friend, is gray; but the lovely tree of life is green)

To abstract means, in Latin, to "pull out", or to select the essential features of an object for analysis. Like the Man of Sung, however, excessive abstraction risks killing lived experience. Static models, whether culturalist or economist, ignore the contingencies of time and space that determine development. I should stress that I am not attacking all abstraction in the following critique, but only those forms of abstraction about imperial China that misconstrue its development because they ignore processes of substantial variation over space and time.

Karl Wittfogel's *Oriental Despotism* still remains an important reference point for proponents of the Chinese despotism model. (Wittfogel, 1956, 1963) A Sinologist, member of the German Communist Party, and Marxist theoretician in the 1930s, Wittfogel converted to virulent anti-Communism after his arrival in the U.S. in the 1950s. Arguing that imperial China was the source of the violent domination by terror that was responsible for the victory of Communism in the Soviet Union and in the People's Republic of China after 1949, he traced the rule of totalitarian Communist states back to the "hydraulic state" of ancient China. Distorting Marx's Asiatic Mode of Production into

a simplistic, deterministic model, he argued that centralized imperial control over vital irrigation sources secured the basis for a system of total power, in which there was no private property, because the state held all the land and productive resources. Officials served as slaves of the emperor, with no intellectual or territorial bases of autonomy. Villages were self-sufficient units of production, with no exchange relations. There was no historical dynamic of progress, because there was no class struggle and all were slaves of the state.

Wittfogel's model lacks any empirical grounding. Studies of irrigation organizations in imperial China have demonstrated that nearly all control of water resources was local, not centralized. Most of China's agriculture did not depend on large waterworks, but on natural streams or on tube wells. The model is technological determinism of the most vulgar sort. Like Hegel and Marx, Wittfogel excludes Asia from "History" of the Western type. His argument is a late phase in a long-standing Orientalist project designed to prove the superiority of the West over Asia.

Many modern European historians and social theorists have repeated the same assertions unchanged. (Blaut 1993; 2000) Some, like David Landes and Eric Jones, explicitly endorse Wittfogel's outdated scheme. Others adopt only parts of the Eurocentric vision on which he based his theory. Despite abundant empirical evidence of private land markets and thriving commerce, they all concur that the Chinese autocratic state, because of its total control of property, prevented industrialization. (Landes 1998; Jones 1981)

Yet why does Wittfogel's model retain its appeal? Like the Chinese budaoweng doll, every time it is knocked down, it bounces back up in a new guise. The myth of changeless China has many uses. The popular Chinese TV documentary, "River Elegy", invoked the same myth of a stagnant China, victimized by an oppressive imperial state controlling waterworks and sealing off the country behind the Great Wall. In this mythical version, only the arrival of the Western powers in the sixteenth century, sailing

their ships across the blue ocean, could save China from its millennia of stagnation on the Yellow Earth locked behind the Great Wall. The grandiose sweep of the vision, combined with technological determinism, lent it great popular appeal in China, at the cost of distorting history. (Perdue, in Smith 1994)

Yang Tai-shuenn, in a dissertation entitled "Property Rights and Constitutional Order in Imperial China", adopts uncritically most of the essential features of the Wittfogel and Marxist Asiatic mode model and applies them to the analysis of property rights in imperial China. (Yang, 1987) Invoking Douglass North on the importance of the "constitutional order" underlying the rules which specify transaction costs, he looks for common features of a Chinese constitutional order spanning two millennia of the imperial period (221 B.C. - 1911 A.D.), and explicitly downplays the significance of historical change or regional variation. Taking the existence of "stagnation" as unproblematic, he deduces the nature of property rights in China from classical philosophical texts, law codes, and cosmological and ideological assertions. He finds that the emperor owned all the land; there was little change over millennia, because the cultural emphasis on filiality, hierarchy, and imperial unity precluded individual rights. State control of property interfered with the efficient allocation of resources, and Confucian officials denigrated the value of trade. Because peasants had no secure property rights, villages remained self-sufficient, with little specialization, or cooperative contact.

The model is very recognizable as Asiatic despotism dressed up in the terms of modern "property rights" analysis. As with Hegel, Montesquieu, and Marx, a construction of timeless China is erected in contrast to the dynamic evolution of "freedom" in the West. Globalist and totalistic in its characterization of the two modes of production, it is classically Orientalist: It others the West, radically separating it from China and the East. It is also "Occidental" in fetishizing the Western Europe's experience as the norm for all. It is equally unconcerned with empirical research, relying

on documents referring to cosmology and norms, and never analyzing real land transactions.

Within China, Occidentalism can become a liberating ideology, as it did in the "River Elogy" television series, because it opens space beyond the strictures of Stalinist vulgar Marxism (Chen,1995), but as a method of social science analysis, it damages our ability to do empirically based cross-cultural comparisons. It is a static cultural analysis that removes two millennia of Chinese history from the reach of the market. The Oriental Despotism model removes China from world history, instead of including China's experience in global processes.<sup>1</sup> In fact, the "sprouts of capitalism" argument that flourished within the old vulgar Marxist model, despite its crudity, did have the advantage of seeking trends in China parallel to those elsewhere in the early modern world.

Ramon Myers also applies property rights analysis to imperial China, but comes up with completely contrasting conclusions. (Myers, 1982) He points, first, to the sustained, massive expansion of the Chinese economy from 1400 to 1800 A.D. During this period, the population grew from roughly 65 million to 300 million people, maintaining at least constant per capita income; a rural marketing system developed, embracing 27,000 standard marketing areas linked to a hierarchy of marketing areas reaching up to central metropolises; specialization and exchange of agricultural products allowed rural households to allocate factors of production efficiently to their best uses; and the imperial state enforced and encouraged the development of customary law which undergirded this commercial development. It was the spread of customary law as the

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<sup>1</sup> Many of the same points can be made against Eric Jones' discussion of "The European Miracle", although his work is much richer in ecological and economic detail. His later work, *Growth Recurring*, however, does find much more dynamism in the Chinese economy at certain times. (Jones, 1987, 1988)

dominant allocation system in rural China after the seventeenth century that enabled the lowering of transaction costs and the spread of trade:

The state combined the role of noninterference or slight modulation of the private sector with very limited authoritarian allocation of resources so as to create a fairly beneficent economic environment for private enterprise. (Myers 1982, 280)

Myers' argument, with its stress on the limited state and the beneficent effects of the state on private enterprise, echoes in more up-to-date language the eighteenth-century physiocrats. His perspective is based on more solid evidence than the despotic view: To support his argument that contracts were significant and enforceable, he discusses actual transactions. Still, he creates an almost equally abstract, idealized picture of a competitive society filled with free markets, the society where Adam Smith should have been born. His view of China in this work is spatially undifferentiated, and although he focuses on economic change after the sixteenth century, he does not provide an explanation of the dynamic of change. Although he admits that the commercial and population growth of the eighteenth and nineteenth centuries "led to ecological devastation almost ignored by communities and state" (Myers 1982, 279), he regards this devastation as merely a "dysfunction of development", not a critical weakness.

I will return to his discussion of customary law below, but here I will simply point out the parallels in this style of analysis with the oriental despotism model. Both applications of the property rights approach can lead to excessively stylized pictures of a complex society, like snapshots of a living organism that fail to capture its dynamic of growth and decline.

A social history approach does not look for essential principles of a social structure in formal legal codes and religio-philosophical texts, but finds them revealed in social practice. Land sales and litigation are the best places to study property rights, not

law codes and the principles of filial piety. I would deny that there is one completely consistent set of underlying principles that uniformly characterized Chinese social space. Particular transactions exhibited conflicting values which required individual judgment of cases.

The Chinese land mass is of continental scale, and regional variation across the empire was quite pronounced. Let us turn to two regional examples of the determination of property rights in land.

### **Case Studies**

#### **Taiwan**

Taiwan had been almost uninhabited by Han Chinese until the late sixteenth century. (Shepherd, 1993) Its aboriginal peoples, who numbered about 100,000 in the seventeenth century, practiced deer hunting, fishing, and low yield swidden cultivation of rice, taro, yams, and sugarcane. When Chinese merchants began to arrive in the late sixteenth century, trade began between Taiwan and the southeast China coast. The aborigines exchanged mainly deerskins, venison, and herbal medicines for iron, clothing, and salt. Meanwhile the Dutch built a fortress in the south in the 1640s. They failed to extract large revenues from the aborigines, whose productivity was low, but they were much more successful in generating revenue by selling deer-hunting licenses to Chinese merchants.

The pirate-adventurer Zheng Chenggong (known to Europeans as Koxinga) drove out the Dutch in 1662 and established a base on the island. He focused primarily on security and revenue collection to protect his military refuge on Taiwan, and until his death in 1681, he promoted land reclamation and immigration to supply his wars against the Manchus. The Qing rulers took over the island in 1683.

The first consideration of the new rulers, likewise, was security. Taiwan was not expected to be highly productive. The new Qing rulers did not encourage immigration or

trade, fearing that the island would once again become a base for piracy. They stationed only a small garrison of 10,000 men there. Soon, however, demographic and commercial pressures outstripped official policy. Chinese merchants promoted greatly increased trade in deerskins with the aborigines. Demographic pressures along the Southeast coast induced peasants to leave for more abundant lands on Taiwan. By 1750, the combined population of Han and aborigines exceeded 660,000. The Han settlers cleared new lands along the western coast of Taiwan, and fought off aborigines with claims to these lands. Partly to stabilize the land conflicts, the Qing state supported the large rent system, at first introduced by Chinese merchants. This system of property rights divided land rights into two : the large rent owner paid the tax to the state and held title by contract; the small rent owner was the actual worker on the land, who paid a fixed rent to the large rent owner. Both rights could be sold independently or subleased to others. Aboriginal large-rent holders given title to unopened deer fields contracted with Han peasant settlers who took over the small rent rights and cleared these lands for agriculture. The Qing state made special efforts to secure the rights of both parties. It was especially interested in protecting the rights of aboriginal landholders and in preventing conflict between the arriving waves of Han settlers and the native inhabitants. With only a small garrison on the island and with little expectation of revenue, the court's main priority on Taiwan was to keep peace at low cost. The new property system seemed to satisfy the demands of Han settlers, aboriginal inhabitants, and state officials. Aboriginal land holders could receive a fixed income without engaging in cultivation, while their Chinese tenants were assured of secure tenures and incentives to improve productivity. Court policy in the early eighteenth century, in sum, "was to give Han settlers access to tribal land on the condition that they pay rents to aborigine tribes and land taxes to the state". (Shepherd 1993, 257)

Further economic and demographic developments of the eighteenth century, however, put great pressure on the system. The population flow to Taiwan continued at

increasing rates, as Fujian province, across the straits, became increasingly crowded. Fujian producers also, as agriculture commercialized, turned to production of sugar cane and tea on the lowlands, and sweet potatoes and maize on the highlands, causing the province to become a grain deficit area. Taiwan became a profitable source of grain exports to the mainland. Increasing profits in the grain trade and increasing integration of Taiwan's economy with the mainland greatly raised its revenue potential in the eyes of both the state and Han settlers, but severely damaged the aboriginal economy. The deerskin trade was eliminated by overhunting and replaced by commercial agriculture as the herds were exhausted. The deer population, in effect, suffered from the "fishermen's problem": deer were an open-access resource, the extraction of which no one could limit. (McEvoy 1986) Therefore they were vulnerable to overhunting when commercial and demographic pressures grew, and the tribal hunters lost their livelihood.

After the destruction of the deer herds, the plains aborigines depended critically on large rent holdings for survival. Han settlers illegally bought tribal lands, and conflict occurred on the frontier between Han settlers and aborigines. Despite state efforts, aborigines fell into debt to Chinese merchants and lost their land. The officials feared that land losses among the aborigines would drive them into the mountains and turn them into the more dangerous wild tribal peoples who staged raids on the plains.

Compared to the non-Han peoples on other Chinese frontiers, the Taiwan aborigines received unusually favorable treatment. There is little evidence of impact of epidemic diseases on Taiwan's native peoples; their population did not decrease. Unlike the native North Americans, or the Mongols of China's northwest frontier, the aboriginal Taiwanese had had sufficient contact with the mainland germ pool to avoid near extinction. The plains aborigines saw the Qing state as their main protector. They enrolled in militia units for self-defense, under official supervision, and these militia units helped the Qing state suppress rebellions by Han immigrants.

Despite economic pressures, the large rent -small rent system persisted, because the state supported it. Qing officials debated the effects on landholding of unrestricted migration to the island. Some argued for keeping the island relatively isolated, allowing immigration only by soldiers and single male settlers, so as to reduce conflict with the aborigines. They attempted to stabilize conflicts over resources and freeze the status quo by restricting immigration and land clearance and by drawing boundaries between aboriginal and Han settler lands. Other officials, however, energetically promoted Han settlement. They argued that single men were much more likely than married couples and families to become involved in feuds and banditry. Their solution to land conflict was to push the Han settlement frontier much farther inland and drive aborigines off the plains. Imperial policy fluctuated under pressure from isolationist and integrationist (or separatist and imperialist) factions during the eighteenth century. In the end, demographic and commercial pressures overrode state policy. Settlers pushed the land frontier farther inland as the Han population increased, driving many aborigines into the mountains. The best the state could do was to protect the land rights of the remaining plains aborigines by shoring up the legal foundations of the large rent system.

The Qing rulers, despite autocratic pretensions, were far from "despotic" in practice. Their garrisons could not prevent movement of large numbers of settlers to an island far offshore. Nor could they stop conflict between aggressive Han settlers and the aborigines they wanted to protect. But they could fight a rearguard action against indiscriminate land takeovers, mainly through the legal guarantees of property rights and tax collection. As a result, the large rent system persisted until 1895, when the Japanese abolished it, and plains aborigines have maintained their presence on the flatlands of Taiwan to this day.

On the other hand, the Qing rulers were not simply "neutral adjudicators" of property conflicts. Their own security and revenue interests in the island affected their decisions about property. Taiwan, at first, was a low revenue region, important only in

military terms as a potential base for rebels and pirates. During the eighteenth century it became much more productive, a major supplier of grain reserves for Fujian and of tax income. Consequently, the state became increasingly interested in preserving stability of land tenure there.

Preservation of aboriginal livelihood also influenced state intervention in the property system. That livelihood depended ultimately on a successful transition from a hunting to a cultivating economy. Thus local ecology was clearly intertwined with the property system. The deer hunting economy of the aborigines eventually was pushed out by commercial grain production on the plains. The "raw" aborigines, those who refused to make the transition, moved to the mountainous uplands to continue their hunting and slash-and-burn cultivation, but the "cooked" plains aborigines adapted to the new intensive agriculture (Chen 1994, 1996).<sup>2</sup>

Was this economy sustainable? "Sustainability" is an ambiguous concept. Mark Elvin has argued that Chinese agriculture has been unsustainable for three thousand years. (Elvin 1993) If "sustainable" means "unchanging", he may be right. But let us define "sustainability" more narrowly as the ability to continue an agricultural system for at least a century without radical shifts in the property rights regime or extensive outside subsidies. In these terms, Taiwan's agriculture was sustainable under Qing rule. It required low investment from the state. The subtropical climate of Taiwan lent itself easily to the production of rice and sugar cane. Maritime links to China's southeast coast attracted considerable mercantile capital. The Qing rulers encouraged this maritime trade, because it enhanced the revenue potential of the island. Taiwan remained a densely

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<sup>2</sup> "Cooked barbarians" was the term used by Chinese rulers to refer to non-Han peoples who seemed to accept the Confucian civilizing mission, adopted Han customs, and paid taxes; "raw barbarians" were those who maintained ethnic distinctions, rejected Han agricultural methods and social practices, and remained beyond the control of local officials. (Shepherd 1993, 7,109; Harrell 1995, 19-20.)

populated, highly commercialized center for high-yielding agriculture, very much integrated into the mainland Chinese economy, until the Japanese conquest in 1895, after which it developed agriculture even more rapidly to service Japanese markets. It was one of the last regions to be incorporated in the expanding Chinese rice economy sphere, a process which had begun with clearance of the lower Yangzi marshes in the ninth century AD.

### **The Northwest**

The security threat from Taiwan had been a temporary result of the decline of the Ming dynasty in the sixteenth century. In the Northwest, however, threats to the core lasted for millennia. The Northwest was China's most open frontier. No major mountain or river barriers separated the region of settled agriculture from the steppe and desert. Pastoral nomadism emerged out of settled agriculture in the Near East by 900 to 800 BC. Once the nomads adopted the crucial weaponry of the horse, the stirrup, and the bow, they became a constant, and unbeatable, military threat to the states developing in the North China plain. (Barfield 1989) These states had several responses. Most conspicuous but least effective was the building of defensive walls. In the second century B.C. the first Qin emperor unified many existing walls into a series of "Long Walls" which stretched across the Northwest frontier and were manned by military garrisons, designed for quick response to nomadic attacks.

The concept of a single unified "Great Wall" lasting for millennia, which has captured the Western and Chinese imagination, becoming along with the panda one of the two major symbols of China today, was in fact a mythical invention of eighteenth century Western Sinophiles. (Waldron 1990 ). Although defensive walls did sometimes help to repel nomadic attacks, they were often far too expensive and ineffective.

Founding emperors of new dynasties launched aggressive military campaigns into the steppe, but these often ended in disaster. The nomads retreated before the superior

Chinese forces, waiting until the infantry troops outstripped their supply lines. Then the nomads wheeled around and struck from ambush, devastating the slow moving Chinese forces with rapid maneuver and lightning raids. Diplomacy, "using barbarians against barbarians" and the lure of trade, was often more effective. Winning over certain nomadic tribes as allies against others and bribing leaders to refrain from attacks, disguised as the "tribute system", protected the regime until either the Chinese dynasty grew too weak to pay the price, or until a powerful nomadic leader unified the entire steppe frontier.

Over the centuries, despite Chinese efforts, nomadic rulers repeatedly staged attacks on the northwest frontier, and on certain occasions occupied part of the North China plain, or, as in the case of the Mongol dynasty (1279 - 1368 AD), the entire empire.

Only in the mid-eighteenth century could the Manchu rulers of the Qing dynasty finally resolve the northwest security problem. They used a combination of all the earlier methods plus two essential innovations: solving the logistical problems of steppe warfare, and radically reorganizing property relations in the northwest. Solving the logistical problem required building a chain of magazine posts from Gansu out to Xinjiang, and setting up a purchasing operation that could move camel loads of grain, clothing, and weaponry thousands of kilometers through steppe and desert out to the core bases in Central Eurasia. Once the Qing could keep a 50,000 man army in the field for up to three years, nomadic holdouts could no longer rely on temporary retreat before they were tracked down and wiped out. Stabilizing the Russian border through treaty negotiations in 1689 and 1727 also deprived the Mongols of a rear area, once the Russians decided it was more in their interest to pursue trade with China than alliance with the Mongols.

Most important for our purposes was the drastic reallocation of property rights pursued by the Qing, a process parallel to, but contrasting with, its concurrent policy decision about Taiwan. For autonomous pastoralists, rights to herds and men were far

more important than rights to land. Customary law regulated seasonal movements of herds by each tribe to its pastures, but fluctuations in climate and changing power relations in the steppe often led to conflict. Any tribe which could not defend its pasturelands by warfare faced elimination, or incorporation of its members as slaves into the victor's tribe. Constant warfare between nomadic tribes was the general norm in the steppe. As the Qing rulers consolidated control in North China, they offered Mongolian tribesmen who surrendered to the Qing relief from incessant feuding and conflict. Those who surrendered were given titles of nobility and material rewards, and their pastureland rights were guaranteed and regulated by Qing officials. The Manchus, far more familiar than Han Chinese with steppe politics, also intermarried with the Mongol nobility to draw many of the Eastern Mongols (Khalkha) to their side. The basic process was a surrender of autonomy by the Mongols, handing over insecure but flexible rights to pasturelands to the Qing administration. Fluctuating claims on land, people, and herds, were replaced by static, allocated rights to specific regions and territories incorporated within the bureaucratic state.

The Western Mongols, or Zunghars, resisted this process, unifying themselves under a succession of great leaders to confront the expanding Manchu regime. From 1690 to 1697 the Kangxi emperor conducted a series of campaigns against the Zunghar leader, Galdan, which ended with Galdan's death. Kangxi, proud of his victory, nevertheless had not crushed the Zunghar state. Only his grandson, the Qianlong emperor, in a second series of campaigns from 1755 to 1760, could finally eliminate independent Zunghar power. He could only do this after overcoming logistical barriers and settling the Russian border question. Then began the great reallocation of property rights: the extermination of the Zunghars and the introduction of Chinese settlers into Central Eurasia.

The emperor ordered the massacre of young able-bodied male Zunghars who refused to surrender when defeated. The elderly, women, and children were redistributed to surrendered tribes or made slaves and wives of Chinese military officials. By the end

of the campaigns, the Zunghar population of roughly 600,000 had been entirely eliminated from their homeland. Wei Yuan, writing in the early nineteenth century, estimated that one-third had died from disease, one-third had fled, and one-third died in battle. (Wei Yuan 1984). Zungharia was by the mid-eighteenth century tabula rasa for new social experimentation. The Qing solution was to relieve the overpopulation in Gansu and the poor provinces of northwest China by encouraging immigration to Xinjiang. Pasturelands and wastelands were converted to cultivated fields. The first settlers were military colonists. Each soldier was given sufficient land to support a family. He owed half his crop to his garrison and kept the rest. The state bore the cost of seed, tools, and irrigation works. (Borei 1992; Hua 1995; Millward 1998)

The next step was to allow settlement by military families. The soldiers were no longer rotated back to the interior after the end of the campaigns, but remained as permanent settlers on the frontier. The goal was to create self-sufficient settlements, thus preserving a military presence in the newly conquered territory while promoting land settlement. As in the nineteenth-century American West, land settlement was explicitly linked to frontier security. (Allen, 1991).

Next came the encouragement of civilian migrants. Beginning in the mid-eighteenth century, Gansu provincial officials sent out convoys of peasant settlers, equipped with clothing, agricultural tools, seeds, and cattle. They were to establish settlements in areas already surveyed by the government and found to have sufficient water and good soil. Every year, caravans of officially sponsored immigrants crossed the steppe to the oases around Urumqi, the capital city. By 1800, over 50,000 settlers had moved to the region. (Hua 1987; Perdue 1992) Officially sponsored settlers were followed by unofficial migrants, who heard tales of the abundant land on the new frontier. Merchants put up funds to sponsor migrants, who paid off their debts after arrival. Finally, the state encouraged new settlements by Turkic peoples from southern Xinjiang, who had expertise in irrigated oasis agriculture.

When Zungharia had been steppe, low population density and nomadic customary law protected the grasslands from overexploitation. After the Qing conquest, the government, frontier merchants, military colonists, and civilian settlers pushed vigorously for more land clearance, more seeds, more water, and more fertilizer. Officials collected statistics on land yields which are the most detailed in the country. The result was a much more intensely driven system, with higher population density, higher agricultural yields, and heavy use of irrigation channels. All these measures required heavy government investment.

Contrary to the Oriental Despotism model, the Qing state had an interest in improving agrarian production on both military and civilian lands, so as to promote self-sufficiency on the new frontier. Each of the settlers had a different relationship to the land they cultivated and to the state, but in general, there was a trend toward greater civilian control, as the officials focused more on productivity and less on security. Concerns for incentives to increase both production and revenue replaced the focus on simple sustainability and military defense.

The following report of the provincial treasurer of Gansu is one example:

I have investigated and found that people's effort varies from diligent to lazy. They do not treat state land as their own fields; they only get the planting over with quickly with loaned seed; they do not plow deeply or rotate crops, they use little fertilizer... When the crops sprout they do not go to the fields to protect them; or they even damage them or cut crops illegally for themselves and conceal it. Many abuses occur. Although officials inspect, there are 2400 households scattered widely over 160 li, and they cannot all be watched. If we do not set up a taxation system, then yearly the government share will decrease; there will be only the empty name of dividing the harvest, and no real military land cultivation. The land will get rockier, or have no yield. (*Zhupi* memorials in First National Archives, Beijing, "Land Clearance", 1762/5/13 Gansu buzhengshi Wu Zhaoshi)

This writer goes on to recommend changing from the military colony land system, in which the crop was divided evenly between the cultivators and the state, to a fixed rent system, which turned the military colony lands into private land. This discussion shows that state officials were clearly aware of incentive and supervision costs connected with the military colony system, and they were willing to alter the property rights regime in order to increase agrarian productivity.

Besides altering the property regime, the state also indirectly promoted land development by fostering the growth of trade. Commercial networks penetrated Mongolia and Xinjiang after the conquest. Increased market integration with the interior was promoted by state efforts to create a common currency, build roads, and facilitate trade by suppressing banditry.

As mentioned above, the question of sustainability is mainly a question of cost and time. A state willing to invest substantial resources can keep an agricultural regime going for a long time even in very unfavorable environments. Unlike Taiwan, Xinjiang was always a financial burden. It never became completely self-supporting, because the arid region could not support high-yielding agriculture on its own. (Millward, 1998) Literati representatives of the well-watered lower Yangzi region, who bore some of the heaviest tax burdens in the empire, recurrently criticized the expense of ruling Xinjiang during the eighteenth and nineteenth centuries, but security considerations led imperial officials to reassert its importance. Considerations of defense against restive Turkish peoples of Xinjiang, Chinese Muslims, and the aggressive Russians overrode considerations of cost. Although officials did try to create incentives to improve productivity, sustainability of the intensive agricultural regime had little significance in itself: it was more important in imperial eyes to keep the fields of Xinjiang open to Han settlement.

Both Taiwan and Xinjiang were frontier regions where landed property relations were radically transformed in the eighteenth century under the combined impact of

people, markets, and states. Native peoples were swamped by Han immigrants; swidden and pastoral economies replaced by intensive cultivated fields; and tribal societies put under the domination of an expanding agrarian bureaucratic empire. The interaction of ecological, demographic, and commercial pressures with state interests accounts for much of their similar and different experiences.

### **Common property and Customary Law**

Let me more briefly point out the usefulness of the historical approach to property rights for two central questions about Chinese land rights: the existence of common property, and the nature of customary law.

Daniel Bromley has argued that the failure to distinguish "common property" from "open access" property has caused a great deal of confusion. (Bromley, 1991) "Open access" property is really unowned property, which faces no restrictions on its use. "Common property", properly speaking, restricts enjoyment of its benefit stream to a defined group, and lays down restrictions on members of the group. Garrett Hardin's famous "tragedy of the commons" in fact referred to open access property, but really existing commons, as in English open field villages for example, in fact restricted usage so as to preserve the resource. In Bromley's view, most "traditional" common property regimes do preserve their resources. It is their undermining by forces of commercial capitalism that unleashes unrestricted use and ultimate devastation of the resource.

There are many examples of "common property" in China which support this analysis. Nomadic pasturelands, whose use was regulated by tribal customary law and enforced by constant warfare, can count as at least a sporadically regulated common property resource, before the Chinese invasion. After the Chinese conquest, the property rights became much more privatized, intensity of exploitation increased, and overgrazing on the remaining pasturelands became a serious problem. The over exploitation of

China's grasslands driven by commercial profit and demographic pressure has become extremely serious today, but the origins lie in the eighteenth-century conquest.

(Committee on Scholarly Communication 1992)

Lineage land provides a second example that needs more investigation. Chinese lineages -- groups of families with the same surname claiming descent from a common ancestor -- maintained common lands to provide income to maintain the ancestral temples and to finance education of promising members of the lineage. Once again, static analyses lead to contradictory claims. In Yang Tai-shuenn's view, lineage common property is necessary for the protection of village autonomy against the state (p.117). He sees lineage land holdings as defending against the state abuse of tax/rent power. Japanese scholars, however, see lineage property as the basis of a "despotic" order in which common landholding overrode individual property rights.

Historical analyses, by contrast, show a fluctuating process, where efforts to maintain lineage lands were under siege by forces of commercial profit, population pressure, and free-rider problems. Land managers were tempted to sell off lineage lands for individual profit, despite the efforts of both state officials and lineage heads to maintain them in order to shore up the ideology of familial harmony. (Twitchett 1959)

Water resources form another large category of common property regimes in China. These include large reservoirs, jointly managed by the peasant producers, small polders, whose dike maintenance was allocated in rotation to the landholders within them, and numerous lakes, which were used for irrigation and fishing, whose bottoms were dredged for clay, and which were enjoyed for their aesthetic qualities by poets and admirers. (Morita 1964, Schoppa 1989, Perdue 1990) All of these resources faced the same pressures. Population growth created incentives to clear more land around the lakes, reducing the size of the reservoirs and endangering flood control. The attractions of cash cropping and commercial markets led other investors to attempt to "privatize" the resources by seizing them, defying official prohibitions. Unlike the frontier cases, these

resources seldom had significant security implications, but free rider effects were strong: dike repairs, for example, should have been allocated to all those who benefited from the water supply, but in fact, it was often only possible to get the immediately adjacent landowners to carry out repairs. The preservation of these common property resources was precarious and difficult. Only a historical examination can demonstrate how officials, literati, peasant users, and proto-industrial "entrepreneurs" struggled over their exploitation, with a mixed record of success and failure.

The preservation of these resources concerned not just the immediate fate of a lake or forest; the ability of the Chinese to keep the resource "common" is an important indicator of the nature of the "public" (*gong*) realm. As Keith Schoppa brilliantly points out in his study of one small lake in southeast China, the fate of this lake parallels in miniature the fate of Chinese society over the long term. Despite the best efforts of poets, literati proto-ecologists, and officials, the lake, besieged by the demands of peasants for water, of tile-makers for clay, and of powerful local elites for tax-free land, disappeared in the twentieth century after a thousand-year history, like the Chinese empire itself.

### **Customary Law**

Customary law regulated most Chinese land transactions, but official administrative law interacted with it. Thomas Buoye has studied the combined effects of the two legal systems in responding to conflicts over land use in the eighteenth century. (Buoye 1993, 2000) He focuses on cases of homicide arising from land disputes, which were "rooted in the tension between the emerging concept of land as commodity and the historical concept of land as patrimony". (Buoye 1993, 33) Customary law allowed most sellers of land to redeem it at the original price. Absolute sales with no redemption rights could be specified in contracts, but they were not the normal contract. In Guangdong province in the eighteenth century, population growth and increased commercialization continually raised land values, causing many sellers to claim redemption rights, but the buyers, interpreting their rights as absolute, often resisted, leading to violent conflicts.

The state had to step in to adjudicate these conflicts, and it ended up reinforcing the idea of land as a commodity which could be alienated permanently, thus curtailing redemption rights. An imperial edict of 1756 limited redemption rights to thirty years, but local officials and provincial legal precedents often shortened the period. I have found a similar process at work in Hunan. (Perdue 1987)

These examples demonstrate neither a stagnant despotism, nor a fully laissez-faire regime, but a state struggling to direct institutional change in response to social and economic pressures. Customary and statutory rights to land moved closer toward absolute private property, but never reached total control. Limits on rights of sale remained, and limited redemption rights still persisted. Also, the changes varied regionally, depending on the balance of demographic, commercial, and security factors. Growing population densities drove up land values but also increased the landless population. The spread of cash cropping and specialization also raised land values in rapidly commercializing regions. Here, the claimants for land could be entrepreneurial landlords seeking profit from landed investment, rather than impoverished immigrants. In frontier areas, conflicts also broke out between immigrants from different regions of China and between immigrants and native inhabitants. Amidst these conflicts, state officials wrestled with conflicting goals. The ideology of "patrimony" -- harmonious relations between official and subject, or landlord and tenant, based on a familial model, where land provided subsistence -- was challenged by the spread of commodity relations. The state had both defense and welfare concerns. Military security was paramount in some regions, but relief of the poor was equally important. The two concerns were connected, as large landless groups could foment revolt, while loss of territory caused refugees and disruption. Conversely, territorial expansion provided elbow room for the landless, and settling a mobile population contributed to social order. Hence the Qing state both conducted aggressive military campaigns on an unprecedented scale and built the largest system of relief granaries the world had seen. Both were responses to new trends of

population growth, commercialization, and ecological exploitation. Redefining landed property rights was part and parcel of this broader process.

### **Conclusion**

There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. (William Blackstone, *Commentaries on the Laws of England*, 1807, 1-2)

To summarize the argument: proponents of the property rights perspective disagree on many aspects, but they agree about the insufficiency of economic analyses restricted to the variables of supply and demand. Institutional structures that define the use and transfer of property significantly affect economic growth and environmental change. This paradigm marks a great advance in the use of economic theory to illuminate institutional change, but misapplication of the model outside Western Europe has led to misunderstanding. First, misuse of the model has created an implicit binary division between the privileged West, purported to be the first society to develop true private property rights in land, and the backward, "despotic" East. Second, the theoreticians have neither embedded property rights in the wider social and historical context, nor have they considered sufficiently the environmental effects of development based on property rights. Analysis of specific cases outside the West should contribute to productive application of this perspective.

As Yoram Barzel argues, too many economists and lawyers have assumed that property rights must be an all-or-nothing affair. Either they are absolute and unlimited, or private property rights do not exist. In real life, transactions are costly, and "property rights are never fully delineated".(Barzel, 1989, p.1) Some economists of the property rights school have claimed that only absolute property rights will provide the incentives

to drive economic growth and have made misleading policy recommendations accordingly. (Bromley, 136) Legal historians have shown that absolute property rights of the Blackstone definition characterized only a little more than one century of American legal history. By the early twentieth century they had been transformed into notions of contingently bundled rights, limited by social consensus. (Vandeveldt, 1980; Grey 1980) Some economists have moved in the same direction. Because of high measurement and enforcement costs, many attributes of a good cannot be captured by one individual, nor transferred absolutely by contract. Many of them have to be left in the public domain, and it is efficient to do so. (Barzel, 115)

In this new perspective, Chinese property rights look neither backward nor particularly "Asian". Chinese land contracts transferred limited aspects of rights to land, they were enforceable by the state to a degree, but not completely, and yet they did provide sufficient incentives for agricultural investment and growth. Imperial China's property system was neither identical to the idealized market economy, as Myers would have it, nor utterly divided from it, as Yang argues. It was simply a different arrangement of bundles. You do not need absolute individual property rights to get economic growth - or ecological devastation. If we turn away from bipolar classifications to historically contingent, mixed combinations of particular rights and obligations created by varieties of states and legal institutions, we place less emphasis on the absolute individual and more on the social context, less stress on personal rights and more on the rights of nature and the rights of future generations; or in other words, a move in Western theory from Locke to Kant. (Bromley, 5-7) We recognize that property rights have always been blurred bundles. Looking at the Chinese form sheds light on the Western variant.

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