

An excerpt of discussion on property rights in China (Oct. 22)

Peter Perdue started the session by going over the main arguments in Carol Rose's Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership (1994) and in his two papers on property rights in China.

General Idea:

- There are still many misconceptions about the history of property rights in China and Asia in general
- Ensuring secure property rights is often advocated as solution to environmental problems and economic development problems especially by economists.
- Interpretations of recent Chinese reforms are often based on the idea that fundamental change took place in property rights regime. For instance, the creation of individual property from collective property is seen as a major driving force for reform program.

All those assumptions are questionable. We need more nuanced analysis. Those assumptions came from a number of questionable master narratives circulated in the field:

- The myth about Asiatic despotism. Lack of property rights is still a building block of modern social science.
- Property rights is seen as “natural right” isolated from social conditions that constructed it. Such is the underlying assumption for many policy discussions

How to redress those misconceptions?

- Need for socially embedded notions of property rights
- Property rights is a cultural, social, and historical product, not a universal human attribute

Carol Rose criticized both the neo-utilitarian version of property rights (i.e., it generates incentives to create wealth) and the communitarian view of property rights (i.e., a product of community). It is possible to have informal communal norms to regulate property without state intervention. Lobster fishing in Maine is a good example. Is it possible in China?

* * * * *

Peter Perdue: "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. . . We recognize that property rights have always been blurred bundles." ("Property Rights on Imperial China's Frontiers")

"[The problem is that] there are no clear boundaries defining what should and should not be subject to market forces: almost everything is potentially up for sale . . . The widespread accusations of 'corruption' in China today are a product of inadequate boundaries and unclear enforcement of the line between what is and is not legitimately

on the market. Drawing sharp lines between state and individual property, as if there were only two choices, will not lead to enlightenment on these issues. It would be more useful to recognize that both in the Chinese past and in the modern West, property rights are not individual and absolute claims to a thing, but bundles of symbols, texts, narrative and artifacts by which possessors persuade a community and state that they are entitled to certain uses of a resource.” (“Constructing Chinese Property Rights: East and West”)

Highlights of Discussions

Kate Hartford: I want to bring up a different issue. Very often the distinction between property rights and ownership rights is left unaddressed. In addition, there is a certain degree of conflation between property rights and the notion of exclusive rights. Even in the West, we don't carry out the "exclusive rights" notion thoroughly.

[Jing: The group will look into the Rural Land Responsibility Policy (农村土地承包法) early next spring to further explore the issue of the separability of “property rights” and “property ownership” Kate brought up.]

Margaret Woo: in the field of law, absolute dichotomy between individual actors and the state as an actor does not exist when it comes to property rights debate. the question is not whether the state should be an actor or not. The question is rather the nuanced relationship between the state actors and individual actors.

Jing Wang: There is implication in your essays that it is better that the state stays out of the scene. You imply that bureaucratic behavior is static and immutable, and detrimental to socio-economic reform. I don't think you can draw such a fast conclusion. I am not sure why the state should definitely stay out. As Jean Oi and Andrew Walder 's work on the ownership issues of the TVEs illustrates, the state is an economic actor too. An analysis of economic change requires an understanding of officials as economic actors, and of the various incentives, constraints, and resources that shape their choices. The important question is: which political actors exercise what kinds of rights in practice over what kinds of economic assets. To foreclose the possible productive cross-fertilization between the “public” and the “Chinese state” (or any state for that matter) is problematic.

The blurred boundaries between the "private" and the "public" in China is a very acknowledged fact and a normalized practice. Hybrid ownership is the norm. It is also the official line (hunhe jingji, touzi zhuti duoyuan hua, etc.). So are we talking to the already converted? It is scholars in the West, especially mainstream China studies scholars in the West, who like to perceive China in those binary terms.

Peter Perdue: The New Right in China certainly think in those binary terms. The important issue is that there are no clear boundaries defining what should and should not be subject to market forces. I am interested in the intermediate space, the "commons," which is being squeezed from both ends of the 'public' and the 'private.' The question is how to encourage and nurture that intermediate space.

Lily Tsai: In response to Peter's call for different conceptions of property rights, I would

say that there are lots of local variations (and perceptions) of "collective" property rights even in China. For instance, at the village level, very often the collective land ownership is conflated with the notion of local state ownership. That is, in a lot of villages, both villages and local cadres consider the collective land the collective property of the local government (jiti) not that of villagers as a collective. Villagers lost the notion of entitlement to those land assets. In good cases, there is a genuine sense of entitlement felt. In worst cases, local cadres do whatever they want with the land. In other words, I found that conflation problematic.

The discussion veered to some of the worst scenarios in which local states transferred land property rights to real estate developers.

Lily Tsai: Whether it is a bad scenario or not is a complicated question. In some cases, in selling the land property rights to developers, local states also transfer some public obligations to those private economic actors. The latter is made to shoulder the public responsibilities of building schools and roads. Is it a good strategy or not? More research needs to be done. I guess we can cast a doubt upon those transfers because citizens don't have power on the developers to enforce them to provide public goods. But that may turn into a viable option for public goods provision especially for those local states that are on the verge of fiscal bankruptcy.

The discussion was directed to the Chinese terminology and usage of the words "gong," "gonggong," "gongtong ti," etc. Peter Perdue will come back next time with the Japanese concept of "gongtong ti," Lily will provide the Chinese materials on the definition of those terms.