

PROPERTY AND PROSPERITY, AN ILLIBERAL STORY

Forthcoming in 96 St. John's Law Review (2023)

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Abstract

Professor Hu's forthcoming article argues that, contrary to prevailing legal and other lore, formal property law that recognizes and protects private property rights in China lay at the heart of the creation and expansion of urban real estate market, complete with zoning, urbanization, and developer incentives which has created unprecedented urban building and infrastructure in China. Hu argues that economic development is really a story about property law.

INTRODUCTION

Hu locates the state created, designed and redesigned ingredients intentionally mixed into China's economic trajectory in four instances. First the state creation of an eminent domain system established and functioning for the transfer of land from farmers to entrepreneurs; second, zoning designed to enable urban, not rural, development; third, special rights for entrepreneurs enabling freely alienable property, and fourth, the externalization of the costs of social reproduction to rural China, creating a massive compliant cheap workforce.

In revealing the true nature of China's economic transformation

I. DESTROY AND REDISTRIBUTE

Professor Hu discusses the shifts in the Chinese population that are tied to changes in land ownership and use in China; for example, Hu notes that in 1981 80% or 794 million people were living in rural China, and that roughly 6,700 square kilometers of land was urban construction land, by 2018, that number had exploded to approximately 56,000 square kilometers.

Land is crucial to the story of China's urban and industrial development.

Big difference in distinction to the US where land use is driven by private sale from one owner to another, followed by a zoning change is that urban land belongs to the state in China.

Here is the big rub in China: the state confiscates rural land, so now it is urban government land, then the state transfers the right to develop the newly acquired land to “entrepreneurs” for a hefty fee. Then zoning law takes care of authorizing new uses and designations.

Hu notes that the concept of eminent domain in China is highly volatile in the sense that “serving the public” can be very elastically stretched or contracted as the government desires, and “compensation” for that land can be very little.

Hu examines the role of eminent domain in China’s urban-industrial development.

A. The 1980s: Eminent Domain, by Another Name

The story of eminent domain can be textually located in the 1982 amendment to the Constitution (article 10, paragraph 2) which authorizes the state to “requisition” land “in the public interest.”

A crucial feature of the land requisition was the 1982 regulation that relocated former rural land residents and reemploy these newly displaced agricultural workers, or provide these with urban welfare benefits. This was followed by the passage of the 1986 Land Administration Law, which formalized these housing, employment and livelihood guarantees as compensation for the massive swaths of land.

B. Paradigm Shifts from Socialist Equity to Maximal Growth

Eminent domain then supplied cheap land to industrial developers and blunted the plight of newly homeless residents and their most pressing needs.

C. The 1990s: Disempower Residents to Maximize Growth

In the urban context, 1991 regulations provided similar compensation to residents in urban housing demolitions bringing some minimum guarantees for them.

In 1991, the state council commodified and privatized urban housing.

Regulations in 2002 brought further refinements to urban demolition projects by adopting a fair market value approach to financial compensation.

A. Complement Eminent Domain with Zoning

Professor Hu further explains how the peri-urban areas, that is, those areas just outside of the urban areas began to experience what we can call “urban sprawl.” Local or sub governments could annex a mostly rural county and convert it into an urban district enabled by the 1984 Urban Zoning Regulations. I am wondering if there is a list of these “Demolishing Parties” and rural developers? Who are they? Are there anti-corruption laws of any kind, preventing local officials and their families from sitting on decision making bodies that authorize these development/ demolition projects to convert rural county into an urban district.

III. POWER INDUSTRIALIZATION

Hu discusses China’s industrialization, and explains how it is characterized by low-price goods, being produced by “migrant workers from the countryside” How does this compare with (im)migrants otherwise?

A. Externalize the Costs of Social Reproduction

Hu’s discussion of “social property rights — the system of Household Registration or “huji” or “hukou” is a system based on a rigid place-based citizenship status, based on husband or father’s native village. This system ties social property rights to this status. This system perpetuates all inequalities across time, space, and over generations.

In this system, rural residents were excluded from urban areas. Newly built factories led to a loosening of these exclusions in the mid-19080's and stopped the proletariat transformation of the Chinese rural population, according to some scholars.

B. Skeletal Social Protection

Professor Hu explains that some scholars argue that the *hukou/huji* system—that is, the rural-urban land divide or taxonomy— is desirable in that it safeguards rural land tenure and limits the power of capital in rural areas—as private land ownership in rural areas, providing a source of wealth and work for those who cannot be absorbed in the urban economy by providing basic social protection.