

Book Reviews

Property Law and Property Rights in China

Shitong Qiao, *Chinese Small Property: The Co-Evolution of Law and Social Norms* (New York/Cambridge: Cambridge University Press, 2017) pp 230. Hardcover: \$110.00.
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Studying property rights in China is no laughing matter. Although no private land ownership exists under the People’s Republic of China (PRC)’s socialist system to this date, since the 1990s, a complex system of property rights has been developed to accommodate the rapidly rising demands for land and housing during the market reform. In *Chinese Small Property*, Shitong Qiao confronts one of the most prevalent and controversial forms of property rights in contemporary China—the so-called “small properties” that are illegally built on rural land—with an elegant combination of theoretical rigor and fine-grained empirical analysis. The interdisciplinary approach between law and the social sciences enables Qiao to investigate the co-evolution of law and social norms from the complementary perspectives of legal doctrines, law and economics, and socio-legal studies. In addition to its theoretical contributions, the book documents an exemplary case of “grey-area” legal institutions in China’s market transition.

Chinese Small Property opens with a puzzling question: Can a real-estate market form in the absence of a supportive property-law system? (p. 1). While existing theories of law and economics often see property law as a necessary institutional condition for real-estate markets to boom, in the case of China, the answer to this question is a definite yes. In the waves of urbanization from the 1990s to the 2010s, a sizable amount of rural land had been converted to other usages under the small-property system, such as housing for migrant workers, schools, office space, and even local police stations. The rise of this informal property market generated eye-popping profit for local governments and greatly facilitated China’s economic growth, sometimes at the expense of farmers. Based on his 11-month fieldwork in Shenzhen, where small-property houses account for nearly half of the city’s floor space, Qiao provides a detailed overview of the historical evolution of the small-property market and a multifaceted analysis of how villagers, local governments, courts, and lawyers respond and adapt to the formation and transition of this vibrant yet risky market.

But Qiao’s ambition in this book does not stop at presenting a good empirical story. In Chapter 3, he appropriates a theory of focal point to explain why the small-property market was able to thrive in Shenzhen despite the apparent legal and social obstacles. The concept of focal point originates from the American economist Thomas Schelling’s classic analysis of tacit and explicit bargaining and it refers to “the intrinsic magnetism of particular outcomes” (p. 69) that enable co-ordination. Private rural land development and transfer in Shenzhen, as Qiao argues, are such a focal point. Using a series of co-ordination games, such as the Assurance Game and the Hawk-Dove Game, he explains why Hong Kong investors,

Shenzhen government officials, and local farmers were able to co-ordinate in small-property transactions in spite of their legal risks. More interestingly, a sophisticated set of formal documents and legal mechanisms were established to facilitate those illegal transactions. This is what Qiao terms “legal magic,” by which government-recognized authorities and legal professionals confer “an aura of legality on illegal rural real estate transactions” (p. 85).

The judicial response to small property discussed in Chapter 6 is another example of how the legal system interacts and evolves with informal social norms and institutions. Qiao contrasts what he calls “judicial minimalism” in Shenzhen and “judicial entrepreneurialism” in Beijing: whereas the former approach avoids legal consequences by leaving property rights undecided, the latter invents a rule to minimize the negative impact on the buyers and deter the sellers from suing them. What the two approaches have in common, however, is an effort to maintain the status quo and minimize the negative consequences of illegality. A key implication of this finding is that, while social norms often are more responsive to market development than formal law, the Chinese legal system displays a remarkable degree of tolerance towards illegality when that illegality contributes to state-sponsored economic growth, which is the most important source of legitimacy for the Chinese government in the reform era.

These fascinating and theoretically meaningful chapters make *Chinese Small Property* an appealing text for students and researchers interested in property rights, law and development, and legal pluralism, among other topics. As a monograph, however, some chapters could use a little more structural integration. Traces of journal articles can be seen in various places of the text and the organization of chapters does not consistently point to a coherent logic. To be sure, this is not a unique problem for this book, but a general trend in today’s social science research, which increasingly values journal articles over monographs and, as a result, changes the traditional styles of book writing. Furthermore, the law-and-economics jargons make some discussions hard to comprehend for readers unfamiliar with this approach. It is also difficult to assess the efficacy of the theory of focal point without discussing viable alternative explanations for the survival of small property in China. Nevertheless, the book remains an excellent piece of scholarship that deserves the wide attention of China specialists and socio-legal scholars alike.

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Court Mediation

Shahla Ali, *Court Mediation Reform: Efficiency, Confidence, and Perceptions of Justice* (Cheltenham, UK: Edward Elgar Publishing, 2018) pp 298. Hardcover: \$135.00.

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Where there are people, there is conflict; and where there is conflict, there are conflict-resolution institutions. In many societies, including the ten countries that form the heart of