

**CRYING OUT FOR JUSTICE:
AMBIGUOUS PROPERTY RIGHTS AND THE LAND
SEIZURE PROBLEMS IN CHINA**

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

By
Chih-Hsing Ho
May 2006

ABSTRACT

This thesis studies the historical and institutional factors in the creation of property rights in China and examines China's land seizure problem and related social conflicts. The distinction between *land ownership* and *land use rights* reflects the basic theme in China's land reforms. Property rights in China can be deemed to be an institutional form in which conflicting interests and policy goals meet. The ambiguity of *collective ownership* makes individual protection more difficult due to the absence of clear identification of *owners* and weak supervision in land management. This thesis argues that such ambiguity has caused farmers' rights infringements in China's overall economic progress.

China's land problems challenge economic models that urge transitional countries to conduct economic reforms before legal reforms. Based on an analysis of empirical data, this thesis argues that the ambiguous collective ownership has created considerable leeway for local governments to engage in the expropriation of land. In addition, the gap of law implementation between the central and local governments illustrates the decentralization inherent in land-related disputes. The nature of such decentralization exacerbates the problem of corruption whenever local governments face conflicts of interest under the current land management system.

Moreover, due to the deficiency of formal mechanisms for the land-loss farmers to seek redress, protest has become a significant alternative way for this major disadvantaged group in China to express themselves. Even though it is too early to conclude that China is on the verge of mass disturbances, the growing numbers of protests have sent out important signals in China, in which land seizure problems have become a major obstacle to China's pursuit of the *rule of law*.

ACKNOWLEDGMENTS

This thesis represents my first attempt to study China's legal system. I am indebted to many people for their encouragement and help in the course of the research. I would like to thank my advisors, Professor Lawrence M. Friedman and Dr. Manuel Gomez, for their valuable counsel and guidance during this learning process. I am also grateful to Professor Carol Shabrami for her great help in the editing of this thesis and teaching me how to write an academic work.

I thank Professor Jerome A Cohen who initially drew my attention to issues of China law; Professor Tran Van Doan for his constant encouragement; Cai Hua for sharing his knowledge and insight; Xia Xiang and Chen Linghai, for their kind help in collecting data and finding records in China; Hsu-Ting Huang, for his editing help; my SPILS fellows for their cherished friendships. Needless to say, all the remaining errors are my own.

I am also indebted to this topic, which has given me an opportunity to reflect on an important question: "What good is the law if it does not serve the people who need help?" Last, but not least, my deepest gratitude goes to my family: my beloved grandparents, Mom and Dad, and sister Chih-Yuan, for their continuous support and endless love.

TABLE OF CONTENTS

INTRODUCTION.....	1
I. WHO OWNS CHINA'S LAND? -- AMBIGUOUS PROPERTY RIGHTS.....	4
A. LAND OWNERSHIP AND LAND USE RIGHTS.....	4
1. Land Ownership.....	7
2. Land Use Rights.....	11
B. LAND REFORM.....	12
1. The Sociolegal Meaning of Land Reform.....	12
2. A Brief History of China's Land Reform.....	14
II. PROBLEMS OF ILLEGAL LAND SEIZURE: ANALYSIS.....	17
A. OVERVIEW.....	17
B. LACK OF DUE PROCESS.....	19
C. THE AMBIGUOUS DEFINITION OF "PUBLIC PURPOSES".....	24
D. LOW COMPENSATION AND ITS INADEQUATE ALLOCATION.....	30
1. Low Compensation.....	30
2. The Allocation of Compensation.....	36
III. CRYING OUT FOR JUSTICE.....	39
A. PROTEST.....	39
B. THE JUDICIAL RESPONSE.....	44
1. Lack of Independence.....	44
2. A Denial of Hearing the Case.....	46
3. High Cost of Filing A Lawsuit.....	48
4. Lack of Legal Aid.....	50
C. THE XINFANG (PETITION-HEARING) REDRESS.....	51
CONCLUSIONS.....	62
APPENDIX I.....	65
BIBLIOGRAPHY.....	67

LIST OF TABLES

Table 1: Different Purposes of Arable Land Conversion.....	27
Figure 1: Price Differences between the Stipulated Compensation and Market Price.....	32
Table 2: Income Analysis of Farmers before and after Land Conversion.....	34
Table 3: Responses to the question, “What do people think of the following governments in terms of “public reliance”?.....	54
Table 4: Responses to the question, “What are your major purposes for petitioning Beijing?”.....	55
Table 5: Responses to the question, “What are the attitudes of the central government toward Xinfang?”.....	56