

# TRADING THE PEOPLE'S HOMES FOR THE PEOPLE'S OLYMPICS: THE PROPERTY REGIME IN CHINA

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*Abstract.* China is under increasing international scrutiny as the country's economic growth launches the previously isolated nation onto the world stage. As the national wealth increases at a record rate, the government is constantly modifying strategies to ensure its economic stability. In response to this nearly unmanageable growth, entire Chinese cities are remodeled and progressively more privatized, while urban dwellers are evicted from their homes in the name of economic development. These urban land acquisitions often occur with little or no compensation, while private developers reap the economic benefits. These policies follow a pattern of development replayed throughout history, notably in the nineteenth-century United States. This Comment focuses on these similarities, explores the fundamental differences between the American past and the Chinese present regarding property rights, acknowledges the improbability of China's adopting Western models of governance wholesale, and ultimately argues the national government should reform its policies on urban requisitions to include viable venues of just compensation for victims of forced evictions.

## I. INTRODUCTION

In 2000, Beijing finally won a long, hard-fought battle to be the host city for the 2008 Olympics.<sup>1</sup> The streets of the city filled with jubilation and national pride as thousands of people flocked to Tiananmen Square—the once infamous plaza became a center of celebration.<sup>2</sup> While the citizens rejoiced, the Chinese government immediately began preparations to build an Olympic project unprecedented in modern history.<sup>3</sup> As a catalyst for the modernization of Beijing, the government cleared miles of residential land for new complexes and infrastructure in preparation for the critical eyes of the international community.<sup>4</sup> These actions are attracting worldwide

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<sup>1</sup> Melinda Liu, *Games and Grievances: When Officials Dreamed Up Catchphrases Like 'The People's Olympics' Who Knew the Public Would Take the Words Seriously?*, NEWSWEEK, May 9, 2005, at 46.

<sup>2</sup> Lin Ting Li, *2008 Olympics*, HARV. INT'L REV., April 1, 2005.

<sup>3</sup> Alan Abrahamson, *Built in Commitment; Beijing Has Become a Huge Construction Site in Order to Stage the 2008 Olympics*, L.A. TIMES, July 14, 2005, at D.5.

<sup>4</sup> Patrick A. Randolph, Professor, University of Missouri, Kansas City, Statement to the Congressional- Executive Commission on China Issues Roundtable: Property Seizures in China: Politics, Law, and Protest (February 3, 2003) available at <http://cecc.gov/pages/roundtables/062104/Randolph.php>.

scrutiny as hundreds of thousands of homes are taken in China's drive for economic development.<sup>5</sup>

China, however, is no stranger to this kind of attention. Controversial policies, such as the decision to undertake the project of the Three Gorges Dam, and the economy's improbable growth, have effectively placed the previously secretive nation within the international gaze.<sup>6</sup> With the pressure of being the fastest growing economy in the world,<sup>7</sup> China is undertaking a large-scale urban renewal project with the aim of encouraging private development and new infrastructure.<sup>8</sup> Collective urban land in China is increasingly allocated to private developers, transforming courtyard homes housing multiple families to commercial property.<sup>9</sup> In Beijing alone, the government has evicted about 300,000 residents from their homes per year, sometimes forcefully, in order for the city to make way for the thirty-eight billion dollar Olympic project.<sup>10</sup> These evictions reportedly happen without notice, minimal or no compensation, and little legal recourse.<sup>11</sup>

In response to these forced evictions, the citizens have taken to the streets again, but not in celebration.<sup>12</sup> According to one estimate, hundreds of thousands of displaced residents have participated in protests against forced evictions.<sup>13</sup> These protests range from peaceful sit-ins and marches on Beijing, to self-immolation and suicide.<sup>14</sup> The Chinese government responded to these protests by arresting both protest leaders and lawyers attempting to defend the rights of the evicted.<sup>15</sup>

<sup>5</sup> See discussion *infra* Part II.

<sup>6</sup> China is currently undertaking the most ambitious, largest man-made dam project in history on the Yangtze River. For more discussion on dams and human rights implications, see Jen Lin-Liu, *Out with the Old and in with the New around China's Three Gorges Dam. But at What Cost?*, 192 ARCHITECTURAL REC. 57 (2004).

<sup>7</sup> See generally Charles Wolf Jr., *China: An Emerging "Economic Superpower"?*, in CHINA IN THE NEW MILLENNIUM, MARKET REFORMS AND SOCIAL DEVELOPMENT 11 (James A. Dorn ed., 1998).

<sup>8</sup> *Forced Evictions and Land Requisitions*, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA 2004 ANN. REP. (2005) available at <http://cecc.gov/pages/virtual/Acad/rol/property2004.php?mode=print>. Rural land requisitions are out of the scope of this Comment, for further discussion of this aspect, see RDI Memorandum from Brian Schwarzwalder, Roy Prosterman, & Li Ping, *Land Takings in China: Policy Recommendations* (June 5, 2003) (on file with RDI); PROPERTY RIGHTS AND ECONOMIC REFORM IN CHINA (Jean C. Oi & Andrew G. Walder eds., 2005); Arjun Subrahmanyam, *Land Use in China: The Impact of the Economic Revolution*, 18 CHINA LAW & PRACTICE 24 (2004).

<sup>9</sup> See, e.g., Liu Qing, *The Legal Time Bomb of Urban Redevelopment*, CHINA RIGHTS FORUM, No. 2, 2003, at 68.

<sup>10</sup> Abrahamson, *supra* note 3.

<sup>11</sup> Sara Meg Davis & Lin Hai, *Demolished: Forced Evictions and the Tenant's Rights Movement in China*, 16 HUM. RTS. WATCH 1,12.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> Bill Savadove, *Special Police Units to Counter Protests and Terrorism Threats*, SOUTH CHINA MORNING POST, August 19, 2005, at 7.

<sup>14</sup> Davis & Hai, *supra* note 11, at 1-3.

<sup>15</sup> *Id.* at 4.

What might be surprising given this backdrop, however, is that the Chinese government has been taking steps toward a more definitive rule-of-law, loosening its grip on social controls and acquiescing to more reforms.<sup>16</sup> This allowance led to recognition of property rights, even constitutional reforms acknowledging the right to compensation for the state's use of eminent domain.<sup>17</sup> There are official regulations that provide avenues for disputing the amount of compensation offered to the evictee, as well as a right to file civil suit for inadequate settlements at adjudication.<sup>18</sup> The level of enforcement by the Chinese judiciary, however, leaves much to be desired.

Similar gaps between statutory authority and the political reality of property rights enforcement is a repetitive theme throughout world history. In the United States during the nineteenth century, early government regulation of urban land favored private development over individual land rights.<sup>19</sup> Faced with a growing nation, the United States government was likewise under pressure to adapt to a rapidly growing market economy, and responded by putting its land into the hands of private developers.<sup>20</sup> China's current policies, albeit tumultuous, mimic strategies the United States undertook in times of national economic expansion. The United States also prioritized economic development by transferring private property to the hands of private developers.

While it is easy to encourage China to take the same course America did in granting absolute protection of individual property rights, the characteristics of the two countries differ to the extent that this wholesale adoption would be unreasonable. Given the intensity of international scrutiny and social unrest in China now, the laws and procedure regarding the recent forced evictions is an ideal place to begin discussing Chinese property reform. This Comment aims to reveal the similarities between Chinese economic development and the early American market evolution, as well as explore the fundamental differences between the two. Part II of this Comment briefly describes the Chinese government's historic property regime, traces its evolution to current reforms in individual property rights, and addresses international agreements and the ramifications of China's

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<sup>16</sup> *Legal Reforms in China, a Hollow Mantra?*, FINANCIAL EXPRESS, July 8, 2005.

<sup>17</sup> Chan Siu-sin, *Draft Property Law Allows Abuse, Says Analyst*, SOUTH CHINA MORNING POST, July 11, 2005.

<sup>18</sup> Chengshi fangwu chaiqian guanli tiaoli [Administrative Regulations on Urban House Demolition and Relocation] (promulgated by the Standing Comm. Nat'l People's Cong., June 13, 2001, effective Nov. 1, 2001), art 16, *translated in ISINOLAW* (last visited Sept. 7, 2005)(P.R.C.) [hereinafter Administrative Regulations].

<sup>19</sup> WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE, LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* 128 (1996).

<sup>20</sup> *Id.*

membership in the global community. In addition, it clarifies how current property rights and the eviction process function, both in codified form and practically, focusing on the problematic gap between the two. Part III compares these Chinese policies with those of nineteenth century America, exploring early American jurisprudence that allowed massive allocations of public resources to private developers. Part IV emphasizes the similarities between the two countries' methods and suggests that absolute property rights are simply not conducive to economic development, whether in early America or current Chinese policies. Finally, Part V offers a realistic solution to the problem of forced evictions, applying recent Chinese judicial reforms to battle corruption at the adjudication level to take steps toward an equitable system. This section will also argue that it is in China's best interest both globally and domestically to revise its eviction process by revisiting the subject of international scrutiny. This Comment ultimately recommends such changes as a positive step to renew faith in the system, quell the criticism of the government, and refocus global attention on the positive changes within the Chinese government.

## II. THE EVOLVING CHINESE PROPERTY REGIME IS A DRAMATIC DEPARTURE FROM THE CHINESE COMMUNIST PARTY'S TRADITIONAL PRINCIPLES

The increased protection of property rights since the founding of the People's Republic of China ("PRC") is a remarkable evolution in itself. Upon the founding of the People's Republic of China, the Chinese Communist Party ("CCP")<sup>21</sup> invoked massive land reform policies, transferring most privately owned land into the hands of the common collective.<sup>22</sup> Since then, however, the government has undergone massive changes, including widespread privatization of its urban land.<sup>23</sup>

### A. *China's Property Law Has Gone from Virtually Nonexistent to Being a Constitutionally Recognized Right in Just over Two Decades*

Given the historical background of the property regime in communist China, the recent Constitutional amendments recognizing individual

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<sup>21</sup> As the Chinese government operates under a one-party system, the term "CCP" is used interchangeably with "the state" and "the government" in this Comment.

<sup>22</sup> JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 516 (1990).

<sup>23</sup> Andrew G. Walder & Jean C. Oi, *Property Rights in the Chinese Economy: Contours of the Process of Change*, in *PROPERTY RIGHTS AND ECONOMIC REFORM IN CHINA* 11 (Jean C. Oi & Andrew G. Walder eds., 1999).

property rights are revolutionary. Though the early PRC recognized a degree of private property rights in urban areas, the CCP regularly confiscated privately owned property for “national construction” under the Maoist regime from 1949 to 1976.<sup>24</sup> Most of the urban land holdings in China were private despite the Communist regime, as property ownership was undefined, but allowed to a small degree in the early 1950s.<sup>25</sup> By the late 1950s, the Chinese government had exerted extensive control over the land in its cities, rendering private ownership extremely weak.<sup>26</sup> The vulnerability of private ownership was pushed further to ruination during the tumultuous Maoist campaigns, initiated in the name of “constant revolution.”<sup>27</sup> Following the Cultural Revolution in the 1970s, China lost any semblance of the rule of law, creating a chaotic environment that instigated a policy change from “class struggle” to “economic development.”<sup>28</sup> This new interpretation of socialism entailed a redefinition of the communist property regime and the CCP’s policies regarding ownership.<sup>29</sup>

The death of Mao Zedong and the subsequent rise of Deng Xiaoping in 1978 gave birth to a modified Communist China.<sup>30</sup> In this rebirth, the concept of individual or corporate property rights regained some definition, both legally and in practice.<sup>31</sup> This new administration searched for a way to merge central economic planning with market principles.<sup>32</sup> Deng’s declaration that “urban individual residents can purchase houses, they can sell them, and they can also benefit from them”<sup>33</sup> fleshed out a notion of a “bundle” of property rights the private citizen could hold.<sup>34</sup> Though initially directed at encouraging foreign investment to stimulate China’s then-

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<sup>24</sup> WILLIAM D. SOILEAU, PAST IS PRESENT: URBAN REAL PROPERTY RIGHTS AND HOUSING REFORM IN THE P.R.C. 12 (1994).

<sup>25</sup> *Id.* at 13.

<sup>26</sup> *Id.* at 28-29.

<sup>27</sup> SPENCE, *supra* note 22, at 704.

<sup>28</sup> Yingyi Qian, *The Process of China’s Market Transition (1978-98): The Evolutionary, Historical, and Comparative Perspectives, Paper Prepared for the Symposium on “Big-Bang Transformation of Economic Systems as a Challenge to New Institutional Economics,”* in J. INSTITUTIONAL & THEORETICAL ECON., June 9-11, 1999, at 4.

<sup>29</sup> *Id.* at 16.

<sup>30</sup> See generally SUZANNE OGDEN, CHINA’S UNRESOLVED ISSUES 349-362 (1995) (parenthetical explanation here).

<sup>31</sup> Louis Putterman, *The Role of Ownership and Property Rights in China’s Economic Transition*, 144 China Q. 1047, 1048 (1995).

<sup>32</sup> Yingyi Qian, *supra* note 28, at 9.

<sup>33</sup> SOILEAU, *supra* note 24, at 58.

<sup>34</sup> See generally DOUGLASS C. NORTH, INSTITUTION, INSTITUTIONAL CHANGE, AND ECONOMIC PERFORMANCE (1990) (arguing that modern property rights are stabilized in institutions ensuring clear contractual and property rights).

struggling economy, this policy eventually affected domestic property rights as well.<sup>35</sup> Deng's administration, realizing the importance of joining the world market and gaining the confidence of foreign investors, allowed certain property rights to be legally enforced.<sup>36</sup> Liberalizing reforms of property rights for both international and domestic entrepreneurs encouraged growth in the real estate market, notably in the newly created Special Economic Zones.<sup>37</sup> This era brought about an increasingly privatized China, necessarily decentralizing the CCP's power and distributing it to various private sectors of society to boost the economy.<sup>38</sup>

The success of these strategies in attracting foreign investment encouraged the government to expand its policies.<sup>39</sup> By protecting property rights for investors, China had effectively catalyzed its economy and forcefully entered the international market as a viable competitor.<sup>40</sup> A current estimate places state-owned enterprises in the increasingly privatized PRC as responsible for only a third of the national output value.<sup>41</sup> In 2002, President Jiang Zemin encouraged the Chinese to "conform to the time and follow the law of development and display great creativity...keeping pace with the times."<sup>42</sup> In order to sustain an energetic entry on the international market, Jiang's government recognized the importance of further defining property rights.<sup>43</sup> This was not in the interest of creating vested rights in the citizenry at large, however: it functioned to protect the interests of investors, with the hope of catalyzing the economy.<sup>44</sup> In 2005, National People's Congress<sup>45</sup> chairman Wu Bangguo declared "[t]he property law is one of the cardinal laws that supports our socialist legal framework with Chinese characteristics, and it plays an important role in protecting the fundamental

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<sup>35</sup> TONY SAICH, *GOVERNANCE AND POLITICS OF CHINA* 242 (2d ed. 2004).

<sup>36</sup> *Asia: Ideological gymnastics; China*, *THE ECONOMIST*, Mar. 13, 2004, at 68.

<sup>37</sup> SPENCE, *supra* note 22, at 674.

<sup>38</sup> Jieming Zhu, *Urban Development under Ambiguous Property Rights: A Case of China's Transition Economy*, 26 *INT'L J. URB. & REGIONAL RES.* 52, 54 (2002).

<sup>39</sup> Yingyi Qian, *supra* note 28, at 14 (citing that foreign direct investment in China increased from 4.4 billion in 1991 to 28 billion in 1993).

<sup>40</sup> Lan Cao, *Chinese Privatization: Between Plan and Market*, 63 *LAW & CONTEMP. PROBS.* 13, 13 (2000).

<sup>41</sup> James A. Dorn, *China's Future Depends Upon Protecting Rights*, *ASIAN WALL STREET JOURNAL*, July 19, 2004, at A9.

<sup>42</sup> SAICH, *supra* note 35 at 346-47.

<sup>43</sup> *Id.* at 243.

<sup>44</sup> *Id.* at 242-43.

<sup>45</sup> The National People's Congress is defined in the 1982 Constitution as "the highest organ of state power." See CONGRESSIONAL-EXECUTIVE COMMITTEE: *China's Government Structure*, available at <http://cecc.gov>. [hereinafter *Government Structure*].

interests of our people and our economic system.”<sup>46</sup> The national goal of managing these competing interests becomes a balancing test for the People’s Congress.<sup>47</sup> To further its interests, the CCP initiated the “Three Represents” campaign to frame the future of China around “representing the development trend of China’s advanced productive forces, the orientation of China’s advanced culture, and the fundamental interests of the overwhelming majority of the people.”<sup>48</sup> Some legal scholars interpret this campaign as a methodology to incorporate capitalists into the CCP’s membership, as a way of institutionalizing the economic development instigated by these private parties.<sup>49</sup>

In order to further its economic strength in the world market, China became a member of international organizations and party to a number of international agreements.<sup>50</sup> Among these, China ratified the United Nations International Covenant on Economic, Social and Cultural Rights in 2001 (“ICESCR”).<sup>51</sup> The document, which sets forth an international standard of human rights for its parties, defines “forced evictions” as “the permanent or temporary removal against the will of individuals...from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>52</sup> The ICESCR further stipulates that “forced evictions are *prima facie* incompatible” with the document’s purpose.<sup>53</sup> China gained international legitimacy as a result of ratifying the ICESCR, and found itself on equal footing with other nations within the realm of international law.<sup>54</sup> The policy to clarify property rights was originally established to further foreign interests, but with that objective

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<sup>46</sup> Shi Jiangtao, *NPC Delays Passage of Property Legislation Disagreement over Compensation for State Requisitions Is a Major Reason*, S. CHINA MORNING POST, July 2, 2005.

<sup>47</sup> Dorn, *supra* note 41.

<sup>48</sup> Jia Hepeng, *The Three Represents Campaign: Reform the Party or Indoctrinate the Capitalists?*, 24 CATO J. 261, 261 (2004).

<sup>49</sup> See, e.g., Hepeng, *supra* note 48 (proposing that Chinese legal reforms, including the 2004 constitutional amendments, were enacted to legitimize capitalist membership in the CCP).

<sup>50</sup> See, e.g., Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810, art. 17, establishing property ownership and protection guarantees; FORCED EVICTIONS AND HUMAN RIGHTS, U.N.H.C.R. Fact Sheet No. 25(1996) (declaring forced evictions in violation of the Universal Declaration of Human Rights).

<sup>51</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Sup. (No. 16) at 49, U.N. Doc. A/6316 (1996), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, art. 11., ratified by China on June 27, 2001. The U.N. Committee on Economic, Social and Cultural Rights, General Comment 7 reemphasizes the right to adequate housing and freedom from forced evictions (1991).

<sup>52</sup> The Right to Adequate Housing (Art.11.1): Forced Evictions. THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, CESCR General Comment 7, May 20, 1997.

<sup>53</sup> *Id.*

<sup>54</sup> Frank Ching, *In the Eye of the Beholder*, S. CHINA MORNING POST, May 26, 2005.

gained, China's global reputation now entails enacting domestic property rights reform to protect individual interests.

*B. China's Current Property Regime and Regulations Regarding Urban Demolition and Relocation Provide Inadequate Means for Legal Redress*

Despite an apparent legal framework, the CCP's present law providing the procedures for demolition and relocation fails to present sufficient avenues for the aggrieved. Following recognition and investment from the global community, the CCP enacted domestic property rights reforms.<sup>55</sup> The Land Management Law's amendments in 1986 reflect this recognition of domestic property rights, declaring that the right to use State or collectively owned land could be allocated by law.<sup>56</sup> Accompanying this evolution, China gave recognition to individual property rights in the form of land-use rights.<sup>57</sup> Because all urban land is owned by the state, fee simple ownership is not possible. The law still confers a certain degree of usufruct rights to the citizens residing on the state's land, however, allowing them to use the land as if it were their own.<sup>58</sup> This land-use right essentially functions as a leasehold wherein the individual resident has the right to use the land without restriction, given proper allocation by the state.<sup>59</sup>

The People's Congress also passed constitutional amendments regarding private property rights in 2004.<sup>60</sup> These amendments legitimize a degree of capitalist activity in socialist terms by maintaining the state's right to seize lands for public use, a right mitigated by language that was added to ensure proper compensation.<sup>61</sup> Citizens were encouraged by the language of the amendments and eagerly bought 2.8 million copies of the amended

<sup>55</sup> See discussion in Lan Cao, *supra* note 40.

<sup>56</sup> Zhonghua Renmin Gongheguo tu di guan li fa [Land Administration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 1998, effective Jan. 1, 1999), art. 2, *translated in* ISINOLAW (last visited Sept. 7, 2005).

<sup>57</sup> Law of the People's Republic of China on the Administration of the Urban Real Estate, art. 22 (adopted January 1, 2001), *translated in* ISINOLAW.

<sup>58</sup> Zhonghua Renmin Gongheguo tu di guan li fa [Land Administration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 1998, effective Jan. 1, 1999), art. 8, *translated in* ISINOLAW (last visited Sept. 7, 2005); see also STANLEY B. LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 184 (1999).

<sup>59</sup> LUBMAN, *supra* note 58, at 184.

<sup>60</sup> Zhonghua Renmin Gongheguo xian fa xiu zhen gan [Amendments to Constitution of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 14, 2004, effective Mar. 14, 2004), *translated in* ISINOLAW (last visited Aug. 23, 2005) (P.R.C.) [*hereinafter* Amendments].

<sup>61</sup> Amendments, *supra* note 60, art. 22 provides, "The lawful private property of citizens shall not be encroached upon...the State may, in the public interest, expropriate or requisition private property of citizens and pay compensation in accordance with the law"; see also Hepeng, *supra* note 48.



Constitution.<sup>62</sup> This constitutional language also provided encouragement to those in the Chinese legal community who advocated for passage of the amendments.<sup>63</sup> A facial reading of these amendments reveal a similarity to the United States' Takings Clause, which also guarantees the right to "just compensation" for the government's use of eminent domain.<sup>64</sup>

These amendments contrast with China's historic legal record, which continues to threaten the private right to own land.<sup>65</sup> Despite these capitalistic amendments, the government's extensive history of favoritism towards economic development allows for land seizures in the "public interest."<sup>66</sup> As such, the nature of the leaseholds granted to private citizens to live on the state's urban land is perpetually subject to government control and regulation.<sup>67</sup> For example, the Beijing Olympics project has cleared miles upon miles of residential land to make way for green spaces and hosting facilities.<sup>68</sup> The official reason for clearing away the traditional residences and alleyways was that the old homes were "dangerous," but most evicted residents remain unconvinced.<sup>69</sup> Other takings justified by the "public interest" involve the building of new luxury condominiums, shopping malls, and commercial office buildings.<sup>70</sup> According to government statistics, over thirty million people have had their residential land requisitioned for development, in large part for the country's massive Olympic project.<sup>71</sup>

1. *The Procedure of Urban Demolition and Relocation Results in Unfair Consequences for Those Forcefully Evicted for Development Projects.*

The law regarding urban demolition and relocation passed by the People's Congress provides framework for procedures to evict but lacks

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<sup>62</sup> Grady Epstein, *Chinese Reforms Yet to Register at Local Levels; the Chinese Constitution Guarantees Both Individual and Property Rights—on Paper*, THE BALTIMORE SUN, July 18, 2004, at 1.A

<sup>63</sup> *Id.*

<sup>64</sup> U.S. CONST. amend. V.

<sup>65</sup> See generally Jacques deLisle, *Property Rights Reform in China*, FOREIGN POLICY RESEARCH INSTITUTE, January 29, 2004.

<sup>66</sup> Jieming Zhu, *Urban Development under Ambiguous Property Rights: A Case of China's Transition Economy*, 26 INT'L J. URB. & REGIONAL RES. 52 (March 2002).

<sup>67</sup> Zhonghua Renmin Gongheguo tu di guan li fa [Land Administration Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 1998, effective Jan. 1, 1999), art. 8, translated in ISINOLAW (last visited Sept. 7, 2005).

<sup>68</sup> Jane Macartney, *Thousands of homes destroyed to make way for Olympic tourists*, TIMES (UK), May 26, 2005.

<sup>69</sup> John Taylor, *Beijing Gets a Facelift Ahead of 2008 Olympics*, WORLD TODAY, July 22, 2005.

<sup>70</sup> FINANCIAL EXPRESS, *supra* note 16.

<sup>71</sup> *Id.*

clarity and transparency to claim compensation. The Administrative Regulations on Urban House Demolition and Relocation (“Regulations”) provide the process for a developer or the state to apply for demolition of a property.<sup>72</sup> Once the demolition is approved, the private developer or the state then negotiates compensation with the residents of the property.<sup>73</sup> The only stipulation on notice is that local governments must alert the urban residents sometime before approval or amendment of a development plan.<sup>74</sup> Some municipalities require notice to the residents, but there is no national standard.<sup>75</sup> The Regulations clearly state that upon approval of the development plans, the evictee must move out within the specified time limit, even if negotiation regarding monetary compensation is not complete.<sup>76</sup> The evictees may dispute the offered compensation, but the developers have the right to “advance enforcement.”<sup>77</sup> There is no way for the residents to challenge the underlying eviction *ex ante*, only the compensation amount *ex post*. As a result, many evictees attempt to stay in their homes until agreement is reached.<sup>78</sup> This often causes violent forced evictions, where the evicting authorities take matters into their own hands, frequently employing dangerous demolition methods.<sup>79</sup> Reports allege that electricity and water supplies are shut off in order to drive out persistent residents.<sup>80</sup> Some residents claim they have come home to find their homes demolished without warning, while others report measures as extreme as arson.<sup>81</sup> Evictees even report demolition crews yelling “Earthquake!” in the middle of the night in order to clear residents: in other instances, the demolition begins while families are still inside.<sup>82</sup> These clearance methods are purportedly responsible for many accidental deaths during dangerous evictions.<sup>83</sup>

These same Regulations further stipulate that adjudication boards that handle compensation disputes are “the administrative departments in charge

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<sup>72</sup> See Administrative Regulations, *supra* note 18, Ch. 2-3.

<sup>73</sup> Davis and Hai, *supra* note 11, at 13.

<sup>74</sup> See Guanyu Renzhen Zuohao Chengzhen Fangwu Gongzuo Weihu Shehui Wending de Jinji Tongzhi [Urgent Circular Concerning Better Implementation of Urban Development to Protect Social Stability] (issued on Sept. 19, 2003 by the State Council).

<sup>75</sup> Pamela Phan, *Enriching the Land or the Political Elite? Lessons From China on Democratization of the Urban Renewal Process*, 14 PAC. RIM L. & POL’Y. J. 607, 632 (2005).

<sup>76</sup> See Administrative Regulations, *supra* note 18, art. 16.

<sup>77</sup> *Id.* art. 15.

<sup>78</sup> Davis and Hai, *supra* note 11, at 3.

<sup>79</sup> Epstein, *supra* note 63.

<sup>80</sup> Davis and Hai, *supra* note 11, at 11.

<sup>81</sup> *Id.* at 9.

<sup>82</sup> *Id.*

<sup>83</sup> Liu Qing, *supra* note 9, at 70.

of housing demolition and relocation,” which are comprised of the same people who approved the demolition in the first place.<sup>84</sup> As the beneficiaries of fees and other costs paid by developers, these boards are often biased.<sup>85</sup> There are further allegations that various municipal administrative boards are corrupt bureaucracies tilted in favor of the developers, as well as speculation of bribes and pay-offs.<sup>86</sup> These governmental bodies’ interests, in their capacities as regulators of socialist market forces, are prone to align themselves with helping the flourishing economy at the cost of the evictees.<sup>87</sup> Chinese lawyer Gao Zhisheng reported to *China Economic Times* that “officials at all levels of the bureaucracy routinely operate as if these laws don’t exist.”<sup>88</sup> The offered compensation amount will rarely adequately cover the cost of a new home in the area, adding to the problem of homelessness in China.<sup>89</sup>

The Regulations offer a final, yet still inadequate, avenue of legal redress.<sup>90</sup> If a party remains unsatisfied with the amount offered, they then may file for civil suit in the People’s Court.<sup>91</sup> This measure has also proven ineffective, however, to assist evicted tenants battling compensation amounts.<sup>92</sup> Most complaints and negotiations are already stifled in the administrative stage described above, and usually with massive disappointment on the part of the tenant.<sup>93</sup> To further frustrate these efforts, the Supreme People’s Court recently issued a ruling that People’s Courts are not to accept compensation disputes until the proscribed adjudication remedies are exhausted, or until the evictees have accepted a compensation settlement with the developers.<sup>94</sup> Though this exhaustion requirement seems routine and equitable, most claims are dispensed with in the administrative process and never reach the civil courts.<sup>95</sup>

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<sup>84</sup> See Administrative Regulations, *supra* note 18, art. 16.

<sup>85</sup> Liu Qing, *supra* note 9, at 68.

<sup>86</sup> Davis & Hai, *supra* note 11, at 6-7.

<sup>87</sup> See CHIH-YU SHIH, COLLECTIVE DEMOCRACY: POLITICAL AND LEGAL REFORM IN CHINA 38-39 (1999).

<sup>88</sup> Liu Qing, *supra* note 9, at 68.

<sup>89</sup> *Id.* at 69.

<sup>90</sup> See Administrative Regulations, *supra* note 18, art. 16.

<sup>91</sup> *Id.*

<sup>92</sup> Phan, *supra* note 75, at 609.

<sup>93</sup> Davis & Hai, *supra* note 11, at 14.

<sup>94</sup> Written Reply of the Supreme People’s Court on the Issue that When the Party Concerned Refuses to Accept the Ruling of Overturning His/Her Application for Revoking the Arbitration Award and Applies for Re-trial, the People’s Court Shall Not Accept the Application, *translated in* ISINOLAW. (Supreme People’s Court, July 26, 2004).

<sup>95</sup> Davis & Hai, *supra* note 11, at 16-7.

The Chinese judiciary has yet to recognize a claim based on constitutionally based rights.<sup>96</sup> Attempts to bring a civil suit or petition officials often results in incarceration, and there are even reports of officials preventing evictees from boarding trains to Beijing to air their grievances and protest at the capital.<sup>97</sup> Evicted residents who manage to organize a challenge and file a case in civil court find themselves routinely turned away for lack of jurisdiction or authority over the previous agency's decision.<sup>98</sup> According to one source, of over 18,000 real estate disputes filed in Beijing, less than 4,000 were actually heard in the first half of 2004.<sup>99</sup> Among the hundreds of thousands of evictees, many remain homeless as a result of receiving minimal or no compensation for their homes, and others were forced to move far outside the cities where their families lived for generations.<sup>100</sup> Many of those evicted cannot afford to live in the new urban landscape and are left out of the growing market economy.<sup>101</sup>

2. *The Unenforceability of These Regulations Emphasizes the Tension Between the CCP's Motivations for Economic Development and the Social Need for More Predictable Property Rights.*

These regulations and unfair practices highlight the tension between the Chinese government's interests in encouraging economic development while also providing for the population. While there remains a residual national pride in China's newfound wealth, frustration has spread throughout the cities.<sup>102</sup> Thus, the existing regulations and reforms, while still an impressive step, fall victim to a larger constellation of problems in China: the government's interest in economic development is too strong, monetary incentives encourage corruption in the bureaucracy, and the system lacks accountability, all while the widening social gap grows daily.<sup>103</sup> The decentralization of the CCP's power base has generated myriad private,

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<sup>96</sup> Hepeng, *supra* note 48, at 264.

<sup>97</sup> Liu Qing, *supra* note 9, at 68.

<sup>98</sup> For further discussion of attempted civil suits, *see generally* Phan, *supra* note 75; Didi Kirsten Tatlow, *Claims of Olympic Eviction Denied*, S. CHINA MORNING POST, March 11, 2004, at 10.

<sup>99</sup> CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, 2004 ANNUAL REPORT, *Forced Evictions and Land Requisitions* (2004) [hereinafter Report]; *see also* Liu Qing, *supra* note 9, at 69 (claiming that not a single evicted plaintiff has won a case in court).

<sup>100</sup> Anita Lam, *Soho Residents Face Sleeping in the Streets, Redevelopment Wrangles Leave 10 Elderly People on Verge of Eviction*, S. CHINA MORNING POST, Dec. 30, 2005, at 4.

<sup>101</sup> REPORT, *supra* note 99.

<sup>102</sup> Liu, *supra* note 1; Hepeng, *supra* note 48, at 266 (citing a survey in the cities in China that reveals high percentages of support for China's political system and ideology, but a rising dissatisfaction with reform policies).

<sup>103</sup> SAICH, *supra* note 35, at 342-47.

municipal, and governmental interest parties all competing in the lucrative real estate market in China, rendering the private leaseholds subject to these powerful entities.<sup>104</sup> Chinese property reforms appear enforceable and fair on the macro level, but prove weak and subject to governmental interests in practice, creating a need for transparency.<sup>105</sup> Unfair as it may seem, favoring economic development over individual property rights is not a new concept for a fast-growing nation.

### III. IN TERMS OF ECONOMIC DEVELOPMENT, AMERICAN AND CHINESE POLICIES ARE STRIKINGLY SIMILAR IN METHODOLOGY

In this era of international standards and human rights law, China's actions appear extreme. The early United States, however, utilized analogous policies in order to accomplish successful development. China's willingness to use governmental powers to side with private developers at the expense of the individual mirrors the United States government's policies in the nineteenth century.

#### A. *Nineteenth Century American Policies Regarding Economic Development Closely Resemble Current Chinese Procedures*

The appearance of the Chinese government rampantly abusing human rights takes on a more nuanced character when compared to American nineteenth century jurisprudence. The CCP's siding with private developers in order to stimulate modernization parallels strategies undertaken by the early American government. The current interpretation of the Chinese constitutional amendments is in actuality not a far cry from early interpretations of the Takings Clause. Although theorists deem strong property rights are required to establish a resilient economy, the historical record reveals that this was not consistently the case in early United States. What began as a tenuous right to property in nineteenth century America has morphed into an absolute and guaranteed right as each era has espoused its own interpretation.<sup>106</sup> In early America, the "public interest" of economic prosperity overrode individual rights.<sup>107</sup> While this young economy was transitioning, the weaker property rights of individuals contributed to the

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<sup>104</sup> Phan, *supra* note 75, at 618.

<sup>105</sup> Dorn, *supra* note 41.

<sup>106</sup> LAWRENCE M. FRIEDMAN, *LAW IN AMERICA* 43 (2002).

<sup>107</sup> MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1870-1960* 112 (1992).

strength of developers, driving the market forces to a stable state.<sup>108</sup> Thus, the concept of American “vested rights” arose as a social construction only after the strength of the nation’s economy was secure. These rights are subject to the socioeconomic conditions and needs of the nation, and no single definition can be the universal optimum.<sup>109</sup> The evolution of the early definition of American property rights is explored in the next section.

1. *The United States Legislature Encouraged Policies of Production and Growth*

During the early development of the American economy, strong government regulation of land use was generally an allowable tactic to advance the fledging market economy.<sup>110</sup> The conception of early American government’s *laissez-faire* market economy is largely a myth that gives way to an era of strong government regulation of land use.<sup>111</sup> The public right to land was often cited as justification for private takings, often with compensation below market value, or in extreme cases, none at all.<sup>112</sup> James Willard Hurst characterizes this era as an attempt by American government to “release energy” by encouraging private developers to make the best use of land.<sup>113</sup> These policies were similar to the current Chinese property regime, allocating vast amounts of resources to the hands of the wealthy elite in order to best accommodate the market economy.<sup>114</sup> The concept of property rights emerges as a social creation in an examination of the early American interest in creating a legitimate role for its emerging corporate wealth.<sup>115</sup>

In the drive to catalyze America’s fledging economy, there was no absolute right to property, as individual rights were subservient to the government’s interest in developing its national market. Diverging from the original English legal tradition that absolutely protected vested rights, the American policy in the early nineteenth century favored dynamic,

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<sup>108</sup> NOVAK, *supra* note 19, at 131.

<sup>109</sup> HORWITZ, *supra* note 106, at 271.

<sup>110</sup> JAMES WILLARD HURST, *LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH CENTURY UNITED STATES* 26 (1956).

<sup>111</sup> *See generally*, NOVAK, *supra* note 19, at 83-84. (Evidence suggests that early Americans understood that strong government regulations were both necessary and “another part of their well-regulated society”).

<sup>112</sup> *See id.* at 63..

<sup>113</sup> *Id.* at 6.

<sup>114</sup> *Id.* at 63. .

<sup>115</sup> HORWITZ, *supra* note 109, at 107.

productive property over static property at rest.<sup>116</sup> This principle resulted in private investment spurring the economy at the cost of the individuals who simply had no legal recourse. Early American jurisprudence placed the burden of persuasion on the injured, during an era where “[n]oncompensation was the general rule, not the exception.”<sup>117</sup>

Studies of this period highlight a great deal of expropriation and confiscation without compensation while emphasizing the coercive nature of property in any society.<sup>118</sup> Legislatures were eager to attract investment, oftentimes at the expense of individual property owners.<sup>119</sup> Many Americans found themselves without legal recourse, even when eminent domain powers were not used for traditional “public use” but for delegating resources to private parties, with whom the government sided.<sup>120</sup> In other words, the public power of eminent domain transferred interests wholesale to private entrepreneurs while the aggrieved property owners found the courts largely unresponsive.<sup>121</sup>

## 2. *The United States Judiciary Deferred to the Pro-Growth Policies of the Legislature*

The interest in forging a dynamic market economy was the chief concern of both lawmakers and the supportive judiciary in a fledging America.<sup>122</sup> The judiciary exercised extensive deference to these government decisions to take property as well as maintaining a liberal definition of “public interest.”<sup>123</sup> The public interest defined itself in terms of what a situation or community deemed necessary at the time, even if the principle beneficiary was private profit.<sup>124</sup> Decisions such as the *Shreveport Cases*, where Chief Justice Shaw declared that “the law aims to be practical, and to favor what is practicable,” reveal the mindset of the judiciary at the

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<sup>116</sup> FRIEDMAN, *supra* note 106, at 43.

<sup>117</sup> *Id.* at 46.

<sup>118</sup> This era is when American policy began to imagine property as a relationship between “the owner and other individuals in reference to things,” beginning a more complex vision of property’s role in the societal order. HURST, *supra* note 110, *citing* Morris Cohen, *Property and Sovereignty*, 13 CORNELL L.Q. 8, 12 (1927).

<sup>119</sup> Harry N. Scheiber, *Property Law, Expropriations, and Resource Allocation by Government: the United States, 1789-1910*, 33 J. ECON. HIST. 232, 240 (1973); Novak, *supra* note 19, at 128.

<sup>120</sup> See e.g. HURST, *supra* note 110, at 63. (where government and courts assisted private developers by allowing seizures of land and setting compensation below market value).

<sup>121</sup> Scheiber, *supra* note 119, at 237-9.

<sup>122</sup> HURST, *supra* note 110, at 25.

<sup>123</sup> Scheiber, *supra* note 119, at 243.

<sup>124</sup> *Id.*

time.<sup>125</sup> Hurst observes that these rulings characterize the legacy of the nineteenth century United States, and its tendency to highly value “change more than stability...property in motion or at risk rather than property secure and at rest.”<sup>126</sup> Protecting private property, then, was a means to an end. “Vested rights” were thus developed in order to open up the continent and facilitate business interests to generate and protect venture capital, not the individual property rights of the citizens.<sup>127</sup> For example, in Wisconsin, a federal judge supported the government’s delegation of the power of eminent domain to a private waterpower developer, simply by assuming that capital had been invested and economic prosperity had resulted.<sup>128</sup>

The government used positive law in order to achieve its goals, maximizing the productive potential of a developing nation.<sup>129</sup> Justice Holmes wrote, in support of these policies, that “the absolute protection of property...is hardly consistent with the requirements of modern business.”<sup>130</sup> In fact, *damnum absque injuria* (an injury without a remedy) was a common judicial tool for legal positivists in early America, where judges were not uncomfortable leaving victims without compensation as long as the government had a semblance of just cause.<sup>131</sup> As William J. Novak puts it, judicial decisions during this time of development did not “reason upward from private rights and particular injuries...instead they reasoned downward from autonomous conceptions of state powers, public rights, and the general welfare of the society.”<sup>132</sup> Novak observes that much of the courts’ instrumentalist tendency ultimately favored “large and efficient, private developmental interests in the release of capitalist energies,” thus supporting wide police powers in a strongly-regulated United States.<sup>133</sup>

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<sup>125</sup> *Shreveport Cases*, 234 U.S. 342 (1914) (declaring the social desirability of free individual action justifies the burden of proof resting on the defendant, revealing a deference utility of law, rather than law as the protector of a rights to redress).

<sup>126</sup> HURST, *supra* note 110, at 24.

<sup>127</sup> *Id.* at 25.

<sup>128</sup> *Id.* at 25-26.

<sup>129</sup> *See id.* at 24.

<sup>130</sup> HORWITZ, *supra* note 109, at 129, quoting O.W. HOLMES, *THE COMMON LAW* 80 (1963). Is the proper form really “O.W. Holmes”?

<sup>131</sup> NOVAK, *supra* note 19, at 131.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 133, quoting *Joanna Clark’s Case*, 1 City Hall Rec. 136 (N.Y., 1816); see also *Kelo v. City of New London*, 126 S.Ct. 326 (Mem.), 163 L. Ed.2d 40, 74 USLW3201 for a recent example of the United States Supreme Court upholding the use of eminent domain to allocate resources to private development.



B. *Comparing Early American Policies and Current Chinese Practice Reveals Similar Strategies of Economic Development with Different Theoretical Underpinnings*

Despite contrasting ideologies, early American and current Chinese policies follow analogous paths in developing their respective national markets. As the above discussion reveals, the early American government was not adverse to seizing private property and allocating these resources to private developers. The CCP currently undertakes these same methods in order to accomplish its economic goals. The vulnerability of property rights in China, however, has reached a breaking point, and China has the legal infrastructure to enact its own reforms without adopting Western methods. Under the international gaze, it is in China's interest to give weight to individual property rights and enforce the constitutional right to compensation.

In many ways, the early American record and the current Chinese policies defy the assumption that clearly defined and predictable property and contractual rights are prerequisites to foster economic growth.<sup>134</sup> Economic theories posit that clearly defined property rights such as the right to definitively own, sell, and benefit from one's property are key to the positive growth of a market economy,<sup>135</sup> while vaguely defined rights create inefficiencies and hinder growth.<sup>136</sup> Both the early American legal system and China's relatively weak system, however, challenge this assumption.<sup>137</sup>

The Chinese courts are now facilitating the same interests as nineteenth century American jurists, assisting the government in achieving national development goals. In order to most efficiently use resources, particularly land, the CCP is utilizing the Constitutional language that "the State may, in the public interest, expropriate or requisition private property of citizens and pay compensation in accordance with the law."<sup>138</sup> China is allocating public resources to private developers in order to "release energy"<sup>139</sup> previously tied up in stable, secured residential property.<sup>140</sup> As of September 2004, 94,480,000 square meters of property were "idle," with

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<sup>134</sup> See Donald Clarke, Peter Murrell, and Susan Whiting, *Law, Institutions and Property Rights in China*, ASIA PROGRAM SPECIAL REP. 42, 44 (2005).

<sup>135</sup> See generally NORTH, *supra* note 34 (arguing that property and contractual rights must be clear and enforced by established institutions in order to foster a strong market economy).

<sup>136</sup> Clarke et al, *supra* note 134, at 42.

<sup>137</sup> *Id.*

<sup>138</sup> Amendments, *supra* note 60, at Art. 22.

<sup>139</sup> See discussion *supra* Part III.A.1.

<sup>140</sup> See Phan, *supra* note 75, at 618.

residential land accounting for 57,360,000 of that total.<sup>141</sup> The policy decision to transform these lands from “idle” to “productive” mirrors the nineteenth century American notion that property held by private developers was preeminently dynamic, rather than static, “property” being a political concept that could be morphed to best fit the needs of the country.<sup>142</sup>

By maintaining control over and responsibility for the commercial sector, the Chinese government remains ideologically communist.<sup>143</sup> Due to unmanageably rapid growth, however, the State must prioritize economic expansion at the expense of many citizens displaced by the necessary development.<sup>144</sup> In order to achieve this growth, the CCP has essentially delegated its regulating powers to the private companies in order to enact a trickle-down effect, justifying takings for the public good. This policy is particularly relevant and rhetorically effective in a communist society, where the entire economy depends on the collective productive forces working for the collective public good.<sup>145</sup> The wealth of a communist country, in other words, depends on the state both controlling and providing production venues for the masses. This necessarily renders the term “for public necessity” ambiguous in a communist society, where wealth for one is in theory wealth for all.<sup>146</sup>

Though China’s political climate is notably violent in comparison with the early American liberal use of eminent domain,<sup>147</sup> the policies undertaken are not as divergent as initially perceived. China is a country that is undertaking what is necessary to advance itself to the world stage and mimicking strategies used by its predecessors, but is uniquely Chinese at its foundation.<sup>148</sup> Nonetheless, American history reveals that absolute property rights cannot be guaranteed during a transitional economy.<sup>149</sup> Examples from early American history do not justify China’s current abuses and lack of legal clarity, but rather add nuance to the criticisms of the CCP’s policies. While the development strategies succeeded in stimulating the market in the

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<sup>141</sup> *Id.* quoting *Immoveable Property Tax Should Be Levied on Idle Housing*, THE BEIJING NEWS, March 7, 2005.

<sup>142</sup> HURST, *supra* note 110, at 9-10.

<sup>143</sup> CHIH-YU SHIH, *supra* note 87, at 39.

<sup>144</sup> *See* Hepeng, *supra* note 48 (implying the CCP has revamped its entire ideology in order to both accommodate and prioritize economic development and ensuing commercial interests).

<sup>145</sup> *See* Peter Ho, *Deliberate Ambiguity in Property Rights*, 166 CHINA Q. 394, 397 (2001).

<sup>146</sup> *See id.* at 397-401. (there is no definition in the Chinese constitution or Chinese laws that clearly define “collective ownership” or “public interest,” purposefully rendering the term ambiguous in terms of private versus public ownership of land).

<sup>147</sup> *See e.g.*, Taylor, *supra* note 69.

<sup>148</sup> *See* discussion, *supra* Part II.

<sup>149</sup> FRIEDMAN, *supra* note 106, at 46-47.

United States, the Chinese now face the peculiar problem of an increasingly privatized economy under a communist political regime.<sup>150</sup>

As the inequities of the market regulation become progressively more apparent, the common collective and individual private citizens absorb this predicament as the most vulnerable sector.<sup>151</sup> Comparable to the post-New Deal era in American jurisprudence, there will come a time when this gap can no longer be ignored and a fair and equitable system must be practically applied.<sup>152</sup> Given the Chinese population's dichotomous sentiments of frustration and sense of entitlement evidenced in the mass protests, combined with international scrutiny, it appears that time could be drawing near for China. The solution, however, is not to be found in mimicking American policies: China's history and processes should shape a uniquely Chinese reform.

#### IV. CHINA SHOULD REFORM ITS PROCEDURES FOR URBAN DEMOLITION AS A STEP TOWARD ITS OWN UNIQUE RULE OF LAW

The CCP should renovate its property regime to include more transparent rights as it advances its socialist rule of law.<sup>153</sup> The Chinese citizenry's rights are solidifying but remain largely unenforceable.<sup>154</sup> Consistent with Chinese reluctance to adopt Western models, the CCP studies other existing governments but insists on remaining ideologically true to its socialist foundation. Given the intensified scrutiny from both governments and interests groups abroad, China should take affirmative steps toward establishing a more equitable system for evictees.

##### A. *China Has Already Initiated Reforms Consistent with Its Own Characteristics As It Works Toward Economic and Social Goals*

The CCP is not averse to reforming its fledging legal system, but refuses to depart from its policy of taking a unique Chinese path. The natural tendency in light of the discussion above is to recommend that the Chinese government should undergo massive legal reforms that would include recognition of personal property rights to ownership. It is also easy to suggest that China should enforce its constitutional amendments as

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<sup>150</sup> Walder & Oi, *supra* note 23, at 11.

<sup>151</sup> Phan, *supra* note 75, at 608.

<sup>152</sup> deLisle, *supra* note 65.

<sup>153</sup> For more on China's developing rule of law, see CONGRESSIONAL-EXECUTIVE COMMITTEE ON CHINA 2005 ANN. REP., Part V available at <http://www.cecc.gov/pages/annualRpt/annualRpt05/index.php>.

<sup>154</sup> See discussion, *supra* Part II.B.

America started to do once the economy proved itself secure. While these ideas are optimal, they are unrealistic in light of China's policy of avoiding Western political mechanisms. The CCP recently released its first White Paper on Democracy, stating its national goals to work toward a true People's Democracy.<sup>155</sup> In this policy announcement, the CCP acknowledged it had a long way to go in combining the Marxist theory of democracy with the reality of China, and was learning from other political civilizations.<sup>156</sup> China's socialist political democracy as reiterated throughout the White Paper, however, should build its democracy based on its own socialist experience and historical process without copying any other political model.<sup>157</sup>

National leaders approve of this approach. An official of the People's Supreme Court reflected this approach in an interview, saying that "China should base itself on its national situation instead of mechanically copying the experiences gained by [other countries] because China is a socialist country carrying out the people's congress system and its state, political, and judicial systems are essentially different from those of the western countries."<sup>158</sup> Even regarding a new draft of property law – something admittedly alien to modern China – a Chinese legal expert has said:

“[T]he present-day China has no reason to choose [laws from other nations] as the example for making its own law of property. The future law of property in China should be able to fully reflect and meet the trend and generalization of changes in relations of property in the modernization of man...”<sup>159</sup>

These Chinese officials and experts represent a fundamental tenet of China's current global politics: socialist policies will prevent the wholesale adoption of capitalist property laws and regulations.

Though the above discussion highlights the CCP's reluctance to modify its structural format, a recent revision to the judicial system is helpful in illuminating the types of reform the Chinese are willing to make. The Chinese judiciary, appointed by the CCP, has been criticized for lack of

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<sup>155</sup> Chinese White Paper on Democracy, Oct. 19, 2005 available at [http://www.chinadaily.com.cn/English/doc/2005-10/19/content\\_48206\\_24.htm](http://www.chinadaily.com.cn/English/doc/2005-10/19/content_48206_24.htm). [hereinafter White Paper].

<sup>156</sup> *See id.*

<sup>157</sup> *See id.*

<sup>158</sup> *Highlights: China's Judicial Reform, Legalization Process, Other*, WORLD NEWS CONNECTION, June 6, 2005.

<sup>159</sup> Meng Qinguo, *Law of Property—Symbol of Intelligence, Dignity of a State and Nation*, CHINA LAW, Oct. 2004, at 82-85.

independence, impartiality, and subsequently being prone to corruption. In response to this censure, the National People's Congress prompted the People's Supreme Court to implement reforms in an effort to create a better system of adjudication.<sup>160</sup>

One example of such reforms addresses the Chinese system of People's Jurors, a legal mechanism adapted from the U.S.S.R., in place since the 1950s.<sup>161</sup> Initially a response to accusations of corruption and a lack of independence in their judiciary, the People's Jurors were citizens appointed to the bench alongside with the judicial officers.<sup>162</sup> The appointees were largely uneducated, however, and as such the jurors proved to be no more than the implementation of symbolic figures without any real authority.<sup>163</sup>

The 2004 reforms to the system of People's Jurors reveal a basic yet uniquely Chinese solution to the problem of alleged judicial corruption.<sup>164</sup> Now, many of the People's Jurors are elected by the districts in which they serve for a term of five years.<sup>165</sup> These reforms require citizens to meet minimal education standards and complete basic legal training before sitting with the judges.<sup>166</sup> They serve on a bench with three official judges upon request by parties at the initiation of the trial.<sup>167</sup> People's Jurors then have the same powers as the judges do and can vote alongside them in both criminal and civil cases.<sup>168</sup> Jurors are also called in to hear cases "with considerable social repercussions," in a representative capacity for the public, acting as the equivalent of a magistrate.<sup>169</sup> The president of the Supreme People's Court said the reform was representative of the fact that "during such a period [of gaining wealth], the country needs improvement in its judicial capacity." The CCP further stipulates that the purpose for adopting of these measures was to allow transparency in the judiciary and assist in the guarantee of the citizens' rights.<sup>170</sup>

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<sup>160</sup> For more on ongoing judicial reforms in China, see CONGRESSIONAL-EXECUTIVE COMMITTEE ON CHINA 2005 ANN. REP., Part V(c) available at <http://www.cecc.gov/pages/annualRpt/annualRpt05/index.php>.

<sup>161</sup> *China: Jury System Key to Justice*, CHINA DAILY, June 7, 1999.

<sup>162</sup> *China prepares for first-ever jury trials*, AGENCE FRANCE PRESSE ENGLISH WIRE, April 25, 2005.

<sup>163</sup> *China to legitimize trial by jury*, UPI NEWS, December 20, 2004.

<sup>164</sup> AGENCE FRANCE PRESSE, *supra* note 162.

<sup>165</sup> Implementing Opinions of the Supreme People's Court and the Ministry of Justice on Selecting, Appointing, Training and Examining the People's Jurors, art. 18 (adopted December 15, 2004) *translated in ISINOLAW*.

<sup>166</sup> *Id.* at art. 12.

<sup>167</sup> AGENCE FRANCE PRESSE, *supra* note 162.

<sup>168</sup> *Id.*

<sup>169</sup> *Jurors to Help Decide Court Verdicts*, CHINA DAILY, Apr. 25, 2005.

<sup>170</sup> *Nation Holds Human Rights in High Esteem*, CHINA DAILY, Apr. 14, 2005.

The process for urban demolition and relocation could benefit from similar equitable rights, guarantees, transparency and accountability, guided by Chinese values and political philosophy. Reforming the system of People's Jurors represents a willingness on the part of the Chinese to adopt certain democratic-style innovations, while still maintaining Chinese characteristics—a value insisted on by the government.<sup>171</sup> Though it would only be a step toward fair compensation, a system like the People's Jurors would initiate a more transparent, predictable judicial hearing for evictees. These renovations would begin to combat the corruption of the urban redevelopment program. Currently, the board consists of CCP-appointed administrators who both approve of and collect fees for the original demolition. As the Regulations stand now, the board that adjudicates is unfairly biased as the same board that approves of demolition if residents dispute compensation offered by the developer. If citizen jurors were seated on the adjudication board, a resident could hope for more adequate monetary compensation. Though it remains to be seen how much change the People's Jurors will effect, a similar system could be implemented at the administrative level of the eviction hearings in reviewing compensation amounts to generate more unbiased judgment.

Measures such as these could be taken to further legitimize the amendments and other facial reforms the Chinese have made. The People's Congress expressed its concern for the human rights of its citizens in a white paper entitled "China's Progress in Human Rights in 2004," stating, "[t]he Chinese Government pays special attention to respecting and safeguarding human rights. It will take effective measures to promote the development of human rights and to raise the level of human rights and basic freedoms enjoyed by the Chinese people."<sup>172</sup> Despite the reluctance shown by the CCP to rapidly liberalize social controls and implement massive reform in this area, small steps are being taken. In the socio-political arena, where massive protests are occurring on a daily basis, it is perhaps time the CCP acted on its alleged concern for human rights and granted the citizenry a substantial right, such as just compensation, even if the residents still cannot challenge an underlying eviction.<sup>173</sup> The hope is that, in the end, China will enforce its version of Fifth Amendment Takings Clause jurisprudence. In the meantime, a step toward an equitable system of compensation will help

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<sup>171</sup> WORLD NEWS CONNECTION, *supra* note 158.

<sup>172</sup> CHINA DAILY, *supra* note 170.

<sup>173</sup> deLisle, *supra* note 65, at 4.

maintain stability.<sup>174</sup> As the Chinese urban population stages protest after protest, the social strife becomes palpable.<sup>175</sup>

*B. China Is Ripe for Reform and Should Renovate Its Legal System, Beginning with the Property Regime*

The social turmoil in China resulting from the shortcomings of the legal system necessitate reform. Much has been written on the inadequacies of China's property regime, particularly in light of the recent economic boom. Given the nature of comparative law, it is difficult not to recommend installation of political reforms such as separation of powers, creation of an independent judiciary, and other democratic principles.<sup>176</sup> It is also presumptuous, however, to assume these mechanisms can be imported to China's unique system and be as effective as they have proven to be in other nations.<sup>177</sup> While it is hopeful for tenants to be able to challenge the underlying eviction instead of just the compensation amount, and to recommend that the adjudication board be independent from the department responsible for the initial approval of demolition plans, these solutions fail to address the character of Chinese government and its deeper problems.

The unitary party system in China disallows true independence from any other branch of government, while the top-down process of legislation ensures provincial and state governments only exercise powers specifically delegated to them. This system of delegation allows for rampant corruption in the local governments, however, as the system lacks credible enforcement mechanisms.<sup>178</sup> There is no separation of powers, either vertically or horizontally, creating a system of relatively loosely connected centers of local power, all stemming from the apex of the National People's Congress, the central agent of the CCP.<sup>179</sup>

In the specific case of forced evictions, the lack of uniformity results in the various municipalities each creating its own policies within the sphere of the nationally-issued Regulations.<sup>180</sup> The People's Congress' Regulations for Urban House Demolition and Relocation and 2003 Constitutional Amendments remain too vague for consistent implementation, as evidenced

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<sup>174</sup> *Id.*

<sup>175</sup> Savadove, *supra* note 13.

<sup>176</sup> *See, e.g.,* Davis & Hai, *supra* note 11, at 37-41.

<sup>177</sup> SAICH, *supra* note 35 at 329-347.

<sup>178</sup> Dorn, *supra* note 41.

<sup>179</sup> Donald C. Clarke, *The Chinese Legal System* (July 4, 2005) available at <http://donclarke.net/public/ChineseLegalSystem.html>.

<sup>180</sup> Phan, *supra* note 74, at 618-20.

by the variance of execution from province to province. While many local governments have taken notable and impressive steps toward a more equitable system of urban development, others remain convoluted and oppressive.<sup>181</sup> For example, the city of Qingdao passed a circular in April 2005 that requires developers to obtain approval of ninety-five percent of the affected residents before they proceed with plans.<sup>182</sup> In contrast, Beijing remains frustratingly opaque and corrupt in its city's massive remodeling project.<sup>183</sup> Though serving as examples of potential for change, policies that vary from city to city have little effect on the national front. Genuine national reforms can only originate from the People's Congress, where a uniform policy and procedure for land requisitions and compensation could be created.

Despite the progress of property regime reform at some municipal levels, the national government is the only way to disseminate a uniformly equal policy across China. Corruption within the unitary, one-party CCP system, however, hinders efforts for achieving such a uniform policy. To be fair, corruption has been a problem in all transitional governments, but China has made little progress to address this crippling issue.<sup>184</sup> As economic development consumes the nation while commercialization and investment create more wealth to feed the corruption cycle, the CCP has not revised its hierarchical system to reflect this evolving society.<sup>185</sup> As economic liberalizations have occurred in the past few decades, the CCP has seen an upswing in reported corruption, as the incentive to personal revenue grows in an increasingly profitable economy.<sup>186</sup> While reluctant to abandon its bureaucratic procedures, the CCP is currently taking steps to eradicate the pervasive corruption within.<sup>187</sup> Still insistent on developing its own socialist market economy within the established unitary political body, the CCP is taking steps to cleanse the administrative and judicial processes, as demonstrated by the People's Jurors.<sup>188</sup> The CCP remains the sole organ of power and dissemination, and it is only from the National People's Congress that countrywide change will come.<sup>189</sup>

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<sup>181</sup> See Phan, *supra* note 75, at 622-35.

<sup>182</sup> *Id.* at 650.

<sup>183</sup> Macartney, *supra* note 68.

<sup>184</sup> Phan, *supra* note 74, at 609.

<sup>185</sup> Saich, *supra* note 35, at 345.

<sup>186</sup> *Id.* at 331.

<sup>187</sup> *Id.* at 345.

<sup>188</sup> White Paper, *supra* note 155; *see also*, discussion *infra* Part V.A.

<sup>189</sup> Government Structure, *supra* note 45.



C. *The Chinese People Should Capitalize on International Pressure to Advance Property Rights Reform*

China's development comes at a time when international standards are not only emergent, but established, which differs from the fledging American experience in the nineteenth through early twentieth centuries. The Chinese government endured and achieved economic development beyond global expectations within the past twenty years, but that development has come at a price.<sup>190</sup> While China's economy is benefiting from being party to international agreements, a previously isolated China is now under the critical scrutiny of the international community as a party to international covenants and a member of the World Bank.<sup>191</sup> China's desire for legitimacy on the global level necessitates a degree of adherence to international rules and norms. This entails not only ratifying an international covenant, but also taking genuine steps to enforce its provisions. This experience differs in the level of international scrutiny and expectations to which the United States was not subjected to in the late nineteenth to early twentieth century.

For example, in 2005 the U.N. Committee on Economic, Social and Cultural Rights held hearings regarding China's progress in enforcing the covenant ratified in 2001.<sup>192</sup> The Committee, finding a lackluster effort on the part of the Chinese government, filed numerous complaints and recommendations, including a special concern about the way in which the Olympics project was handled.<sup>193</sup> Regarding the forced evictions and relocations, the Committee asked China to implement "open, effective and meaningful consultations with affected residents."<sup>194</sup> This is but one way China's entry into the international market affects its domestic policy decisions.

The Olympics are China's debutante ball, at which the nation intends to prove its modernization and discard its third-world status once and for all.<sup>195</sup> The CCP is taking the event as seriously as a nation could, while quietly attempting to quash political dissent within its borders to avoid

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<sup>190</sup> See generally Charles Wolf, Jr., *China: An Emerging "Economic Superpower?"*, in CHINA IN THE NEW MILLENNIUM 11-39 (James A. Dorn ed., 1998) (reviewing the economic progress of the Chinese economy, as well as some of the general problems arising from this rapid development).

<sup>191</sup> See generally Wen Hai, *The WTO and China's Objectives as a World Trading Power*, in CHINA IN THE NEW MILLENNIUM 175-89 (James A. Dorn ed., 1998).

<sup>192</sup> Ching, *supra* note 54, at 12.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> Liu, *supra* note 1.

controversy and scrutiny.<sup>196</sup> China's worst nightmare is a repeat of the 1968 Mexico City Olympics when thirty student protestors were killed on the eve of the Games, or perhaps, the 1988 Seoul Olympics where publicly broadcasted mass protests helped persuade the country to concede democratic elections to the people.<sup>197</sup> Activists claim that a city hosting the Olympics ought to represent ideals such as human dignity and harmonious development that are enshrined in the Olympic Charter and Code of Ethics. These activists are set on ensuring that the values are not only symbolized, but also realized.<sup>198</sup>

The torch does not light in Beijing until August 2008, but the anxiety for has begun. China lost the bid for the 2000 Olympics in large part due to human rights abuses.<sup>199</sup> This coming of age for China unavoidably involves acknowledgment of international standards, including the right to adequate housing and freedom from forced eviction.<sup>200</sup> The CCP still has time before the hundreds of thousands of international journalists arrive.

Instigating reforms for clarity and transparency in the urban eviction procedure might also function to quell surging domestic protests and civil unrest. Currently, the techniques used by the State to suppress political activity and protests are failing to stop the massive demonstrations that plague domestic Chinese society.<sup>201</sup> According to one report, the number of collective acts of protest has risen six-fold in the past decade.<sup>202</sup> The population's courage to speak out and protest government abuses comes from mottos the CCP itself promulgated, such as "The People's Olympics." The jubilation of the celebration in the streets upon winning the 2008 bid was not staged: the Chinese citizens are truly proud of their country. It is perhaps this patriotism that inspires protests and hope for change.<sup>203</sup> As the head official of Beijing's Chaoyang district, Chen Gang puts it, "[t]he citizens' political sense is maturing...the Games are changing our society."<sup>204</sup> One man forcefully evicted has used his copy of the new

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<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Mark Magnler, *Trying to Get Beijing to Go for Gold on Rights*, L.A. TIMES, Oct. 11, 2004, at A3.

<sup>199</sup> Lin Ting Li, *supra* note 2.

<sup>200</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200A, 21 U.N. GAOR Sup. (No. 16) at 49, U.N. Doc. A/6316 (1996), 993 U.N.T.S. 3, entered into force Jan. 3, 1976, ratified by China on June 27, 2001.

<sup>201</sup> Savadove, *supra* note 13.

<sup>202</sup> Liu, *supra* note 1;

<sup>203</sup> According to the CONGRESSIONAL-EXECUTIVE COMMITTEE ON CHINA 2005 ANN. REP. 2005, Part V(d) & (e) available at <http://www.cecc.gov/pages/annualRpt/annualRpt05/index.php>, there are currently about three million social groups including non-profit, civil organizations in China, demonstrating a stronger willingness on the part of the citizenry to participate in society and attempt change.

<sup>204</sup> Liu, *supra* note 1.

constitution to challenge local authorities, disputing his compensation amount. He now sits on the sidewalk every day, protesting with a headband that reads, “[p]rotect the constitution and protect our rights.”<sup>205</sup>

The government is in a transitional period, one that historically has shown itself to inherently favor one class over another, catering to the private developers while fueling the frustration and resentment of the urban poor.<sup>206</sup> This widening gap between the rich and poor is strikingly similar to the consequence of early American economic development, and especially out of place in a socialist regime. This friction coupled with the sheer number of displaced or homeless evictees threatens the social structure the CCP has strived to create. The residents should be given some development in the rule of law to renew their dwindling faith in the Party and the nation of China.

## V. CONCLUSION

Aware of the global attention that the Beijing Olympics would attract, many countries with an eye on China's treatment of human rights supported the bid in hopes that the government would respond by loosening its social controls.<sup>207</sup> Instead of fulfilling these aspirations, the CCP has responded to evictee protests with incarceration and other methods of suppression, disregarding petitions and international calls for legal reform while touting advances toward the rule of law.<sup>208</sup> This inconsistency, given China's current position on the world stage, cannot continue unnoticed or overshadowed by the country's wealth. The early American experience lacked this global character, and in this way the Chinese present is unique in that it is developing at a time where international law is not only established, but is used as a means to establish international standards.

The stakes are high. Following an era of strong government in early America, legal reforms and evolutions led to the rights-based framework in which we now live. The means by which China will arrive at this conclusion will be necessarily “uniquely Chinese.”<sup>209</sup> Given that the practice of forced evictions is the source of most protests and social strife,<sup>210</sup> it is an ideal place to begin granting stronger rights. By implementing a

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<sup>205</sup> Epstein, *supra* note 62.

<sup>206</sup> See Phan, *supra* note 75, at 608-9.

<sup>207</sup> Lin Ting Li, *supra* note 2.

<sup>208</sup> *China white paper on democracy*, BBC NEWS Oct. 19, 2005, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/4355768.stm>.

<sup>209</sup> WORLD NEWS CONNECTION, *supra* note 158.

<sup>210</sup> Savadove, *supra* note 13.

system similar to the People's Jurors in the procedures for urban demolition and relocation, the CCP could demonstrate to both its citizenry and the international community that it is maintaining its "Chinese characteristics," while taking steps to enact a more transparent, equitable legal system. Although the interest in development currently overrides individual rights, a professor at the Beijing Institute of Technology remains optimistic, saying, "I hope that...more and more people will be able to pay attention to the Constitution and to safeguard the authority of the Constitution."<sup>211</sup>

In writing about the necessity of balancing early American law with its policies, Justice Holmes looked forward to a time when the desire for a goal is examined as much as the means used to attain it. Highlighting the complexity of legal policies in particular contexts, he noted that getting "the dragon out of his cave...you can count his teeth and claws, and see just what [his strength is]. But to get him out is only the first step. The next step is either to kill him, or to tame him and make him a useful animal."<sup>212</sup> The time has come for Beijing to make its fledging legal regime a useful animal, as opposed to a tool to legitimize its interest of economic development. However similar China's current situation is to the era in which Holmes wrote, the creation of a true socialist democracy will be a product of its own.

These expectations will not be achieved easily. At the Oriental Plaza, an upscale shopping center in Beijing, a homeless man and his father sit under a bridge holding a sign that says, "Homeless Because of the Olympics."<sup>213</sup> Another evicted resident in Beijing complains that "the Olympics are a good thing for a few people, but not for the majority,"<sup>214</sup> reflecting a general malaise spreading throughout the entire country, not just at the epicenter of the Olympic project. The dichotomy further emphasizes the international reputation at stake—with the global community watching, China could either alleviate fears by granting certain limited rights to its citizens, or could do nothing to its own detriment.

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<sup>211</sup> WORLD NEWS CONNECTION, *supra* note 158.

<sup>212</sup> HORWITZ, *supra* note 109, at 141, quoting O.W. Holmes, *The Path of the Law*, in COLLECTED LEGAL PAPERS 186-7 (1920).

<sup>213</sup> Liu, *supra* note 1.

<sup>214</sup> *Id.*