

LAWS AND MORALITY OF LAND USE: THE CASE OF CHINA

By Anne Haila

One of the most interesting phenomena at the moment for urban scholars is the transformation in China. China is urbanizing rapidly and going through an institutional change. As a result of urbanization, China has several large and mega cities, including one of the largest cities in the world today, Chongqing, with its more than 30 million people. An institutional change from a planning system to a market system and an attempt to create a real estate market has attracted Western developers and investors to China. The change going on in China today, I assume, also bears some resemblance to the development in Estonia. In this paper, I will consider what kind of changes there have been in the system of land management and land use in China. I will first look briefly at the history of land reforms, and then introduce the main idea of China's contemporary reform and the international advisers advocating such a reform. After that, I will mention some problems produced by the institutional change and the new market allocation system, and conclude by discussing what is regarded as the main reason for current problems: ambiguous property rights.

Land reforms in China

Sun Yat-sen, the ideological leader of the Republic of China at the beginning of the 20th century, was influenced by the great land reformer Henry George (1839-1897), who introduced the idea of the Single Tax: collecting land rent instead of nationalizing land. After the revolution in 1949, the People's Republic of China, however, followed the other model of land reform suggested by Karl Marx and nationalized land. Chiang Kai-shek took Sun Yat-sen's heritage to Taiwan and implemented a Georgist type of land reform there.

Deng Xiaoping's Open Door policy, beginning in 1978, has led to a series of experiments which have gradually changed the system of land management. In 1987, land use rights were sold in Shenzhen, a city next to Hong Kong. In 1988, the new idea of allowing the selling of land use rights was written into the Constitution. This has had a tremendous impact on the growth of cities and urban development.

The separation between ownership and use rights

The model for separating ownership and use rights was taken from Hong Kong, where the government owns the land and leases it to

users. The leases can be from 30 to 60 years, and the terms of the use are defined in the contract.

The separation between ownership and use rights has made it possible for China to maintain socialist public ownership of land and develop a capitalistic land market. On the primary market, the state allocates land to users, like work units, at a nominal price. Work units are the social organizations in which people are employed: a factory, shop, school, research institute, cultural group or Party organ. Through work units, the Party penetrated the grass roots level of society and led masses to carry out class struggle, land reform and support for the war effort (Lu Feng 1989, in Dutton 1998, 53). On the secondary market, users can sell their use rights at market prices. Foreign development companies can buy use rights on the secondary market. Naturally the difference between the nominal prices on the primary market and the market prices on the secondary market is huge, and provides the opportunity for speculation.

The principles of how to manage lands are written in the Land Administrative Law of the People's Republic of China (adopted in 1986, amended in 1988 and revised in 1998). The first article states that "this law is formulated in accordance with the Constitution to strengthen land administration, and maintain socialist public ownership of land". Socialist public ownership of land means ownership by all of the people and collective ownership by the working people (article 2). The right to the use of land may be transferred according to law. Land in urban areas shall belong to the state (article 8). State-owned land and land owned by rural collectives may be distributed to units or individuals for use (article 9). A construction unit that uses state-owned land should use the land according to the provisions of the land-use right concession contract (article 56).

There are two important features in this law. The first is that the state is the owner of urban land. In my home town of Helsinki, the City of Helsinki owns more than 60 % of the land. In Finland, with state land owned and managed by companies like Senaatti and Kapiteeli, it makes a big difference whether the landowner is the state or the city. Secondly, the contract which is signed between the owner and user gives the public authority the power to determine how the land is used, and also keeps that power in the hands of public authorities.

International advisers and the ideology behind the reform

The reform that separated ownership and use rights and allowed the selling of use rights on the market was radical and meant a

completely new way of thinking. What is the ideology behind the new system? International advisers, such as the World Bank, recommended that China and other socialist countries privatize and introduce a market system. The World Bank's Development Report, "From Plan to Market" (1996), recommends introducing a system of private ownership, replacing the planning system with a market mechanism and defining property rights. Chinese scholars, in their analysis of urban development in China, have adopted this World Bank vocabulary and almost unanimously seem to agree about three statements: Firstly, they argue that a real estate market has emerged in China. The second assumption they make is that the market that has been developed is not perfect and therefore something has to be done. Thirdly, they believe that the way to make the market work better and eliminate inefficiency is to define property rights.

The ideological background of these assumptions is the new institutional economics concept that institutions are important and capable of change. One important institution is the system of property rights. The branch of new institutional economics which has become popular among Chinese academics is the school of thought of property rights or law and economics. This school of thought is popular in the United States, and less popular in Europe. However, some of the assumptions of this school of thought have become so popular in Finland that we no longer remember the ideology behind this way of thinking. In the United States, where the school of thought of law and economics is just one school of thought, seeing the policy recommendations of this school as just one alternative is easier than in countries where some of the trivial assumptions of the property rights school become confused with demands for increased economic efficiency.

What are the basic ideas of the property rights school? Firstly, institutions are important, and property rights are especially important. Secondly, government intervention and regulation are dubious because they disturb the market. The best solution is found when the market can function unregulated. Thirdly, to make the market work better involves defining property rights. This leads to an efficient solution. The reason for inefficiency and the problems in urban development are ambiguous property rights. Fourthly, the property rights school economists believe that the tragedy of common use is not an assumption but a true statement: that is, they believe that if resources are left open for free use they become over-exploited. This assumption is, of course, an empirical statement and there are examples of communities of native people preserving their natural resources. Fifthly, by defining property

rights, authorities create good incentives for people to behave rationally.

The most important figure behind the belief in the power of the market mechanism is Ronald Coase, who received the Nobel Prize in 1991. The theorem bearing his name and repeated in economic textbooks states that “if costless negotiation is possible, rights are well-specified and redistribution does not affect marginal values, then the allocation of resources will be identical, whatever the allocation of legal rights, and the allocation will be efficient, so there is no problem of externality. Furthermore, if a tax is imposed in such a situation, efficiency will be lost” (Layard & Walters 1978, 192). The point of this theorem is to question government intervention and suggest defining rights in such a way as to make it possible for the parties to negotiate and let the market decide (see Haila 2007).

Vacancy, corruption and gated communities

Chinese scholars inspired by the ideas of the property rights school claim that the reason behind current urban problems in China is ambiguous property rights. What kind of problems are ambiguous property rights believed to create? One problem is the over supply of floor space and a high vacancy rate. If local authorities can get foreign investment and revenue by selling land use rights, they do not necessarily have an incentive to limit selling land use rights in a situation where there is no demand on the market. At one point, the vacancy rate in Shanghai was as high as 40% (Haila 1999). Another problem is corruption. When the owners of rights are not clear, there are possibilities for misuse. The mayor of Fuyang city, Xiao Zouxin, was sentenced to life imprisonment for illegal land sales. The former mayor of Shenyang, Mu Suixin, was sentenced to death on corruption charges that included seizing land from peasants. Cheng Keijie, Vice-Chairman of the National People’s Congress, and Ho Changqing, Deputy Governor of Jiangxi province, were caught for engaging in illegal land deals (Jiang 2002; Haila 2007).

The third problem is uneven urban development. If public authorities have an incentive to sell use rights to the highest bidder, the danger is that development in the city will not be planned but will follow the wishes of developers. Beverly Hills in Chongqing is a luxurious housing area developed by a developer from Hong Kong, Hutchison Whampoa. Three-storied single family houses have a balcony off every bedroom and a lift. The houses were advertised with Western classical music, furniture, family photographs and German fairy tales for children. The price of one

unit was three million yuan. Compared to housing prices in other neighborhoods in Chongqing, Beverly Hills houses are extremely expensive.

Ambiguous property rights and ethical land use

The policy recommendation of defining property rights raises three questions. Firstly, can property rights be defined exclusively? Secondly, who benefits and who loses when the rights are defined? And thirdly, is defining property rights the only option or are there other alternatives?

Let's begin with the third question. Another socialist country, Vietnam, in 1993 enacted a new law attempting to introduce an exclusive private property rights system. In northern Vietnam, villagers wanted to maintain their previous type of system, which lacked clear property rights. The villagers started to fight against the state law. They wanted to maintain their system, which contained negotiations, hierarchy and flexible access to land. Inside the village, property rights were not ambiguous. The local people knew how the system worked. The system of land use was based on the social relations that had developed trust between the people using the land (Sturgeon and Sikor 2004). It is only from the point of view of new institutional economists, the state and the World Bank that property rights are ambiguous. The Vietnam case shows that there are alternatives, that the ambiguity is relative, and if some one wins, some one else can lose when property rights are defined.

There are several problems related to the policy recommendation of defining property rights. The first problem is that it does not pay attention to alternative policy options. The second weakness is that there is no evidence that the market mechanism will produce good and efficient allocation. The third problem is the confusion of open access with common property and the belief that tragedy is inevitable with common land use.

Open access, common property, state property and city property are not the same. In European cities, land used to be owned by the city. European cities used the land and regulated the market for the public good of their citizens. There are many land parcels that are not sold to the highest bidder on the market, but are allocated administratively. Cities tend not to demand market rent for land used for schools, parks, squares, libraries, sport facilities, theaters or streets. These areas are for the common use of citizens. And, even more, often the use cannot be defined exclusively, because in urban areas people find new uses and different groups of people can use the space in different ways.

The policy of defining property rights and letting the market decide can also be criticized for its narrow focus on economic benefits. Economic benefit is not the only aim of land use, land management and town planning. Critics of the ideas of the property rights school applied in land use and zoning, such as Timothy Beatley (1994) in the United States, have suggested alternative, ethical principles for land use. The aim can be to prevent harm and to protect certain types of use. Land can be allocated administratively, without demanding the market price, for parks, schools, libraries, theaters and other low-rent uses which need subsidizing. The aim may be to promote justice between people or neighborhoods in the city. The aim may be to protect the environment. The aim may be to make various lifestyles possible; this is important because the market tends to make neighborhoods homogeneous and segregated. The aim may be to protect the interests of future generations and take into account the needs of neighboring communities. Competing with other cities is not the only alternative. Such ethical principles of land use are good to keep in mind, not only in China, but also in the West, where there is a tendency to define property, development and use rights as well.