

**NEGOTIATED AMBIGUITY:
Explaining the Nature and Evolution of China's
“Ambiguous Property Rights” Regime**

By

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Abstract

This dissertation seeks to enhance our understanding of the nature and evolution of China's property rights regime over the past thirty years of market economy reforms. I ask and answer three core interrelated questions about the country's property rights rules governing the ownership, use, control, transfer and profit from property (e.g. land, labour, capital, fixed assets, technology and ideas). These questions are: (i) What is the nature of China's property rights regime? (ii) Why has this institutionally ambiguous property rights regime persisted despite predictions for convergence with global capitalist norms of private property rights and a western rule of law? (iii) How has this ambiguous property rights regime evolved in way that permits the relative social order necessary to attain sustained economic growth?

In answer to the three research questions, my central thesis advances a two-pronged argument. First, I contend that the pivotal defining feature of China's property rights regime is its institutional ambiguity. Second, building upon this descriptive finding, I propose a preliminary pre-theoretical framework of analysis called "Negotiated Ambiguity" to explain the role of ambiguity in the processes of evolutionary change. Essentially, if we take ambiguity seriously as an institutional feature, we can then understand the dynamic evolution of the country's property rights regime as the product of the continuous processes of negotiations and contestations amongst political economy actors over the legitimate meanings and distributional outcomes of the ambiguous property rights arrangements. Mediating these negotiations at both the domestic and global political economy levels is the Chinese central state. The state's active agency in the constitution of the ambiguous property rights regime is often downplayed by the extant literature on property rights where local states have decision-making authority. The proposed Negotiated Ambiguity framework of analysis presents an alternative understanding and explanation of China's property rights institutions that, by taking institutional ambiguity seriously, sets us on new path of discovery about this important case.

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Part I

Introduction and Overview of China's Property Rights Regime

Chapter 1: Introduction

The Context

The People's Republic of China has emerged since the launch of its market-oriented “reform and opening” in December 1978 as one of the fastest-growing economies in the world, historically and contemporarily. Sustained annual economic growth rates of the gross domestic product, averaging nearly ten percent nationally over the past 30 years, has lifted 400 million Chinese people out of poverty and represents a quadrupling of productive output. The Chinese leadership plans to repeat this impressive feat of quadrupling output by 2020. Maintaining the current rate of market-oriented economic development could see China overtake the United States as the world's top economy by sometime between 2020 and 2040, according to various projections.

All these successes in economic growth and human development render China a vital case to examine in-depth for those interested in development and the processes of transition to a market-oriented economy from a planned (or command) socialist economy. One of the most critical dimensions of this market economy transition is the shift to private property ownership and control – over land, labour, capital and fixed assets -- associated with a capitalist market economy, thereby transforming the public- or state-owned and controlled property espoused by socialism. Property rights —the rights to own, control, gain from property—have been associated with the outcomes of economic growth and capitalist development at least since the time of classical political economist Adam Smith (1776).

China's market-oriented growth successes in the apparent absence of clearly private, formalized and secure state-enforced property rights renders this case study particularly significant from the perspective of property rights theory. Especially upon the "rediscovery" of the insight that "institutions matter" for economic growth and development in the 1990s, Rational Choice Institutionalism (RCI) has greatly emphasized the vital importance of private property rights in development (e.g. North 1981, 1990, 1994). The powerful post-1990s influence of the RCI on international development policy-makers in the World Bank and other global governance institutions supported by western governments raises China's significance as possible Ecksteinian (1975) "critical case study" that can challenge the orthodox view that economic growth and capitalist development require unambiguously assigned private property rights supported by a rule of law to keep state interventionism to a minimum.

In this research, I view China's economic growth and development achievements, such as they are to date, as presenting a rather sizeable gap between contemporary property rights theory and policy, on the one hand, and the existing institutional reality in China.

Largely, this theory-reality gap is based on the inability and/or unwillingness of the dominant economic theory to *problematize* property rights regimes of rules, norms, understandings, practices and relations. Instead, what matters to rationalist institutionalists in both general and China literatures is the role of property rights (as independent or explanatory variables) in explicating the outcome of China's growth (as the dependent variable). As I argue in this research, one cannot make the leap to

explaining outcomes like improved economic performance unless the input variable – the property rights regime— itself is clearly defined and understood. In the case of China, the ambiguity of property rights manifested in their vague legal wordings, or non-private hybrid forms, suggests that causal arguments are premature.

This dissertation focuses its attention on one particular gap concerning how China's property rights regime (of formal rules, informal norms, understandings and practices) has yet to be adequately understood or explained by orthodox economic theories, inclusive of neoclassical Economics and, as of the 1990s, Rational Choice Institutionalism (RCI). The idea that private, defined and state enforced and secured property rights are preconditions to capitalist market economy growth is not new. Economic theory from the writings of Adam Smith in the mid-18th century have proposed this idea. Modern-day institutionalist scholars like Douglass North (1990, 1994) have emphasized, since the early 1990s rediscovery of the importance of institutions for politico-economic phenomena, the idea that property rights “matter” for capitalist economic growth and development. Deductive models and statistically based evidence is provided in abundance to support this “property rights thesis” (my term) that well-defined, enforced or secured private property rights are necessary, and some even say sufficient preconditions (e.g. North 1990) for the attainment of capitalist economic growth and development. Upholding the property rights thesis today are the New Political Economy theories subscribing to Rational Choice Institutionalism (as a family of theories including New Institutional Economics, Law and Economics, Public Choice), as well in the currently ascendant “neoliberal good governance” (NLGG) development

policy doctrine supported the international development community and most staunchly by the World Bank. Both theorists and development policy advocates have contributed to the plethora of large-N(umber) statistical studies that tend to confirm, on average for most countries in the sample, the property rights thesis.¹

Despite the popularity of the property rights thesis, China has enjoyed three-decades of market-oriented economic growth with a property rights regime that defies this logic. Instead, China's property rights regime is *ambiguous* rather than well-defined; sporadically enforced by the state; and with a consistently low proportion of unequivocally private property rights in assets such as land, factories, enterprises, and available investment capital. As a short-form all these real-world features of China's property rights regime are incorporated under the umbrella term of "ambiguous property rights" (APR) regime.

¹ A short list of recent or well-known statistical studies confirming the correlation between private property rights and/or the rule of the law with positive economic performance is as follows: Robert Barro (1991). "Economic Growth in a Cross Section of Countries", *Quarterly Journal of Economics* 106: 407-43; Robert Barro and Xavier Sala-i-Martin (1995). *Economic Growth*. New York: McGraw-Hill; Aymo Brunetti, Gregory Kisunko, and Weder (1997). "Institutional Obstacles to Doing Business: Region-by-Region Results from a Worldwide Survey of the Private Sector." Policy Research Working Paper No. 1759, World Bank; Alberto Chong and Cesar Calderon (2000) "Empirical Tests on the Causality and Feedback Between Institutional Measures and Economic Growth." *Economics and Politics* 12(1) 69-81; Alberto Chong and Cesar Calderon (1997) "Institutional Change and Poverty, or Why is it Worth it to Reform the State?" World Bank; Christopher Clague, Philip Keefer, Stephen Knack and Mancur Olson (1996) "Property and Contract Rights in Autocracies and Democracies." *Journal of Economic Growth*, 1(2): 243-276; Stephen Knack, and Philip Keefer (1995) "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures." *Economics and Politics*, 7(3): 207-227; Stephen Knack and Philip Keefer (1997) "Institutions and the Convergence Hypothesis: The Cross-National Evidence." *Public Choice*, 87: 207-228; Stephen Knack and Philip Keefer (1997) "Why Don't Poor Countries Catch Up? A Cross-National Test of an Institutional Explanation." *Economic Inquiry*, 35:590-602; Roger Kormendi and Philip Meguire (1985). "Macroeconomic Determinants of Growth." *Journal of Monetary Economics*, 16: 141-163; Gerald Scully (1988) "The Institutional Framework and Economic Development." *Journal of Political Economy*, 96 (3): 652-662.

The existence of this APR regime, representing one of the core arguments to be advanced, is the point of departure for this research. While scholarship on China's legal and economic reforms related to property rights frequently recognizes the ambiguity (e.g. by pointing to vague and imprecise laws, inconsistency of implementation and weak enforcement) there currently exists no satisfactory scholarly effort to understand the nature of the APR regime nor to explain its persistence and evolution over the past 30 years. In fact, much of the economic institutionalist literature either ignores the China anomaly (i.e. the general property rights theory) or endeavours to explain economic growth in the country in spite of the unique and unorthodox property rights regime (i.e. China-specific literature). Either way, the dominant economic approach to apprehending China's anomalous APR regime is afflicted by a theory-reality gap that requires resolution. Moving toward a resolution of theory-reality gap is important due to the vital importance of the Chinese case as an unparalleled exemplar of both of successful economic growth and human development, as well as relative social stability. Notably, in the past decade many observers are pointing to the rising number of protests in China over – it is claimed— grievance related to property rights (e.g. See Ho 2000, 2005; Zweig 2000).

My research is not interested in challenging the long-standing, orthodox property right thesis on empirical grounds. Linking private property rights (and the rule of law limiting state attenuation of property rights) with positive economic performance outcomes such as increased growth or inward investment is extensively addressed in a sizeable literature.

Instead of raising China as a potential theoretical and empirical anomaly to the property rights thesis and its focus on economic growth outcomes, my aim is this research is less ambitious and more foundational to the understanding of the country's evolving property rights system, and its wider 'socialist market economy'. My more modest ambition is to investigate and explore the very nature of China's property rights institutions *per se* and the processes that might help to explain their evolutionary change. In short, I treat the property rights regime as a 'dependent variable' and not simply as an 'independent' (or 'explanatory') variable that leads to the outcome under study: economic growth.

My research questions concerning the nature and evolution of China's property rights tackle under-explored issues that should be, I contend, considered prior to making causal arguments about the role of private property rights in producing economic growth, in China and elsewhere. How can we make plausible causal arguments linking a certain type (i.e. private, well-defined, enforced) of national property rights regime with specific economic outcomes if the nature of this regime is not clearly established. Institutional ambiguity characterizing China's property rights regime, then, *prima facie* suggests that any causal argument linking these blurred private-public 'hybrid' institutions is premature.

Shifting the focus of institutional analysis away from the purportedly causal property rights-growth thesis toward an investigation into the nature and evolution this property rights system requires a reconsideration of what are the most important sets of New Institutional questions. An alternative set of questions asks: How and why do

institutions emerge, persist and change? Emphasizing these questions on the nature and evolutionary dynamics of institutions are social theorists such as those in New Institutionalism of Sociology and Organization (NISO) and Social Constructivists studying such institutions as global norm making in the international system of states.

For RCI theorists interested in economic institutions, and by extension the NLGG development policy makers in the World Bank, the critical question posed is: *Why do (property rights) institutions matter?* The answer is economic growth. In RCI theory and NLGG development policy prescriptions, individual and national growth results due to the ability of privately assigned property rights, backed by the rule of law (where even the state must respect the laws it promulgates), to reduce *transaction costs* in the marketplace and to provide incentives for risk-taking and profit-seeking behaviour on the part of the individuals. Property rights that are well-defined, state-enforced and privately assigned act as the “credible commitments” the state makes in its promise to protect individuals or firms from the expropriation or harm of their property by others or, more importantly, by the much more powerful state. One of the major power paradoxes in Political Science is the reality that the state is the only organization with the power to supply and to deny protection for protect property rights.

Asking these crucial foundational questions about the nature of the institutions and their evolution (from emergence, maintenance and change) is presented in this research as helping to fill the current gap in the research surrounding China’s property rights regime. The causal property rights theory of the orthodoxy, set out by the RCI theory and NLGG

development policy, does not convincingly apply to China's economic successes because the country's high and sustained market-oriented growth has co-existed with property rights that are theoretically 'inefficient' or, as I call them, 'ambiguous' in order to remove the singular consideration of costs . One need only to look to the large corpus of China-specific literature on property rights to see that many China experts are not convinced of the applicability of the RCI's universal, deductive theory of property rights to the Chinese case. China field scholars are seeking also to explain how growth has occurred in spite of the absence of a private, well-defined and enforced, property rights system. Inductive China-specific work *recognizes* the ambiguity inhering in the Chinese property rights regime, but does not seek to *explain* this ambiguity. Here again, like the general RCI literature, scholarly emphasis remains on explaining the economic outcomes of property rights rather than on problematizing the nature and evolution of these institutions in their own right. This lacuna needs to be filled, especially, but not exclusively, if we are to advance our knowledge about the linkage between property rights and growth. Without a deeper knowledge of the nature and change processes (re)producing China's property rights regime, any connection -- causal or correlational— to expected outcomes will remain contested. Explaining the nature of property rights is the first step to improving the current obsession with growth outcomes.

Research Questions

The two core questions addressed in this research are guided by the objective of filling the lacunae in the current literature. This literature emphasizes the economic performance outcomes associated causally with a certain type of property rights regime with scant

effort paid to problematizing the nature and evolution of this regime of rules and norms.

The two interrelated research questions are as follows:

1. What is the nature of China's property rights system, and in what ways does it conform to or diverge from existing economic theory and development policy?
2. Why has China's ambiguous PR system persisted and how has it evolved?

In answering these questions I draw on a body of literature known as the "New Institutionalisms" (Campbell and Pedersen 2001; Hall and Taylor 1996), with a particular focus on the institutionalist streams that consider behaviours of state and non-state actors 'embedded' in political, economic, social, and historical contexts. These include the New Institutionalism of Sociology and Organizations (NISO) and Historical Institutionalism (HI). Both streams emphasize inductive, often case study, empirical analysis of institutions. By contrast, the 'disembedded' RCI provides us with a de-contextualized view of the nature of relatively 'efficient' (transaction cost reducing) institutions that become increasingly efficient through the choices of rational, efficiency-seeking actors.

Questions on the nature and evolution of property rights are essentially precluded from RCI and do not require in-depth studies of any given case. Problematically for RCI is the dissonance between what the theory stipulates – that market economy growth is driven by rational state and market actors who select efficient (i.e. private, defined, enforced) property rights rules – and the reality in China where supposedly rational actors have not, as yet, selected such efficient property rights. Given its focus on explaining economic performance outcomes via the concepts of rationality, efficiency and cost-benefit analysis or the 'logic of calculus' (March and Olsen 1989), RCI is ill-equipped to explain why and

how ‘inefficient’, or what I term “*ambiguous*”, property rights institutions have emerged, persisted and evolved in China.

Prior to setting out in more detail the central thesis of this research, I will provide a brief answer to the two core research questions guiding the research. First, my central argument regarding the question on the *nature* of China’s property rights regime is that this institutional complex of rules, norms, understandings and relations can be characterized as being ‘ambiguous’. The seemingly high degree of ambiguity is denoted by my proposed label of the ‘*ambiguous property rights*’ (APR) regime. Generally speaking, ambiguity here is defined in contradistinction to the RCI’s view that China’s ill-defined, weakly enforced and non-private property rights institutions are ‘inefficient’. Ambiguity is also understood as being synonymous with not only inefficiency, but also multiple interpretations of a vaguely worded law or policy, inconsistency of application and enforcement, and a general uncertainty or unpredictability about state agents behaviour in relation to the market actors’ property and rights of ownership, control, profit.

The prevailing economic thinking found in the RCI theory focuses on the concept of ‘efficiency’ and sometimes ‘uncertainty’ (probabilistic risk), two concepts more concerned with the information available to actors in their rational, cost-conscious decision-making over institutions. Institutional ambiguity, were it recognized as a real-world reality in China’s economic institutions, would be assumed to be progressively eliminated through the ‘evolution toward efficiency’ driven by rational actors only

selecting the more efficient institutions (via the logic of functionalism). Ambiguity, moreover, is considered by RCI theorists and development policy makers in a negative light, that is, as a pathology or dysfunctional quality, that must be eliminated from the market economy system in order to ensure growth and efficiency. In my research ambiguity is considered naturally inhering in institutions as collectively created ‘social facts’, and even constructively useful for outcomes such as social order and inter-state stability.

The second part of the first research question asks how closely China’s APR regime conforms to or diverges from existing economic theory and development policy. Due to the inherent ambiguity of this regime, including the official statistics on ownership and enterprise control structures, this is not an easy question to address. The question is wrapped up in the as yet unsettled debate over whether or not China represents a theoretical *anomaly* to the property rights orthodoxy articulated by the RCI theory and the NLGG development policy. For instance, the dominance of public ownership in the state-owned enterprises and township and village enterprises to the present-day (e.g. Liu, Sun and Woo 2006) can be read by the divergence scholars as evidence of the China Anomaly or as evidence of the privatization that is necessary for economic growth for the convergence thinkers in the RCI theory and NLGG policy advocates. On its face, China’s APR regime, its ‘socialist market economy’ (See chapter 2) and its ‘socialist rule of law’ (Jiefen Li 2001) are all examples of an ambiguous Chinese institutional landscape that simultaneously demonstrate elements of convergence with and divergence from today’s western-styled capitalist market economies endowed with highly institutionalized private

property rights regimes, and the rule of law that keeps the state's discretion over codified laws protecting property in check.

In spite of the evidence divergence and embeddedness of China's APR regime within the national historical and socio-cultural context, proponents of the institutional convergence thinking in the property rights orthodoxy – RCI theory and the NLGG development policy -- downplay or ignore the notion of a Chinese anomaly, because the country has been in the throes of privatizing, marketizing, and modernizing its property rights regime. Convergence thinkers can plausibly claim that the seemingly *sui generis* APR regime is undergoing a gradualist evolution toward more efficient property rights and the rule of law (e.g. Peerenboon 2002: Chapter 10). The convergence view might be weak because of its deductive speculative projections of a future institutional convergence in China based on the 'demand' by society for more secure private property rights, but its strength is that it considers the impact on China's market economy reforms by the global, exogenous pressures. Proponents of the NLGG development policy, in particular the World Bank and the International Monetary Fund, are using normative pressures on China and all developing countries to comply with the purportedly efficiency- and growth-enhancing NLGG institutions, including private property rights and the attendant rule of law (which often serves as a proxy to property rights).²

² See the *Governance Matters* indicators of the World Bank at: www.wb.org. For a review of the NLGG's "legal pillar", see also Julio Faundez (ed.) (1997). *Good Government and Law: Legal and Institutional Reform in Developing Countries*. New York: St. Martin's Press.

The second research questions asks processual questions on why, and to some extent how, the APR regime has persisted through 30 years of market-oriented reforms. Building on the first argument that China's property rights regime is institutionally ambiguous, I move beyond an ontological argument and largely *descriptive* point to advance an *explanatory* argument on the evolution – i.e. the persistence and change -- of this ambiguous institutional complex. I suggest that the puzzling persistence of China's APR regime after 30 years of market-oriented reforms can be best explained if we think of this regime of rules and norms as an institutional product of the Chinese central state's (government's)³ efforts to retain its authority (the “right to rule”) and to enhance its legitimacy (societal belief in the state's right to rule). In essence, the central state's primary (albeit not exclusive) agency in constituting the APR regime and the equally ambiguous ‘socialist market economy’ is its *legitimation* activities aiming to preserve its authority and the perceptions of legitimacy required by several ‘audiences’. These legitimacy-conferring audiences tend to include the domestic society, the state itself, and other states (Barker 2001). The central state has continued its support for the APR regime and other ambiguous elements of “capitalism with Chinese characteristics” because it has proven to be a constructive, and possibly even strategically advantageous, way to maintain its authority by appeasing these various audiences during the market economy transition process.

³ Following the conventional usage I have found in the relevant literature, I employ the term “state” instead of “government” for both the central state in Beijing and the “local states” governing the provinces, autonomous zones, townships and counties. An examiner pointed out, however, that the Chinese language possesses no term for the Chinese “state”.

In the account presented here, and unlike the currently dominant RCI economic accounts, the rational state's willingness and ability to impose any kind of 'efficient' property rights regime on its society is not taken-for-granted. Powerful though it may be, the Chinese central state is not able to act in a 'rational' and cost-calculating way devoid of the social context in which it finds itself. Instead, the state is a social actor in search of maintaining its authority and (perceptions of) legitimacy from important audiences in the surrounding institutional environment in which the state is 'embedded'.

In one important innovation of this study, the Chinese state is viewed in this research as being 'doubly embedded' (and not merely domestically embedded) in two institutional environments that influence institution-building and decision-making activities over property rights institutions: the domestic and the global political economy. Political economy actors -- including states and non-state actors like global governance institutions and transnational corporations -- are argued to make 'legitimacy demands' upon the authority-and legitimacy-seeking Chinese state for what are deemed 'legitimate' (socially acceptable) property rights rules. By virtue of making legitimacy demands on the state for the appropriate property rights, these audiences are termed 'legitimacy constituencies' or 'legitimacy communities' (following Black 2008).

For conceptual simplicity and clarity, I suggest that there are two competing 'institutional logics' (or 'ideologies') over what count as legitimate property rights, a 'capitalist' logic supporting private property rights, the rule of law, and a neoliberal minimalist state, and a 'socialist' logic supporting non-private forms of property rights such as hybridized

public-private enterprise ownership and control, a ‘rule by law’ or a ‘thin rule of law’ that does not delimit the state’s discretion and where the law is another tool used by the state to advance economic development (J. Li 2007; Peerenboon 1999, 2002; Ohnesorge 2007). The notion of institutional logics is drawn from recent work in the New Institutionalism of Sociology and Organizations (NISO), which is endeavouring to explain domestic institutional heterogeneity (e.g. in organizational responses to national policy) by arguing that societies are often characterized by multiple, competing institutional or ‘moral’ logics, containing idea(l)s, values, goals, identities, roles, among other social elements (Stryker 2000, 1994; Friedland and Alford 1991). All of these extant logics in a given institutional environment are vying for legitimacy in the view of the state and the society writ large. Adapting the insight that institutions are tied to underlying institutional logics such as capitalism, socialism, democracy, or family (Friedland and Alford 1991; Ingram and Simons 2000; Stryker 2000), I suggest that the Chinese central state confronts articulated ‘legitimacy demands’ on the part of both domestic and global political economy actors for what are divergently deemed as legitimate property rights (i.e. following a capitalist or socialist institutional logic).

Actors in the two spaces of negotiations -- the domestic and the global political economy actors – do not have a monolithic perception on what counts as a legitimate property rights regime. On the contrary, there are groups within both the global and the domestic political economies who support both institutional logics, the socialist and the capitalist.

For instance, Carolyn Hsu provides a recent account of how the different groups within China support different socialist and capitalist ‘moral logics’.⁴

In all, maintaining its authority while overseeing one of the most dramatic economic, legal, social and even political transformations of the current era is a remarkable feat that has found, as yet, little scholarly interest in the current literature. This is in large part because the dominant property rights orthodoxy set forth by the RCI theory and NLGG development policy take for granted state authority and legitimacy. The state is purportedly free to impose, coercively, on its society an efficient property rights system. Implied is the notion that the state and its property rights are legitimate “objects” because they are efficient. This does not assist us in accounting for the persistence of the theoretically ‘inefficient’ yet seemingly legitimate (by dint of its long survival) APR regime. By linking ambiguity with legitimacy and legitimation, and by moving away from the constraints of the RCI’s efficiency concept, this research is able to provide a preliminary, yet plausible explanation for why and how the APR regime has persisted while also moving along a path of legal and economic reform and development.

Research Objectives

Four distinct yet interrelated objectives are stressed in this research. These are:

⁴ For instance, in Carolyn Hsu’s (2007) study of ambiguous entrepreneurial strategies in China, she suggests that workers and consumers prefer socialist property rights defined as a publicly owned and operated enterprise that profits the collective, whereas foreign investors and some state agents show a preference for enterprises following the principles of capitalism such as private profit-making efforts and risk-taking. See, Carolyn L. Hsu (2006). “Market Ventures, Moral Logics, and Ambiguity: Crafting a New Organizational Form in Post-Socialist China,” *Sociological Quarterly* 47(1): 69-92.

1. To demonstrate empirically that the nature and evolution China's "ambiguous property rights" regime diverges from the theoretical expectations of the RCI and the prescriptions delivered to developing countries by the NLGG development model.
2. Explain why RCI and the NLGG development model are unable to accurately describe or explain China's APR regime. The dissertation will show that the main limitations of the orthodoxy stem from the insufficient empirical inquiry into property rights institutions *per se*, and the theoretical limitations incurred by an overly parsimonious "disembedded" ontology that strips away the essentially social and "embedded" character of economic institutions such as property rights.
3. Develop a novel political embedded model through an in-depth inductive empirical analysis of China's property rights system. The analysis will supplement the empirically and ontologically impoverished 'disembedded' RCI accounts with a more accurate explanation for the existing nature and evolving changes of this property rights regime.
4. Derive from the empirical analysis a set of propositions or contingent (within-case) generalizations that provide an important initial step toward better understanding the essentially 'embedded' nature and change processes of economic institutions such as property rights.

Central Thesis

The central thesis advanced by this research holds that China's unique and theoretically 'inefficient' APR regime has survived for over thirty years of market-oriented reforms because this regime is a central component of the *processes of legitimation*. The two main "objects" of legitimation (following Gilley 2006)⁵ are the central state and the APR regime itself. According to the NISO thinking, a legitimate or socially acceptable institutional or organizational object of legitimation is one that persists over time.

The Chinese central state is motivated in its actions of co-constituting with society the APR regime and the wider socialist market economy by virtue of its need to retain its

⁵ Bruce Gilley (2006) suggests that the multitude Social Science formulations of political (state) legitimacy typically refer to three features of legitimacy: the objects of legitimation, the subjective perceptions of what is legitimate, and the degrees of legitimacy attributed to a given object.

authority. Authority (the right to rule) and legitimacy (recognition/acceptance of authority) are two sides of the same coin. In the context of China, I argue that a key part of the central state's legitimation strategy rests on the creation of a property rights regime that gains and maintains the support (or acquiescence) of both domestic and global political economy actors. Because these two constituencies of actors may have competing views on 'legitimate' property rights institutions (and the attendant values, understandings, identities, roles, practices and relations), the state's own authority requires that it mediates between these two competing 'legitimacy constituencies' in developing the property rights regime. For simplicity, I suggest that the legitimacy demands of various groups of actors in the domestic Chinese and global political economies hold preferences for property rights (and the rule of law) following a socialist and capitalist 'institutional logic' or 'ideology' (See above).

Given these differential preferences for legitimate property rights, the doubly embedded Chinese state must satisfy (and often dissatisfy) various groups of actors in both the domestic and the global constituencies on the Left and the Right who harbour preferences for capitalist/private and socialist/non-private (i.e. public, communal, hybridized public and private) property rights. In mediating between these competing legitimacy demands for legitimate property rights rules, the Chinese state has been supporting, both intentionally and unintentionally, an ambiguous complex of property rights rules and norms that is sufficiently fuzzy to satisfy the preferences for a more 'modern' set of capitalist institutions and the status quo 'socialist' institutions (i.e. hybridized forms of public and private enterprises, state intervention in a 'thin rule of law').

Legitimation processes are invoked not only by the state's efforts to retain its authority in the face of both domestic/socialist and global/capitalist political economy constituencies of actors, but also in the processes of constructing the APR regime. That is, because of the ambiguity of the property rights rules, we cannot simply say that the central state is coercively imposing these institutions on its domestic society, with or without the assistance of the global governance institutions. Ambiguity opens the way for us to study processes of legitimation implicated as the state and society qua political economy actors in the domestic and global space negotiate this ambiguity. Specifically, the negotiations -- discussions, debates, contestation, rhetoric, consensual agreement -- between the central state and the political economy actors explain how the APR regime evolves. By evolution I refer to both the reproduction of ambiguity and the changes that might involve improvements, such as clarification of codified laws, or better enforcement of the laws in the books. I found in my fieldwork, for instance, that the foreign-invested enterprises in Shanghai and Pudong New Area are involved in negotiations and contestation for more secure and clearly defined property rights. But at the same time, these foreign capitalist actors are legitimating the extant ambiguous property rights regime by virtue of their investment and business activities in China.

Elucidating this central thesis in longer form requires discussion of three key, interlocking concepts -- ambiguity, legitimation, and political embeddedness. Taken together, these three fundamental concepts provide a valuable and innovative analytical framework. I label this trilogy of interrelated concepts as the '*Negotiated Ambiguity*'

framework of analysis. At its most general, Negotiated Ambiguity refers to a political and social discursive space in which state and non-state actors negotiate, deliberate, discuss, learn, experiment, conflict and cooperate over the property rights rules, including both their meanings and their material distribution. This space exists in two domains, the Chinese domestic political economy and the global political economy.

Advancing our current understanding of and explanations for the nature and evolution of China's APR regime is the principal aim in developing the proposed Negotiated Ambiguity framework of analysis through the chapters of this dissertation. I see this framework as a precursor to developing, in future research, a more fully elicited model to examine China's APR regime. This model would be able to supplement the dominant RCI model holding that states are willing and able to coercively impose any kind of property rights institutions on a purportedly willing society and with the acceptance of the actors in the global political economy.

Analytical Framework: Negotiated Ambiguity

Negotiated Ambiguity is the overarching or composite concept developed in this research with its aim to enhance our understanding of the nature and change processes of China's post-1978 property rights transformation. Entailed in the notion of Negotiated Ambiguity are the concepts of institutional ambiguity, political embeddedness and the processes of legitimation and negotiation over the legitimate meanings, practices and distributional outcomes of property rights institutions. In a nutshell, the argument being advanced is as follows: China's property rights regime, as all institutions, can be best qualified as being institutional ambiguous. This ambiguity has persisted, despite strong pressures on China

to converge to a capitalist private property rights and rule-of-law system, because it is reproduced by the legitimation processes occurring between the state and political economy actors in *both* the domestic and global domains. These domains operate as sites of negotiation and contestation over China's property rights rules, as well as other economic and legal reforms occurring through the country's market economy transition.

This co-constituted or socially constructed APR regime is based on the continuous negotiations amongst the state and political economy actors over what are deemed intersubjectively (i.e. collectively) to be legitimate meanings, practices and distributions of the property rights. In what follows, I briefly discuss the four core concepts falling under the Negotiated Ambiguity analytical framework: ambiguity, political embeddedness, legitimation, and negotiations over legitimate institutions. Together these concepts form a conceptual framework for answering the two research questions concerning the nature and evolutionary processes —both reproduction and transformation— of China's APR regime.

Ambiguity

The concept of “ambiguity” is pivotal to the proposed concept of Negotiated Ambiguity. In this research, the concept of ambiguity is conceived in several ways. First, ambiguity is defined in contradistinction to the concept of ‘efficiency’. Second, ambiguity is often used synonymously with such terms as vagueness of the written word, unpredictability, uncertainty and inconsistency in application. These synonyms all capture the standard view of ambiguity in various disciplinary literatures (e.g. economic sociologist Jens Beckert 1996) as the ‘possibility of multiple interpretations’ of institutions by the actors

who are constructing them. For instance, philosopher John Searle's (1995: 120) conception of institutions as "social facts" or social agreements follows the well-known formula of: "[institution] x means y in context c." In addition to multiple possible interpretations, ambiguity also refers to the "unknowns" confronting actors in institutions or (or "institutional situations" to Aoki (2001)), such as how other actors will behave or interpret institutions. With multiple interpretations and unknowns, the *natural* reality of institutional ambiguity cannot be rectified by more or better information, as the remedy to institutional problems suggested by RCI theorists.⁶

Due to scope and time conditions, the research does not consider the cultural and anthropological elements of ambiguity, which could be used to bolster my argument about the prevalence of institutional ambiguity in China's APR regime as well as the other economic and legal institutions underpinning the 'socialist market economy.'⁷ In

⁶ By defining ambiguity as the "unknowns" faced by actors the concept is virtually indistinguishable from the concept of "uncertainty". Both Frank Knight (1921) and J.M. Keynes define uncertainty as a situation in which probability of risk is unknown due to a lack of experience or knowledge about the situation. See J.M. Keynes, J. M. (1921) *Treatise on Probability*, London: AMS Press, and Frank H. Knight, F. H. (1921) *Risk, Uncertainty, and Profit*, Boston, MA: Houghton Mifflin.

⁷ Several interesting treatments of the concept of ambiguity from a linguistic, organizational studies and communications perspective, respectively, are worthwhile mentioning. These are (1) William Empson ([1930] 1947). *Seven Types of Ambiguity*. New York: New Directions, which served as a guide to literary criticism; (2) Geert Hendrik Hofstede (2001). *Culture's Consequences: Comparing Values, Behaviors, Institutions, and Organizations Across Nations*. Second edition. Thousand Oaks: CA: Sage Publications, and Gert Jan Hofstede (2005). *Cultures and Organizations: Software of the Mind*. Second edition. New York: McGraw-Hill, which includes the variable of "weak versus strong uncertainty avoidance" in national cultures; and (3) E. M. Eisenberg (1984). "Ambiguity as Strategy in Organizational Communication", *Communication Monographs*, 5 (3), 227–242, which sets out some of the strategic elements of ambiguity in organizational communications that allow, say, multiple meanings and multiple goals to be pursued to positive effect. My thanks to a dissertation examiner's emphasis of the cultural and linguistic tolerance of Chinese people for ambiguity, and the mention of the first two references above.

the research, the only reference I make to the Chinese cultural acceptability of ambiguity occurs in Chapter 6 with the work of Zhu Zhichang (2007), who considers the fallibility of our western theories of China's market economy transition.⁸

From a theoretical and development policy perspective this label and argument is innovative and important because the prevailing thinking on China's property rights pays little attention to the reality of institutional ambiguity that social theorists hold to be intrinsic to all institutions. Because the RCI theory has determined that private, well-defined and state enforced or secured property rights are "efficient"⁹, China's property rights are deemed "inefficient" as opposed to ambiguous. To wit, whereas efficient property rights are well-defined, state-enforced and private, China's property rights are vaguely defined and open to multiple interpretations by state officials and bureaucrats, weakly and sporadically enforced, and predominantly non-private or hybrid forms that combine both public and private ownership or control of property –land, labour, capital, technology, labour. For instance, one might think of the "red hat" private companies run and partly owned by (former) bureaucrats or government officials.

In sum, the central, overarching concept of ambiguity is advanced as a conceptually and analytically useful concept that can answer questions on the nature and evolution of

⁸ See Zhu Zhichang (2007). "Reform Without a Theory: Why Does it Work in China?" *Organization Studies* 28 (10): 1503-1522.

⁹ Evidence for the efficiency and economic development gains associated with privately assigned property rights is furnished by deductive case studies, many of medieval Europe, (e.g. North 1981; North and Thomas 1973) as well as manifold large-scale, cross national statistical studies confirming that private property rights supported by a rule of law system are growth and efficiency enhancing on average.

China's property rights regime. With the concept of ambiguity, analysis of the well-known features of China's property rights system – i.e. ill-defined, non-private and unenforced rules — can escape the constraints of cost-benefit analysis and the 'logic of calculus'. While social theorists recognize that all institutions are ambiguous, China's property rights regime is somewhat unique and exemplary due to the rather high degree of ambiguity. One of my key arguments in the research, confirmed by interview data, is that ambiguity can be employed as a major characteristic of the country's property rights regime. This finding suggests that the existence and persistence of the APR regime is merely a point of departure for analysis in the Chinese case study.

Processes of Legitimation and Negotiations

Legitimation processes lead to an object, such as the state or a property rights rule, being perceived as being legitimate (or illegitimate). Both the phenomenon of legitimacy and legitimation are examined in this research for the purpose of better apprehending the (ambiguous) nature and persistence of the evolving APR regime in China. Political (or state) legitimacy is generally defined as the "right to rule" or as "the normative belief by an actor that a rule or institution ought to be obeyed" (Hurd 1999: 381; Beetham 1991). Political scientist Rodney Barker emphasized the need to focus on the process-based concept of *legitimation* in order to overcome some of serious shortcomings of the concept of *legitimacy*. This latter concept has been accused of being vague and underspecified (e.g. Levi 1988: 17), overly subjective as a mere "matter of sentiment" (Schaar 1989: 22), and a static quality or resource merely possessed (or not) by the state (Barker 1990). For Barker, any activity of the state or any other entity to gain, maintain or regain legitimacy involves processes of legitimation.

Once it has been established credibly that the core characteristic of China's property rights regime is its institutional ambiguity, the next logical research step is to answer how and why this APR regime has emerged, persisted and continues to evolve. Evolution involves both the reproduction of ambiguity and transformative elements such as the central state's ongoing concerted effort to 'modernize' the country's property rights regime, its legal system, and the rule of law (e.g. Peerenboom 2002: Chapter 10).

Legitimation processes are key to explain the evolution – the reproduction and transformation – of China's APR regime in the post-1978 market economy transition period. Equally important are the intertwined processes of negotiations and contestations over legitimate property rights. Specifically, the central state and the political economy actors at both the domestic and the global domains are involved in a continuous negotiation – contestation, debate, discussion, consensus-building – over the meanings, practices and resource distributions associated with property rights. In effect, the central state and the political economy actors are *negotiating ambiguity*.

The central state does not exogenously and coercively impose on domestic society clearly defined and enforced property rights, as the RCI theory of property rights suggests and the NLGG development model prescribes. Instead, the reality of the APR regime in China is that this ambiguity requires actors to first make sense of them, and then to collectively work out legitimate practices. Determining collectively, or intersubjectively, which meanings, practices, and resource distributions are perceived as being legitimate

by both the state and the domestic/global political economy actors is what is meant by the processes of legitimation in the Negotiated Ambiguity framework.

At the same time, however, it is important to note the motivation of these actors in seeking and maintaining authority (for the state) and legitimacy (for both state and organizational actors). That is, the central state's concern in promoting the APR regime and the sites of negotiations and contestation over legitimate property rights is to retain its own political authority. For this reason, the persistent support of the Chinese state for the high degree of ambiguity in the APR regime can be explained as a function of the doubly embedded state's efforts to appease the legitimacy demands for socially acceptable property rights on the part of constituents inhabiting both the domestic and global political economies. Within this two institutional environments are organizational actors who reveal preferences for property rights that are either more ideologically 'capitalist' (i.e. private, benefiting individual profit-makers) or more 'socialist' (i.e. public or other hybrid forms of non-private rights that benefit the collective).

Research Design and Methodology

In the research I empirically examine the nature and evolution of property rights in the foreign investment sector of Shanghai and the contiguous Pudong New Area. Most of the empirical scholarship on property rights in the China-specific literature focuses on the domestic agricultural and manufacturing sector (comprising the rural township and village enterprises and the urban state-owned enterprises), leaving under-explored the property rights issues in the foreign investment (and business) sector. For many business

analysts and economists, the foreign-invested sector in China comprises the country's strongest and clearly private "private sector". The so-called "wholly-owned foreign enterprises" are less conceptually encumbered by the private-public mixture, say, of the state-owned enterprises that have been partially privatized, or the supposedly "private" township and village enterprises (TVEs) run by local governments, local communities or by elite families (e.g. Oi and Walder 1999 for case studies). Shanghai was selected as a case study because it is similarly viewed as one of the best places in China to invest and conduct business following the law. My first-hand interview evidence, however, reveals that even in Shanghai the foreign-invested enterprises find the property rights laws ambiguous and uncertain.

The empirical part of the research began with an extensive three-month period of reading the literature on property rights found in the RCI's general theory on the role of property rights in national and individual wealth, and the China-specific literature. Guided by this scholarship, I developed a set of initial research questions, which were then constantly reviewed and revised during the fieldwork following the procedures stipulated by Yin's (1994, 2002) case study methodology.

Two different data sources were employed in support of my initial thesis about China's APR regime, that is, the centrality of institutional ambiguity and its persistence being explained as the product of a legitimacy-seeking state embedded in two competing spaces, domestic and global. Principally, I rely on primary data based on the 30 in-depth interviews, and a few impromptu phone or in-person conversions, occurring in Shanghai

and Pudong New Area. These interviews were conducted with government officials, and both Chinese and foreign business associations or consultancies at the sub-state or meso-level (i.e. organizations between the state and individual). In my visits to each government agency or business association I asked for and often received documents of some of these organizations. The Chinese government officials mostly pointed me to their ministry's websites.

The importance of these interviews and documents is important because the second main data source for the research, the secondary sources found in peer-reviewed journals, monographs, and books addressing China's property rights transformation and the wider market economy transition might recognize the reality of institutional ambiguity inhering in the property rights arrangements, but do not seek to explain this aspect of the nature and, thus, the evolutionary dynamics, of these vital economic institutions.

With regard to data analysis, the primary data collected from semi-structured and elite types of interviews provided me with a means to critically interpret the extant scholarship on property rights. RCI is the dominant current in both the general (non-area specific) literature and China-specific literature that has developed through arguments and counter-arguments about the applicability of the general RCI theory (i.e. that efficient, private, well-defined, state-enforced property rights are a necessary or sufficient precondition to market-oriented growth.).

It is important to stress the *exploratory* nature of the research. By bracketing the dominant issue regarding property rights as a determinant of economic growth, my interest in studying the “prior” research questions asking about the nature and evolution of China’s property rights institutions did not have an established theory to rely upon. Empirical studies of property rights institutions by social theorists such as Economic Sociologists (e.g. Campbell and Lindberg 1991) and social constructivists (e.g. Whitley 1996) treat these institutions as exogenously fixed and given by the state. Some theoretical guidance has been found in the “embedded” streams of New Institutional literature, in particular the NISO and emerging elements of a constructivist or discursive New Institutionalism stream (Schmidt 2006; Hays 2001). However, the lack of established theory on the nature and evolution of property rights institutions required a research design and methods that emphasize exploratory, pre-theoretical approaches to empirical research.

Chapter Overview

The dissertation is organized into 7 chapters, divided into three parts. In chapter two of Part I, I provide overview or a generalized “mapping” of China’s property rights regime, focusing on the formal rules that have been stipulated by the state and its agencies. Based on the corpus of literature exploring China’s property rights regime, the overview in Chapter 2 concentrates on setting out the legal-formal chronology of institutional changes affecting property rights in the two main economic sectors, agriculture and manufacturing.

Part Two sets out the literature review that has been vital in building my proposed conceptual and analytical framework of analysis called Negotiated Ambiguity. The literature review begins in Chapter 3 with the theoretical literature on the nature of institutions. Insights are drawn from the New Institutional scholar, in particular from those social theorists privileging an intersubjective and social constructivist ontology of institutions as “social constructions” or Searlian (1995) “institutional facts” (as a subset of “social facts”) that both shape and are shaped by relevant actors of a collectivity. Chapter 4 examines the literature on property rights beginning with a the general theoretical literature, and then turning to an in-depth critical review of the property rights debates animating the scholarship on China’s post-1978 property rights transformation. I review these debates even though they are nearly exclusively devoted to arguments about the role of property rights as the independent (explanatory) variables in explicating outcomes (dependent variables) such as economic growth and inward investment. At issue is whether or not China’s high levels of economic growth in the apparent absence of “efficient” property rights constitutes a theoretical or empirical anomaly to the property rights orthodoxy set out by RCI theory and NLGG development model. In my view, these debates appear unsolvable until such a time as the nature of the property rights regime can be clearly defined and conceptualized. In this way, my interest in later chapters in closely investigating the nature and evolutionary processes of China’s property rights arrangements could prove useful for those interested in property rights as a determinant of economic growth. Until such a time, my research avoids consideration of the purported connection between property rights and growth in order to treat the property rights as the “dependent variable” to be explained.

Part Three of the research presents the research design, methodology and the discussion of findings related to the viability of the proposed Negotiated Ambiguity framework. Chapter 5 discusses the methods used for the case study of foreign-invested business sector in Shanghai and nearby Pudong New Area (and development zone). Interview protocols, sampling methods, data collection and analysis are explained. Chapter 6 elaborates the findings from the 30 semi-structured and elite interviews, followed by the discussion section outlining the discovered support for the utility of the Negotiated Ambiguity conceptual and analytic framework for probing the under-explored intellectual terrain of China's APR regime. Chapter 7 concludes with a brief overview of the dissertation and discussion of the core contributions and implications of the proposed Negotiated Ambiguity framework of analysis.

Chapter 2: Mapping China's Evolving Property Rights Regime

Introduction

This chapter sets the context of the post-1978 (and post-Mao) property rights transformation by disaggregating the economic sectors and organizations that are investigated in different sub-literatures. These sectors include the agricultural and manufacturing sector, which is sub-divided into the rural township and village enterprises run by local states and the state-owned enterprises run by local states or central state appointed managers. Detailing the legal, policy and regulatory changes affecting property rights in each of these three sectors is used to show both the specific property rights debates appropriate to each sector, and also serves as a necessary first step to an elaboration of the more broadly-based theoretical explanation for China's seemingly anomalous economic growth in the absence of private, clarified and enforceable property rights arrangements.

The first section maps out the core organizational elements of the Chinese political economy, and highlights the main reform processes. The subsequent sections of the chapter provide an in-depth chronological assessment of the major formal property rights related reforms— including laws, policies, regulations and constitutional amendments, that have affected the agricultural and industrial sectors of the economy since the “reform and

opening” in 1978. Section two discusses property rights related reforms in the agriculture sector, followed by reforms in the collective non-state enterprise sector, or the rural township and village enterprises (TVEs) in section three. Reforms in the mostly urban state-owned enterprise sector and the private enterprise sector are outlined, respectively, in sections four and five.

Missing in this overview mapping the property rights changes affecting the organizations of China’s political economy is what many considered to be the strongest segment of China’s emerging private sector: the foreign-invested enterprise (FIE) sector. This sector is not commonly discussed in studies on market economy reforms, an exclusion criticized by Redding and Witt (2009). In this chapter I hew closely to the established conventions in the Chinese property rights literature, but I will address the property rights reforms and issues of the important, but under-explored, FIE sector in my case study located in Part 3 of the research.

Overview of China’s Political Economy and Property Rights Reforms

This section sets the context of the literature review chapters by providing a brief overview of the main organizational components in China’s complex, multi-faceted and polycentric political economy in the post-1978 period. The goal is to provide a “big picture” overview of the economic sectors and organizational entities that constitute China’s complex, decentralized and organizationally diverse political economy. Scholars in the China-specific literature pay attention to the reforms in two core economic sectors, agriculture and industry. Within the industrial sector a myriad of organizations are also at the heart of the reforms in property rights and property relations. Redding and Witt

(2009) decompose China's industrial sector, or its "business system", into three components: the (mostly) urban state-owned enterprises, the (mostly) rural collectively-owned enterprises or township and village enterprises, and third, the millions of mostly dependent and small-scale private sector entrepreneurs and enterprises.¹⁰

These authors estimate that that the state-owned, collectively-owned and privately-owned sectors of the economy account for about 15, 20 and 65 percent, respectively, of the contemporary Chinese economy.¹¹ To these three components I add the FIEs, which at an estimated 6 percent of the total enterprises still count as the most vibrant and vital enterprises of the country's burgeoning private sector by virtue of its capitalization and export numbers.¹² Market economy reforms began in the agricultural sector in the late 1970s and their economic success led to the Party-state's decision to expand the reforms to develop the industrial systems. In the 1990s scholars began to focus on China's business systems in response to the need for a more complex concept to examine the myriad combination of ownership forms in "an extremely complex and disparate economy" (Redding and Gordon 2009). In calculating the estimated contribution in 2003 to value-added (without agriculture in the nonfarm business sector), 57 percent is

¹⁰ For a detailed analysis of the organizational landscape in China, see: Gordon Redding and Michael A. Witt (2009). "China's Business System and Its Future Trajectory," *Asia Pacific Journal of Management* 26(3): 381-399, in the Special Issue: Varieties of Asian Capitalism: Indigenization and Internationalization.

¹¹ Due to the difficulty of assessing statistics on ownership, and varied definitions by both Chinese official statistics and scholars, there exist no consensus opinions on the ownership structures. More than a few scholars eschew official Chinese statistics completely.

¹² James Petras (2006). "Past, Present and Future of China: From Semi-Colony to World Power?" *Journal of Contemporary Asia* 36 (4): 423-441.

attributed to the private sector (including both domestic and overseas private firms and investment.), nearly 9 percent to the collective sector, and 34 percent to the state sector.¹³

Table 1 Changing Ownership Structure of the Chinese Industrial Sector

Estimated contribution to China's GDP by ownership types (1998–2003, %)						
Year	1998	1999	2000	2001	2002	2003
State sector	41	40	39	38	36	34
Nonstate sector	59	60	61	62	64	66
Collective	10	10	8	8	8	7
Domestic private	26	26	28	29	31	34
Foreign private	5	7	8	9	9	10
Agriculture	18	17	17	16	16	15

Source: Adapted from Table 1.2 in Garnaut, R., Song, L., Tenev, S., & Yao, Y. (2005). *China's ownership transformation: Process, outcomes, prospects*. Washington, DC: The International Finance Corporation (IFC) and the World Bank, p. 10.

Note: "Foreign private" includes Hong Kong and Taiwanese firms and investment.

Reforms in the Agricultural Sector

China's property rights transformation in the late 1970s began and was inspired by economic successes in its agricultural sector.¹⁴ In addition to this sector's economic importance, its property rights reforms provide critical insights into the dramatic changes that have transpired in the polity and the society. "Agriculture has its own property rights arrangements under socialism", Mertha (2006: 6) observes in a recent overview, recalling the importance of public ownership of the land for this socialist political economy with its ties to Marxist revolutionary principles.¹⁵

¹³ OECD (2005). *OECD economic surveys: China*. Paris: OECD, at p. 81.

¹⁴ This sector comprises agriculture, forestry, animal husbandry and aquaculture.

¹⁵ Karl Marx and Friedrich Engels (1998) observe: "You reproach us with planning to do away with your property. Precisely so; that is just what we intend." See Karl Marx and Friedrich Engels, *The Communist Manifesto*, New York: Signet Classics, at p. 69.

Table 2 Chronology of Agricultural Property Rights Reforms in China

<u>Year</u>	<u>Party Meeting/ Legal Enactment</u>	<u>Major Policy Orientation</u>
1979	3 rd Plenum of 11 th Central Committee of the CCP	Institutionalization of the Household Responsibility System granting farmers lease and profit rights to small land plots, with 15-year land leases
1984		Reform of the market mechanism
1986	16th Meeting of the Standing Committee of the 6th National People's Congress	Land Administration Law
1993		Reform of grain distribution system provides more freedom to farmers Agricultural Law permits 30-year land leases
1998		Land Management Law introduces 30-year land leases and calls for written contracts Constitutional Article 14 prohibits “major land adjustments” and limits “small adjustments” by local states over land use leases
1999		New regulations for the sale of public land
2007		Property Law protecting farmers’ land lease and use rights against land grabs by local states

The system of property rights in China’s agricultural sector and rural areas has experienced dramatic changes since the outset of reforms in 1978. Two principal dimensions relative to China’s property rights reforms in this sector are, first, the decollectivization drive under the “household responsibility system”, and second, a continuing process of marketization (i.e. the creation of freer markets) and liberalization in which farmers and households have become increasingly free to make their own decisions about products and conduct market exchanges with others. The discussion that follows outlines the main legal, constitutional and policy changes affecting the agricultural sector over the course of the reforms, and a discussion of the core debates centering on the question of whether or not China’s property rights transformation constitutes an anomaly to the mainstream property rights orthodoxy.

By the late 1970's the consensus of Party-state leaders was to transform the "impaired" agricultural sector, an objective expressed as early as the 1960s (the time of the disastrous Maoist projects called Great Leap Forward (1958-60) and the Cultural Revolution (1966-76). Under the 1979 introduction of the "household responsibility system" (HRS) (*bao gan dao hu*) the central state, as the sole constitutionally sanctioned owner of the land and its natural resources, provided small groups of farmers (peasants) the lease rights to special plots of land.¹⁶ Farmers and households were also granted profit rights (appropriation from residual) that could be earned once a specific percent of production was turned over to the local states. Thus, profit rights granted by the HRS are not absolute because households are required to deliver a substantial part of their output as an annual quota to the government at below market prices.¹⁷

The national HRS implemented in the late 1970s distributed farmland equally in quantity and quality to households according to family size. Under this system households keep the residual after paying the government procurement and tax.¹⁸ Under the HRS, farmers' use rights of land were generally stipulated to be 15 years (Chen 2002: 350).¹⁹

The HRS was a policy experiment that followed the gradual creation of freer markets for

¹⁶ By 1956, the Chinese Communist Party had completed land reform and redistribution among the peasantry, while at the same time the Party was rapidly collectivizing land and setting labour up into the people's communes, in order to raise production output by introducing economies of scale to agriculture. The communes lasted from late 1950s to the early 1980s.

¹⁷ Farmers are required to sell a certain percentage of their seasonal output to the local state authority at low "plan" prices according to their contracted agreements. Once their obligations have been fulfilled farmers are free to sell any surplus output on the markets.

¹⁸ Y.H. Liu and X.B. Wang (2005). "Technological progress and Chinese agricultural growth in the 1990s", *China Economic Review* 16(4): 419-440.

¹⁹ Chien-Hsun Chen (2002). "Property Rights and Rural Development in China's Transitional Economy," *Economics of Planning* 35: 349-363.

agricultural products (Chen 2002). Full official acceptance of HRS was not given until late 1981, leading to the view that the “shift in the institutional structure of Chinese agriculture by and large evolved spontaneously” (Lin 1992: 37). Indeed, decollectivization projects in isolated areas quickly spread to other parts of the country. Over a short period of time the HRS became the dominant institutional form in rural areas across China, leading to the end of the system of collectivization involving peoples’ communes, production teams and brigades by 1984. By the end of 1983, 98 percent of production teams had adopted HRS, and as of 1992 this covered 98.6 percent of total farmland.²⁰ The household-based level of economic activity replaced older institutional forms such as the production teams and brigades. Success in the household contracting system became the clarion call for more reforms in other sectors of the economy. The later “management contract system” providing control and profit rights to the managers of state-owned enterprises was styled on the HRS.

The second major component of agricultural sector reforms involves the increasing marketization and liberalization of restrictions on markets and private trade in agricultural commodities and household products since 1979.²¹ Opening up markets is an essential element of actors’ ability to exert their use and profit rights. A complete property rights analysis needs to consider not only the nature of the property rights rules

²⁰ China Daily (1997). “Rural reform shifts to market economy”, September 2, p.4. Cited in Russel Smyth (1998). “Property Rights in China’s Economic Reforms”, *Communist and Post-Communist Studies* 31(3): 235-248, at p.3).

²¹ Liberalization did not occur out of the blue. These post-1978 markets were preceded by the extant yet limited markets spotting the countryside, the rural trade fairs. This supports the evolutionary or gradualist approach to reforms, in contrast to the orthodoxy’s tendency to focus on the state’s installation of efficient, formal property rights rules in a top-down fashion.

per se, but also the way that reforms influence the freedom of action of the economic actors. Increasing the availability of markets and market change possibilities provided more freedoms to farmers, for instance in the relaxation of the very close monitoring of the local markets by the local state officials (Smyth 1998: 237-8). With the gradual liberalization and marketization, private trade in agricultural products in local and inter-regional market exchanges began to thrive (Chen, Chien-Hsun 2002; Watson, 1988). In an important signpost of the marketization of the Chinese economy as of the 2000s, mandatory planning has been completely eradicated in the agricultural sector, where “production is mainly subject to guidance planning and market regulation.”²²

In the early 1990s, various market-oriented reforms were adopted to revive and sustain the growth in agriculture. One of the important policy changes was to extend the land tenure to 30 years in 1993. Meanwhile, the Chinese government enhanced support for agriculture by providing infrastructure, capital investment and agricultural technology research. The government effort achieved an immediate return through a subsequent recovery in agricultural production, despite a minor increase in farmers’ own inputs.²³ Since these initial policies were implemented, the Chinese leadership has introduced a series of further institutional reforms in rural areas. The most prominent include the 1984

²² Economic Focus Magazine (2003). “China’s Socialist Market Economy. *China and World Economy*. Number 4.

²³ Y.H. Liu and X.B. Wang (2005). “Technological progress and Chinese agricultural growth in the 1990s”, *China Economic Review* 16(4): 419-440.

reform of the market mechanism, the 1993 reform of grain distribution system, the Land Administration Law enacted in 1986 followed by the 1993 Agricultural Law.²⁴

According to Rozelle et al., (2000) the gradual institutional reforms and new laws increasing the “bundle” of non-ownership related rights to farmers can be linked with augmentations in agricultural productivity, efficiency and profitability. Contrasting this position is Sachs and Woo’s (1997: 3, ff 5) counter-claim that the failure to grant private ownership rights to Chinese farmers and their “continued farmers' uncertainty about future land use rights” cannot be discounted as a reason for the country’s agricultural growth slowdown since 1985.²⁵

China’s Land Management Law, promulgated in 1998, is perceived by analysts to have spawned a new direction for property rights transformation in the rural sector. The Law called for the execution of written contracts that provided for 30-year land leases, thereby extending the existing ceiling of 15-year leases that were introduced in 1993. The law is important for restricting the right of the local states as nominal owners of the public land to readjust land use based on their own discretion. Article 14 of the Law prohibited “major land adjustments” and limited the extent of “small adjustments. In 1999, this law was bolstered by new regulations for the sale of public land, introduced in order to address the problem of local states expropriating land from farmers and selling it to

²⁴ For details of these reforms and their positive economic results, see Rozelle et al. (2000).

²⁵ Lease rights can be inherited by the farmers’ children. Chan 2002: 350. Perkins (1994:29) notes that leaseholds cannot legally be bought or sold. The government officially sanctioned trades in long-term land leases in the early 1990s, but this was restricted to urban areas.

developers (Ho et al., 2005; Zhang 2006). The regulations for the sale of public land sought to ensure that land sales by communities or local states were conducted through public bidding under the supervision of local land administration authorities (*tudi guanli ju*) (Ho et al., 2001; Ho 2000). Problematically, this law lost favour because it also impeded the development of private enterprises in the rural areas.

Throughout the 1990s, local states and localities “tried to maximise their cash revenues from land sales at the cost of expanding private enterprises in need of new industrial sites” (Krug and Hans 2004:7). Local states or village communities held the control rights over public land and relied on the sale of long-term usage rights to augment their local state revenues and capital accumulation for investment or public goods provision. This led to problems of excessive sales of land to developers, and higher prices in the land market bubbles. One direct causes of this practice is the lack of access to bank finance by collective enterprises leaving them to rely on the land-use sales exclusively. According to Zhang (2006: 20) the “land grabs” that have seen approximately 34 million Chinese acres (*mu*) of farmland lost to developers (Han 2004) are not strictly illegal if farmers are justly compensated and local governments deem the sale of land to investors to be in the public interest.²⁶ The problem, of course, is that just compensation is often not provided (e.g. Mertha 2006).

The Chinese Communist Party did not recognize private property until its incorporation into the Constitution in 2004. Three years later in March 2007, with the adoption of the

²⁶ Xiaobo Zhang (2006). *Asymmetric Property Rights in China's Economic Growth*. International Food Policy Research Institute, January.

Property Law, a legal provision was ultimately instituted to strengthen the security of farmers' land rights. If the law can be fully implemented, then it is calculated by two authors of a recent Cato Institute report that the security of rural land rights would bring more than half a trillion dollars of value to farmers.²⁷ This study also notes the wide gap between the enactment of a law and its implementation and enforcement. It is too early to predict the outcome, but Zhu and Prosterman (2007: 2) highlight that this rural land law “requires major institutional and legal measures on several fronts that China must tackle in the immediate future.”

The formal legal and policy changes delineated in the previous section demonstrate the dramatic post-1978 transformation of China’s agricultural sector through its processes of decollectivization, privatization, marketization and increased freedom of action of the rural denizens and farmers (peasants). Beyond recognition of the dramatic nature of this transition so far, there is little else that finds such consensus in the relevant literature.

Reforms in the Collective Non-State Enterprise Sector (The TVEs)

The collective enterprise sector comprises both private companies and those collectively owned and managed by local states or by the members of village communities (Che and Qian 1997). Township and village enterprises (TVEs) (*xiangzhen qiye*) are defined as those in which invested capital of collectives or farmers accounts for the "the bulk of their capital" (i.e. more than 50 percent or plays a “dominating role”).²⁸ Distinguishing

²⁷ Zhu Keliang and Roy Prosterman (2007). *Securing Land Rights for Chinese Farmers: A Leap Forward for Stability and Growth*, Cato Development Policy Analysis No. 3. October 15, 2007. Available online at: <http://www.cato.org/pubs/dpa/DPA3.pdf>

²⁸ Township Enterprise Law (1996), Article 2.

the TVEs is not only their collective ownership nature, but also their inclusion in the non-state sector along with domestic and foreign private sector companies. Generally, the TVEs are located in the rural areas, with the SOEs mostly urban enterprises, although this urban/rural divide is not clear-cut. This overview includes the major legal and policy provisions in the market economy transition that have influenced the development of the local state-owned collective township and village enterprises (TVEs). Most scholars agree that these dynamic rural TVEs acted as China’s industrial growth engine during the 1980s and into the 1990s, when they commenced a slowdown as the competition from other TVEs and proliferating small-scale private sector enterprises began to intensify (Naughton 1995).

Table 3 Chronology of Non-State, Collective Enterprise Reform in China

<u>Year</u>	<u>Party Meeting/ Legal Enactment</u>	<u>Major Policy Orientation</u>
1979	3 rd Plenum of 11 th Central Committee of the CCP	Institutionalization of the Household Responsibility System eventually releases millions of farmers into rural industry.
1990		Regulation on Township and Village Collective Enterprises
1996	Standing Committee of the	Township Enterprise Law urges the state to 8th National People's Congress protect the property rights of TVEs as “legal persons”, and clarifies their collective ownership structure
1997	15th Party Congress of CCP	Program to privatize thousands of small-and mid-sized SOEs affects local state owners.

Reforms that began with the 1978 decision of the Third Plenum of Eleventh Central Committee of the Communist Party to undertake the liberalization and decollectivization of agriculture through the “household responsibility system” (shifting farming from collectivist communes and brigades to private household plots) set in motion similar reforms in the rural and urban industrial sectors. Indeed, the rising efficiency and

productivity in farming forced many off the land, but restrictions on labour mobility directed the surplus labour into the rural TVEs. Abundant and low-cost labour constitutes a critical reason behind the emergence of thousands of township and village enterprises (TVEs) in the 1980s and helps to explain their economic growth gains (cf. Sachs and Woo 1997).²⁹

Most analysts concede that the collectively-owned and operated TVEs served as the dominant engine of growth from 1980 to 1989, only beginning to slow down in the years following the 1989-1991 retrenchment that forced many TVEs to shut down. Economist Barry Naughton (1994,1996) interestingly observes that the local states controlled much land under the decentralization, but because they were unable to generate an income from rents due to the imperfection of rental markets the officials turned to their “second best option” of running businesses by themselves in order to generate an income from their new land resources.

Immediately after the “reform and opening” got underway in 1979, a program of fiscal decentralization and the devolution of authority over property rights to the local states was set in motion by the Chinese state and the Chinese Communist Party (CCP). Fiscal decentralization, or fiscal contracting, was initiated in 1980 by CCP after considerable debate.³⁰ The decision to decentralize power and authority to the sub-states in this decade

²⁹ Sachs and Woo (1997) aver that economic growth was due to cheap labour and not a direct result of property rights reforms, a position that seems to narrow-mindedly miss the spillover effects of property rights reforms in agricultural on the successes in rural industrialization.

³⁰ Decentralized economic governance is not new to China’s political economy structure. During the previous socialist experiment from 1949-1976, local state officials were major participants in

was an institutional solution endeavoring to balance the incentives to local political actors to promote economic gains with the need for national economic order possible only through centralized control. Major problems with fiscal decentralization did not emerge until a full decade later, prompting Beijing to recentralize the tax system.

Fiscal decentralization enabled the central state to increase its revenues while spurring local states to spur development in their own localities. Beijing's revenues were ramped up through the collection of after-profit taxes from the local states that had become the nominal owners of the state-owned land and fixed assets such as enterprises and factories. Industrial growth increases in the localities augmented the coffers of local state officials, inspiring them to intensify their efforts to grow the enterprises. As to the local states, the main aim of decentralization was to provide incentives to local officials to act responsibly by being accountable for their own revenue and spending. Incentives were attached to the devolution to local state control rights over the state-owned enterprises and profit rights by allowing officials to keep the residual claimants of enterprise profits in their jurisdiction. Theorists suggest that the self-reliance and discipline compelled by fiscal decentralization, along with the lack of access to state-owned capital, created the "hard budget constraints" that compelled local states to promote the development of their TVEs rather than engage in rent-seeking (Walder 1995).

Under fiscal contracting, contracts deciding fixed lump sum tax targets and profit-sharing arrangements were individually negotiated between the centre and each province and

overseeing five-year plans in their localities. Economic actors for centuries enjoyed relative economic freedoms in an economic space left unhampered, yet unprotected, by the central state or Imperial leaders.

three major metropolises -- Shanghai, Beijing, and Tianjin -- depending on the proportion of its revenue. Provinces would then replicate contractual agreements with local states at the township and village levels. Contracts remained in place for three-year terms or more. According to some estimates a minimum of 60 percent of after-tax profits were to be reinvested in the TVEs, mainly used for production development in technological transformation, the development of new enterprises, or endowed in welfare funds and bonus funds.

Fiscal decentralization contracts with the central state involved the awarding of profit rights (or rights to the residual), thereby prompting the local politicians and bureaucrats to promote the growth of the township and village enterprises (TVEs) collectively owned and operated by either the local states or the community writ large. Efficiently and profitably running the TVEs was also spurred by the need for the local states to provide most of the local public goods and services to their citizens.

In the 1980s, most local states adopted profit-sharing contracts with their enterprises. Two reform processes shaped the financial and fiscal relationship between local states their TVEs. In 1983, the first tax reform was the “tax for profit” (*ligaishui*), in which profit and loss remittances in profit-sharing contracts were replaced by taxation.³¹ Then in 1994, the overhaul of the tax system altered the tax-for-profit reform. Decentralization of the property rights reforms in the 1980s led to problems by the early 1990s, a time of

³¹ These early reforms occurred experimentally in provinces that were said to have kick-started privatization reforms due to their successes-- Jiangsu, Sichuan, Fujian and Guangdong provinces. For studies, see Li 1998; Shirk 1994; Ho 1994; Vogel 1989.

recession, when the central state started to suffer a severe strain of its revenues (Wang and Hu 2001; Huang 1996). Intense pressure arose to generate more revenue and increase efficiency. The central state hit upon the idea of trading more freedom for local officials and SOE managers in exchange for revenue (Shirk 1993).

Throughout the 1980s and 1990s the innovations of the TVEs were the result of local state officials and bureaucrats creating new and highly differentiated institutions out of the public-owned sector but still in line with the core values of Socialism and the Leninist system.³² It is perhaps due to this coherence of economic practice and political ideology that up until 1993, property rights reforms involving the separation of the local state owners from their enterprise had still not been officially endorsed by the central authorities and backed up by law (Walder 1996).³³ Local states embarked on a program of full and partial privatization beginning in the mid-1990s (Liu, Pei and Woo 2006). Although TVEs began to experiment with private property forms in the mid-1980s through various regional “models”³⁴, it was not until the mid-1990s that a more evident shift in ownership structures occurred, supported by the early 1990s legal and attendant

³² For details of the political system and attendant ideology, see Steven Goldstein, *China in Transition*, at p. 1106-08.

³³ Andrew Walder (1996). “Markets and Inequality in Transitional Economies: Toward Testable Theories, *American Journal of Sociology* 101 (4): 1060-73.

³⁴ Some of the better known “models” comprise as the Sunan model of southern Jiangsu Province and Zhucheng in Shandong Province, the Wenzhou model in southern Zhejiang Province, or the Hengdian model in central Zhejiang Province. Each model brings out a different type of institutional creation, typically with some form private property. The Sunan model is a distinctive as a shareholding co-operative model where workers manage and own shares in the firm. In the case of the Wenzhou model an important role for private ownership developed, while for the Hengdian model is distinctive with team ownership of firm, rather than ownership residing in the local residents or the government, along with strictly centralized decision making by the local state. For a brief review see Smyth (1998): 240-41.

social changes in support of private property (e.g. the acceptance of “socialist market economy”).

Around 1994, a range of new organizational forms altered the collective sector as the TVEs morphed into joint-stock cooperatives (*gufen hezuoshi*), where shares are sold or distributed mostly to employees and managers or community residents. Also, the TVEs were undergoing partial privatization, a situation in which managers, employees or foreign companies received control rights, whilst the local states retained minority rights in the firms. Local state owners either incorporated the TVEs into a joint stock company with limited liability, or converted TVEs into joint stock shareholding cooperatives, where company shares are sold mostly to managers and employees. This latter practice has been called “insider privatization”, and is argued to be the by far the most chosen way to privatize the collectively owned companies (Li and Rozelle 2003).³⁵

By 1996, Ministry of Agriculture data shows that rural China had more than three million shareholding cooperatives accounting for more than ten percent of TVEs, a number that goes to more than 20% in the coastal regions.³⁶ Several factors prompted the privatization efforts of local states. Market competition intensified in the mid-1990s

³⁵ Voting under these joint-stock companies is a system of one-person-one share and conventional shares one share one vote. The authors explain technically the price mechanisms that occur in insider privatization, but do not explain the prevalence of this approach. See H. Li and S. Rozelle (2003). “Privatizing Rural China: Insider Privatization, Innovative Contracts and the Performance of Township Enterprises.” *China Quarterly* 176, 981–1005.

³⁶ One media report estimates that by 1997, 70% of TVEs in Jiangsu Province had been transformed into joint stock companies. See “Shareholding Co-operative Fares Well, *China Daily*, September 5, 1997, p. 4.

driving down the profit margins of the TVEs. Local state officials were forced to switch to the more efficient and more “private” contracts (Zhu 1998).

In the 1990s, the local state-owned TVES that had out-competed in productivity the SOEs were facing the possibility of being dethroned by the emerging private enterprises. Notwithstanding the economic contributions made by these small-scale of these private sector actors, they remained dependent on the supply chains and inputs of the larger collective and public sector firms (Redding and Witt 2009), and they did not alter the dominance of non-private ownership structures in the political economy. In response to changes in both the institutional environment in favour of private property and market competition pressures for increased efficiency, TVE privatization accelerated in 1994 with launch of the central state’s program of SOE reform known as “grasping the large and letting go of the small”, which was officially recognized in 1997 at the Fifteenth Congress of the CCP.

One reason for the recent push to convert TVEs into joint stock companies, asserts Smyth (1998: 242), “is the official government view that clarification of property rights is a precondition for future success. Indeed, in November 1993 officials in Beijing identified ambiguous property rights as a major cause of low inefficiency in the state enterprises (Sachs and Woo 1997: 10), a precursor to the commitment a few years later in 1997 to privatize and restructure the SOEs. For the TVEs, the more direct effort at clarification of

the collective nature property rights in TVEs (Article 10) and their protection as “legal persons” were introduced with the Township Enterprise Law promulgated in 1996.³⁷

State leaders might have been influenced in their turn to privatization by policy advisors in the World Bank. The 1996 *World Development Report* concludes:

“TVEs will continue to grow, but they must also evolve. As the demands for finance increase and extend beyond their communities, and as people become more mobile, the TVEs’ limited and implicit property rights will need to be better defined and made more transferable” (World Bank, 1996, p. 51).³⁸

Into the 2000s, property rights reforms within the non-state owned sector have continued, with scholars attention focused on ongoing privatization processes. China’s accession into the World Trade Organization in December 2001 is also a driving factor of privatization and improved efficiency of the TVEs (and the SOEs). Domestic firms will have to compete with foreign business as the principles of national treatment and fair market access, and liberalization of more industrial sectors to foreign competition.

Reforms in the State-Owned Enterprise Sector

The 1992 "Operating Principles for State Industry" built upon previous reforms by further endowing managers with control rights over a wide range of economic decisions,

³⁷ The law was promulgated by the Standing Committee of the Eighth National People's Congress on October 29, 1996. The Law’s main purpose is to “facilitat[e] and guid[e] the sound and sustained development of township enterprises, protecting their legitimate rights and interests, standardizing their operations, bringing about a prosperous rural economy and promoting the socialist modernization drive.” Law available online at: <http://www.asianlii.org/cn/legis/cen/laws/tel286/>.

³⁸ World Bank (1996) *World Development Report: From Plan to Market*. Oxford University Press, Washington DC. For similar views, see also: World Bank (1997) *China’s Management of Enterprise Assets: The State as Shareholder*. World Bank, Washington DC.

including asset transfers.³⁹ In November 1993, CCP officially identified ambiguous property rights to be a major cause of low inefficiency in the state enterprises (Sachs and Woo 2003: 22). A vital milestone in China's property rights reform of the state-owned sector occurred in 1997 when China's leaders enacted resolutions to privatize most of the state-owned sector, to reduce legal discrimination against non-state and non-collective forms of ownership, and to accelerate the economic opening liberalization to the world capitalist economy.⁴⁰

Table 4 Brief Chronology of State-Owned Enterprise Reforms in China

Year	Party meeting	Major policy orientations
1984	3rd Plenum of the 12th Central Committee	Expanding enterprise autonomy; managerial reform
1987	13th Party Congress	Multiple forms of enterprise governance system, e.g. contracting system; shareholding system
1992	14th Party Congress	Establishing the framework of a socialist market economy; decentralization of economic power
1993	3rd Plenum of the 14 th Central Committee	Clarification of ownership, definition of rights and responsibility, separation of enterprise and politics, scientific management
1994		Company Law and the incorporation of SOEs
1996		Enactment of the Company Law initiates SOE privatization reforms
1997	15th Party Congress of CCP	Transformation of SOEs into profitable ones in three years

³⁹ The Operating Principles document states clearly that: "Enterprises have the right to dispose of their fixed assets.... Enterprises have the right to operate jointly or to merge operations with other units" (FBIS 1992, p. 30, cited in Jefferson and Rawski (2002): 8.

⁴⁰ Officially sanctioned in the September 1997 meeting of the 15th Congress of the Chinese Communist Party.

The following overview sets out the principal legal-formal changes to property rights in the SOE sector, drawing from the most commonly cited reforms in the relevant literature. Compared to the agricultural and the non-state sector (the TVEs), the reform processes of the SOEs are generally perceived as being the most challenging and least successful for the Party-state (e.g. Smyth 1998; Sachs and Woo 1997). China's property rights reforms in the post-1978 period focused initially on the agricultural sector and moved quickly into the manufacturing sector, where millions of workers no longer needed on the increasing efficient farms were soon mobilizing in the dual processes of industrialization and urbanization. Reforming the state-owned enterprises (SOEs) has been the top priority of the Chinese government in the past three decades of reform. All property rights reforms were undertaken by the central state with a view to the vital economic lifeblood supplied by the large-sized SOEs and their role in ensuring social stability to tens of millions of workers and their families. None of the reforms in the SOE sector occurred without fierce debates over potential dangers to the political economy played out between reformers and conservatives within the Party and state.

A series of reforms, gradual and often experimental, aimed at making the state-owned enterprises (SOEs) more efficient, and as of the 1990s, more competitive with foreign enterprises within and outside China. Property rights reforms in the SOEs in the first two decades were devoted to increasing the "bundle" of non-ownership rights, such as the decision making autonomy of managers in the context of more marketization and liberalization (Lardy 1999; World Bank 1999). Facing more competitive strains, reforms

of the mid-1990s moved to more radical changes for the socialist polity by stressing the privatization and restructuring of the thousands of SOEs.

In the late 1970s and early 1980s, the Party-state introduced progressive management reforms with a view to expanding the SOEs' autonomy and to improve the managers' and workers' incentives to increase productivity and efficiency. From 1978 to 1984, the first two major reforms of the SOEs involved the 1979 "profit retention scheme", which permitted SOEs to retain a specified proportion of their profits to be spent on worker welfare and managerial bonuses. As early as 1979, the Party-state decided to improve the incentives structure for SOE managers by permitting profit rights in form of allowing firms to sell over-quota products in a growing consumer market and to retain a percentage of profits, which were to be used for bonuses or reinvestment in the firm. Managers were also awarded control rights, or the ability to make decisions on which goods to produce and sell. A second initiative in 1983-84, building on the earlier reforms, introduced a "tax-for-profit scheme" that expanded the previous profit retention initiative. SOEs were allowed to pay taxes according to a contracted pre-determined tax rate in lieu of remitting after-tax profits to the centre.

The third major initiative of this series of earlier reforms, officially announced at the Third Plenum of the Twelfth Central Committee, extended managerial reforms and enterprise autonomy by permitting SOE managers to enter into long-term contracts that set the amount of profits and taxes these companies paid to the central state.

Between 1987 and 1992 the state oversaw the development of the “contract management system” (CMS), which was officially promulgated at the Thirteenth Party Congress.

Taking on several forms, the contract responsibility system specified reciprocal rights and obligations, promises and targets to be attained by the enterprise managers. Also termed the “contract responsibility system”, making it more evidently analogous to the household responsibility system in the agricultural sector, the managerial contracting system continued the expansion of control rights and profit rights of managers and is generally considered to be the second core benchmark (*licheng bei*) of China’s market economy reform process.

Again, the general aim was to create an appropriate incentive structure for managers inspiring them through promises of profit retention and with augmented autonomy to make strategic decisions (Lin et al., 1994).⁴¹ Contracts with the state were seen as a principal tool to use to increase SOE performance.⁴² Under the CMS, managers signed formal contract with the authorized administrative superiors. The contract meant that the SOE manager was gaining, in principle, an unprecedented control over enterprise decisions and its finance and became accountable for profit and losses. Contracts were meant to clarify enterprise governance by formalizing the division of powers between the state owner and the managerial control rights. In practice, however, there was no firm

⁴¹ The CMS replaced a single rate of division of profits between the state and the SOEs with a fixed base of tax-and-profit remittance rate, and was itself replaced in the mid-1990s push for privatization

⁴² One typical contract form was the “two guarantees and one linkage” contract, in which the firm pledged to realize a certain level of tax and profits, and also finance the technological upgrading through the state’s own funds.

agreement for the separation of powers (or the separation of ownership and management rights). Perhaps the most widely implemented SOE reform, the managerial “contract responsibility system” set out a special type of performance-based contracts between the central state and SOE management. Like many of the SOE reforms in the 1980s and 1990s, the success of this contract initiative has proponents and critics. Typically, the main criticism comes down to the tight relations between the state and managers, and market-oriented economists’ lamentations of the inefficiencies caused by state intrusion into economic decision-making.⁴³

Many analysts suggest that the ultimate failure of the contract responsibility system was that the responsibility and accountability were undone by generous payouts to the SOEs that did not improve efficiency, and in fact remained inefficient and non-profitable. Many of these SOEs were propped up in order to reduce potential labour unrest of laid off or under-employed workers. This is called the problem of the “soft budget constraints.” Another problem was that the managerial autonomy was never adequately paralleled by concomitant reductions in the state’s ownership structure (e.g. Gabriele 2001: 27). This task in the modernizing corporate governance did not begin until the mid-1990s, when the contract system formally ended (in 1994) to make way for the second major stage of industrialization reforms.

In 1993, the Fourteenth Party Congress officially launched the “socialist market economy,” and the Third Plenum of the Fourteenth Central Committee committed to a

⁴³ For a detailed analysis of the failings of this institutional arrangement, see M. Shirley, and C. Xu (2001). “Empirical effects of performance contracts: Evidence from China.” *Journal of Law, Economics and Organization* 17(1):168–200.

third wave of reforms emphasizing the creation of a “modern enterprise system” and modern corporate governance. By “modern” the leaders were attempting to separate politics from economics, or state ownership from managerial control through the processes of “scientific management.” A modern company also needed well-defined legal rights and responsibilities. This could be accompanied by incorporating the SOEs under the new Company Law of 1994, which allowed owners to make them into joint-stock companies. These reforms did not change the fundamental nature of public ownership of the SOEs, which retained the state as the majority shareholder in most cases, nor did it alter the strained relations between the state and SOE managers.

From the mid-1990s scholarly interest has been devoted principally to examining the processes of privatization. Generally, 1994 is viewed as the start date of the central state’s decision to conduct privatization in earnest, albeit still lumbering and incomplete, until a bold announcement in 1997 by officials at the Fifteen Party Congress avowing that SOE restructuring was to be completed in three years time. Since 1993 the SOEs have been strongly encouraged by the central state leaders to transform themselves into modern companies able to compete with other enterprises, especially the TVEs in the non-state sector and the foreign enterprises both within China and overseas. Multitudes of SOEs, however, were ill-prepared for this process of restructuring, downsizing, and increasing efficiency and they remained dependent on the state resources to keep them afloat.

SOE restructuring and rationalizing was enabled by the Company Law, introduced in 1993.

With its implementation, the Company Law provided the legal guidelines enabling the reform agenda has concentrated on the corporate reorganization of SOEs. In particular, transforming SOEs into limited liability (e.g. by granting private ownership shares) has been an important institutional change, although majority share ownership typically remains with the state (Smyth 1998: 243). The managerial contract responsibility system ended formally in 1994, as attention turned to replacing it with a new system of joint-stock companies.

Around 1994 the central state leaders recognized the need to privatize the SOEs. An experimental pilot project began in 1994 in which the government started experimenting on privatization and restructuring ideas for 100 large and medium SOEs in 18 cities.⁴⁴ Until then, the Chinese government and the CCP were satisfied with reforms that endeavoured to improve the SOE performance through market-oriented yet non-ownership related reforms with a view to incentivizing managers to enhance performance of the SOEs through allocating elements of the “bundle” of property rights of control (i.e. decision making) and profit. With the intensification of competition from domestic and foreign private sector actors, state leaders determined that the next step in the reforms required altering the public ownership structure of these enterprises and finally breaking the inefficiencies stemming from the close relations between the state and the manager and the state’s political intrusion on managers’ authority in decision making for the firm.

Economic considerations about productivity, efficiency and profitability constitute only one element of leaders’ concerns about SOE restructuring. Social issues related to social

⁴⁴ “Restructuring targets: state-owned business,” *China Daily*, August 8, 1997, p. 4.

welfare and the end of the “iron rice bowl” (birth to death care through the SOEs in urban areas) and the potential for instability wrought by high levels of unemployment have been central issues. Beginning in the late 1980s and early 1990s, the state implemented a process of labour force ‘re-optimization’ (i.e. retraining, reduced wages) to deal with widespread over-staffing in SOEs. The legal “green light” for enterprises to layoff workers began in 1993.⁴⁵ SOEs’ layoffs are justified by the slogan “to retrench staff and to enhance efficiency” (*jianyuan zengxiao*).

At the Fifteenth Party Congress held in September 1997, the Chinese leadership boldly pledged to transform the SOEs into profitable ones in three years. Economists of the Convergence School who strongly criticize the first twenty years of gradualist, experimentalist, partial and growth-impeding reforms of the SOEs (and all other sectors), laud the CCP leaders for finally realizing in 1997 the necessity of full privatization in order create a productive, “normal” capitalist economy. Woo (1999: 15) explains that the central state has demonstrated that it “recognizes the increasingly serious economic and political problems created by the agency problem innate in the decentralizing reforms of market socialism.” The 1997 Congress commenced this newest phase of state sector reforms with the installation of a “two-R” strategy, referring to efforts to *retain*

⁴⁵ From 1995 to China’s WTO accession in December 2001, there was a 40 percent reduction in the number of workers in the state sector (46 million), and a 60 percent reduction in workers in collectively owned urban TVEs (18.6 million), with a further 34 million state sector workers registered as laid off (Giles, Park and Fang 2003: 1). Problems associated with massive layoffs of state workers became a prominent social issue after the new phase of SOE reforms launched by officials in 1997. For details on the difficulties faced by workers faced with SOE layoffs and the loss of their proverbial “iron rice bowl”, see Stephen WOK. Chiu and Eva PAW. Hung (2004). “Good Governance or Muddling Through? Layoffs and Employment Reform in Socialist China”, *Communist and Post-Communist Studies* 37: 395–411.

government control of larger and better-performing enterprises operating in strategic sectors (e.g. energy, technology) and, second, *retreat* from small and medium-sized enterprises that operate in highly competitive markets (Liu, Pei and Woo 2006; Green and Liu 2005).⁴⁶

At this same Congress, President Jiang Zemin urged the introduction of policies to encourage the development of the small-scale private sector (i.e. of enterprises with fewer than 8 employees), and led the charge for the constitutional recognition of private owners as an important “component” of the “socialist market economy.” Notwithstanding this coup for the small-scale private sector, public ownership was to remain dominant in the economy as a whole, with public ownership defined broadly to include both SOEs and the collectively owned TVEs in the non-state sector. All told, the privatization and restructuring program cut the number of industrial SOEs (including shareholding firms in which the state holds a controlling ownership share) from 118,000 to 53,489 between 1995 and 2000.⁴⁷

Embodying the state’s policy for the SOE privatization and corporatization is the 1994 slogan : “grasping the big to enliven the small” (or “grasping the big but letting go of the small”) (*zhuada fangxiao*). The “grasping the big” part of the strategy established the 1000-firm Reinvigoration Program aiming to enhance the competitiveness of nearly one thousand of the large, most capitalized and technologically advanced SOEs through

⁴⁶ S. Green and G. S. Liu (Eds.) (2005). *Exit the dragon? Privatization and State Control in China*. Oxford: Blackwell Publishing.

⁴⁷ Chinese Statistical Yearbook 2000: 407; Chinese Statistical Yearbook 2001: 401

restructuring, privatization and even bankruptcy. The end goal was to transform these top, strategic SOEs into modern world-class, and globally competitive enterprises. The larger SOEs remained within the state sector, but mergers and consolidation were encouraged in order to boost efficiency in the sector. Efficiency was also encouraged through removing protectionist barriers, increasing competition with other sectors, and through the shedding of excess workers. The traditional social functions of the firms was to be progressively shifted to the external welfare systems (Gabriele 2001).

The “letting go of the small” part of the slogan indicates that smaller and medium-sized SOEs were to be transferred to private ownership by sell-offs, mergers and acquisitions, or simply left to go bankrupt. Many small SOEs were sold at public auctions or closed negotiated transactions.⁴⁸ This reduction of the smaller SOEs reflects the stalwart efforts on the part of local states to dispose of loss-making enterprises through all forms of asset restructuring such as mergers and acquisitions, leases or sales, in addition to bankruptcy. Local states are deemed to be more successful in privatization because of the incentives to material gains and stronger political will (Liu, Pei and Woo 2006), or because legal rules like the rights to transfer assets are much less ambiguous than for the state managers of the larger and more strategic SOEs, for which any asset transfers must be approved by the State Council or one of its agents (Jefferson and Rawski 2002: 9-10).

⁴⁸ Much of the privatization, mergers and acquisitions were organized through one of nearly 150 property rights transaction centers in China’s major cities. See World Bank (1997) *China’s Management of Enterprise Assets: The State as Shareholder*. World Bank, Washington DC.

Over the fifteen years since 1997, hundreds of thousands of small and medium SOEs at the local level of governance have been granted central state permission to privatize either in full or in part, to spin-off to various owners, to purchase of “insider” shares in the company by managers and workers, and to allow unproductive firms to go bankrupt. The World Bank (1997: 24) noted that by the end of 1996, only five percent of SOEs were privatized. By 2003, local states as the more “privatization-friendly” agents than state SOE managers had “restructured” 85 percent of small and medium SOEs (OECD 2005: 120).⁴⁹ The term “restructuring” can signal a company has undergone full privatization (i.e. a private company) or partial privatization, meaning that the enterprises sells a significant number of private shares but retains the government as the largest shareholder (Liu, Pei and Woo 2006).

Restructuring of large SOEs also included encouraging SOEs of all sizes to reorganize as shareholding companies, and this process of “corporatization” might privatize only a fraction of government cash flow rights in return for funds from the companies. (See Liu and Sun 2005a, 2005b). Importantly, these measures enabled the government to retain ultimate corporate control over these corporatized enterprises (Liu, Pei and Woo 2006). Ultimately, central state officials fully intended to maintain a controlling ownership share in the strategic “pillar industries”, such as in energy and high technology, as well as vital enterprises in basic industries.⁵⁰

⁴⁹ This data is from the State Assets Supervision and Administration Commission (ASSOC)

⁵⁰ Liu, G. S., and Sun, P. (2005a). The class of shareholdings and its impacts on corporate performance: a case of state shareholding composition in Chinese Public Corporations. *Corporate Governance: An International Review*, 13(1), 46–59; Liu, G. S., & Sun, P. (2005b). Ownership and control of Chinese Public Corporations: a state-dominated corporate governance system. In

In summation, as China enters the twenty-first century, the Chinese central state has embarked on a steadfast program of privatizing and restructuring the SOEs individually and collectively as a sector in order to increase their competitiveness and efficiencies. Most economists agree, from the perspective of efficiency, competitiveness, that China's SOEs must shed their old, socialist public ownership and control enterprise rights and to adopt the private property rights available to the western capitalist corporations. Future economic growth, productivity, innovation and export capacity of the SOEs, we are told, depends on the success of the privatization program.

Driven by the efficiency and international competitiveness concerns, the central state leadership is expected by SOE scholars to continue to step in to compel the survival-based privatization. Market forces alone evidently have their limits. For neoliberal economists Sachs and Woo (1997), the mid-to-late 1990s represents a watershed time when the central state factions, the reformers and conservatives, recognized the need for SOE privatization. Problematically, more than ten years later, the restructured SOE sector retains its predominantly publicly owned, or with some admixture of public and private ownership (Liu et al., 2006). Few scholars agree with the level of success in the SOE reforms, in terms of their slow progress or outcomes, but one indicator is the lack of interest from foreign investors to buy up liquidated SOEs (Dougherty et al., 2008).

Resistance to the privatization program should not allow us to conclude, without clear empirical evidence, that China is slowly and its own time undergoing a process of

corporation convergence with western capitalist firms. Such is the view of the RCI theorists and neoliberal economists wed to the deductive proposition that rational state and business actors will continue to import the more efficient capitalist institutions, like private property rights. For this institutional convergence with capitalist institutions and values to occur, convergence scholars rely on the assumption that the central state will coercively impose “top-down” reforms. While this seems to be a plausible assumption, its realization would radically alter the more bottom-up decentralized, experimentalist and gradualist reform modalities characterizing China’s market economy and property rights transformation occurring in the first two decades. Instead of harbouring faith in future speculations about China’s imminent convergence, students of the SOEs and the wider political economy are admonished to consider an alternative future of institutional divergence manifested in Chinese-style hybrid enterprise ownership structures (e.g. Redding and Witt 2009). Considering such institutional alternatives requires replacing reliance on deductive efficiency and rationality assumptions with China’s real-world reality.

Reform in the Private Enterprise Sector

China’s small-scale private economy has emerged along with reforms enacted by the central state encouraging both the privately owned and the collective sectors of the TVEs to compete with the state and state-owned companies in industrial production and services. Tracing these legal and policy reforms tells a story of the formation of property rights for private sector enterprises. As a result, private shops, family-run restaurants, and individual vendors have continued to spring up all over China's cities and rural areas. Taken as a whole, this private economy is making increasing contributions to China’s

employment and productive output. The private sector has increased its contribution to the national economy. Already by 1996 the private sector (including the *siying*, but excluding the smallest *getihu*) accounted for 11.6% of national employment 9.9 of enterprises; 38.4 of operating capital; 19.5 of gross productivity; 21.6 of operational income (excluding foreign enterprises); 31.4 of retail trade; 19.9 of taxation (cite.). In what follows I provide a brief chronology of the main property rights reforms that have abetted the emergence of the private sector, and set the legal and policy groundwork for the privatization of some portions of the collectively-owned TVEs and the publicly-owned SOEs.⁵¹

Table 5 Chronology of Private Sector Enterprise Reform in China

Year	Party Meeting/ Legal Enactment	Major Policy Orientation
1978	3 rd Plenary Session of the Eleventh Central Committee	“Reform and opening up” to the outside world
1981	State Council regulations	Permit private businesses operated by an individual or a family (<i>getihu</i>)
1982	5 th Plenary Session of the 5th National People’s Congress	Constitutional amendment, Article 11, recognizes an “individual economy” is a complement to the socialist public economy to be protected by state law
1988	1 st Plenary Session of the 7th National People’s Congress	Constitutional amendment officially permitting the private sector to exist and develop affirmation of the legal status of private sector organizations, the <i>getihu and siying qiye</i> .
1989-1991		Promulgation of “standard regulations” for shareholding (<i>gufenzhi guifan tiaoli</i>) allowing individuals to secure a certain percent of shares in a collective enterprises, and the start of “corporatization” via management buy-outs through share ownership in their enterprise.
1993	1 st Plenary Session of the 8 th National People’s Congress	Constitutional amendment enshrining the socialist market economy.

⁵¹ For a brief outline of the major legal and policy developments in the Chinese private sector see Zhou and Burns (2000). For a more detailed analysis of the rise of China’s private sector and attendant property rights laws, see Barbara Krug and Hans Henrdrischke (2004). “China Incorporated: Property Rights, Privatization”, *Managerial Finance*, 29(12): 32-44.

1999	2 nd Plenary Session of the	Constitutional amendment calling for the rule of law, 9 th National People's Congress and legitimating the private sector as "an important component" of the socialist market economy (Article 11). Article 6 amended to encourage diverse forms of ownership alongside with the dominant public ownership.
2003	3 rd Plenum of the 16th Party Congress	Official pledge to protect private property of farmers and entrepreneurs, and to allow farmers to amass large land holdings.
2004	2 nd Plenary Session of the National People's Congress	Passage of 14 Constitutional amendments including 10 th the Three Represents doctrine allowing private business owners to be Party members, and Articles legitimating entrepreneurial activities. Revised Article 11 requires the state to protect the lawful rights and interests of the non-public sectors of the economy. Constitutional amendment to "not violate" the private property rights and inheritance rights of private entrepreneurs and citizens.

China's political economy has experienced substantial structural and institutional changes relating to the development of the private sector. Private sector businesses were nearly extinct at the time when economic reforms began in 1978.⁵² The primary reasons for this disappearance was the stress of the country's Five-Year Plans on heavy industry following the Soviet model leading to the collectivization in the agricultural and industrial sectors, and the nationalization of banks that privileged lending to state-owned enterprises, and suppression in the cultural Revolution (1966-76).⁵³ In a previous era a private sector existed, but most for-profit enterprises disappeared in 1956 after the

⁵² In 1977, China did not even keep official statistics on private firms because they were illegal and negligible in number. By 2005 there were 29.3 million private businesses, employing over 200 million people and accounting for 49.7 percent of the GDP.

⁵³ Harold Dolles (2006). "The Changing Environment for Entrepreneurship Development: Private Business in the Peoples' Republic of China," in Sten Soderman (ed.) *In Emerging Multiplicity: Integration and Responsiveness in Asian Business Development*. Palgrave, Macmillan, Chapter 12, pp. 234-255.

disastrous earlier capitalist efforts of the new Communist Party leaders in the first few years after the 1949 revolution (Chaudry 1993).

In December 1978, the Third Plenary Session of the Eleventh Central Committee of the Chinese Communist Party made the strategic decision to shift the focus from socialist modernization to national economic policies of “reform and opening up” to the outside world. Both economic growth and modernization became the Party-state’s paramount concerns, with a focus on all aspects of planning, invest, finance, taxation, pricing, material sources, commerce and foreign trade. Beyond these areas of concern, at the time no clear plan on how this was to be achieved, according to members of the so-called Experimentalist School (e.g. Peter Nolan, Thomas Rawski and Barry Naughton) and others (Zhang 2007; Pomfret 2000; others).

At this critical 1978 plenum, no reforms were made specific to private businesses. But, Wang (1988) opines that the 1978 Third Plenum meeting was the first of a number of official changes to the basics of Chinese Communist Party reflecting important ideational shifts that laid the foundation for radical changes to come. The important shift to note is the movement of the basis of party rule and legitimacy from a politically to an economically mobilized model (primary to class struggle). Nevertheless, the floodgates had opened since by 1979 the nascent private sector began with an estimated 140,000 individual household enterprises, the *getihu*, that were run by self-employed and family run entrepreneurs operating in the cities. Evidently it was an amenable environment more than specific activating laws that influenced the Chinese to launch for-profit start-ups.

In what Zhou and Burns (2000) label the “initial stage” of private sector development between 1979 -1981, China’s central government permitted the development, on an experimental basis, of certain individual businesses in the agricultural sector through the creation of the 1979 household contracted responsibility system (HRCS). This system linked remuneration of farming households in the rural areas to output, and also entitled these actors full autonomy in arranging their production. By 1982, nearly two million “individual business households” were registered (Yu 1990).

Between 1982-1986, or Zhou and Burns’s (2000) “second period” of the private sector evolution, individual businesses grew rapidly under the central government’s new rule allowing businesses to hire up to five employees. In 1981, new State Council regulations permitted only those private businesses operated by an individual or a family (called *getihu*, short for *geti gongshang hur*). Single owner operated food stalls or street-corner retail shops, were the typical entrepreneurial result. These establishments were allowed to hire only two helpers and several apprentices, and the total number of employees may not exceed seven. By the early 1980s, slightly larger private enterprises, the *siying qiye* (or *siying*), employing about eight or so employees began to emerge in large numbers, often being the outcomes of the more successful *getihu*. The *siying* organizations were not legalized by the central state until 1987. At the end of 1986, the number of people involved in individual business by one (rather high) estimate was 35.5 million (Zhou and Burns 2000).

At the Fifth Plenary Session of the Fifth National People's Congress in December, 1982, the Party adopted a completely revised constitution, under Article 11, which for the first time recognized the new economic structure of an emergent "individual economy" due the protections of state law.⁵⁴ The 1982 Constitution has been amended several times in support of the development of the private sector economy. In 1988, the constitution was amended to allow for the transformation of land use rights. In the same year, at the First Plenary Session of the Seventh National People's Congress again amended China's Constitution by introducing a new paragraph which reads, in part:

The State permits the private sector of the economy to exist and develop within the limits prescribed by law."

This amendment finally affirmed the legal status of the Chinese private sector, in the form of the small-scale *getihu and siying qiye*. Until this time, the State Council's promulgated regulations governing privately run enterprises -- the small private enterprises (*siying qiye*)— evidenced political discrimination and a lack of rules to protect private sector businesses. Dolles (2006: 236) suggests this "conspicuous silence" on the ascending private sector is a form of legal discrimination based on "ideological considerations" of a socialist state. The state seemed to be ignoring the quite remarkable growth of the private sector, which for certain of the old guard (or "revolutionary veterans" for Dolles 2006) were likely seen to jeopardize the purity of the socialist ideal. A few years later this reticence would shift to a full-out encouragement of the private sector activities such as money making. These laws were playing catch-up to the reality of the increasing economic significance non-state controlled private enterprises.

⁵⁴ Constitutional Article 11 states that: "The individual economy of urban and rural working people, operated within the limits prescribed by law, is a complement to the socialist public economy. The state protect the lawful rights and interests of the individual economy. The state guides, helps and supervises the individual economy by exercising administration."

In 1984, Chinese leaders again decided to reform the country's economic system. Decollectivization of agriculture, by that time, had proved to be a huge economic success, prompting the state to experimentally grant state-owned enterprises more managerial autonomy and to use incentives from profit-sharing contracts to spur their efforts to earn profits. The "managerial contract system" was set up to emulate the rural household responsibility system.

Students of China's private sector development and legal system highlight the importance of the "General Principles of Civil Law" (*minfa tongze*) (hereafter, General Principles) adopted by the National People's Congress in April 1986 (e.g. Lichenstein 2004). With fewer than 200 articles, the General Principles represent an important step in setting up the building the blocks of the legal framework protecting companies, equaled only by the establishment of the Company Law in 1994. Enterprises were granted legal personality, civil liability, partnerships, and basic property notions, such as the rights to market goods of their own choice, choose suppliers, set prices and utilize capital. These property rights were limited to merely articulating the general rights and duties of enterprises as legal persons in civil matters, including an affirmation of the lawful right of state enterprises over assets that the state has authorized them to manage and operate. It remains however, that enterprise rights are subject to State Council regulations, a point that is repeatedly emphasized in contradiction to claims that China's private sector or non-private actors, in actual fact, enjoy complete freedom's provided by property rights laws.

Evidently, by qualifying property rights in the law by their subjection to State Council regulations, uncertainty and lack of clarity of property rights prevails. For instance, new regulations could rescind new laws by reversing back to earlier regulations (Lichtenstein 2004). In her estimation, Lichtenstein (2004: 279) suggests that the General Principles are most striking for not being attached to a civil code, one result of which is that no comprehensive legislation existed to secure property rights of these enterprises. Property law has been urgently needed in order to set the “legal foundations to guide property rights over land, structures, enterprise assets and debts that a full-blown civil code would offer” (Lichtenstein 2004: 279).

In the “third stage” of the private sector development, from 1987-1988 (Zhou and Burns 2000), a series of laws, rules and regulations (e.g. tax, environmental, worker and child protection) governing individual businesses were implemented by the Party-state.

Economic reforms crossed another legal watershed in 1988 with constitutional amendments recognizing “the private economy” as a supplement to the “socialist public ownership economy.” This same year also saw the introduction of an important contract law, a reform directed at the SOEs, and the central state’s establishment of the National State Property Administration (NSPA). This organization is mainly devoted to administering the ownership of state property, defining the property rights, registering the property rights, valuation of the assets, calculating and analyzing the assets, and refining relevant rules and regulations, all functions that established a marketized state property administration system.

Other late 1980s legal efforts to privatize the collectively-owned enterprises and later the state-owned enterprises comprises the promulgation of the “standard regulations” for shareholding (*gufenzhi guifan tiaoli*), which was the first step to separating collective and private enterprise shares and allowing individuals to secure a certain percent of shares in a collective enterprises. Collective TVEs began a process of privatization or “corporatization” via management buy-outs in which selected top managers could gain a majority share in their enterprise. Privatization also involved permitting central and local state officials who were stakeholders in a given enterprise to become owning shareholders, further muddying the distinction between private and public property rights. Ho (2000) observes that starting in 1993, the Ministry of Agriculture has pushed for converting TVEs into ‘stock-holding cooperatives’, institutions with explicitly specified ownership and control rights structures, in order to advance growth and development in the agricultural and rural sectors.

These experiments in shareholding and corporatization gave local states and private enterprises the flexibility to define property rights by determining the ceiling of share ownership. For many collectives this led to de facto privatization (i.e. majority private ownership) but where the official status remained collective. Or, shareholding collectives could become incorporated as a limited liability company with single legal owner, an option that increased in the late 1990s (Krug and Hendrischke 2004: pp). One must take care in relating these advances in the privatization of the collective sector as advances in the clarification and formal definition of private property rights; the shares defined in the shareholding standard regulations did not constitute enforceable legal titles for private

owners (Krug and Hendrischke 2004: pp). The strength of private economic activity outside of state control that had emerged in the countryside through the decollectivization of agriculture in the 1980s had spread to the industrialized sectors. The two developments are connected, since it was the new freedom of the rural households to produce what and how much they wanted led them to develop side-line activities. Moreover, the increased efficiency in farming forced many off the land only to be absorbed by the TVEs.

Despite all this progress, in the late 1980s the promotion of private ownership and the formal acceptance of capitalism remained politically contentious, and the state regulations of 1988 (called the “Tentative Stipulations on Private Enterprises”) did little to encourage the formal registration of private enterprises. Other major speed bumps in the development of the private sector occurred in the 1988-1991 period with the rise of inflation, prompting Premier Li Peng to restore elements of state control, pricing and planning⁵⁵, and the onset of austerity measures and an official retrenchment campaign for the private sector during 1989-1991 put in place in the aftermath of the Tiananmen Incident. The number of private and individually owned enterprises “declined significantly” between 1989 and 1991 through a combination of specific reforms, such as demands for payment of back taxes, and also due to the increased attacks on the private sector actors (Liu 2003: 3).

The final and “fifth stage” of China’s private sector development (Zhou and Burns 2000) covers the entire period from 1992. The defining moment in the development of the

⁵⁵ This occurred at the Third Plenum of the Thirteenth Session Central Committee in September, 1988.

private sector of the socialist market economy is 1992 (Zhang 1999: 64; Dai and Zhu 1994). In September President Deng's Xiaoping announced the introduction of the "socialist market economy" while on his Southern Tour (*Nan Xun*) to inspect the progress of fast-growing southern provinces and cities. His speeches called for continuing reform efforts and abandoning the economic planning order in favour of a socialist market economy, and called for a new policy of rapid economic reform and further opening. These ideas were enshrined the next year as Party policy, and are considered the watershed event that accelerated privatization, greater openness to the outside world, and the deepening of the legal reforms for the private sector. For many observers, the event marked the end of an era where reforms were struggling to replace the old institutions and structures with the new, or the defeat of conservatism and a triumph for reformers in the Party leadership.

In practice, the post-1992 stage, approximating what Breslin (2004: 5-6) calls China's new "trial and error" reform era, saw an explosion in private enterprises as laid-off and retired workers from the inefficient and lumbering SOEs, along with farmers in a more efficient agricultural sector, began to engage in private businesses en masse. Joining them were professionals, officials, or cadres, bureaucrats who opened "red hat" enterprises assisted by close ties to the state and access to public resources. Requirements for entering the market were loosened (Li 1993) as local governments and local bureaucracies begin to introduce more flexible rules and regulations for private businesses. By 1992, approximately 153.4 million individual households and 139,000

private enterprises existed (Zhou and Burns 2000). In that year, private and foreign-funded ventures accounted for 13.5 percent of China's total industrial output value.⁵⁶

In March 1993, at the First Plenary Session of the Eighth National People's Congress, leaders amended the Constitution a third time with Article 15 by enacting the provision that China would practice a "socialist market economy."⁵⁷ The term "socialist" refers to the dominance of public ownership forms. This is widely considered as an ideological breakthrough and emphasized a rule-based system and the building of market-supporting institutions. Observers see this legal step as being a necessary reaction to the reality in China where the rising number and increasing importance of the non-state sector and private sector actors, alongside the concomitant decline in the utility of state planning made the concept of a "planned socialist economy" increasingly out of step with reality.⁵⁸ Another constitutional amendment at this time was to replace references to the rural people's communes and agricultural producers' cooperatives with the terms of the "household contract responsibility system" (HCRS).

In November 1993, CCP officially identified ambiguous property rights to be a major cause of inefficiency in the state enterprises. Institutional changes in 1993 set out by the

⁵⁶ A 1993 survey by the State Commission for Restructuring the Economy.

⁵⁷ Article 15 of the Constitution states that: "The state has put into practice a socialist market economy. The State strengthens formulating economic laws, improves macro adjustment and control and forbids according to law and units of individuals from interfering with the social economic order."

⁵⁸ Article 7 of the Constitution depicts this reality: "The state-owned economy, i.e. the socialist economy with ownership by the people as a whole, is the leading force in the national economy. The state will ensure the consolidation and development to the state-owned economy."

central state to legalize and hence to legitimate private sector actors, including the small *getihu* to large private entrepreneurs or *siying qiye*, were often followed up by the provinces' and cities' own legal changes. Guangzhou, for instance, recognized these private actors as fully fledged "market actors" (*zhuti*) in 1993, and redefined private business to be as legitimate as state and collective ownership forms, thereby upgrading them from their previous categorization of "supplement" (*buchong*) to the collective/public sector. Further, city laws were drafted to protect these rights.⁵⁹

Scholars who optimistically conceive of China's market economy transition as one leading toward increasing privatization tend to point to the 1994 enactment of the Company Law as a vital catalyst leading the private sector into the next stage of development. Whereas in 1992, as a precursor to the Company Law, collective enterprises were allowed by the central state to convert to a limited liability company with shares being sold to official or citizen owners, in 1994 the enactment of the Company Law further clarified the ownership structures of enterprises by recognizing firms as a "legal person" and as the owner of the firm's assets, and by attempting to more definitively separate collective-or state-owned shares and private company shares.

Scholars urge caution in reading the Company Law as a breakthrough for the protection of enterprises' property rights. Provincial and local authorities were responsible for implementation of this law, as they are all the other laws, which led to a wide divergence in the pace and extent of its implementation (Krug and Hans 2004). Many local states were not interested in the privatization of the collective enterprises, while others set up

⁵⁹ Zhongguo siying jinji nianjian (*China Privately Managed Economy Yearbook*, Beijing: Zhongguo gongshang lianhi chubanshe, 1996, p. 140).

strict limits on the private shares that managers might be allowed to own up to 35 percent (Krug and Hendrischke 2004: 6).

In the latter years of the 1990s, property rights and privatization reforms began to accelerate in all sectors of the economy, including the collective and public sectors. In 1997, President Jiang Zemin set the stage for a third major Constitutional amendment (which would not occur until 2004) by announcing at the Fifteenth Party Congress new policies to encourage the private sector. Jiang declared the private sector to be an important component in the socialist market economy and promised to facilitate its development. Although public ownership was to remain “dominant” in the economy, Jiang’s ideas defined public ownership broadly to include both SOEs and the collectively owned TVEs. President Jiang also called off the debate on public versus private ownership, signaling to Chinese economic actors that the CCP accepted a genuine “move away from its traditional economy” (e.g. Hu 1998).

Advocates of the Convergence School view 1997 as the second most important turning point in China’s privatization and marketization processes after the 1992 pronouncement of the “socialist market economy” and the accompanying reforms in favour of a more capitalist – profit-seeking, privatizing – economic system. In July 1997, CCP committed itself to convert most of the SOEs to publicly traded shareholding corporations, a promise that in 1998 became known by the central state’s slogan to “keep large, release small SOEs.” Confidence in privatization is based on the September 1997 decision at the

Fifteenth Party Congress to intensify official efforts to privatize the state-owned enterprise sector.

Sachs and Woo (1997) and Woo (1999: 15) opine that 1997 is the year in which the liberal reformers managed to gain the tipping point over the conservative reformers, meaning that the question was no longer the question of whether to implement privatization of the SOEs but that the only remaining question regarded “the optimal form and amount of privatization.” Privatization in China is presumed by these and authors to be on the inevitable path toward complete privatization, even though more recent updates demonstrate that the SOE privatization process has been less than stellar.

Table 6 Privately Owned and Operated Enterprises (siying qiye)

	Total Enterprises (000s)		Total Employment Enterprises	Coastal Provinces Employment
1991	139.0	2,588.4	95.4	1,754.5
1993	238.0	3,720.8	159.3	2,351.3
1997	960.7	13,492.6	597.0	8,110.0
2000	1,730.0	24,065.0	1,165.0	15,588.0
2003	3,006.0	42,991.0	2,024.0	28,244.0

Note: Coastal provinces are: Liaoning, Hebei, Beijing, Tianjin, Shangdong, Jiangsu, Shanghai, Zhegjiang, Fujian, Guangdong.
 In 2003, the total central was 541, 000 enterprises with 8, 124, 000 employment, and the Western provinces were 442, 000 enterprises and 6,625, 000 employed. This is a rather small percentage.

Source: Zhongguo Tongji Nianjian (1992, 1994, 1998, 2001, 2004).

In 1998, a constitutional amendment and the subsequent passage of the State Council’s “Provisional Regulations Concerning Private Enterprises” formally sanctioned the existence of private businesses. Later, in March 1999, the Second Plenary Session of the Ninth National People’s Congress made a third amendment to the 1982 Constitution

calling for China to practice the rule of law, stipulating that” “The PRC shall be governed according to the law and shall be built into a socialist country based on the rule of law.”

Commentators observe that this must be read as the rule of law with Chinese characteristics.⁶⁰

In another major shift, the 1999 Constitution awarded the private sector more legitimacy, in Article 11, by being recognized not longer as a “complement of the socialist economy” but as “an important component” of the country’s market economy, as Jiang’s earlier speech recommended. With this last change, the individual and privately run economy gain legitimacy in the eyes of Party equal with the state-owned sector. Another constitutional amendment in 1999, Article 6, provided for the development of diverse forms of ownership alongside with the dominant public ownership, and in so doing supported the increase in managerial autonomy of SOEs and the collective TVEs was also increased by the amendments.⁶¹

Dolles (2006: 236) avers that this last amendment “is widely regarded as a milestone in the revitalization of the private sector” in China, one that launched “since then an all-out effort to encourage private business has been promoted by the government.” Party leaders expected the private sector to continue to drive economic growth and to assist in social order by absorbing surplus labour from unprofitable, inefficient or shut down SOEs. Private sector entities were also expected to bolster state coffers by paying taxes. Along

⁶⁰ For an in-depth analysis of China’s “long march toward the rule of law” and its various meanings in the mind of China observers, see Randall Peerenboom (2004), esp. Chapter 4.

⁶¹ For details, see Xin Chunying (1999: 394-405)

with the constitutional amendments, a number of concrete regulatory changes were made to assist private enterprises to become more competitive.⁶²

At the CCP's eightieth anniversary celebration in July 2001, President Jiang Zemin declared (without official Party sanction) that the CCP should formally accept private business owners,⁶³ and this soon followed with the leader's official proposal to the Central Committee to amend the Constitution to provide a constitutional entitlement allowing business persons to join the Party. Thus introduced into the public discourse was Jiang's doctrine of the "Three Represents," which would take two years to deliberate and then enshrine into the Constitution's preamble. Although Jiang's proposal was then ignored by the Party, at the September 2001, the Sixth Plenary Session of the Fifteenth Central Committee of the CCP officials did agree to promote economic development through "scientific innovation", an end requiring the support of technically-oriented self-employed and privately owned businesses, as well as a restructuring of the state-owned economy. Private sector entrepreneurs as key drivers of the Chinese economy were given official status just decades after being considered the enemy of Communism. The doctrinal change has been variously interpreted by scholars, but it generally is said to reflect the Party's decision to cast off leftist dogma in pursuit of prosperity and national status in the global political economy, and to co-opt the private sector actors as a means to stay in control.

⁶² For instance, the on July 6, 2000, the State Economic and Trade Commission issued *The Encouraging and Promoting the Development of Medium and Small Enterprises Several Policy Opinions*.

⁶³ Jiang's proposal overturned a 1989 ban on Party membership to owners of private businesses who were already Party members (Dolles 2006: 2376). A full text of this speech can be found at <http://www.ching.org.cn/english/features/35725.htm>

A complete list of milestones in China's private sector and market economy development would need to include the December 2001 accession into the World Trade Organization. Although still not formally recognized as a "market economy" by the WTO today (Ted Cohn 2007: pp), this accession denotes China's acceptance into the global economy and symbolizes the Chinese leadership's determination to continue its pursuit of marketization, liberalization to gain more foreign investment and trade opportunities, and other measures, including privatization of the non-private sector, to ensure competitiveness of the domestic economy. Encouraging foreign investment and enterprises is a major plank in this development plan because of the positive competition spillovers from the foreign to the business sector (The foreign-invested private sector is discussed in another chapter).

In its first meeting after the WTO entry, the Sixteenth National Congress of the CCP in November 2002 was seen by China's leaders as an opportunity to proclaim China's arrival on the world stage as a deserving member of the global economy, willing to persevere in the legal and economic reforms and opening-up that had been underway for over twenty years. China wished to announce that it has become a developing market economy. To this end, a host of measures were discussed and officially sanctioned that promised efforts to expand the non-state sector's access to capital, land, and foreign trade, as a means to ensuring fair competition with the state sector, and following the new demands of the WTO, to "grant national treatment to foreign investors and make relevant policies and regulations more transparent." With regard to property rights, officials

pronounced the need to “improve the legal system for protecting private property” and to unswervingly “encourage, support and guide the development of the non-public sectors of the economy.”

Building on these promises, after the National Congress, a myriad of laws and regulations consistent with the international practice were discussed, such as the much anticipated Civil Code of New China. Mertha (2006) notes that as of 2006 no complete civil code (*minfadian*) exists in China, instead what does exist is “simply the collection of separate laws.” Mertha claims that this fragmented set of laws commonly placed under the general heading of “civil law” is indicative “provides some clues as to the challenges facing property rights regulation in China today,” which for the author refers principally to the ambiguity and diversity of property rights issues and rules.

The draft copy of the new Civil Code included several provisions to improve the legal system for protecting private property. One whole chapter was devoted to private ownership, clarifying the basic principle relating to property ownership law and regulations for protecting the property ownership, which were applicable to the property rights of non-state enterprises, private or individual enterprises, as well as to regular citizens.

In October, 2003, the CCP’s Central Committee, at the Third Plenum of the 16th Party Congress, officially promised to protect private property of farmers and entrepreneurs, and to allow farmers to amass large land holdings. China’s state-run media called these

key steps toward creating a more capitalist economy. These pledges emerged many years after the notion of private property had been implicitly legitimated by the state.⁶⁴ In March 2004, fourteen critical positional amendments were enshrined at the Second Plenary Session of the Tenth National People's Congress, many of which framed the newly legitimated entrepreneurial activities in China in general.⁶⁵

All told, the amendments addressed issues related to the promotion, guidance and support of private sector development, and perhaps most dramatically the Party-state finally clarified its position on private property rights. Constitutional Article 11 was again revised to declare that the state would “protec[t] the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors.”⁶⁶ Moreover, the Chinese Constitution changes promised improvements for the system to protect private property by stipulating that : “Citizens’ lawful private property is inviolable” and that the Chinese government “protects in accord with law the rights of citizens to private property and to its inheritance.”

⁶⁴ Two laws of note implemented after the Congress were the Law on the Administration of State Property, stipulating the exclusive contributor status of the state property in order to once again attempt to separate the government administration from enterprises management; and the Bankruptcy Law necessary for the successful restructuring of the SOE sector. Among the host of other laws passed in the wake of the 2002 National Congress include the Law on Partnership Enterprises ; the Law on Individual Proprietorship Enterprises; Contract Law, the Negotiable Instrument Law, the Insurance Law, the Securities Law, and the Guaranty Law, and many others. The new Ministry of Commerce was also established in a major governmental restructuring

⁶⁵ The amendments are available in English at; <http://www.cecc.gov/pages/virtualAcad/rol/NPCApprove-ConstAmendCHart.pdf>. See also more in-depth discussions in Dolles 2006.

⁶⁶ Revised Article 11 now stated that: “The State protects the lawful rights and interests of the non-public sectors of the economy such as the individual and private sectors of the economy. The State encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with the law, exercises supervision and control over the non-public sectors of the economy.”

A third major provision in the 2004 National People's Congress affecting the nature of property rights and the legitimate status of private owners and operators was the long awaited acceptance of Jiang's Three Represents "theory," permitting the induction of suitable private sector actors into the 60-million-strong Party. The Constitution's Preamble enshrined Jiang's doctrine of the "Three Represents" (*san ge daibiao*), articulating that "[t]he CCP represents the most advanced mode of production, most advanced culture, and the interest of the majority of the people."

Now as the new Party guidelines for national political, economic and social life, Jiang's contribution to Communist theory involved an official recognition of both the private sector development and the private owners and entrepreneurs as an integral element of economic advancement. The seemingly radical nature of this Jiang's Three Represents is tempered by the fact that it was more than anything a recognition of reality by Chinese leadership. Scholars place great emphasis on this legal change legitimizing the status of the private sector business persons, going so far as to suggest that this is a sufficient indicator to reveal China's true stripes as a privatizing, capitalist country where an autonomous private sector can propel the state to alter its laws (e.g. Tsai 2006; Dickens 2001). Others point simply to the state's co-optation of the business segment of the emerging civil society, and as a potential political encumbrance to the authoritarian state's authority (e.g. Gilley 2008; Peerenboom 2002).

In March 2004, the National People's Congress amended the Constitution to protect the property rights of private entrepreneurs and citizens. The new amendment on private property, building on the 1999 Constitutional amendment that merely declare private business an "important component" of the social market economy, stated that "private property obtained legally shall not be violated," and that private property would be "put on an equal footing with public property." The amendment brought the Constitution in line with the country's market and commercial reality, in which millions of Chinese own businesses and apartments and trade shares on the country's two stock exchanges.

Although the laws guiding business practices such as trading real estate or trading stocks and bonds are conducted without any legal guidelines or property rights guarantees (e.g. limited liability for stock losses).

As of 2004, the legislative agenda of the National People's Congress came to include the preparation of a law on property. Strikingly this agenda item has come a full two decades after the initial introduction of the General Principles of Civil Law (1986). Most observers point to delays caused by the lack of political consensus on how far property rights should go (e.g. Mertha 2006; Black 2004: Chapter 4; Lichenstein 2004:279).

In summation, this abridged outline of the thirty-year 1978—2007 span of formal institutional reforms relevant to the domestic private sector or the Chinese socialist market economy illuminates the big picture of reforms that one might read as support for the "privatization thesis." China, this thesis posits, is progressively converging toward a typical western capitalist market economy in which the property rights to own control,

profit from, transfer property that is predominantly fundamental Based on the delineation of formal institutional reforms, one would be hard-pressed to simply neglect the efforts from on high to advance privatization, marketization and to nurture a private sector economy in China. And yet, the core theories purporting to show China's anomalous growth without privatization or without clearly defined property rights are guilty of such a lapse. More interesting yet, these formal-legal reforms are generally not part of the privatization thesis expounded by the convergence and market transitions theses. Why this lacuna exists in most of the China-specific literature could be explained by the generally known disciplinary segregation of legal studies and social sciences, or by what I deem to be the problem of a dominant and "disembedded" RCI paradigm largely dismissive of such elements of the institutional environment lying beyond the narrow confines of rational action. The starting point of this critical evaluation is that the decade-long trends in privatization, marketization and the emergence of a domestic private sector (strongly supported by foreign enterprises) cannot be neglected.

Conclusion

This chapter mapped out the chronology of major formal legal and policy changes related to China's property rights in the post-1978 period. The aim is to illuminate the context of the property rights transformation, as one element of the broader "socialist market economy" transition. Covered in this overview were the major reforms, according to the relevant literature, transpiring within China's principal economic sectors and domestic organizational structures. These include the agricultural and manufacturing sectors, populated by the township and village enterprises, the state-owned enterprises, and the millions-strong small-scale private sector entrepreneurs and enterprises.

The overall picture that emerges in this mapping exercise is one of a massive transformation of the political economy, going beyond the formal-legal changes in laws, policies, regulations and the constitution into the realm of transforming ideas, ideology, norms, values, attitudes and beliefs. Economic sociologists have long stressed that economic systems are deeply embedded in social systems that are constructed and transformed by people (e.g. Swedberg 2004; Granovetter 1985).

This overview of the formalized property rights changes now sets the stage for Part 2 of the research, which includes a literature review that focuses on the nature of institutions (chapter 3) and major property rights debates in the current scholarship (chapter 4). This literature review provides key insights that will be applied in the analysis of the ambiguous nature of China's property rights regime in Part 3 (chapters 5, 6 and 7). The evolution of formal rule changes in the reform process has not accentuated the reality of institutional ambiguity inhering in China's property rights institutions. Any scholarly efforts focusing only on formal rules and rule changes fail to account for this institutional ambiguity, which constitutes, in my view, the major characteristic of the Chinese property rights regime. A complete analysis of this regime, then, requires that we move beyond the legal-formal examination of formal rules "in the books" to an exploration of these rules "in action" on the ground.

Part II

Literature Review

The primary objective of Part two of this dissertation (chapters 3 and 4) is to provide a critical review of the vast corpus of inter-disciplinary literature relevant to the study of China's property rights reforms and wider market economy transition. China's highly successful – some continue to call it “miraculous”—market economy transition allures and mystifies scholars from a variety of Social Science disciplines and Political Science fields. Among these (sub)disciplines, those addressing property rights institutions as one element of the wider market economy transition include Political Economy, Comparative Politics and Comparative Economic Systems, Comparative Capitalism, Legal Studies, Law and Economics, Sociology of Law, and Development Studies. China and its property rights reforms attract a great deal of inter-disciplinary scholarly interest not least because of the considerable significance of the Chinese case as an exemplar to development policy makers and as a positive comparative to other market economies in transitions (where China is comparatively successful in terms of economic growth and socio-political stability). International Relations scholars are interested in the implications of a successful market economy transition to China's rise (e.g. Kang 2007).

This literature review sets the stage for the rest of the dissertation, which has the ultimate goal of enhancing understanding of the nature and evolution of China's property rights

regime. The central thesis is that political and economic actors in China have constructed an “ambiguous” property rights regime and this institutional ambiguity is the essence of what makes China a unique and anomalous case. Such a claim has not been well defended in the literature so far because of the continued dominance of economic/neoliberal thinking. Thus, a novel approach, one that moves outside of the circumscribed box of “disembedded” (asocial, apolitical) RCI theorization to furnish an “embedded” ontology of China’s institutional evolution constitutes the main contribution.

It is important to clarify that whereas this dissertation emphasizes exploring the nature and evolution of China’s property rights institutions – that is, treating these institutions as “dependent variables” worthy of study in their own right, for the majority of scholars (less the legal scholars) the emphasis has been on the outcome of economic growth and performance, and property rights are treated principally as the “independent” explanatory variables. As stated in the introductory chapter, this dissertation makes no attempt to engage this ‘property rights – growth’ debate. Although this renders much of the literature somewhat peripheral to my objectives, it is important to review the literature for as observed by Caruthers and Ariovich (2004), social theorists have inexplicably abdicated the study of the vital institutions of property rights to economists. By allowing economic/neoliberal thinking to retain their stronghold over property rights analysis our understanding of the salience of these institutions – beyond incentives for economic growth and efficiency gains – is highly limited.

The review principally focuses on the various streams of the ‘New Institutional’ literature on the nature of institutions and property rights, comparing dominant Rational Choice Institutional (RCI) approaches (including New Institutional Economics -- NIE, the Neoliberal Good Governance -- NLGG literature espoused by major development agencies such as the World Bank, and aspects of the China-specific literature -- CSL), with alternatives based on the New Institutionalism in Sociology and Organizational Analysis (NISO), Historical Institutionalism (HI) and Social Constructivism (SC).

Three key arguments are advanced. First, I argue that RCI, despite being the dominant New Institutional approach to the study of property rights, suffers from what would appear to be a sizeable theory-reality gap in the case of China’s property rights regime. The main explanation for this gap can be found in the “problem of disembeddedness”. Briefly, this refers to the RCI’s ontological position that disembedded (i.e., asocial and apolitical) ‘rational’ state and non-state actors select the most ‘efficient’ property rights institutions (i.e., privately assigned, well-defined, and state-enforced) to decrease their transaction costs in the marketplace and increase their utility (profit) maximization. As the mapping exercise in the previous chapter showed, China’s property rights regime of rules, norms, understandings, practices and relations, however, is not persuasively described as being well-defined, state-enforced or privately assigned.

With respect to the CSL, scholars have since the 1980s been endeavouring to show that China is a unique case because it has enjoyed for decades a “growth without

privatization” (Oi 1992, 1996, 1999) or “growth without the clarification” of property rights (Walder 1995), or growth thanks to the networks and attendant “guanxi” (social connections). However, my second main argument is that much of CSL does not go far enough in establishing China as an anomaly to the RCI’s general property rights theory linking private property and/or increasing privatization (of state-owned assets, like firms) to China’s economic growth. Principally, this is because these area-specific accounts are constrained by the very same limitations of the RCI – specifically, their reliance on a disembedded ontology that fails to account for the influence of the institutional environment – both domestic and global – on the development of the country’s property rights regime. Third, I argue that the NISO and SC provide better insights into the ‘China anomaly’ because the embedded ontology is more open to the concepts of ambiguity, legitimation, and negotiations over the meanings, practices and distributive outcomes of (property rights) institutions.

The review is divided into two chapters. Chapter 3 discusses some key debates in the New Institutional literature, focusing primarily on issues relating to the nature and evolution/change of institutions. Chapter 4 discusses RCI’s general property rights theory and the China specific literature (CSL).

Chapter 3: The Nature of Institutions

In discussing the debates over the nature of institutions, it is useful to consider the “nature” of institutions in two ways: their more basic physical descriptions and their more profound ontological essence, inclusive of the world in which these institutions are expected to provide order and meaning, incentives and constraints. I use this section to argue that this ontological discussion should be made more overt and central in order to advance our knowledge in the study of institutions writ large. Social theorist and linguistic expert John Searle (2008) argues that ontological assumptions over institutions must necessarily precede our decisions about methods, epistemology and theory. I would add that improving our descriptions and understanding of the nature of institutions is a precondition for improving our explanations on other vital institutionalist questions, such as why institutions persist and change, and how institutions are able to produce valuable outcomes such as economic growth and social stability.

The key ontological issue raised revolves around questions about *what* institutions are and *how* institutions stand in relation to actors/agents and the wider context/environment within which they act and interact. Based on this I divide the New Institutional literatures into two broad categories: those that *disembed* actors from institutions and from the wider environment on the one hand (RCI and NLGG), and those that *embed* actors within institutions and within broader contextual environments (NISO, HI and

SC). The major differences between these two groups of literature are summarized in Table 3.1 below. Admittedly, there is a wide variety of interdisciplinary literature grouped in each of these categories, with important differences within and between them. However, the grouping provides a useful foundation supporting the main argument of this research that the embrace of an ontology of institutional embeddedness is a key to enhancing the understanding of the nature of China's APR regime and explaining its evolution.

Table 7 Comparing Economic (Disembedded) and Social (Embedded) Approaches to Institutionalism

<u>Economic Institutionalism (Disembedded)</u>	<u>Sociological Institutionalism (Embedded)</u>
<u>Problematic (Object of Explanation)</u>	
-How do institutions act as material incentives in order to solve individual and collective problems of exchange and inefficiency?	-How are institutions socio-culturally, historically, and discursively shaped and legitimated?
<u>Nature of Institutions</u>	
- formal, codified, state-enforced - regulative role of institutions	- formal and informal, socially enforced - normative and cognitive role of institutions
<u>Role of Institutions</u>	
Constrain inefficient actions of the state and market actors that could attenuate private property rights	- systems of meaning and identity
<u>Logics of Action</u>	
- logic of calculation, consequences, and self-interest	-logic of appropriateness - logic of legitimacy, legitimacy-seeking
<u>Ontology, Epistemology and Methodology</u>	
-social realism and objective ontology where institutions are exogenous, fixed givens preconstituted by models	-social constructivism where institutions are inter-subjectively understood and constructed by society

-methodological individualism

-mythological holism

-positivist deductive, abstract models used to search for general theory

-inductive, often interpretive, empirical analyses in search of contingent, middle-range theory

-large-N quantitative studies

-small-N qualitative and quantitative case studies, comparative analyses

Conceptions and Processes of Change

- (punctuated) equilibria altered by efficiency calculations

- imitation leading to isomorphism (convergence) and institutionalization
- ideas influence identities, and interests

- rational choice based on exogenous efficiency and/or cost-benefit factors

- interest-based bargaining and contracting through strategic interactions (within games)

- Learning, imitation, experimentation, feedback loops, and path dependence

-evolution toward efficiency, based on neoliberal good governance norms

- diffusion and translation based on a drive for legitimation and efficiency

The discussion of the embedded and disembedded approaches to institutional analysis that follows is structured through three implicit debates drawn from the literature: *a) the primacy of formal or informal institutions; b) institutions as efficient or legitimate; and c) institutions as pre-constituted objects or inter-subjective social constructions.*

Employing these competing views on the nature (and change) of institutions as a framework, I make the argument that the two embedded NISO and HI approaches can be shown to be empirically superior to the disembedded RCI's conception of institutions both in general terms and more specifically in their comparative ability to understand China's ambiguous property rights system.

Debate 1: Formal versus Informal Institutions

Institutionalists find consensus with North's (1990:3) standard definition of an institution as a humanly devised constraints on behaviour that includes both formal constraints (e.g. rules, laws, regulations, constitutions) as well as informal constraints (e.g. social norms

of behaviour, self- or societally-enforced codes of appropriate conduct, social conventions). This appreciation of both formal and informal types of institutions tends to break down, however, in any one of the hundreds of empirical studies relevant to property rights, or other economic institutions, that are shown to be causally linked to economic growth outcomes. Here, RCI theorists and NLGG development policy publications focus on the *formal* nature of institutions, while the embedded camps like the NISO are predominantly interested in the informal ones.⁶⁷ This continued divide suggests the failure of New Institutional Economist Douglass North's (1990) efforts to build a theory of institutions, and of the vital role of property rights institutions in economic development, that attempts to combine the formal and informal institutions extant in any given institutional environment. As noted by Ginsberg (2000:20) "North's emphasis on informal substitutes for formal institutions has received far less attention than his focus on property and contract, broadly conceived". Oliver Williamson (1985) has admitted to the weaknesses of the NIE's tendency to legal-formalism.

Even if this privileging of the formal or the informal is not always apparent, the ontological presumption that institutions can be so divided remains strong. As I discuss below, the corpus of literature detailing China's property rights (and any other economic or legal institutions) introduced the country's market economy transformation can be divided according to scholarly preferences over formal or informal structures as explanations for outcomes of interest.

67. This entire discussion on the nature of institutions differentiates economic theory of the RCI with the social theory set out by the NISO, and leaves aside for now the HI. Due to its versatility the HI's exploration of the historical creation and evolution of both formal and informal institutions is equally employed by the RCI and the NISO scholarship.

The focus on formal institutions is understandable from an empirical point of view: these rules are much easier than informal rules to identify and analyze, and for states or development agencies to “engineer” in order to produce economic growth and development. In the RCI, one reason for this preference for the more “efficient” formal institutions is methodological and intrinsically epistemological: knowledge generation in the RCI is based on abstract, deductive models that assume rational behaviour of all actors, whereas the embedded accounts of the NISO and HI champion inductive, empirically grounded studies that require, as they say, “getting ones hands dirty”, by examining real-world institutions. A focus on formal rules promulgated and enforced by the state, like property rights, can proceed without much empirical work beyond the rule-making, or policy formulation stage of analysis. What happens after a new, formalized property rights rule is pre-determined – it incentivizes actors to take risks, produce and invest more based on increased material gains from private property rights – and thus need not be studied. The “rule-taking” processes through which actors need to understand, make sense of, or interpret the meanings of institutions is not part of this dominant approach studying the impact of formal institutions on outcomes, such as behaviour and economic growth. Otherwise said, investigating the nature of institutions *per se* is downplayed due to the emphasis on institutional impacts and outcomes.

In the RCI, scholars tend to conceive of institutions (rules) as the constraints on rational action (i.e. cost-benefit analysis) or as the incentive structures guiding utility maximizing behaviour. In reality, this conception of the nature of institutions is marginal in the RCI

because the focus is placed on the study of the actions of the “rational agent”⁶⁸ who is imbued with the ability to select the most “efficient” (cost minimizing, benefit maximizing) institutions. For the RCI, formal institutions are studied as a part of regulatory processes: rule-setting, monitoring, and sanctioning activities. Generally, formal institutions are denoted by their enforcement by the state, whereas informal rules are enforced by the society or the self (North 1990; Coleman 1990; see Mantzavinos (2002: Chapter 7) for a review).

North (1990) discuss institutions in general and property rights specifically as “features of rule systems and enforcement mechanisms” (Scott 2001: 51). Recognizing the state’s role in the provision and enforcement of institutions is vital to the RCI because it is a major determinant of the efficiency or costliness of institutions. If institutions are not clearly defined, or privately assigned, then they are less likely to be well enforced by the state, thereby driving up transaction costs (e.g. searching for good partners, bargaining over contracts setting out property rules, monitoring and protecting property rights by various means).⁶⁹ Demonstrating the coercive and state-centric focus that co-exists with economic theory’s emphasis on regulative rules is North’s (1990: 64) statement that:

“Because ultimately a third party must always involve the state as a source of coercion, a theory of institutions also inevitably involves an analysis of the

68 Shepsle (1989: 134) defines “rational agent” as: “[one] who comes to a social situation with preferences over possible social states, beliefs about the world... and a capacity to employ these data intelligently. Agent behaviour takes the form of choices based on either intelligent calculation or internalized rules...”

69. See Furubotn and Richler (1997) for a review of the New Institutional Economics providing an in-depth discussion on transaction costs confronted and overcome by efficiency-seeking and utility-maximizing individuals through contracting (inclusive of property rights stipulations and promises). See also Williamson (1985).

political structure of a society and the degree to which that political structure provides a framework of effective enforcement.

Commentators on the New Institutionalism tend to agree that the NISO provides a significant contribution to institutional analysis by dint of its broader understanding of institutions as both formal and informal institutions (e.g. Schmidt 2006; Hall and Taylor 1996). A definitive list of informal or social institutions is provided in the introductory review of Powell and DiMaggio (1991: 15) who suggest the new school of Sociological Institutionalism's strong preoccupation with the informal – normative, cognitive and cultural – institutions that exist in the institutional environment and condition actors. Scripts, templates and routines among other concepts all bespeak this conditioning and constraint on the possible actions and decisions of actors in a given setting. These scholars see this as a corrective to the fixed and exogenously given institutions qua incentives examined by RCI. But, on this point, proponents of the NISO suggest that their approach expands our understanding of institutions not only by examining both formal and informal rules, but also by exploring how institutions enable actions and constitute actors' identity rather than merely constraining their assumed desire to maximize utility (e.g. DiMaggio 1994). I return to this point later in the discussion of why and how institutions are created, maintained and altered.

Somewhat surprisingly the distinction between the formal and informal types of institutions remains a strong tendency in the NISO literature. In treating institutions as the scripts, templates, roles that influence actors' behaviour and identities, and as meanings that assist actors to act in the first place, there is much scope in the NISO for the needed

conflation of formal and informal rules. Understanding the meaning of an institution would seem to logically precede action, if this action is to increase efficiency under the RCI's "logic of calculus" or to act properly according to the "logic of appropriateness" (March and Olsen 1989). It appears that the social constructivists are most advanced in this notion that formal and informal/social institutions are conceptually inseparable.

For instance, International Relations scholar and social constructivist Friedrich Kratochwil (1989) purposefully uses the terms "rules" and "norms" interchangeably in his discussion of the legal institutions providing social order amongst states.⁷⁰ Social constructivists point out the impossibility of dividing the social world between formalized rules and informal norms because all rules hold meanings that are socially constructed by a certain collectivity of actors in an context of time and space. Another problem with the formal-informal dichotomy is that the institutional environment surrounding actors is constitutive of both formal and informal rules. As noted by Pejovitch (1997) in his economic analysis of institutions, the "prevailing institutional framework in a society consists of formal and informal rules, all of which carry their own incentives and transaction costs."

70. Kratochwil's argument, in line with the views of other International Relations constructivists such as Nicholas Onuf (1990) and J. Gerard Ruggie (1995), can be read as a challenge to the rationalists' tendency to separate the formal types of rules from the informal ones. For instance, rejected would be Stephan Krasner's (1982) separation of the core institutional elements of "international regimes" (e.g. trade, investment) into the more formalized principles and rules, and decision-making procedures from the social norms and expectations for appropriate standards of behaviour.

The New Institutionalism could benefit from a comprehensive study of the interplay between regulative, normative and cognitive rules elements as proposed by Scott (2001). A similar idea aligns with the effort by some institutionalists to promote “second movement” emphasizing the comparative or synthetic use of more than one of the New Institutional paradigms in order to develop more complex and complete (although often ad hoc) explanations (Campbell and Pedersen 2001). Working against this cutting-edge of the New Institutionalism, it seems, is the general view amongst leading theorists that the *sine qua non* of developing a coherent and more scientific theory of institutions is to explain the relationship between formal regulatory rules and informal norms (Coleman 1990; North 1981: 185, 1990; Mantzavinos 2002: Chapter 7).⁷¹ In setting out the future research agenda for inquiry into the role of the law (including property rights) and economic development in Asia, Ginsberg (2000: 20-22) urges more research into the interplay of formal and informal norms in Asia in generating institutional environments that embed and influence social and political action. In his study of the “Asian anomaly” to the notion that formal legal institutions like contracts and property rights are necessary preconditions to economic development, Ginsberg notes that Asian growth gains have occurred with relational contracting, networks, and social norms of ethnic minority groups, rather than formal rules.⁷²

71 A second element of such a theory, according to Coleman (1990:36) is to specify the causal mechanisms through which rules and norms are produced and maintained in the processes of institutional change.

72 I am skeptical of Ginsberg’s (2002: 21) suggestion that the future examination of the formal informal interplay should be taken up by the newly emerging, RCI-based Law and Economics (e.g. Posner 2000; McAdams 1997; Symposium 1996). While these RCI efforts to fuse formal (regulative, coercive) rules with the social norms embedded in societies does offer an important synthetic account that can advance knowledge, information about the nature of informal rules is lost when they are ultimately defined in terms of cost-benefit analysis. A case in point is Bates et

This brief discussion has shown so far that the New Institutionalism is divisible by the preferences of the RCI and NISO over formal and informal rules. Proponents of the RCI examine formal rules, such as property rights, guiding efficiency and profit-seeking behaviour, and enforced by the state and its enforcement mechanisms. The NISO privileges informal rules such as social norms, cultural and cognitive rules, and the social networks or other collectivities who are guided by these social rules on appropriate behaviour. It is important to recall that property rights are the preserve of the rationalists, and very few economic sociologists subscribing to the NISO have shown interest in the general analysis of property rights. The exceptions include Campbell, Hollingsworth and Lindberg (1991), Campbell and Lindberg (1990), and social constructivist Richard Whitley (1992, 1996). In all these analyses, however, property rights institutions are explored as the formal rules exogenously fixed given by the state. The author's objective is not to study the social nature of property rights, but instead to examine how social networks or industries (e.g. Campbell et al., 1991) or business environments (e.g. Whitley 1996) are affected by the state's formal property rights rules. The point being stressed is that the distinction between formal and informal remains strong in the property rights literature as it does elsewhere in the New Institutional Literature. I will reinforce this point below in a discussion specific to how property rights are examined in China's market economy transition.

al.,'s (1998) *Analytic Narratives*.

Debate 2: Relative Efficiency or Legitimacy of Institutions

The second implied debate in the literature pits competing conceptions of institutions (or organizations) as efficient or legitimate. To characterize the debate between the RCI and the NISO, one must choose between the idea that rational, disembedded efficiency-seeking agents able to select and abide by efficient institutions following the “logics of calculus” and consequences, or the alternative view that legitimacy-seeking socially and historically embedded social(ized) actors construct and obey legitimate institutions according to the “logic of appropriateness”. Similar to the first debate where the NISO’s emphasis on the informal nature of all institutions, including the formal ones that must be understood and interpreted by social beings, this second debate also reveals the contribution of the NISO and its embedded account of legitimate institutions is superior to the RCI’s disembedded view of institutions as being “efficient” (transaction cost reducing).

Legitimacy turns out to be a vital theoretical contribution of the NISO and its basic insight that all economic actors and all economic are socially embedded in social relations, networks and norms and understandings (e.g. Granovetter 1985; Polanyi 1944). In this way, the NISO’s notion of socially and politically embedded actors searching for and adapting to legitimate institutions – in this case property rights—provides a much-needed genuine alternative able to supplement the RCI’s overly narrow view of institutions being relatively efficient or inefficient. Supplementation is the suggested empirical and theoretical strategy because a sophisticated institutional analysis should consider the plausibility of actors being both efficiency-seeking and legitimacy-seeking (Hirsch 1995).

RCI and Institutional Efficiency

All economic institutions are efficient according to the deductive, universalistic assumptions of economic theory. Drawing from Transaction Cost Economics, one of several theories situated in the RCI family of theories, an efficient institution is transaction cost reducing, and by consequence, utility maximizing.⁷³ Following Oliver Williamson (1975), the choice over a particular institution or organizational form—a firm, a market, or a state -- can be explained as the result of an effort to reduce the transaction costs⁷⁴ of undertaking an activity without such an institution. The costs incurred by economic actors of transacting in the marketplace— transaction costs – are primarily reduced in RCI thinking by the formal nature of institutions. Formal rules, laws, regulations of the state are clearly defined by the law and are either enforced or potentially enforced by the state and its enforcement mechanisms. For economic actors, transaction costs are reduced by these formalized economic rules because these actors who can rely on the state’s legal framework to sanction contract-breaches or any form of non-compliance to, say, property rights, are able to spend less time finding and nurturing

73: The most prominent authors of Transaction Cost Economics is Oliver Williamson (1975, 1985) who introduced the notion of transaction costs as the core unit of analysis in institutional economics. Williamson’s ideas are drawn from Ronald Coase’s earlier ideas on the nature of the firm (1936) and the relative costs of activities in a market or in a firm (1960). Oliver Williamson (1975). *Markets and Hierarchies*. New York NY, Free Press; Oliver Williamson (1985). *The Economic Institutions of Capitalism*. New York NY, Free Press.

74. Furubotn and Richler (1997) review the New Institutional Economics (another member of the RCI family) and detail the six forms of “transaction costs” incurred by rational actors, including search for partners, contracting, monitoring, and enforcement and dispute settlement. Jack Knight (2001) reviews the two main RCI models —contracting and bargaining-- in which rational actors are able to select the most efficient and mutually beneficial institutions.

trustworthy partners, and less time in litigation over varied interpretations of unclear or undefined laws.⁷⁵

At the micro level, formal, clearly defined and state-enforced rules with lower transaction costs inspire economic actors to spend their time and efforts to conduct risk-taking and profit-seeking actions, and spend less time in finding and monitoring trustworthy partners and settling disputes. Rational actors are more likely to comply with formal rules that are likely to be enforced by the state, at great cost to those who disobey these coercive, regulative rules (Scott 2001: 52). At the macro-level, a state that stipulates property rights as “credible commitments” that evoke fear and compliance amongst its actors is a state that can pay more attention to ensuring that property resources are allocated to the highest valued uses resulting in increasing output and productivity gains in a political economy (North 1981, 1990; Pejovitch 1997).

By contrast, fuzzy or incredible commitments to protect its citizens’ private property rights will cause the state to waste resources on enforcement of non-compliant actors who might risk malfeasance if the costs of illicit behaviour, such as breaching contracts or attenuating others’ rights to security of property. In this rationalist theory of economic history Douglass North concludes that rise of the Western world and its successful capitalist economic systems was the result of developing an efficient economy whose

75. There is, however, one school of thought in the evolutionary study of law arguing that costly litigation makes law more efficient in the long-run. Others, such as evolutionary theorist Richard Nelson (1995), disagree that lawsuits and court-time is an efficient use of businesses’ time. See Richard R. Nelson (1995). “Recent Evolutionary Theorizing About Economic Change”, *Journal of Economic Literature*, 33: 48-90.

system of private property rights provided the incentives encouraging individuals to produce, invest, innovate and undertake other profitable yet risk-taking exchanges in the marketplace (North and Thompson 1973, North 1981, 1990). North's theory has strongly influenced the currently orthodox NLGG development model.

While the RCI, and the NLGG development model dismiss or denigrate informal institutions of all kinds – social norms, networks, kinship and family relations – as being inefficient and uncertain ⁷⁶, there is a strong sub-literature of RCI and game theory that uses Prisoner's Dilemma principles to demonstrate the efficiency of social norms, such as those guiding behaviours in common-pool resources. (Ostrom et al., 1994; Ellickson 1991; Ostrom 1990). The problem with these accounts, however, is that they dare not argue against the state as a possible last resort and most efficient option for ensuring social order and preventing the “tragedy of the commons”, and nor do they deny that the state's formal legal framework is a vital background factor to enabling *only* small, close-knit communities to develop social norms to efficiently and effectively guard property and resources. Only primitive, pre-capitalist societies have exhibited a genuinely stateless social order. ⁷⁷

From a meta-theoretical perspective, one major reason for the entrenched strength and intransigence of the distinction between purportedly efficient formal rules and inefficient

76. There is a palpable irony in the NLGG policy prescriptions that encourage participatory and democratic economic policy making in order to attain “good governance” and the simultaneous view that state-imposed and enforced rules, like property rights and the rule of law, are the best ones because of their intrinsic efficiency- and growth-producing properties.

77. For instance, Robert Bates (1989) provides a classical game theoretical example of “order without law” in the case of the African Nuer.

informal social rules based on the meta-theoretical conception in line with Modernization Theory. Luminaries in the study of capitalist economic development, including Polanyi (1944), and Weber (1978 [1922]) support the notion that modernization – including modern capitalist economies and the modern state – requires supplanting social norms, cultural beliefs and social or familial relations with what Weber calls “rational” laws (i.e. formal legal) that protecting the incentives of individuals. For Karl Polanyi (1944) such social institutions occurred only in pre-modern economies and had to be banished in the modernization of socially “disembedded” and rules-based capitalist societies.⁷⁸ More recently, Cooter (2004) develops a RCI based theory of the “market modernization of law” that is similarly based on the idea that both social norms and formal laws in our modern era will *naturally* evolve toward ever more efficiency thanks to the demand and supply for such laws by rational actors and judges settling litigation.

One point to keep in mind is that the predominant economic RCI theory and the NLGG development policy that it strongly informs, evokes the ideas from the 1950s Modernization Theory.⁷⁹ This theory in its current form holds that all nation-states,

78 Economic sociologist Mark Granovetter’s (1985) endeavour to rejuvenate the concept of *embeddedness* (i.e. that all economic life is ensconced and influenced by social structures and relations) was based as a rejection of Polanyi’s apparent argument that all “modern” capitalist economies are disembedded from their social roots through impersonal and universally applied state laws. Granovetter’s argument, that even modern market economies are embedded in social structures, is the quintessential theme of Economic Society and much of the NISO thinking.

⁷⁹ See Carol Jones (1994) for a review of Modernization Thesis as one of three main approaches to the study of Development and Law literature, inclusive of the property rights-growth thesis. The other two approaches are, very similarly, Weber’s theory of the relationship between capitalism and “rule of law” in western countries, and globalization theory arguing for the ineluctable institutional diffusion and convergence of all countries to ,western legal and economic institutions. See Carol G. Jones (1994). “Capitalism, Globalization and Rule of Law: An Alternative Trajectory of Legal Change in China”, *Social and Legal Studies* 3: 195-221.

including China, are on an ineluctable path toward instituting Liberal capitalistic market democracies. Capitalist market economies by their very definition possess “efficient” formalized, state-enforced, privately assigned, property rights. Said otherwise, economic theorists hold to the belief in the “evolution toward efficiency.” This refers not to any kind of legal system, but rather only to western common or civil law families; systems toward which all countries are presumably heading due to their inherent efficiency inside the emergent capitalist economic systems.

By accepting that institutions in an imperfect world are often a work-in-progress that are not as efficient as they could be, or will be, in the future, RCI theorists recognize that rational actors often face serious difficulties in selecting the most efficient institutions. In this way, RCI has come a long way toward overcoming the unrealistic or “heroic” assumptions set out by the “institution-less” neoclassical Economics, which presumed complete rationality, perfect information and perfectly functioning markets based on the laws of supply and demand. Theoretical advancements of the RCI introduced by such theorists as North and Williamson, involve such concepts as bounded rationality, decision making under constraint of uncertainty, and transaction costs themselves. The tenet of “bounded rationality” (i.e. computational difficulties in actors’ calculus) introduced by Herbert Simon (1968) impede, but do not prevent, actors’ choices of the most efficient institutions. Other realistic problems such as asymmetric information and other elements of the generalizable “problem of uncertainty” (i.e. inability to assign probabilities to outcomes) are key to the RCI, and to its efforts to improve upon its “institution-less” precursor theory, neoclassical Economics.

In spite of all the possible difficulties, such as choosing institutions in the context of great uncertainty, increasingly efficient institutions are foregone conclusion in economic thinking. This is readily apparent in the literature on China's property rights and market economy reforms. China-specific case studies must acknowledge the high level of uncertainty in operating in the country's market economy because of the APR regime. In order to embrace this reality in their models, the relevant literature argues that rational Chinese market actors might only be able to select institutions that are not necessarily efficient but rather only "as efficient as possible" in the context of uncertainty. For instance, in David Li's (1996) "Theory of Ambiguous Property Rights", the mystery of China's economic growth successes occurring with non-private and unenforced property rights regime is explained by actors finding efficiency and cost-savings by forming cooperative networks. Much of the China-specific literature follows the same theme, in which efficiency is the driving force for economic actors in spite of the prevailing APR regime. Although uncertainty and efficiency abound in this institutional environment, there is an assumption of an ineluctable evolution toward efficiency – typically viewed in terms of privatization of state assets -- that will ultimately prevail and thereby render the networks unnecessary. To my mind, this is one of many theory-saving measures for applying the RCI tenets to the case of China and its unorthodox APR regime.

What is perhaps most problematic about this seemingly arbitrary assignation of which institutions are efficient is the studied and yet questionable assumption that formal rules are efficient, or more efficient, than informal rules. Of course, such a view rests upon the

rather questionable segregation of formal and informal rules discussed in the first debate discussed earlier. No formal rule can provide an incentive to efficiency- and profit-seeking behaviour unless its meanings are first understood by the actors introduced to the new formal rule. With regard to the efficiency question specifically, efficiency that is based on a disembodied ontology of the social world risks miscalculating what are the costs of implementing new institutions. Max Weber's studies on the sociology of law long ago observed that formal rules that were not deemed socially acceptable to members of society would drive up the state's costs of enforcing these undesirable or misunderstood rules.⁸⁰ Robert Cooter (2001) demonstrates with an abstract model the exorbitant costs incurred by such a mismatch between formal and informal institutions, forcing a rational state to ensure that the formal rules are a 'social fit' to the prevailing institutional environment. Avoiding the astronomical costs of enforcement is important to offset any potential efficiency gains from formal rules. This models and insights hew closely to Eggertsson's (1996) "interaction thesis" on the interplay of formal and informal institutions involved in economic development.⁸¹

⁸⁰ For a review on Weber's influence on Economic Sociology, and its efforts to challenge RCI thinking, see Richard Swedberg (1998). *Max Weber and the Idea of Economic Sociology*. Princeton: Princeton University Press.

⁸¹ Eggertsson summarizes his interaction thesis as follows: "The basic idea ... is that formal rules interact with informal rules (culture) and outcomes will differ from the nominal [expected] implications of formal rules, if the two are inconsistent in some sense. The viewpoint suggests that attempts to introduce structural change from above must be consistent with people's informal mental models, if they are to be successful. Furthermore, different cultures are likely to follow different approaches to decentralized exchange systems, and it is hard to predict which path will be taken in a process that involves evolution and learning." (Cited in Svetozar Pejovitch (1998). *Economic Analysis of Institutions and Systems*, Kluwer Academic Publishers, at p. 47.

NISO and Institutional Legitimacy

From its beginnings the NISO has rejected the RCI's emphasis on institutional "efficiency", endeavouring instead to build up an alternative, more complex conception of economic institutions and economic action based on social theory and the foundational notion of embeddedness. To New Institutionalist Mark Suchman, legitimacy is defined as:

a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions. (Suchman 1995: 574)

This definition usefully illuminates the connection between legitimate institutions and the NISO and HI conception of *embeddedness*. Embeddedness is most generally and commonly defined by the study of the "institutional effects" (Scott 2001) of institutional environments or contexts on the actions and decisions of social(ized), thinking and learning actors. Following from this is the notion that institutional actors situated in a certain political economy act according to a "logic of appropriateness" in order to retain their own legitimacy, and hence their survival. Institutions that guide actors' behaviour must be legitimate in the sense that they are a "social fit" that also attain a "social purpose" (Scott 2001: Chapter 4). In this way, the notion of legitimate institutions and the legitimacy-seeking behavior of collective actors who create and adapt to these institutional "constraints on action" extends far beyond the RCI's view that institutions are only efficient or cost-beneficial. Institutions are deemed socially and politically acceptable by dint of being embedded in or forming an appropriate "social fit" with (or "social purpose" in) the extant institutional environment. Conventionally this institutional environment refers to that of a national political economy, or an industrial or economic sector of one nation, leaving less attention paid to the global institutional environment.

The embedded approach of the NISO contends that legitimate institutions are the product of legitimacy-seeking social(ized) actors who might be interested in efficiency and wealth, but who are also interested in fitting in and acting appropriately. Individuals' logic of appropriateness in their everyday lives is based either on the effort to avoid censure from society and peers and/or to ensure a sense of self and identity, and this "logic" can be intentional or unintentional in the case of taken-for-granted cognitive understandings. In any of its forms or impetuses, legitimacy-seeking actors work cooperatively and in contestation to develop legitimate institutions, and quite possibly these socially acceptable institutions might be the most efficient ones.

For conceptual clarity, it is useful to consider NISO's focus on legitimacy in institutional analysis in two separate yet interrelated ways. First, there is the concept of *institutional legitimacy*.⁸² Economic (and social) organizations (e.g. large and small enterprises, networks of firms or entrepreneurs, unions, business associations) "require more than material resources and technical information if they are to survive and thrive in their social environments. They also need social acceptability and credibility" (Scott et al., 2000: 237). Social acceptability and credibility are alternative terms for *legitimacy*.

82. Institutional legitimacy is a slight adaptation of the NISO's focus on *organizational legitimacy*. While I hope that this conceptual dualism increases clarity in the study of China's APR regime, In the NISO this separation of institutional and organizational legitimacy is unnecessary because organizations are defined as purposive institutions in which individuals gather to act as one, because organizations are replete with internal institutions such as formal structures, rules and policies as well as informal norms of behaviour, and because organizations must adapt to the formal and informal institutions situated in the surrounding institutional environment.

Limits exist in the NISO's thinking about institutional legitimacy and legitimacy-seeking actors, in particular for developing a macro-level political model tracing the nature and evolution of China's ambiguous property rights institutions and the country's uncertain institutional environment. The NISO account, as exemplified in disciplines such as Economic Sociology and Law, tends to focus on the meso-level organizations (organizations or networks or industries), saying little about the state or other political dimensions of economic life. Nevertheless, nothing prevents an expansion of the NISO's narrowed foci to include macro state-level institutions. Another limit in treating institutions or organizations as legitimate is the measurement of this concept. In the same way the notion of "efficiency" can be criticized for a lack of objective measurements, so also can the notion of legitimacy. Supplanting the imprecise, arbitrary and seemingly immeasurable concept of "efficiency" with another equally imprecise and subjective concept of "legitimacy" hardly seems to offer a way forward.

Definitions of legitimacy abound, and there are almost as many definitions as there are articles on the subject, and the term is expected to perform all sorts of analytical and rhetorical or ideological tasks such as carrying the flag of neoliberal democratic governance. Sociological definitions of legitimacy in the differ somewhat from those in Political Science that are directed at the notion of the state and its policies or laws being conferred acceptability by society and the latter's belief in the state's "right to rule" (Beetham 1991; Franks 1990; Barker 1990). As to its measurement, some scholars have been satisfied to rather simplistically equate legitimacy of an institution with its survival

or durability, which would mean, for instance, that China's 30-year-old APR regime could merit the label of legitimate institution without further study. Equally problematic is measuring organizational legitimacy in terms of "density" referring to the relative number of similarly structured organizations in a given setting, such as an industry (Carroll and Hannan (1989); See Scott 2001:119-120 for review).

For instance, the outnumbering of large-scale state-owned enterprises in China over other forms of enterprises would be deemed the most legitimate, suggesting that other enterprises would need to adapt to this established legitimate structural form in order to be socially acceptable by the state or society. A majority of NISO scholars, it would seem, oppose this approach. The problems associated with merely counting up institutions was demonstrated with Wang's (2001) rationalist institutionalist study of FDI in China: by counting up the increasing number of new FDI laws in China and regressing these with the country's rise in investment and growth, Wang foregoes any in-depth study of the real nature of these formal rules, whether efficient or ambiguous or legitimate. Given the favourable reception of such scientific and reality-challenged studies on efficiency-growth correlations in the property rights literature, positing an alternative based on legitimacy will be an uphill battle.

Although institutional legitimacy can only be "measured" by inductive studies devoted to exploring how the state and market actors themselves perceive the institutions under study, there is an element of objectivity in this approach that is grounded in social theorist John Searle's (1995) exposition on "institutional facts" (a subset of social facts).

Legitimacy of an institution or an organization like a firm or a state is necessarily rooted

in the acceptance of that institution by others— other organizations, the society and the state with its potentially coercive powers. Thus, legitimacy may be examined as an objective fact, accepted by the majority of society, and therefore imminently open to inductive study of these endogenous perceptions of what is deemed to be a legitimate institution in a given time and space.

In standard Political Science treatments of *political legitimacy* applying to the state itself or to its promulgated policies, legitimacy is measured by three criteria: rule validity, state justification, and active consent (Beetham 1990). Part of the difficulty in dealing with empirical studies of institutional legitimacy is that this epithet cannot be viewed as a mere descriptor. Legitimacy is not just an ordinal concept that is present or absent, or an incremental concept present to some measurable degree (cf. Gilley 2006). Instead, legitimacy is more than a descriptive quality of institutions because it cannot be divorced from the *ontological depictions* of institutions as object(ive) or subject(ive) structures. Although the competing ontological views of institutions as objects or as inter-subjective social constructs is outlined in the third, scholarly debate over the nature of institutions below, it is worthwhile to mention briefly here the NISO's supposition on the ontological nature of legitimacy. Legitimacy is a socially constructed opinion held by a majority of state agents within the state and a majority of society's members. In this way, Suchman (1995: 574) argues that legitimacy is continuously generated (and contested) as opposed to an event- or institution-specific evaluation of an institution that is "possessed objectively, yet created subjectively."

The concept of *legitimation* describes this on-going process. The result is the intersubjective construction, on an everyday basis, of organizations (e.g. a state, a firm) or institutions (e.g. property rights) deemed legitimate by the political economies embedded in the given institutional environment under study.

The analytical framework developed in Part Three views the construction of China's APR regime as entailing legitimation processes involving the state and society and external actors. At the core of this framework is the notion of "dual legitimacy claims", which refers to the domestic (endogenous) and the global (exogenous) perceptions of what is a legitimate institution. When it comes to property rights, the global governance institutions like the World Bank accompanied by the most powerful western Liberal Democratic nations support the notion that the allegedly *efficient* – i.e. formal, state-enforced, private property rights are the only ones that are legitimate in today's capitalist market economies. Such a stipulation about which institutions are legitimate is exogenous in that it stems from the outside, and might have very little to do with the prevailing formal rules, social norms, practices and understandings of the extant domestic institutional environment. In this way, my focus on legitimation ends up being much less radical a supplement to contemporary obsession with efficiency than one might suppose. This conflation suggests, I argue, that the RCI theory and the NLGG development model express an implicit theory of legitimacy under the guise of the pressing developing countries like China to institute presumably *efficient* property rights.

Debate 3: Institutions as Objects or Inter-subjective Social Constructions

Table 3.2 below summarizes some of the main ontological differences between embedded and disembedded approaches on the issue of institutions as pre-constituted objects or inter-subjective social constructions.

Table 8 Institutions as Objects or Inter-subjective Social Constructions

Comparison of the Ontological Positions of the Embedded and Disembedded Accounts		
<u>Level of Analysis</u>	<u>Embedded (Social Theory)</u>	<u>Disembedded (RCI & NLGG development model)</u>
Actors (Micro-level)	Actors are social(ized) beings who are (i) knowledgeable and interpretive; (ii) base their actions and decisions (un)consciously upon inter-subjectively (re)created social dimensions such as identities, roles, understandings, social norms, logic of appropriate behaviour; (iii) and, often engage in economic activities as a collective.	Actors are (i) rational, self-interested utility maximizers with exogenously fixed and given levels of rationality--knowledge, information or capacity to calculate cost-benefit advantages of action and decision; (ii) atomistic and therefore unaffected by social factors unless these are materially beneficial or efficient; (iii) individuals competing against other self-interested individuals for gains in an impersonal, anonymous marketplace.
Institutions (property rights) (Middle level)	As examples of economic institutions, property rights are (i) complexes of formal rules and informal norms that constrain and enable action (ii) (re)created collectively or inter-subjectivity in order to solve collective problems and guide appropriate behaviour under uncertainty, and, thereby, (iii) represent “social facts” melding internal/actor and external/world realities.	Economic institutions are (i) formal and contractual rules (ii) emerge by the intentional rational choice of the state or unintentionally by the accretion of individual rational choices; (iii) with exogenously fixed and given (dis)incentive effects on individuals concerned only with material costs and gains, and (iv) remain lodged within in the minds of rational actors.
Institutional Environment (Macro-level)	The institutional environment (i) is the set of macro-level embeddedness contexts that (ii) influence and are influenced by the interrelations between and among the micro-level actors and institutions.	Institutional environments (i) are synonymous with institutions generally or property rights in particular, and so remain at the micro-level; (ii) are discounted by the assumption of <i>tabula rasa</i> where “efficient” institutions can easily supplant all prevailing formal and informal rules and norms of a given society.

Institutions as Exogenously Given “Objects”

Institutions are exogenously given in deductive, abstract RCI models and are metaphorically and ontologically treated as “objects.” Like Searle’s notion of “brute facts” (e.g. mountains or trees), an object is disembedded from the asocial, apolitical actors and the institutional environment in which they operate. Located “outside” the knowledge and experiences or input of actors, institutions are merely those rules imposed by state actors or obeyed by the non-state market actors, both actors of which are expected to be constrained and guided in their conduct by these institutions in ways that generate personal or national wealth. Because of the lack of thinking or reasoning attached to the discovery of institutions as objects, many critics complain that rational actor models articulate some of the least agential or action-oriented accounts of institution building and policy making of all the New Institutionalisms (Hall and Taylor 1996).

Property rights in economic theory are objects that can be discovered by either states or the individual economic actors on the ground. In the micro-level form of RCI, which is given less attention in this research because of the assumption that individuals cannot produce or change institutions, it is the economic actors transacting in the economy who discover the most efficient property rights and other economic rules through the competitive processes of bargaining or contracting (Knight 2001). In these abstract and disembedded models where only atomistic actors strategically act and react, rational actors seek and ultimately select the most efficient and mutually beneficial institution from a pre-given choice set (Knight 2001, for details). All these supposedly “bottom-up” or “spontaneous” (Sugden 1998?) approaches rest on the unexplored yet vital underlying

assumption that the state will impose the most efficient property rights rules (Bates 2004; Anderson and McChesney 2004; Denzau and North 1996; Libecap 1989).⁸³

In state-centric approaches of the RCI, the central state is the one to “discover” the efficient and wealth-producing property rights systems prior to imposing it on its domestic economic actors. In contemporary studies on the market economy transitions, particularly those that emerged in the aftermath of the Soviet empire’s collapse (1989-1991), rational-minded states’ *discovery* of the most efficient type of market economy institutions is no longer a matter of abstract, formulaic modeling of the RCI and game theory: such discovery is based on the real-world provision of advice by proponents of the NLGG development model, and the general global norm that has transcended global governance thinking since the 1990s.

Objectification of economic and legal institutions like property rights is also a function of two other common features in the RCI models. First, property rights or any other economic law imposed by the state tends to be reified or unchanging over time. As denoted in the economic jargon, exogenous givens are often fixed “constants” in part because there is no involvement on the part of the actors to make or to change these givens. This shortcoming is revisited in the chapter developed to the New Institutionalism’s approach to theorizing institutional change. A second feature of institutions being objects is related to the instrumentalist rationality of the RCI accounts.

83. Gary Libecap’s political economy study of the emergence of property rights over mineral rules is exemplary in showing how efficiency- and wealth-seeking rational actors vie for the state’s attention and favour in instituting their demands for property rights and the resultant material gains.

Institutions, and property rights included, are conceived as both the means and the ends to efficiency-seeking rational actors who wish only to maximize their material wealth or power. As the means and the ends to attaining personal or national gain, institutions are being envisaged as objects external to the thoughts and actions of agents .

Institutions as Intersubjectively Created Social Constructions⁸⁴

A possible alternative to seeing institutions as exogenously given objects, outside the minds and experiences of actors, is to envisage institutions as inter-subjectively created social constructions or Searlian (1995) “institutional facts” (as a subset of “social facts” produced collectively by society’s members) Such constructions are produced and reproduced on a daily basis by actors engaged inter-relations with each other in a specified context or institutional environment. Related aspects of this alternative ontology of the nature of institutions have been previously intimated in this chapter.

First, NISO’s concept of embeddedness denotes that social(ized) actors are together embedded in, and influenced by, an institutional environment that itself consists of collectively shared and devised formal rules, social norms, understandings, practices, and relations. Second, it was observed that the NISO emphasizes the informal and social elements of institutions, including the vital notion that institutions are constitutive of meanings and meaning systems. For an institution to have meaning requires that these be

84. NISO scholars such as Scott frequently refer to the “subjective” understandings and interpretations of institutions, however to ensure clarity I will only use the term “inter-subjective” in order to reinforce social theorists’ view that only social groupings such as organizations, networks, groups, communities, families or societies can construct the collectively shared meanings and values and practices associated with institutions. By contrast, the RCI proponents support the notion of methodological individualism in which an institution results from the accretion of individuals’ expression of self-interest.

interpreted by the actors in the society. Moreover, any (meaningful) action by these actors is conditioned by their ability to understand what the institution signifies. As Scott (2001: 56) avers: “To understand or explain any action, the analyst must take into account not only the objective conditions but also the actors’ subjective [collective] interpretation of them.” Based on this view, institutions are very usefully understood, as North (1990:3) has suggested, as human constraints on actions or as rules of the game in a political economy, but for these constraints to actually guide action social actors must first “make sense” of these institutions (Weick 1995, 2004). A third previously noted feature of institutions as inter-subjective constructions was initially discussed in the second debate introducing the concept of institutional legitimacy.

Inter-subjectively created institutions are usefully depicted as “institutional facts.” In his self-claimed “general theory of institutional facts” philosopher John Searle (1995, 1999) suggests that “institutional facts” are a more precise subset of the abstract notion of a “social fact” defined as “any fact involving two or more agents who have collective intentionality” (Searle 1999: 121). In a nutshell, Searle proposes that institutions qua institutional facts require (i) collective intentionality and (ii) the capacity to assign a function, or purpose or end state desired by the collectivity under study. “Collective intentionality” means a conscious knowledge about the institution and its meaning(s) held by a social grouping, although Searle does not discount that an institution can become so engrained in everyday behaviour that it becomes “institutionalized” as unconsciously taken-for-granted.⁸⁵ As to the second point, Searle suggests that the functions or purposes

85. A person’s *identity* --e.g. in terms of sex, gender, race, ethnicity -- or *role* in a giving organization or community can be taken-for-granted influences on choice and other actions.

of an institution are important for the sake of empirical analysis. This purpose makes the institutional facts observable by researchers (or in Searlian terms, "observer relative").

Instead of conceiving of property rights institutions as exogenously given objects like the RCI, the NISO and social theory provides an alternative image of institutions as intersubjective created social constructions or institutional facts. From this ontological point of departure, property rights institutions would be manifestations of a collectivity's (e.g. a nation-state) understandings, representations, practices and discourses, which are some of the social dimensions that are critical determinants of the existence and evolution of institutions. Although a fully-fledged interest in studying economic institutions like property rights as intersubjectively created social constructions has yet to appear in the literature, there are several advantages to incorporating such an ontological position.

First, as Searle (1995) notes, institutional facts possess an independent existence outside the heads of actors because such institutions cannot exist without a societal agreement of them. Institutions are types of "facts" that can be examined by data such as the overt expressions of actors' understandings, visions, representations, or discourses of institutions. Based on these ideas, understandings and words, the much more tangible practices, routines and roles can be empirically examined and validated through open, public and replicable studies and other principles of good Social Science (e.g. King, Keohane and Verba 1994). In contrast, in the RCI perspective, institutions exist "within the heads" of the scholars or policy makers who advocate them in their models, and empirical validation of the notion that rational actors always prefer the most efficient and

profitable institution is tenuous at best. A second important advantage in taking seriously the ontological nature of institutions as social constructions is the potential to vastly improve our understanding of the nature institutions as socially constructed, and reproduced/changed through legitimation processes. Institutions change as states and societies do. Without this insight, institutional analysis of property rights is restricted to the idea that institutions exist and change as a function of efficiency and potential profitability. How this change occurs remains in an explanatory “black box” in the RCI.

Conclusion

The following are the main conclusions that emerge from this review of the New Institutionalism literatures. In studying institutions (including property rights) a broader ‘social’ ontological conception is needed that views institutions as intersubjective constructions, in which actors are embedded in institutions, both of which are also embedded within broader social contexts (political, economic, cultural, etc). The review also points to the need to include both formal and informal institutions in our analysis, and underscores the importance of paying attention to issues of legitimacy and on-going processes of legitimation in our efforts to understand the creation, maintenance and change of institutions. These core insights are developed and applied in the inductive case study of China’s Property Rights in Part three of the dissertation. The next chapter turns to a review of the general and China-specific literature on property rights.

Chapter Four: Property Rights

This chapter aims to clarify briefly the claims made by the general property rights theory as a necessary first step toward placing the Chinese case and the China-specific literature into this larger scholarly context. This step is also needed to identify and evaluate the precise counterclaims made by those who envision China as an anomaly to the general property rights thinking both in theory – Rational Choice Institutional (RCI) and development policies of the NLGG model championed by major donors and multilateral development agencies such as the World Bank. The discussion begins by defining property rights, followed by a very brief overview of RCI’s general explanations as to why these institutions “matter” so crucially to economic (and legal) development, and then proceeds to examine in more detail the China-specific property-rights literature.

General Theory of Property Rights

Defining Property Rights

Property rights are generally defined as the rights and attendant obligations associated with the ownership, use, exclusion, transfer, alterations, and profits stemming from resources that are both tangible (e.g. land, factory, capital) and intangible (intellectual property such as patents, and copyrights) (Anderson and McChesney 2003:3; Ekelund and Tollison 1986:50). In essence, property rights are “norms of behaviour that individuals must observe in interaction with others or bear the costs of violation” (Pejovitch 1997: 56). In this research, we employ the oft-cited typology of property

rights set out by neoclassical economist Harold Demsetz's (1967) in his seminal article, *The Theory of Property Rights*. Demsetz decomposed a "bundle" of property rights rules, including: (i) use or control property; (ii) transfer or sell property; and (iii) profit or gain materially (appropriate the surplus) from property.⁸⁶

Disaggregating property rights into this "bundle" is particularly helpful in the case of China,⁸⁷ where the country's mixed economy (part market, part command/planned) has produced a complex and widely varied array of property rights arrangements that defy the typically public-private dichotomy. The dichotomization of property rights into private and public (or communal) however, continues to dominate the literature. Central to the economic paradigm, grounded in centuries-old western liberal capitalist beliefs and values, is the view that private sector actors perform much better in the economy than do communal actors or the state as a public actor. The key question is: do the ontological, ideological and normative biases underlying the private-public divide limit its universal applicability, in particular to non-western, non-democratic, non-liberal transitional mixed-market economies such as China?

⁸⁶ For an in-depth review on this concept and the attendant "property rights paradigm", see Armen A. Alchian and Harold Demsetz (1973). "The Property Rights Paradigm", *The Journal of Economic History*, 33(1): 16-27.

⁸⁷ In their significant contribution to the empirical study of the variety of property rights arrangements in China, Oi and Walder (1999: Introduction) begin by arguing for the utility of envisioning property rights as a bundle of rights of control, transfer, and income, as a way to expand the restrictive conventional focus on ownership. Jean and Andrew Walder (eds.) (1999). *Property Rights and Economic Reform in China*. Stanford CA: Stanford University Press.

Why Do Property Rights Matter?

Viewed through economic thinking, property rights and property relations arise because of the existence of resource scarcity and the need to settle on the most efficient uses as determined by the rational economic actors or the state. So important are property rights that they are often deemed synonymous with “institutions” for many institutional theorists like North (1978, 1981) and neoclassical economists (Libecap 1986, 1989; Alchian and Demsetz 1972, 1973; Field 1981; Furubotn and Pejovich 1972; Demsetz 1967).

Perhaps the best way to explain the standard property rights theory in the RCI is to consider why property rights rules and norms are significant to a given political economy. In the New Institutionalism writ large, the key question to answer is why do institutions matter? The implied answer in all the traditions of the New Institutions is that institutions matter for two core reasons: because they influence – constrain, enable, constitute – behaviour and because they influence social, economic and political outcomes. More specifically, the RCI argues that *private* property rights institutions matter because they constrain (rather than enable or constitute) economic and political actors’ conduct in the marketplace in ways that engender individual and national economic growth and prosperity.

Conventional wisdom upheld by students of economic development since the 1990s has been that property rights that are private, clearly defined, formalized and state enforced are preconditions to capitalist development and growth (Trebilcock and Veel 2008; North 1990). Privately assigned property rights constrain the behaviour of rational,

egotistic, utility maximizing actors, state or non-state, in two ways. On the one hand, property rights constrain the behaviour of self-interested, utility maximizing actors who, in the absence of such rules, might be tempted to steal, harm, or waste others' property, or alternatively be required to expend most of their resources in the protection of their property. On the other hand, property rights act as incentives for actors to work hard, invest, innovate and take risks in the marketplace knowing that their private rights to the given property – land, capital, technology, etcetera – are secured by the state, and backed by legal enforcement. In this way, the economic outcome of private property rights regimes is individual and national income gains. Hence notions of *rationality* (cost-consciousness, utility maximization), *efficiency* especially with respect to *transaction cost* reductions (e.g. the costs of contracting, negotiating, searching for trustworthy partners, legal disputes), and the state's *credible commitments* to enforce rights, are central RCI's explanation of why property rights matter (see Bates 1981, 1986; North 1984, 1991; Caporaso 1989; Hodgson 1993; Williamson 1979; Knight 2001).

This “Property Rights Thesis” (for short) has emerged as one of the most active areas of scholarly inquiry in Economics, New Political Economy and Economic Development (Alesina and Perotti 1994; North 1981, 1990; Alchian and Demsetz 1972, 1973; Demsetz 1967; Furubotn and Pejovich 1972; Field 1981; Libecap 1986). Another parallel yet often independent realm of scholarship is found in Legal Studies, which also looks at the development of modern, capitalist legal systems, how economic laws influence behaviours in the marketplace, and how laws like property rights engender capitalist

economic development.⁸⁸ What is important about this literature is that, unlike the Political Economy and Economics realm, Legal Studies possesses a strong group of critics who argue, among other things, that the law cannot be used instrumentally to produce growth, or that legal systems from the West cannot be “transplanted” with facility in developing countries.

Although typically isolated in their musings, the interest of these various disciplines in the study of property rights institutions does reveal a level of ignorance about these institutions in the literature. The weak link is social theory, which as I have noted earlier, appears to have abandoned the study of “economic” property rights to the economists and political economists (Caruthers and Ariovitch 2004). Employing the RCI tenets, these theorists and researchers are most interested in the economic outcomes of growth, efficiency, and inward investment than they are in property rights *per se*. A similar fusion revolves around the new Law and Economics sub-discipline that also has recently turned to RCI to provide insights on the rational, efficiency behaviours that explain lawmaking, the development of entire legal systems, and how actors respond to implemented laws.⁸⁹

88. Kevin E. Davis and Michael J. Trebilcock (2008). “The Relationship Between Law and Development: Optimists versus Skeptics,” *American Journal of Comparative Law* 56 (4); Thomas Carothers (ed.) (2000). For critical evaluations of the law-development nexus, see Trebilcock, Michael, Veel Paul-Erik (2008) “Property Rights and Development: The Contingent Case for Formalization,” *University of Pennsylvania Journal of International Law* 30 (2): 397-481; and *The Law-Growth Nexus: The Rule of Law and Economic Development*; David Trubek and Alvaro Santos (eds.), (2006). *The New Law and Economic Development: A Critical Appraisal*. For a critical look at the law-development nexus in Asian market economies, Ginsburg, Tom (2000). “Does Law Matter for Economic Development? Evidence from East Asia”, *Law and Society Review*, 34 (3).

89. Steven Shavell (2006). *Foundations of Economic Analysis of Law*. xxx; Gomez, Fernando, and Hans-Bernd Schaefer (2007). “The Law and Economics of Pure Loss: Introduction to the Special Issue of the Review,” *International Review of Law and Economics* 27 (1): 1-7; C. Jolls,

It is not surprising given this state-of-the-art in the general property rights scholarship that the RCI predominance has filtered through to the study of China's market institutional reforms. However, as the discussion below on the China-specific literature shows, there is a notable gap between the observed reality in China and the theoretical and policy expectations that economic growth is preconditioned on the state's imposition of an efficient private property rights regime and rule of law system.

Property Rights in the China-Specific Literature

Scholars since the 1980s have developed three alternative explanations for China's growth in the absence of private, well-defined and enforced property rights arrangements. These explanations are: local state corporatism, de facto private property rights, and informal alternatives (esp. networks and attendant *guanxi* relations) to formal property rights rules. The discussion begins by first highlighting the main arguments of each explanation and then proceeds to an in-depth evaluation.

The first approach is called "local state corporatism" (LSC) and comprises all theoretical efforts to explicate China's economic growth, particularly in the rural areas, through the corporate-like behaviour of the country's large numbers of "local states", inclusive of governments governing (in order of size) city, country, township, and village jurisdictions. China's well-known decentralized governance structure, in which the central state devolved much of decision making authority over property rights rules and

Cass R. Sunstein, R. Thaler (1998). "A Behavioural Approach to Law and Economics," *Stanford Law Review* 50 (5): 1471-1550.

the allocation of resources, is a key contextual factor in the investigation into the local state's vigorous role in spurring the country's growth success. LSC accounts attribute the country's growth trajectory to the local states' developmental or entrepreneurial or corporate-like behaviour in owning and running the township and village enterprises (TVEs), commonly viewed as being the main drivers of economic growth in the 1980s and into the 1990s. By positing that local state agents, as officials or bureaucrats, have stimulated economic growth through collectively owned and operated TVEs, the proponents of the LSC thesis expressly aim to demonstrate the inapplicability of standard property rights theory (in both its neoclassical Economic and RCI forms) to the Chinese case.

The second major explanation for China's seemingly anomalous growth in the absence of an orthodox property rights regime is called the "de facto privatization" approach.

Although the China-specific literature tends to label virtually any non-conventional institutional arrangement in China as operating as de facto private property rules, in this section I focus on three of the most commonly discussed manifestations. In the agricultural sector, the emergence of 30-year land leases to farmers who do not have ownership over state-owned land and natural resources has been described as an institutional innovation that provides de facto sense of private ownership to these economic actors. Secondly, the economic concept of "hard budget constraints" is employed in studies of the larger state-owned enterprises (SOEs) as well as the collectively owned TVEs as a way to explain how these non-private entities have managed to enjoy gains in growth, productivity, profitability, efficiency and investment, without the requisite clearly defined, enforced property rights institutions. Hard budget

constraints refer to the demands on local state or state firm managers to act responsibly in securing the profitability of their businesses concerns where central state financing for bail outs, loans, or subsidization are uncertain or non-existent.

The third main example of de facto privatization falls under the rubric of the “regional property rights thesis” (Granick 1990) depicting local states in competition with each other for inward investment and other requisite inputs for production. Competition for resources leads to developmental behaviour, the search for efficiency cost-cutting, along with other behaviours that one finds amongst individual actors in a capitalist market economy defined by privately assigned and secured property rights. All told, the de facto privatization (or de facto private property rights) approach labels various forms of collective or public ownership as de facto private based on the resultant rational, growth- and efficiency-seeking economic behaviour of those charged with overseeing these non-private assets. De facto privatization aims to challenge the RCI orthodoxy by showing that institutional alternatives exist to privately assigned and legally clarified property rights institutions.

This third explanatory school also emphasizes the alternative institutional arrangements in China’s fast-growth marketizing economy. By dint of its focus on the informal institutions that pervade the Chinese political economy over the course of the transition, most predominant including the social norms and social networks, I call this the informal institutional alternatives to formal institutions approach. Social norms specify and enforce the property rights not through formal rules of the state, but rather through the

community norms, values, practices and understandings that have evolved historically in a given locality. Social networks linking economic and political actors through normative and communicative ties are vital ways to ensure social order in the market and to gain the needed resources – financial, technological, information, -- and trust and confidence needed to propel the marketplace exchanges. Within these networks, and sometimes without, are the thick webs of social connections (or guanxi) that have been attributed to China’s economic "miracle" by numerous scholars in the China field. The informal institutional alternative explanation attempts to show that economic actors, from local states to families and clans, manage to behave as rational, utility maximizing actors through and within these informal institutions and, therefore, have managed thus far in the market economy transition to pursue individual and collective economic growth without formalized, legally defined and enforced private property rights institutions.

Table 4.1
China-specific Literature’s Theories on China’s Growth in the Absence of Private, Clearly-defined, State-enforced Property Rights

Theoretical Explanation	Core Challenges to the Property Rights Orthodoxy
1. Local State Corporatism	<ul style="list-style-type: none"> - growth without privatization - dominance of collective and public ownership - property rights security through local states’ incentives to pursue material gains - local states pursue growth (not private individuals)
2. De Facto Privatization specification of	<ul style="list-style-type: none"> - growth without clarification or property rights

3. Informal Alternatives
to Formal law

the

- market and fiscal pressures, including hard budget constraints and competition over markets and investment, promote secure property right
- de jure private owners prefer being recognized as collective enterprises
- long-term land leases are similar to privately assigned property rights
- growth without formal legal rules or rule of law
- collective actors, like states and communities, specify and enforce property rights by social norms delineating acceptable behaviour
- social networks between the local states and private entrepreneurs provide property rights guarantees and assured resource allocations

Explanation 1. Growth without Privatization: Local State Corporatism

Likely the best known and acclaimed institutional explanation of China's rapid and sustained economic growth in the 1980s and 1990s is the local state corporatism (LSC) thesis articulated by political scientist Jean Oi (1992, 1995, 1999).⁹⁰ LSC generally advances the argument that fiscal decentralization in the early years of the market transition reforms reshaped incentives among local states (at the county, township and village levels) giving rise to their profitable running of the dynamic township and village enterprises (TVEs). Oi was among the first to identify the "corporatism" or corporate-like

90. Jean C. Oi and Andrew G. Walder (eds.) (1999). *Property Rights and Economic Reform in China*. Stanford, CA: Stanford University Press; Jean C. Oi (1999). *Rural China Takes Off* Berkeley, CA: University of California Press; Jean Oi (1995). "The Role of the Local State in China's Transitional Economy." *China Quarterly* 144: 1132-1150; Jean C. Oi (1992). "Fiscal Reform and the Economic Foundations of Local State Corporatism in China," *World Politics* 45.

behaviour of profit-seeking local states as the secret of the economic success of the collectively owned TVEs. According to Oi (1999: 12), the term LSC

"was used primarily to highlight the workings of local government and the economy that it oversees as a corporation. . . . Local governments ran their firms as diversified corporations, redistributing profits and risks, and thereby allowing the rapid growth of rural industry with limited resources."

The essence of the corporate metaphor is that Chinese local governments are run like private corporations would be where individuals enjoy privately defined and legally enforced property rights. For instance, individual officials take bonuses from their state's tax revenue, just as shareholders in a capitalist economy receive dividends from joint stock companies. Manifesting the high levels of influence of the LSC approach are the many efforts to tweak or improve upon the theory.⁹¹ Three theoretical derivatives can be noted briefly: Jane Duckett's (1998) "entrepreneurial state" and Gore's (1998) "entrepreneurial bureaucrat".

Jane Duckett (1996, 1998) contends that local state agencies or departments respond to property rights reforms and devolution from the central state by becoming entrepreneurial. That is, they establish, manage and monitor businesses in order to take advantage of emerging market opportunities. Hence, China's stellar economic growth can be explained in great part by the emergence of local state component units acting as "entrepreneurial states." The entrepreneurial state "involves the individual, profit-seeking business activities of state bureau" (Duckett 1998: 12-13).⁹² The author quite

91. For a comparative review of LSC with other similar theories, see Shu-Yun Ma (2000). Review Article: "Understanding China's Reform: Looking beyond Neoclassical Explanations", *World Politics* 52 (4): 586-603.

92. The entrepreneurial state is characterized by the following major features: (i) individual state bureaus and their subordinate agencies are directly involved in business; (ii) bureaus establish

unjustifiably claims that this type of state "refer[s] to quite different distinct kinds of activity" than the local state corporatism model of Jean Oi.⁹³

Also unintentionally similar to the LSC is Lance Gore's (1998, 1999) theory on "bureaucratic entrepreneurialism." Gore's (1998: 13) central question asks, "What has motivated the dominant economic actors in the Chinese economy to generate such a long, sustained boom"? His answer is that China's sustained growth has been propelled by individual cadres who act as "bureaucratic entrepreneurs" in the context of "Market Communism." To Gore, the dominant economic actors in China's reform process are "bureaucratic entrepreneurs", primarily "leading cadres" of the localities, who are directly engaged in business activities aimed at promoting economic expansion (Gore 1998:5, 96-97). These bureaucrats initially garnered the devolved authority over the property rights to enterprises and land in their localities by the central state under fiscal decentralization. Oi's own LSC does not discount the role of individual officials or bureaucrats, each of which is incentivized by material gains to work toward their locality's development prospects. Although, Gore does expand the LSC to the city level of governance, as does Duckett (1998) and Whiting (2001).

new profit-seeking businesses, and are also risk-taking; (iii) the entrepreneurial state's adaptation to market reforms are potentially productive and not necessarily rent-seeking (Duckett 1998: 14-15, 155-60).

93. Specifically, Duckett (1998: 173-174) tries to distinguish between the LSC and the entrepreneurial state by suggesting that the former refers to the non-profit based co-coordinating activities, while the latter refers to actual state entrepreneurialism such as the running of businesses. This distinction hardly passes muster because both Oi's local states and Duckett's bureaus coordinate economic activities and run rural enterprises. One problem with Duckett's focus on the "red hat" cadres who run private businesses is the efforts of the central state to stamp out this practice in later years.

Susan Whiting (2001) also explores how property rights reforms particularly the recent shareholding experiments affect the growth-enhancing behaviour of local states in rural localities. Her theoretical contribution is to consider two sides of the equation of institutions and growth. Not only does she consider how property rights institutions induce local states to act in developmental ways, but also she follows up by examining how improved local economic performance induces novel institutional changes elsewhere such as at the centre state (e.g. tax reforms).

These variants of the LSC, in my view, end up making only minor adjustments to the initial theory by arguing, say, that local state agents are incentivized by political benefits (e.g. jobs, promotions, Party advancements) (Whiting 2001), or that bureaus or departments constitutive of local states act as the key agents rather than the local states (Duckett 1998), or that in fact the most entrepreneurial agents to study are the bureaucrats (Gore 1998). All told, these interesting accounts are variants on ideas already covered by Oi's LSC thesis, making her work a worthwhile exemplar in this section.

Recognizable in the LSC thesis is an overt challenge to the property rights orthodoxy.⁹⁴

In her work, Oi (1992) initially asks the question, how could China achieve economic growth without privatization? Her answer -- local state corporatism — emphasizes the

94. Oi's target, as with many of the LSC theorists noted here, is for some reason the "institution-less" neoclassical Economics (NCE) rather than the institution-based RCI developed by North (1990), Williamson (1975, 1985) and others. Attacking the older, traditional NCE turns out to be problematic for evidencing China to be an anomaly. For instance, Whiting's (2001) argument that China deviates from NCE because local states are incentivized by political gains as well as economic ones is correct, but this point is nothing new to RCI employed by New Political Economists.

active agency of local states as collective (non-individualist) actors in operating collective (non-private) TVEs. Comparatively, Oi (1999: 12) finds that the collective TVEs run by local states are equally or more efficient than privately owned and run corporations.

Two core concepts of the LSC approach are, first, the incentives influencing rational actors, and second, the wider context of fiscal decentralization in which these incentives were introduced by the central state. Economic growth in the rural economy has been catalyzed by the set of material incentives established by the central state leaders to inspire local states – qua states, or departments, or individual officials and bureaucrats -- to promote the development of their localities through the TVEs. Incentives are both economic (e.g. the right to keep after-tax profits of enterprises, higher salaries, or bonuses) and political (e.g. earning or keeping a job, Party advancement, and other perks and bonuses). Said otherwise, these incentives represent the property rights afforded to the local states, particularly the devolved authority over property rights to own, use, control, profit from and transfer assets like land, factories, capital, labour and the like. These rights were not absolute; for instance a proportion of land and enterprises remain owned by the central state on behalf of “the whole people”, and the central state could rein in local state power by recentralization of authority (e.g. 1994 tax reforms) or retrenchment of property rights reforms (e.g. after the 1989 Tiananmen Incident).

Essentially, the LSC argues that the prospect of earning and keeping personal and/or collective profits prompted the rational, “market-oriented agents” local state agents to act in developmental rather than predatory ways. They pursued ever more profit, reinvested

in the future growth of industrial enterprises, redistributed resources and allocated property rights in a way to keep their local citizens satisfied, and avoided the temptation to engage in short-term predation on property that is the blight, at least in theory, of collective property rights or participants in “the commons” (e.g. Hardin 1968). Incentives altered behaviours of rational, in much the same way as legally defined and enforced private property rights are theorized to spur profit-seeking and risk taking behaviour in capitalist economic system. The context of these incentives is the generally described as the “fiscal decentralization” (or fiscal contracting in reference to contract signed between local and centre states), indicating the new autonomy of the local states for the monetary well-being their own localities. Decentralization and devolution over property rights shifted power and authority over property rights reforms from the center to its local state agents.

In his exploration of the TVEs, political scientist Andrew Walder (1994, 1995) expands the LSC thesis by focusing on the notion of the “hard budget constraints” under fiscal decentralization that kept local states fiscally responsible in their approach to the TVEs. Along the same lines as the hard budget constraints, others have suggested that the local states are not so much induced by incentives as they are heeding “market discipline” (e.g. Lin et al., 1998; Nee 1996; Peng 2002 for reviews). Conversely, some analysts agree with Whiting (2001:12) suggest that not all TVEs were subject to the demands of the market discipline and the hard budget constraints.

Critics of the LSC tend to point to the overly sanguine treatment of the developmental local states, and to the problems of over-generalization based on selection bias. First, the

LSC and its variants tend to focus on the developmental – corporate, entrepreneurial – behaviours of the local states to the neglect of their predatory nature and the “agency problems” (i.e. principal-agent problems). Agency problems can lead to rent-seeking or state abuse of property rights where self-interested local states managers as “agents” harbour different objectives than self-interested state “owners” (central or local). And yet, local state agents and elites are commonly shown to be predatory as well, for instance, in expropriations of land or enterprise profits or in entire enterprises, and in attenuating property rights through a wide range of practices such as collecting unfair taxes or fees, renegeing on contracts, handing property rights to family and friends, ignoring the rights of workers or environmental regulations, among many others.⁹⁵ To demonstrate this lacuna, Oi’s positive take on the “corporate” or developmental role of the local states can be compared to the work by Susan Shirk (1993), in her seminal monograph *The Political Logic of Economic Reform in China*, who also examines in great detail the power and authority relations between the central and local states under decentralization and devolution. Shirk’s study on the “politics of market economy transition” argues that the decentralization of the fiscal and political nomenklatura systems in China during the 1980s led to the economic ills of overheating, inflation, price gouging, and the “balkanization” of the economy as evidenced by the (still) high levels of local protectionism.

95. For an overview of these problems, see the ten case studies in Oi and Walder (1999). The “sub-optimal” ambiguous property rights held by local states, elites, elite families, clans and the like are often considered to be the root of the corruption, nepotism and economic failings of the dynamically growing TVEs.

A second point is methodological. LSC accounts are prone to over-generalizations that suffer from the problem of selection bias. Steinfeld (1998: 237-41) levies this criticism against Oi's LSC by noting her focus on rural enterprises in southern regions where the TVEs have been more successful. Well-known regional disparities in China are downplayed, and the less vibrant TVEs of the inland or northern areas are not easily explained by the LSC as a generalizable theory grounded in universal assumptions about rational behaviour.⁹⁶

Prior to turning to the critical evaluation of the LSC and its ability to persuasively challenge the standard property rights theory by revealing China to be a theoretical anomaly, it is important to provide some more detail on decentralization and devolution.

Decentralization and Devolution in China

The evolution of property rights reforms affecting TVEs is rooted in the processes of decentralization, or what is often called "fiscal decentralization" and the devolution of decision-making authority over the property rights allocations and reforms to local states (or, local governments). More broadly, Peng (2002) suggests in his critical review of TVE theories that three pillars to apprehending China's market economy transition are decentralization of reform authority to the local states, privatization of the SOEs, and marketization (creation of markets for free economic exchange). Certainly, the complexity of China's political economy landscape and the dramatic institutional changes

96. Steinfeld's (1998) explanation for the variance is the hardness of budget constraints in each region. China's south receives fewer state subsidies than inland and the north, therefore making the local states of the south more self-reliant and better managers of TVEs. Thusly, it is budget constraints and the availability of cash rather than collective ownership that accounts for the different economic performance of TVEs across China, according to Steinfeld.

it has undergone require more than a discussion of the organizational reforms of the TVEs, SOEs and agricultural sector. Decentralization and privatization processes are a critical part of the complete story behind China's economic transformation. Moreover, the decentralization of governance decisions is considered as one of the most significant elements defining China's changing political economy (OECD 2005).⁹⁷

In terms of explanatory theory, decentralization is intrinsic to explorations of central-local relations that are deemed foundational to scholarship on the country's property rights transformation (Zheng 2005; See also Granick 1990). Within the China field empirical studies of property rights and other market economy reforms in the transition toward a form of capitalism concentrate on the interaction between the central state and local states (Oi and Walder (1999); Oi 1992, 1996, 1999; Whiting 2001; Gore 1998; Duckett 1998; Parris 1996; Huang 1996; Henriot and Lu (1996); Wank (1995: 55); Pearson (1994: 25). Yang 1994; Solinger (1993: 256); Shirk 1993; Yang 1989: 31). Some deem these interactions as political processes, but in fact they are treated under RCI as economic and cost-benefit relations, often as the tensions between the self-interested "principal" over its self-interested "agent."

Theoretical discussions of centre-local relations boil down to RCI-based explanations of China's economic growth – mostly driven by the TVEs – has occurred by the central state incentivizing local state agents through economic and political dis/incentives to act in developmental, as opposed to predatory, ways. Decentralized governance and the

97. OECD (2002). *Foreign Direct Investment in China: Challenges and Prospects for Regional Development*. Paris: OECD. Organization for Economic Cooperation and Development.

devolution of authoritative rights to allocate property (e.g. land or fixed assets like enterprises and factories) constitute the main incentives to local state officials and bureaucrats to personally profit from behaving responsibly. With regard to property rights theory, the core insight to glean from studies of local states' agency is that economic growth and development in China do not require legally defined and enforced private property rights.⁹⁸

Students of China's market economy transition say very little about political, policy and power structures underpinning the central and local states. While this is not the place to overcome this lacuna, a few comments on the foundational political structures should be supplied in the interest of comprehension and comprehensiveness.

Local states (or local governments) are the main agents in theories eliciting centre-local relations, the processes of decentralization and devolution that made possible the vital role of localities in promoting China's rising prosperity. The term "local states" will be used in reference to the sub-national governments at the county, township, village levels of governance, and sometimes including the city governments, and the provincial governments. Different theories/theorists focus on different governance levels. The Chinese state bureaucracy has six levels, which includes: various industrial ministries (e.g., Ministry of Energy), some of whose national authority over enterprises (except the

98. A contradictory, yet surprising view in light of the dominance of RCI theory, holds that the contemporary focus on central-local relations dangerously neglects market forces, economic interests and problems at stake in the study of property rights reforms. See Barbara Krug and Hans Henrichs (2004). "China Incorporated: Property Rights, Privatization, and the Emergence of a Private Business Sector in China.", p. 1.

large, strategic ones) has devolved during the reform era to regional governments; 29 provinces and four autonomous regions; city governance (at three administrative levels), 196 prefectural, and 371 county-level cities; 335 prefecture-level governments below the provinces; 2,166 county (*xian*) governments below the prefectures; and 48,000 townships (*xiangzhen*) at the lowest rung within the state apparatus. At the grassroots level there are numerous village (*cun*) committees outside the formal state despite performing governmental functions.

Local states at the provincial, city and county levels follow the form and function of the central state level. Relationships between the centre and local levels of government abide by the principle of “democratic centralism.” The principle generally stipulations that all levels of the local Party committees and government apparatus should submit to the centre.⁹⁹ With regard to the central state, its absence in the exploration of central-local state relations is highly notable in the China-specific literature.¹⁰⁰ Again, a complete disquisition on the central state structures is unnecessary for apprehension of the central-local relations and decentralization processes at the heart of China’s property rights reforms, but a few basics are worthwhile mentioning.¹⁰¹

99. More broadly, the principle of democratic centralism urges the minority should submit to the majority, the individual should submit to the organization, and the subordinate should submit to the higher authorities, and every organization or individual should submit to the Party centre.

100. The downplaying of the central state’s role, particularly its provision of macroeconomic stability, is noted in Zheng’s (2005) critical review of centre-local relations. See Zheng Yongnian (2005). “Institutional Economics and Central-Local Relations in China: Evolving Research,” *China: An International Journal* 3(2): 240-269.

101. Suffice to briefly take note of the broad contours of the fundamental power structure and principles of the Chinese central state. The paramount organ of state power is the Chinese Communist Party (CCP), the centre of which is subdivided into three import executive bodies, the Central Committee, the Politburo and the Secretariat. The CCP power structure comprises

It is useful to mention two interesting efforts to understand the nature, evolution and implication of the Chinese government and governance structure. Two models are noteworthy. One describes the Chinese state structure as a “fragmented authoritarianism” paradigm (Lieberthal and Lampton 1992), and another as a complex “polymorphous state” structure (Ho et al., 2005). Fragmented authoritarianism, a concept developed to understand political change in China in the 1990s, observes Chinese communist rule’s special approaches to administrative decentralization, under which administrative responsibilities are distinguished – fragmented -- between two types of authority relations that can influence property rights reforms. First, “leadership relations” (*lingdao guanxi*) occurring between a local administrative unit and its immediate “superior” are based upon binding orders and are called “leadership along a ‘line’” (*tiaoshang lingdao*). Second, “professional relations” (*yewu guanxi*) involve nonbinding relations with local governments at the same administrative level, or what the Chinese call “leadership across a ‘piece’” (*kuaishang lingdao*).¹⁰² As to the “complex, polymorphous state,” Ho et al., (2005) use this conceptualization to explain the institutional ambiguity of property rights

five elements: Party Congress; the Central Committee; the Politburo; the Secretariat and now two commissions for Discipline, Military Affairs. The Politburo (political bureau) at apex of the Party’s power structure, with its handful of standing members and 15-20 other members, makes the most important decisions for Party and country. Standing members comprise the General Secretary, the premier, the state president, the Chairpersons of the NPC and the advisory body called the Chinese People’s Political Consultative Conference. The highest organ of the CCP is the National Party Congress, which elects the party’s Central Committee, examines and approves the party’s policy and organization changes and amends the constitution.

102. For a discussion of the line and piece (“tiao” and “kuai”) notions of authority relations in China’s decentralized political system through a property rights perspective, see the section in Mertha (2006) entitled “Political” Property Rights: *Bianzhi* and *Rencaiwu*”, in Andrew C. Mertha (2006). “The Ubiquity and Fungibility of Property Rights in China”, Paper Prepared for the “Capitalism with Chinese Characteristics” Conference/Edited Volume, Indiana University, Bloomington, May 19, 2006.

over land and the attendant difficulty of the centre in controlling ongoing land expropriations by the local states.

This leaves us with the question of why the central paradigm of central-local state relations give short shrift to exploring the central state's role China's property rights transformation in the context of the market economy transition. Several possible reasons exist, and eliciting them is insightful to understanding the theory and how it differs between the China field and the non-area specific general property rights orthodoxy. Overall, the dearth of interest in the central state's role in the China field is one of the distinguishing features with the strong state-centrism articulated by the general property rights theory involving RCI theory and (ironically) the anti-statist NLGG development model. To wit, the rational central state is theorized to impose on society the most efficient property rights system in order to lead to individual and national prosperity (North 1981, 1990, 1994; North and Weingast 1989; Barzel 1989, 2007; Levi 1988).¹⁰³

Neglect of the central state's role might arise for several reasons, including: a simple desire to focus narrowly on the vital import of local states or local networks linking public with private sector actors; the purely economic interest of New Political Economy theorists employing RCI's economic methods to rather empty political processes; or the fact that China's market economy transition is not a "dual transition" that would also invoke democratization. On this latter point, some authors identify China's political

103. This is generally called the "resource-exchange theory" of property rights, indicating that the state earns its legitimate authority, loyalty, and tax revenues from merchants in exchange for promoting and protecting their property rights. For an in-depth review of this theory of the original emergence of property rights, and the state itself, see C. Mantzavinos (2002). *Individuals, Institutions and Markets*. Cambridge University Press, Chapter 8.

institutional stability during the reform years as a determining factor of its relative success over post-socialist transitional economies in Europe and Russia.¹⁰⁴

Counting among the critics of China's "single-track" economic reforms, devoid of much in the way of political reforms, are the World Bank and International Monetary Fund, both spearheading the NLGG development model and both of which are prohibited by their Articles of Agreement to privilege any political system. The NLGG development model places "democracy and voice" as the first among six clusters of good governance institutions acting as preconditions to capitalist market economy growth. China scores very low on this precondition to growth, as it does on the property rights/rule of law and other good governance institutions (See Appendix).

There are exceptions to the dearth of elicitation on the central state but often these discussions paint a rather negative picture of an "incompetent" or "weak" central state. For instance, in her book, *Weak State, Strong Networks*, Hongying Wang (2001) argues that the weak state is unable to hand market economy reforms due to its long-standing legal tradition and the contemporary problems in the economic rules guiding investment. Students of the "market preserving federalism" thesis (Montinola, Qian and Weingast

104. China's stable yet fragmented political structure compares favourably to the sudden dissolution of the state apparatus and attendant lawlessness occurring in Russia and Central and East Europe in the early 1990s (Smyth 1998: 242; Buroway 1996). Along similar lines, Harvard economist Dani Rodrik (2004) explains China's better economic performance over Russia to the former's policy and political stability, as opposed to the rule of law and property rights laws. See, Dani Rodrik (2004). "Getting Institutions Right." Available online at: http://www.wcfia.harvard.edu/sites/default/files/807_ifo-institutions%20article%20April%202004_.pdf

1995), and of “government competition” (Breton 1997; Zhou and Zhao 2002) demonstrate the central state’s inability to eliminate or control the intense “race-to-the-bottom” competition for resources amongst Chinese regions-- provinces, cities and counties — as well as between local states and private sector actors. Legal scholar Stanley Lubman (1995:5), in observing the “legal fragmentation” in China where local states can differentially interpret central state promulgated laws, suggests that these divergent views on rules engender conflicts amongst the state actors, and thereby enable economic actors to “play off one part of government over the other or conduct forum shopping for better, say, environmental regulations.”

From a standpoint of Political Science theory, these exemplary criticisms of the Chinese central state under fragmented state structure do make sense. Fragmentation of authority between central and sub-states is indicative of the centre’s reduced capacity and lower “relative autonomy” of the centre to fulfill its own interests and preferences vis a vis the economy and society (Skocpol 1985). However, the China case does not wholly fit this general theory and its dismissal of central state capacity. Against the corpus of central-local relations literature accentuating the role of local states in driving China’s economic transition and property rights reforms, I would suggest that a better balance needs to be made in articulating the admixture of economic (or fiscal) decentralization and political centralization. Not least, scholars of the local states are mute on the fact that the central state decided to undertake and maintain the reform modalities of decentralization and devolution in the first place.

The dominant approach to explaining centre-local relations, RCI theory, is unable to explain any actions of self-interested actors to yield their powers. Although it is rare to find a systematic examination on the question, one explanation offered by Jefferson and Rawski (2002: 7) is that:

“China’s governments possess neither the knowledge nor the power to organize th[e country’s] vast resources effectively”... and various economic difficulties “have persuaded growing numbers of Chinese economists and policy-makers that a decentralized, market-based approach offers the best prospect for unlocking the productivity potential of China’s industries.”

Evaluation of LSC Explanations

Local state corporatism and its close theoretical variants contend that China’s economic growth throughout the post-1978 market transition is anomalous to the standard property rights thinking (esp. neoclassical Economics). By virtue of the rational behaviour of local states in promoting the development and profitability of collectively-owned and operated township and village enterprises, the LSC demonstrates China’s credentials as an anomaly to the property rights orthodoxy. In a nutshell, the LSC shows that China has enjoyed “growth without privatization.” This set of theories emphasizing central-local state relations and the vital agency of the local state in driving economic growth is important by being perhaps the most provocative challenge to mainstream property rights analysis in the China-specific literature. However, the question addressed in this section is whether this provocation measures up. That is, does the LSC succeed in contesting the RCI orthodoxy and in demonstrating China’s exceptionalism to the idea that only private, defined and enforced property rights can produce market-oriented growth?

My answer is negative. The LSC faces the two problems that can be ascribed to the China-specific literature as a whole. First, it cannot adequately defy the RCI orthodoxy by adhering to the RCI concepts of rationality, efficiency, and transaction cost analysis. Second, the LSC fails to address counter-arguments resting on the recent developments in the Chinese political economy, such as the advent of TVE privatization in the mid-1990s. These main points are fleshed out in slightly more detail below.

The first problem is that the retention of RCI concepts, assumptions and axioms makes it very difficult for the LSC to refute the property rights orthodoxy that is itself based on RCI concepts. The nature of the agent involved in pursuing profit, efficiency and growth is perhaps the strongest collective challenge of the LSC and its variants (e.g. Duckett's (1998) "entrepreneurial state" or Gore's (1998) "entrepreneurial bureaucrat") to the applicability to China of the mainstream property rights theory. LSC theorists claim that the local state, as a political and collective agent, contrasts sharply with the axiomatic "economic" atomistic individuals examined by RCI and Economics. Moreover, in economic thinking the state is deemed to be predatory, not development or entrepreneurial as is the case in China, particularly in the rural economy overseen by the dynamics TVEs.

For students of RCI and New Political Economy, this is evidently an overly narrow and inaccurate image of the family of theories under RCI. It is true that traditional or purer approaches to the RCI, such as those employing micro-level game theoretical models (e.g. Knight 2001) (often where the individuals vie for the most efficient property rights

institutions), do emphasize the role of atomistic individuals. But much of the RCI focuses on states and politicians as rational self-interested actors. In fact, much of the general property rights theory is state-centric, as I noted at the top of this chapter.

The LSC theorists fail to distinguish political collective organizations like the state or individual departments from atomistic individual economic actors because both types of agents behave in similar ways and are motivated by similar interests, namely, self-interest and utility maximization. Within this context, there are more failed efforts to differentiate the local state actors from the orthodoxy by suggesting that they are motivated by political gains as opposed to economic ones (Whiting 2001), or by arguing that the objective of the local state is to increase gains for their individual departments (Duckett 1998: 13) or for the community at large as opposed to the state agents (Gore 1998). Unfortunately, none of these points are outside the ambit of the RCI's powerful concepts. That is, the RCI explores incentives that motivate efficiency- and profit-seeking behaviour if these are political or economic (both are material incentives), and the RCI could be used to explain the desire to increase gains for personal or for the community at large. In my view, I would find it difficult to even make the case that the political incentives such as Party promotion or better jobs are not also economic gains. Also difficult would be to claim that the motivation to increase community's growth is unrelated to the gains derived to the individual local official if s/he succeeds.

All in all, the LSC and its variants do not successfully present the Chinese case of developmental or entrepreneurial states as being deviant from the orthodoxy. The best

explanation seems to be that these theorists fail because they do not, in effect, refute the RCI as they claim to do with their minor tweaks. The power of the RCI's concepts of efficiency, rationality, and transaction cost calculations in the development of efficient and growth-enhancing institutions is unthwarted. By consequence, China is not exceptional. At root this is because the Chinese agents of institution building and economic development, even if they are local states, behave in the normal and universal ways that is expected by RCI theory.

The second main reason why the LSC-types of accounts fail in their aim to refute the property rights orthodoxy is linked more with the real-world reality than with theory. Developed to explain the rising economic power and contribution of the TVEs in the rural areas in the 1980s and 1990s, the study of developmental/corporate/entrepreneurial local states has not adequately addressed its challengers with competing perspectives based on the most recent developments in China. Among these perspectives is the Convergence School's highlighting of the predatory (corrupt, rent-seeking) behaviour that has led to the relative economic decline of the TVEs after their heyday years; the market transition theory (Nee 1992, 1996) and market discipline (Li et al., 1998) accounts holding that TVEs will disappear as they begin the process of privatization in a more marketized and mature capitalist economic system with more secure property rights. These represent two competing perspectives on China's contemporary situation that must be addressed by the LSC approaches lest they lose credibility through a gap between theory and reality.

Not accurately describing the reality in China is at the heart of the problem. To build its accuracy, the LSC would need to cease its over-generalizations of local states across China as being only developmental and address their predatory nature as well.¹⁰⁵ Part of the LSC refutation of the economic orthodoxy is to show that states are not predatory seekers of short-term gains as the theory expects. Neither side of the debate actual “wins” because both fail to accurately portray the local states individually or in total by relying on dichotomous treatment of state as either-or developmental or predatory. With regard to the TVEs’ privatization processes, the LSC’s effort to disconfirm the orthodoxy by arguing that China’s growth has occurred “without privatization” has become increasingly suspect as the local states have increasingly engaged in privatization since the mid-1990s. Not to mention that many of the TVEs were already privately-owned from the outset.

In sum, the LSC thesis and its variance is to be commended for enhancing our knowledge of China's reform process, but it has not succeeded in adequately establish China as a deviant case to standard property rights thinking set out by the RCI theory, and latterly, NLGG development policy. It could be argued that contrary to its aims, the LSC is confirming China to be a part of the universal norm by showing that its political and economic actors behave in the same way actors do across all time and all space.

Reinforcing this non-special, non-anomalous treatment of China’s rational decision-makers is the gap between the reality and the LSC theory that does not address such real

105. Perhaps more than other researchers, Gore (1998) more fairly represents the problems of corruption and inefficient that are associated with the local states, the local bureaucratic entrepreneurs have compartmentalized the economy and fueled “massive corruption.”

developments as privatization. Processes of privatization are also explicated by the RCI since it is argued to be undertaken by rational, efficiency-seeking political actors, primarily the local states (Liu, Pei and Woo 2006). In this way, ongoing privatization in China appears to threaten the viability of the LSC project, at least for the recent decade.

Finally, what is striking about the LSC, as well as the other theoretical efforts to demonstrate China's seeming anomalous growth despite private property rights regime discussed in what follows, is that theorists have so far neglect to point to the most evident elements of the Chinese anomaly, namely, its unique socio-cultural, legal and political institutional environment and the high levels of institutional ambiguity of the property rights that are not legally defined, enforced or privately assigned. These two elements are neglected because the RCI is a disembodied approach considering the cost-benefit calculus of rational actors operating in anomic milieu whose aim is to reduce the costly problems of ambiguity and uncertainty. Also notable is that the RCI is interested in the outcomes of property rights – behavioural changes, economic performance – and shows no interest in studying the (ambiguous) nature of these institutions *per se*. From this foregoing discussion, it would seem that to successful appeal to China's institutionally anomalous status the first step is to divorce it from the disembodied ontology of the RCI.

Explanation 2. Growth without Clarification of Property Rights: De Facto Privatization

Throughout the China-specific literature one finds diverse references to the concept of *de facto* privatization or *de facto* private property. For instance, *de facto* privatization describes the situation where “hard budget constraints” (versus soft budget constraints) are

present and spur SOE managers or local state owners of collective enterprises to behave in a financially responsible way. Or, the presence of inter-jurisdictional competition between provinces or localities for resource inputs like state or foreign investment capital is deemed to be a kind of de facto privatization that has engendered growth in these regions while also “locking in” the central state’s commitment to market economy reforms.¹⁰⁶ A third example, discussed earlier in the agricultural reforms section, concerns the state’s allocation of 30-year land leases for farmers who do not legally own the land. A raft of other examples of the use of de facto privatization exist. Many scholars speak of private property rights where collective actors, such as elite family clans in a given locality.¹⁰⁷ In these various examples, the outcomes of economic growth success, along with the developmental and growth-producing behaviour of the economic and political actors is deemed to replicate outcomes and behaviours in a capitalist market economy where secure private property rights system exists. The “as if” rational behaviour is sufficient to merit the appellation of *de facto* private property, despite the

106. This competition between regions is called “market preserving federalism.” See Qian, Y., and Roland, G. (1998). “Federalism and the Soft Budget Constraint. *American Economic Review*, 88(5): 1143–1162; Gabriella Montinola, Yingqi Qian, and Barry Weingast (1995). “Federalism, Chinese Style: The Political Basis for Economic Success in China,” *World Politics* 48 (1): 50-81.

¹⁰⁷ For de facto privatization concept used in land and agricultural reforms, see Gregory A. Ruff (1999). “Collective Enterprise and Property Rights in a Sichuan Village: The Rise and Decline of Managerial Corporatism,” in Jean C. Oi and Andrew G. Walder, eds., *Property Rights and Economic Reform in China*, Palo Alto: Stanford University Press, pp. 27-48; . Yia-Ling Liu, “Reform from Below: The private economy and local politics in the rural industrialization of Wenzhou,” *China Quarterly*, no 130, (1992): 293-316; Kate Xiao Zhou, *How the Farmers Changed China: Power of the People*, Boulder Colorado: Westview Press, 1996. For the de facto private property rights argument in the TVEs, see Huang (2008) *Capitalism with Chinese Characteristics*.

fact that *de jure*, no privatization or legally defined and enforced ownership rights exist.¹⁰⁸

Methodologically, the key point to keep in mind is that the *de facto* private property label is predicated on what RCI theory would see as positive outcomes, namely, efficiency-seeking behaviour and growth, and stems from a backward induction from these outcomes to show that some kind of tandem institutional arrangement paralleling a capitalist private property rights regime must exist. The logic is that if some kind of similar substitute to a private, secure and enforceable property rights did not exist, then growth would not have occurred in China. In this way, the theories explaining China's growth successes on the basis of *de facto* privatization cannot be said to be challenging the property rights orthodoxy; they seem to be confirming it, although through identifying some unique Chinese-styled institutional substitutes. Despite this lack of clarity, I envision the *de facto* property rights/privatization concept as a part of the project to disconfirm the applicability of the standard property rights theory. At minimum, the *de facto* forms of property rights are distinctive to the *de jure* private, legally defined and enforced property rights institutions that are presumed to be preconditions to capitalist economic development by the RCI and NLGG development model.

108. Another expression of *de facto* privatization focuses more on the ambiguous nature of actual property rights rather than on the developmental behaviours and outcomes. Here, the practice of *de jure* private enterprise owners registering officially as collective or public enterprises is called *de facto* privatization. For instance, Francis (1999: 226-7) asserts that “[a] growing proportion of China’s national resources have come under the effective control of individuals and non-state entities, despite their nominal classification as publicly or collectively owned, and are thus *de facto* private property.” This kind of hidden privatization in China not only renders official ownership statistics unreliable, but also indicates that the Chinese institutional environment is not amenable to private owners.

In what follows, I provide a brief description of the *de facto* privatization approach by eliciting one of the most frequently employed concepts and explanations for China's economic growth in the absence of *de jure* private property rights rules: hard budget constraints (HBC). Employing this concept, two respected authors, Andrew Walder (1995) and Edward Steinfeld (1998) furnish explanations for China's high and sustained growth gains thanks to the dynamism of two non-private property forms, respectively, the collectively-owned township and village enterprises (TVEs) and the state-owned enterprises (SOEs). A critical evaluation follows this, emphasizing why this approach does not attain its goal of demonstrating that China represents an anomaly to orthodox thinking on property rights in economic development.

Two Examples of Defacto Privatization Explanations

Long-time student of the SOEs, Edward Steinfeld (1998) advances a view of *de facto* privatization that emphasizes the beneficial role of HBC and close principal-agent relations between state owners and managers to explain the SOEs' three-decade long economic success. His approach is interesting because it contradicts much of the contemporary literature. Among other things, conventional wisdom suggests that the SOEs have stymied China economically, and that this is in large part because of the lack of HBC and precisely because of the close principal-agent relations. Also, Steinfeld's theoretically informed SOE case studies overtly counter the mainstream "property rights analysis", as he calls it, by advancing the argument that China's state sector has enjoyed positive performance without private or clearly defined property rules or relations.

Further yet, Steinfeld argues that efforts blindly seeking to privatize property relations in the state sector can be counter-productive under the conditions that have marked China's market economy transition experience.

Constraints are key to Steinfeld's theoretical argument in his self-claimed "constraints-based approach." Specifically, the hard budget constraints function as fiscal and financial constraints that engender profit- and efficiency-seeking behaviour of managers. HBC generally refer to the access to capital from the banking and financial system, which if excessive or poorly monitored can lead to the problems of "soft budget constraints" or subsidization leading to over-production and non-performing loans. It is not the public or private ownership that explains the variance SOEs' behaviour, but rather "firms' access to the banking and financial system shapes the degree to which economic actors engage in market-oriented behaviour (Steinfeld 1998: 47). In sum, the determining factor of enterprise behaviour is the degree of hardness of budget constraint rather than ownership, and thus "the imposition of hard budget constraints should be the prime goal of transitional reform" (Steinfeld 1998: 247).¹⁰⁹ The HBC are put in place by the state owners as "principals" who closely monitor and assist the private managerial "agents." The close principal-agent relations act as a *de facto* private property rights system of rules would in a capitalist market economy where formal-legal rights and arm's-length business-government relations are the norm. It is because of fuzzy separation between

109. Buroway (1996) argues that China's relative economic success and social stability over Russia's transition experience is due in large part to the harder budget constraints that were imposed by the central state. In Russia, the central state all but imploded, rendering it unable to conduct any monitoring. See Michael Buroway (1996). "The State and Economic Involution: Russia through a China Lens", *World Development* 24 (6): 1105-1117.

owners and managers that a privatization scheme might prove counter-productive to economic growth goals in the Chinese context, argues Steinfeld.

Steinfeld uses his constraints-based approach to criticize not only the standard property rights theory, but also the local state corporatism approach that dominates much of the Chinese-specific literature on property rights. Both approaches are faulted for neglecting the constraints on economic action while over-emphasizing the freedoms endowed on economic actors by legally secured property rights or simply by material incentives (e.g. via fiscal decentralization) to profit. In discussing how budgetary constraints are needed to inspire the SOE managers to spur efficiency and growth gains, Steinfeld (1998: 229) opines that "[b]ehavioral change is viewed not as a spontaneous response to new freedom but rather as a forced response to new pressures and strictures." Whereas his constraints-based approach calls for reforms that "clam[p] down" on wasteful, rent-seeking behaviour of SOE managers, the aim of standard property rights advocates is to "loose[n] up" of less constrained conduct under market conditions (Steinfeld 1998: 9). Legal rights or promises of material incentives to increase personal gains might inspire developmental behaviour, but it might just as plausibly inspire predatory and corrupt behaviour.

Critics would point out that the standard economic property rights theory is not purely about freedom of action devoid of constraints (e.g. Ma 2002). Property rights (as with other rights, such as human rights) intrinsically contain strictures for rights and obligations to act in non-predatory ways. For instance, one core Political Science paradox

involves exploring why and when the powerful central state actor both installs private property rights for its merchants and citizens, while also refraining from expropriating or attenuating these rights at will (e.g. Barzel 1989; North and Weingast 1989).

Another set of criticisms of Steinfeld's approach often rely on the work of economist Janos Kornai (1980, 1990, 1992), who has long expounded the conventional wisdom in theory and development policy on the necessary reforms for large-scale, public corporations in market economy transitions. Kornai argued that soft budget constraints and the principal-agent problem are the twin dilemmas of SOEs in any transitional economy. Soft budget constraints, or subsidization, occur when the public sector is inadequately separated from the private sector, leading to inefficient and politically based decisions.¹¹⁰ The principal-agent problem examines the strained relations, asymmetric information, and differential goals of similarly self-interested state owners and private managers.¹¹¹

Many critics of China's SOEs argue that their economic troubles, as well as the country's, are based the continuing soft budget constraints (e.g. due to easy capital access by SOEs to state-operated banks, or moral hazard problems), and the lack of sufficient monitoring of state principals over managerial agents (e.g. Jefferson and Rawski 2002; Lin, Cai, and Li (1998, 1999). Of course, it is to be expected by many scholars side with

110. For a general review, see Gary J. Miller (2005). "The Political Evolution of Principal-Agent Models", *Annual Review of Political Science* 8: 203–25.

111. According to Kornai (1980), "underperformance and resulting threat of lay-offs of workers often lead to 'soft budget syndrome', a situation in which costs are shifted from the enterprise and its managers or owners to the central state and taxpayers.

Steinfeld's more optimistic view of the SOEs.¹¹² In his nuanced review of the SOE reforms, (Peerenboom 2002: Chapter 5) argues that the neither of the key problems plaguing the SOEs, the SBC and the principal-agent problem of control over managers, has been resolved by the reform efforts of the past ten years involving privation and corporatization (i.e. selling shares). Moreover, even if there are HBC, the problems of predation or asset-stripping and corruption continue to exist in the state sector, and cannot be ignored if a complete picture of the Chinese reality is to be provided.

All this said, Steinfeld's work is important for its effort to provide a theoretically based explanation for the SOEs and their undeniable economic contributions to output, exports, employment, particularly in the first two decades of reform into the mid-1990s. Hard budget constraints and close principal-agent oversight relations, although not perfect, might reasonably explain the developmental behaviours of SOE managers in the form of *de facto* private property rights substitutes for non-extant *de jure* private and legally defined or secured property rights found in the context of capitalist market economies.

A kindred approach to Steinfeld's in the state sector is provided by political scientist Andrew Walder (1995, 1998) in the non-state or collective sector containing the township and village enterprises (TVEs). To explain why local state officials and bureaucrats, as collective actors, have managed to propel the rapid growth of the collectively owned and operated TVEs, Walder also uses the HBC concept to show that these collective agents

112. For instance, Groves, Hong, McMillan (1995) and Naughton (1995) find the property rights reforms to have improved managerial performance in China's SOEs by strengthening incentives to these managers whose appointment, retention are held by the firm's legal owners, the state.

were constrained to act in developmental and responsible ways within China's decentralized governance structure. In so doing, Walder endeavours to show that China's TVEs defy the property rights orthodoxy. In tandem with Oi's local state corporatism thesis, Walder (1995) stresses that the robust growth in the collective TVEs occurred without privatization or the clarification of private, formalized property rights. He argues that property reforms in China should not be equated with privatization; instead, the "clarification of property rights" in China's market economy and fiscal reforms have engendered growth while maintaining "public ownership" and in the absence of privatization. The concept of HBC, and in fact the entire context of fiscal decentralization that devolved property rights allocations from the central to the local states, together have created a situation of *de facto* privatization in China. Constraints as well as performance-enhancing incentives have inspired the self-interested local state agents to act as they were private managers in capitalist firms with legal secure private property rights.¹¹³

Walder (1995) uses the HBC concept as part of his exploration of the institutional and organizational factors that account for the observed superior productivity performance of TVEs vis à vis the SOEs. The TVEs have been increasingly productive and efficient due to HBC and by competing with each other for inputs and market opportunities.¹¹⁴, and in

113. The entire thesis of local state corporatism could fall under the rubric of *de facto* privatization because these collective actors – the state, or the bureaucracy or the community writ large – are the owners and operators of economically successful factories and firms. No consensus exists on whether to treat the TVEs as private (e.g. Huang 2008) or collective (e.g. Oi 1999; Walder 1995), and in the official statistics the TVEs in the "collective sector" are both. See Huang Yasheng (2008). *Capitalism with Chinese Characteristics: Entrepreneurship and the State*. Cambridge University Press.

114. Competition is also a common form of *de facto* privatization. Anderson, Young and Murrell (2000) who find that competition has been more significant than privatization for increasing large

fact the local states are more likely than central authorities to impose HBC due to the market and fiscal pressures.

HBC and the resultant fiscally responsible behaviour on the part of the TVEs have been stronger because of local states' financial self-reliance, their responsibility for the development of their localities, and their much more restricted access to capital from state-owned banks.¹¹⁵ Moreover, TVEs have faced fewer "agency problems" in line with the principal-agent dilemma, than the SOEs due to the more effective direct bureaucratic monitoring (Walder 1995) and more effective indirect market monitoring (Nee 1992). In sum, Walder argues that while there has been no privatization, there has nevertheless been a clarification of property rights in China through hard budget constraints faced by the TVEs.

Does the de facto privatization approach achieve its aim of challenging the property rights economic orthodoxy and, consequently, of presenting China as an anomaly to this standard theory? My answer is no, it does not. Perhaps one of the principal problems with this perspective is that it betrays confusion over whether or not scholars are intent on

firms' efficiency in post-socialist economies such as Mongolia. See James H. Anderson, Lee Young, and Peter Murrell (2000). "Competition and Privatization amidst Weak Institutions: Evidence from Mongolia," *Economic Inquiry* 38(4): 527-549, and Jean Oi and Andrew Walder (eds.) (1999). *Property Rights and Economic Reform in China*. Stanford CA: Stanford University Press.

115. Walder (1995) conceives of the China's official distinction between "state owned" and "collective" not an ownership distinction but one signaling different privileges of social actors in China's political economy. HBC have been stronger for the less privileged social status of collective enterprises, and have been still stronger for the least privileged social actors in the socialist market economy, the private sector entrepreneurs. See also Nee (1992).

challenging the applicability of the RCI theory to China's case of a successful market economy transition, or saving the theory. To wit, many scholars conceive of the concepts such as the hard budget constraints or close principal-agent relations, along wide range of other examples of de facto privatization (noted above) as proxies to clearly-defined, enforced private property rights institutions. It seems a strange strategy to provide a proxy variable to a theory when the intention is to criticize that same theory. The end result is that proxy, say the HBC, acts as a mere institutional alternative to private property rights while the logic of theory remains intact.¹¹⁶

This is not much of a theoretical criticism, nor does it depict China as much of an anomaly. At best, the proxy HBC (principal-agent relations, 30-year land leases) concept can show that China has developed unique institutions to substitute for private property rights but that the country and its actors fall under universally generalizable and convergent logic of rational economic action. As I will later note, the same problem exists for those who wish to reproach economic theory of property rights by using China's social networks as informal alternatives to the absent formal-legal property laws. Also, on the general issue of confusion, Putterman (1996, 1997) suggests authors should refrain from treating principal-agent (owner-manager) relations as *de facto* privatization because it is confusing and inaccurately compares China's fuzzy property rights of control, profit, transfer between managers and owners to capitalist situations where

116. This is common also outside the China field. For instance, economic sociologist Dag McLeod (2004) uses hard budget constraints as a proxy for private property rights in his model devised on the empirical basis of Mexico's privatization processes in the context of neoliberal policy ideology. See Dag MacLeod (2004). *Downsizing the State: Privatization and the Limits of Neoliberal Reform in Mexico*. Pennsylvania: University Park Press.

managers are free from restrictions other than increasing short-term profits. A second and more problematic weakness of the *de facto* privatization approach is that by retaining the internal logic of conventional property rights theory, an accurate depiction of China's institutional structures is missing. This problem is revealed in at least three ways. First, in its proxy status, the HBC, for instance, is used to show that an alternative institution provides the clearly defined and enforced rules and relations that can, in the absence of private property laws, ensure rational actor will behave rationally. In China, however, there exists no such thing as clearly defined and enforced rules or relations. To hold HBC, or principal-agent relations, or 30-year land leases up to this standard is questionable in its own right; one would be hard-pressed to suggest that all SOEs or all local states are sufficiently restricted by the HBC to not act in a self-seeking, or rent-seeking way. The reason for this is that there are no legally or formally defined and enforceable laws.

A second manifestation of the inaccurate depiction of the Chinese institutional reality stems from the *de facto* privatization school's over-stated claims, such as China's "growth without privatization" or "growth without clarification" of property rights. (See above). As early as the 1980s there have been perceptible shifts toward privatization in the manufacturing sector, which have gained movement from the late 1990s. Moreover, the collective sector of TVEs has always included privately owned companies. As to the clarification of property rights, hundreds of laws and policies have been formalized, often as constitutional amendments, in the past decades. Provision of blanket and clearly

exaggerated claims about growth without privatization/clarification in China are empirically inaccurate and enfeeble the theories to which they belong.

Finally, a complete and complex picture of the Chinese market economy transition cannot be provided by theoretical works that focus on such binomials as predatory or developmental behaviour, or privation or no-privatization, or growth or stagnancy. That these dichotomous arguments pervade the literature is understandable because of the tangible division of scholars who seek to confirm or infirm the Property Rights Thesis. As a causal argument about which types of property rights institutions can cause growth and development, scholars need to array themselves along battle lines that argue for growth or stagnancy, say, with no room for a gray zone. Unfortunately, China's property rights regime and its socialist market are precisely that, a gray zone, a reality that at least has been recognized by several scholars (e.g. Fan 1996; Li 1996).

Explanation 3. Growth with Informal Alternatives to Formal Property Rights

The third major explanatory approach examines how China's pervasive informal institutions, particularly social norms and social networks, can explain the country's apparently anomalous economic success in the absence a formal-legal private property rights system. This approach, labeled here the "informal institutional alternatives" approach, generally proposes that social norms and networks are vital, albeit transitory, institutional alternatives to the formal(ized), legally binding, and enforceable property rights institutions that are expected by the property rights orthodoxy in RCI theory and NLGG development policy. China field theorists tend to argue that the economic vitality of these informal institutions stems from their quality of being "comparatively efficient"

(Wank 1999), that is, transaction cost reducing, compared to the ideal-typical formal-legal institutions of a mature capitalist market economy. [fn] Based on this sub-optimal level of efficiency, however, rational efficiency- and growth-seeking actors will eventually replace the networks and norms for the more efficient privately assigned and legally enforced property rights rules (e.g. Wank 1999; Nee 1992). Such a private property rights regime and buoyant private sector would no longer need the networks of social and political ties nor the state's intervention, two elements of the proposed "phasing out thesis" of the state (e.g. Cao and Nee 1998; Qian 2000; Pearson 1997).

In the absence of formal-legal guarantees by the state's "credible commitments" of secured private property rights, China's domestic economic actors are forced to construct network relations and communicative ties, while relying on social norms enforced by first-party (i.e. self) and second-party (i.e. community) enforcement mechanisms. This same logic applies to foreign investors and businesses (e.g. Wang 2001), actors who are, unfortunately, largely missing from most treatments of China's market economy transition. Acting as the alternative to or substitutes for the yet inchoate formal, property and contract laws, informal institutions have enabled China's private sector enterprisers and entrepreneurs to survive and to thrive, at least those who manage to gain access to networks.

The general theme being articulated by this China-specific sub-literature examining social networks and norms expresses the importance of informal institutions act as substitutes to existing formal institutions (Hu 1998; Nee and Ingram 1998; Oi and Walder

1999; Wang 2000; Li 96; Wank 1996, 1999; 2001). It is useful, however, to focus on two well-known exemplars in order to elicit in more detail insights developed by the relevant works. On social norms, Weitzman and Xu's (1994) discussion of communities (as opposed to local states) successful operations of the dynamic TVEs can be explained by social norms of trust and cooperation; and on social networks, Wank's works has demonstrated the critical material important of clientelist networks ties to the individual private businesses, local state agents, and to the economy writ large. Despite the sociologically orientation of these studies on social dimensions of economic action, these exemplars highlight the tendency in the China-specific literature to employ RCI's concepts of rationality, efficiency and transaction cost analysis.

Exemplars

In their game theoretical analysis, Weitzman and Xu (1994) argue that social norms of cooperation and trust within a local community can explain the success of the fast-growing collective TVEs. The authors famously describe the TVEs in legal terms as being legally "vaguely defined cooperatives," a conception that stresses the ambiguity of these forms and the lack of clearly defined legal property rights. Rather than laws, the economic exchanges through these "vaguely defined" enterprise forms have been effectively defined and enforced by the social norms constructed by the community. Shared norms of trust and cooperation, as well as authority relations rooted in traditional kinship and community institutions offer substitutes to the missing or under-developed formal rules over property. As substitutes for formal institutions, the norms, values and practices embedded in the local culture enable economic growth and developmental behaviour in two ways.

First, they provide the stable expectations about appropriate economic behaviour in economic exchanges (Che and Qian 1997; Lin 1995). Second, the norms inspire efficient, developmental behaviour social sanctioning mechanisms such as ostracism, shame, and loss of reputation (Etzioni 2000; Nooteboom 1996; Coleman 1990). Compliance with social norms mirrors the compliance with formal laws; both are explained by the rational actors' rational calculus of the costs incurred by being caught for non-compliance or "cheating."

Several other authors inspired by the work of Weitzman and Xu (1994) have proposed similar explanations for how social norms enable communities to effectively run the TVEs (Che and Qian 1997; Taube 2002). These approaches can be labelled "the community is the firm", and are notable for shifting the analytic focus from the rational actions of local states seeking individual and collective gains (i.e. local state corporatism) toward a focus on the shared cultural norms of trust and cooperation that guide communities to act in rational ways as they would under a private property rights regime. Critics suggest that Che and Qian's (1997) "community is the firm" thesis serves as an important corrective to the view from local state corporatism's tendency to overstate the capacity of the local state to enforce entrepreneurial behaviour of TVE managers and owners. These authors themselves overstate the capacity of the community denizens to manage and benefit from TVEs (e.g. Peng 2002).¹¹⁷

117 Peng (2002:1365) is not alone in suggesting that local states tend to assume more power over the control and profit rights, and that the nominal ownership of TVEs by all the community residents is "much too diffuse to exercise any monitoring function or to directly benefit from township industries—besides through public facilities and better employment opportunities." See

In the exploration of China's critically important social networks (or, business networks)¹¹⁸, David Wank's (1995a,b; 1997, 1999, 2001) oeuvre is commonly cited.¹¹⁹ Wank reveals that social(ized) individual actors in China, with particular reference to the private entrepreneurs and enterprises in the non-state sector – the TVES— construct vertical and horizontal networks in response to their uncertain and risky institutional environmental reality. In short, networks are an institutional response to an inadequate

Yusheng Peng (2001). "Chinese Villages and Townships as Industrial Corporations: Ownership, Governance and Market Discipline", *American Journal of Sociology* 106 (5): 1338-70.

118. While social networks and business networks are often used synonymously, the latter constitutes a separate literature typically associated with business and management studies, and too infrequently contemplated by Political Science or other social sciences. Recent studies show that the formation of business networks is closely related to institutional change in transition economies (Aguilera 1998; Wong 1996); that these business networks are vital for economic reasons (Park and Luo 2001; Peng and Luo 2000; Boisot and Child 1996; Peng and Heath 1996; Xin and Pearce 1996); and that they reveal the "variety of capitalisms" that tend to institutionally distinguish Asia, or China, from the West and, therefore challenges the thesis of global capitalist institutional convergence (Redding and Witt 2009; Aguilera 1998; Davis and Mizruchi 1999; Gerlach 1992). Aguilera, R. V. 1998. Directorship interlocks in comparative perspective: The case of Spain. *European Sociological Review*, 14(4): 319–342; Wong, G. 1996. Business groups in a dynamic environment, Hong Kong 1976–1986. In G. Hamilton (Ed.). *Asian business networks*: 87–114. New York: de Gruyter.

119. Wank's works theorizing on the economic viability of network alliances draws from his fieldwork (1988-1995) in Xiamen city, a free-trade zone in Southeast China's Fujian province. See David L. Wank (1995). "Private Business, Bureaucracy, and Political Alliance in a Chinese City, *The Australian Journal of Chinese Affairs* 33: 55-71; David Wank (1995). "Bureaucratic patronage and private business: changing networks of power in urban China." In A. G. Walder (Ed.), *The Waning of the Communist State: Economic Origins of Political Decline in China and Hungary*. Berkeley: University of California Press, pp. 153-83; David L. Wank (1997). "The Institutional Process of Market Clientelism: Guanxi and Private Business in a South China City," *China Quarterly* 147; David L. Wank (1999). "Producing property rights: strategies, networks, and efficiency in urban China's nonstate firms." In Jean. C. Oi, and Andrew. G. Walder (Eds.), *Property Rights and Economic Reform in China*. Stanford: Stanford University Press, pp. 248-272; David L. Wank (1999). *Commodifying Communism: Business, Trust, and Politics in a Chinese City*. New York: Cambridge University Press, at pp. 225-31. David Wank (2001). *Private Business, Bureaucracy, and Political Alliances*.

legal framework that does not clearly define, enforced and protect private property rights (Wank 1996, 1999; Boisot and Child 1996; Li 1996).

Not all scholars agree that particularistic networks act as a good substitute for a formal legal system. Selecting business partners based on personal trust instead of market conditions discriminates against new entrants and reduces the number of partners (Hendley 1997:243; Kali 2001: 223), and can negatively skew inward foreign direct investment in ways that diminish efficiency by offering property rights (e.g. the right to set up factories, or raise capital) to less-than-highest-value uses (e.g. Wang 2001).

In the uncertain and often unfriendly institutional environment of a market economy in transition from a socialist command economy “business is largely about the forging and enhancing of supportive ties with others” (Wank 1999: 253). By viewing the building of networks as a response to the institutional environment, Wank employs one of the core insights from Sociological Institutionalism, the embeddedness of economic actors in their social environment. By viewing the networks as strategies by which embedded yet rational actors are able to pursue wealth, Wank’s work endeavours to find a middle ground between the purer RCI perspectives, where rational actors supposedly operate in a theoretically anomic (norm-less) environment, and the “traditional cultural approach” that does not focus on the instrumentalist economic and efficiency gains of networks and social connections (*guanxi*). I argue below that Wank’s synthesis project fails to adequately to provide a middle ground, and instead perpetuates the dominance of the RCI

paradigm and its concepts of rationality and efficiency. Consequently, China's market economy experience is universalizable, not anomalous.

Networks represent organizational "strategies" employed by private sector actors in order to operate in China's uncertain and difficult institutional environment. There are two main types of strategy: a bottom-up strategy where entrepreneurs "holding no formal office in government ...strive to develop connections with officialdom" (1999: 225) and a top-down strategy where officials "use the power of their positions to enhance their connections" (1999: 253). Both strategies establish networks for the purpose of increasing private gain, be that the gain of the local states or the private sector actors. In this way, clientelist networks are mutually beneficial for both parties, the public and the private sector actors. Specifically, local state agents, as official cadres or bureaucrats, gain materially from the networks because they are offered private company stocks, board membership, and an array of gifts or bribes (corruption by some standards). By assisting in economic growth in their localities, the local state agents also earn higher incomes, bonuses and promotions within the Party (See also Oi 1999; Whiting 2001).¹²⁰ Local states offer a crucial helping hand to innumerable private businesses, assisting with their establishment and maintenance (Krug and Hans 2004; Tsai 2002; Unger and Chan 1999), while also sharing in the profits (Francis 1999; Li 1996).

120 For instance, a 2004 questionnaire of 240 local officials reveals that the most important factor to determine their prospects for promotion was guanxi -- connections or networks-- , with local economic performance ranked as the second most important factor. See, *The Twenty-first Century Economic Herald*, September 13, 2004. Cited in Liu, Pei and Woo (2006: ff12). Guy S. Liu, Pei Sun, Wing Thye Woo (2006). "The Political Economy of Chinese-Style Privatization: Motives and Constraints," *World Development* 34 (12): 2016–2033.

As to the private sector actors, they are willing to give up ownership shares and possibly control rights in their formerly private enterprises in order to gain relative security of property rights and resource allocations from the local state officials and bureaucrats. Economist David Li's (1996) oft-cited "theory of ambiguous property rights" uses a game theory model to demonstrate the material gains and property rights protections garnered by private sector actors who decide to build networks and to sell ownership shares to the local states. By arguing that the networks are efficient and growth-enhancing strategies on the part of rational actors, Wank and Li defy the standard economic theory, and the Convergence School, wherein such informal institutional innovations are inefficient.

One interesting point made by Wank is that by offering ownership shares, directorships and the like to the local states, China's private entrepreneurs are using social and communicative network ties to cultivate "symbiotic clientelism" as distinctive from the more generally known cases of patronage systems or neo-patrimonial systems in other developing countries (Gambetta 1993). According to Wank (1999), network ties built between the local state agents and the private sector actors have created "cadre entrepreneurs" operating in a new "neo-mercantilist corporatism." This makes China's growth-enhancing networks and partnerships between the local states and economic actors rather unique to China.

While Wank and others focus on the vertical network relations and their attendant social connections – or *guanxi* – ¹²¹ between the private and the public sector actors, another sub-literature on China's economic transformation pays attention to the horizontal relations amongst networks, family, friends, and business associates. Guanxi relations are often treated conterminously with networks, which is a convention I follow here.¹²²

Guanxi is often described as a core element of Chinese economic behaviour (Bian 2001; Wank 1996), although scholars differ in their focus on whether these close ties are indicative of rational cost-benefit thinking or deeper, social routines, habits and preferences to fulfill social obligations. These studies commonly suggest that "culture" qua *guanxi* relations will have to be included in any attempt to explain overall institutional change in China's market economy transition. The tendency in studies of China's market economy transition, however, is to treat the *guanxi* as a kind of "social capital" that matters only insofar as these relations provide economic advantages to market players. For instance, recent studies in business studies confirm that the *guanxi*

121 The notion of "guanxi" means social relations built on "pre-existing relationships of classmates, people from the same native-place, relatives, superior or subordinate in the same workplace and so forth," (Yang 1988: 411), or when they clarify other components governing such relationships, such as trust, "face" or moral obligations (Smart 1993).

122. Because *guanxi* relations predominantly operate within network structures as well, I see no need to review this sub-literature here, particularly the culturalist approaches to *guanxi* that are more concerned with typologies and eliciting the ascriptive ties, trust relations, emotion bonds and moral obligations characterizing networks and *guanxi*. A short list of cultural, anthropological studies and psychological studies claiming that culture is the single most crucial factor in explaining the emergence of new institutions and organizational forms such as networks, associations, or firms and property relations, see Bian 2001; Wank 1999, 2001; 1996; Redding 1996;; Tsang 1998; Carney 1998; Davies et. al. 1995; Xin and Pearce 1996; Xu 1994 Boisot and Child 1988; Hamilton and Biggart 1988).

and networks have been found to exert significant influence on domestic business (Park and Luo 2001; Peng and Heath 1996; Peng and Luo 2000; Xin and Pearce 1996).¹²³

In the perspective of theory, the social capital viewpoint ensures that an economic rationale for the cooperative *guanxi* and networks subordinates cultural aspects of *guanxi* like shared values and meanings, moral obligation or the logic of appropriate behaviour. A counter-argument to this is that cultural rationales subordinate the economic importance of the *guanxi* to the individuals who use these ascriptive ties to get ahead in the marketplace.¹²⁴ Further, from a theory standpoint, where *guanxi* and networks are viewed as social capital, as is the case of Wank and many others in this sub-field, these informal institutions are exogenous factors used to explain the rational behaviour of Chinese actors – and all actors universally – in their economic activities. (Davies et. al. 1995; Kiong and Kee 1998; Park and Luo 2001; Xin and Pearce 1996). Thusly, even the existence of a seemingly distinct form of “network” or “relational” capitalism in China would not make this case divergent from the expectations in the RCI orthodoxy.

In sum, social norms, social networks and *guanxi* are factors used to explain China’s puzzling economic growth trajectory over three decades of reform in the absence of a

123. H. S. Park and Y. Luo (2001). “*Guanxi* and organizational dynamics: Organizational networking in Chinese firms.” *Strategic Management Journal*, 22(5): 455–477; L. Keister (1999). “Commodifying communism: Business, trust, and politics in a Chinese city.” *Contemporary Sociology*, 28(6): 684–685; M. W. Peng and P. S. Heath (1996). “The growth of the firm in planned economies in transition: Institutions, organizations, and strategic choice.” *Academy of Management Review*, 21(2): 492–528.

124 For instance, Smart (1993: 404) suggests from the culturalist vantage point that the interplay between *guanxi* and economic exchange can be described by saying that *guanxi* “acknowledges the legitimacy both of seeking the accomplishment of instrumental aims through friends and of building relationships through mutual support and exchange, so long as the instrumental use is subordinate to the cultivation of the relationship.”

formal-legal property rights regime. Informal institutions are typically examined in Sociological Institutionalism, and ignored by RCI, although in the China-specific literature informal institutions are explored as relatively efficient, albeit transitory, institutions that can effectuate individual and collective wealth gains for private and public sector actors whilst the formal, legally granted private property rights institutions can be installed by rational actors. Actors embedded in an uncertain, often hostile institutional environment for businesses have cooperated to create community firms run efficiently by shared social norms and values or to create networks, all for the purpose of reducing transaction costs and opportunities for rent-seeking and predation.

The question to ask in this critical evaluation of the “informal alternatives to formal institutions” approach is whether or not this explanation can persuasively make the case for China’s anomalous economic success and its divergent political economy structure. The answer has implications for the applicability of the RCI to the Chinese case and the feasibility of its institutional convergence (or market transitions) thesis holding that China is slowly yet ineluctably marching toward a “normal” capitalist market economy with a formalized legal system, rule of law society, and private property rights regime.

Evaluation

The “informal alternatives” approach explains China’s exceptionalism to the standard property rights theory by demonstrating that a complex of informal institutions are responsible for China’s capacity to attain high and prolonged growth in the absence of legally formalized and enforceable property rights and a weak legal system. How well does this approach portray China as a theoretical and empirical anomaly to the property

rights orthodoxy? I believe that this informal institutional alternatives approach garners a mixed assessment.

Undeniably, this approach important contributions to a more holistic study of China's political economy by introducing the network structures and social norms that exist in all institutional environments. These informal institutions are essentially absent from the other two explanatory approaches, local state corporatism the de facto privatization school, with their focus on state and non-state enterprise. No study of China's market economy transition or property rights reforms can be complete without reference to the informal institutions, and relations of trust, cooperation and shared goals, that compose the institutional environment encompassing social(ized) actors.

This point brings us to the problem of the informal institutional alternatives perspective, which overall is grounded in its inability to portray China's case accurately or with the realistic complexity it deserves. Unlike the China-specific literature, economic institutionalists of the general property rights theory have long recognized that both formal and informal institutions compose a country's political economy and its institutional environment (e.g. North 1990, 1994; Pejovitch 1997). In fact, the inclusion of "culture" or "ideology" or "shared mental models" is one of the major advancements North has made in his theory of institutional evolution. To suggest that informal institutions are "alternatives" or "substitutes" for absent formal rules in China is complete exaggeration. By focusing attention on only the informal institutions like networks, this approach not only provides a partial exploration of the institutional environment, but also

denies the reality of the vast number of economic laws – i.e. of property, contract, company, bankruptcy, labour – that have been enacted over the market economy transition as well as downplaying other enhancements to the legal infrastructure and the security of property rights rules. In addition to being empirically inaccurate, the separation of formal and informal institutions in China's, and any, political economy is ontologically flawed; no formal or informal institution can be acted upon, say, for economic gain, without first providing social and cognitive meanings to the given institutions.¹²⁵ In sum, the effort to examine the plethora of clientelistic networks is commendable for its more realistic depiction of China's political economy landscape; the near exclusive focus on informal institutions is itself exaggerated and partial. The ontological segregation of formal and informal institutions introduces an unnecessary and unrealistic dichotomy, and can only be overcome by a study of both the very real prevailing formal and informal institutions.

Another element of the failure of the informal institutional alternatives school to accurately describe the reality of China's property rights regime concerns the faulty claims that social norms and networks act as functional equivalents to absent formal institutions. Weitzman and Xu (1994), among others, argue that the social norms, values, and practices shared by communities provide well-defined and enforced property rights equivalents. The problem is that China does not have such well-defined and enforced

125. Wank (1999) tries to temper his generally RCI account of networks by defining property rights and other institutions as “the cognitive categories and social norms that construct relationships” (Wank 1999: ff 5). But, the networks are conceived as the creation of rational, individual, efficiency- and profit-seeking actors, with little mention of the cognitive-cultural dimensions of these structures.

property rights rules, informal or informal. Instead, rights to own, control, profit from and transfer assets are not well clarified or consistently enforced, and are open to negotiations and leveraging at the whim of political actors.

Perhaps more accurately, Francis (1999) demonstrates this reality of ambiguous property rights rules in her study of the incessant “bargaining for property rights” occurring between private owners and state managers of high-technology spin-off companies. Or, Li’s (1999) “theory of ambiguous property rights” discusses the continuous threat of local state attenuation of property rights by tax policy or fees or other changes to contractual agreements. A better depiction of the China’s property rights regime appears to be its inherent institutional anomaly, and not the notion that informal institutions provide alternative yet equally defined, enforced (by self or society), well-known and constant rules to guide behavior in the Chinese economic system. If this were the case, then the diversity of property right forms within and across localities in China (e.g. Mertha 2006; Oi and Walder 1999) would not be so readily in evidence.

The informal alternatives approach does possess the potential to expose China as a deviant case to the theoretical orthodoxy and as an empirically divergent capitalist economy to the Liberal democratic norm lauded by the RCI theory, NLGG development model, and the Convergence School. This potential has not been attained, in my view, because the approach and its adherents have not overcome the power of the RCI in their efforts to synthesize the RCI with the insights from the New Institutionalism in Sociology and Organizational Theory (NISO). NISO insights like the embeddedness of actors in

institutional environment remain anemic. The inability to avoid subjugation by the RCI and its powerful concepts of rationality, efficiency and transaction cost analyses, is unsurprising, since most efforts at synthesis between the RCI and NISO or with Historical Institutionalism end up failing.¹²⁶

Exemplifying the hegemony of RCI, Wank's study of networks argues that these are strategies by rational individuals, political and economic, to increase their material and political gains. This is not a problematic account of the networks, but it simply does not present the case that China and its political economy actors are in any way unique. This point is driven home by Wank's assessment of the inevitable demise of the networks. First, the networks are defined by Wank as being "comparatively efficient"¹²⁷ in the special conditions under which China's market economy and legal infrastructure are undeveloped, leading to high transaction costs for fledgling private sectors actors. Notably, Wank's idea does present a valuable theoretic challenge to the RCI purists who argue that informal institutions are inefficient, but, as "comparatively efficient" or relatively inefficient institutions, RCI predicts that rational actors will replace these informal institutions with more efficient formal ones.¹²⁸ Wank and many others argue

126 To wit, Bates et al.,'s (1998) "analytic narratives" essentially probe history to find preconstituted rational explanation for behaviour. Any trenchant influence on behaviour by social, cognitive, or cultural factors for human action are subsumed by cost-benefit analysis.

127. That is, network strategies "are efficient because they stimulate commercial activity that would otherwise not occur" Wank (1999: 260). By comparison to the more ideal-typical capitalist market economies, where the private property rights systems exist, the networks are inefficient and, consequently, represent impediments to the development of these more efficient legal institutions and to growth (Nee 1992, 1996).

128. In standard RCI the informal alternatives to formal law and legal procedures are deemed inefficient because they place costs upon the economic actors, and highly unpredictable compare to the formal-legal laws. Only a few scholars have recognized the high costs to the

that the changes in China's institutional environment since the 1990s, particularly with regard to the processes of privatization, marketization and better property rights protections, will see the eventual disappearance of clientelist networks and simultaneous the economic retreat – or “phasing out” -- of the state.¹²⁹ Of course, these speculations about the future are based on deductive RCI assumptions about the desire of China's rational actors for western Liberal institutions, and assumption that only these western property rights institutions are efficient and growth producing.

Finally, it is worthwhile commenting that another literature often outside the sights of social scientists, the business networks literature, might be more advanced in its exploration of China as a unique and divergent “variety of capitalism” (e.g. Redding and Witt 2009). Scholars examining the contours of Chinese and Asian forms of “network capitalism” or “relational capitalism” (Hamilton 1991) are more inclined than the scholarship described in this section to argue that China's economic institutions are divergent from western (Liberal and Coordinated) “varieties of capitalism” (Soskice and

implementation of formal laws and procedural systems when these do not fit the prevailing cultural and societal preferences. (Weber 1919; Cooter 2001).

129. The mechanisms by which the networks and the state will be “phased-out” vary according to different theories. For instance: rational actors will begin to demand private property rights and the rule of law (i.e. impartial laws over discretionary state decisions) from the state (Nee 1989; 1992; Pearson 1997; Peerenboom 2002: Chapter 5); the rise of marketization, the private sector, and regional competition will considerably reduce the resources under state control (Nee 1992; Wong 1992; Krug 2002; Montinola, Y.Y. Qian and B.R. Weingast 1995; Qian and Weingast 1997); or the slow but steady processes of enterprise ownership diversification and experiments with different modes of property rights governance will increase the strength of private property rights and lead to the competition for allocation of resources to their best, most efficient uses (Cao and Nee 1998; Qian 2000).

Hall 2001; cf. Sachs and Woo 1997).¹³⁰ Differing from the western market system and its “contractual relations” (e.g. written, legal contracts, formalized property rights), the networks of the emergent Chinese capitalism emphasize relational contracts. China’s system of network capitalism “works through the implicit and fluid dynamic of relationships” (Boxiot and Child 1996: 625; Keister 1999) as well as through long-term trust relationships and aspects of social obligation and belongingness that might be more important “preferences” than economic gain.¹³¹

Insofar as China is developing a system of network capitalism, where network and guanxi relations stand as the main governance mechanisms, then this would pose a threat to RCI and NLGG predictions that economic actors will need to eventually rely on “contractual relations” developed through legal contracts, the court system, and property rights.

Given the power of this line of inquiry to demonstrate that China is a deviant case to the RCI and NLGG orthodoxy, it is a wonder why the dominant theories described in this literature review have not been more influenced by the scholarship accentuating China’s network capitalism. The short answer is the dominance of the RCI and its concepts of rationality, efficiency and transaction cost analyses, and its lock on the theoretical and

130. Convergence School scholars Sachs and Woo (1997) tellingly argue that China’s recent progress in privatization and magnetization is leading the country on the path to becoming a “normal” Liberal democratic capitalist economy such as those in Asia. This neoliberal perspective ignores the vast literature describing the distinctiveness of Asian capitalism with its state-led development through “developmental states” (e.g. Amsden 1989; Wade 1990; Johnson 1962) and its “embedded autonomy” (Evans 1995). Moreover, scholars use the Asian countries to show that the rule of law and legal property rights systems are not preconditions for development (Trebilcock 2008; Ginsberg 2000; cf. Pistor and Wellons 1998; Brown and Gutterman 1999).

131 Boxiot, M., and Child, J. 1996. From fiefs to clans and network capitalism: Explaining China’s emerging economic order. *Administrative Science Quarterly*, 41: 600–628.

policy proposition that only western-style Liberal private property rights rules protected by the rule of law are optimal for all rational actors, from individuals to states. Who wants to be irrational?

Conclusion

The major conclusions that emerge from this review of the general RCI theory of property rights and the China-specific literature can be summarized as responses to two key puzzles. These puzzles ask, first, whether or not China constitutes an anomaly to the general property rights theory; and second, why does the property rights literature espoused by the RCI theory and NLGG development policy continue to dominate the literature, even though its persuasiveness is challenged by what the China field scholars view to be an anomalous case?

Is China an anomaly to the General PR Theory? In spite of the apparent gaps between theory/policy prescriptions and observed reality in China, it is not possible to stipulate without a doubt that China is an anomaly to the Property Rights Thesis regarding the role of PR in economic growth. Both the RCI's negative view of the anomaly and the China-specific literature's defense of the anomaly are plausible, if only because the true nature of China's PR is not clarified. But it is because of this lack of clearly private or clearly public property rights that suggests that the outcome of economic growth lacks a precise "independent variable". At a minimum, a study on the nature of the PR system is needed in order to gauge the validity of the PR thesis. My interest is in directing our attention to the other New Institutional questions that have not been adequately addressed, namely,

questions about the emergence, persistence and change of institutions (as opposed to their measuring outcomes in terms of behavior and/or economic performance).

A second puzzle ponders the question: Why does the RCI /NLGG orthodoxy dominate the literature, in spite of the apparent China Anomaly? The observed theory-reality gap appears to have little harmed the RCI “hegemony” or the influence of the NLGG development policy that exhorts China (and all emerging market economies) to install a private property rights regime and an accompanying rule of law system in order to *further* increase its economic growth into the future. I suggest that the puzzle of the RCI’s dominance in the face of this theory-reality gap can be explained by a scholarly acceptance of the RCI’s counterfactual arguments (e.g. that China would grow even faster with private, secured property rights) and speculations on a future (time unstated) institutional convergence with the capitalist market economies endowed with private property rights systems and the rule of law limiting state appropriation of secured property rights.

A key factor in the continued dominance of the RCI is that with the rise of the NLGG, the RCI theory is supported by the normative claims that states should impose ‘good governance’ institutions in order to be considered legitimate and reputable states in the global political economy. One of the core arguments of this dissertation is that the China *partial* compliance with the powerful NLGG global norms is a key component of the legitimation strategies of the state leaders at the global level. Some compliance, rhetorical if not always real, with the prescriptions of global capitalist institutions and values is necessary for the Chinese state to ensure the legitimacy of the APR regime in the global

“legitimacy constituency”. As the analysis in Part three of this dissertation shows, ambiguity remains because the state is also attempting to ensure the PR regime is legitimate according to the institutional demands of the socialist-minded domestic “legitimacy constituency”.

Part III. Research Design, Methods And Findings

Part Three of the dissertation (chapters 5, 6, and 7) takes as its principal objective to develop a novel framework of analysis – called Negotiated Ambiguity-- to investigate China's unique property rights regime through inductive, case study research. The case under analysis is the foreign investment and business sector, with interviews conducted in Shanghai city and nearby Pudong New Area, in one of China's fastest-growing regions and most vibrant investment sites. The proposed Negotiated Ambiguity framework of analysis will supplement the dominant Rational Choice Institutional (RCI) account of economic institutions like property rights, which relies on deductive and disembodied tenets of rational, efficiency-seeking and utility-maximizing actors.

RCI theorists and neoliberal good governance (NLGG) development policy makers extend the property rights-growth thesis to the case of foreign direct investment (FDI) by arguing that China has managed to attract such increasingly high volumes of FDI because of its more secure, formalized, and credible economic laws and a more certain legal environment. Problematically, the depiction of a China enjoying increasingly secure, enforced, clearly defined property rights protections for foreign investors, and a robust legal infrastructure and rule of law system, does not adequately depict the reality in China on the ground. To begin to narrow this theory-reality gap, an alternative, albeit

supplementary, approach is required. Key to this approach is an “embedded” ontology that, first of all, studies the property rights rules and business environment per se, as opposed to simply explaining the outcomes – in investment and growth or productivity – of these institutions. The alternative approach also considers the formal rules “in action” and not just “on the books”, and otherwise takes seriously the examination of domestic and global contextual factors that explain the evolution and persistence of what I term China’s “ambiguous property rights” (APR) regime.

The three chapters composing Part Three cover the following topics. Chapter 5 presents the research design and methodological strategies, tools, and precise procedures employed in the inductive, case study research. Chapter 6 discusses the key findings of the case study illuminating in particular the initial findings on the core conceptual components of the proposed Negotiated Ambiguity framework: ambiguity, legitimation, political embeddedness, and negotiations over the meanings, practices, and distributive outcomes of property rights rules. Chapter 7 concludes with ideas on the strengths and limitations of the Negotiated Ambiguity construct, implications for current scholarship, and directions for future research to pursue the preliminary ideas established in this research.

Chapter 5: Design And Methods For Case Study Of China's Foreign Investment Regime

Introduction

This chapter sets out the research design and methodological strategies used to develop a new and alternative framework of analysis centred on the notion of 'Negotiated Ambiguity', designed to provide a better understanding and explanation of the nature and evolution of China's property rights regime. These topics, unproblematized in the property rights literature dominated by the deductive concepts and methods of RCI, suggest that any effort to fill this lacuna has the potential to add to our knowledge about China's market economy transformation. The ambiguity inhering in China's property rights rules – the rules governing the rights to own, control, lease, profit from, transfer, and change such assets such as land, real estate, labour, capital and technology – suggests that this “ambiguous property rights” (APR) regime presents a salient area of scholarly inquiry.

Initially, the idea for developing a Negotiated Ambiguity concept and analytic framework was spurred by one key observation drawn from my extensive reading of the literature on China's property rights institutions. Namely, I noted that the China-specific literature recognizes but fails to explicate the existence and long-standing persistence of

institutional ambiguity inhering in the country's property rights system.¹³² This is not a blindness found only in the empirical studies of China's market economy reforms.

Rather, this same inability to recognize the ambiguous nature of vaguely worded, differentially interpreted and understood, formal institutions applies to a wide array of relevant (sub)disciplines exploring property rights and transitional economies, inclusive of Political Economy, Comparative Politics, Legal Studies, Development Studies and the RCI-informed neoliberal good governance (NLGG) development model spearheaded by the World Bank and promoted by most other global governance institutions.¹³³

In the present research, I argue that by simply acknowledging and "taking seriously" the ambiguity imbuing institutions and the attendant uncertainty pervading China's

¹³² Key to this oversight on the part of the China field is its efforts to explain the China Anomaly (viz., growth in the absence of private property rights and the rule of law) because of the continued employment of RCI concepts such as 'efficiency' and rationality. Cost-based explanations about the role of non-private, unclear, unenforced property rights in producing China's growth, by increasing private or public incomes of local states or enterprise managers, is a vital approach. But, it has severely limited scholars' ability to explain the existence and persistence of the institutional ambiguity characterizing property rights arrangements these very scholars are examining.

¹³³ Well-defined, enforced, private property rights and the attendant rule of law are part of the "legal pillar" of the NLGG development model (or for some, the post-Washington Consensus). A market economy and democracy are the other two pillars. Property rights and the rule of law is one of six clusters of variables the World Bank both promotes, and measures annually for countries, in its *Governance Matters* indicators. See Kaufmann, Daniel, Kraay, Aart and Mastruzzi, Massimo, *Governance Matters VI: Governance Indicators for 1996-2006* (July 2007). World Bank Policy Research Working Paper No. 4280. Some of the main references for other global governance institutions advocating the need to install good governance institutions for development are as follows: For the IMF, see "World Economy Outlook: Growth and Institutions", in *World Economic and Financial Surveys*, (April 2003), especially, Chapter III, pp. 95-128, online at <http://www.imf.org/external/pubs/ft/weo/2000/02/>. For the UNDP's "democratic governance" agenda, see online at <http://www.undp.org/governance/>; for the OECD DAC's Governance and Capacity Development Department, see online at <http://www.oecd.org/dac/governance/>; and for the OECD generally, see Wolfgang Michalski, Riel Miller and Barrie Stevens, 2001, *Governance in the 21st Century: Power in the Global Knowledge Economy and Society*. OECD, Paris.. For the WTO see the "Joint WTO/OECD Report on Trade-Related Technical Assistance and Capacity Building" (December 2004).

institutional environment, we can take a major step beyond the general (non-area specific) and deductive RCI account. This account denies the possibility of China's anomalous property rights regime entirely. Instead, China's growth and attraction of inward investment is explained by improvements -- such as they are -- in securing property rights and formalizing laws (e.g. Fu 2000)¹³⁴, in advancing the privatization of state-owned assets and collective enterprises, or in a counter-factual future speculation that property rights reforms will be installed by the Chinese central state (and all states) in the future in order to sustain its growth levels as the country ineluctably converges toward becoming a "modernized", "efficient" capitalist market economy.

The point of departure for this research design, and the proposed Negotiated Ambiguity framework of analysis, is this very insight that ambiguity constitutes a quintessential feature of China's property rights regime of formal rules, informal norms, understandings, practices and relations. At the outset, "ambiguity" is broadly defined as being synonymous with vagueness, inconsistency, uncertainty, inefficiency or waste,

¹³⁴ Arguing against the usual economic endowment and cultural/guanxi explanations (e.g. Wang 2001) of inward FDI, Jun Fu follows North (1990) and others to support his thesis that FDI has risen in China since the 1990s due to the increasing formalization of economic laws acting as the Chinese state's "credible commitments" to protect foreign interests. See Jun Fu (2000). "Institutions and Investments: Foreign direct investment in China during an Era of Reforms. Ann Arbor: University of Michigan Press. More generally, a rising number of cross-sectoral, large-N regression analyses used to support the neoliberal development model confirm the correlation between "good" institutions such as secure and credible property rights and the rule of law with the promotion of investment, and thus growth. See for instance, Aymo Brunetti, Gregory Kisunko, and Weder (1997). "Institutional Obstacles to Doing Business: Region-by-Region Results from a Worldwide Survey of the Private Sector." Policy Research Working Paper No. 1759, World Bank. For similar statistical findings, see Stephen Knack and Philip Keefer (1995) "Institutions and Economic Performance: Cross-Country Tests Using Alternative Institutional Measures." *Economics and Politics*, 7(3): 207-227; Roger Kormendi and Philip Meguire (1985). "Macroeconomic Determinants of Growth." *Journal of Monetary Economics*, 16: 141-163.

unpredictability of interpretation and implementation. This conceptual strategy is used to ensure the accessibility of this opaque concept of ambiguity to the interview participants.

Taking ambiguity seriously in this empirical research requires going beyond the descriptive task of merely establishing the existence or, even, the ubiquity of ambiguity in a preliminary way. The case study research presented here also seeks to investigate plausible, preliminary explanations for the evolution of China's unique APR regime. In this way, a second set of fundamental New Institutional questions concerning institutional emergence, persistence and change can be addressed more persuasively once the nature, as perceived by expert informants, of these property rights institutions is established in the case study. Moreover, another fundamental institutional question asking "Why institutions matter?" can be answered once the nature of institutional ambiguity is recognized. Social order and perceptions of state legitimacy based the construction of societally legitimate property rights institutions will be advanced as reasons why the APR regime matters, thereby leaving the issue of growth and investment outcomes for others to explore.

The implicit and sometimes explicit (e.g. Li 1996)¹³⁵ recognition of ambiguity in the relevant literature supplies important secondary data in support of the core argument regarding ambiguity's centrality to institutional analysis in the China case (and possibly others). The inductive research presented in this section of the dissertation sets out to discover whether or not evidence exists for this argument through the collection of primary data based largely on interviews and field observations. Ultimately, I do find this evidence supporting the pervasiveness of ambiguity through interviews with foreign business and investment experts working in government, the private sector and the non-governmental sector in Shanghai and Pudong, China.

The chapter is organized in such a way as to detail the steps involved in building the Negotiated Ambiguity framework of analysis. The first section discusses the broad contours of the research strategy in the form of an overview of the main techniques and procedures. These steps cover the inductive research strategy based on the initial Literature Review, to the data collection, principally through fieldwork involving semi-structured and elite open-ended interviews and organizational material collection. The second section briefly reviews the initial ideas for the process-based concepts (i.e. legitimation, negotiations) comprising the Negotiated Ambiguity framework. Data and

¹³⁵ In his "theory of ambiguous property rights", economist David Li (1996) defines ambiguous property rights to ownership, control, or profit-taking as those held jointly by local state officials and "private sector" entrepreneurs. In his game theoretical model, Li shows that when confronted with an uncertain institutional environment where property rights are not secured and are often appropriated by local government officials a "rational" efficiency-seeking entrepreneur will choose to join networks and alliances with local governments. In exchange for better treatment and some certainty over the privately held property rights, the entrepreneurs yields some rights to ownership, control, and profit to the local state officials. Li and other analysts (e.g. Wank 1999; Nee 1996) argue that once secure, clarified and private property rights are established the need for public-private networks will wane as China privatizes and marketizes in its convergence toward a capitalist market economy.

analysis on the findings of the case study research In Shanghai and Pudong, are provided in Chapter 6. This Findings and Discussion chapter discusses in more detail precisely how these concepts are shown to operate through the inductive data derived from the case study.

Overview of Research Design, Strategies and Methods

The research design of this empirical case study investigation of China's property rights system is in the foreign investment (and business) sector in Shanghai and Pudong New Area, located in the fast-growing southern region called the Pearl River Delta. This study's objective in endeavouring to redress the extant theoretical lacuna on the nature and evolution of the country's APR regime best fits a qualitative research design, and a single-case exploratory case study. Resisting the draw of accessible numbers or statistical correlations, qualitative case study methods stress the importance of data and procedures that discover, interpret and assess what is in the minds of the subjects under study. In this case study, the government, business and civil society actors operating within the Shanghai and Pudong's foreign investment regime are interviewed in order to distill insights about the nature and evolution of the local property rights system and arrangements. These perceptions, opinions and experiences are not readily accessible by a quantitative study. Triangulation of both quantitative and qualitative data is recognized as the best approach (King, Keohane and Verba 1994) and is applied where appropriate.

This inductive research study draws on and adapts three main approaches to qualitative research design and methods.¹³⁶ These approaches comprise: *exploratory case study* research methods (esp. Yin 1994, 2002; and see Stake 1995); and *qualitative research design* associated with *grounded theory* (Strauss and Corbin 1998; Glaser and Strauss 1967).

In what follows, I provide an overview of the research processes, briefly describing each of the main methodological steps and techniques employed in the research and their purposes. The final research step, data analysis, is discussed in Chapter 6 in the context of the empirical research findings. These techniques were applied to the case study investigating the property rights issues relevant to foreign investment and business sector in Shanghai and Pudong, China. Fieldwork was conducted in the summer and early fall of 2007.

1. Inductive Theoretical Ideas Guiding the Initial Framework

Developing the Negotiated Ambiguity framework of analysis relies principally on an inductive research strategy and inductive insights drawn from the empirical, exploratory case study stage of the research. The option of a deductive strategy is forestalled by lack of any testable theory on the nature or transformation of China's property rights institutions. As shown in the literature review, this is an issue that RCI's does not address

¹³⁶ Generally, the "research design" logically links the research questions of a study to the research steps including the collection and analysis of data. Selecting the research design depends on many factors, such as the research objectives, the state of development of the prevailing theory, and the nature of the processes under study. See Robert K. Yin (2002). *Case Study Research*. Third edition. Thousand Oaks, CA: Sage Publications.

(as it will require treating property rights as ‘dependent variables’). The China-specific literature did provide the core insight underpinning this research project – that *institutional ambiguity* constitutes the central feature of China’s property rights regime. As I observed in the Literature Review chapter, however, although the China-specific has widely recognized (even if sometimes only implicitly) the reality of ambiguity inhering in China’s property rights system, there has as yet been little effort to explain the existence, persistence and changes of this institutional ambiguity. Armed with the key inductive insight about the seeming prevalence of unexplained institutional ambiguity from the China-specific literature, I set out to conduct my fieldwork in the summer of 2007. My intention was to confirm this general observation, and to begin to probe the perceptions, experiences and responses of this institutional ambiguity on the part of the societal meso-level actors (e.g. business associations) and state macro-level actors (e.g. government workers).

Although many social scientists may prefer a “theory-testing” research design and methods (King, Keohane and Verba 1994), there is no real theory on the ambiguous nature and evolutionary processes of China’s property rights institutions to test. Based on this reality, this study is more of a pre-theoretical exercise that must look for guidance outside the property rights literature dominated by the RCI approach and its focus on the issues of economic outcomes, rather than property rights *per se*. The empirical study and the development of the Negotiated Ambiguity framework succeed in finding this guidance in locating and interpreting primary data in the “embeddedness” streams of the New Institutionalism and Social Constructivism. Elaboration of such concepts as

institutional ambiguity, legitimation, and negotiations over the meanings of (ambiguous) institutions in this literature prove to be extremely helpful to develop at least a tentative framework of analysis -- Negotiated Ambiguity. This framework completes the loops of the deductive-inductive interplay as a research strategy.¹³⁷

2. Single-Case Exploratory Case Study

Given the subject matter of this research – i.e. an investigation into the under-explored nature and evolution of China’s property rights institutions – a single-case case study strategy was selected. Qualitative case study methodology has garnered the support of many scholars (George and Bennet 2005; Slake 1995; Ragin 1987), and case studies are particularly valuable for understanding complex phenomena that are “embedded” in rich localized contexts (Yin 1994). In recent years, the traditional view has shifted as scholars involved in improving the sophistication of case study techniques find them superior to the large-N, quantitative statistical analyses that do not provide the rich details, nor non-universal, mid-range explanations covering a few cases (George and Bennet 2005; cf. King, Keohane and Verba 1994). While the single case study is certainly limited in its ability for theory building and testing, this exploratory research does not have theory-building as an objective. Instead, I follow the Harold Eckstein’s (1975) conception of a case study a “plausibility probe” of the conceptual and possible theoretical viability of the proposed Negotiated Ambiguity notion.

¹³⁷ A research strategy based on the interplay between deductive- theoretical insights and inductive-empirically validated knowledge follows the best in the tradition of case study (e.g. Skocpol 1979; Olson 1965) and single case study (e.g. Rogowski 1995; Bates 1981) analyses in Political Science.

Of particular utility in this research project is Robert Yin's (1993; 2002a, b) concept of, and recommended procedures to execute, an "exploratory" case study. This type of case study is not based on an existing model or theory and, in fact, the fieldwork data collection and data analysis may be undertaken prior to definition of the research questions and hypotheses. Developing the research questions is one of the fundamental steps and objectives of the research steps, for which Yin makes detailed recommendations.

Exploratory case study research techniques parallel many of the ideas described by qualitative research methods set out by grounded theory (Strauss and Corbin 1998, Glaser and Strauss 1967). Grounded theory is characterized by the researcher's attempt to explain phenomena and make a statement of a supposed principle or relationship that is grounded in the views of the participants of the study (Creswell 2003). The raw data being collected, analyzed and interpreted are the perceptions, opinions and experiences of interview informants. According to Strauss and Corbin, grounded theory is theory derived from data, systematically gathered and analyzed through the research process. In this method, data collection, analysis, and eventual theory stand in close relationship to one another. The researcher does not begin the project with a preconceived idea in mind. Instead, the researcher begins with an area of study and allows the "theory" to emerge from the data and to better resemble the "reality". Grounded theories, because they are drawn from data, are likely to offer insight, enhance understanding, and provide a meaningful guide to action (Strauss and Corbin 1998: 12).

Similar to the recommended procedures of Yin's exploratory case study, grounded theory advises researchers to look for recurring themes in data being collected, including the interview and collected published materials. Grounded theory entails the organization of data into categories (called "conceptual ordering") and the use of description to explain the categories (Strauss and Corbin, 1998). Assessment and refinement of the data and the interview questions are continuous throughout the research processes. Refinements might include the adding of new interview questions to address newly discovered themes or insights or the rejection of questions or themes.

In sum, this research study on the ambiguous nature and evolution of China's property rights regime lent itself to a research strategy employing elements of recommended procedures of exploratory case study and grounded theory. Grounded theory methodologists Strauss and Corbin emphasize that grounded theory is not to be applied inflexibly, or by rote. Rather, they highlight that procedures "were designed not to be followed dogmatically but rather to be used creatively and flexibly by researchers as they deem appropriate" (Strauss and Corbin 1998: 13). Grounded theory, then, encourages the researcher to proceed without preconceived ideas of what would come from the research. It is important to note that, in keeping with a grounded theory approach, part of the literature review in this study was completed after data analysis was complete. In this research, these foregoing techniques were used to draw out the themes and that might be developed into concepts, processes for the Negotiated Ambiguity framework of analysis.

3. Justification of the Case Selection

Several reasons justify the selection of the case study of the foreign investment and business sector in the southern city of Shanghai and nearby Pudong New Area. First, geographically and economically, Shanghai and its surrounding provinces of Zhejiang and Jiangsu have remained one of China's fastest growing regions, attracting great volumes of the country's inward investment since the 1990s. According to a Shanghai government 2007 *White Paper*, annual contracted foreign investment in Shanghai alone has risen from about 2 billion US dollars annually from 1984 to 1990 to 105.8 billion in 2000 and 138.3 billion in 2005.¹³⁸ In terms of ownership structures, wholly foreign-owned enterprises (WFOEs) are the main form of foreign investment in Shanghai (79.1% of total contracted value in 2005).¹³⁹

A major part of this steady rise in inward investment is investors' attraction to the Pudong New Area on the east side of the Huangpu river is one of the country's premier high technology development zones.¹⁴⁰ Regarded as "a gate[way] to China's economy, a golden key to open the Chinese market and a bridge connecting the Chinese economy to the world," Pudong welcomed 16.4 billion US dollars in contractual foreign investment at

¹³⁸ Shanghai Municipal Government. 2007 White Paper on the Environment for Foreign Investment in Shanghai, at p. 105.

¹³⁹ Shanghai Municipal Government. 2007 White Paper on the Environment for Foreign Investment in Shanghai, at p. 108.

¹⁴⁰ The Pudong New Area, is a special economic zone founded in 1990 for the purpose of attracting technology-intensive foreign investment in the context of China's reforms and opening to the outside world. Today, Pudong incorporates the follow four specified areas: (i) Lujiazui Finance and Trade Zone; (ii) Jinqiao Export Processing Zone; (iii) Zhangjinag Hi-Tech Park; and (iv) Waigaoqiao Free Trade Zone. Although I endeavoured to find interview informants from each of these sub-zones, I only succeeded in interviewing two mid-level managers from Lujiazui.

the end of 2005.¹⁴¹ Based on its economic success and its emergence as a “global mega city”, government officials in Shanghai and Beijing are striving to make the city an International Financial Center by 2020.

Second, in conjunction with this region’s economic growth gains and the ability to attract foreign investment, scholarly and media accounts suggest that Shanghai is one of the most advanced or “modernized” places in China for doing business in a more certain, rules-based institutional environment. This view of Shanghai as a rules-based, rule-of-law place of doing business, was confirmed by my interviews, and the general disdain I sensed toward the idea that *guanxi* (social) relations matter for business and investment operations, despite the inchoate legal system to protect property rights. From the perspective of theory-building, then, the exploration of institutional ambiguity in such a location would be more theoretically interesting than to confirm ambiguity in localities less inclined to a rules-based approach to inward investment. In a similar way, the case study selected the foreign-invested enterprises (FIEs) operating in Shanghai and Pudong because these entities are more likely to abide by and demand private property rights rules and the rule of law. Many foreign companies are dissuaded by their home country’s national law to avoid any seemingly “corrupt” acts that might emerge from too close contacts with the government.

Third, Shanghai/Pudong is not only an interesting case economically and legally, but also it is politically. Shanghai has unique authority as a fully-fledged “autonomous region”

¹⁴¹ The Economic Committee of Shanghai Pudong New Area. *2006 and 2007 Investment Guide in Shanghai Pudong New Area*, at p. 1 (insert page).

with certain powers on par with a larger province. Pudong's government falls under the auspices of Shanghai, but the county's officials – I was told in interviews – do have the ability to suggest new projects or laws. Experimentalism in legal development for which China is well known occurs at great regularity in Pudong, which the state Council officially labeled a “test bed of comprehensive policy reforms.” Governance relations between Shanghai, Pudong county, and the central state in Beijing are investigated in the interview questions in order to look for sources and explanations of the continuity and change in institutional ambiguity in the foreign investment regime.¹⁴²

Aside from the justifications for the geographic choice of Shanghai and Pudong, the selection of the case study on China's foreign investment in a business sector – including the attraction of foreign direct investment (FDI)¹⁴³ and the operations of foreign invested enterprises (FIEs)— is also significant. I justify this choice with three rationales. First, sustained economic growth in the city, and the country writ large, hinges on the attraction of foreign direct investment (FDI), and the exports and technological advances provided by the FIEs (e.g. OECD 2008).¹⁴⁴ Second, in addition to being one of the most economically important sectors in China, the foreign sector is considered by many

¹⁴² The Economic Committee of Shanghai Pudong New Area. *2006 and 2007 Investment Guide in Shanghai Pudong New Area*, at p. 4.

¹⁴³ FDI refers to the funds invested by parent firms in the form of equity, including capital, technology, intra-company loans, and reinvested earnings. See UNCTAD (1999). *World Investment Report 1999: FDI and the Challenge of Development*, New York: United Nations, p.4.

¹⁴⁴ This OECD (2008) report finds that the share of high-technology exports by foreign-owned companies in China, including joint ventures and firms controlled from Hong Kong, Macao, and Taiwan, accounted for a rising proportion of total growth-producing high-technology exports. The share rose from 73% in 1998 to 88% in 2005. In another recent study, Blonigen and Ma (2008) found that foreign-owned firms outperformed Chinese firms by double in developing new product varieties for exports.

scholars and business experts to be the most advanced component of China's private sector. While many domestic enterprises in China are obliquely private and public, a examination of the wholly-owned foreign enterprises provides an opportunity to study the views of those entities possessing the clearest of property rights in China.

Third, in spite of its import, the foreign invested enterprise sector and the relevant property rights rules remains under-explored. Business network scholars Redding and Witt (2007, 2009) observe that most attention is directed at China's domestic organizations, including state-owned enterprises, township and village enterprises, and the millions of emerging small-scale, and supply-dependent private sector entrepreneurs (See Chapter 2 for review). To their point I add that property rights institutions *per se* are not examined closely in the foreign investment regime for the familiar reason that scholars are more interested in confirming the RCI's property-rights growth thesis. Increased FDI in China is explained by property rights institutions (typically proxied as the degree of private ownership, contract enforceability or the risk of state expropriation).¹⁴⁵

¹⁴⁵ See, for instance: Iftekhhar Hasan, Paul Wachtel and Mingming Zhou (2009). Institutional Development, Financial Deepening and Economic Growth: Evidence from China, *Journal of Banking and Finance*, 33(1): 157-170, arguing that Chinese provinces' growth rates and FDI are positively linked, to improved legal institutions like the legalization of the market economy, the establishment of secure property rights, the growth of a private sector, the development of financial sector institutions and markets. On FDI location choice, Du et al. (2008) show that property rights protection and contract enforcement influence the investment choices of US multinationals. Du Julan, Lu Yi, and Tao Zhigang (2008). "Economic Institutions and FDI Location Choice: Evidence from US multinationals in China", *Journal of Comparative Economics* 36 (3): 412-429.

Fourth, examining the foreign investment and trade regime of rules, norms and practices enables research on the impact of global (f)actors on the central state's legal choices as well as the domestic (f)actors. Not only are China's foreign investment rules often tightly connected substantively with other relevant domestic economic laws (e.g. company, bankruptcy, taxation and environmental protection), but also the presence of and need for foreign investment has powerfully influenced the workings of the strictly domestic economic sectors. Pomfret (2001) has argued that the reforms in the foreign-invested enterprise sector are an outcropping of the property rights reforms for the domestic economy.¹⁴⁶ Chinese central state reformers have progressively altered property rights rules in a wide array of domestic sectors after successful experimentation with the more spatially bounded and restricted foreign-invested sectors. This suggests elements of an evolutionary approach to economic institutional reforms that involves an interplay of foreign and domestic property rights rules, that cannot be examined by the deductive tenets of the RCI approach.

4. Data Sources and Data Collection

Two main data sources were employed in support of my initial ideas about the centrality of institutional ambiguity in China's property rights system: primary and secondary.

Principally, I relied on primary data based on 30 in-depth interviews conducted with people involved in the foreign investment regime in Shanghai and Pudong New Area.

Qualitative research methodologists suggest that within these interviews the *discourses* –

¹⁴⁶ Specifically, Pomfret notes that the central state's willingness to decentralize the such property rights as leasing and control over land to rural farmers in the Household Responsibility System later influenced the state's later decision to permit private ownership to domestic and foreign enterprises.

talk, interpretation, reflections – expressed by the participants count as a unique source of data (Creswell 2003).

Supplementing the primary source interview data and organizational materials is the secondary data drawn from the vast corpus of existing scholarship touching on China's property rights institutions and wider market economy transformation. As I earlier noted, the most important information stemming from this literature are scholarly descriptions of institutional ambiguity. These characteristics of property rights that are, say, vaguely defined, inconsistently interpreted and unpredictably implemented do confirm the centrality of institutional ambiguity, but they need to be adapted into a more systematic typology and explanation.

In the conduct of the fieldwork I logged over 120 hours of data gathering through formal in-person (and several informal telephone interviews) as well as in gathering relevant information at various local publication centres and libraries. At each interview site, most often a government office, non-governmental consulting agency in the service of assisting foreign investors, and foreign business association offices, I asked for and collected organizational materials. Most often these were used to confirm the activities of the given organization that came out in the interviews, such as its efforts to improve the business environment. In addition to this organizational material, a variety of data sources was collected over a six-month period prior to the interviews. This data was discovered in the course of the scholarly literature review process, and includes published and

unpublished official documents and statistics, China and western media accounts, and online resources.

5. Developing the Interview Questions and Interview Guide

Without benefit of drawing questions deductively from extant theory, the questions for the field interviews were devised primarily through inductive insights. General insights were obtained through the review on the literature on the ontology of institutions and institutional change (especially on notions of ‘embeddedness’ and ‘legitimation’). Initial questions were developed after an extensive initial reading of the China-specific property rights literature that, above all, revealed the lacunae on the general topics concerning the nature and evolutionary changes in property rights institutions. Initial questions asking potential informants about their views on property rights institutions in Shanghai/Pudong (and in other places in China according to the informants’ experiences) were reviewed and accepted by the Dissertation Committee and attained ethical approval from the university. Following the recommended procedures for exploratory case study methods and grounded theory, I continued to constantly subject these initial interview questions to critical review and revisions where necessary.

In the course of the actual interviews, three major changes were made to the initial interview questions. First, I developed an interview guide organized by clusters of questions on a similar theme. The themes only became apparent to me after the first few weeks of interviewing. The finalized interview guide, displayed below, is composed of five standardized sets of questions to pose in semi-structured and elite open-ended interviews. One of the main advantages of the interview guide is to make sure that the

same general areas of information are collected from each interviewee, allowing a comparison of the responses.

A second change to the interview questions involved adding a set of questions (Question Set 4) addressing the political dynamics of institutional change. Questions were added about the impact of global governance institutions on China's property rights transformation. Influencing this change was the chance to interview international affairs and World Trade Organization scholars in a Shanghai-based research institute and at the famed Shanghai Academic of Social Sciences. Also I came to realize from my interviews that meso-level pressures from business associations, consultancies, law firms and the like, did not appear to be overly successful in pressing the Chinese government, at any level, to install more secure, well-defined and enforced private property rights for foreign-invested companies.

Third, I began to spend less time on questions about *guanxi* (social relations) between the business actors and governments, after several weeks of finding that both western and Asian respondents found their businesses have little use for *guanxi* relations. Part of this change was based on the rather negative responses to this line of questioning. In fact, some of the business experts and government workers appeared to take some insult to my interest in *guanxi*. At a minimum, this suggests that *guanxi* relations in the conduct of business do not garner favour in Shanghai.

The finalized interview guide of standardized questions focuses on five themes that became apparent to me in the first week of pilot interviews. These themes are touched on by the specific interview questions organized into each of the five question sets. The themes are:

1. Perceptions on the nature of property rights rules or, more generally, the business (or investment) environment in Shanghai/China.
2. Understanding the Chinese governance structure and the legal system.
3. Relational alternatives to formal property rights rules.
4. Contestation and the politics of institutional creation and change at the domestic and global levels.
5. Expert questions on the “ambiguous property rights” thesis.

The specific interview questions for each of these themes are listed in Table 5.1 below followed by a brief overview of the five question sets to clarify the main objectives and the theory-based thinking behind them.

Table 5. Interview Guide Showing Five Question Sets

<p>Question Set 1: Perceptions on the Nature of China’s Property Rights Regime and/or Business Environment</p> <p>1a). Considering the current property rights rules or general business environment, what do you consider to be the main problems and challenges confronting foreign investors in Shanghai/China (e.g. in investing, getting businesses launched, establishing a factory, acquiring a workforce)?</p> <p>1b). What problems do you spend most time resolving for your foreign investor clients?</p> <p>1c). Do you agree with the claim that China’s property rights regime of rules can be characterized as being “ambiguous” (vague, inconsistent, uncertain, unpredictable)? Do you have any examples or experiences that support or deny the reality of institutional ambiguity? How would you characterize the current property rights regime of rules for the foreign investment regime?</p> <p>1d). What have been the main improvements to Shanghai’s/China’s property rights rules (or the business environment) governing foreign-invested enterprises in the past few years or decades?</p>
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Question Set 2. Understanding the Chinese governance structure and the legal system

2a). How are property rights laws formulated, implemented and enforced here in Shanghai or Pudong? Follow up questions: Who initiates new laws? Are all relevant laws promulgated by the central state or do these local states have some capacity to institute their own rules for foreign investment? Is any one government more important in the governance of foreign investment?

2b). How would you describe the political relationship between Shanghai Beijing (and/or Shanghai city and Pudong county) when it comes to the making or enforcing of property rights rules for foreign investors? Are there any examples of disputes that have emerged and have been resolved (or not), or conflictual issue areas?

2c). Do you find the legal system of laws, rules, and constitutional amendments, easy or complex to understand and follow? How would you explain this system of formal rules and their import to foreign investors?

2d). Does Shanghai (Pudong) follow the national laws exactly?

Question Set 3. Relational alternatives to formal property rights rules.

3a). Are informal relations, or guanxi connections, necessary or important to succeed in business here in China (Shanghai, Pudong)? Or, given the weak legal system and uncertain property rights to land, labour, capital, technology, how important are the social relations or connections (“guanxi”) for doing business in Shanghai?

3b). Are there any significant differences between Asian and Western businesses in conducting business in Shanghai (China)? Specifically, are there any differences in behaviour or strategic approach when it comes to using formal laws or in building close social connections with government officials?

Question Set 4. Contestation and the politics of institutional creation and change at the domestic and global levels.

4a). What activities does your organization undertake to assist foreign (your nation’s) businesses and investors resolve property rights related problems or uncertainties?

4b). How successful are you in pressuring the government for improvements.

Question Set 5.

Expert questions on the “ambiguous property rights” thesis.

5a). If you agree that China’s property rights regime and legal system can be accurately described as being “ambiguous”, which factors account for China’s relative social order in the marketplace or its high and sustained levels of economic growth and foreign inward investment? In short, what is making the system work?

5b). Why do you believe that the institutional ambiguity in the property rights laws and the uncertainties of the business environment continue to persist after over 30 years of market-oriented reforms?

5c). What attracts foreign businesses and investment to Shanghai and Pudong in spite of the ambiguous property rights regime? What advice do you give to your foreign business clients for succeeding in China’s uncertain legal and business environment?

5d). What speculations or projections can you make for the future of China’s property rights regime? Specifically, do you agree with the Convergence school of thought holding that China is slowly heading toward becoming a fully-fledged capitalist market economy with a private property rights regime and a robust rule of law?

5e). What does the existence and persistence of China’s “ambiguous” property rights regime indicate about the capacity of the central state to create a secure property rights system based on the rule of law? Do you agree with the scholarly view that China’s APR regime signals the weakness or incompetence of the central state (e.g. unable to enforce economic laws nationally, or to control its local governments.)? Could the persistent ambiguity be deemed purposeful, or even strategic?

5f). To what extent is China’s property rights transformation and general market economy reforms influenced by external pressures, such as those from the global governance institutions (e.g., World Bank, IMF, World Trade Organization)?

The first question set directly addresses the issue of the nature of the property rights rules. Informants were first asked to describe their views on the property rights related issues within Shanghai or Pudong locally, or China nationally if their experiences were relevant to other areas of the country. I also asked the questions about the nature of the

property rights through questions about the problems and improvements in the business environment for foreign investors and businesses.

Definitions of core concepts like “property rights” or “ambiguity” were not initially provided in the interviews. Only if more clarification was requested, or in follow-up questions, would I express the standard definition of property rights (as the right to own, control, lease, transfer, profit from, or alter assets such as land, real estate, labour, capital and technology). Often informants would talk not about property rights rules specifically but more generally about the formal rules and practices of the more general business environment. As to the concept of ambiguity, I also left this undefined at first in order to hear the informants’ own viewpoints about this concept. In some follow-on questions, and in the elite interviews, I asked informants about whether ambiguity could be said to characterize the property rights rules individually or the system of rules writ large. Rather than to open up a discussion on private, public or mixed ownership, I defined ambiguity as vaguely worded laws, inconsistent application of the laws by the state officials, or the uncertainties generally in the business environment.

Questions posed in the *second question set* were addressed to Shanghai and Pudong government workers as well as Shanghai-based non-governmental organizations.¹⁴⁷ This set of questions asks those in the know about the complexities of the legal system and the governance relations between the three levels of governance involved in creating

¹⁴⁷ Given the weak state of the civil society in China (e.g. Yang 2004), I assume that these self-claimed non-governmental organizations were not necessary all that independent from the state. See Yang Da-hua David (2004). “Civil Society as an Analytic Lens for Contemporary China”, *China: an International Journal* 2(1): 1-27.

property rights for foreign investment (and other sectors), namely, the federal government in Beijing, the municipal Shanghai government, and Pudong county. Asking about the structure of laws and who formulates, implements and enforces property rights laws for the foreign-invested sector was an excellent way to open the interviews with government officials who work either within government ministries in Shanghai or Pudong or in non-governmental organizations engaged as consultants, advisors and promoters of investment opportunities. These neutral questions paved the way nicely for the more difficult questions about the main problems confronted by these foreign-invested businesses in securing their law-given rights, for example, to lease land or fixed assets, to gain access to capital, to hire and fire workers.

From those whose job it is to interpret, implement and enforce the economic laws, it was important to gain insights into the roles and relations amongst the various governance levels, namely, Pudong county, Shanghai municipality, or the Beijing central government. By asking question 2b) on the cooperative or conflictual relations between governments (e.g. Shanghai-Pudong, or Shanghai-Beijing) my objective was twofold: to locate sources of ambiguity in such elements as the differential interpretation of laws by various government officials, and to consider the political dynamics of institutional change that are, in the model I develop later, sourced in the contestations over the meanings and practices of any given property rights law promulgated by the Chinese central state. Finally, these questions also allowed me to interrogate another major issue debated in the literature on China's ambiguous and uncertain property rights regime: the capacity of the central state.

My objective in better understanding the governance structure and legal system was twofold. First, the aim was to learn, from a Chinese perspective, about the processes of rule-making and rule-taking (i.e. interpretation and implementation) for Shanghai municipality and Pudong county as a practical matter. The available literature tends to list or describe, with little or no institutional explanations, the most pertinent types of formal rules (e.g. laws, policies, constitutional amendments, implementing rules, internal directives) or describe the most important provisions of relevant laws used to govern the foreign investment sector (e.g. Lichenstein 2004; Potter 1995; Duffy 1995).¹⁴⁸

Second, I expected that inter-governmental relations and political dynamics in the institution-building processes would indicate a possible source of institutional ambiguity. This ambiguity is not recognized in the RCI literature, which concentrates heavily on the relations between the central and local states (including provinces, cities, townships, counties, and autonomous zones) (Zheng 2006; Mertha 2006; Jones 1994). Central-local politics are framed as the cost-benefit calculations of local states who are incentivized to spur personal and collective income gains by the central state's economic and political dis/incentives (Shirk 1993; Whiting 2001; Oi 1992, 1996; Gore 1998). Such cost-based rational calculations of property rights arrangements centering on individuals' personal or public gain do not consider institutional ambiguity (or inefficiency, uncertainty) as other

¹⁴⁸ Potter (1995), for instance, provides an overview of foreign investment in China that lists formal rules including: broad statements of principle, implementing regulations added later, basic laws. To this list others add constitutional amendments and internal directive. See Pitman B. Potter (1995). "Foreign Investment Law in the People's Republic of China: Dilemmas of State Control", *The China Quarterly*, 141: 155-85. Special Issue on China's Legal Reforms.

than a pathology that will be eventually eliminated by rational actors' installation of increasingly more efficient, secure property rights.

Question set three covering the informal or relational alternatives to formal property rights rules draws ideas from a major subset of the China-specific literature. Generally this sub-literature argues that political economy actors rely on the informal norms and relations in the absence of a formal legal system that guarantees secure private property rights. These include public-private networks allying local state officials and private sector entrepreneurs or enterprises, and the social connections called guanxi. My questions on guanxi defined them as the relations between businesses and central or local state officials, paying little attention to other forms of family or friend based guanxi (See Wang 2001: Chapter 6 for review of types of guanxi).

In the FDI literature, Wang (2001) contends that the steady rise of FDI in China can be explained by the cultural facility of Chinese or Overseas Chinese investors from Hong Kong, Taiwan, Macau, and Singapore who operate through guanxi in the conduct of business. These economies have long been the source of the bulk of "foreign" investment in China. China's central state, meanwhile, is incapable and incompetent by virtue of not providing the formal property rights and other economic laws to protect investors. Not all students of FDI in China agree with this assessment on the utility of guanxi, however. Contradicting Wang's thesis, Jun Fu (2002) recently argued that the steady increases in FDI can be causally linked (via regression analyses) to an increase in formalized economic laws increasing efficiency and predictability for potential investors. The

interview questions directed at gauging the perceptions of the utility of guanxi relations to the foreign investment community were informed by this debate in the FDI literature. My interviews suggest that guanxi traditionally understood by the literature are not useful to foreign investors and businesses, at least in Shanghai/Pudong, and that there exists no “Asian Way” or distinctive Asian values in doing business.

Questions in the *fourth question set* inquire into informants’ activities in contesting and improving property rights rules, the legal system and the local business environment generally. Asking about contestation activities is a way to better apprehend the political dynamics driving institutional reforms. These contestations also manifest the processes of negotiations and legitimation processes, two key concepts in the construction of the Negotiated Ambiguity approach. Pressures on China to conform to the capitalist institutional norms such as secure, privately assigned property rights and the rule of law emanate not only from the meso-level actors of the foreign business community interviewed in this study, but also from the macro-level global governance actors such the international financial institutions (e.g. World Bank, World Trade organization), regional development banks like the Asian Development Bank, and western governments and their development agencies. International relations experts in Shanghai-based universities were asked their opinions about the degree and effectiveness of reform pressures on China from these global governance institutions.

The questions ask, first about the activities the organization undertakes to respond to the legal problems encountered by the foreign business community, and then asks

perceptions of the effectiveness of these activities. Scope and time limitations did not allow for a systematic study measuring the actual effectiveness of efforts to lobby and normatively pressure the Chinese central state to construct a more modernized, capitalist market economy and legal system supplying private, formalized and enforced property rights rules accompanied by a robust legal system and the rule of law. However, the general insight guiding this study is that the persistent nature of China's APR regime suggests that global actors – the internal foreign business community and the external global governance institutions – have only attained partial compliance with the prescriptions of global capitalist institutions.

Finally, *question set five* incorporates questions for expert open-ended interviews, which asked experts directly to comment on certain elements of my emerging thesis. In particular, I would ask about the applicability of calling Shanghai's and/or China's property rights regime "ambiguous" (differently defined), and then ask more complex questions requiring explanation for the 30-year persistence of this ambiguity and predictions into the future. To those expert interviewees more familiar with international affairs, I suggested that the ambiguity might be a strategic approach employed by the central state leaders. Most esoterically, I would ask the experts how – by which processes or factors -- the city or country has managed its economic success and relative social stability in the absence of the private, well-defined and enforced property rights system.

6. *Processes of Data Collection through Interviewing*

Data collection issues involve the following: interview types and protocols, criteria for the selection of informants, and sampling. The main source of data collected for the inductive research was the conduct of qualitative interviews. To collect data from interviews and available documents from various organizations, governmental and non-governmental, involved in the advocacy or consulting of active or potential investors in China, I traveled to Shanghai, China for two months in the summer and fall of 2007.

Interviews constitute the most important type of data collection technique in this research. I conducted 30 semi-structured and elite open-structure interviews. The interviewing process involved the following steps: 1) A pilot set of interview questions, garnering official ethical and dissertation committee approval, to be refined over the course of the interview process; 2) development and finalization of an interview question guide to ensure the posing of standardized questions for the bulk of the interviews; 3) finding and vetting, based on established criteria, interviewees ; 4) scheduling and conducting the interviews in Shanghai and Pudong China; 5) critical evolution of transcribed and translating interviews on a daily basis to search for themes; 6) analysis of interview data along with the other materials gathered from relevant organizations and government agencies.

Two types of interview protocols used in the fieldwork were the semi-structured and the elite open-ended interviews.¹⁴⁹ Both interview protocols provide a useful balance of standardization and flexibility. Standardization of questions ensures that the researcher

¹⁴⁹ In contrast to semi- and open-structured interview, closed structure questions re fixed-response questions where all interviewees are asked the same questions and asked to choose answers from among the same set of alternatives. This format is useful for those not practiced in interviewing.

covers all the required topics, that the answers are comparable, and mitigates biases. The flexibility of semi-structured and open questions (avoiding yes or no answers) permits the researcher to engage in a dialogue with the interviewees with a significant degree of freedom and adaptability in gleaning information, opinions, experiences, and speculations from him/her.

All of the interviews followed the semi-structured process by drawing from the questions set out in the interview guide (See above). However, eight of the respondents were deemed to be candidates for the elite open-structured interviews, which ask more complex questions directly related to the central thesis on the existence, persistence and evolution of China's ambiguous property rights regime. Elite interviews differ principally from the semi-structured interviews by requiring the researcher to act as a filter in interpreting informants' responses in a way that makes sense, as opposed to merely recording them as is the case for the semi-structured interviews.

A total of 30 in-person interviews were conducted with a range of experts in the foreign investment and business operations in Shanghai and Pudong, including government officials from Pudong and Shanghai, executives and researchers in foreign business associations, consultants in academia, the private sector and the non-governmental sector. My efforts to get interviews with lawyers in local law firms were unsuccessful. Interviews were conducted mostly in English, with several being held in Chinese through the assistance of my interpreter. This interpreter also assisted me in translating the five main interview questions to be sent to the Chinese informants prior to the interview.

Other questions beyond these five were drawn from the (memorized) interview guide, covering the questions that fit the ambit of expertise of the participant.

A few comments on sequencing are useful. Prior to each interview session all interviewees were informed of the purpose of my research as a dissertation project and the confidentiality guarantees worked out through the ethical review with Simon Fraser University Research Ethics Office. I verbally guaranteed that these informants would be anonymous (e.g. called ‘government workers’, or ‘consultants’), and that their views would only serve as part of the fruits of my dissertation work. None of those interviewed were willing to sign confidentiality agreements.

In terms of the interview questions, I generally began the interview questions by asking about the informant’s position and the work of the agency or organization in the foreign investment regime. For the consultancies, business associations, as well as the government workers, the main function was to assist foreign business and investors. This assistance often verged on political advocacy, or lobbying, on behalf of the foreign investors hoping to see improvements in specific property rights related laws (e.g. to alter draft provisions, say, on a new labour law) or to enhance the general business environment (e.g. increasing transparency, and increasing enforcement of legal disputes between foreign and domestic firms).¹⁵⁰ Next, I asked questions from questions sets one through 5 (with set 5 for the elite questions), selected based on the informant’s experience and expertise. Later, in the post-interview phase, at the end of each day and

¹⁵⁰ For an excellent review of the improvements and recommendations for future improvements needed in China’s economic laws and legal development, see European Union Chamber of Commerce (2007). *European Business in China: Position Paper 2006/2007*.

each week, I reviewed my copious field notes to search for repeated themes or novel ideas worthy of pursuing in other interviews. Most of the interviews lasted between 1-2 hours, allowing for many of the questions to be answered. Some respondents sent in the other comments later via email. Not all the questions in a given question set were asked in the interviews, and not all the question sets were covered due to either time constraints or the lack of perceived expertise of the informant. This is in keeping with the flexibility granted to the researcher in semi-structured and elite interviews.

Several strategies were used to search for and select interview candidates. To find candidate interviewees I initially looked through 2007 directories for business associations, embassies, consultancies, and law firms in Canadian libraries and online, but the phone numbers were incorrect. I later turned to locally published directories in Shanghai and Pudong which had accurate addresses and phone numbers. In these directories, I made my requests for interview via email and phone (most successfully) at business associations and industrial organizations, consultancies dedicated to assisting foreign investors, and business situated in the private sector, non-governmental sector and academia, and law firms. I was not successful in getting interviews with lawyers, although I managed to interview one paralegal in a western law firm on several occasions.

Several criteria were attached to the selection of interview participants. The principal criterion applied in determining the suitability of interviewees was the level of expertise and, for foreigners, experience operating in the Shanghai/Pudong or elsewhere in China.

My interviewees each had at least two years of experience in the mainland, as either business persons or more commonly as consultants or executives in non-governmental business associations. For the Chinese informants, expertise and experience in dealing with the foreign businesses and investors was critical. Another criterion was the breadth of experience in working with foreign-invested businesses. By drawing my interviewees from consultancies and business associations my aim was to ensure that these participants worked with many different foreign, and sometimes domestic, companies. This ensured that the viewpoints of the informants were expansive, enabling me to gain insights from a meso-level as opposed to merely the micro-level views of a single company.

Table 5.2 provides basic information on the informants interviewed during the inductive research stage, and includes a listing of their general position, organization and which questions sets were asked of them from the interview guide.

In addition to the clearly defined criteria for interviewee selection, it is important to consider the issue of sampling. Two sampling methods were used in the study: purposive and snowball sampling. Creswell (2003) suggests that qualitative researchers may use purposive sampling to include the informants who are best able to assist the researcher in addressing the research questions under investigation. According to Creswell (2003: xxiv), the “use of purposeful sampling, collection of open-ended data, analysis of text, and personal interpretation of information of the findings all inform qualitative procedures”. In the snowball sampling processes, potential interviewees are identified

through various means such as referrals from initial informants who generate ideas and contact information about additional participants.

Table 9 Information on Informants and Interview Questions Posed

Date 2007	Interview Code No. and Interviewee's Position	Organization Address	Question Sets Asked
Aug. 14	01G Pudong Public Services Officer	Pudong New Area Association of Enterprises with Foreign Investment No. 2 Hehuan Rd. www.pdi.org.cn	1, 2
Aug. 14	02L Chinese Master's of Business Student	Shanghai Foreign Business Related Law Consulting Center, 191 Changle Rd.	1, 2, 3,5
Aug. 15	03G Liaison worker, Shanghai Government	Shanghai Foreign Investment Enterprise Association 55 Luoshan Rd., 16F, 615 New Town Mansion; www.smert.gov.cn	1, 2, 4
Aug. 20	04G Researcher	Foreign Affairs Office of the Shanghai Pudong New Area People's Government, Building No. 1. , 2001 Century Ave.	1, 2, 4
Aug. 21	05G Assistant Director	Shanghai Foreign Investment Development Board, Luan Shang 15Fl. New Town Centre, 83 Loushanguan Rd; www.investment.gov.cn	1, 2, 3,5
Aug. 21	06G Manager in the Investment Promotion Dept.	Shanghai Foreign Investment Development Board, Luan Shang 15Fl New Town Centre, 83 Loushanguan Rd; www.investment.gov.cn	1, 4
Aug. 22	07F Researcher	European Union Chamber of Commerce in China Shanghai Liaison Unit 2204 Shui On Plaza, 333 Huai Hai Zhong Road www.europeanchamber.com.cn	1, 2, 5
Aug.25	08F Business Manager	European Union Chamber of Commerce in China Shanghai Liaison Unit 2204 Shui On Plaza 333 Huai Hai Zhong Road; www.european chamber.com.cn	1, 2, 3, 4, 5
Aug. 25	09F Executive	Shanghai Association of Enterprises with Foreign Investment; www.sefi.org.cn	1, 2

Date 2007	Interview Code No. and Interviewee's Position	Organization Address	Question Sets Asked
Aug. 28	10F Manager	Confederation of Indian Industries (CII) Shanghai Mart, Room No. 11A47/49, 22 Yan'an-Road (W.), www.ciionline.org	1, 2, 3, 4,5
Aug. 29	11L Director	WTO Affairs Consultation Center, No. 5. Lane 294 Xinhua Rd.,; www.sccwto.net	4
Aug. 29	12L Researcher	WTO Affairs Consultation Center, No. 5. Lane 294 Xinhua Rd.,; www.sccwto.net	4
Aug. 29	13F Manager	Korea International Trade Association (KITA) Shahti Center http://china.kita.net	1, 2, 4
Aug. 29	14F Executive	JETRO Shanghai, Japan External Trade Organization Room 319, Shanghai International Trade Centre, 2201 Yan An Xi Road www.jetro.go.jp/china/shanghai	1, 3, 4, 5
Sept. 1	15F Consultant	APCO Worldwide inc, Shanghai Representative Office, 2102 CITIC Square, 1168 Nanjing Rd.(W); www.apcoworldwide.com/china	1, 2, 4
Sept. 1	16F Consultant	APCO Worldwide inc, Shanghai Representative Office, 2102 CITIC Square, 1168 Nanjing Rd. (W); www.apcoworldwide.com/china	1, 2, 4
Sept. 3	17L Professor	Shanghai Academy of Social Sciences, Institute of World Economy, No. 7. Lane 622 , Huaihai Zhong Rd., (W)	1, 4
Sept. 3	18L Researcher	Shanghai Academy of Social Sciences, Institute of World Economy, No. 7. Lane 622 , Huaihai Zhong Rd., Zhongmei	1, 3
Sept. 3	19L Researcher	Shanghai Academy of Social Sciences, Institute of World Economy, No. 7. Lane 622 , Huaihai Zhong Rd., Zhongmei	1, 3
Sept. 3	20L Researcher	Shanghai Institute for International Studies Dept. of International Organizations and Laws 845-1 Julu Rd.; www.sjis.org.cn	1, 3
Sept. 5	21L Executive	Shanghai WTO Affairs Consultation Center, Building 4, 141 Pudong Avenue; www.sccwto.net	4
Sept. 5	22L Director	Shanghai WTO Affairs Consultation Center, No. 5. Lane 294 Xinhua Rd.; www.sccwto.net	1, 2, 4
Sept. 6	23G Director's	Lujiazui Function Zone Administration of Pudong New Area, 981 Pudong Ave, Shanghai;	1, 4

Date 2007	Interview Code No. and Interviewee's Position	Organization Address	Question Sets Asked
	Assistant	www. Pudong.gov.cn	
Sept. 6	24G Director	Lujiazui Function Zone Administration of Pudong New Area, 981 Pudong Ave,; www. Pudong.gov.cn	1, 2, 4
Sept. 6	25L Deputy Director	Shanghai Association of Enterprises with Foreign Investment (SAEFI); www.sae.fi.gov.cn	1, 2
Sept. 7	26F Executive	British Chamber of Commerce, Suite 1703 Westgate Tower 1038 Nanjing Xi Lu; www.sha.britcham.org	1, 2, 3, 4, 5
Sept. 7	27L Paralegal in a foreign law firm		1, 2, 3
Sept. 8	28L Consultant	China Council for International Investment 9 th Floor , No. 55, LouShan Guan Road; www.sfisc.com	4,5
Sept. 9	29L Professor of Law, Administrative Executive	Shanghai Institute for International Studies (SIIS), Department of World Economy Studies, 845-1 Julu Rd.; www.siis.org .	1, 2, 4
Sept. 10	30F Manager	American Chamber of Commerce in Shanghai; www.amcham-shanghai.cn	1,2,3,4,5

Conclusion

This chapter has explained the research design, methodological tools -- strategies and techniques – employed for the empirical research portion of the research on the nature and evolution of China’s property rights arrangements in the Shanghai/Pudong area foreign investment and business environment. The steps delineated here, ranging from the case and interview candidate selection, and the data collection that focused primarily on interview methods. Integrated with the data collection stage was the development of the questions posed to informants from the interview guide, which aimed to ensure a standardized set of questions stripped of potential biases. Missing from this sequence of

research steps is the data analysis, a step that also works in conjunction with data collection in order to assist the research to interpret the interview data and other collected primary source data. Data analysis and an in-depth discussion of the key findings of the inductive research are highlighted in Chapter 6.

Chapter 6: Findings And Discussion

Introduction

This chapter elaborates on the key findings from the case study research, while discussing in more detail the final research step of data analysis and interpretation. The case study focuses on the property rights related rules and norms of the foreign investment and business sector in Shanghai city and Pudong New Area (as a development zone and county), in the south of mainland China. Over 30 interviews were conducted in the summer and early fall of 2007 with selected experts involved in advising and improving the experiences of foreign-invested businesses in the region.

Two core findings resulted from the analysis and interpretation of the interview data. Each finding provides a preliminary and, I contend, plausible answers to the two research questions driving this dissertation. These questions, elicited in the Introduction, ponder the *nature* of the property rights regime in the foreign investment and business sector, and second, the *processes of evolution* of this regime of rules and norms. Evolutionary processes include both the *persistence* and continuous *transformation* of the property rights and the wider institutional environment for market exchanges in the context of China's rather successful post-1978 market economy transition.¹⁵¹

¹⁵¹ It is useful to think of these questions, respective, as the “what” type of question that addresses informants their perceptions and views on what is the nature of the property rights regime they experience, and the “why” and/ or “how” questions that look to insights on the factors and actors influencing the *processes* of continuity and change.

Concerning the first question on the nature of property rights, I find strong confirmation in the interviews for the argument that China's property rights regime can be characterized accurately as "institutionally ambiguous". This confirms my "hunch" about the best way to describe the overarching nature of the property rights regime from my initial critical review of the literature. Scholars in the China field do recognize the prevalence of institutional ambiguity in the property rights regime (e.g. in terms of vaguely written laws, hybridized private-public ownership structures, sporadic enforcement). In addition to confirming the accuracy of my claim that China exhibits an "ambiguous property rights" (APR) regime, the interview data is also used to extract some of the specific meanings attributed to the concept of ambiguity by the informants, and to determine whether ambiguity is conceived as a positive or a negative institutional reality for China, as it constructs its property rights in a global context.

On the second research question, the main finding regarding the evolution of China's APR regime is a preliminary confirmation of the importance of the core concept of legitimation. Legitimation was proxied by the very persistence of ambiguity itself as well as by notions of contestation and negotiations (debates, discussions, and criticisms) over property rights rules, practices and distributions occurring principally between the foreign business community and the state at various levels – central, municipal, and county. The findings also show that contestation and negotiations transpire inter-governmentally between the three levels of governance, each of which is able to formulate rules

influencing the rights of the investors to own, control, transfer, lease, and profit from property.

The discussion of the findings in the chapter proceeds as follows. The first section sets the stage for the discussion by explaining the procedures and techniques applied in the data analysis stage of the empirical research study. Principally, the processes of “qualitative data analysis” require the researcher to search through the interview and other primary source data for relevant themes (often called “categories” and “domains” of categories). In this case, my search is not open to any common themes, but rather is directed at seeking possible answers to the two main research questions. The distilled themes, insights and consensus points from the interview data are used in conjunction with insights from the existing scholarship to provide answers to the two core research questions. The second section delineates in more detail the main findings for the first research question asking about the nature of China’s property rights regime. Section three examines the second research question regarding the evolutionary processes of this APR regime, in particular the explanations for its persistence in the context of 30-year-long market-oriented reforms.

Data Analysis Procedures and Findings: A Note on Procedures

The data analysis procedures for this "exploratory" case study research are adapted from the recommendations made by methodologist Robert Yin’s (1994, 2002a,b) exploratory case study methods, and elements of the grounded theory methodology originally developed by Glaser and Strauss (1967) for pre-theoretical and theory-building types of

qualitative analysis. Generally speaking, the data analysis steps hew closely to the idea of “qualitative data analysis”.

The data analysis in this chapter emphasizes my interpretations of the interview discussions held with 30 selected experts of the foreign investment and business environment in Shanghai and/or contiguous Pudong New Area (a development zone and county). Two main types of primary source data are analyzed -- the interview data and the organizational material and other documents, reports (private and public), and media accounts collected at each of the organizations that agreed to interviews, as well as at local research centres and libraries. In conducting 30 semi-structured and eight elite open-structured interviews I talked with experts in the foreign investment and business activities working in the local governments of Shanghai and Pudong county, business associations and consultancies in the private and non-for-profit sector. Interviews, typically lasting one to two hours, helped to confirm or disconfirm my developing ideas or hunches about the existence and persistence of the pervasive institutional ambiguity in the institutional environment.

Based on requirements for semi-structured and elite-open-ended interviews, the researcher is tasked with identifying and interpreting the various themes, categories, discourses, and insights articulated by interviewees that are fruitful. In this case, the fruitful ideas are those that assisted me in three areas: (i) To better assess the reality in modern-day Shanghai and Pudong, as two relatively advanced localities for foreign investment in China; (ii) To better evaluate the veracity of the recent scholarship about

the reality in China¹⁵²; and (iii) to develop insights for devising the Negotiated Ambiguity framework to enhance our understanding and explanation of the nature and evolution of China's APR regime.

Data analysis during the fieldwork followed a three-pronged approach. First, the verbatim interview notes were examined for themes (common responses) and other insights by the informants. Novel themes or insights deemed important were introduced into the actual questions and in subsequent interview dialogues to be confirmed or disconfirmed and discarded. Second, I also looked for further views and confirmation of the interview points in the organizational materials collected from each of the interview sites. These supplied materials often repeated the information gleaned from the interview about the organizations' role and efforts to improve the investment environment.

The result of the first two steps of analysis can be seen in the interview question guide (See Chapter 5), identifying the themes of institutional ambiguity; political dynamics and contestation over property rights between (i) the three levels of government and (ii) the Chinese state and global (foreign) capitalist actors including foreign business organizations and global governance institutions; and, (iii) informal alternatives (e.g. guanxi) to the well-defined, enforced and private property rights rules. The third step of the data analysis involved careful consideration of the data from the both the semi-

¹⁵² As I note in the main findings and general discussion, my interview data does not confirm the prevalence and utility of guanxi, nor the idea of steadily increasing formalization, efficiency or clarity of property rights related rules. Guanxi and the rise of legal formalization count as two sides of the main debate in the literature to explain China's ability to attract a high volume of the foreign direct investment that spurs economic growth.

structured interviews, elite open-ended interviews, and other primary data now arranged into themes.

Interview questions were analyzed using “qualitative data analysis” (QDA), adapted from the processes described by Creswell (2003), Seidel (1998), and the grounded theory ideas of Straus and Corbin (1998). Qualitative data analysis proceeds in the following way:

Analysis is a breaking up, separating, or disassembling of research materials into pieces, parts, elements, or units. With facts broken down into manageable pieces, the researcher sorts and shifts them, searching for types, classes, sequences, processes, patterns or wholes. The aim of this process is to assemble or reconstruct the data in a meaningful or comprehensible fashion (Jorgensen, 1989, cited in Seidel).

Similarly, Strauss and Corbin (1998: 3) describe analysis as the coding of interview data, where coding is “the analytic processes through which data are fractured, conceptualized, and re-integrated to form a theory”. New concepts and categories are discovered by breaking up the data (Strauss and Corbin 1998). The analysis (or coding procedures) evolved through multiple reading of the interview transcripts with the intent of observing themes, trends, and regularities in the participants’ stated viewpoints, beliefs, opinions, and concerns (Strauss and Corbin 1998). Qualitative data analysis is iterative and recursive. Analysis requires the researcher to move back and forth iteratively and concurrently between the data analysis and the data collection from the interviews. Consequently, the researcher is enabled to explore emerging themes from analyzed data in prospective interviews. Throughout this process of separating and reassembling

elements of the interview data, is it important to keep the informants' stories and viewpoints intact (Seidel 1998).¹⁵³

Another general point concerning data analysis that can be drawn from various methodological accounts of qualitative research is that the analysis of the primary interview data involves interpretation and the filtering conducted by the researcher herself. Strauss and Corbin (1998: 10-11) suggest that research generally and the data analysis stage are processes of interpretation by the researcher “carried out for the purpose of discovering concepts and relationships in raw data and then organizing these into a theoretical explanatory scheme”. Interpretation is vital because analyzing the raw data from the interviews consists of an exploration of the perceptions, opinions, and experiences of the experts selected as interviewees. Interacting with informants enabled me to identify appropriate themes to develop the Negotiated Ambiguity construct. In the context of the elite interviews the informants gave me more specified feedback on my evolving theories (e.g. on the pervasiveness, persistence, and strategic utility of ambiguity), and provide insights that help contextualize understandings from the informants' particularized perspectives.

The final procedure in qualitative data analysis, as Strass and Corbin note, is to identify the main theme, or in the jargon, the “core category” of the research. Strauss and Corbin (1998: 146) say that:

¹⁵³ Seidel (1998) provides a diagram depicting schematically the process of qualitative analysis and stresses. Available online at: <http://www.qualisresearch.com/QDA.htm>.

“The core category represents the main theme of the research. . . in an exaggerated sense, it consists of all the products of analysis condensed into a few words that seem to explain what (the) research is all about” . . . [it is] “the researcher’s interpretation of what the research is about, and what the salient issues or problems of the participants seem to be”.

The core category emerging from my inductive research and confirmed by the literature review *is* the salience and perhaps even the pervasiveness of institutional ambiguity in China’s property rights system. In the discussion that follows, I relax some of the more stringent reporting procedures established by qualitative data analysis in order to provide a simpler narrative of the findings.¹⁵⁴

Finding 1: Confirming Ambiguity of Property Rights in the Foreign Investment Regime

Institutional ambiguity is a prevalent feature of the property rights rules, norms and practices governing the foreign business and investment regime in Shanghai and Pudong, China. This key finding answers the first core research question stated in the introductory chapter -- *What is the nature of China’s property rights regime?* Confirmation of the ubiquity of ambiguity as a prevailing feature in the property rights institutions in China is grounded in both the collected primary interview data and in the relevant empirical studies in the China-specific literature.

The pervasiveness of ambiguity is reflected in the discourses and ideas of the interviewees, who supplied their perceptions, opinions and everyday lived experiences of the foreign investment and business issues “on the ground” in Shanghai and Pudong, as

¹⁵⁴ A complete implementation of the grounded theory methods would require schematic representations of the “coding” of the main themes distilled from the research, organized by code (quote), category, domain, and type of source. The “core category” is the result of a process of integrating and refining the initially discerned “domains” in the interview data.

well as elsewhere in China (as revealed in the overview of China's PR reforms in chapter 2). Reporting directly on respondents answers ensures that my presented findings and interpretation of the interview data is grounded in the perceptions and experiences of the participants, as opposed to being based on my own preconceived ideas or biases. With this confirmation, I also find there is strong evidence to describe China as a whole as having an APR regime.

Interview data draw primarily from answers to the first question set (see chapter 5) exploring respondents' perceptions, opinions and experiences on the problems and improvements in the property rights rules. The interview results were striking in that there was little disagreement about the reality of ambiguity, differentially understood and experienced, or about whether ambiguity can accurately be used as a key characteristic of the property rights rules and practices governing the investment regime in Shanghai. Informants with experiences elsewhere in China also confirmed ambiguity pervades other regions of China. No comparisons on the degree of ambiguity within China were provided, although several informants suggested there was a higher degree of ambiguity in mainland China as compared with other places, including India and Hong Kong.

Confirmation for the prevalence of institutional ambiguity in the property rights regime is provided not only by the interviews, but also in my extensive review of the existing scholarship in the China-specific literature, in the overview of China's PR reforms in chapter 2, and in the literature review in chapter 4. In fact, it was my initial reading of this literature that suggested to me the vital importance of ambiguity inhering in the

property rights institutions. Table 6.1 below displays the characteristics of ambiguity that are observed in the scholarly literature.

Table 10 Observations of Institutional Ambiguity in the China-specific Literature

Element of Institutional Ambiguity	Author(s)
Vaguely written formal laws	Lubman (1995)
Predominant collective or public nature of property rights owned by local government, local villages, or elite families	Oi and Walder (1999) Huang (2008)
Vague and ill-defined ownership structures or laws (2006)	Dougherty et al. Ho (2005)
Mixture of private and public property via public-private networks or partnerships	David Li (1996) David Wank (2001)
Gradual, experimental, and decentralized reform processes	Naughton (1995) Nolan (1995)
Informal relations (guanxi) serving as alternatives to formal-legal institutions	Wang (2001)
Vast diversity of property rights arrangements across the country	Oi and Walder (1999)
Political discretion; differential and inconsistent interpretation of formal property rights rules by local or central state officials	Wang (2002)
Uncertainty, hostile institutional environment for private sector actors	Li () Michaelson (2006) Hsu (2006)
Continuously bargained rights over ownership, profit, decision-making	Francis (1999)
Rent-seeking, corruption, wastefulness (1997)	Sachs and Woo

As noted in the literature review in Part Two, institutional ambiguity is implicitly and explicitly recognized by China field scholars exploring property rights institutions. These scholars can be shown to readily recognize the prevalence institutional ambiguity inhering in the property rights arrangements and in the institutional environment because their theories of China's economic growth are grounded in the need to account for China's institutional exceptionalism. This uniqueness is defined as economic growth in the absence of clearly defined, well-enforced, and secured private property rights.¹⁵⁵ The tendency to recognize institutional ambiguity, however, has not induced China scholars to pay much attention to this pivotal feature or to offer any explanations for its persistence.

Detailed Summary of Interview Responses

So far, I have documented the general consensus of the informants on the existence of institutional ambiguity as a central characteristic of the property rights regime in Shanghai. It is important to now advance that general finding by reporting in more detail on the informants' expressed understandings of ambiguity. The processes of qualitative data analysis, described above, specify that the researcher should look for common themes or "categories" (Glasser and Strauss 1967) emerging in the interview data transcriptions, and then to offer interpretations of these discerned themes.

¹⁵⁵ As discussed in the Literature Review, three of the best known alternative theories for China's growth include the role played by corporate-like developmental local states; the incentives to proper behaviour due to the institution of de facto private property rights such as hard-budget constraints; and informal alternative to formal rules such as networks and guanxi relations.

While ambiguity in the literature is generally viewed through the RCI lens of “inefficiency” (i.e. non-private, ill-defined and unenforced property rights rules), this is not necessarily the understandings of ambiguity articulated by the interview participants. In terms of themes, interviewees understood ambiguity in multiple, and sometimes contradictory ways. For instance, ambiguity was associated with both the long lag time in the development of laws, many of which take years in the making, and the rapidity of changes that do not enable foreign businesses to clearly understand before implementation is expected by the local government. For clarity of presentation, Table 6.2 displays the main commentary on the understandings or perceptions of ambiguity expressed by the informants. I list only the most frequently observed meanings of ambiguity, and provide a sample quotation.

Table 6 Understandings of “Ambiguity” in Interviewee Responses

Understanding or Perception of Ambiguity	Sample Comments from Interviewees
Immature laws	“The legal system is immature.” (Interview 11L)
Disuse of “good” formal laws	“The assignment of property rights is the most legal principle for humans, yet the Chinese people do not use these laws. Education about property rights is not enough....” (Interview 16F)
Changing and different interpretations of laws by officials using their own discretion	It is the country’s culture and history that gave the Chinese people ... the notion that they can interpret the law as they like” (Interview 14F) “Take property rights laws related to competition, labour law, real estate leasing. All of these are precise laws on the book and follow the rule of law. In China, only constitutional rights and can be openly interpreted. But because the law is so immature, local government and people can interpret it as

Understanding or Perception of Ambiguity	Sample Comments from Interviewees
Slow-changing laws	<p>they like and depending on the situation.” (Interview 07F)</p> <p>“China does not have a good law system. Different laws do not co-exist very well. Every different government level has a right to interpret and explain the law. Implementation is a different thing. In Pudong district we must deal with a lot of pressure from governments, and from [foreign investment] partners.” (Interview 03G)</p> <p>“The Chinese government has taken so long to introduce secure property rights laws. And, this leaves room for the government officials to interpret the laws as they like.”</p>
Fast-changing laws	<p>“China is changing very fast and developing very fast. The law is changing fast, too. If the Chinese government makes a law, then suddenly all the companies do these new things. Generally, the waiting period is too short. The company has no time to prepare for new laws to change all that needs to be changed. Even 30 days is too quick.” (Interview 13F)</p>
Lack of enforcement of existing laws	<p>“An act or law comes out, and then the regulations can be implemented and amended as they are not enforced well... This process of legal emergence exists across the country.” (Interview 16F)</p> <p>“... [T]here are unexpected laws and aspects of the laws. The government doesn’t inspect or enforce the laws that do exist. The law is good... and yet no one follows it.” (Interview 06F)</p>

Several interesting insights and observations can be distilled from this set of differential understandings of ambiguity on the part of the interviewees. First, there evidently exists a multiplicity of different understandings of “ambiguity” on the part of the expert interviewees. The same divergence of views on what types of ambiguity pervade China’s property rights regime and institutional environment is also observed in the discussions in

the China-specific literature (Table 6). Generally speaking, it appears that the meanings of ambiguity are as numerous as those who recognize its existence in the Chinese case. This problem of conceptual confusion would typically preclude the utility of a concept, following the old Social Science adage: “if a concept means everything, it means nothing”. However, I suggest that this problem of conceptual imprecision can be rectified in two ways.

First, one potentially useful and generalizable definition of ambiguity is as the “potential multiple interpretations” of an institution or a rule/norm (e.g. Aoki 2001). From this perspective ambiguity is a function of interpretation and meaning. This is quite different from RCI where ambiguity is primarily a function of inefficiency and (informational) uncertainty. Another way to tame the multiple interpretations of the concept of ambiguity is the construction of a typology of the different types or sources of ambiguity. The starting point of such a typology of ambiguity could begin with the concepts of “substantive ambiguity” (e.g. vaguely worded laws) and “procedural ambiguity” (e.g., in the lack of enforcement of laws or legal disputes). This divide between substantive and procedural typology is provided, implicitly, by Laurel Edelman’s (1990, 1992) studies on the ambiguity inhering in American (affirmative action) policy in the tradition of New Institutionalism in Sociology and Organization Theory. These issues are taken up in more detail in the concluding chapter.

In summation, the foregoing discussion on the first major finding from the case study research of Shanghai/Pudong’s foreign business and investment sector has confirmed the

initial “hunch” that institutional ambiguity is pervasive and that it stands as a significant characteristic of the property rights regime in this one case. This finding not only allows a defence of the viability of the concept of China’s “ambiguous property rights” regime, but also bolsters the proposition that ambiguity can serve as the overarching concept of a novel, alternative framework of analysis— called Negotiated Ambiguity.

As it stands, the finding of the prevalence of institutional ambiguity in the property rights regime is an important starting point for the development of a novel approach to supplement the dominant RCI approach to the study of property rights institutions, which is ill-equipped to study ambiguity. This starting point, while important, is also delimited because it provides us with a *description* of China’s property rights regime without the more advanced arguments involving *explanation*. In the next section, I discuss the second major finding of the case study research, and reveal how ambiguity is a useful concept not only for describing the nature of China’s property rights regime, but also in explaining the evolutionary of this regime.

Second Finding: Preliminary Evidence of the Process of Institutional Persistence and Change: Negotiations, Contestations, and State Legitimation

The second preliminary finding from the case study of Shanghai’s foreign business and investment sector confirms the existence of the phenomena of ‘negotiations’ and ‘contestations’ over the ambiguous property rights arrangements in Shanghai/Pudong and, where the informants’ experience allowed it, within China generally. Respectively, these two concepts refer to the negotiations over the meanings, practices and

distributional outcomes of the ambiguous property rights rules, and secondly, to the active political contestations by political economy actors over the application and official interpretations of the ambiguous laws.

Based on the confirmed existence of negotiations and contestations, I make the inference that long-standing persistence of China's APR regime can be plausibly explained as a product of the central state's legitimation activities. That is, the Chinese central state's allowance of a space (or site) of negotiations and contestations over the property rights rules might be fruitfully explicated as part of the state's strategy to retain its authority and the needed perceptions of legitimacy on the part of certain 'audiences' (following Barker 2001) both at home and in the global political economy.

This second case study finding builds directly upon the first preliminary finding confirming that institutional ambiguity constitutes a major characteristic of China's property rights regime and the wider institutional environment in the Shanghai case study. Taking the reality of ambiguous property rights as a point of departure, the next step to this *descriptive* finding is to attempt to find an *explanation* to the questions of why and how this APR regime of rules, norms and practices persists. I suggest the negotiations and contestations assist us to explain *how* the APR regime is reproduced by the everyday actions of state and market actors at both the domestic and the global domains, or sites of negotiations (and contestations) over property rights. As to the question of *why* the APR regime persists, I posit that the Chinese central state, in mediating the different demands for 'legitimate' property rights made by various actors in

these two sites of negotiations domestically and globally, appears to have discovered the *utility* of institutional ambiguity as a means to retain its own authority.

The key theoretical contribution to this second set of findings is that we can begin to better understand the evolutionary *political* dynamics driving the persistence, as well as the changes and improvements, to the APR regime. The proposed framework of analysis being developed in this research, called Negotiated Ambiguity, earns its utility by suggesting a plausible alternative approach to the study of both the nature and the evolutionary processes of the APR regime.

In what follows, I discuss the theoretical insights that had originally prompted my search for the institutional change processes of legitimation, negotiations, and contestations during the fieldwork. It is also useful to begin with a recapitulation of the central thesis delineated in the introductory chapter, which recalls the aim of the study is to find plausible explanations for the puzzling persistence of the APR regime. Drawing on the extant literature on legitimacy and legitimation in both Political Science and the NISO, I then define the concepts or processes of negotiations, contestations and legitimation. Finally, I conclude the section with a brief critical appraisal of the confirmed findings (i.e. negotiations, contestations) and inferences (i.e. state legitimation strategies), arguing that these initial findings on the evolutionary processes of the APR regime's continuity and change are worthwhile pursuing in future research.

Theoretical Background and Key Definitions

To recapitulate, the main argument of the central thesis (articulated in chapter 1) holds that legitimation processes are key to understanding the evolution of China's APR regime in the post-1978 market economy transition period. Specifically, the central state and the political economy actors at both the domestic and the global domains are involved in a continuous negotiation – contestation, debate, discussion, consensus-building – over the meanings, practices and resource distributions associated with property rights. In effect, the central state and the political economy actors are *negotiating ambiguity*. There is a strong linkage between the concepts of ambiguity, negotiations (and contestations) and state legitimation activities. If not for the high degree of ambiguity inhering in the property rights rules, this process of negotiation and contestation would not be as apparent as it is in the case of China.

Ambiguity is not only a description of China's seemingly unique property rights regime; it is also a context in which agency occurs in the construction of the APR regime. In this research, agency refers to two types of actions. First, the actions of political economy actors in the domestic and global domains to interpret and make sense of the ambiguous property rights rules. This is an insight drawn from NISO and Social Constructivism. A second aspect of agency focuses on the central state and draws from the work on legitimacy and legitimation in Political Science (esp. Barker 1990, 2001; Beetham 1991; Francks 1990). Here, I posit that the APR regime's persistence is a product of the Chinese central state's agency that is motivated in large part by the leaders' and policy makers' drive to retain authority amidst a major transformation of the political economy and legal system. Proxies for this inference of state legitimation, discussed below,

comprise ambiguity, negotiations over meanings and interpretations and contestations over the application of the law in practice.

I focus in the research on the central state as the pivotal actor constituting the property rights system and the wider socialist market economy.¹⁵⁶ The central state is the focal point of the political dynamics of contestation and negotiations occurring at the two spaces, one global and one domestic. The state's legitimation activities entail the act of mediating between the legitimacy demands over acceptable property rights emanating from the global actors and the domestic actors. Global political economy actors are demanding reforms that introduce capitalist institutions of the Chinese state such as private property rights and the rule of law, whilst the domestic political economy actors are demanding of the state the retention of the socialist institutions such as non-private, weakly enforced property rights. Ambiguity is the central state's response to these two different "logics" or "legitimacy demands" over what constitutes legitimate property rights to each constituency of actors. These are called "legitimacy constituencies" or

¹⁵⁶ The researcher's focus on interpreting the results of the interview data in terms of the legitimation activities and strategies of the Chinese central state, a choice most apt to a Political Science approach, the study is nevertheless informed by recent empirical work on the legitimation activities of MNCs and of the global governance institutions. Business Management and Strategy studies have shown that foreign multinational subsidiaries seek legitimacy by conforming to the normative and cognitive structures of the host country as well as their home country and headquarters. See for instance, Li and Yang, 2006, *FDI Communities and the Legitimation of Wholly-Owned Foreign Subsidiaries*. On companies' legitimation strategies generally, see Mark Suchman. Legitimation strategies are also being explored in the global governance institutions, which must vie amongst each other to convince states that the latter's global norms and laws are the most legitimate (See Carruthers et al., (2010) "Rhetorical Legitimation", *Global governance institutions are not only competing with each other for legitimacy, but also increasingly with the non-state actors (e.g. credit rating agencies) in today's "polycentric" global political economy with the authority to make economic rules and standards that influence state behaviour (e.g. Black 2008).*

“legitimacy communities” in some of the recent scholarship on New Governance (e.g. Black 2008).

These ideas are drawn from two main theoretical sources, the NISO’s account of institutional legitimacy and the ‘logic of appropriateness’ guiding actors’ selection of institutions that ‘make sense’ and adhere to a ‘social fit’ with the institutional environment. Secondly, these ideas are based on studies on state legitimation studies in Political Science (esp. Barker 2001). While these ideas are employed in the efforts to develop the proposed Negotiated Ambiguity construct, I had not yet begun to focus on legitimacy and legitimation when I conducted the fieldwork and interviews. In fact, it was in interpreting the data from the interview transcripts that the themes of negotiations and contestations emerged. These two processes, which are empirically verified in the interview data, are used as proxies to support the inference that state legitimation processes can plausibly explain why the APR regime has persisted over the course of three decades of market-oriented reforms.

In terms of theoretical background, it is also important to note that the dominant RCI theory does not provide us with a detailed account of the processes of institutional change. To caricature the RCI argument, the rational state is presumed to have the capacity and the will to impose on a willing, and equally rational society, the most efficient (i.e. capitalist) property rights system. This prevailing theory takes legitimacy of the property rights and the state for granted. Implicitly assumed in this RCI account is the notion that only ‘efficient’ -- capitalist private property rights rules -- are deemed

'legitimate' by the rational state and its rational market actors. Given the persistence of China's APR regime, however, this single notion of a hegemonic view of legitimacy of private property rights cannot be supported.

Definitions and Three Proxies for Legitimation Processes

Employing the methods recommended by exploratory case studies and Grounded Theory, two core themes, or concepts, were discerned from the interview data and the organizational material collected from business associations and consultancies. These themes comprised: negotiations and contestations. I argue that these two interrelated processes of institution-building can usefully explain *how* the APR regime is reproduced and changed through the interrelations between and among states and economic actors, in this case the foreign business and investors in Shanghai and Pudong. In order to answer the question of why the APR regime persists, I use the existence of these two processes as proxies of the central state's strategy of legitimation in promoting the APR regime by creating the spaces of negotiated ambiguity. In this way, a third proxy – ambiguity – can also be used as initial evidence of the state's legitimation activities.

The existence in the Shanghai case study of contestations and negotiations between and amongst the local states and business actors constitute the second of two key empirical findings emerging from the fieldwork, and supported by scholarly literature. These two concepts are defined here both as variables in their own right, but also as proxies to the inference on the state legitimation processes. A third proxy, that of the ubiquity of ambiguity in the Chinese property rights regime (i.e. the first empirical finding), can also

serve as a proxy to the notion that the APR regime persists as a result of state legitimation activities.

Negotiations

By ‘negotiations’ I refer to the idea that socially and politically embedded actors in an economic system must interpret or ‘makes sense of’ an institution prior to acting on it. This insight stems from the institutional accounts found in the New Institutionalism of Sociology and Organizations (NISO) and Social Constructivism, which view institutions as socially constructed “social facts” (See Chapter 3). As social facts, institutions are naturally ambiguous because their meanings, practices and distributional outcomes or consequences are collectively discovered and worked out by societal members.

Many of the interviewees mentioned the varied interpretations of property rights rules by the local state officials and bureaucrats in the context of discussing the ‘problems’ of ambiguous property rights (Questions 1a, 1b) (See Table). Here, however, I read these discretionary interpretations as part of the political processes of institutional change, leaving aside the normative view about their problematic aspects.

Interpretation and implementation of the ambiguous laws is a major political role of the local states, to which the central state has devolved authority over the property rights arrangements. In the context of institutional ambiguity, however, all the actors in the marketplace are involved in making sense of these rules, since their meanings are not spelled out clearly by the state through codification of formal rules or by systematic enforcement after a law has been promulgated. David Wank (1999: 251) suggests that

confronted with China's uncertain institutional environment due to ambiguous, insecure, and vague laws actors are guided merely by the knowledge – based on their embeddedness in society – of what is an illicit interpretation or practice, but not what counts as a legitimate interpretation or practice. In fact, the state leaders themselves might not yet agree precisely on this themselves; and hence the ambiguity. Instead, the legitimacy of the ambiguous formal rule is something that needs to be worked out collectively by the political economy actors through negotiations and contestations with each other, and with the central state as the key arbitrator of institutional legitimacy.

Contestations

'Contestation' is often treated as synonymous to negotiations, but here the concept refers to any politically motivated efforts on the part of political economy actors to alter or to improve the prevailing property rights rules, or those that are being drafted. One of the main conceptual benefits of the contestation variable/proxy is the clear political dynamic involved in the foreign business actors actively voicing their views about the property rights. For instance, the European Chamber of Commerce submitted to Beijing and Shanghai a 2006/2007 position paper clearly voicing four grievances with the legal environment in Shanghai for all foreign investors. These four problems, and associated recommendations, were: (1) inconsistency in implementation; (2) a weak and inconsistent arbitration environment for the enforcement of legal; (3) problems in the administrative approval system for new companies; and (4) the lack of transparency in policy- and law-making.¹⁵⁷

¹⁵⁷ *European Business in China Position Paper 2006/2007*. European Union Chamber of Commerce.

The contestations envisioned here cover disagreements, discussions, and outright conflicts of opinion over the practical application of the property rights laws, and tend to involve the central state. In physical terms, contestation can be manifested in the formal or informal meetings between, say, businesses and state officials, or between state officials and experts of the global governance institutions like the World Bank. Or, contestations can be in written form, such as when a chamber of commerce submits to the Chinese government a white paper of recommendations to improve the legal infrastructure, or sends a written letter complaining about a particular official's treatment.

In the interviews, the theme of contestation is drawn out in several ways and at two levels of analysis (i.e. domestic, global). At the domestic level and perhaps most clearly, the meso-level organizations – mostly foreign and Chinese business associations and consultancies -- are all involved in direct attempts to assist foreign-invested enterprises (FIEs) to operate in Shanghai and Pudong. Government agencies are also interested in increasing levels of inward foreign investment arriving in their localities. Charged with these functions and objectives, the organizations conduct activities to enlighten the state (at all three levels) on the problems confronted by the FIEs and to recommend measures the government could take to improve either specific laws for the wider business environment. Principally, these activities involved the submission of white papers or survey reports to the government, the organization of seminars to explain new laws in which government officials are invited (but do not necessarily come), informal “meet and greets”.

I have defined the concepts, or proxies, of contestation and negotiations as being distinctive in theory, and indeed they are important core processes in their own right. However, in the real-world of research this tight separation quickly unravels. In the conduct of the interviews and in my interpretation of the interview data I found it necessary to often elide the three proxies of contestations, negotiations and institutional ambiguity in order to ask clear questions, or in the interpretation of the response. For instance, at first blush it seems possible to distinguish between contestation and negotiations because the former is more political (in that actors are seeking to actively change the laws and policies or their interpretation) and the latter, negotiations, is more cognitive with its focus on developing the meanings needed prior to acting on institutions. More useful I found, was the separation of these concepts into the two different domains or spaces, the global and the domestic political economies, wherein these contestations and negotiations with the central state transpire in the construction of the APR regime.

Domestically, I suggest that we find hints of the central state's legitimation strategy in its allowance of sub-state actors and non-state actors to engage in contestations and negotiations over the property rights. The central state has long devolved the authority over property rights to the local states, and has thereby allowed them to interpret the meanings, practices and distributional outcomes of these rules. Informants in the case study observed first-hand these inter-governmental negotiations over the meanings of the property rights. By providing the economic and political space in which the local states

can interpret the property rights the central state is, it would appear, increasing its own authority. Second, the recent allowance of contestations on the part of the foreign business and investment community suggests that the state is seeking a way to appease this community. By voicing their complaints about the APR regime, meanwhile, the FIEs are engaged in legitimating the APR regime, and by extension the state itself.

Ambiguity

Institutional ambiguity inhering in the property rights institutions is used as a third proxy of state legitimation in the research. The ubiquity of institutional ambiguity acts as a 'precursor' or 'precondition' to the processes of negotiations and contestations. Because of the existence of ambiguity, and the resultant negotiations over the meanings and outcomes of property rights institutions, the RCI's account of the state coercively imposing an efficient (and presumably legitimate) property rights system on a willing society becomes suspect in the case of China. Not only is there evidence of negotiations/contestations over the APR regime, but also the very persistence of the APR regime suggests that it is deemed legitimate as an institutional 'object' by the agents who co-constitute this institutional complex. In the NISO, the survival of any institution or organization is considered *prima facie* evidence of legitimacy. It can be inferred, then, that the state might continue to support the APR regime because it is constructive, or even strategically advantageous to the state. Recent scholarly literature has suggested the utility of studying institutional ambiguity as a constructive feature of institutions in that multiple possible interpretations enables inter-state stability (e.g. Best 2005; Byers 2004). In the China field, Peter Ho (2000, 2005) has suggested that land ownership rights have

been left 'deliberately ambiguous' and flexibly by the state in order to engender relative social stability.¹⁵⁸

One of the key theoretical implications of the ambiguity proxy is that recognizing the prevalence of ambiguity inhering in the Chinese property rights regime (but also within all institutions) requires that we look to agency and actions to explain how the institutions are being reproduced and transformed by the actors embedded in their institutional environments. With ambiguity, we cannot simply accept that the state can coercively impose the institution on a willing, quiescent society who immediately has knowledge and information about the legitimate meaning or practices of an institution. In the Chinese case, the high degree of ambiguity enables us to consider the agency the actors involved in the constitution, or construction of the APR regime through contestations and negotiations. In particular, this research focuses on the long-neglected role of the Chinese central state in intentionally and/or unintentionally supporting substantively ambiguous (i.e. vaguely worded) and procedurally ambiguous (i.e. meekly enforced) property rights and thus constitutes the APR regime, the market economy and the actors embedded within in. These meso-level collective actors, including local states and business organizations, are enabled and constrained by the central state to negotiate, interpret, politically contest and ultimately agree upon the meanings and practices of these ambiguous institutions in an economic space that might be termed contextual ambiguity.

¹⁵⁸ In part this stability has been based on the demand by the farmers for adaptable property rights arrangements. But Ho suggests that this relative social stability in recent years has been at risk as the farmers become more cognizant of their legal rights.

In sum, these three proxy variables act as “functional equivalents” to search for tangible empirical evidence of the rather elusive and complex processes of legitimation. The proxy variables of contestations and negotiations are useful not only because they are more amenable to empirical validation than is the concept of legitimation, but also because they are drawn directly from the interview data and the interview questions developed from it. The proxies were also selected because of their conceptual neutrality as compared to the more loaded concept of legitimacy and legitimation as they are conventionally studied by political scientists.

A few initial comments on the concept of legitimation should be made here in order to clarify the processes by which the inference of state legitimation were made. In order to find evidence of legitimation processes, the first step in the inductive process involved operationalizing this complex concept in order to make its meaning sufficiently clear and accessible to my interview participants. Rather than pose direct questions that used the term “legitimation” (or “legitimacy”) I chose to employ ‘proxies’ as indicators of legitimation processes that were consistent with the way the concept is understood in the scholarly literature yet at the same time sufficiently “neutral” so as to avoid situations where interviewees would feel as though they were being asked to make ideological or moral/sentimental judgments. In developing and refining the interview questions, I came to the realization that the complex concept of legitimation could be proxied by several notions: “contestations” over the procedural application of property rights rules, policies and laws; “negotiations” over the meanings, outcomes and implications of these rules.

And, indeed, the interview data also suggested that the very existence of “ambiguity” inhering in the interpretation and implementation of the property rights rules in the foreign investment sector provides *prima facie* evidence of legitimation processes. That is, the reality of ambiguity requires us to consider how the relevant political economy actors cooperate and conflict collectively in order to work out a set of property rights rules that can ensure social order, and in the case of China, stellar economic growth.

The key point here is that institutional ambiguity does not simply describe the static nature of China’s property rights regime, but also can be used to proxy the processes of co-constitution of these rules within the meso-level of the institutional environment. Said otherwise, ambiguity can be used to combine the two main findings of this empirical part of the research, the finding that a rather high degree of institutional ambiguity continues to characterize China’s property rights system despite over three decades of market economy reforms (finding #1, above), and the role of ambiguity in explaining the evolution of property rights institutions constructed by the agency of legitimacy-seeking political economy actors engaged in contestations and negotiations over legitimate property rights.

In undertaking legitimation strategies the organization is directing its activities at altering the perceptions of legitimacy held by certain audiences. In this study, and adapting the ideas of Barker (2001), I suggest the following legitimation activities: the state itself (at both the central and local levels), the domestic political economy actors (including both local states and any private actor engaged in market exchanges), and the global political

economy actors (including both the foreign investors and businesses within China, and external actors of the global political economy like global governance institutions and states.¹⁵⁹

It was only after the fieldwork that I became aware of the importance of the processes of state legitimation as a plausible explanation for the perseverance of the APR regime. For this reason, there are no direct research questions addressing the issue of legitimacy and legitimation. Instead, support for the argument on state legitimation benefits mostly from the secondary sources of the existing scholarly literature, a process of deductive-inductive interplay that is encouraged by Grounded Theory. Interview commentary are elicited to support the empirical plausibility that these three processes do transpire in China. Further evidentiary support for the empirical results of the fieldwork is supplemented with references to secondary 'data' found in the China-specific literature.

The study focuses on the concept of state *legitimation* over that of *legitimacy*.

Legitimation refers to the agency, or activities, on the part of the state to gain, retain or regain its authority and the perceptions of legitimacy from political economy actors in the global and domestic realms. As a process variable, legitimation is interpreted in the empirical case study by other processes, namely those of negotiations and contestations.

By emphasizing these two empirically verifiable activities undertaken by the domestic-

¹⁵⁹ There is a necessary overlap of the local states as part of the state apparatus, and as part of the society. Local states have been devolved the authority over the interpretation, implementation and distribution of property rights, making them an essential part of the state machinery. Local states are simultaneously an intrinsic part the networks and/or guanxi relations explored by many in the China field, making them a part of society as much as they are a part of the state. See the discussion in the introduction of Wang Hongying (2001) *Weak State, Strong Society*.

level political economy in the case study, the problems associated with exploring the more intellectually elusive, complex and ideologically laden concept of *legitimacy* can be avoided. Legitimacy of any given organization or institution is not only ideologically problematic, and empirically difficult to confirm, it is also not as useful for our efforts to develop Negotiated Ambiguity as a framework to explain institutional change. That is, legitimacy is most often elicited by scholars in Political Science as a static resource, or a possession of the state, which might have a high or low degree of legitimacy. The degree of legitimacy or authority a state holds at any given time does not enrich our explanations of institutional change (cf. Gilley 2008).¹⁶⁰

Despite its complex and ideologically laden features, the concept of legitimation itself is an important one to focus on in this research. One justification is the superiority of the concept of *legitimation* over the much-used but little understood concept of *legitimacy* (Gilley 2008). Political scientist Rodney Barker has emphasized the need to focus on the process-based concept of *legitimation* in order to overcome some of the serious shortcomings of the concept of *legitimacy*. Generally defined as the state's perceived "right to rule", legitimacy has been accused of being vague and underspecified (e.g. Levi 1988: 17), overly subjective as a mere "matter of sentiment" (Schaar 1989: 22), of being overly normative and carrying unnecessary ideological baggage, and of having a static quality as a resource merely possessed (or not) by the state (Barker 1990). The concept

¹⁶⁰ In a recent work, Bruce Gilley essentially argues that political change is the direct result of the popular perceptions of legitimacy or illegitimacy of a given institution. Thusly, if a majority of societal members consider a local state to be illegitimate, this can prompt the introduction of village elections. See Bruce Gilley (2008). "Legitimacy and Institutional Change: The Case of China", *Comparative Political Studies*, 41(3): 259-284.

of *legitimation*, in contrast, helps minimize these problems by focusing on *processes* by which an organization or an institution (like property rights) evolves via continuity and change.

Detailed Summary of Interview Responses

In exploring the perceptions, experiences and opinions of experts and advocates of the foreign investor and business section in Shanghai and Pudong, several of the questions developed addressed the core processes of contestation over the problematic elements of the APR regime in the effort to rectify these problems, and the processes of negotiations over the legitimate meanings and practices of these ambiguous laws. Using these two proxies, legitimation processes were addressed in interview question sets numbered two through five (see chapter 5). Question sets two addresses the governance relations and political dynamics over property rights rules occurring amongst the three levels of governance – central state (Beijing), municipal (Shanghai), and county-level under the authority of Shanghai (Pudong)¹⁶¹.

Question set four focuses on the contestations occurring between the state (any level) and global capitalist actors represented domestically by the foreign-invested enterprises (FIEs) and their business associations, and the external global governance institutions or western states within them exhorting China (and all developing countries) to install the NLGG institutions like private property rigs and the rule of law. Although the FIEs are part of what I call the global capitalist legitimacy constituency that demands of the

¹⁶¹ As a development zone Pudong has special status allowing its leaders to undertake investment related projects affecting property rights rules (e.g. taxation, leasing of land and fixed assets, hiring) that might be vetted by Beijing and/or Shanghai (Interview 01G).

Chinese state more clearly defined, secure, private property rights, I explore their contestations with the state as part of the domestic realm of contestation. Global-level contestations involve the Chinese central state in negotiations with the global governance institutions. This dimension of the central state's legitimation processes is explored in this research in a more indirect way because I was only able to interview experts on China's relations with the global governance institutions.

1. Legitimation Processes at the Domestic Level

Two sites (spaces, domains) of contestation are indicated by the inductive research within the domestic political economy: contestations between the three levels of government, or inter-governmental contestations, and those occurring between the state (various levels) and the foreign business community as represented by the meso-level organizations like business associations and consultancies. Political efforts to contest, improve or to make sense of – i.e. to negotiate the meanings of – the rules and norms of the APR regime occurring at these two levels can only conceptually, not realistically, separated. I discuss, in turn, the preliminary evidence pointing to legitimation processes involving inter-governmental relations, relations between the foreign business community with the state, and relations between the central state and the global governance institutions.

Inter-governmental Legitimation Processes

Question set two in the interview guide set out to better understand the politics of governance over the foreign investment regime that is overseen by the central government in Beijing, the municipal government of Shanghai, and the county government of Pudong. Originally, my intention was to distill from these governance

relations a source of ambiguity, defined as multiple interpretations of an institution or an institutional “situation” (following Aoki 2001). A number of informants from the foreign business community noted the high degree of interpretation of ambiguous rules that occurs on the part of the local state officials. For the most part, these comments on the interpretation of the laws were framed as criticisms of the ambiguous, inconsistently applied property rights in China that remain open to official discretion. One of the more insightful comments was:

“China does not have a good law system. Different laws are do not coexist very well. Every different government level has a right to interpret and explain the law. Implementation is a different thing. In Pudong district we must deal with a lot of pressure from governments, and from [foreign investment] partners.” (Interview 11G)

Later on in the interview process it became clear that the multiple interpretations of the ambiguous property rights rules tell us much about the dynamic political processes of continuity and change. Moreover, allowing the local state actors to negotiate the meanings, practices, and distributive elements of the property rights rules amongst each other, with the central state, and with the foreign business community as well, the central state is engaging in a legitimation strategy helpful to secure its own legitimacy in a vast, populous and complex country.

Questions posed to the government officials more neutrally explained how the system of laws worked in Shanghai and Pudong. I was told about the freedoms and the constraints on these two local level governments in their property rights governance.

“Pudong does follow the laws [promulgated by Beijing] exactly. But China has 32 provinces and autonomous regions, each of which are like Beijing’s children. All the children follow their parents, but they .. are all different. Beijing gives freedom that allows its children to grow.” (Interview 01G)

“Beijing makes the laws, or Shanghai as the local government, but for some special things, the Pudong county-level government can make some laws. If Pudong initiates a law it must seek approval from Beijing and Shanghai. Pudong and Shanghai collaborate.” (Interview 02G)

“The laws [from Beijing] cannot be explained as “ABC”; it doesn’t work that way. The laws should be interpreted by the local governments like Shanghai.” (Interview 03G)

“An act or law comes out, and then the regulations can be implemented and amended as they are not enforced well... This process of legal emergence exists across the country.” (Interview 16F)

Local states (or governments) (here, Shanghai and Pudong) are involved in political contestations and sense-making negotiations over the property rights rules that often, but not always, are promulgated from above by Beijing. Insofar as these laws are ambiguous, the local states are required for pragmatic reasons to interpret and implement these laws. Interpretation, we can assume, is done in such a way as to ensure the continued the acceptance of the centre. Interpretation is not free; it is constrained and enabled by the political embeddedness of the local state officials and their desire to retain their positions by ensuring the interpretations are legitimate. This is an element of the state apparatus’s self-legitimation processes (following Barker 2001) as seen by the local states’ efforts to ensure that they “follow the law” set out by Beijing.

Local governments are not the only ones engaged in the processes of negotiation and contestation over the legitimate or politically desirable interpretations. One executive at a business associate indicated to me that there is more at hand than the mere interpretation

of, say, vaguely written or complex and confusing laws. Market actors, inclusive of foreign and domestic businesses, law firms, consultancies, business associations and the like, are not only interpreting the ambiguous laws coming down from Beijing, but also these actors are legitimating or striving to create legitimate property rights rules. Key to this process, moreover, is learning. This insight is most evident in the comment from one informant about the desire of the foreign business community to avoid “crisis” and “scandal” in their interpretations of the ambiguous laws. He said:

“[Law] directives emanating from Beijing become open, open to learning and the exchange of ideas over how to apply them in practice. One goal is to avoid crises or conflicts by discussing how to work together.. and.. to understand what local governments will do. No scandals are wanted.” (Interview 16F)

One implications for theory can be drawn from this discussion of the inter-governmental negotiations over the meanings of the ambiguous property rights, and in contestations over such things as jurisdictions. First, the on-the-ground, everyday efforts on the part of the local states to interpret the formal rules coming down from Beijing, or to create their own property rights rules, invoke the legitimation processes of these local states.

Shanghai policy makers must be ever mindful of retaining their legitimacy in the view of the central state in Beijing, Pudong county officials below, and the reformers and conservatives within all of these governments. In addition, the local state must consider the foreign business community as an audience from which it must attain the perception of legitimacy.

My ultimate interest in this project, however, was not to study the legitimation processes of the local states, which make up most of the literature on China’s property rights, but rather to consider the central state at the macro level. In the China-specific literature,

scant attention is paid to the central state which is either downplayed as the entity that provides the local states the political and economic incentives to spur growth (e.g. Whiting 2001; Oi 1999; Shirk 1993). Or, the central state is disparaged for its inability to construct a secure, clearly defined and enforced, private property rights regime, a feat that would require much more control over the local states and their “interpretations”. What is ignored in these accounts is the legitimation strategy of the central state in allowing these local states, and the private-public networks joining local states and private sector actors, to participate in the constitution of the property rights regime and the market economy writ large. This could be interpreted as the central state’s self-legitimation strategy. Such a strategy is vital in a political economy as geographically vast, as populous and as culturally diverse as China. As one informant noted:

“A strong relationship exists between the central government and local governments. The [local governments] should follow the law set by the central government. Anyone who does not obey the law of Beijing will be punished. But Beijing can’t always see the picture clearly because they are too far away.”
(Interview 11G).

Business-Government Legitimation Processes

The themes of political contestation and negotiations over property rights emerged not only in the inter-governmental relations, but also in the relations between the local states (Shanghai and Pudong) and the foreign investment and business community.

Interviewees were representatives of meso-level institutions, including foreign and Chinese business associations and consultancies in the for-profit and non-for-profit sectors, selected for their expertise in the foreign investment regime as well as their political functions in advocacy for investors or in seeking to improve the legal environment for investors.

Contestation activities undertaken by the meso-level organizations involved direct and indirect means of attempting to politically engage the state for the purpose of improving property rights or other laws governing foreign business and investment. In their mostly independent activities to improve specific property rights rules¹⁶² or the general business environment, direct activities included formal meetings with government officials, letter writing about complaints and the submission of white papers or reports to the government with overt recommendations on how to improve the legal system. In recent years, foreign business organizations have been invited to comment on some draft laws within a 30-day period. Indirect means of contention include the organization of seminars to better understand new laws, in which government officials are invited (but rarely come, I am told), and other informal “meet and greets” in social circuits. I envision that contestations and negotiations over meanings occur on a more regular, daily basis as these foreign business associations and consultants deal with bureaucrats in attempting to make sense of, and work out in practice, the laws that are subject to officials’ dissertation and constant change.

One of the reasons why I selected the for the case study the FIEs in the foreign investment regime is that these actors will have more options of “voice” and “exit” (following Hirschman) in making policy and legal requests of the host state. Although domestic companies were represented by the Shanghai-based consultancies, I did not

¹⁶² Specific problems with the Labour Law and Anti-Monopoly Law were those most often raised by informants in the summer and fall of 2007. These were both considered problematic for retrenching the foreign businesses’ property rights, respectively, over hiring and firing, and in lost tax policy preferential treatment, which is one of the most common ways governments attenuate property rights.

gather sufficient evidence on their legitimacy demands on the state. One academic suggested that increasingly the state has been open to allowing the views of Chinese academics, lawyers or legal scholars on the draft laws, but that this advice was not often taken (Interviews 14F, 17L).

It bears repeating here that nearly all the interviewees denied the importance of, or any reliance on, social connections (*guanxi*) in their business operations conducted in an APR regime and uncertain environment. And, there was no distinction found between the legitimacy demands on the state for more secure property rights on the part of the western and Asian business communities. Thus, the notion that the Overseas Chinese or Asian businesses are satisfied with informal *guanxi* and are not a part of the struggle to improve the property rights and legal system in China is open to question (cf. Wang 2001).

I mostly limit my analysis of the interview findings to the strong *existence* of political contestations in the case study, and say little about the actual *effectiveness* of these protestations and complaints. (I take a similar approach in the subsequent section discussing the exogenous pressures on the Chinese state for property rights and legal reforms from the global governance institutions.) It suffices to say on effectiveness that the informants frequently mentioned improvements in the legal system and business environment in Shanghai and China (see finding 1), which is taken as *prima facie* evidence that the global capitalist actors have some influence on the government's policy making.

At this preliminary stage, it is sufficient to note that the existence of contestations over the unfavourable practical applications of the law and ongoing negotiations over their uncertain and shifting meanings suggests in itself a responsiveness of the state (all levels) to the “legitimacy demands” of the foreign business community for more secure, defined and enforced property rights. This openness to dialogue and receptiveness to contestation is a new approach taken by the state in recent years. One informant stated:

“One major improvement I’ve seen in my dozen years of working in China is that the government is increasingly more open to dialogue with foreign experts, more willing to share, be transparent and to talk about international best practices.... Laws are copied.” (Interview 16F)

On the effectiveness of the foreign business community’s influence, however, this informant was less sanguine.

“No law is perfect. Despite the best efforts of the state to consult widely with the foreign business community, not all the scenarios are considered in advance, and there are plenty of gaps and problems when the draft comes out. But, this is natural for all laws and constitutions.” (Interview 16F)

Another informant similarly noted that:

“It is very hard to make things work in China...Improvements are not automatic. Instead the local and national governments need to be pushed make any changes to improve the situation of foreign businesses...” (Interview 13F)

Ultimately, the fact that the contestations are occurring, and not their success, suggests that the Chinese state is engaging in a legitimation strategy vis-a-vis the foreign investors. The state appears to be open to hearing the complaints, receptive to the recommendations on laws or on legal development, and occasionally delivers some improvements. At least symbolically, the state is placating the foreign investment sector at home, and by extension the external actors in the global political economy. The state’s legitimation strategy is not unidirectional. By engaging with the state in the negotiations and

contestations over the property rights rules, the foreign investment community is itself legitimating both the state and the APR regime these investors and business actors are co-constructing.

2. Global-level Legitimation Processes

Legitimation processes at the global, or macro, level of analysis involve the contestations and negotiations between the Chinese central state and the actors in the global political economy. In particular, I include here three main global governance institutions --the World Bank, International Monetary Fund (IMF), and the World Trade Organization—because these were mentioned most in the interviews.¹⁶³ Legitimation processes involving the central state and the global governance institutions at the global level of analysis were not initially part of the interview questions, and were added later in question set five (following the procedures of qualitative data analysis and grounded theory) when I managed to secure interviews with four scholars at the Shanghai Academy of Social Sciences and two interviews at the WTO Consultation Centre in Pudong and Shanghai. I engaged these experts in elite interviews about two core issues: the prevalence and the effectiveness of global pressures on China's property rights transformation and market economy transition.

Based on the insights garnered from these interviews, I found that legitimation processes at the global level of analysis can be manifested in China's *partial compliance*, or

¹⁶³ Although the foreign investor and businesses community operating inside China is considered part of the global set of actors constituting the “global capitalist legitimacy constituency” pressuring China for the NLGG reforms, I treat them geographically as part of the domestic-level legitimation processes for the sake of clarity of exposition.

alternatively *partial resistance*, to the powerful global pressures on the state to conform to the “legal pillar” – private property rights, the rule of law and a robust legal system -- of the NLGG development policy.¹⁶⁴ The robust consensus of this development policy, I argue here, essentially renders the support for the NLGG institutions a global norm, or an expected standard of state behaviour (e.g. Krasner 1983: 12). The APR regime, showing a *prima facie* resistance to these immense global normative pressures to comply with the NLGG qua global norms, is also suggestive of legitimation processes – contestations and negotiations – transpiring between the central state and the exogenous actors in the global institutional environment. Key among these global actors promoting developing country states’ installation of the NLGG, including private property rights and the rule of law, is the World Bank.

In elite interviews I discussed with six scholars of China’s role in international relations about the existence and the effectiveness of external pressures on China’s property rights transformation. The consensus point was that these external pressures were not all that successful in altering China’s course. The issue that is more important are the possible reasons for China’s partial resistance to the global normative push. Answering this will begin to explain the persistence of the APR regime. This puzzle has not be explained by the RCI – expecting institutional convergence based on rational actors’ efficiency choices following the “logic of calculus”, nor by the NISO or Social Constructivism’s

¹⁶⁴ Although some of the experts interviewed specialized in China’s rather recent 2001 accession to the World Trade Organization, they felt that it was premature to comment on the extent of compliance with the country’s WTO commitments, many of which were not to come on line until 2010.

expectation that China will abide by global norms under the “logic of appropriateness” of good, reputable states operating in the global system.

Commenting on the partial resistance to the exogenous reform pressures, informants suggested:

“WTO argues for universal and fair treatment [of foreign businesses and investors], but conflicts arise because all groups and countries have their own interests. China’s interests are not the same as the US.”

“China tries to learn from foreign countries their laws. Shanghai is a diligent learner of other regions’ laws and policies. And the city gains experience in its market activities. Beijing is much more limited because it is more of a political centre, not a business hub. Shanghai is competitive with Hong Kong, nowadays.”

“It’s a dilemma. I don’t think the international community can take away the right of the Chinese government and people to increase their standard of living as humans. So pressures for macroeconomic policy change or the pressures to be a market economy should not be more important than our right to improve our life... and the pressures from outside motivate the people to support their government.” (Interview 11L)

“There are many contradictions in the law. But also China is so willing to learn from other countries... Everything is copied. Best practices on all elements of the law for the market economy are copied... although there is some backlash. Under the current system, [China’s] own standards [for products, technology] has not met with much success. So international standards are viewed as being more successful for Chinese companies.” (Interview 16F)

Table 11 Understandings of the Evolutionary Processes of the APR Regime in Interviewee Responses

Interview Commentary (Data) in Support of the Change Processes of Legitimation, Negotiations, and Contestations	Interview Comments
<p>Negotiations over Meanings, Practices, Outcomes of Property Rights Rules</p> <p>State officials’ interpretations of property rights laws due to their ambiguity.</p>	<p>“The Chinese government has taken so long to introduce secure property rights laws. And, this leaves room for the government officials to interpret the laws as they like. It is the</p>

	<p>country’s culture and history that gave the Chinese people ... the notion that they can interpret the law as they like” (Interview 14F)</p> <p>“Take property rights laws related to competition, labour law, real estate leasing. All of these are precise laws on the book and follow the rule of law. In China, only constitutional rights and can be openly interpreted. But because the law is so immature, local government and people can interpret it as they like and depending on the situation.” (Interview 14F)</p> <p>“The... law in China is interpreted by one person, at any given time, and thus is subject to change over time or if this person is replaced by another... This is the most difficult task in China. Law is itself is immature, with lots of interpretation by different government persons.... The law depends on the authority. It changes from person to person, city to city... We can’t believe the law, that the law says something.” (Interview 16F)</p>
<p>Contestations</p> <p>Domestic Domain Contestation : Inter-governmental and State-business</p> <p>Global Domain Contestation</p>	<p>“China does not have a good law system. Different laws are do not co-exist very well. Every different government level has a right to interpret and explain the law. Implementation is a different thing. In Pudong district we must deal with a lot of pressure from governments, and from [foreign investment] partners.” (Interview 03G)</p> <p>“The government is certainly willing to work with the business associations to come up with the best practices in the Chinese context.” (Interview 07F)</p> <p>“The lack of innovation and creative capacity” of Chinese firms enables the foreign business community... to have the power to make some pressures [on the local and central states].” (Interview 16F)</p>

<p>Legitimation Activities or ‘Strategies’ of the Central State</p> <p>Central state provides a ‘space of negotiations’ allowing political economy actors the freedom to interpret and put into practice the ambiguous laws</p>	<p>“Pudong does follow the laws [promulgated by Beijing] exactly. But China has 32 provinces and autonomous regions, each of which are like Beijing’s children. All the children follow their parents, but they .. are all different. Beijing gives freedom that allows its children to grow.” (Interview 01G)</p> <p>“A strong relationship exists between the central government and local governments. The [local governments] should follow the law set by the central government. Anyone who does not obey the law of Beijing will be punished. But Beijing can’t always see the picture clearly because they are too far away.” (Interview 08F)</p> <p>“An act or law comes out, and then the regulations can be implemented and amended [with discretion] as they are not enforced well... This process of legal development and emergence exists across the country.” (Interview 16F)</p> <p>“If there is a real problem in the business environment, the government will change a law; if not they just leave things as they are.” (Interview 25F)</p>

Conclusion

This chapter discussed the steps taken in the analysis and interpretation of interview data and the two major findings in support of the proposed notion of Negotiated Ambiguity.

Fieldwork interviews associated with the exploratory case study confirmed in a preliminary way, first, the prevalence of ambiguity as perceived by the experts in foreign

business and investment, and second, the existence of negotiations and contestations. I made the inference that the existence of institutional ambiguity along with the negotiations/contestations over ambiguous institutions might be suggestive of legitimation processes by which the central state supports the continued reproduction of the APR regime in order to preserve its authority. Ambiguity enables the existence of multiple interpretations of institutions or multiple ‘institutional logics’ and in so doing promotes the flexibility that engenders the perceptions of legitimacy the state needs to remain in authority with the ‘right to rule’.

The second finding confirming the existence of negotiations and contestations provides, I believe, sufficient evidence to support future research on these processes. Less certain, however, is the inference on state legitimation. In this inference I make a bit of a logical leap in suggesting that the processes of institutional change associated with negotiations over meaning and the contestations over the applications of the laws might be indicative of the state’s legitimation strategies. It does seem valid to claim that the central state has enabled, if not actively promoted, a space of negotiations in which the political economy actors, including local states and foreign businesses and investors, actively participate in the construction of what these actors see as legitimate and workable property rights rules. Further research is needed, however, to delve into the central state officials’ actual thinking on the issue of the APR regime. Gaining insights into the domestic business actors would also be an important future avenue for inquiry.

The main point to be stressed is that the confirmed existence of negotiations and contestations, along with the persistence of the seemingly legitimate APR regime, are all suggestive of the plausibility of the Negotiated Ambiguity construct to explain the evolution of China's property rights rules.

A brief critical appraisal of the second main finding on legitimation processes is worthwhile. The exploratory case study evidence is only able to confirm the plausibility of the ambiguity and legitimation processes. Despite this limitation, other evidence has been adduced in this research to add support to these findings. Substantiating the on-the-ground existence of legitimation activities on the part of the three actors under study – central state, local states and the foreign business/investor community – followed a research strategy of integrating theoretical/deductive and empirical/inductive procedures (see Chapter 5). Because the dominant RCI economic theory does not explicitly address the phenomena of institutional or organizational legitimacy (i.e. social acceptability) and legitimation, I turned to social theory – principally the New Institutionalism of Sociology and Organizations (NISO) and Social Constructivism (SC) – for guidance on how the concept of legitimation, as well as the “embeddedness” of actors in their surrounding institutional environments, might explain the APR regime's persistence.

I have suggested that the state's legitimation processes involves allowing, or possibly encouraging, an ambiguity that covers two ‘institutional logics’, one ‘capitalist’ and one ‘socialist’. This logic refers to what certain groups of actors in the domestic or the global political economy – the legitimacy constituencies – deem to be a legitimate property

rights and rule of law system. Ambiguity of property rights that are not clearly socialist (public, communal, and upholding a collectivist ethos) nor clearly capitalist (private, well-defined and enforced, upholding an individualist ethos) enables the central state to satisfy, at least to some degree, the proponents of both logics.

While more research needs to be conducted in future on this claim, evidence of the competing legitimacy demands to which the state must satisfy is found in several sources within this research beyond the empirical evidence of the case study reported above. First, chapter 2 provides a chronological mapping of the gradual and experimentalist property rights reforms that have been transforming the agricultural and industrial sectors. In that chapter I demonstrated the institutional ambiguity resulting from the slow pace of change, the experimentalist backtracking, and the ambiguity associated with the breach between the ‘law in the books’ and the ‘law in action’. These features suggest evidence of domestic support for retention of some form of socialism, while the state also makes robust efforts to move the country forward.

Second, the Chinese state’s support for ambiguity is evident in institutional complexes other than the APR regime. For instance, the state has overseen the 20-year construction of the equally ambiguous ‘socialist market economy’ and a ‘socialist rule of law’ (Jiefen Li 2007) that is only fuzzily ‘socialist’ or ‘capitalist’ in nature. The ambiguity of these economic and legal institutions with ‘Chinese characteristics’ allows the central state to appease the divergent demands from groups in both the global and the domestic political economies for a more ‘modern’ capitalist private property rights regime or for a more

conservative approach that values the status quo where hybrid public-private enterprises, de facto privatization (e.g. 15- and 30-year land leases), and vaguely worded laws that can be differentially interpreted based on local contingencies and socio-political realities.

Third, there are several exemplars in the China-specific literature that can be used as secondary source evidence that ambiguity is, in fact, a result of the state endeavouring to secure its authority by appeasing both camps, the proponents of a capitalist or a socialist property rights system. These works can be used to bolster the initial empirical findings of the exploratory case study and the *inference* about the state's employment of institutional ambiguity as a legitimation strategy that appeases both domestic and global "legitimacy constituencies" holding divergent views on what counts as a legitimate property rights institution. These works provide secondary-source support for the claim that the Chinese state's authority and perception of its legitimacy domestically must be attained by appeasing those who are not yet actively embracing the capitalist ethos of private property rights, profit-seeking, and consumerism. I provide three important exemplars in this literature that guided my thinking.

Peter Ho (2000, 2005), first of all, sets forth the provocative argument that the state has undertaken a strategy of "deliberate institutional ambiguity" over land ownership rules in order to fulfill the demands of peasants for flexible land leases that can be altered based on crop yields or demographics at the request of the farmer. The provocative element of his thesis is Ho's view that this ambiguity can help to explain the relative degree of social stability in the Chinese countryside, at least – Ho admits readily – for the first two

decades of reforms. His critics point to the rise of protests in the countryside in the past decade as evidence of a demand for more secure, privately assigned property rights, but this view has its own critics.

In the industrial sector, secondly, Hsu (2006) articulates a theory of “institutional ambiguity” based on the experiences of a single entrepreneur who must hide the “moral logic” of capitalism in his business ventures in order to placate his workers and consumers. These actors express dismay at over profit-seeking for individual gain, and express a desire to work at and buy from a business that is helping the people. Only when seeking out capital does the entrepreneur present an image of being a capitalist. In the services industry, Ethan Michelson (2006) employs the concept of “political embeddedness” to explain why private sector lawyers in China suffer from extreme discrimination, to the point of physical beatings, from those who find them and their work an undesirable manifestation of capitalism.

In the realm of theory, recently, Zhu (2007) challenged the major debate in the China-specific literature pitting the Convergence and Experimentalist schools of thought established by Sachs and Woo (1997) by arguing that the Chinese state, with the support of society, has conducted a gradual, experimental, and piece-meal market economy reform “without a theory”. Any claims by westerners that the state is abiding, say, by RCI tenets of private property rights being the key to economic growth does not sufficiently appreciate the comfort of the state and society, argues Zhu, with ambiguity inherent in gradualism. Zhu (2007) suggests that the missing question is “why a no-theory 'strategy' was 'selected' by the Chinese elite, 'accepted' by the Chinese people and 'worked' in the

Chinese context?” His answer emphasizes cultural and ideological factors such as the historical pragmatism or “pragmatic mindscape” that is highly tolerant of policy and governance that is characterized by ambiguity, uncertainty, flexibility and local experimentation. These are just some of the examples of a wide literature that well documents that private business entrepreneurs in China have been forced to learn how to live with discrimination from administrative officials that routinely interfere with or levy fees on them, and the discrimination from society at large. This all said, the contrasting views also exist. One subset of the China scholarship also documents an increasing demand on the part of Chinese political economy actors and citizens for rule of law, which is often taken as a proxy of property rights (Peerenboon 2002: Chapter 4; Pistor and Wellons 1999; Levine 1999).¹⁶⁵

Another way to assess the plausibility of the Negotiated Ambiguity framework of analysis as a novel alternative to explore the nature and evolution of China’s APR regime is to compare it to alternative theories. Currently, the RCI approach to the study of property rights is the only available theory. I suggest that utility of the Negotiated Ambiguity construct can be positively compared to the RCI approach based on three of the latter’s own weaknesses that can be supplemented by my own alternative approach.

First, in the property rights orthodoxy articulated by the RCI theory the central state is assumed to exogenously and coercively impose on domestic society clearly defined and

¹⁶⁵ One must take care in interpreting this demand for the rule of law, however, if it based on the deductive RCI assumption that rational actors will eventually demand efficient institutions, such as the rule of law and private property rights, from their state. Elements of this deductive speculation are evidenced in Peerenboon’s (2002: Chapter 4) discussion.

enforced property rights. This is not the case in China where the APR regime requires political economy actors, including the state itself, to work out the meanings of vaguely worded, and weakly enforced property laws. Instead, the reality of the APR regime in China is that this ambiguity requires actors to first make sense of them, and then to collectively work out legitimate practices. Determining collectively, or intersubjectively, which meanings, practices, and resource distributions are perceived as being legitimate by both the state and the domestic/global political economy actors is what is meant by the processes of legitimation in the Negotiated Ambiguity framework.

Second, the RCI approach tells us little about the processes by which these institutions change. An institutional change according to the RCI account is akin to a jump from one 'equilibrium' (institution) to another, with little known about the mechanisms and processes of change (Campbell and Pedersen 2001). Given this extant theory of property rights evolution, it appears evident that even an inchoate and preliminary account based on the concepts of the Negotiated Ambiguity construct – ambiguity, legitimacy, negotiations, contestations – provides at least one alternative explanation that attempts to get into the “black box” of institutional change.

Third, RCI takes the legitimacy of the state and its property rights regime for granted. By deductive assumption, all rational state and market actors, both domestic and global, prefer ever more 'efficient' (i.e. capitalist) property rights institutions. Discussions on the domestic demand for more secure property rights and the western-styled rule of law are common in the RCI treatments of the Chinese case, but these tend to adduce much more

futuristic speculation than present-day evidence to support the claim that managers of state-owned enterprises, or local government officials overseeing township and village enterprises, or farmers are rational actors demanding private, secured property rights (e.g. see Peerenboon 2002: Chapter 10). Another set of scholars claims that these same domestic actors have socio-cultural and political reasons to demand of the state ‘ambiguous’ property rights arrangements that are easily adjustable and flexible (e.g. Ho 2000, 2005 on land rights).¹⁶⁶

Evidently, more inductive research needs to be conducted on the actual preferences of domestic and global actors for the property rights rules in order to support the claim that the state is employing the APR regime as a strategy of legitimation that appeases the proponents of the two legitimacy constituencies. Also important would be to better discern the actual views on institutional ambiguity of central state officials, both through both interviews and a discursive analysis of official laws and oral decrees. For instance, the recent campaign to develop a ‘Harmonious Society’, along with property rights rules that favour bolstering the competitiveness of the domestic enterprises in ways that add to the costs of foreign invested enterprises (Interview 14f, 16F), suggest that socialist impulses will continue to vie with capitalist ones.

¹⁶⁶ See also the work of J. Kung on peasants’ support for insecure and flexible property rights to land. J. Kung. (1995). Equal Entitlement versus Tenure Security under a Regime of Collective Property Rights: Peasants’ Preference for Institutions in Post-Reform Chinese Agriculture. *Journal of Comparative Economics* 21: 82–111, and J. Kung and Liu, S. (1997). “Farmers’ Preferences Regarding Ownership and Land Tenure in post-Mao China: Unexpected Evidence from Eight Counties. *China Journal* 38: 33–63.

Chapter 7: Conclusion: Implications of the Negotiated Ambiguity Concept for Theory And Development Policy

Introduction

What are the implications derived from this exploratory research study? My answer to this question discusses both the theoretical and (development) policy implications as well as the intrinsic limitations of the main outcome of this dissertation, namely, the initial development of the proposed ‘Negotiated Ambiguity’ analytic framework. The stated goal of this framework, as a preliminary construct to a more formal ‘model’, is to enhance our current understandings on the ‘ambiguous’ *nature* and to explain the *evolutionary political dynamics* of China’s unique and seemingly theoretically unorthodox ‘ambiguous property rights’ (APR) regime. I also see Negotiated Ambiguity as a point of departure to guide future investigations into these very topics.

Implications are delineated in this concluding chapter for both property rights theory and for development policy. With regard to theory, the Literature Review set out in Part 2 divided the scholarship on property rights theory into the general (non-area-specific) and the China-specific, highlighting that both are largely dominated by the deductive tenets and methods of the family of theories under Rational Choice Institutionalism (RCI).

Chapter 3 introduces and critically evaluates the RCI and the “embedded” schools of the New Institutionalism and Social Constructivism, which appear to be better able than the dominant RCI to understand the nature and evolution of China’s property rights regime

due to their stress on the role of thinking, social(ized) and legitimacy-seeking actors who shape and are shaped by institutions.

With regard to development policy, implications are drawn for the currently ascendant neoliberal good governance (NLGG) development model (or post-Washington Consensus for some). Since the early 1990s this policy has been powerfully influenced by the RCI, and in particular its core proposition that “efficient” – defined, private, enforced – property rights rules and the rule of law (constricting state expropriation) are necessary and/or sufficient conditions to market-oriented growth.

This concluding chapter aims to provide an overview of the dissertation project and to suggest the major implications, along with limitations, that derive from it. Contributions to the advancement of knowledge in Political Science and the elements of original knowledge are also discussed, along with an agenda for future research that centres on pursuing in a more definitive way the preliminary findings related to the proposed Negotiated Ambiguity construct.

The chapter is organized as follows. In the first section, I provide a brief review of the main research questions and research objectives of the study by summarizing the main findings in support of the plausibility and utility of the Negotiated Ambiguity framework. This section continues the discussion from Chapter 6 by eliciting in more depth the two main findings of the empirical case study research. In the second section, I suggest the key implications of this research for prevailing theory on property rights and NLGG

development policy, noting some of the limitations. Section three concludes with a discussion on the contributions to knowledge, original knowledge, and ideas on the directions for future research, particularly as it regards China's institutional development and the concept of institutional ambiguity.

7.1. Research Questions, Objectives and Summary of Findings

The context of this study initially was the observation that the *nature* of China's property rights institutions appeared to be rather distinct from the "efficient" – well-defined, state-enforced and private-- property rights that RCI and NLGG development policy proponents argue to be preconditions for market-oriented economic growth. Property rights set out the rules governing the "bundle" of rights to own, control, transfer, lease, profit from and transfer property such as land, fixed capital, technology, and labour. Leaving to economists and political economists the study of the purported causal linkage between private property rights and economic growth, the evidence of a gap between the prevailing theory and China's institutional reality suggested an important lacuna to be filled and a puzzle to be unraveled. The research questions posed by this project asked:

1. What is the nature of China's property rights system, and in what ways does it conform to or diverge from existing economic theory and development policy?
2. Why has China's ambiguous PR system persisted and how has it evolved?

The concept of Negotiated Ambiguity has been developed through these seven dissertation chapters as a guide, or a framework of analysis, setting forth the concepts and existing theoretical insights that can lead us toward more enhanced answers to these two New Institutional questions. Briefly, the answer to the first question (a "what"

question) regarding the nature of China's property rights system, is institutional ambiguity. Ambiguity, understood synonymously as vagueness, inconsistency, uncertainty, unpredictability, is shown to be a pivotal, perseverant quality characterizing China's property rights arrangements in the several parts of the dissertation, including the chronological mapping of property rights transformation (chapter 2), the literature review (esp. chapter 4), and in the empirical case study of the foreign investment and business sector in Shanghai, China.

Ambiguity is also central to answering the section question concerning the evolutionary processes of the APR regime. This evolution comprises both the persistence of the quality of ambiguity, as well as the transformations in the property rights and legal regime. These improvements are an undeniable dimension of China's market economy transition and legal development. Interview data confirm the perception of the improvements in the property rights regime in the Shanghai case study, but one need only to consider the hundreds of new or refined laws, provisions, constitutional amendments being promulgated by Chinese leaders over the years (See chapter 2).

Given this rather high degree of sustained ambiguity, we must look outside the RCI for answers. I suggest an "embedded ontology" is the first place to start in order to narrow the theory-reality gap created by the RCI and its "problem of embeddedness". Beyond ontological considerations, the more tangible and political answer is the ambiguity can be explained as part of a "strategy", either intentional or unintentional or both, on the part of the Chinese central state to retain its authority in the face of the pressures emanating from

two audiences, one domestic and one global. Undertaking legitimation processes to remain at the seat of power, it is plausible that the APR regime is an institutional response to ensuring those favouring both socialist and capitalist property rights institutions and values will confer their legitimacy on the central state overseeing this unorthodox, but still workable, APR regime.

Four core interrelated research objectives were set out and, I believe, achieved through the execution of the research. In chapter 2, “Mapping China’s Property Rights Regime”, I endeavoured to demonstrate empirically the nature and evolution of China’s ‘ambiguous property rights’ (APR) regime (Objective 1). A detailed chronological overview “mapping” out of the main property reforms in four key domestic economy sectors (according to Redding and Witt 2009) including: agriculture, non-state sector with the township and village enterprises, state-owned enterprises, and the small-scale private enterprise sector. The foreign investment and business sector, which has proved economically vital to China and its continued “reform and opening” to the world, is touched only later in the synoptic case study in Chapter 6 following the convention of the relevant literature. This generalized “mapping” of the formal-level evolution of property rights rules and interests in China served as a useful way to set the context for the discussion of property rights to follow in subsequent chapters, and is in itself is much more detailed and comprehensive chronology of China’s post-1978 (and post-Mao) market economy reform process than I have seen anywhere in the literature.

The main impressions drawn from a reading of this chronology are twofold. First, inescapable is the reality of the massive extent of the transformation in China's property rights in the agricultural and industrial sectors. This is a reality that should be used to mitigate any overly harsh criticisms by international development agencies or by businesses about China's ambiguous and still inchoate legal development.

A second impression is the resilience of the socialist ideology and ethos that continues to imbue the formal laws, policies, and constitutional amendments promulgated by the central state and its many agencies. The continued role of the (for some) "developmental" local states (i.e. provincial, city, township, county) in the distribution of property rights, the continued dominance of non-private – public and collective – property rights over ownership, control, profit, lease, transfer of assets, are among the main manifestations of a lingering socialism. The socialist ideology, values, and ethos that still manifests itself in the formal-legal rules of the property rights regime has also been observed to exist in the wider Chinese society by some recent empirical work (e.g. Hsu 2006; Ho 2005; Zhu 2007). It is the persistence of historically, politically and socio-culturally embedded socialist values and institutions that bring out the ambiguity in the property rights regime in China which is simultaneously on a development path toward becoming more capitalist (i.e. privately assigned, enforced and secured by the state), and theoretically "efficient" and growth-producing.

The Literature Review covered in Part Two of the dissertation aimed to revealing how China's unique and theoretically unorthodox 'ambiguous property rights' regime

diverges from the theoretical expectations of the Rational Choice Institutionalism (RCI) and the prescriptions delivered to China by the World Bank and other proponents of the neoliberal good governance (NLGG) development model. (Objective 2). This goal is attained in the discussions in Chapter 3 on the “Nature of Institutions” and Chapter 4 on “Property Rights”, which both discuss and critically appraise the RCI’s powerful, and yet narrowly circumscribed, approach to “economic” institutions such as property rights. By accentuating the deductive tenets of “efficiency” (transaction cost reductions) and rationality (cost-conscious decision making) and atomistic actors’ sole pursuit of individual or national wealth, the RCI theory provides only a narrowed lens through which to understand the nature of property rights as efficient or inefficient institutions or to explain why and how these institutions change. The fact that an “inefficient” APR regime has persisted in China through three or more decades of a very successful market economy reforms suggests that we must look elsewhere for insights on how to understand and to explain, respectively, the nature and evolution of this regime.

Chapter 3 focuses on explaining how the “problem of disembodiedness” goes a long way toward explaining why the RCI theory and NLGG development model are unable to accurately describe or explain China’s APR regime. Disembodiedness refers to the ontological presupposition that rational actors are atomistic, asocial and apolitical by being largely unaffected by the institutional environment that surrounds them. This overly parsimonious “disembodied” ontology also strips away the essentially social and “embedded” character of property rights, and all institutions, that are mere objects calculated on the basis of their efficiency. This approach has limited ability to explain the

reality in China is perhaps best exemplified by the inability to acknowledge or explain the main characteristic, I believe, of the country's property rights regime: ambiguity. RCI theorists and neoliberal economists can and do only describe China's non-private, weakly enforced, and ill-defined property rights regime as "inefficient", "wasteful", and amenable to "rent seeking", all negative denotations of pathologies that must be rectified in order that China grow even more quickly. In reality, however, the institutional ambiguity that imbues the property rights regime in China cannot be described in completely negative, pathological terms. The APR regime has accompanied what many call unprecedented economic growth in China and, until recently, a relative level of social stability (e.g. Ho 2000, 2005).

This chapter shows that the way forward for those interesting in advancing our knowledge of China's property rights institutions are the "embedded" camps of the New Institutionalism, which consider how thinking, social(ized) actors embedded in their environment collectively construct institutions that "make sense" and "socially fit" their prevailing environment. Precisely this embeddedness helps to explain why many within the Chinese society and within the state are satisfied with a slow, gradualist and experimentalist reform process for which China is well-known. These very reform modalities – gradualist, experimentalist – only add to the (procedural) ambiguity evident in the Chinese market economy transition.

The dissertation research has culminated in establishing the initial contours of a novel approach to the study of the nature and evolution of China's APR regime, which is

labeled Negotiated Ambiguity (Objective 4). This proposed preliminary framework of analysis was developed through a research strategy integrating deductive-theoretical insights from the “embedded” camps of the New Institutionalism and Social Constructivism, with the inductive-empirical case study analysis provided in Chapter 6 on “Findings and Discussion” (Objective 3).

Two main findings arose from the empirical case study and interview data outlined in Chapter 6. First, I found some empirical confirmation for the reality of institutional ambiguity in the foreign investment and business sector operating in Shanghai city and contiguous Pudong New Area. Respectively, these are one of China’s most important fast-growth “mega-cities” and the site of the 2020 “international financial hub”, and one of the country’s most important “experiments” in opening high technology investment and trade to foreign companies. Second, the empirical case study also illuminated some suggestive evidence that the state is involved in the construction and support of the prevailing APR regime through processes of legitimation vis a vis the foreign investor community and simultaneously state self-legitimation (following Barker 2001). Both of these preliminary findings provide the foundation, or the rudimentary beginnings, of the Negotiated Ambiguity framework of analysis.

For the remainder of this section I recall the procedures for arriving at these two main preliminary findings of the empirical portion of the research. Subsequently, the next sections turn to an elicitation of the principal implications for theory and policy of the

findings and the Negotiated Ambiguity framework of analysis, and then to a critical evaluation of their main limitations.

The strong presence of institutional ambiguity imbuing the property rights regime of rules, norms and practices is the first major empirical finding of the case study research outlined in chapter 6.

For this first preliminary finding, I used the primary-source interview data to confirm the on-the-ground reality of a high degree of institutional ambiguity (differentially defined by informants) inhering in the property rights regime governing the foreign investment and business sector in Shanghai and contiguous Pudong New Area. The reported opinions, perceptions and experiences of the 30 experts interviewed in the nearly two months of fieldwork supplemented the conclusion already emerging in this dissertation about the overarching character of ambiguity in China's property rights.

In the conduct of the interviews and fieldwork I most often left the concept of ambiguity undefined in order to better apprehend how informants perceive and experience it.

Ambiguity has been defined, for the most part in this research, in opposition to the "efficiency" qualities the RCI attaches to the kinds of property rights institutions that are theoretically presupposed to produce growth, namely well-defined and formalized rules, enforced and secured by the (central) state, and privately assigned to individuals or firms. Another set of understandings stems from treating ambiguity synonymously with uncertainty, inefficiency, inconsistency, vagueness, unpredictability, and the like.

The qualitative data distilled from the interviews served to supplement two other forms of evidence supporting the same conclusion. These were: First, the earlier descriptions of the chronological “mapping” of the evolution of China’s property rights in other major economic sectors, the agricultural and industrial sectors (inclusive of the non-state township and village enterprises, the state-owned enterprises, and the millions of small-scale privately owned enterprises); and second, the Literature Review of the China-specific literature which concluded that the China field acknowledges, without benefit of explanation, the ambiguity inhering in China’s property right regime.

The second main finding to emerge from the case study and interviews addressed the question of the evolution of China’s APR regime. I found in these interviews a degree of confirmation for a novel explanation for the existence and persistence of China’s APR regime over thirty years of market economy reforms that is grounded in the *processes of state legitimation*. State legitimation is defined as any activity aiming to increase the authority (the right to rule) and legitimacy (the perception of authority) of the state.

Essentially, the case study research showed the existence of *contestations* and *negotiations* over property rights related rules and norms of the foreign investment and business sector. Ongoing, daily contestations over the practical applications of formal rules, and negotiations over the meanings of these ambiguous rules, served as useful proxies to legitimation. Informants discussing their experiences and perceptions discussed their involvement in contesting the APR regime and/or specific property rights rules in direct or indirect relations with government officials at the central (Beijing),

municipal (Shanghai), and county (Pudong) levels. In rather recently allowing these contestations, and by appearing to listen to the foreign investor community, the state is actively engaging in a legitimation strategy by allowing this space of contestation to exist. Its existence appeases the foreign investor community, and by extensions I suggest, the large global capitalist actors in a “legitimacy constituency” that demands of the Chinese state to install private property rights, a more robust legal infrastructure, and the rule of law.

Regarding the negotiations over the meanings of the property rights rules, these are a natural outcropping of the reality of institutional ambiguity. Formal rules promulgated by Beijing that are vaguely written, or not systematically enforced by the central state, sets in motion a process of negotiation in which the manifold local states must interpret. Informants mentioned that the discretion of local state authorities over the interpretations of vaguely written or confusing or changing laws, as one of the main dimensions of “ambiguity”. I suggest that negotiations or interpretations are much more important than as a mere description of China’s property rights rules (cf. Wang 2001: Chapters 5 and 6) because these processes of “negotiated ambiguity” assist us to explain how these ambiguous institutions are continuously reproduced by actors, while also changing their meanings.

In my interpretation of the informants’ responses, I suggest that these meso-level representative organizations of foreign investors are themselves involved in negotiating the meanings and practices of the ambiguous rules as they engage with the state’s agents.

In this way, the legitimation of the APR regime of rules is a bi-directional process involving the state and the political economy actors under study.

In sum, this ambiguity as multiple interpretations and negotiations over meanings and applications is suggestive of a state legitimation strategy that involves both self-legitimation strategy and legitimation of the state through its interactions with the foreign investment community. State authority rests, in part, upon the success of the state's legitimation strategies to secure the perceptions of legitimacy of the state agents (i.e. self-legitimation) and the global capitalists of the foreign investment community.

7. 2. Key Implications for Theory and Development Policy

Key implications of this research, and its proposed Negotiated Ambiguity framework of analysis stressing ambiguity, legitimation, and the political embeddedness of actors, can be derived for prevailing theory on property rights and institutions, as well as for the currently ascendant NLGG development policy.

The theoretical implications of the Negotiated Ambiguity construct can be decomposed into the ontological, epistemological, and methodological implications. From an ontological perspective, the research here confirming the ubiquity of ambiguity in the substance, procedures, and context-based evolution of China's property rights regime is representative of the naturally occurring ambiguity inhering in all institutions in all locations. This suggests that the case of China examined here might be representative of a wider "population" of country cases where ambiguous property rights systems are reproduced. Likely, such cases would be found in the 30 or so other transitional market

economies in Europe, Asia, and Latin America. The natural feature of ambiguity that is ignored or downplayed by the RCI is, however, recognized by institutionalists in the “embedded” camp, such as the New Institutionalism in Sociology and Organization (NISO) and Social Constructivists in International Relations. The problem has been that these scholars well versed in social theory have not shown interest in the study of such “economic” institutions as property rights (Carruthers and Ariovitch 2004).

Epistemologically, the knowledge to be gained from studying institutional ambiguity will require foregoing the positivist divides between fact and value, subject and object, and the like, and the tendency in institutional analyses to emphasize formal institutions that are codified “in the books”. While interpretivists, and ethnologists of the post-modernist approaches are much more comfortable and skilled in exploring the concept of ambiguity, rendered as the multiple interpretations of institutions, this research showed that empirical observations of people’s perceptions, opinions and experiences can be collected, analyses and interpreted to positive effect. The next positivist-oriented empirical step in this research on China’s APR regime would be to better understand these perceptions of ambiguity in the country, on the part of the state as well as the society and businesses. One specific way to advance the Negotiated Ambiguity framework of analysis would be to build a typology of the types of ambiguity experienced by economic actors in the marketplace.

Methodologically, the research design employing recommendations for methodological procedures from exploratory case study and grounded theory shows promise. Without the

benefit of a theory to develop research questions, or hypotheses to test, these approaches to qualitative data collection, analysis and interpretation proved to be a way forward in exploring a heretofore unexplored topic, namely, the nature and evolution of property rights institutions. I was able to develop my interview questions, analyze and interpret the interview response, in an iterative, integrated approach that substituted for the lack of theory.

Because of the embeddedness of all institutions, and the actors who construct them, in their localized/national contexts, deductive theories like RCI are limited. In the case of China, the RCI approach has created a theory-reality gap – by not acknowledging the reality of institutional ambiguity – that initially prompted this research. Grounded theory methods are recommended for future research that seeks to better understand property rights and how they evolve in their contexts.

Given the preliminary nature of the findings of this research or “plausibility probe” (following Eckstein 1975), the Negotiated Ambiguity framework of analysis provides at best a supplementary approach to the study of China’s APR regime. While the RCI theory and its deductive concepts of rationality and efficiency of disembedded actors has created a very influential corpus of literature in the past two decades, this literature has remained narrowly interested in the economic outcomes of property rights (acting as independent variables). This rather narrow focus of attention leaves much room for a supplementary approach emphasizing the exploration of the nature and evolutionary change processes of institutions.

Implications should equally be noted for the Neoliberal Good Governance (NLGG) development policy or model. This development model, supported by such influential global governance institutions as the World Bank, the IMF, and the OECD's Development Assistance Committee (DAC), exhort China and other developing countries of the Global South to quickly install private property rights, to privatize their state-owned assets, and to create rule of law societies. The NLGG is powerful influenced by the RCI theory, and as such it is following a disembedded, or "one size fits all" development approach that assumes universality and neutrality of these legal institutions. China's case of APR regime reminds us of the embedded character of institutions that are "negotiated" through state and society relations and legitimation processes, cannot be easily influenced by these global pressures for reforms.

China is, again, a special case for which contingent generalizations to other developing countries or market economies in transition might not be possible. China is an economic and political powerhouse that cannot be coerced by external institutions, a reality that other less powerful countries might not enjoy. However, the notion of "negotiated ambiguity" in China suggests that other nation-states might also be unable or unwilling to implement the policy prescriptions set out by the NLGG proponents.

The overarching conclusion I draw from the case study and interview research, in combination with the literature review and "map" of China's slowly evolving APR regime, is that the proposed Negotiated Ambiguity framework of analysis should focus

on the concepts of ambiguity and the processes of legitimation that can explain the ubiquity and persistence of this institutional ambiguity. These two core concepts should be combined, as well, with the ontological conception of politically embedded, legitimacy-seeking state and non-state actors who are influenced by the values, norms, and beliefs of the prevailing institutional environment as they intersubjectively (collectively) construct legitimate institutions. In the case of China, the persistence of the APR regime suggests that it is a legitimate “object” to all the actors who together continue to construct it, namely, the state, the domestic and the global political economy actors such as the foreign investors within China.

Even with this combined set of evidentiary sources, these two core findings must be interpreted with caution. The elements of the Negotiated Ambiguity framework of analysis – the presence of institutional ambiguity and state’s legitimation strategies -- are limited, for one thing, by the limitations of a single-case case study, and particularly one that is *exploratory* in nature. I have suggested that Eckstein’s (1975) concept of a “plausibility probe”, which along with the goals of the exploratory case study (Yin 1994), aims to show the researcher that she is on the right track. Here, the “right track” is the continuation of research into the concepts of ambiguity, legitimation, and the negotiations over meanings, of politically embedded actors. No contingent generalizations of the China case can be made at this time for other similar market economies in transition. However, the findings of ambiguity and legitimation in the Chinese case study do suggest that similar findings might be confirmed in other case studies.

7.3. Contributions to Knowledge and Future Research Directions

Advancing our current understanding of and explanations for the nature and evolution of China's APR regime is the principal aim in developing the proposed Negotiated Ambiguity framework of analysis through the chapters of this dissertation. Negotiated Ambiguity makes both theoretical and empirical contributions to knowledge.

Empirically, the concept of ambiguity is able to better describe the Chinese property rights regime, and to overcome the theory-reality gap produced by the RCI theory's limited focus on efficiency and rationality. China's successful APR regime can only be described as being 'inefficient' by the RCI approach, and therefore, ambiguity is seen only as pathological and problematic. Ambiguity in the case of China appears to be constructive, and possibly even strategic if the APR regime can be said to have played a role in keeping the Chinese Party-state in power over the reform years.

Theoretically, the Negotiated Ambiguity concept has introduced many core concepts – ambiguity, (political) embeddedness, legitimacy and legitimation – that can be fruitfully pursued in studies of property rights and other economic institutions. Taking ambiguity seriously in the study of institutions has been shown to be useful not only for improving our understandings of the nature of institutions, but also in providing an alternative explanation for institutional continuity and change. Agency is required where the institutions are ambiguous, suggesting that in future the concept of ambiguity, and the attendant processes of legitimation, negotiations and contestations, could be the basis of a theory of action that would resolve the current difficulties Political Science faces in its analyses of institutional change (e.g. Cook and Campbell 1999).

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