

TALKING ABOUT PROPERTY IN THE NEW
CHINESE DOMESTIC PROPERTY REGIME

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IN JANUARY 1998 the most popular legal advice journal in Shanghai published the following exchange between a reader and the editor of the journal's biweekly advice column:

COMRADE EDITOR,

The home where I now live with my mother originally was a publicly owned dwelling belonging to my father's employer and rented by my father. After the implementation of the housing reforms, I put out the cash to buy the home. In October 1996 my father died. My older brother not only did not come to console my mother, but even declared that he had inheritance rights to the home and was prepared to go to court to sue me. Please tell me, given that I purchased the home for which my father was previously the lessee when my father was still alive, does my older brother have any inheritance rights?

SIGNED: Wu Min

READER WU MIN:

In order to answer the question raised in your letter, we think it is necessary first to clarify what is an estate. According to Article 3 of the National Law of Inheritance, an estate is defined as all personal legal property handed down when a citizen dies, including the citizen's income, citizen's home, savings, and items of daily use, a citizen's tools, livestock, and household furnishings, a citizen's copyrights and patent rights, and other legal property. If the home where you now live with your mother or any part of this home belonged to your father as his personal legal property when he was alive, then when he passed away, that part of his property becomes his estate, and as his estate, your elder brother has inheritance rights. But if the situation was otherwise, that is, if as you state in your letter, the home was a publicly owned dwelling belonging to your father's work unit, and after the housing reform you purchased it, . . . then this home does not qualify as your father's personal legal property, does not qualify as his estate, and your older brother has no inheritance rights.

Minzu yu Fazhi 1(1998): 46

I first read this exchange between Wu Min and the editors of *Minzu yu Fazhi* in the fall of 1998 while conducting a study of the social consequences of privatizing Shanghai housing stock. Integral to the project were comparisons between statutory definitions of property rights and popular expectations toward ownership under the new conditions of market socialism. Review of the statutes documented a stepwise commodification of the rights of use, the rights of control, and the rights to alienate and transfer ownership, but they could not capture changes in popular attitudes. Even household surveys that documented which occupational groups were most likely to become owners did not adequately reveal how Shanghai residents understood their new rights as property owners (Davis 2002, 2003). Yet, as previous work on the reallocation of property rights in India, Latin America, and Eastern Europe has shown, new property regimes imposed from above are revised and resisted by the larger population in order to protect and assert their own immediate interests (Agarwal 1994; Deere and León 2001; Hann 1998; Stark 1996).

Moreover, as Christopher Hann (2002) and Katherine Verdery (1999) have demonstrated in their analyses of property disputes in postsocialist Europe, changes in property rights are most fundamentally about creating new relationships around property rather than the drafting of formal statutes. Therefore, the point of departure for understanding the institutionalization of a postsocialist property regime is investigation of how individuals—or groups of individuals—differentiate among different people's relationships to things. Or as Verdery (1999, 76) concludes in her study of postsocialist Romania: "Property is . . . about the boundaries between self and non-self, . . . and the self can also be collective." Only when we can identify enduring logics of entitlement within the moral argument and behavior of social actors can we understand the institutions of the postsocialist property regime.

The focus on the social construction of economic institutions extends, of course, beyond the particularities of the market transitions of postsocialist economies in Europe or China and exemplifies a core precept of economic sociology that, as Frank Dobbin (this volume) concludes, seeks "to develop explanations that root economic behavior in society" and privileges "human-made conceptions of how to be rational" over universal economic laws or "economic ideals that transcend society." The authors of several of the early chapters of this volume (for example, Charles Perrow and Bai Gao) illustrate how cognitive and normative frameworks at the national level create political institutions that over time produce enduring national distinctions. William Schnepfer and Mauro Guillén, in their study of hostile takeovers, also illustrate what Dobbin sees as the power of cultural tool kits when they demonstrate the key role of the "cognitive acceptance of stock trading" and "normative legitimacy for private property." My work on contemporary China thus works within the larger epistemological world of economic sociology but enters the discussion at the grassroots rather than national level by listening to individuals talk

about competing claims to newly privatized, transferable real estate assets. Like Christopher Hann and Katherine Verdery, I am listening to the language of protagonists in property disputes in order to identify logics of entitlement that define social positions. And like many other authors in this volume, I use close study of one particular taken-for-granted socioeconomic phenomenon to demonstrate how a core economic institution—in this case, the institution of private property—is socially defined and institutionalized. Specifically through analysis of the transcripts from sixteen focus groups that discussed Wu Min's letter to the editor of *Minzu yu Fazhi*, this essay explicates how Shanghai men and women simultaneously drew on both the moral values of pre-Communist family justice and their past experiences with state socialism to understand competing claims to newly commodified private property. In this way, the essay demonstrates the importance of approaching the comparative study of property regimes in terms of bundles of meanings embedded in the institutions of family and kinship, the party-state, and the market.

The Rise and Fall of Collective Ownership

For the Communist victors in the Chinese Civil War, the superiority of collective ownership decisively shaped all public policy after the establishment of the People's Republic of China in October 1949. For urban households, one immediate outcome was precipitous disinvestment in privately owned dwellings and rapid institutionalization of housing as a decommodified welfare benefit.¹ Then, between 1992 and 1998, the central leadership abandoned this position and enthusiastically endorsed the advantages of private homeownership (Davis 2003; Li 1999; Tong and Hays 1996; Wang and Murie 1999; Zhou and Logan 1996). The impact of this repudiation was dramatic. At the end of the Mao era, less than 15 percent of the urban population had lived in privately owned dwelling; by 1999 not only was most real estate commodified, but most residents had become homeowners, according to *Zhongguo Fangdichan Bao* (Chinese Real Estate News) on May 19, 2000 (see also Li 2000).²

Because of the party's unwavering preference for collective ownership between 1950 and 1980, two generations of city-dwellers had lived within a decommodified residential property regime in which no one could buy new residential property and the majority lived in apartments allocated by their employers as a welfare benefit (Bian et al. 1997; Chen and Gao 1993; Davis 1993; Lee 1995; Lee 1988). Under these conditions, the concept of the home as family property, which had been central in pre-Communist years, atrophied to the point of extinction.

At marriage, urban couples queued with the housing office of their employers or the municipal real estate bureau. There was no possibility of taking a loan or using family savings to purchase a new dwelling. Moreover, because public investment for new housing estates dried up in the 1960s, crowding increased

to the point that three-generation living was more common during the 1970s than it had been twenty years earlier (Wang and Murie 1999; Whyte 1993).

However, even when parents sheltered married children and created multigeneration households, urban apartments could function neither as family property nor as a parental estate. During the collective era enterprise housing could not be sold, rented out, or inherited by the tenants. Rather, within the decommodified property regime the criteria for making a just claim to an urban home were politicized and bureaucratic.

In need of a new apartment, employees approached the housing officer citing unbearable crowding or an intolerable commute. In turn, the officials in the housing office decided which "supplicants" were most worthy (Davis 1993). Within an overarching logic of need, housing was assigned on the basis of job rank and seniority. However, if an individual applicant was politically tainted because he or she was the child or grandchild of a pre-1949 capitalist or had close relatives who had fled to Taiwan, that person's request would be deemed less worthy than that of the individual whose family tree included no such political pariahs. High-ranking military officers and party officials lived in separate compounds, but even they were assigned rental units by rank and seniority.

When the employee registered as the head of the household died, the surviving spouse was permitted to remain, but the right to rent could not routinely be passed on to the next generation. And in no case could children who were not coresident inherit the right to rent the home, use the dwelling as collateral for a loan, or sell use-rights to create a legacy. Thus, when the housing reforms of the 1990s recommodified urban housing stock and made the family home into fully capitalized, alienable property (Davis 2003; Gu 2001; Wang and Murie 1999), the new policies necessitated new logics of entitlement.

To identify the criteria for just property claims as defined by the party-state and its agents, we can turn to court cases and media coverage (Davis 1999). However, neither the statutes and casebooks nor the news media can capture the understandings of ordinary citizens. In particular, such sources are silent as to how individuals or groups of citizens understand and negotiate competing claims. Yet from prior work on "claim-making" in capitalist versus socialist settings and urban versus rural ones (Burawoy and Verdery 1999; Singer 2000; Thireau and Wang 2001), we know that the criteria that ordinary citizens invoke to decide just possession—or dispossession—create the practices of new property regimes and define subsequent property relations. For this essay, I turned away from casebooks and media to focus groups created specifically to capture the popular discourse emerging in postsocialist Shanghai.

The Data and Research Design

Disputes over the inheritance of a parental estate by two or more heirs provide an ideal setting to capture the vocabulary, syntax, and logic of claims to property. By asking a variety of men and women to discuss their views of how best

to divide a parental estate, we have a natural laboratory to record potentially competing logics of entitlement. For several reasons, however, it is not easy to gather data systematically in this "natural laboratory." First, most individuals deal with the division of a parental estate only once or twice in their lifetime, and only a small number of heirs ever dispute the division. Thus, in a random sample of even a large population there will be few respondents who could draw from personal experience since the onset of housing reform. Second, inheritance disputes are painful experiences that are not easy to discuss with strangers, even in the abstract. And finally, there are widely circulating "correct answers" for how best to divide a parental estate. For example, in urban China most respondents know that legally men and women should have equal property rights and that parents should care for all their children equally well. Yet those justifying their claim to a parental estate may find that "incorrect answers" are actually the most decisive, or they may invoke multiple criteria simultaneously.

To overcome these barriers to data collection and also take advantage of the natural laboratory of inheritance disputes, I ran a series of focus groups in which I asked each group to respond to Wu Min's letter. A pretest was done in the summer of 1999 when I asked two groups of women and two groups of men divided by age to discuss the letter.³ However, because the men and women who held blue-collar or service jobs systematically deferred to the college-educated professionals, I subsequently assembled groups that were homogenous on gender, occupational class, and age. The first groups met in July 2000, the second ones in May 2002. In each of these two sessions, the group met for ninety minutes, seated around a table in a medium-size meeting room. Each session was led by a professional associate. The leader explained that the research goal was to understand the impact of the recent housing reforms, but the leader asked no specific question and offered no hypothesis. None of the participants had known each other prior to the sessions, and none were chosen because they had experienced an inheritance dispute. In each session the leader read Wu Min's letter and then asked the participants how they would answer him. Over the course of the ninety-minute session the leader encouraged every participant to speak. In both sessions respondents discussed more than one dispute and were asked for their reactions.⁴ All sessions were recorded and then transcribed in Chinese.⁵

The Language and Logic of Property Claims

When the magazine editor answered Wu Min, he focused first on the definition of personal legal property as defined by the 1985 inheritance law and then concluded that the decisive issue was whether or not the father had ever owned the home prior to his death as personal legal property. Because the father had not owned the property as his personal legal property, the editor wrote, the

older brother had no claim. Thus, in his answer the editor disregarded considerations about Wu Min's current coresidency with his mother, his past joint household with his father, and his claim that his older brother had been unfilial. In short, in contrast to some legal scholars (Foster 1998, 1999) who have praised the Chinese justice system for linking behavior and bequests in the Chinese case law, the *Minzu yu Fazhi* editor invoked a straightforward market logic that disregarded the letter writer's coresident status and the older brother's unfilial behavior: the younger son had used his own money to buy the apartment from his father's employer, and thus the younger son had all rights of ownership.

The men and women in the focus groups perceived Wu Min's situation as far more complicated than it had appeared to the magazine editor, and they spent a great deal of time evaluating the information on the family's past and current domestic relationships. Only one fifty-year-old female manager took the inheritance law as her first point of departure, and only four other professionals and one young male truck driver made the inheritance law central to their discussion. Also of note was that even after these individuals had framed their argument in terms of the law, no one else in their group responded with further discussion of the law.⁶ Instead, the participants overwhelmingly evaluated the competing claims of Wu Min and his brother by invoking principles of entitlement rooted in the norms of family justice or in the regulatory practices of state socialism. Moreover, they were able to invoke both the logic of family justice and the logic of the regulatory state even as they accepted the rights of individual ownership and market exchange. Let us now examine in detail the vocabulary and logic of their multidimensional arguments about just property claims in postsocialist Shanghai.

Family Justice

In each group several participants emphasized the need to preserve family harmony and to consider the past and current behavior of all family members. Thus, someone in each group qualified his or her views in terms of the need to be fair in dealing with family obligations and the actual needs of each family member. In group 1—the only group in which all four participants quickly agreed that the older brother had no inheritance rights⁷—there also was consensus that more than a simple legal decision was involved. For example, participant 1, who was the first to cite the decisive role of new legal procedures, qualified his position by suggesting the possibility that contrary to Wu Min's statement, the older brother may have been more filial to the father than the younger, and that if this were true, then the older brother should get at least a share. Participant 3, a thirty-four-year-old male computer programmer, then amplified this point by emphasizing the need for siblings to treat one another equitably in order to avoid the trauma of lifelong enmity.

In group 2, two women supported the older brother, one supported the younger brother, and one could not make up her mind. Nevertheless, all four of these young professional women grounded their decision in some aspect of family relationships. Most notably, they stressed that a history of coresidence and the relative housing needs of the two siblings could trump the letter of the law. Participant 6, a thirty-year-old female researcher who actually supported the older brother on the assumption that the younger brother had purchased the home at a steep discount, also made clear that the older brother's claim was not absolute. She summarized her view this way:

I think that the elder brother should still have a part of the inheritance. However, I think that he should consider that the younger brother had been supporting his parents for so many years. He did not fulfill his duty to support his parents, and in fact his younger brother had been shouldering this duty. In that case, the elder brother might consider that although he had the right, considering the circumstances, he should give up the right of inheritance.

This concern with coresidence and the years of support that the women in group 2 articulated also emerged during all twelve subsequent groups and was given even greater elaboration. In the following remarks, participant 24, a twenty-four-year-old female factory worker, participant 27, a fifty-one-year-old male electrician, and participant 40, a thirty-four-year-old female factory worker, explain the importance of mitigating circumstance regardless of which sibling's claim they favored:

PARTICIPANT 24: I think the older son should have the right to inherit because the parents' or the father's housing could be inherited by every member of the family. Each child had a share. Even though this younger brother bought the place, I think the other children still had the right to co-inherit, right? However, it is necessary to investigate the behavior of the other children, right? Because this letter did not mention the duty of the children, they should investigate to see if they fulfilled their filial responsibility to support the parents. There should be an investigation, and they should decide according to the particular circumstances.

PARTICIPANT 27 (*when asked if he had a solution*): I would say, what on earth was the elder brother thinking? The mother is living with the younger brother, right? Now, he bought this place, and from now it became the house of their family. If the elder brother wants to support the mother and also pay some money, then they can divide the place equally in the future. But right now the elder brother has another home, and the younger has only this one he shares with their mother. Currently the younger son is living with the mother and caring for her. If the elder brother wants to take care of her, wants some property rights, and also offers some money, then he can have half or a third. They can easily negotiate.

PARTICIPANT 40: The mother's arrangements should be followed. The apartment should be given to whomever the mother chooses. It also depends on how the older son fulfilled

his duties to his elders. If he did not fulfill his duties, then his demand for half the apartment should not be considered at all. But if he was adequately filial, then he should get some reward.

The other central criterion that the women in group 2 introduced and that subsequently surfaced in every group was the question of necessity.⁸ Thus, when one participant asked others to consider the housing situation, most agreed that if the older brother had inadequate housing, then the younger brother needed to find a way to help him even if legally the younger brother had full property rights. Participant 13, a fifty-one-year-old female statistician, summarized this typical understanding of the primacy of necessity:

Everyone hopes all things could conform to reason and law, but in fact what is legal is not necessarily reasonable. For instance, in this case it is not very reasonable from the perspective of moral principle, but it is legal from the perspective of law. The younger brother bought the place, and it became his legal property. According to the law, the elder brother did not have the right to inherit it. But if the older brother was in financial difficulties, and if his own home was crowded, from the perspective of moral principle the younger brother should somehow aid him financially. This would be reasonable, but the law would not protect it.

But when participants raised the possibility that the older brother was already well housed and therefore had no pressing need for new accommodation, the argument became even more multidimensional. In the comments of participant 8, a twenty-eight-year-old manager at an insurance company, and participant 60, a twenty-nine-year-old truck driver, we see how familiarity and experience with the regulatory state contextualized the invocation of the logic of family justice.

PARTICIPANT 8: Different people will have different ways to deal with this issue, right? For example, if this elder brother was well-to-do and had his own home, then he probably won't want this place. Because, after all, he was already living elsewhere, and he did not take good care of his parents, while the younger brother did take care of them. Also, when the younger brother bought this place, he must have made the purchase relying on his father, because normally when you buy discounted housing, the one with the longest employment history gets the biggest discount. So ordinarily, the younger brother's employment history would not have been used. There should have been an agreement between the younger brother and the parents. But whether the older brother was informed is not clear. Just now [participant] 6 mentioned this issue of discounts. This house was not a fully commercial sale—it was rather after-sale public housing, and there must have been a big discount. The elder brother must enjoy part of that discount. Of course, in practice the older brother could consider that the younger brother supported the parents more, and the older brother could not ask for the money. However, his right is still there.

PARTICIPANT 60: This was the situation of my own family. My father has a flat. It originally belonged to my father's aunt, who had never married. My dad was her nephew. Auntie had four nephews and nieces in Shanghai. At that time, only my auntie had her official household registration at that publicly owned apartment, so if after she died, in terms of household registration, no one else was involved and the apartment would then be taken by the state. So then my mother spoke with Auntie about whether we could register someone else (in addition to Auntie) as a household member. My auntie agreed, and afterward my mother discussed it with the other uncles. They said none of them had the possibility to move a registration, and none had the energy to work on this. So my mother then moved my household registration into my auntie's house. In 1993, when the sale of publicly owned flats to sitting tenants began, my uncles noted that because this apartment was my auntie's, they also had inheritance rights. Afterward my whole family moved into the place, and we took care of Auntie. Two years later she died. Afterward we went to seek the advice of a lawyer, and he said that my uncles absolutely did not have inheritance rights because at that time (when we moved my household registration) publicly owned flats could not be inherited; rather, it was a question of the names on the official household registry. Whoever had their name in the household registry, then they were the heirs.

Regulatory State Socialist Logic and Housing Assets

During the first set of focus groups in 2000, at least one participant in each group spontaneously distinguished between the situation of Wu Min and situations where the home had either been an old private home that had always been in a family's possession prior to the reforms or was newly built commercial property. When the property at issue was an old private home, participants agreed that both sons would have equal claims regardless of their current residency, on the grounds that all family members were entitled to a share when, as participant 7 put it, the home had been handed down from "the ancestors." By contrast, when the property was a newly built commercial flat, participants thought that only the current owner had a claim. However, as discussion progressed some participants focused on the source of the money used to pay for the commercial property, arguing that if parents had paid for a child's commercial property, then other siblings might indeed have a claim. Thus, in discussion of all types of housing, the logic of family justice remained a key moral anchor.

Most complicated were disputes, like that between Wu Min and his brother, in which the property had originally been a publicly owned rental home. In these cases, participants entwined the logic of the regulatory state with that of family justice. For example, in the earlier remarks of participant 8, we hear how decisive were the special discounts that the state had given to sitting tenants when public housing was privatized. And participant 60 shows us how strictly families understood their rights to residential property and ownership within the administrative regulations of the household registration bureaucracy.

On the basis of these distinctions rooted either in individual household registration or more generally within the socialist property regime, we identify a second major axis of entitlement: a "regulatory state socialist logic" that was invoked even by those who consistently stressed the centrality of new legal procedures. For example, we hear this clearly in the answer of participant 3, a thirty-four-year-old programmer at a private Web company, as he explains how the past experience of housing as a welfare benefit of the regulatory state affected even the undisputed claim of an only son.

Before I rented my old place, my dad had rented the place. But when my employer was going to assign me a new rental place, they calculated my allocation including the space my dad had rented and assigned me the bigger flat that I later bought in my name. But my father ultimately had half of the use rights . . . at least half. So in my heart it is impossible to make him move out. Even if I had to move, I would not make him move out. Right? After all, without my father's place in the beginning, I wouldn't have had this place.

Contingent Entitlements

Participants in the July 2000 focus groups spontaneously differentiated the situation of Wu Min, whose family home had originally been a publicly owned flat, from situations in which families lived in a home they had owned continuously since 1949 or in a home purchased outright since 1990. In short, people navigated with a moral gyroscope that triangulated between three systems of residency and ownership. However, because not every person in the 2000 focus groups relied on these distinctions, and not every group spent equal time embedding its arguments in these property distinctions, I could not be sure that the logics of entitlement really pivoted around housing type. Thus, in May 2002 I organized a second round of focus groups in which participants considered Wu Min's original dispute with his brother, disputes over a parental home that had always been privately owned, and a third dispute in which the home was a newly built commercial property.⁹ The conditions of the father's death, current coresidence, and lack of concern for the mother were identical in each case, but in the second two cases there was no history of the home having originally been a rental in the father's name.

Overall, the pattern of response in the two sets of focus groups was identical. In 2002, as in 2000, only one-third of the participants agreed with the editor that the previously publicly owned rental unit now indisputably belonged to the younger brother.¹⁰ Rather, as illustrated in the quotes from participants 40 and 60, participants weighted the relative needs of the two brothers, the amount of care each had given to the parents, past patterns of coresidence, the specifics of household registration, and the source of the money and the meaning of state discounts.

But as in 2000, the logic of entitlement varied systematically with the type of housing stock. When the home had always been owned by the family, only 9 percent (three out of thirty-two) of the participants would deny the older brother's claim. By contrast, when the home was a formerly public apartment, 27 percent (ten out of thirty-one) held this view, and when the home was a new commercial flat, 72 percent (twenty-three out of thirty-two) were confident that the older brother's ownership claims were groundless. Among the participants in May 2002, we also can identify a distinctive vocabulary, emphasis, and order of argument according to the type of property in dispute. Let me now summarize the pattern for the three types of homes.

The Always Privately Owned Home and the Logic of the Family Estate

In the case of the always privately owned home, participants more quickly focused on the situation of the mother than in any of the other cases. I quote from an exchange between a forty-seven-year-old clerk and a fifty-five-year-old textile worker:

PARTICIPANT 32: If mother is still alive, the older brother then should not raise this thing about inheriting a home. If mother is not alive, then, just as these several comrades said, everyone gets equal shares.

PARTICIPANT 33: Just now everyone spoke really well. What I have heard is also my view. I have no other view. If mom is alive, then mom is the first heir and the older brother cannot raise this thing about dividing the property. The house was the dad's, so to demand a division now is simply outrageous. If mom is not alive, then he and the younger brother both have inheritance rights.

These remarks were made in the first three minutes of a discussion among four middle-aged women with blue-collar service jobs, but there was a similar focus on the rights of the mother in the other groups. In the group of middle-aged professional women, participant 36, who was the second to speak in her group, immediately emphasized the mother's legal right to half the father's property. In the group of younger women with blue-collar service jobs, participant 41, a thirty-four-year-old clerk, stressed the importance of the sons' care of their mother. In her view, if the older brother cared for the mother less than the young son, he still had an inheritance claim to the family home, but his share should be proportional to the care he gave. However, at the end of the discussion among these young women in blue-collar and service jobs, participant 43, a twenty-eight-year-old cashier at a supermarket, moved away from viewing the mother as a passive object of concern and emphasized her

right to dispose of the house as she wished: "If mother wanted to give a share to the older son, then she could give it." These issues of the mother's rights as the father's heir, the importance of filial behavior toward the mother, and the mother's power to decide also appeared among young female professionals and all the male groups when the property under dispute was one that had always been privately owned.

In assessing claims to the always privately owned home, many participants in May 2002 raised the question of a will, an argument that was not raised very often in July 2000. Across the eight groups in 2002, the argument was the same. If the father had written a will and cut out the older son, then, participants agreed, the older had no claim. But if there was no will, then the older son had a claim to the family property, as did all family members. However, the size of the older son's claim and the time at which he could take his share would be decided by all members' current needs and past behavior. Participant 39, a forty-nine-year-old administrator, explained her views:

Well, if we look at it from the perspective of the property law, then I agree with [participants] 36 and 37 [that both brothers have the right to inheritance unless the father left a will cutting out the older son]. But here there is a question about how to divide the property. I think in regard to assessing the care of the parents, as was just pointed out by [participant] 38 [participant 38 had linked the older brother's share to the degree of care], care for a parent can be provided in many forms. If one doesn't live with the parent, one can still fulfill one's duty to care in other ways. Here the younger brother lived with the mother, so physically he was there to give care. I also am thinking the mother is still alive, so actually they have not arrived at the time to divide the property. If the older brother now insists on dividing the property, then I think he is expropriating his mother's inheritance right, and morally he shouldn't make this claim.

The Previously Publicly Owned Rental Unit and the Logic of the Regulatory State

When participants discussed the case of the formerly publicly owned home, their first question frequently centered on the names on the deed and the names on the household registration, both at the time of the dispute and when the property was first purchased. Thus, in contrast to the arguments about the always privately owned house—in which the technical-legal issue was whether or not the father had explicitly disinherited an interstate heir—here the question related to the bureaucratic procedures of the household registration system created by the Communist party-state. According to this line of reasoning, ownership claims pivoted around the technicalities of the Communist household

registration system regardless of which names were on the deed. Participant 49, a forty-six-year-old man working in a Chinese medicine factory, drew on his own experience to demonstrate this logic:

PARTICIPANT 49: The key is that previously this was a rented place, and now [they] want to buy the property rights, so you take the household registration book and you go and register. Those people not officially registered simply have no connection.

GROUP LEADER: You mean that those who are not included in the household registry have no property interests?

PARTICIPANT 49: Right, absolutely none.

GROUP LEADER: If other brothers who are not officially registered as residents come to discuss the situation at the time the house goes on sale and they decide that the younger brother will put up the money, then the older ones have no inheritance right, right? But if at that time the older brothers considered that the younger brother was in financial difficulty and so he put up the money, then what?

PARTICIPANT 49: It still belongs to the younger brother. Just like when I bought my old place. I went to the real estate office to handle all the procedures for the contract; they verified the names on the household registration book and closed the deal. Those others whose names were not in the registration book then had no relationship to this real estate property.

But while the language of the state registration system framed the discussion of Wu Min's case in both July 2000 and May 2002, few participants saw the administrative procedure of the household registration system as definitive, as did participant 49. Rather more representative was the perspective that participant 60 attributed to his mother in making claims to the childless aunt's home, or the perspective of participant 47, whose remarks will conclude this section. In these more typical arguments, participants weighed competing property claims within a moral framework that entwined the logic of family justice with the logics of the state and the market.

I know a case. This was public housing. The father passed away, and the elder son was discussing with the younger son about buying the house. At that time, the younger son clearly indicated that he would not participate. He had already bought a one-hundred-square-meter place with three bedrooms and two living rooms elsewhere, and his family even hired a maid. He was very well-to-do. At that time, the elder son and his wife were both laid off and had no money. Their relatives in Hong Kong were sympathetic with the elder son and offered some money to help the elder son buy the place. Now this house is worth 300,000 yuan, and the younger son then requested that he would also have a chance to inherit part of the place. His reason was that the parents were not fair to the children. The elder son said to the younger son, "You were in such good situations that

you could buy a one-hundred-square-meter house while I was laid off? Why should you come back and take a share?" The younger son said, "If you don't agree, I'll go to court and sue you." The elder son said, "Let's see each other in the court." After some time, the younger son came back and told the elder son, "Forget it. We siblings should not become enemies. If you give me 50,000 yuan, I'll let it pass, and I can feel justified." The elder son did not agree. After some more time, the younger son said 8,000 yuan would do, and the elder son agreed, but told his younger brother: "If you want that 8,000 yuan, you'll have to wait till my child starts to work."

I've heard that this issue is still not resolved. The younger son even transferred his household registration back to his mother's place, but the housing certificate used the elder son's name. The younger son said, "Anyway, you shall need my signature if you want to sell this place." The elder son said, "I'm living here till my death and will never sell it." All the other family members, including the mother, supported the elder son.

The Newly Built Commercial Home and the Logic of the Law and the Market

When the dispute involved newly built commercial housing and the letter identified the younger brother as the property owner, not a single participant said that the older brother had an undisputed claim to the apartment, and 72 percent definitively rejected his demand for any share of the flat after the father's death. Moreover, in comparing the content and sequence of the discussion of the new commercial flat with those for the other two kinds of property, respondents in all groups spoke more consistently in what I call a logic of the law and the market. However, the logic of family justice still established priorities and emphasis.

Thus, for example, the question that raised doubts and created sustained discussion was not about the presence or absence of a will, the names on the household registry, or the quality of filial care. Rather, the issue that animated the debate over the commercial real estate dispute was the source of financing. Many thought that if the parents had made a major contribution to the purchase by the younger brother, and if the older brother had received nothing from the parents to buy a home of his own, then the younger brother had the legal rights to the house but was obliged to give his older brother a monetary gift. On the other hand, if the older brother already was well housed, then the younger brother did not need to give him anything, and the older brother's demand was totally unreasonable. I conclude by quoting from an exchange between two young professional women to illustrate how even when the situation of commercial housing is first presented within the framework of market transactions and legal definitions, ownership claims continued to be understood in terms of the morality of intergenerational family ties.

PARTICIPANT 45: I think the older brother has no right to this flat. Commercial housing belongs to whoever purchased it. However, if the younger son was really nice and felt that the relationship with his brother was strong and that the brothers depended on each other for their survival, or if the older brother was in financial difficulty, then the younger brother could give the older one some compensation. But that is really for him to decide.

PARTICIPANT 44: I agree with [participant] 45. The younger brother's name was the name on the certificate of ownership, so it was the younger son's property. As for the source of the money, it has no influence. Even if you had evidence that the money came from the mother's bank account, as [participant] 46 mentioned before, or even if his parents openly gave the money, the parents must have known that the younger brother's name was on the certificate of ownership. So that proves that it was their intention to give it to the younger one as a gift.

Logics of Entitlement in a Postsocialist Domestic Property Regime

When the Chinese leadership relegitimated private ownership and enthusiastically created the new hybrid of market socialism, they opened the way for private real estate development and created the conditions for a new logic of entitlement defined by rules of individual property and private ownership.

Not only was it now good to get rich, but entrepreneurs became exemplars of modernity, and private real estate investment a primary engine of economic growth. Local governments and state-owned banks, which had systematically treated housing as a nonproductive welfare good, now imposed mandatory provident funds and urged urban residents to take advantage of twenty-year home mortgages. Emblematic of the new commercial discourse of market socialism were advertisements in Shanghai's largest publicly owned newspaper that urged readers to "buy a home, become a boss!" (Fraser 2000, 35).

When scholars first evaluated the trajectory for privatizing ownership claims in China, they focused on the privatization of industrial assets and land (Putterman 1995; Oi and Walder 1999). The argument was framed in the language of economists and legal scholars. One extremely useful distinction first introduced by the nineteenth-century lawyer Sir Henry Maine and more recently popularized by the economist Harold Demsetz (1967) was to disaggregate property ownership into three distinct bundles of rights: the right of use or control, the right to derive income or return, and the right to transfer or alienate. In this chapter and elsewhere (Davis 2003), I build on these well-established distinctions because they usefully disaggregate the omnibus concept of market transition into more analytic processes that facilitate comparisons across nations and historical eras. However, as others have documented—most notably, the anthropologist Christopher Hann (1998, 2002)—the semantic distinctions between rights of use, return, and alienation fail to incorporate the moral reasoning and conceptual distinctions of

ordinary people as they develop a logic of just ownership in postsocialist societies.

Thus, as we learned from the discussion of the focus-group participants, despite the rapid creation of a new urban property regime, Shanghai residents rely on a moral calculus that incorporates the experience of earlier eras of state socialism and pre-Communist familism even as they accept the legitimacy of market-based individual property rights. However, they also see the contradictions between new property laws and the need for justice when the house itself has a history as collectively owned property or when the desire for family harmony and justice justifies multiple claims. For these Shanghai residents, therefore, the bundles of newly marketized property claims could best be allocated by relying on a bundle of meanings that triangulate between the moral logics of the party-state, the property markets, and family justice.

In her pathbreaking study of the social meaning of money, Viviana Zelizer (1994) addresses the misconceptions in previous one-dimensional assumptions about market money that presumed that increased monetization transforms society and drives out nonpecuniary values. Through a study of household budgeting, gift-giving, and U.S. welfare reforms between 1870 and 1930, Zelizer employs the concept of earmarking to demonstrate how the seemingly "qualitatively neutral" (12) currency of market exchange is used by consumers to "preserve moral categories" (24). Even as monetization and rationalization offer increased opportunity to depersonalize economic transactions, she points out, earmarking of money becomes ever more elaborated. Moreover, Zelizer argues, social categories and norms are as likely to direct economic practices as vice versa, and they are particularly salient at moments of conflict or difficulty.

In contemporary urban China, we observe another example of the centrality of social norms and the utility of earmarking during a period of increased monetization and marketization. Prior to 1990, the majority of urban residents lived in collectively owned flats that were distributed as a workplace benefit and for which they paid minimal rents. Homeownership was a residual of the pre-Communist era, and a fully elaborated socialist property system defined legal rights and duties. Within a decade the entire situation was turned on its head. Private ownership has now become the norm, the legal system consistently stands on the side of individual property rights, and the party-state is pressing for ever greater monetization of goods and services. Yet, at moments of conflict, such as that confronted by Wu Min, people reject the market-based, legal logic of the magazine editor and ground their decisions by earmarking the properties according to the rules under which families first established residency. When the property at issue had been a private home of the family before 1949, they disregard the legal argument about what constitutes an estate and instead emphasize a moral logic of family justice rooted in millennia of Confucian familism. When the property at issue had originally

been a collectively owned rental, they invoke both the logic of family justice and their experience with the socialist regulatory state. Even when the property is a newly built commercial property that has had no existence prior to market reforms, people continue to give weight to the norms of sibling equity, family unity, and filial piety. Comparative analysis of property rights gains precision and rigor when we unbundle the rights into component claims. Grounding these claims in past experiences and the moral arguments of those who claim those rights reveals the societal matrix and practices in which a new property regime becomes institutionalized.

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Notes

1. In China's biggest cities, between 10 and 20 percent of housing remained privately owned after 1950. But most of these privately owned homes were simple, usually dirt-floored cottages without modern plumbing. By contrast, all new modern residential dwellings built after 1951 were collectively owned property provided as a welfare benefit. By the 1970s the percentage of owners had stabilized at about 15 percent. Rents averaged less than 5 percent of household incomes, and for the wealthiest families with the largest flats, rents were trivial (Gu 2001; Whyte and Parish 1984, 82).
2. Because of the influx of migrants from rural areas who rarely purchased a home, the percentage of privately owned dwelling units exceeds the percentage of households who had an ownership claim, but whether we estimate ownership levels for total population or for total households, the slight majority are owners. In any case, most housing units have been privatized and are either rented out by the owner or owner-occupied.
3. Half of the group were under age thirty-five, and half were between forty-five and fifty-five.
4. In 2000 the second letter described a dispute among three siblings over a mother's bequest. In 2002, in addition to Wu Min's original letter, participants were read two other letters in which the family situation was identical but the house in dispute either had always been privately owned or was a commercial property built since 1980.
5. All quotes from the original letters and from the focus groups were translated for this essay by the author or by Ms. Jin Gao. Word counts and word searches were done only with the Chinese transcripts.

6. What was also striking was that even after the facilitator read aloud the editor's reply to initiate a second round of discussion, not even those who had cited the law earlier cited it again.
7. The key point for these young male professionals was that the older brother had his name was on the deed—a fact that was not presented in the information they were given to discuss but that they projected onto the case.
8. Although I did make numerical tallies of how many times certain phrases or words were used in each group or by each individual, I do not rely primarily on frequencies to compare the relative importance of an argument across groups or between individuals. In each group the facilitator allowed the group to develop its own dynamic, and as a result, the groups varied in the amount of time they focused on any one topic. Thus, what I have done in the text is to note whether an issue was raised in a group and then to look at the range of criteria that were invoked.
9. In addition to using the original letter from *Minzu yu Fazhi*, we also presented the two additional disputes as letters to the editor. In the second dispute, the letter read:

COMRADE EDITOR,

I lived in a home with my mother that was originally my father's privately owned home. After my father died in November 2000, my older brother not only did not come to console my mother but even declared that he had inheritance rights and was prepared to go to court to sue me. Please tell me: does my older brother still have inheritance rights to this place?

In the third dispute, the letter read:

COMRADE EDITOR,

I live with my mother in a commercial flat, and I am the owner. After my father died in November 2000, my older brother not only did not come to console my mother but even declared that he had inheritance rights and was prepared to go to court to sue me. Please tell me: does my older brother still have inheritance rights to this place?

10. In 2000, ten of the thirty-one participants said the older brother had no rights; in 2002, nine of thirty-three said the brother had no rights.

References

- Agarwal, Bina. 1994. *A Field of One's Own*. Cambridge: Cambridge University Press.
- Bian Yanjie, John Logan, Hanlong Lu, Yunkang Pan, and Ying Guan. 1997. "Work Units and Housing Reform in Two Chinese Cities." In *Danwei: The Changing Chinese Workplace in Historical and Comparative Perspective*, edited by Xiaobo Lu and Elizabeth Perry. Boulder, Colo.: Westview Press.
- Burawoy, Michael, and Katherine Verdery, eds. 1999. "Introduction." In *Uncertain Transition: Ethnographies of Change in the Postsocialist World*. Lanham, Md.: Rowman & Littlefield.

- Chen Xiangming and Xiaoyuan Gao. 1993. "China's Urban Housing Development in the Shift from Redistribution to Decentralization." *Social Problems* 40(2, May): 266–83.
- Davis, Deborah. 1993. "Urban Households: Supplicants to the State." In *Chinese Families in the Post-Mao Era*, edited by Deborah Davis and Stevan Harrell. Berkeley: University of California Press.
- . 1999. "The 1985 Law of Succession at the End of the 1990s." In *China Review 1999*, edited by Chong Chor Lau and Geng Xiao. Hong Kong: Chinese University of Hong Kong Press.
- . 2002. "When a House Becomes His Home." In *Popular China*, edited by Perry Link, Richard P. Madsen, and Paul Pickowicz. London: Rowman & Littlefield.
- . 2003. "From Welfare Benefit to Capitalized Asset." In *Housing and Social Change*, edited by Ray Forrest and James Lee. London: Rowman & Littlefield.
- Deere, Carmen Diana, and Magdalena León. 2001. *Empowering Women: Land and Property Rights in Latin America*. Pittsburgh: University of Pittsburgh Press.
- Demsetz, Harold. 1967. "Toward a Theory of Property Rights." In *Ownership, Control, and the Firm*. Oxford: Blackwell.
- Foster, Frances H. 1998. "Towards a Behavior-Based Model of Inheritance?" *University of California at Davis Law Review* 32(1): 77–126.
- . 1999. "Linking Support and Inheritance." *Wisconsin Law Review* 6: 1199–1257.
- Fraser, David. 2000. "Inventing Oasis." In *The Consumer Revolution in Urban China*, edited by Deborah Davis. Berkeley: University of California Press.
- Gu, Edward. 2001. "Dismantling the Chinese Mini-welfare State." *Communist and Post-Communist Studies* 34: 91–111.
- Hann, Christopher M. 1998. *Property Relations: Renewing the Anthropological Tradition*. Cambridge: Cambridge University Press.
- . 2002. *Postsocialism*. London: Routledge.
- Lee Peter Nan-shong. 1995. "Housing Privatization with Chinese Characteristics." In *Social Change and Social Policy in Contemporary China*, edited by Linda Wong and Stewart MacPherson. Aldershot, Eng.: Avebury.
- Lee Yok Shiu. 1988. "The Urban Housing Problem in China." *China Quarterly* 115(September): 387–407.
- Li Ling Hin. 1999. *Urban Land Reform in China*. London: Macmillan.
- Li Xuefan. 2000. "Chengshi Zhumin Zhufang." *Beijing Fangdichan* (March 15): 18–22.
- Oi, Jean, and Andrew Walder, eds. 1999. *Property Rights and Economic Reform in China*. Stanford, Calif.: Stanford University Press.
- Putterman, Louis. 1995. "The Role of Ownership and Property Rights in China's Economic Transition." *China Quarterly* 144(December): 1047–64.
- Singer, Joseph William. 2000. *Entitlement: The Paradoxes of Property*. New Haven, Conn.: Yale University Press.
- Stark, David. 1996. "Recombinant Property in East European Capitalism." *American Journal of Sociology* 101(4): 993–1027.
- Thireau, Isabelle, and Wang Hansheng. 2001. *Disputes au village chinois*. Paris: Éditions de la maison des sciences de l'homme.
- Tong Zhongyi, and R. Allen Hays. 1996. "The Transformation of the Urban Housing System in China." *Urban Affairs Review* 31(5): 625–58.
- Verdery, Katherine. 1999. "Fuzzy Property." In *Uncertain Transition: Ethnographies of Change in the Postsocialist World*, edited by Michael Burawoy and Katherine Verdery. Lanham, Md.: Rowman & Littlefield.
- Wang Ya Ping, and Alan Murie. 1999. *Housing Policy and Practice in China*. New York: Macmillan.
- Whyte, Martin K. 1993. "Wedding Behavior and Family Strategies in Chengdu." In *Chinese Families in the Post-Mao Era*, edited by Deborah Davis and Stevan Harrell. Berkeley: University of California Press.
- Whyte, Martin K., and William L. Parish. 1984. *Urban Life in Contemporary China*. Chicago: University of Chicago Press.
- Zelizer, Viviana. 1994. *The Social Meaning of Money*. Princeton, N.J.: Princeton University Press.
- Zhou Min, and John Logan. 1996. "Market Transition and the Commodification of Housing in Urban China." *International Journal of Urban and Regional Research* 20(3): 400–21.