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*Property in Transition:  
Conflicts over Ownership  
in Post-Socialist Shanghai\**

*Introduction*

WHEN evaluating post-socialist property regimes, social scientists routinely draw on the well established conceptual language of bundled property rights first elaborated by the nineteenth century legal theorist Sir Henry Maine, and more recently popularized by the economist Harold Demsetz (1967). Disaggregating 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—specifies variation of property regimes across the post-socialist world and facilitates comparisons among competing theories of successful transition (Hann 1998; Putterman 1995; Oi and Walder 1999).

However, as others who have studied privatization in formerly socialist societies have documented (Hann 1998, 2002; Verdery 1999), the semantic distinctions among 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 property ownership. Thus while disaggregating property rights into separable claims usefully unpacks the omnibus concept of private ownership and facilitates comparisons across nations and historical eras, it is silent as to the moral reasoning that ultimately institutionalizes property rights. To capture the rights-talk of citizens that constitutes the socio-cultural substrata of the new system of property relations, it would be best therefore to rely on

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conversations to identify and record the contemporary vocabulary and logic of possession and dispossession.

Court records offer one such viewpoint (Davis 1999), popular media another (Fraser 2000). But neither represents unmediated speech of citizens conversing among equals. And therefore conventional methodologies that rely on the written record fail us. Even during many years of fieldwork, there would not be the opportunity to record verbatim an adequate range of focused debate over property rights. For this reason, we decided in spring of 2000, just six months after the Chinese government had lifted all restrictions on sale and resale of urban dwellings and two years after the termination of the Maoist public housing program, to run focus groups in which we would ask small groups of men and women, grouped together by generation and occupation, to discuss their views about the emerging logics of entitlement. To create a sustained discussion, we relied on participants' responses to the following exchange between a young man and the editor of one of Shanghai's most popular legal advice magazines (1). (See Appendix for a description of the 64 participants.)

### 1. *The dispute*

#### *Comrade Editor*

The home where I now live with my mother originally was a publicly owned dwelling (*gongfang*) belonging to my father's employer (*danwei*) and rented by my father. After the implementation of the housing reforms, I put out the cash to buy the

(1) A pretest was done in the summer of 1999 when we asked two groups of women and two groups of men divided by age to discuss the letter. When we discovered that the men and women who held blue collar or service jobs whether they were under 35 or older than 45, systematically deferred to the college educated professionals, we created 8 focus groups that were homogenous on gender, occupational class, and age. (See Appendix for profiles of membership in the 16 groups.) The first group met in July 2000, the second in May 2002. In each session the group met for 90 minutes, seated around a table in a medium size meeting room. Each session was lead by one of the authors or a professional associate. The leader explained that our research group was trying to understand changes in Shanghai life and that we had a special interest in housing reforms,

but we did not identify any specific question or hypothesis. None of the participants knew each other prior to the meeting and none was 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 90 minutes session the leader encouraged every participant to speak. In both sessions respondents discussed more than the letter from Wu Min. In July 2000 the other case involved a dispute over a disability award and in May 2002, the other cases involved a *si Fang* and a *shangpin Fang*. All quotes from the original letters and from the focus groups in this essay were translated by the first author and Jin Gao. Word counts and word searches were done only with the Chinese transcripts.

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 (*yichan*). According to Article 3 of the National Law of Inheritance, an estate is defined as all personal legal property (*geren hefa caichan*) 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, as you state in your letter, the home was a publicly owned dwelling (*gongfang*) belonging to your father's work unit (*danwei*) and after the housing reform you purchased it and it belonged to you, 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* 1998 n° 1: 46).

At first glance the situation confronting Wu Min may appear totally unremarkable. A man writes that his older brother, who seems to have poor relations with other family members, wants to sue him over the ownership of the apartment that he purchased outright before his father's death. The editor reviews the Inheritance Law and then concludes that because the younger brother purchased the home as his own personal property before the father's death, the older brother has no claim. Why should this simple exchange with such clear legal logic provide a point of departure for an analysis of the property regime of contemporary urban China? How can a seemingly unproblematic case identify core moral principles in an emergent property regime?

The answer is that between the time when Wu Min's father first rented this flat from his employer and his death in 1996, Chinese urbanites had experienced a complete repudiation of forty years of socialist property relations. For decades, the overwhelming majority of urban residents acquired their residence in a public goods regime that allocated housing as a welfare benefit. In most years after 1950, the demand for new homes greatly exceeded supply. Housing queues were long, and individuals could not turn to alternative markets. Because housing was defined as a non-productive welfare good, it fared badly in the competition for increased industrial investments. During the slow growth years after 1962, little new welfare housing came on line and as the baby-boomers of the 1950s began to marry, acute shortages forced young

couples to co-reside with middle-aged parents (Davis 1989; Whyte 1993). But even after decades as enduring multi-generation households, parents held neither the control-rights nor transfer-rights, and only the small minority who had continued to hold title to the homes they had purchased before 1950 were able to treat their homes as part of an inheritable estate.

Then between 1991 and 1999, urban real estate became fully commodified, personal property exchangeable through market transactions (Wang and Murie 1999). Caught in the midst of a fundamental break from past ideology and practice, people like Wu Min and his brother found themselves in uncertain moral terrain where the current 'rules of the game' for establishing undisputed ownership only partially coincided with their past experience.

During their childhood, and through their early adulthood, urban real estate had been a non-commodified welfare good distributed on the basis of need. Even as late as 1990—ten years after extensive economic reform—85% of the urban population lived in collectively owned homes, and those seeking new accommodations approached housing bureaucrats as 'supplicants' (2) (Bian *et al.* 1997; Chen and Gao 1993; Davis 1993; Lee P. 1995; Lee Y. 1988). With the exception of those who still held title to homes purchased before 1950, the maximum property right claim was the right of occupancy. Then between 1991 and 1999, housing reforms fully commodified the entire bundle of property rights, multiplied the pathways to ownership, and rewrote the terms of entitlement (Wang and Murie 1999). In 1990 less than 15% of urban housing was privately owned; by 1999 over 70% of all urban households had some form of private ownership (Li Xuefan 2000; ZGFDCB 2000.5.19: 1) (3). Thus at the time when Wu Min wrote the editor, Chinese urbanites stood on the threshold of an entirely new world of tenancy and ownership where the conventions of the socialist property regime appeared increasingly irrelevant (Wang and Murie 1999; Wang 2001; Davis forthcoming).

Legally individuals, like Wu Min, his parents, and his brother could henceforth routinely purchase the right of use, the right of control and

(2) In China's biggest cities, between 10 and 20% of housing remained privately owned after 1950. But almost all of this private housing were simple cottages without modern plumbing and often with dirt floors. 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 fell steadily until it stabilized at about 15% and rents ave-

raged between 1% and 3% of household incomes (Whyte and Parish 1984: 82; Gu 2001: 95).

(3) Because very few migrants from rural areas purchased urban real estate, the percentage of privately owned dwelling units exceeds the percentage of official urban residents who had ownership claims. But even if one estimates ownership levels by total population or total number of households, the majority have some form of ownership rights.

the right of transfer or alienation. Yet because of their decades of experience with the socialist property regime, they necessarily approached real estate transactions and private ownership through the lens of their past socialist experience. Moreover, because all urban land remained state property and because state agents continued to guide the pace and content of reform (Chen and Gao 1993; Davis, forthcoming; Gu 2001; Ho 2001; Li 1999; Oi and Walder 1999), popular reasoning could not completely reject the moral discourse of the socialist state in favor of the rhetoric and logic of free markets.

From the work of Katherine Verdery and others (Burawoy and Verdery 1999; Hann 1999, 2001; Stark 1996) who have studied the changing property regimes of Eastern Europe, we know that privatization marks a fundamental rupture with past practice, and yet simultaneously evolves within a dynamic where past practice decisively shapes new property relations. Therefore, whether government officials restore ownership rights over things that previously had been privately owned, or whether they create individual claims to something that had always been collective property, policies to decollectivize and privatize precipitate popular contestations over the new logics of entitlement.

For these reasons, the letters between Wu Min and the magazine editors offered a good point of departure for listening to popular discourse about just claims in the new post-socialist property regime of contemporary Shanghai. Had all the socialist criteria of need, seniority, and political purity been completely jettisoned? To what extent did men and women stress the same logics of entitlement? Was the vocabulary undifferentiated among different generations, or between white-collar and blue-collar employees?

### 11. *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 concluded that the older brother had no claim. In his answer the editor disregarded considerations about Wu Min's current co-residency with his mother, his past joint household with his

father, and his claim that that the older brother had been unfilial. Thus 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 straight-forward market logic that disregarded the co-resident status and the unfilial behavior.

By contrast, the men and women in the focus groups perceived Wu Min's situation as far more complicated than the magazine editor and they were only partially swayed by considerations of the law. Rather, they emphasized how a court case could destroy valuable family harmony, and they evaluated the competing claim in terms of the information they gleaned from—or projected onto—Wu Min's letter about the family's past and current domestic relationships (4).

The Inheritance Law provided only a secondary reference for most participants. Only one fifty year-old female manager (R n° 36) took this Law as her point of departure and only four other professionals (Rs n° 1, 3, 44, 53) and one young male truck driver (R n° 19) even mentioned this Law during the entire focus group discussion. Also of note was that even after these individuals had framed their argument in terms of the Inheritance Law, few in their group responded with further discussion of statutes (5). Instead, the participants approached the competing claims of Wu Min and his brother by invoking principles of entitlement rooted in the norms of family justice and the past regulatory practices of state socialism. Moreover, they relied on these pre-reform conventions to decide among the competing claims at the same time as they accepted the rights of individual ownership and market exchange. Overall, therefore, the men and women in the focus group articulated criteria that drew simultaneously on the moral logic and lived experiences of the socialist property regime and on the conventions and legal practices of the newly marketized system of personal, private property. Let us now examine in more detail the vocabulary and logic of these multi-dimensional arguments about just property claims in post-socialist Shanghai.

(4) Although we did make numerical tallies of how many times certain phrases or words were used in each group or by each individual, we do not rely primarily on frequencies to compare the relative importance of an argument across groups or between individuals because in each group we allowed the members to develop its own dynamic. As a result groups would vary in the amount of time they would

focus on any one topic. Thus what we have done in our analysis is to note if an issue was raised in a group and then look at the range of criteria that were invoked.

(5) 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.

*Family justice: harmony, duty and need*

In each group participants weighed the competing claims of the two brothers in terms of three dimensions of kinship relations: the importance of family harmony, the relative weight of rights and duties, and assessments of each member's financial and housing assets. Taken together we identify this focus on harmony, duties, and need as the 'logic of family justice'. Not every group gave equal attention to all dimensions, but in each group, each of these concerns guided participants as they struggled to evaluate arguments—like that of the editor—that presented the case entirely in terms of individual legal claims and market transactions.

**Family Harmony:** In every group at least one person expressed concern about the damage of court battles to family harmony. These participants stressed that going to court would damage future relations, and that even if the ties between the two brothers were already damaged, the sibling bond was a unique relationship of great importance and should not be further weakened by a battle in court. As one young engineer (R n° 3) remarked in recounting a property dispute in his own family that had gone to court: 'It made our family very unhappy. This kind of thing... how do you put it... it could be said to be a trauma. It is not easily cured. Brothers and sisters who turn against each other for ownership of a parent's house can very, very rarely turn back'. (See Appendix A for a description of each participant.)

In each group, people also agreed that the first step in handling any family problem should be discussion and mediation, and many presumed that the primary cause for Wu Min's problem must have been his failure to consult his brother adequately when he first purchased the apartment. Some even assumed that the sale could only have gone forward if the two brothers had agreed to the terms of the purchase. Siblings who had failed to consult each other, as was the case in the family of Respondent n° 15 cited below, were routinely viewed negatively because they had ruined family harmony.

R n° 15: I think that Wu Min was not reasonable. If he had wanted to buy the place using his name, he should have asked the older brother's opinion. If the older brother had voluntarily given up his rights, that would have been another issue, and the older brother could not raise any question about the right to inherit afterwards. If Wu Min had not asked his elder brother's opinion before hand, and bought the place with his own money, for sure his elder brother would have objections. Originally this place was the parents' and the siblings are all equal—all obliged to care for the parents and all having the right to inherit. This is just the kind of problem we had when my husband's younger brother took advantage of the relocation of my in-laws. He used his

own name to buy the place without consulting anyone. My husband and I would not quarrel, but in our hearts we were nevertheless very unhappy. I don't mean we wanted any money from him. In fact, our place is rather spacious and comfortable. It was only that, as the younger brother and sister-in-law, they should have informed us.

Actually I asked my husband to talk to his brother. But he said that because his permanent household registration was not there, how could he talk to him. When we got married we lived in a place belonging to my parents, and he moved his registration to my family. Because he refused to talk with his brother, what else could I say? When his parents were alive we also supported them financially. When they passed away we paid equal shares of the funeral expenses. But we got not a cent of their property. So I thought that when my brother-in-law bought their house in his name and didn't tell us, his behavior was 'not pretty'. It was really unseemly. Although I would not ever talk to him about his ownership of the house, in my heart I was very angry.

**Rights and Duties:** The second, core element of the logic of family justice was the necessity to balance rights and duties, and in particular—as articulated in the quote above by Respondent #15, the need to weigh the relative contribution that each son had made to the care of the mother and father.

In the socialist era, the dominant norm for distributing parental assets among children had been to apportion shares in proportion to the support that each adult child had given to elderly parents. Typically this meant that the largest claim went to the co-resident child (Davis 1991). Article 13 of the 1985 Inheritance Law formalized this norm by stating that although all first-order heirs are entitled to equal shares, those that gave disproportionate care could get a larger share (Davis 1999). Given the strength of this expectation, and the agreement between law and practice, we were not surprised that people in our focus groups also spoke at length about the importance of filial behavior. But what was noteworthy was how equivalent appeals to the role of filial behavior could lead to different evaluations of Wu Min's property claim.

For example in Group n° 2, two women supported the older brother, one the younger brother, and one could not make up her mind. Nevertheless, all four women grounded their decision in considerations of filial behavior and past patterns of aid and support. Most notably they stressed how the history of co-residency could trump the letter of the law. Participant n° 6, a 30 year-old female researcher who supported the older brother on the assumption that Wu Min had purchased the home at a steep discount, also made clear that the older brother's unfilial behavior reduced his claim. She summarized her view this way:

n° 6: 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 many years. He did not fulfill his duty to support his parents, and in fact his younger brother had shouldered 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 emphasis on criteria of co-residence and years of support that women in Group n° 2 articulated, appeared again during all fourteen subsequent groups. We quote from Participants n° 24 a twenty-four year-old female factory worker, n° 27 a 51 year-old male electrician, and n° 40 a 34 year-old female factory worker as they explained how they ranked each brother's claim of ownership.

n° 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.

n° 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 now it has become 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 get half or a third. They can easily negotiate.

n° 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.

Necessity: the third element of the logic of family justice focused on questions of need. In each group, participants qualified their assessments by considering the quality, location, and ownership status of each brother's housing situation. If the older brother was well housed, then he did not have as strong a claim no matter how filial his behavior or how legally justified his claim. On the other hand, if the older brother had no home of his home, or if his home was inferior to the one that Wu Min shared with his mother, then they agreed that Wu Min would have to compensate him.

Among the thirty people over the age of 45, most of whom either had been 'sent down' to work in the country side during the Cultural Revolution, or had a sibling who had been 'sent down', evaluation of housing needs was particularly important. These middle-aged men and women provided many examples from their own experience and were explicit about the possibility of hardship trumping the letter of the law. Participant n° 13, a 51 year-old female statistician, summarized the conflict between law and necessity as follows.

n° 13: 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.

### *The Logic of the Regulatory Socialist State*

Wu Min's apartment was built as a collectively-owned, rental unit that his father leased from his employer. The letter does not tell us when the family first moved to the flat, nor the exact terms of the sale. But if the Wu's experience were typical, we would presume that the father's employer had assigned the flat when the two brothers were in primary school, and that when Wu Min purchased the flat he received a steep discount for each year of his father's employment. In Shanghai during the 1990s, each year of employment was routinely valued at between 3,000 and 5,000 yuan and therefore flats that had a market value of 145,000 yuan in 1999 were routinely sold for less than 20,000 yuan. (Davis 2002, Wang 2001). Also because the flat was bought in the early 1990s before there was aggressive pricing of land costs, we also can assume that the purchase price was far below what would later become a market rate (Wang and Murie 1999). In short, the flat over which the two brothers were fighting was property with a long and well documented 'socialist past'. Thus, it is not a complete surprise that when our participants discussed Wu Min's letter they spoke at length about the bureaucratic, administrative procedures that had established initial occupancy as well as those that had determined discounted sale prices. Comments from participant n° 8, a 28 year-old manager at an insurance company, illustrate how the logic of family justice was simultaneously contextualized by familiarity and experience with the regulatory socialist state.

n° 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 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 especially 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 n° 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, doesn't he still have his rights?

Across all sixteen groups, participants repeatedly made assumptions about regulatory practices, such as the discounting of property and the rules of household registration. Although the original letter told them nothing about the marital status, housing assets, or timing and length of co-residence with the parents, in every group participants became engaged in lengthy discussions about how particular regulations should effect the justice of the older brother's claims. In these discussions no one explicitly said that they needed to review past state regulations. Rather the logic of the regulatory state was invoked as the self-evident context for a discussion of a housing dispute. Like Participant n° 15, many began by noting the importance of the household registration in weighing the validity of a claim. In her situation, n° 15 felt that her husband had given too much weight to the rules of household registration, but even then we sensed that she too allowed the past regulatory regime to take precedent over both the logic of family justice and statutory protection of all first-order heirs.

Repeatedly, people used their own past experience of struggling to find new housing within the constraints of the household registration system as a way to frame their assessment of Wu Min's claims. In some cases, as in the dialogue we cite below, the focus was the special situation of the housing problems of sent-down youth. But as a later quote from Participant n° 60 illustrates, the rules of the household registration defined a principle parameter for claiming ownership more generally within the entire population of Shanghai.

n° 16: I do not quite agree with the Editor. He only considered the Law of Inheritance, but I think the elder brother also had a relationship as a former renter.

n° 13: I agree, the key issue is where was his household registration. If it was still with his mother, then he had the right of occupancy. If not, no one would recognize his right of occupancy, because his registration was elsewhere. The rule is that if the parents are alive and all their children are registered in their household, every one has the right of occupancy. After the parents pass away, then it is not right for the older brother to move back his registration to the parents' old home.

I had a colleague who faced this kind of thing. Both of his parents have just passed away, and his sister who had been sent-down to the countryside was planning to send her son to live with her parents in Shanghai. But my colleague refused to let the nephew move his household registration into the grandparent's old house. He was afraid exactly of this situation, that once the nephew's registration was in that house, then the boy would have the right of occupancy (that would then entitle him to buy the place at a discounted price). As long as the nephew's official registration was not in that house (even if he had actually lived with the grandparents), he would not have the

right of residency. So my colleague refused to let the boy's name be added to the household registry.

n° 16: But this is not the same situation as Wu Min because sibling relations are different than those between uncle and nephew. In Wu Min's case the elder and younger brothers belong to the same generation, and the same level.

n° 13: No. Because there were just two children, my colleague and his sister—an elder sister and a younger brother. When she was sent to the countryside, her official registration was moved from her Shanghai home. So when she returns, she should be able to return to her home, shouldn't she? Because both her parents had died, she can only return to their home. But now her brother refuses to let her son move back in. This actually means that the younger brother wanted to refuse his own sister her right to move back her official registration.

n° 16: Right, right. This is indeed a moral problem. The editor only thought from the perspective of inheritance, he did not consider the questions of morality.

Finally from the experience of Participant n° 60, a 29 year old truck driver, we see how state regulatory practice could be used not only to adjudicate between claims between siblings but also to eliminate the claims among second-order heirs of equal rank. Also of note was that none of others in n° 60's group responded to his story by questioning the power of the administrative rules to prevail.

n° 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. Aunty had 4 nephews and nieces in Shanghai. At that time, only my Aunty had her official household registration (*hukou*) at that publicly owned apartment, so if after she died, in terms of *hukou* no one else was involved and the apartment would then be taken by the State. So then my mother spoke with Aunty about whether we could register some one else in addition to Aunty as a household member. My Aunty agreed and afterwards after 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 registration (*hukou*) into my Aunty's house. In 1993 when the sale of publicly owned flats to sitting tenants began, my uncles noted that because this apartment is my Aunty's they also had inheritance rights. Afterwards my whole family moved into the place, and we took care of Aunty. Two years later she died. Afterwards 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 *hukou* to Aunty's) publicly owned flats could not be inherited, rather it was a question of the names on the official household registry. Who ever had their names in the household registry, then they were the heirs.

Focus group leader: So did you buy the place?

n° 60: No, because there is no separate toilet and kitchen, the state does not allow a sale. Now I have only bought the use-rights.

### III. *The pivotal role of initial property claims*

In accord with other sociologists and anthropologists working on post-socialist privatization (Burawoy and Verdery 1999; Hann 1998,

2002; Stark 1996; Verdery 1999) we approached the Chinese experience with private ownership as a process by which people redefine both their claims to particular bundles of property rights and their relationships to other new owners. Thus we understood the situation of Wu Min as one where individuals who had gained limited rights of occupancy under the condition of bureaucratic redistribution were negotiating more complete and differentiated claims of ownership under the highly unstable conditions of 'market transition' (Nee 1989).

Because we, like others (Hann 2002; Lee C. 1999, 2000; Pine 2002; Szelenyi and Kostello 1996; Tong and Hays 1996; Zhou and Logan 1996; Verdery, 1999), observed that access to newly privatized assets reflected pre-reform financial and organizational advantages, we hypothesized that when people discussed the competing property claims, their differential access to the benefits of the more marketized urban economy would create distinctive arguments. In particular, based on previous work that had documented higher incomes among families headed by managerial-professional groups than those headed by manual employees, a growing wage gap between men and women, and significant cohort distinctions in vulnerability to unemployment (Bian and Logan 1996; Bian, Logan, and Shu 2000; Hauser and Xie 2001; Zhou 2000), we expected that the core arguments and logics of entitlement would vary by the occupations, gender, and generation of the different participants. We set up the focus groups to test this expectation by having each of the eight groups homogenous by gender, occupational status, and generation (6). In this way we could observe, for example, whether middle-aged women who worked in service or manual jobs understood Wu Min's claim differently from young professional women, or from men of their same generation and job status. If vocabulary and logic of argument did not vary consistently by gender, generation, or occupation, we would then conclude that the socio-cultural substrata of the new property regime transcended the cleavages of the work place and suggested significant 'moral convergence' in understanding the new property market.

Analysis of the transcripts from the focus groups run in July 2000 supported a pattern of convergence. Across all groups, men and women,

(6) As is documented in appendix A, one can see we created two groups with women under age 36 working in service or manual jobs, two groups with women under age 36 working in professional or managerial jobs, two groups with women over age 45 working in service or manual jobs, two groups with women over age 45 in professional or managerial jobs, two

groups with men under age 36 working in service or manual jobs, two groups with men under age 36 working in professional or managerial jobs, two groups with men over age 45 working in service or manual jobs, and two groups with men over age 45 in professional or managerial jobs, for a total of 16 groups with 64 people.

manual workers and professionals, middle-aged and young participants drew on the logic of family justice and the logic of the regulatory state in assessing the two brothers' competing claims. Nor did gender, generation, and class identify hierarchies or clusters of values that created distinctive priorities. For example, women were not more likely than men to speak in a logic of family justice, nor were men more likely than women to stress the rationality of the law or free markets.

However, as we reviewed and compared the conversations of the 2000 focus groups, we did identify an axial assumption that patterned the relative weight of the several logics of entitlement: the rules of ownership at the time the property first became the family home. Thus, for example in 2000, at least one participant in each group spontaneously distinguished the situation of Wu Min from situations where a home had been privately owned by a family before housing reforms, or where a home was a newly built commercial property that had never been collectively owned.

When the property was an old private home that the family had owned in the pre-communist era, participants agreed that both sons would have equal claims regardless of their current residency on the grounds that all family members (*jiating chengyuan*) are entitled to a share when the home had been handed down from 'the ancestors' (*zushang*) (7). By contrast, when the property was a newly built, commercial flat, participants thought that only the current owner had a claim. The most complicated disputes therefore were cases like that of Wu Min where the property had originally been collective property, first occupied under the pre-reform rules. In these cases, people felt that they had to weigh a wide range of moral and legal considerations, but ultimately that the logic of the regulatory state remained entwined with the norms of family justice.

In the July 2000 focus groups, respondents spontaneously differentiated the situation of Wu Min's formerly publicly owned flat (*gongfang*) from the situation of brothers fighting over an always privately owned home (*sifang*) or a post-1990 commercial (*shangpin fang*) property. However, because not every group spent equal time framing their arguments in terms of distinctions among property types, we could not be sure that the logics of entitlement pivoted around housing type more than gender, generation or occupation. Therefore we organized eight further focus groups and asked participants to discuss disputes over three different types of property: Wu Min's original dispute with his brother over the formerly-public *gong fang* and two new disputes—one

(7) Participant n° 7.

over a parental home that had always been a privately owned *sifang* and a third where the home was a newly built commercial *shangpin fang* property (8). The conditions of the father's death, current co-residence and lack of concern for the mother were identical in each case, but with the *sifang* and *shangpin fang* there was no history of the home originally being a rental in the father's name.

Again the respondents entwined the logics of family justice and state regulation, and overall, the pattern of response was identical. In 2002, as in 2000, the majority wanted the older brother to be given some consideration and only a third agreed with the editor that the previously publicly owned rental unit indisputably belonged to the younger brother (9). And again, the property rules that applied when the dwelling first became the family home patterned the language and argument of the participants. Specifically the 2002 focus groups confirmed (1) that the logic of family justice was strongest when the property had always been family property; (2) that the weight of the regulatory state predominated when the property was a previously collectively owned flat; and (3) that the market logic dominated in discussion of the commercial homes. In addition, by offering focus groups a case of a home that had always been in the family's possession, we identify a fourth logic of entitlement: the logic of the family estate (see Table 1).

Let us begin with a review of Table 1 that categorizes the response of each person in the May 2002 groups to the question: does Wu Min's brother have the right to inherit?

(8) In addition to using the original letter from Minzu yu Fazhi, we presented these two additional disputes. In the first the letter read as follows: Comrade Editor. I lived in a home with my mother that was originally my father's *sifang*. 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 second: Comrade Editor, I live

with my mother in a commercial flat (*shangpin fang*) and I am the owner (*yezhu*). 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?

(9) In 2000, 10 of the 31 participants said the older brother had no rights. In 2002, 9 of 33 said the brother had no rights.

TABLE I

*Does Wu Min's Brother have the Right to Inherit?*  
(Y= Yes, D= Depends, N= No)

Group n°	Always Private <i>Sifang</i>	Formerly Public <i>Gongfang</i>	Always Commercial <i>Shangpin fang</i>
9	DNYD	NNYY	NNNN
10	YDNN	YYYY	NNNN
11	YYYY	DDDD	DDDD
12	YYYY	NDYN	NNND
female subtotal	10Y-3D-3N	7Y-5D-4N	0Y-5D-11N
13	DDYY	DNNN	NNNN
14	YYYY	YYYY	DNNN
15	DDDDY	YNNYY	NDNN (no answer)
16	DYYY	DDDD	DNND
male subtotal	11Y-6D-0N	7Y-5D-5N	0Y-4D-12N
TOTAL	21Y-9D-3N	14Y-10D-9N	0Y-9D-23N

When the home had always been owned by the family, only 9% (N=3/32) of the participants decided that the older brother had no claim. By contrast when the home was a formerly a public apartment, only 27% (N=10/31) held this view, and when the home was a new commercial flat 72% (N=23/32) were confident that the older brother's request was groundless.

Among these participants, one can also identify a distinctive vocabulary, emphasis, and order of argument. As noted, the strength of each logic varies according to the type of housing in dispute. Let us begin with the case when the home has been continuously owned by the family.

*The case of the always privately owned home: the joined logics of family justice and family estate*

In the case of the always privately owned home, an overwhelming majority of participants argued that the older brother had rights to the property and only three were willing to deny him any claim to the house. Those who held the majority position also shared a similar point of departure that emphasized the equal rights of all children to a share of the family property. In short, the dominant logic of entitlement that



characterized discussion of the always privately owned *sifang* was one that combined the norms of family justice and a more egalitarian version of the pre-communist family estate norm of equal shares among all sons.

Thus as in 2000, respondents drew on a logic of family justice that valued family harmony, weighed the different contributions of the two brothers, and evaluated the quality of each man's current housing conditions. But, in addition, people added the norm of equal shares of the parental home that grows directly from the understanding that a *sifang* is a type of traditional family estate that should be apportioned according to the norms of a family estate.

A second element that repeatedly surfaced in 2002 but had been absent in 2000 was the importance of a parent's will. Again, the discussions illustrated the importance of an estate, but in this case the estate of an individual parent rather than the family. Participants noted that if the father had written a will and cut out the older son, then they agreed that the older son had no claim even if the house had been handed down from the ancestors. But if the father had left no will, then the older son had a claim to the family property as strong as other siblings. However the size of the older son's share, and the time at which he could remove his share, would be decided by all members' current needs and past behavior. Participant n° 39, a 49 year-old section head, explained her views as follows:

n° 39: Well if we look at it from the perspective of the property law, then I agree with n° 36 and n° 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 n° 38 (n° 38 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, you can still fulfill your 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 case of the previously publicly-owned rental unit and the logic of the regulatory state*

When debating the case of the *gongfang*, participants were more likely to disinherit the older brother and more likely to stress the relevance of state regulation than when the house was a *sifang*. For example when discussing Wu Min's original dispute, every group articulated pervasive concern with names on title deeds or names on household registration.

By contrast when they took up the case of the always privately owned home, the primary technical-legal issue was whether or not the father had explicitly dis-inherited an intestate heir. The following exchange between the group leader and a 46 year old man working in a Chinese medicine factory aptly illustrates the power of the regulatory state to prioritize logics of entitlement when the disputed property was an after-sale *gongfang*.

n° 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 claim.

Group Leader: You mean that those whose household registration (*hukou*) is not there, have no property interests?

n° 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 has no inheritance right, right? But if at that time the older brother considered that the younger brother was in financial difficulty and so he put up the money, then what?

n° 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 more strongly framed the discussion of *gongfang* than *sifang*, few participants saw the administrative procedure of the household registration system as definitive as did participant n° 49. More representative was the perspective n° 47 whose conversation I cite below. In these more typical arguments, participants weighed competing property claims within a moral framework that entwined the logic of family justice with practices of both the state and the market, rather than allowing the logic of the regulatory state to trump all others.

n° 47: 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 100 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 should 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 a good situation that you could buy a 100 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 *hukou* 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 case of the newly built commercial home: the rational logics of the market and the law*

When the July 2000 participants speculated as to Wu Min's situation if he had bought the flat on the commercial market, they concluded that Wu Min's ownership would be easy to establish. Thus we were not surprised that when we presented a dispute in 2002 between two brothers over a commercial property not a single participant said that the older brother had an undisputed claim to the apartment (see table 1, last column). Nevertheless, despite the agreement across age, gender, and occupation groups, several people did argue that the older brother might deserve some compensation according to the norm that parents should treat all children equitably—if not necessarily equally. However, it was also noteworthy that in 2002 the logic of family justice had been monetized and marketized.

Thus, for example, the question that sustained discussion over this case was not about the presence or absence of a will, the names on the household registry, or the quality of filial care. Rather the question that created debate over the commercial flat was whose money had been used to buy this home. Many thought that if the money came primarily from the parents, and if the older brother had received nothing from the parents to buy a home of his own, then the younger brother should give his older brother some monetary compensation but not a share of ownership. On the other hand if the older brother was already well housed, then the younger brother didn't need to give him anything and his demand was totally unreasonable. We conclude by quoting from an exchange between two young professional women to illustrate how the situation of commercial housing was understood within a logic of family justice tempered by the current stress on market transactions and legal definitions of individual ownership.

n° 45: I think the older brother has no right to this flat. Commercial housing belongs to whomever 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.

n° 44: I agree with n° 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 n° 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.

#### *IV. Logics of entitlement in a post-socialist domestic property regime*

When the Chinese leadership re-legitimated private ownership and enthusiastically created the new hybrid of market-socialism, they not only opened the way for commercial real estate development, but they also created the conditions for a new logic of entitlement defined by rules of individual property and private ownership.

In this new post-socialist property regime, successful entrepreneurs became exemplars of modernity and real estate investment was promoted as an engine of economic growth. Local governments and state owned banks that for decades had treated housing as a non-productive welfare good, imposed mandatory provident funds and urged urban residents to take advantage of 20 year home mortgages (Davis 2002). Emblematic of the strong link between market values and social success were such advertisements in Shanghai's largest publicly owned newspaper that urged readers to 'buy a home, become a boss!' (Fraser 2000: 35).

From previous scholarship on property disputes in both capitalist and socialist societies (Burawoy and Verdery 1999; Singer 2000; Thireau and Wang 2001) we know that the criteria that ordinary people use in adjudicating competing property claims define subsequent property relations. In this way the exchange between Wu Min and the magazine editor spoke directly to the logic by which ordinary citizens evaluate and discriminate among competing claims in the uncertain terrain of market-socialism. And because popular discourse creates the cultural substrata within which legal statutes and administrative implementation institutionalize contemporary property relations, reactions to Wu Min's letter identified key parameters of the post-socialist concepts of justice and equity.

Thus, as we learned from the discussion of these focus group participants, despite the rapid creation of a new urban property regime, Shanghai residents relied on a moral calculus that incorporated the experience of earlier eras of state-socialism and pre-communist familism. Individual property rights were deemed legitimate, and participants generally favored a market based property regime. However, they also recognized a contradiction between new property laws and the need for justice in situations where the house itself had a history as collectively owned property or where desire for family harmony and justice justified 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 triangulated between the moral logics of the party-state, the property markets, and family justice and that were framed and articulated within the historical trajectory of particular types of property including that of the pre-communist family estate.

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## A P P E N D I X

### Profiles of Respondents in 16 Focus Groups (indicating gender, occupation, and age)

July 2000 (31 individuals)	May 2002 Focus Groups (33 individuals)
<p>Group n° 1: Male Young Professionals (1) College Professor (age 31) (2) Manager at Private Advertising firm (age 34) (3) Programmer at Web company (age 34) (4) Engineer at Credit Company (age 28)</p> <p>Group n° 2: Female Young Professionals (5) Accountant at Pharmaceutical Firm (age 34) (6) Researcher at Science Academy (age 30) (7) Manager at insurance company (age 33) (8) Assistant Manager at Taiwan Joint Venture (age 28)</p> <p>Group n° 3: Male Middle-aged Professionals (9) Head manager at Joint Venture (age 48) (10) Section chief at Car Parts Company (age 54) (11) Bureau chief for a City Bureau (age 58) (12) Engineer for Construction Company (age 53)</p> <p>Group n° 4: Female Middle-aged Professionals (13) Statistician at State factory (age 50) (14) Manager in sales at State factory (age 49) (15) Accountant at State factory (age 50) (16) Vice Department chief at hospital (age 48)</p> <p>Group n° 5: Male Young Blue-Collar/Service (17) Worker in state printing factory (age 31) (18) Store room clerk in private pharmaceutical company (age 33) (19) Driver at state gas company (age 35) (20) Clerk at insurance company (age 32)</p> <p>Group n° 6: Female Young Blue-Collar /Service (21) Sales clerk at Stock Company (age 31) (22) Janitor at company (age 28) (23) Cleaning staff at Joint Venture hotel (age 32) (24) Worker at state factory age 35</p> <p>Group n° 7: Male Middle-aged Blue Collar/Service (25) Dispatcher at garage (age 53) (26) Mechanic at state firm (age 49) (27) Electrician at state factory (age 51) (28) Security guard at Joint Venture (age 45)</p> <p>Group n° 8: Female Middle-aged Blue Collar/Service (29) Worker at Textile Mill (age 45) (30) Worker at Needle Factory (age 52) (31) Janitor at Computer Company (age 52)</p>	<p>Group n° 9: Female Middle-aged Blue-Collar/Service (32) Clerk at private trading company (age 47) (33) Worker at State textile mill (age 55) (34) Clerk at state real estate company (age 47) (35) Security guard at state factory (age 49)</p> <p>Group n° 10: Female Middle-aged Professionals (36) Vice President of public company (age 50) (37) Head manager of private company (age 48) (38) Party secretary of state factory (age 47) (39) Section chief at hospital (age 49)</p> <p>Group n° 11: Female Young Blue Collar/Service (40) Worker at state factory (age 34) (41) Worker at state hotel (age 34) (42) Clerk at State Pharmacy (age 35) (43) Cashier at joint venture supermarket (age 28)</p> <p>Group n° 12: Female Young Professionals (44) Section Chief at Procuracy (age 35) (45) Head Stylist at Joint Venture Cosmetic Company (age 35) (46) Manager at State company (age 29) (47) Manager at Hong Kong electronics firm (age 35)</p> <p>Group n° 13: Male Middle-aged Blue-Collar/Service (48) Dispatcher at Steel Mill (age 48) (49) Worker at Chinese medicine factory (age 46) (50) Buyer for supermarket (age 46) (51) Worker at steel mill (age 51)</p> <p>Group n° 14: Male Middle-aged Professionals (52) Engineer at State factory (age 56) (53) Head Manager of State company (age 46) (54) Vice Head of State trading company (age 52) (55) Bureau Head of State company (age 56)</p> <p>Group n° 15: Male Young Blue-Collar/Service (56) Taxi Driver (age 34) (57) Security guard for state company (age 30) (58) Mechanic in old collective (age 35) (59) Worker in joint venture (age 28) (60) Driver at state factory (age 29)</p> <p>Group n° 16: Male Young Professionals (61) Manager, Joint venture (age 35) (62) Manager, State company (age 33) (63) Manager, Private web company (age 35) (64) Manager, Joint Venture super market (age 29)</p>