

## **PROTECTING PRIVATE PROPERTY IN CHINA – WHOSE PROPERTY?**

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### **ABSTRACT**

The importance of protecting private property in China has now ascended to the same level as that of safeguarding public assets which has traditionally been a top priority for socialist nations. This article will firstly and heavily expound on the rationale behind the availability and at certain times the marginalisation of protecting private property de jure and de facto during some momentous stages in modern Chinese history. It will then touch on a lingering problem relevant to today's Chinese society arising from the drainage of state assets, a phenomenon having occurred in the transformation process of China's economic regimes over the most recent decades. It finally argues that while protecting the right to lawful private property is not a matter in dispute, pursuing the protection of private property shall in no way lead to the weakening of sticking to the core value of justice and egalitarianism, a key to ensuring a sound socialist institution.

### **KEY WORDS**

Protection of private property; Constitutional pledge; Justice and egalitarianism

### **1. INTRODUCTION**

In China's 247-article Property Rights Law enacted in 2007, a few lines contained in Articles 3 and 4 turn out to be most politically conscious,<sup>1</sup> as they underline the notion of equally protecting private property in

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<sup>1</sup> In light of China's Property Rights Law, market participants in China are ensured to be granted equal legal status and vested with equal right of development (art 3, para 3); the same as in the case of the state or collective organisations, private persons' property rights will also be protected by law against infringement (art 4).

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juxtaposition with public assets. This could be viewed as something novel in a socialist nation like China where conventionally the public ownership system is supposed to invariably occupy a preponderant place. Exalting such kind of equal protection is in a certain sense a breakthrough beyond the orthodox Marxism on which the socialist ideology embedded in China has long rested.<sup>2</sup> As a matter of fact, since the founding of the People's Republic of China in 1949 with the Chinese Communist Party commencing to lead the nation until the present time, protecting private property has consistently been exhibited as a constitutional pledge, though the actual protection at many times could have been perceived as more formal but less substantive.

The past sixty-odd years had perspicuously witnessed the various forms of formation and development of China's laws, regulations and policies, which, at different times being put forward to meet the demands of the changing political and economic situations, had indispensably absorbed the philosophies of China's two paramount leaders - Mao Zedong (1893-1976) and Deng Xiaoping (1904-1997). As of the early 20<sup>th</sup> century, Mao had written profusely on China's New Democratic Revolution and on the building up of a socialist nation; his thoughts are a crucial source of ideological guidance for the Chinese Communist Party. In the post-Mao era, Deng masterminded the grand policies of carrying out the economic reform and opening-up which started to be implemented in the late 1970s. He led the nation embarking on a road towards architecting a socialist society bearing unique Chinese features. The past institutional frameworks erected under Mao and Deng's political influences constituted the most important legacies pertaining to the evolution of China's economic regimes over all those years since the People's Republic of China was launched and including the more recent reform and opening-up period in Deng's time, the ramifications of which are still reverberating strongly even down to the present.

Over the past few decades in the wave of China's transformation from a centrally planned economy to a market economy as it is today, most Chinese people have achieved economic gains, though to varying degrees. Statutorily putting into practice the tenet of equal protection of private property by relying on the context of what is specifically provided for in this respect in the Property Rights Law may have looked more than necessary at the time than at

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<sup>2</sup> Ladany asserted in the preface to his book on the Chinese Communist Party and Marxism that 'Marxism is the soul and inspiration of the Communist Party', Laszlo Ladany, *The Communist Part of China and Marxism, 1921-1985: A Self-Portrait* (Hong Kong, Hong Kong University Press 1992) ix. Marx articulated in his *Manifesto of the Communist Party* that '[a]bolition of private property' is a goal of communism, Samuel Moore (trs), Karl Marx and Frederick Engels, *Manifesto of the Communist Party* (Moscow, Progress Publishers 1977) 50.

any other time in modern Chinese history. This is arguably the cause of the importance of protecting private property having been escalated to a level unprecedented previously. However, protecting private property ought to be distinguishable from installing an impervious wall to the effect that the illegally obtained assets in the meantime may also be well protected due to the inability in many circumstances to tell a needed distinction which might prove difficult in reality.

How has China's institutional framework for protecting private property evolved into the state as it currently is? Could the correctness of giving protection to private property be ensured both legally and morally substantiated? Should the socialist core value of justice and egalitarianism be upheld in a more adamant way so that Chinese commoners could share more justly the fruits of the nation's economic success?

These are the questions which may plague many people's mind at all times.

## **2. THE NEW DEMOCRATIC REVOLUTION: MAINTAINING THE STATUS QUO OF PRIVATE PROPERTY**

China's New Democratic Revolution roughly spanned the first half of the 20<sup>th</sup> century in which the People's Republic of China was established in 1949, displacing the Republic of China (then controlled by the Chinese Nationalist Party) in Mainland China. It is in fact a terminology derived from the bifurcation made by Mao Zedong.

In his work on the Chinese revolution, Mao underlined the pivotal role played by the New Democratic Revolution (as opposed to the Old Democratic Revolution preceding it) in modern China's democratic revolutionary process which had been described by him as an integral part of the world socialist revolution.<sup>3</sup> Even at the time well before the Chinese Communist Party gained the ruling power in China, Mao had pointed out that the terminal objective of the Chinese revolution is to attain socialism and communism, opining that when the conditions are ripe it would be the task of the Chinese Communist Party to accomplish the transition for China to enter into the phase of a socialist revolution from the New Democratic Revolution.<sup>4</sup> However, he

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<sup>3</sup> See generally Zedong Mao, 'Xin min zhu zhi yi lun' (The New Democracy) in *Mao Zedong xuan ji di er juan* (The Selected Works of Mao Zedong, Vol 2) (Chinese, Beijing, People's Press 1991) 666-672.

<sup>4</sup> Zedong Mao, 'Zhong guo ge ming he zhong guo gong chan dang' (The Chinese Revolution and the Chinese Communist Party) in *Mao Zedong xuan ji di er juan* (The Selected Works of Mao Zedong, Vol 2) (Chinese, Beijing, People's Press 1991) 650-651.

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positioned the New Democratic Revolution, the starting point of which is the outbreak of the May Fourth Student Movement in 1919, as an indispensable stage that China must go through on its way to become a socialist nation.<sup>5</sup> In his view, China's New Democratic Revolution is a bourgeoisie democratic revolution but led by the proletariat who therefore must always prepare to start building up a socialist society once the process of the New Democratic Revolution is complete.<sup>6</sup>

Mao worked out a set of economic canons tailored to the period of China's New Democratic Revolution. He submitted the ideas of maintaining the co-existence of three specific forms of ownership system ('state ownership', 'private ownership', and 'collective ownership') and of ensuring that legitimate private property would be protected.<sup>7</sup> He accentuated that the Chinese nation to be founded as the result of the success of the New Democratic Revolution would be a new type of democratic republic differing from those capitalist republics in Europe and America and also not akin to a Soviet-style totalitarian state.<sup>8</sup> He foresaw that in the new Chinese nation that was coming into being, the state ownership system would dominate all spheres of economic life pertinent to core national and civilian interests;<sup>9</sup> the private, capitalist-style economy could continue to exist, provided that it would do no disservice to the state-owned economic system;<sup>10</sup> the bourgeoisie's private property would not be confiscated;<sup>11</sup> each peasant would be given a plot of land as his private property.<sup>12</sup>

Mao's theories greatly impacted the economic policies of the New Democratic Revolution subsequently formulated and executed in the form of law by the Chinese Communist Party. Typical examples are the Blueprint for Land Law of China 1947, the Land Reform Law 1950, and the Common

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<sup>5</sup> Ibid 647.

<sup>6</sup> Ibid.

<sup>7</sup> Zedong Mao, '*Lun lian he zheng fu*' (The Coalition Government) in *Mao Zedong xuan ji di san juan* (The Selected Works of Mao Zedong, Vol 3) (Chinese, Beijing, People's Press 1991) 1058-1059. See also Qiaomu Hu, '*Hu Qiaomu hui yi Mao Zedong*' (Hu Qiaomu's reminiscences of Mao Zedong) in Shujun Zhang and Sheng Qi (eds) *Hong se jue ce – zhong guo gong chan dang zhong da hui yi shi lu shang juan* (Decision-making in the Revolution – the Documented Important Meetings of the Chinese Communist Party, Vol 1) (Chinese, Changsha, Hunan People's Press 2006) 197.

<sup>8</sup> Mao (n 3) 675.

<sup>9</sup> Ibid 678.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

Principles 1949 which filled the void left by the absence of a formal Chinese Constitution which had not come into existence until 1954.

Against the background of the Blueprint for Land Law of China 1947 and the Land Reform Law 1950, a land reform movement led by the Chinese Communist Party was carried out in China's rural areas during the period of around 1947 to 1953.<sup>13</sup> It gave rise to rural landlords deprived of their land which was then distributed to the peasants with little or without land and to the affected landlords alike.<sup>14</sup> Consequently, all Chinese peasants, regardless of their economic status, became able to live on their privately-held land.

Pursuant to the Common Principles 1949, China's feudal and semi-feudal land ownership system at the time would be abolished and changed into a peasant-owned land system;<sup>15</sup> the assets of the state and co-operatives would be protected;<sup>16</sup> the economic interests and private property of workers, peasants and the bourgeoisie would be protected also;<sup>17</sup> the state would centrally control and run, under a state-run economic system which is socialist in nature, all the industries pertinent to national economic lifelines and core civilian interests;<sup>18</sup> the co-operative economic sector, which is semi-socialist in nature, would constitute an important segment in China's national economy;<sup>19</sup> developing the private-sector economy would be encouraged, given that it could benefit national and civilian interests;<sup>20</sup> and the national capitalist economy taking the form of a collaboration between state funds and private capital would be permitted to exist as well.<sup>21</sup>

It is not difficult to figure out at this point that the Common Principles together with the Blueprint for Land Law and the Land Reform Law had explicitly laid out Mao's expectation in regard of the economic policies applied to the New Democratic Revolution, a period that would last prior to China setting off for its socialist destination: property ownership takes diversified forms; private property is protected; all peasants have their own land; private economic sectors would not head for considerable debilitation.

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<sup>13</sup> See generally Richard Phillips, *China since 1911* (London, Macmillan 1996) 165-166.

<sup>14</sup> Blueprint for Land Law of China 1947; Land Reform Law 1950, arts 2 and 10. See also generally Suinian Liu and Qungan Wu (eds), *China's Socialist Economy – An Outline History (1949-1984)* (Beijing, Beijing Review 1986) 46-54.

<sup>15</sup> Common Principles art 3.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Common Principles art 28.

<sup>19</sup> Common Principles art 29.

<sup>20</sup> Common Principles art 30.

<sup>21</sup> Common Principles art 31.

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Although a fine line may have to be trod between upholding the importance of a public ownership system and ensuring the sustained enjoyment of the right to private property, the general framework established at the time called for no immediacy of taking a huge leap forward towards socialism from the path of the New Democratic Revolution. In this connection, the status quo was not supposed to be distorted, but would be maintained until the New Democratic Revolution could continuously and more naturally complete its well-designed destiny.

However, the ongoingness of the New Democratic Revolution eventually failed to have a lengthy life span; it came to an end in 1953.<sup>22</sup> With the promulgation of China's first Constitution in 1954, the weather vane changed; the building up of socialism became the nation's main mission.

### **3. THE SOCIALIST TRANSFORMATION CAMPAIGN: BUILDING UP THE DOMINANCE OF PUBLIC OWNERSHIP**

#### *The formation of the political and legal basis*

The arrival of the new Chinese republic led by the Chinese Communist Party was in the teeth of a treacherous international environment where in the 1950s the mainstream ideology embraced in most Western nations was in diametrical contradiction to communism. Isolation and animosity from the West deeply engulfed China which was eager to win wide international recognition beyond the limited scope of a few socialist friends. The situation became worse after it joined the Korean War in the early 1950s. As a new sovereign state whose economic strength and technological capacity lagged far behind those of western countries, China had little experience of carrying out modern economic development and hammering out the necessary political and legal institutions. Foreign aid must be sought; but apart from the Soviet Union, few allies could competently be relied upon at the time. The world then had two clearly divided camps – ‘a capitalist camp’ and ‘a communist camp’; while ideologically belonging to the latter, China had not been able to instantly acquire the trust of the Soviet Union, which, under the leadership of Joseph Stalin at the time, was at the top rung of the world communist front.<sup>23</sup>

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<sup>22</sup> Qiufeng Ji and Hwei-shing Cheng (trs), Immanuel CY Hsu, *The Rise of Modern China* (Vol 2) (Chinese, Hong Kong, The Chinese University Press 2002) 655.

<sup>23</sup> See generally Qiming Sun, *Zhong su guan xi shi mo* (History of Sino-Soviet Relations) (Chinese, Shanghai, Shanghai People's Press 2002) 119-121; Zhihua Shen, *Zhong su tong meng de jing ji bei jing: 1948-1953* (The Economic Background of the Sino-Soviet Alliance: 1948-1953) (Chinese, Hong Kong, Hong Kong Institute of Asia-Pacific Studies/The Chinese University of Hong Kong 2000) 2-22.

Chinese leaders understood that in order to secure Stalin's support, they would have to succumb to the hierarchical authoritativeness asserted by the Soviet Union and to learn humbly from Russia's experience across a wide spectrum of social life.<sup>24</sup>

On 14 February 1950, in the presence of Mao and Stalin, the Sino-Soviet Treaty of Friendship, Alliance and Mutual Aid, along with other agreements on bilateral sovereignty and economic interests, were signed in Moscow between the two nations.<sup>25</sup> The Treaty would run for thirty years.<sup>26</sup> Articles 4 and 5 of the Treaty clearly illustrate the general principles to be adhered to by the two nations with respect to the alliance created. By Article 4, the two nations would 'consult each other in regard to all important international problems affecting the common interests of the Soviet Union and China, being guided by the interests of the consolidation of peace and universal security'.<sup>27</sup> Under Article 5, the two nations pledged 'to develop and consolidate economic and cultural ties between the Soviet Union and China, to render each other all possible economic assistance, and to carry out the necessary economic co-operation'.<sup>28</sup> Although divergence of opinions, skirmishes and mistrust between the two communist parties were far from being played down outright, forging a strategic alliance like that was undoubtedly an epoch-making event in the history of Sino-Soviet relations.<sup>29</sup> Stalin believed that against the backdrop of the ongoing Cold War, China's accession into the socialist camp would facilitate securing and enhancing Russia's strategic interest in Asia against the US.<sup>30</sup> For China, the Sino-Soviet alliance would enable it to gain an assured access to the Soviet Union's comprehensive assistance.<sup>31</sup> The bond established was emblematic of a coming era in which China would garner the political basis for heading towards socialism by switching from carrying on the New Democratic Revolution to engaging in a large scale process of Sovietisation in order to construct a socialist society within a short space of time.<sup>32</sup>

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<sup>24</sup> See generally Sun, (n 23) 121-123; Paul Auster and Lydia Davis (trs), Jean Chesneaux, *China: The People's Republic, 1949-1976* (New York, Pantheon Books 1979) 29.

<sup>25</sup> Sun (n 23) 139-140.

<sup>26</sup> See Peter Jones and Sian Kevill, *China and the Soviet Union 1949-1984* (New York, Facts on File Publications 1985) 2.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> See generally Sun (n 23) 142-144; Shen (n 23) 22-50.

<sup>30</sup> Shen (n 29) 45-46.

<sup>31</sup> Ibid 50.

<sup>32</sup> See generally Chesneaux (n 24) 56.

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In this context, spearheaded by the rural collectivisation and urban industrialisation movements, a socialist transformation campaign started in China in the 1950s. The Constitution 1954 timely laid down the required legal basis for launching the campaign, manifesting it as gradually achieving the socialist industrialisation and realising a socialist transformation in agriculture and craftsmanship sectors and in those industrial and commercial sectors whose essential nature is capitalism.<sup>33</sup>

From the perspective of who would exercise control over the means of production which is crucial to a nation's development, the Constitution 1954 mentions four types of ownership system – (a) state ownership; (b) co-operative ownership; (c) individual labourer's private ownership; and (d) individual capitalist's private ownership.<sup>34</sup> Under the Constitution 1954, the state-run economy (the socialist economy in the form of all people's ownership) is displayed as being in the most prominent position on the hierarchy of all the economic systems operating in China at the time;<sup>35</sup> the co-operative economy is prescribed to be of a socialist or semi-socialist character.<sup>36</sup> Thus, in principle both the state-run economy and the co-operative economy could fall into the purview of the socialist public ownership regime.

By the Constitution 1954, protection would be given to a variety of private property right, including individual peasants' private land ownership right,<sup>37</sup> individual peasants and other individual labourers' right of private ownership over their means of production,<sup>38</sup> individual capitalists' right of private ownership over their means of production and capital,<sup>39</sup> private individuals' right over their lawful incomes, savings, houses, etc,<sup>40</sup> as well as private individuals' succession right to private property.<sup>41</sup> However, the said protection ought not to be construed as tantamount to encouraging the development of private ownership economy. Conversely, in light of the Constitution 1954, the agricultural sector, the craftsmanship sector, and the industrial and commercial sectors are the target of rectification. The agricultural and craftsmanship sectors would face collectivisation.<sup>42</sup> As for the industrial and commercial sectors, their private ownership would eventually

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<sup>33</sup> Constitution 1954, preamble, para 2.

<sup>34</sup> Constitution 1954, art 5.

<sup>35</sup> Constitution 1954, art 6, para 1.

<sup>36</sup> Constitution 1954, art 7, para 1.

<sup>37</sup> Constitution 1954, art 8, para 1.

<sup>38</sup> Ibid; and Constitution, art 9, para 1.

<sup>39</sup> Constitution 1954, art 10, para 1.

<sup>40</sup> Constitution 1954, art 11.

<sup>41</sup> Constitution 1954, art 12.

<sup>42</sup> Constitution 1954, art 7-9.

be dismantled and replaced by the all people's ownership system.<sup>43</sup> In other words, any private economy would be substituted with the socialist public ownership regime, though perhaps in a gradual and less traumatised fashion. And once these could become a reality, the integrity of the rights to private property should have unavoidably weathered some stormy changes, the effects of which could have been far-reaching to the nation and to the individual citizens affected for a hardly estimably long time in their lives and in history.

### ***Rural collectivisation and urban industrialisation***

Carrying out the socialist transformation campaign in China was predicated on the presumption that under a well organised public ownership regime, the society's capital, natural and human resources could be mobilised within the shortest time and utilised in the nation's best interests; it would be far less difficult to accomplish a grand action like this under the auspice of a socialist system where a sole ruling party would face no endless debates in the parliament and no ubiquitous interference of opposition parties as what happened in the capitalist West.

As to the carrying out of collectivisation and industrialisation, Soviet Russia had precedents. Collectivisation and industrialisation, the two themes characteristically embodied in Soviet socialism, was a prelude to this red empire's crusade to becoming a socialist superpower in the mid 20<sup>th</sup> century on the basis of exacting a vast transformation of private property in Soviet society. Being the first socialist nation in the history of mankind, the Soviet Union was a pioneer experimenter in engineering rural collectivisation,<sup>44</sup> which put into practice the Bolsheviks' theory about the superiority of collective agriculture and their inclination towards 'regarding private ownership of land as a major obstacle to the victory of socialism'.<sup>45</sup> The result was that numerous collective farms were established, efficaciously smothering private agriculture in the Soviet Union.<sup>46</sup> Private rights and interests belonging to landlords and wealthy peasants (the 'kulaks') were callously quashed,<sup>47</sup> thus perfectly matching Stalin's expectation of the 'elimination of the kulaks as a class'.<sup>48</sup> On the other hand, in the minds of the

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<sup>43</sup> Constitution 1954, art 10, para 2.

<sup>44</sup> See generally Peter Kenez, *A History of the Soviet Union from the Beginning to the End* (Cambridge, Cambridge University Press 1999) 88.

<sup>45</sup> *Ibid* 84.

<sup>46</sup> See generally *ibid* 85-87.

<sup>47</sup> See generally *ibid*.

<sup>48</sup> *Ibid* 86.

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Bolshevik leaders, the industrialisation focusing on heavy industries was their ‘primary task’.<sup>49</sup> The accomplishment of the industrialization was lauded by them as ‘the best proof of the superiority of their political, social, and economic system’, and they revelled in the conviction that the Soviet economy ‘was capable of catching up with the advanced capitalist West’.<sup>50</sup> By 1937, private agriculture had become obsolete in the Soviet Union;<sup>51</sup> the existence of private enterprises in industrial sectors had virtually ceased.<sup>52</sup>

China wished to push through its rural collectivisation and urban industrialisation also. But the approach deployed was comparatively more moderate. Chinese leaders initially made a less ambitious estimation, reckoning that it might take fifteen, twenty or even thirty years to complete China’s New Democratic Revolution before a solid economic foundation (in terms of achieving the industrialisation in particular) could have been laid out for the nation to effect an all-encompassing, one-step transformation into socialism.<sup>53</sup> However, the challenging global and peripheral situation forced Chinese leaders to size up the original prediction again; then they were stunned to become cognisant of the fact that developing national defence must be prioritised, and this would critically hinge on a modern heavy industry the facilities and techniques of which China possessed all but scant command at the time.<sup>54</sup> On realising China’s national industrialisation, private entrepreneurs were deemed not capable of making any significant contribution; the backward private agriculture was viewed as an ostensible hindrance.<sup>55</sup>

In 1953, the Central Committee of the Chinese Communist Party endorsed an official order released to the public - the General Policy Guidelines for the Transitional Period, unveiling a new central plank of government policy which denoted an important change of direction made to the long-term development roadmap prepared for the ensuing decades. The ‘transitional period’ is depicted in this document as a time span roughly ranging from the founding of the People’s Republic of China onwards to the accomplishment

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<sup>49</sup> Ibid 89, 91.

<sup>50</sup> Ibid 92.

<sup>51</sup> Ibid 85.

<sup>52</sup> J M Roberts, *Shorter Illustrated History of the World* (Oxford, Helicon 1993) 507.

<sup>53</sup> Huamin Gao, *Chong jing shi xian guo jia gong ye hua – yu guo du shi qi zong lu xian* (Anticipating the Realization of National Industrialization – the General Policy Guidelines for the Transitional Period) in Suhua Zhang (ed) *Mao Zedong yu zhong gong dang shi zhong da shi jian* (Mao Zedong and Major Historical Events of the Chinese Communist Party) (Chinese, Beijing, Central Literature Press 2001) 269.

<sup>54</sup> Ibid 270-271. See also generally Phillips (n 13) 172-173.

<sup>55</sup> Gao (n 53) 272.

of a socialist transformation in the nation.<sup>56</sup> In the context of this document, the task of the Chinese Communist Party in the transitional period is to gradually accomplish the socialist industrialisation and realise a socialist transformation in agricultural and craftsmanship sectors and in the private industrial and commercial sectors within a rather long period of time.<sup>57</sup> Doing so is to let the system of socialist public ownership over the means of production eventually form the sole basis of China's national economy.<sup>58</sup> While the estimated length of the transitional period prescribed in that document is around fifteen years commencing from 1953,<sup>59</sup> the actual development turned out to be far more rapid than originally projected. In 1957, a massive rural collectivisation became reality.<sup>60</sup> By the end of 1956, the socialist transformation of private industrial and commercial sectors had basically been accomplished.<sup>61</sup> All the targets of socialist transformation set out in the General Policy Guidelines for the Transitional Period have been met in 1956; such an outcome exerted a profound effect on China's economy and national strength, and also on treating private property.<sup>62</sup>

The engine that drove China's socialist transformation was initially ignited in rural areas early in the 1950s, since the small-scale, individualised private agriculture was most susceptible to surrendering to a large-scale, collectivised production fashion.<sup>63</sup> China's rural collectivisation has in fact undergone several development stages, ultimately culminating in the widespread establishment of 'the people's commune' from 1958 onwards.<sup>64</sup> The people's commune had once been highly regarded at the time since it supposedly conformed to the socialist utopian ideals in terms of having available the common ownership of property and the capacity to perform a

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<sup>56</sup> General Policy Guidelines for the Transitional Period, Part I, Item VI. See also Gao, *ibid* 274; Yihua Jiang, *Guo du shi qi li lun yu shi jian qu dai xin min zhu zhu yi li shi bei jing de yi xiang kao cha* (An investigation on the historical background against which the theories and practices of the Transitional Period replaced those of the New Democracy) in Jingping Wu and Siyan Xu (eds) *Yi jiu wu ling nian dai de zhong guo* (China in the 1950s) (Chinese, Shanghai, Fudan University Press 2006) 50.

<sup>57</sup> General Policy Guidelines for the Transitional Period (n 56); Gao (n 56); Jiang (n 56).

<sup>58</sup> General Policy Guidelines for the Transitional Period (n 56); Gao (n 56); Jiang (n 56) 50-51.

<sup>59</sup> General Policy Guidelines for the Transitional Period (n 56); Gao (n 56).

<sup>60</sup> Hsu (n 22) 661.

<sup>61</sup> Xing Su, *Xin zhong guo jing ji shi* (The Economic History of New China) (Chinese, Beijing, Central Party School Press 1999) 314.

<sup>62</sup> *Ibid* 248.

<sup>63</sup> Liu and Wu (n 14) 129.

<sup>64</sup> Hsu (n 22) 661-663.

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comprehensive range of social functions.<sup>65</sup> The emergence of the people's commune ended Chinese peasants' private land ownership and also halted their ownership over other means of production. Rural land ownership became a collectively-owned property right; this means that at that time only by working for rural collective organisations could Chinese peasants use the land to carry out agricultural production.<sup>66</sup>

In lockstep with the proceeding of the rural collectivisation, the urban industrialisation was carried out as another aspect of the socialist transformation campaign targeting private enterprises in Chinese cities. Private entrepreneurs had to give up or at least to significantly decontrol their business as they were 'encouraged' to collaborate with the government by having their privately held enterprise converted into a kind of joint venture-like business in which the state would hold a certain percentage of equity and also step in to manage.<sup>67</sup> The socialist transformation of private enterprises across all business lines was achieved in China in 1956; this was evinced on the countrywide basis by the establishment, in the industrial and commercial sectors, of joint venture-like enterprises owned by the state and private entrepreneurs who could retain some stake in the business, and by the formation of co-operatives in the craftsmanship sector which could then count as being owned collectively and equally by businessmen and/or workers other than by private individuals.<sup>68</sup> By 1966, all the said joint venture-like enterprises evolved into one hundred per cent state-owned, state-run enterprises, or became collectively-owned enterprises; in both cases, the traces of capitalism were ironed out and the enterprises concerned were seen to have been fully integrated into the socialist public ownership system.<sup>69</sup>

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<sup>65</sup> Suhua Zhang, *Zai li xiang yu xian shi jiao zhi de shi jie li – yu da yue jin he ren min gong she hua yun dong* (In a world where dream and reality intertwine – the movements of the 'Great Leap Forward' and the People's Communes) in Zhang (n 53) 328-329.

<sup>66</sup> Su (n 61) 434;

<sup>67</sup> See generally Carl Riskin, *China's Political Economy – the Quest for Development Since 1949* (Oxford, Oxford University Press, 1988) 95-99.

<sup>68</sup> See Su (n 61) 313-315, 335.

<sup>69</sup> See generally Fang Li '*Xi wo guo cai chan quan jie gou de er yuan xing te zheng*' (An analysis on the feature of dualism of China's property rights structure) (Chinese) <<http://www.cntheory.com/news/Llzh/2009/1010/0910109231009H9FH77295CH0F FK7F1.html>> accessed 10 June 2013; Mengfu Huang '*Qu xiao ding qi gong si he ying che di zhuan wei guo ying*' (Discontinuing dividend payments – thoroughly converting those businesses jointly owned and run by the state and private entrepreneurs into wholly state-run enterprises) (Chinese) <<http://lz.book.sohu.com/chapter-18387-114210315.html>> accessed 10 June 2013.

The rural collectivisation, along with the urban industrialisation that was carried out through nationalising private enterprises in urban regions, could hardly be interpreted as something other than a determined action taken by the Chinese government to switch into a fast lane towards the full-scale implementation of socialism. The accomplishment of the socialist transformation campaign signified that China had categorically entered the phase of socialism. In the ensuing decades, the nation had operated within the institutional framework of a centrally planned economy until the early 1990s when being guided under Deng Xiaoping's theory China abandoned the planned economy model and adopted a socialist market economy system. However, viewed in a historical perspective, the positive role played by China's socialist transformation campaign ought not to be unfairly underestimated. The highly organised Chinese peasants played an irreplaceable role in accumulating a significant part of the needed funds for developing China's industries. In that sense, the rural collectivisation made a great contribution to China's industrialisation scheme which was brought to fruition where a series of backbone industrial sectors surfaced, and in particular a staunch national defence became available constituting an all-too-vital deterrent to any likely foreign invasions. A strong military ensured China's building up of socialism a relatively peaceful environment; a preliminary industrial self-sufficiency formed part of the primary foundation for the nation's economic take-off in the later time when the reform and opening-up policy was overwhelmingly dispensed. But of course it would not be possible to make these achievements at no expense to individuals' rights to their private property and interests which are known to have been disregarded or sacrificed to varying extents, either willingly or otherwise.

#### **4. THE CONSTITUTIONAL PLEDGE**

While China sweepingly completed the socialist transformation of its economy in the 1950s, protecting private property as a constitutional pledge has never been missed in any Chinese Constitution historically. But in the centrally planned economy era, China's emphasis on keeping up the dominance of public ownership economy generally frustrated the development of the private economy and consequently resulted in the respect for and protection of private property given far less sufficient weight. A tendency of striking out such an imbalance could be singled out from the relevant provisions set forth in the three Chinese Constitutions that were promulgated before China instituted the reform and opening-up policy in the late 1970s.

Despite the fact that the cardinal stance over the protection of legitimate private property remains the same as shown in these three Constitutions, ie the

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Constitution 1954,<sup>70</sup> the Constitution 1975,<sup>71</sup> and the Constitution 1978,<sup>72</sup> in comparison with what is stipulated in the Constitution 1954, the permitted forms of ownership system of the means of production prescribed in the Constitution 1975 and the Constitution 1978 are narrowed down to two choices only – (i) socialist all people’s ownership, and (ii) socialist collective ownership.<sup>73</sup> And under the Constitution 1975 and the Constitution 1978, the state-run economy is prescribed as the leading force of the national economy.<sup>74</sup> Thus it could be well inferred from these three Constitutions (especially the latter two) that standing by the dominance of public ownership gained apparent ascendancy over safeguarding privately held assets during that period. While in principle the constitutional pledge of protecting private property had not been formally retracted, the actual role played by it had certainly in large part been marginalised at the time.

With the forms of ownership system becoming obviously lopsided, the centrally planned economy appeared not able to yield abundant economic fruits as having been longed for from a socialist society. However, Chinese leaders have never ceased in their endeavour to find a suitable route for the nation’s development. Deng Xiaoping tried hard to uncover the long-term mystique of what socialism really ought to be.<sup>75</sup>

Robert Owen (an utopian socialist) used to have his following dream of socialism: ‘What ideas individuals may attach to the term “Millennium” I know not; but I know that society may be formed so as to exist without crime, without poverty, with health greatly improved, with little, if any misery, and with intelligence and happiness increased a hundredfold: and no obstacle whatsoever intervenes at this moment except ignorance to prevent such a state of society from becoming universal.’<sup>76</sup> Other critiques portrait the characteristics of socialism as ‘egalitarianism’ staying away from ‘those practices and institutions which undermine or stifle sociability and co-operation’.<sup>77</sup>

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<sup>70</sup> Constitution 1954 (n 37–41).

<sup>71</sup> Constitution 1975, art 9, para 2.

<sup>72</sup> Constitution 1978, art 9.

<sup>73</sup> Constitution 1975, art 5, para 1; Constitution 1978, art 5, para 1.

<sup>74</sup> Constitution 1975, art 6, para 1; Constitution 1978, art 6, para 1.

<sup>75</sup> Keqin Tian (ed), *Deng Xiaoping li lun gai lun* (An Outline of Deng Xiaoping Theory) (Chinese, Beijing, Higher education Press 1999) 50.

<sup>76</sup> This excerpt is quoted from Robert Owen, ‘Robert Owen’s Quest for Universal Harmony – extracts from his published works’ <<http://www.robert-owen.com/quotes.htm>> accessed 10 June 2013.

<sup>77</sup> Robert Eccleshall, Alan Finlayson, Vincent Geoghegan, Michael Kenny, Moya Lloyd, Iain MacKenzie and Rick Wilford, *Political Ideologies – An Introduction* (London, Routledge 2003) 75.

But Deng's probe is more down-to-earth. In accordance with his findings, the principal task of socialism is to emancipate and augment productivity,<sup>78</sup> building up socialism should follow a fundamental direction towards eradicating exploitation and getting rid of extremes of wealth and poverty,<sup>79</sup> in order that all Chinese people could prosper eventually.<sup>80</sup> In his view, a market economy is not necessarily at odds with socialism; regardless of how it is named (a planned economy or a market economy), the term itself used by a socialist nation to describe its primary economic institution is not essential, so far as under such an institution the nation's economic growth could be sustained in a fast and healthy way resulting in a marked improvement of people's living standards on an overall basis.<sup>81</sup> Meanwhile, he was clearly aware of the difficulty of achieving common prosperity, and conceded that realising common prosperity in China would not be a quick and easy process but might take a very long time.<sup>82</sup> He thereby posited that calling for immediate, absolute egalitarianism would not really make sense; certain persons and regions in China should be allowed to become rich in the first place well ahead of others, but the final objective would be unchanged, ie avoiding polarisation of wealth and achieving common prosperity.<sup>83</sup>

Deng's theory formed the core of China's prevailing doctrines of building up a socialist nation with Chinese characteristics, the success of which has been well proved by China's economic take-off under the context of executing the economic reform and opening-up policy which had had Deng's firmest support unflinchingly. The formation and implementation of Deng's theory also effectively gave rise to a statutory re-adjustment of China's institutional framework for governing public and non-public ownership economies. The Chinese Constitution currently in force was originally promulgated in 1982; it underwent amendment in 1988, 1993, 1999 and 2004, respectively, each time begetting an increment in the status and momentousness of China's non-public ownership economy enshrined in the constitutional mandate.

Pursuant to the original version of the Constitution 1982, the socialist public ownership system of the means of production, encompassing the forms of all people's ownership and collective ownership, is the basis of China's

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<sup>78</sup> Tian (n 75) 50; See also Richard Evans, *Deng Xiaoping and the Making of Modern China* (London, Penguin Books 1995) 307.

<sup>79</sup> Tian (n 78) 53; Evans (n 78).

<sup>80</sup> Tian (n 78) 56; Evans (n 78).

<sup>81</sup> Tian (n 78) 59-60; Evans (n 78).

<sup>82</sup> Tian (n 78) 56.

<sup>83</sup> *Ibid.*

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socialist economic system;<sup>84</sup> the state-run economy falls into the category of the socialist economic system in the form of all people's ownership and is viewed as the leading force of China's economy;<sup>85</sup> the rural co-operative economy led by the people's communes or by productive co-operatives is classified as part of China's socialist economic system in the form of collective ownership;<sup>86</sup> the urban co-operative economy in the sectors of, eg craftsmanship, manufacturing industry, commerce, and services, etc, is also categorised as part of China's socialist economic system in the form of collective ownership;<sup>87</sup> the economy based on the form of sole proprietorship in urban and rural areas, given that it could operate within the allowed business scope prescribed by the law, is deemed a supplement to China's socialist public ownership economy;<sup>88</sup> and on the basis of socialist public ownership, China operates a planned economy system.<sup>89</sup>

Under an amendment made in 1988, the existence and development of the private ownership economy within the boundaries prescribed by the law is permitted; the private ownership economy constitutes a complement to China's socialist public ownership economy; the state protects any legitimate rights and interests relating to the private ownership economy.<sup>90</sup> With the amendments made in 1993, the original term 'state-run economy' is changed to 'state-owned economy';<sup>91</sup> the wording 'the people's communes and productive co-operatives' is deleted, and China's rural co-operative economy is redefined as the one being run under a farmland contracting system,<sup>92</sup> and with the abandonment of the centrally planned economy model impliedly announced, a socialist market economy system is explicitly declared to be implemented in the nation.<sup>93</sup>

Relative to the amendments made in 1988 and 1993, the amendments made in 1999 could be viewed as a giant jump forward for establishing a new framework that would take in more diversified forms of ownership system. In light of these amendments, China is positioned as still being at a preliminary development stage of socialism; it sticks to an economic system with its public ownership economy as the leading force, but it would also develop

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<sup>84</sup> Constitution 1982 (unamended), art 6, para 1.

<sup>85</sup> Constitution 1982 (unamended), art 7.

<sup>86</sup> Constitution 1982 (unamended), art 8, para 1.

<sup>87</sup> Constitution 1982 (unamended), art 8, para 2.

<sup>88</sup> Constitution 1982 (unamended), art 11, para 1.

<sup>89</sup> Constitution 1982 (unamended), art 15, Para 1.

<sup>90</sup> Constitution 1982 (amended in 1988), Amendment 1 made to art 11.

<sup>91</sup> Constitution 1982 (amended in 1993), Amendment 5 made to art 7.

<sup>92</sup> Constitution 1982 (amended in 1993), Amendment 6 made to art 8.

<sup>93</sup> Constitution 1982 (amended in 1993), Amendment 7 made to art 15.

other types of economy in different forms of ownership.<sup>94</sup> In such a scenario, the importance of the private ownership economy based on sole proprietorship or private business has been greatly enhanced: instead of being described as merely a supplement to the nation's public ownership economy, such kind of non-public ownership economy is re-named as an *important* constituent of China's socialist market economy system, and the relating legitimate rights and interests are under state protection.<sup>95</sup> Furthermore, under the Constitution amended in 2004, developing non-public ownership economies in China will not only be supported but also be particularly encouraged;<sup>96</sup> here, the term 'encouraged' is a way of expression never used in the past.

With the non-public ownership economy in China being strongly countenanced, various productive capacities have been liberated leading to the creation of more and more privately held assets. Hence, the availability of substantively protecting private property seems more critical than ever in some people's eyes. In fact, as far as protecting private property is concerned, specific stipulations in this regard are discernable from all the Chinese Constitutions so far promulgated, no matter it relates to the period before or to that after China's economic reform and opening-up policy began to be implemented. Under the Constitution 1954, the Constitution 1975, the Constitution 1978, and the Constitution 1982 as amended in 1988, 1993 and 1999, it is said that China protects the legitimate incomes, savings, houses, and various consumption goods that belong to private individuals.<sup>97</sup> But noteworthy, this expression has been superseded by a provision brought into effect with the passage of the amendments made to the Constitution 1982 in 2004: immediately following what is set forth in article 12 that the state protects socialist public assets which are particularised as 'sacred' and 'inviolable',<sup>98</sup> article 13 reads that an individual citizen's right over his legitimately obtained private property shall not be impinged upon;<sup>99</sup> the state protects an individual citizen's private property rights and inheritance rights.<sup>100</sup> Here, the Constitution is not using the word 'sacred' to place more conspicuously in the foreground the protection of private property. But it can be generally assumed that safeguarding private property against the menace of impairment, sabotage and unlawful deprivation has since then been attached

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<sup>94</sup> Constitution 1982 (amended in 1999), Amendment 14 made to art 6.

<sup>95</sup> Constitution 1982 (amended in 1999), Amendment 16 made to art 11.

<sup>96</sup> Constitution, art 11, para 2.

<sup>97</sup> Constitution 1954, art 11; Constitution 1975, art 9, para 2; Constitution 1978, art 9; Constitution 1982 (amended in 1988, 1993 and 1999), art 13, para 1.

<sup>98</sup> Constitution, art 12.

<sup>99</sup> Constitution, art 13, para 1.

<sup>100</sup> Constitution, art 13, para 2.

great importance most seriously, especially with the Property Rights Law coming into force.

## 5. DRAINAGE OF STATE ASSETS

The constitutional pledge has ensured that private property in socialist China is now under state protection in the same way as public property. The Property Rights Law reinforces this pledge from the perspective of giving prominence to *equally* protecting private property relative to public assets. Such protection is, however, meant to be provided to legitimate private property only.<sup>101</sup> The current dilemma is to make sure that protection is indeed rendered to the lawfully obtained private property. What happens in reality is that a large part of amassed private assets could have come from illegally drained or siphoned state assets. Such drainage through defrauding state assets largely occurred in the course of China's transformation of its state-owned enterprises aimed at setting up a modern enterprise system.

The widespread establishment of state-owned enterprises and their crushing presence in China's national economy could be attributed to the socialist transformation campaign and the industrialisation movement completed in the 1950s.<sup>102</sup> From the standpoint of modern corporate management, some critics assert that those old-style, state-owned enterprises have 'no production and decision-making rights',<sup>103</sup> and apart from lack of autonomy they have obvious defects of low efficiency and lack of performance-related rewards and stimulus.<sup>104</sup> For this reason, the reform of China's state-owned enterprises commenced in the late 1970s; it was initially aimed at providing enterprises with more autonomy and incentives, with the ultimate objective put up as hammering out a modern enterprise system in the country.<sup>105</sup> The entire process of reforming state-owned enterprises has been described by some scholars as 'from profit retention to a fixed-quota contract for profit or loss, and to the enterprise responsibility system, then to the

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<sup>101</sup> Property Rights Law, arts 64-66.

<sup>102</sup> See generally Justin Yifu Lin, Fang Cai and Zhou Li, *State-Owned Enterprise Reform in China* (Hong Kong, The Chinese University Press 2001) 20-28.

<sup>103</sup> Ibid 43.

<sup>104</sup> Ibid 49. See also generally Decai Yang, *Zhong guo jing ji shi xin lun* (A New Study on Chinese Economic History) (Chinese, Beijing, Economic Science Press 2009) 446-452.

<sup>105</sup> See generally Yang (n 104) 452-456. See also Jian Sun, *The Comprehensive History of Chinese Economy (1949-2000) Vol III* (Chinese, Beijing, Chinese People's University Press 2000) 2138.

shareholding system, and finally to the modern enterprise system experiment'.<sup>106</sup>

At the Third Plenary Session of the 14<sup>th</sup> Central Committee of the Chinese Communist Party held in 1993, it was strongly pronounced that one of the salient features of China's socialist market economy system is 'to have the market play[s] a fundamental role in the allocation of resources under the country's macro-control';<sup>107</sup> it was determined at that meeting to 'establish [a] modern enterprise system with clear property rights, clear powers and responsibilities, separation of government from enterprises and scientific management measures that meets the requirements of the market economy'.<sup>108</sup> For the purpose of setting up some more explicit and manageable targets of reforming state-owned enterprises, a consensus was reached at the Fourth Plenary Session of the 15<sup>th</sup> Central Committee of the Chinese Communist Party in 1999, taking the form of an official document known as the Decision of the Central Committee of the Chinese Communist Party of China on Major Issues Concerning the Reform and Development of State-Owned Enterprises. In accordance with this Decision, encouragement would be given to the establishment and development of giant state-owned conglomerates in the form of 'trans-regional, trans-industrial, trans-ownership and transnational large enterprise groups';<sup>109</sup> small-size state-owned enterprises would be prompted to develop themselves in some more innovative forms, eg by means of 'regrouping, association, merger, leasing, contract-based management, shareholding, and sale'.<sup>110</sup> This suggests that the Chinese government tended to focus on controlling those most sizable state-owned enterprises; small and medium state-owned enterprises would gradually be de-nationalised and most likely become privatised at last.

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<sup>106</sup> Lin et al (n 102) 70.

<sup>107</sup> 'Modern enterprise system established in 1993' (*People's Daily Online*, updated 30 October 2008)

<[http://www.chinadaily.com.cn/bizchina/2008-10/30/content\\_7169106.htm](http://www.chinadaily.com.cn/bizchina/2008-10/30/content_7169106.htm)> accessed 10 June 2013.

<sup>108</sup> Ibid; See also generally Xiangdong Ning, *Guo you zi chan guan li yu gong si zhi li* (State-owned assets management and corporate government) (Chinese, Beijing, Enterprise Management Publishing House 2003) 423-427; Jiagui Chen, *Zhong guo qi ye de gai ge guan li yu fa zhan* (Chinese enterprises' reform, management and development) (Chinese, Beijing, Chinese Social Science Press 2009) 143-150; Yang (n 104) 468-469.

<sup>109</sup> 'CPC Central Committee Major Decision Issued' (*People's Daily Online*, 27 September 1999)

<[http://english.people.com.cn/english/199909/27/enc\\_19990927001005\\_TopNews.html](http://english.people.com.cn/english/199909/27/enc_19990927001005_TopNews.html)> accessed 10 June 2013.

<sup>110</sup> Ibid.

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In light of some scholars' view, transforming state-owned enterprises could be approached from various angles, such as ensuring their independent corporate personality, allowing freedom of transacting the property rights of state-owned enterprises, absorbing outside capital as equity into state-owned enterprises from diversified sources (eg indigenous funds injected by non-public sectors, private individuals and organisations; foreign direct investment), out of which it has been particularly stressed that reforming property rights shall play a pivotal role.<sup>111</sup> It is against this background that China's Company Law was enacted in 1993 and had been revised several times thereafter. Under this Company Law, one of the general types of company allowed to be set up in China is a company limited by shares.<sup>112</sup> Such availability of incorporating a business vehicle to become a company limited by shares creates an opportunity for a state-owned enterprise to be transformed into a body corporate that could operate in another form of ownership, eg private ownership, multi-ownership, or foreign ownership. More significantly, apart from the Company Law, it has been made known to the public through the official source that China's state-owned enterprises in the future are to be subsumed into two major categories: (i) a public welfare type (this type of enterprise will be mainly engaged in the fields of petrochemicals, power grids, telecommunications services, supply of water and gas, waste water treatment, public transportation services, etc; it enjoys certain monopoly powers in the market due to its public welfare character.); and (ii) a multi-ownership type (this type of enterprise has no monopoly power and will normally be floated on stock exchanges with its share capital

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<sup>111</sup> See generally Yining Li, '*Guo you qi ye de chan quan gai ge wen ti*' (Reform of property rights in state-owned enterprises) in Fureng Dong, Yining Li and Zhiguo Han (eds), *Guo you qi ye: ni de lu zai he fang – wu shi wei jing ji xue jia lun guo you qi ye gai ge* (What is the destiny of state-owned enterprises – 50 economists discussed about reforming state-owned enterprises) (Chinese, Beijing, Economic Science Press, 1997) 299-310; Wei Liu, '*Guo you zhi gai ge bi xu yu she hui chan quan gou zao zhuan bian rong wei yi ti*' (Reforming state ownership must be integrated into the transformation of the general structure of property rights in society) in Dong, Li and Han *ibid* 311-323; Zongkun Tang, '*Guo you chan quan ying yun ti zhi gai ge ping xi*' (Comments on reforming the operational mechanism of state-owned property rights) in Dong, Li and Han *ibid* 335-344; Yangyan Song '*Lun gong si fa ren zhi du he gong si fa ren suo you quan*' (The framework for governing the legal personality of a company and a company's rights of ownership as a juristic person) in Dong, Li and Han *ibid* 345-358; Yang He, '*Guo you qi ye gai ge bi xu zou shen hua chan quan zhi du gai ge zhi lu*' (Reforming state-owned enterprises must proceed towards deepening the reform of the property rights system) in Dong, Li and Han *ibid* 364-370.

<sup>112</sup> Company Law, art 2.

open for public subscription and trading.)<sup>113</sup> Obviously, a general trend in the overall scale of state-owned enterprises is to tail off in terms of quantity.

However, there are discordant views opposing the theory that property right is the main cause to be blamed for bruising the development viability and potential of state-owned enterprises.<sup>114</sup> They retort that property right in the form of state ownership is not necessarily synonymous with low efficiency; a well-performing enterprise need not be subject to a precondition that it must to a certain extent be privately-owned.<sup>115</sup>

While different opinions clash with one another, the contention has not stymied the go-ahead of overhauling state-owned enterprises, especially those seemingly poorly performing and moribund ones; nevertheless, in the course of transforming them, the drainage of state assets could have been startling in some places.<sup>116</sup> Some insiders acquired state-owned enterprises at a low price under the guise of accomplishing a securitisation scheme to absorb private capital in order to buy out state assets or to have the state's hold on assets become diluted.<sup>117</sup> In such a way, they became the controllers of the enterprises, the original ownership of which had been artfully altered to the effect tallying with their desire through plotted transactions, the typical *modus operandi* known as carrying out mergers and acquisitions via MBOs (management buyouts).<sup>118</sup> Reforming state-owned enterprises, though under certain circumstances a euphemistic way of saying 'privatisation', is not supposed to generate a consequence whose backlash may on certain scales not only have injured the integrity and healthiness of the economy but also tarnished the cardinal spirit of justice and the rule of law which in today's time in China particularly needs to be staunchly advocated.

But in practice, many people are reluctant to pursue such kind of cases further, other than turning the page on the past by treating it as a price that must be paid for China's reform experiments. Moreover, even in the event of

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<sup>113</sup> Tianliang Bai, 'Shi er wu guo you qi ye gai ge fang xiang chu ding guo qi jiang fen gong yi xing jing zheng xing' (The way of reforming state-owned enterprises during the 12<sup>th</sup> Five-Year Plan has preliminarily been decided: state-owned enterprises will be divided into two types - a public welfare type and a business competition type) (Chinese) (*Finance People*, 14 December 2011) <<http://finance.people.com.cn/GB/16595181.html>> accessed 10 June 2013.

<sup>114</sup> Lin et al (n 102) 127.

<sup>115</sup> Ibid 128.

<sup>116</sup> Ibid 127. See also generally 'The Huge Debate over Privatization and MBOs – Can the drain on state-owned assets be justified?' (*RIETI*, 15 September 2004) <<http://www.rieti.go.jp/en/china/04091501.html>> accessed 10 June 2013; Yang (n 104) 484-490.

<sup>117</sup> See generally Yang (n 116) 488-489.

<sup>118</sup> See generally *ibid*.

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suspected cases, there are not ample mechanisms at present that could really help to effectively corroborate the suspicion. Illicit private assets could thus have been hidden under the umbrella of ‘equal protection’, patently shielded from facing the risk of denudation by the state. Also discouragingly, there are limitations periods for crimes in China. Under China’s *Criminal Law*, an offender can be exempt from prosecution after a certain period expires; the limitations periods include ‘(1) five years, when the maximum punishment prescribed is fixed-term imprisonment of less than five years; (2) 10 years, when the maximum punishment prescribed is fixed-term imprisonment of not less than five years but less than 10 years; (3) 15 years, when the maximum punishment prescribed is fixed-term imprisonment of not less than 10 years; and (4) 20 years, when the maximum punishment prescribed is life imprisonment or death penalty...’<sup>119</sup> In other words, once such a specific period elapses, it could become fiendishly difficult, if not absolutely impossible, to have the wrongdoers brought to justice and their illegal gains disgorged.

### 6. CONCLUDING REMARKS

China’s legal and economic regimes, though architected and adjusted from time to time to square with the political tendencies prevailing in different historical epochs, have basically never missed the point of safeguarding the rights to legitimate private property. Institutionalising the equal protection of private property in parallel to public assets serves the purpose of accommodating the need arising from today’s situation. However, it may face both realistic and potential pitfalls. Thus far, China has not been able to launch a unified, mandatory personal assets declaration system for officials and senior officers working in state-owned enterprises and publicly funded organisations. Unless a sound mechanism is well established and unadulteratedly enforced so that unlawful private wealth can be forcibly stemmed and gradually but efficaciously eliminated, advocating the tenet of equal protection will entail little real significance in regard of justifiably providing protection to private assets on the basis of the rule of law. On the other hand, reforming China’s ownership system by unbinding the private economy ought not to be simply construed and engineered as a U-turn against the merits of socialism. Protecting private property is by no means to demote the status of public ownership system which is still a central pillar in

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119 Criminal Law, art 87. The quoted parts are extracted from the English translation of the Criminal Law of the People’s Republic of China at <[http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384075.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm)> accessed 10 June 2013.

China's economic and political foundations at present. An umbilical cord is inherently tying protecting private property to sticking to justice and egalitarianism, the latter being a key basis on which China's relevant legal and economic institutions have been developed into the current shape from the past. Building up a socialist nation with Chinese characteristics is the road of development that China chooses to follow; the next is to see how 'common prosperity' could be achieved at the earliest time congruent with Deng Xiaoping's theory.<sup>120</sup> In that sense, perhaps only when a golden ratio between ensuring the inviolability of private property and securing the realisation of justice and egalitarianism which the socialist core value venerates is located, would the nutrients in the soil where protecting private property is rooted come close to the level of sufficiency as faithfully envisaged.

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<sup>120</sup> See Xiaoping Deng, 'Shan yu li yong ji hui jie jue fa zhan wen ti' (Try to utilise opportunities to address the problems in the development), in *Deng Xiaoping wen xuan* (The Selected Works of Deng Xiaoping, Vol 3) (Chinese, Beijing, People's Press 1993) 364.