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978-1-107-12543-8 - The Constitutional Protection of Private Property in China:
Historical Evolution and Comparative Research

Chuanhui Wang

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THE CONSTITUTIONAL PROTECTION OF PRIVATE PROPERTY IN CHINA

This timely book reviews the changes in legal reform around the constitutional protection of private property in China since 1949. Using a comparative approach, it analyses the development of property theories and the various constitutionalisation models and practices of private property in representative countries including the United States, Canada, Germany, India and China. It also explores the interwoven social forces that have been driving the evolution of the constitutional protection of private property in China. By comparing China with the United States, Germany and India, the author reveals the unfairness, unjustness and insufficiency in China's application of three constitutional doctrines – public use, just compensation and due process or procedure. The book concludes by predicting future progress and suggests feasible measures for gradual reform that will be compatible with China's existing political system.

CHUANHUI WANG is Associate Professor at Lingnan (University) College, part of the Sun Yat-Sen University in Guangzhou, China. He received a bachelor degree from Yantai University and master degrees from East China University of Political Science and Law and the University of Michigan. In addition to holding a PhD in law from the University of Leuven (KU Leuven), he also has a PhD in economics from the Shanghai Academy of Social Sciences.

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To my parents,
who taught me about compassion, responsibility,
independence and dignity

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FOREWORD

It is with great pleasure that I recommend to the reader this fascinating book. I had the honour of supervising the doctoral research by its author, Dr Chuanhui Wang, and never regretted accepting that task. There are several reasons why this book is fascinating and could be of interest to many lawyers and scholars. First of all, it provides an excellent insight into the historical development of law, politics and practice concerning the legal status of land and property in land in China since 1949. It explains a lot for anyone interested in the history of China, but also for those interested in the development of law and politics concerning land in any contemporary society, given its interesting analysis of the different social forces that influence this development. Understanding this history is also necessary in order to understand which reforms or developments are likely to be possible or not, or may have success or not, in contemporary China. Second, the book confronts different constitutional models and practices concerning the protection of property – especially the American, Chinese and Indian models and to some extent the German one – and shows their strengths and weaknesses in a comparative analysis, remaining at the same time well aware of the different historical and socio-economic contexts of these models. The author does not limit his analysis – as is often the case – to the law as it is written; he examines the implementation and application of the law in concreto and the difficulties encountered in realising the constitutional principles. The book also develops rather detailed practical reform proposals for China that are at the same time sufficiently ambitious and sufficiently realistic. The author is thus able to make those proposals that may in practice make a real difference for the protection of property in China and many other countries confronted with similar questions. For all these reasons, the book and the author deserve a wide audience.

*Professor Matthias E. Storme
Faculty of Law, KU Leuven*

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How to achieve your dream? Personal efforts and good luck are not enough. You must rely on others' instructions, assistance and support. When I reflect on the years spent conducting this research, I am grateful to many people for their kind and generous support and assistance. Without them, I am not sure I could have completed this work.

This book is from a doctoral thesis I completed at KU Leuven. To finish this work and receive a doctorate from KU Leuven has been a dream of mine. Why this topic? I am a scholar who has been driven by my research interest. Since before 2006, I have been shocked by a series of incidents and tragedies regarding the government's infringement on individual property in China. Thus, I was strongly motivated to analyse the constitutional protection of private property and to make this the focus of my doctoral thesis. In May 2006, I received an email from Professor Matthias E. Storme of KU Leuven in which he agreed to be my promotor (supervisor). Upon his suggestion, I finished and submitted my proposal, which, unfortunately, was not initially accepted by the doctoral committee. Under the instruction of and with encouragement from Professor Storme, I revised my proposal three times. At the committee meeting held on 22 January 2008, my proposal was accepted and I officially began my research at KU Leuven.

Professor Storme's support and encouragement continued. He afforded me the opportunity to conduct independent research while at the same time inspiring me to overcome difficulties I encountered during my research. Furthermore, he and his family were warm and welcoming during my time at Ghent, leaving me with many pleasant memories.

I am also sincerely grateful to other professors who have inspired or assisted me. Professor Geert van Calster, a member of my supervising committee, reminded me of the comparison between China and India, and there is no doubt that the addition of India's practice definitely enriches the value of my work. I thank Professor Boudewijn Bouckaert, also a member of my supervision committee, for his comments on China's reform

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issues and his suggestion regarding the holdout issue. These individuals, along with my supervisor, took the time to instruct me, to supervise my progress and to review my thesis for defence.

Sincere thanks are also offered to the members of my examination committee, Professors Andre J. van der Walt, Vincent Sagaert and Yuwen Li, for the time and effort they spent reviewing my thesis. Their feedback and the referred document challenged and inspired me to think deeper about my research, and thereby improved this text. In addition, Professor Sophia Stijns carefully answered my questions about doctoral training, while Professor Peggy Valcke kindly offered me an opportunity to join a competition policy conference in which I had a strong interest. She also offered me generous guidance in the completion of my doctoral training form. Professor Ching Lin Pang allowed me to join her international workshop, which benefitted my research. Professor Luodan Xu has encouraged me to move forward and her words have always warmed my heart.

I must also acknowledge my friends who have supported me throughout this endeavour. Dr Liyang Hou and his wife, Yingjie Li, cared for me when I stayed in Leuven. Dr Hou contributed greatly to the discussions regarding my research, the organisation of my seminars and the introduction of the doctoral training and defence procedure. Dr Yuemei Ji provided encouragement and inspiration. She and her husband, Paul, graciously served me a wonderful dinner in their home in Leuven. I thank Dr Yannan Ding for his workshop on village towns and Dr Haina Lu for her suggestion on my research. Their valuable friendship is one of the many things I gained during my study at KU Leuven. In addition, I thank Mr. Qingsong Zou for helping me to find valuable reference documents in Germany, and Dr Airong Li, an old friend I have known for more than twenty years, for sharing her valuable opinions on China's property law with me.

Special thanks are due to Joe Ng and Claire Wood, editors at Cambridge University Press. I must thank them for guiding and assisting me through the strict review process and the last stages of the revision and production of this book.

The final and most sincere acknowledgement is to my family. They have my love, and they have a warm home in my soul. They have been the sustainable power that has driven me to follow my dreams. A particular mention goes to my parents. Even though I did not become a government officer or a lawyer as they used to expect, they never stopped giving their

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selfless support and encouragement to me when I chased the life I think meaningful. I dedicate this book to them.

The completion of this work is the beginning of my new dream. I will keep enjoying the mysterious journey of academic research and contributing my creation as an independent researcher. Yes! Always on my mind and in my heart: *Ontdek jezelf* (discover yourself). *Begin bij de wereld* (start with the world).

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ABBREVIATIONS

ADB	Asian Development Bank
CPC	Communist Party of China
CPI (M)	Communist Party of India (Maoist) (India)
CPPCC	People's Political Consultative Conference of China
C&R	Custody & Repatriation
EGoM	Empowered Group of Ministers (India)
EPZ	Export Processing Zones
FAO	Food and Agriculture Organisation of the United Nations
FCC	Federal Constitutional Court (Germany)
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
HAC	Higher-stage Agricultural Cooperative
HRS	Household Responsibility System
JCER	Japan Centre for Economic Research
LAA	Land Acquisition Act (India)
LAC	Lower-stage Agricultural Cooperative
LAL	Land Administration Law (China)
LARR	Land Acquisition, Rehabilitation and Resettlement
LF	Left Front (India)
LUREA	Law on Urban Real Estate Administration (China)
MAT	Mutual-Aid Team
MLR	Ministry of Land and Resources (China)
NHA	National Highway Act (India)
NPC	National People's Congress (China)
NPCSC	Standing Committee of National People's Congress (China)
PDR	Persons in Charge of Demolition and Removal
RLCL	Rural Land Contracting Law (China)
RRSL	Regulation on Reforming Suburban Land (China)
SEZ	Special Economic Zone
SIA	Social Impact Assessment
SOE	State Owned Enterprises
SPC	Supreme People's Court (China)
TCP	Trinamool Congress Party (India)
UNRISD	United Nations – Research Institute of Social Development

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Gushi case in Henan (2004–8)
Jiahe incident in Hunan (2003)
Maiqili case in Shanghai (2005)
Nail House incident in Chongqing (2007)
Qi Yuling case in Shandong (2001)
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Tang Fuzhen incident in Sichuan (2009)
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Germany

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 BVerfGE 24, 367 (*Deichordnung*, 1968)
 BVerfGE 50, 290 (*Codetermination*, 1979)
 BVerfGE 52, 1 (*Small Garden Plot*, 1979)
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