**Dynamics in property rights: Some U.S. examples**

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(Compiled by Mr. MA Junjie)

I must say I really like your new facilities compared to the old one. This is much nicer. What I want to do is share with you some of my thinking on what I see is happening to the concept of property as it’s practiced in the United States. Not the concept we have in the economics theory books, but as people are using it today. So by nature, law and theory is always catching up to what human beings are doing. Ok I want to start with something else because the important thing is property and property law and property concepts all grew out of their own historical evolution. I know everyone here is reading Hayek. But we have to be careful to take the aspects of Hayek which are applicable to the Chinese situation rather than thinking that this is going to be a model. And then many of the aspects of Hayek’s talking about, in fact, are taking place in China, but in a different period and within different sets of circumstances. So property in Europe grew out of an urban transformation, from the 1300 to the end of 1700. And this was as cities building up, people started demanding new rights to their property differs from the rights of the nobles and church and other feudal institutions. So the American property tradition traces its origins back to the Magna Carter, and the civil law traces its origin back to the French Revolution. So what Hayek’s talking about is these concepts of the individual’s rights and individual property that emerged out of this transformation in just one little tiny quarter of the world. So by the time the United States got its independence when we won our war of revolution, there was already a well-developed legal tradition of private property. Now the important thing was that a person’s home is their castle. So when I own my home, I was like a little king. So what is the role of government? The role of the government was to protect my property rights, and my civil rights, and my individual rights. So the police power of the state, the courts, the public services, etc. were to serve property. Due to the peculiar history of Europe, and its granting new rights to people from the Middle Ages on, the emphasis has been on exclusive rights. I mean I have my property, I exclude others from being able to enter my property. And my individual rights. I, as an individual, am important.

So one of things you wanted me to talk about. You gave me a list of four or five topics. And one of them was what about externalities that are introduced by private property system? So you can see as we developed a legal system, they give me exclusive rights to my property. That means no body could take any of my rights away, neither nobles, nor soldiers, nor kings, nor officials. Police couldn’t enter my property without proper authority from the courts. So this made many externalities inevitable, both positive and negative. So let’s take a look at some of the positive externalities because this is one of the really powerful areas in favor of private property system. Since I have exclusive rights to my property, I then have the incentive to improve it. This is because the increase in value is mine, it belongs to me and I don’t lose it. So you can see previously when all my property really belongs to some nobles. Then when I made improvements, the improvements really belong to the noble. So there is no stimulation for me to improve my property. As Hayek talks about then, part of this is a multiplier effect, because I improve my property, I also improve the value of surrounding properties. Let me give you some recent examples coming from FAO. Organic farming I end up with better ecology. If I keep bees, everybody benefits from the flowers, the fields, the crops, etc.. And in areas which I work, on brownfield rehabilitation of brownfield, the whole specialty within land administration. I then take negative property, and create into then very positive property. So let me take a look at, I mean, just a piece of wasteland here, just a huge abandoned factory. They used to make cloth for shirts, and bedsheets, and stuff like that, and had poisoned all the ground from the waste. And then when the business had moved from South Carolina to China(so they can poison your ground), the land was abandoned, and has been abandoned for maybe 30 years. So how do we rehabilitate this, to give it now a positive externality from our property systems? As I say this is one of my favorite things. So they had to dig all the bad dirt out, bring fresh dirt in, have it pass the environmental test, and then created new housing for people. So what we want our new uses of the property creating new economic opportunities, and creating employment, and more investment, because now the families are gonna invest in this property. Of course the negative externalities are much more common as a result of our private property rights systems. So my farm practices, if I put too much pesticide, too much fertilizer, the rain comes and washes them off the fields. It all goes to the river, and pollutes the river. I have my big business here and the air gets contaminated from the smoke, etc..(like what you see from the window here) The important thing you keep in mind is that in the United States, the courts have always supported capital. So the early court cases involved, for example, water rights. This was a very important fact of the United States. So a person would put their mill here in a water, build a dam, collect water, and then would be able to make grain by using the water as power for mill. Then someone would built a mill somewhere further and build a bigger dam. And then somebody would move upstream even further and build another bigger dam. And these people would sue, and the court would say, “out of luck.” The negative externalities are a result of the fact that the legal system has always sort of supported investment. So let’s just take a quick look at a couple of these here. This one over here is the Gulf of Mexico. And I live somewhere here. Here’s the farms in my area. So we use fertilizers in my area. And as water comes down the hill, to this whole area of the Gulf of Mexico, and the then the international waters. In this one you can see Lake Eirie. What happened here is that contamination has run off negative externality and killed the lake.

So this is a question. Do we have state intervention or not? Do we need somebody to intervene our private rights to avoid negative externality? And as know from proposition of Hayek, and Milton Friedman, etc. who will say, “No. Hands off, it’s a market choice to determine what should happen.” And we have the Coase Theorem. He got a Nobel Prize for it. If we have two big problems. We pay and we have the problems removed. So theory tells us that we can control this through market choices. But as we should see, society has not gone along with this particular approach. So we start off with this model, absolute property, and then we see we produce lots of negative, as well as positive externalities, and now we see that we are starting to limit the use of property in the US system. So we now have started saying, “ok, you can only do certain things with your property depending on where your property is.” If my property is here, I can do one thing. But when it’s over here, I can’t do that anymore. I can only use it another way. And zoning itself emerged in New York City as a new idea in 1916, but now has spread to the whole country. And in the United States what’s important to keep in mind is that this zoning and planning function is local government. National plans cannot be imposed. What they will do is often say, “if local government does this, we the central government will help pay for this.” Now we see the change coming that, with the recovery of our housing market, master plan communities are now the “the most popular segment” of the real estate market. People want to buy into a planned community, rather buy just a property and then develop by themselves. So this example here is a planned community. All the people who bought into these houses bought into a plan you didn’t have a choice really, you have to agree that you are going to follow the plan and then you have to contribute your ideas to how the houses should be built. So here is an example of an early planned community in Italy (Donna Olympia and San Martino di Cimino) in 1645. And this is what it looks like today, and it still keeps its form. And this is a new idea in America. This is something we are just doing now.

So now what we have accepted is that my house is not my castle. My house is a property of which I have only some of the rights in the bundle. So now the city and the local government have taken somebody’s rights away in my column development rights and have decided then which ones I can use. So I can’t build a house or business without approval of my building plan. I can’t tear my house down without approval of my community and of the planners. I wanna put an air conditioner in my house, I have to have a approved air conditioner. Does it meet the new energy requirement? When I do my yard, I have a have an approved plan so the person who is doing my gardening will carry my plan down to the city. The city will then either approve because it fits into just normal standards, or to put it before the community to coming down and vote for it. So just an example of working on the United States, let’s take a look at an example of my neighbor who lives across the street. So a man who named Richard and what he wants to do is to sell his house to a company, a developer, who wants to come and tear this house down and build two new housing units here. Now you can see from our general models, since this is a private property of Richard, he should be able to do whatever he wants. Not any more. So we have five public meetings to have people to review the plans to either approve or disapprove. In a certain sense, a complete revolution that has happened without anybody being really aware of it. So these building codes and restrictions that pertained to my little city go on for page after page after page. I just put a couple of examples out here. We have now had where my concept of property has been modified to include a lot of other people who can suffer from the negative as well as benefit from the positive externalities of my ownership.

Another thing you wanted me to talk about was the change going on in eminent domain. In the United States, we have only had one constitution and this is the foundation of everything we are allowed to do. So this is our tribal charter and what’s particularly important to our discussion today is the so called “takings clause”. So we have the Bill of Rights, that is the first 10, you might say the rights defined in our constitution. And the fifth amendment states, ”nor shall private property be taken for public use, without just compensation”. So why did we go to war to separate us from England? That’s because the king’s representative, the government comes in and say, “ok, we can take this property to put our soldiers in, or we are gonna make a post office here, etc.. we’ll move over here.” But the writers of our constitution, being very brilliant men luckily, realized that there would be changes taking place and sometimes we need places to build roads and we’ll have to take property to put the roads through. Or maybe we need to build a hospital. We’ll have to buy property and build a hospital for public use. So for 230 years, we all recognize that it was going to be that government could take private property for public use but has to pay the fair value of the property. So this comes into American law and we call it “eminent domain”. In civil law, it’s prescriptive, selected by the government etc.. And the concepts are it’s public use, and you get to paid with fair value of your property. So for 230 years it was for public use, for public welfare, for public interest, does it fit within a recognized function/ power/ role fo the government. So building a police station, building a hospital, building a school, things we would expect from the government, and that land can be taken for public use. In general in the United States, this has always done at the local level by local government. So Just Compensation, how do we determine what just compensation is. And this means fair market value. And we have a highly developed institutional basis of how you determine the value of the property. So it has to be is it fair to the person who owns the property that’s been bought by the government, and it’s fair to the tax payers who give their money to the government. So those of you who were thinking about private property system and land administration, etc. this how you evaluate a property is a specialization within land administration. We give them phds in this field of how you go about the value of a property.

Now this all changed in 2005. On the lefthand side here we have Mrs. Kelo and she is refusing to sell her property because she argues it is not going for public use but rather the city of New London is going to sell that property to a private company to develop. So this is like what you had in Beijing in the year 2008 when you had the Olympics. I put it here, too. So we do all things very similar. OK, now here’s the situation. You can see here where we have this old military base, the green part down the bottom. They don’t need it any more. So they want to develop the area into new uses. So the city of New London said, “we want to take that land back. You took it from us to turn it into a military base in the 1940s for the second World War. Now we want that land back. ” so what we want to do is build a yacht harbor here and high extensive condominium all the way here. And then what we wanna do is build a big shopping mall here. And I think one of these houses here is Mrs. Kelo’s. now we are take the land. We are going to give this land to private companies to put in the condominiums, to put in the yacht harbor, and to put in the shopping mall. Mrs. Kelo said, “no, you cannot do that because it’s not for public use. You are taking my land from a private owners and give it to another private owner. ” so this case went all the way through all of our courts, clear to the Supreme Court. The Supreme Court heard in favor of the city of New London. And Mrs. Kelo was picked up and carried out of her house.

So what the court said is that this was an extension of our concept of other people’s rights into our property. So we can see part of revolution here. We have had the interference of planning in how my castle is used. I got all the restrictions on how I can build and use my castle. And now the Supreme Courts had said that it’s ok for the government to buy my apartment, of course they still have to pay the fair price. And they have to pay the full price of what Mrs. Kelo got. And that’s a very good price for her house. As you can see it’s a very big change.

Now another topic you wanted me to mention what’s going on in the States is the property tax. In the US, this is a very important tax. But it is also the most hated tax. Property tax is usually so expensive to collect that is best only collected very locally. This is one of the original forms of taxation and all of the European states depended on property tax in order to raise money. So taxation had a very important role, though, in the formation of the United States because only property owners had full civil rights. So if you did not own property, you couldn’t vote. So Adam Smith whom we all worship couldn’t vote in England or Scotland because he didn’t own property. Now you can see when the immigrants all came from Europe and came to America and got property, all of a sudden they became full citizens whereas they were not full citizens back in their home countries. So you see why this is important even if I hate the tax. It is also a mark that I am a full citizen because somebody can say, “hey, I pay my taxes, don’t tell me what to do.” Now you see there is a certain conflict here because the cities will come around and say, “oh, Jim, look at that beautiful house. I think that’s worth X.” And I go, “no, no, no, it’s a little house. And it’s only worth Y.” Because my tax depends on the value. That’s why we have, again, so much development also in this field of appraisal and valuation. Ok, the local tax then on property is something that we property owners vote on how much we are going to be taxed. But not really. We got a vote on it anyway. In reality, what happens is people go through all the services demanded by citizens and then divide this prorata against the values of all the property. So we have multiple taxing authorities and districts. Now I’m just using my state just to have a concrete example. And because this is a local tax and the way the United States is constructed, it can be modified in different localities. Just to give one aspect of this. As this taxing developed over the years, we didn’t have good, now, GIS mapping, GPS concepts. And so a lot of times, I would find perhaps my property happens to be in one taxation district for water, another taxation district for schools, and another taxation district for something else. So there is a plea for focusing on good mapping. And here are just some special taxing districts that we have. You can see all of a sudden, more and more societies interfering with my property rights. Here it says, you are gonna have a watershed district, a sanitary district, a regional sanitary sewer district, public library district, park district. All this list on special taxation interfere with my use of my property.

So we are not really aware of it. Here are some more listing of the special tax districts where I live. And this is a small city. Back here you can see any other political subdivision of the state of Minnesota, excluding counties, school districts, cities, and towns , that has the power to adopt and certify a property tax levy to the country auditor, as determined by the Commissioner of Revenue. We can see here that somebody has felt strongly enough to get imposed on the community.

The property tax, I know you don’t have property tax now but some here are thinking about what property taxes could be developed. This is the most hated tax, because you are taxed on the value of your property, not on your ability to pay. For instance, income tax is on your ability to pay. This is not. So let’s just say we have a nice house here, or nice apartment, and I die, and my wife takes this apartment over. But she no longer has my income. So my wife then gets the tax bill. She says, “no, I no longer has Jim’s income. How can I pay this tax? ” While they say, “OK, pay or get out!” because if you don’t pay the property tax, the state can come and take your property over from you. In California, the citizens’ had enough of this nonsense of having property taxes that’s always going up in order to pay for schools and highways, and everything. So they voted that the property taxes could never be raised. And it was a total disaster. In this slide, here are the property taxes, and this is a breakdown of Belvidere, Illinois. You can see how your property taxes are paid. Most of this go for schools. And you can see all of the little ones coming around to the city government, the county conservation, ecology, etc.. so this what the people of Belvidere, Illinois think is important to them. Here is a similar situation in Germany.

Another topic you wanted me to talk about the American Indian, American Indigenous population. So let me take a look at what’s happening with property rights in the American Indian community. I think that America has two major stains, two major sins that occurred to rights in American history. Two things for which we can never forgive ourselves. One of them of course is slavery. We have this history of slavery. The other one was our inability to profit from our indigenous American Indian culture. So we learn almost nothings from the Indians. And we had great leaders who said, “this is foolish, you have to learn something from these people.” A good example is Thomas Jefferson. He constantly tried to study from American Indians. So what we have was 13000 years of development of another civilization. And we didn’t learn anything from it. A human crime of unimaginable size. Around 40% of the world’s food supply, in fact, come from crops developed by this American Indian civilization. So these are some of the main ones down here. Maize (corn), potatoes, peanuts, manioc (cassava), beans, tomatoes, sunflowers, yams, vanilla, chocolate.

Now let’s take a look at Indians and their property rights. We find that the devils are in the details. We have this kind of silly view of the American Indian looking out onto the horizon and seeing only ecology. But there were several thousand different cultures and languages that made up the American Indians. Now we also have a view of the American Indians has always lived running around, chasing buffalo. Shooting arrows at buffalo. But we don’t understand the long complex history of amalgamation of populations and then the dispersion of populations. I could’ve picked hundreds of examples, but I just picked Cahokia. It’s an archeological site of what was a city about the size, perhaps, of the city of Beijing at the time when it existed in Illinois. Now you can see some of the art work here at the archeological site. And these existed about 1400. But we don’t know who lived there. We had no idea who these people were. Because by the time people got there, all this has collapsed and people had spread out again into different communities. They call it Cahokia, but it has nothing to do with it. It’s just a name people gave it. Because the Indians we found there said, what do you call that place, oh, they call it Cahokia.

So this is our view of the American Indians, that they during these periods of intensive food production and then extensive food production. So this is a painting by George Caitlin in the 1830s. so for those of you who read Alexis de Tocqueville, when Alexis de Tocqueville was writing about America, Catlin was out painting the Indians. We people from European descendants came in and just had property rights that had grew out of the water of Europe. And we find now that the American Indians in an extensive economic period. So concentration, breakup, concentration, breakup, changing the economic relationship. And just as we arrived, the concentration has long since disappeared and we are in the extractive extensive period.

So what kind of land rights are we going to give them? What property rights are these Indians going to have? Now you can see from this area, they are not interested in a map that gives geometric space on the ground. Rather what is to own the resources. The resources might be here today, and it might be over here tomorrow. But because of our European tradition, we want to draw lines on the ground, and say this is what you get. So in modern systems, we can handle such things. But in the 1830s, we could not. It is still a problem, because it is the resources that were contested, not the land boundaries. So where I live, the Indians will say, “I have rights to pursue, say, deer, to shoot animals onto your property. Because this is one of my original rights.” But we people of European traditions say, “no, no, no, this is the line. You can’t cross that line.” So you can see the boundaries are fuzzy. They shift by the situation.

The biggest negative impact on the American Indians probably are the diseases that spread and killed so many people. In the movies, of course, you have John Wynn shooting, killing Indians. But that wasn’t so much as the impact of smallpox.

So next we are going to talk a little bit about the land tenure of Ojbawa. But they started off in New York, areas around New York City. And now they are clear across in the middle of the country in Minnesota. So where the American Indians now live, they may have moved thousands of kilometers. And you have to remembers as the American Indian population was dying, due to the new diseases, the population in Europe was growing very very rapidly. And this is what Hayek’s talking about, we have the revolutions in Europe that give civil rights with property. And we have the Europeans now coming to America to have property in order to have full civil rights and citizenship. So we have somewhat more than 5.2 million American Indians today, around 2% of the US population. The United States recognizes 566 tribes. There were several thousands. And now there are 200 waiting, trying to get recognized by the US government.

The government has recognized, or to say, created 325 reservations. Only 22% of the people who identify themselves as American Indians actually live on these reservations. The largest reservation is resided by the Navajo, about 6.4 million hectares, and the smallest is just half a hectare that’s owned by the Pitt River Indians in California. 54% American Indians own their own houses. But they only have about 70% of the income of average Americans.

One of the things that have given Indians some capacity is that they are viewed as sovereign people if they have a reservation and if their tribe is recognized. They are a sovereign people and therefore they do not have to pay taxes or property tax. So what has happened is that when you have certain things are made illegal in a particular state in the United States, such as gambling, the Indians say, “ah, bring your casino here and put it on our reservation because we are a sovereign people and we can have gambling here.” And then the government recognizes of the 566 tribes that it does recognize are self-governing, and they can do pretty much whatever they want. So they can vote, own property, etc.. I want to show you a real case here. If you could see the list here of some of the important events that took place in applying property rights among the American Indians. So here is a good example, though, the complexity of the property rights of American Indians. This is Minnesota here, the little black one. (Illustrating how the American Indians traveled through history from one place to another) So you can’t say this is forever their home. It’s home to somebody, might not necessarily be the people who live there now. Now Mille Lacs (French for a thousand lakes) Ojibwe. And this is where they were given their treaty of reservation. So you can see this is right about there(the red area in the PPT). now again, the treaty was written between two sovereign people, the government of the United States, and the Mille Lacs Ojibwe, it was “you will have this land forever.” Remember from Hayek, “property rights are forever.” Let’s see what happened to these property rights. So 1837, they had all that red area I was showing you. In 1851, the bottom part disappeared. And it was “you have your property rights forever, but we’re gonna move you over here, and give you some property rights over there.” So here now that big chunk of land have disappeared over time. Today, what used to be a big chunk of land are now several isolated scattered spots around the lake.

So when in America, you are given property rights or home, you have gone secured forever, or until somebody else needs it maybe. Now these are examples for the casinos like in Macau. You can put it here because gambling here is legal since this little tiny piece of land is sovereign. So the Ojibwe have to give up their lands. A small group refused to give it up. And they moved on. Now the Indians are trying to take the money from their casinos and go back in buy the land. So maybe if I come back and give a lecture again in 200 years, I might be able to show more pictures of Ojibwe people have more lands.

So what do we learn from the American Indians? And that is giving individual property rights hasn’t always been the best solution. What the kinds of rights that the Indians emphasize are the kinds of rights that we see belong to all of us. Let me go back a little and show you again in this example of what the Indians’s rights are. They want the resource of a major lake, the fish, the water, etc.. and this is now critical to the economy, industrial economy of Minnesota. So the Indians still claim, even though they lost the land, that the fishing rights still belong to them. And our property law has not been able to adapt to these concepts of property rights heal in some kind of fuzzy record. But you see we are struggling with the same thing where you have your apartment buildings here in Beijing, or in Minneapolis, or in New York city, we have all this common area that we have to determine what kind of value it is. So we have to create condominium rights. So what we have to do is extend our concept of property to include the same kind of property rights that the American Indians have been practicing. So this comes down in property, the essential role of contract law, and contract institutions. In fact, there are a certain number of economists and jurists who argue that contract is more important than private property per se.

OK, just to finish our talk, as we can see, all of us in this room, can I hear anybody’s keyboard clicking? It is our shared use of common protocol that allows the new economy to emerge. And the greater our ability to share in this property is the degree to which we become economically important.

So the point has to be made, what we see is happening in the United States, and probably many other places is that property is becoming increasingly defused in its ownership at the very moment in which we are spending more and more effort to try to define property in a classic sense. We need to be looking at how property is being used and then create our institutions in ways which will achieve the maximum benefit for the individuals who are using these property rights. So you can see now I own my house, private property, but I have to use that house in a way in which others are not harmed. So I would argue that in private property system in the world, we are developing increased responsibility that goes along with property rights and are enforced. And if I don’t, society is getting more and more able to impose on me.

OK, that’s pretty much what I have to say. Thank you!