

*Do All Roads Lead to China? Chinese Commercial Law Scholarship in the Past Decade (Part 2)**

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Abstract

China's recent development of a modern legal system coupled with unparalleled economic growth have drawn substantial attention from commercial law scholars. This review summarizes Chinese- and English-language commercial law academic literature from the past decade contributed by both Chinese and non-Chinese scholars while discussing their differences. China's use of vague laws that rely upon implementation rules resulted in a substantial proportion of articles focusing on policy discussions and comparison to foreign approaches. Subsequently, a common theme in both Chinese and English literature was transplantation of foreign law. Chinese scholars often took a nationalistic approach, primarily assessing laws on their impact on China, whereas non-Chinese scholars advocated the adoption of foreign

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laws or legal structures to create clear standards and provide certainty for investors, which in turn is believed to facilitate continued growth of the Chinese economy. The literature is grouped into subject categories, allowing for discussion of important works and representative articles from leaders in their respective fields.

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4. Private Land Use in Commercial Law

This first step in the analysis is to ask why private ownership matters. The proffered answer is essentially an economic model under which private property will presumably be used for economic benefit, while public land will be controlled by disinterested bureaucrats. Here, disinterest assumes a lack of corruption on the part of officials. Property ownership is a complex area of law encompassing a wide range of issues and types of property.¹ While some argue that China falls short of protecting property rights, Donald Clarke claims that private ownership has been virtually restored to China's ownership structure.² Of primary concern in recent years have been land use rights — an area where legal theory and application diverge greatly in China.³

In a country transitioning from a planned economy to a highly regulated market economy, the implications of private equity ownership are an important tangential issue when examining property law. Even in the absence of a planned economy, the market dependence on state-owned enterprises (SOEs) allows the state significant control over the market and places pressure on regulators to protect the interests of such enterprises. However, one recent article argues that ownership interest does not paint an accurate picture of the government's power to control enterprises and Chinese government has more control over private enterprise and less over SOEs than commonly assumed.⁴ The political logic of corporate governance in the context of state capitalism is a dynamic legitimacy management scheme,⁵ which explains and justifies a dominant political control over SOEs.

In reality, the boundary between privately held businesses and SOEs is not always clear in China with mixed ownership common.⁶ However, even when ownership is entirely separate, the majority shareholders of privately held corporations in China also tend to have close government relationships that likely result in the same benefits SOEs are believed to receive by virtue of their state status.⁷ In essence, the state's control over enterprises, both private and state owned, is through regulatory