

Chapter 2

Does the Institution of Property Rights Matter for Heritage Preservation? Evidence from China

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Introduction

Cultural and natural heritage is the manifestation of human civilization and humankind's environment in contemporary society. This heritage is understood in China mainly as landscapes, relics, monuments, and geological features (Wei 2002). China began to study its own heritage in the 1990s, after China joined UNESCO's World Heritage Convention (Zhang 2008). By 2012, China had 43 cultural and natural sites on the World Heritage List, thereby ranking third in the world.

As elsewhere, this heritage is managed. In China the existing management model of heritage management is government-led. China's concern with heritage owes much to the fact that since the end of the last century there has been much damage to heritage sites and inappropriate utilization has occurred constantly. This situation goes against the notion of the sustainable development of precious heritage resources. This situation eventually triggered a great debate in China on the reform of the heritage management system in China. On the one hand, some scholars believe that heritage is actually a kind of public good and the introduction of market mechanisms for heritage conservation and utilization goes against its public beneficial mission (Chinese Academy of Sciences 1993). On the other hand, some scholars suggest that the traditional government-led model is inadequate in practice due to lack of sufficient funds (Zhong 2007). No consensus has been reached.

This brief paper examines the institution of property rights in China, arguing that a property rights institution is the core of the heritage management system. The paper analyzes the relationship between the property rights institution and heritage conservation and utilization. The first section of this paper presents recent examples of heritage protection and utilization in China (Fig. 2.1 shows the location of key sites discussed in the text). The next section documents the

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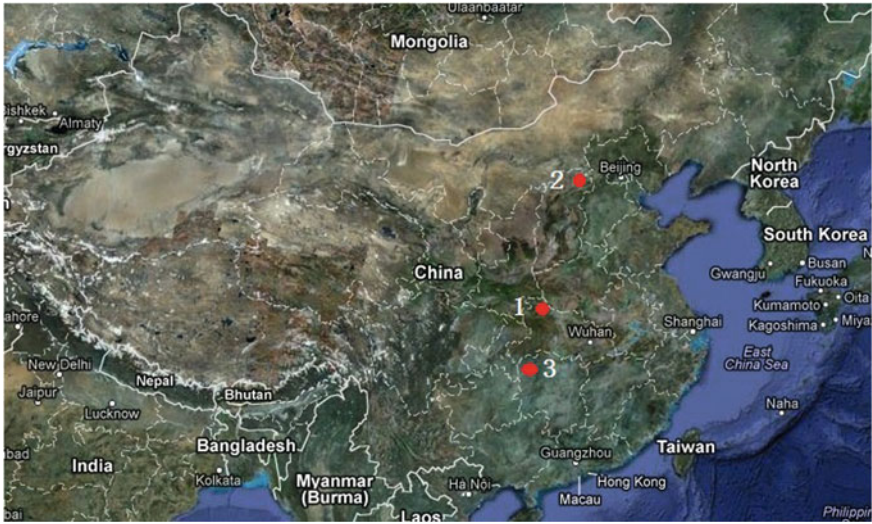


Fig. 2.1 Map of China showing location of key sites mentioned in the text. *Dot 1* = Wudang Mountains. *Dot 2* = Daming Palace Park. *Dot 3* = Bailong Elevator

characteristics of the present institution of property rights for heritage in China. The third section analyzes the practical consequences caused by the present institution of property rights for heritage. The last section presents the conclusions.

The Status Quo About Protection and Utilization of Heritage in China

Since 1985 when China applied to join the World Heritage Convention, heritage protection and research in China have made significant progress. However, generally speaking, the situation faced by heritage protection in China is still severe. Many heritage sites suffer different extents of damage because of inappropriate utilization or over-utilization. Here are some examples.

Fire on the World Heritage List Cultural Heritage Site of Wudang Mountains

“Two suspects have been arrested today for the fire on Yuzheng temple, Wudang Mountains. One is the coach and the other is student of the Kungfu School, which rented the Yuzheng temple as training place.” This is what the *China Cultural Heritage Daily* reported (Zhou 2003). Wudang Mountains, located in Hubei

Fig. 2.2 Wudang Mountains

Province, central China, was inscribed on the World Heritage List as a cultural heritage site in 1994. The palaces and temples on Wudang Mountains exemplify the architectural and artistic achievements of China's Yuan, Ming, and Qing dynasties, containing Taoist buildings from as early as the seventh century (Fig. 2.2). It represents the highest standards of Chinese art and architecture over a period of nearly one thousand years. On 19 January 2003, the representative 600-year-old Yuzheng temple was burned down by a fire accident. Previously, in 1996, the local Bureau of Cultural Heritage Administration had leased Yuzheng temple to a Kungfu school as its training place for 8 years with rent of 15,000 yuan each year (Zhou 2003).

Daming Palace Park was Built on an Important Heritage Site

Daming Palace was a very famous royal palace during the Tang dynasty (618–907 AD), which consisted of many independent buildings or halls. It is located in Xi'An city, Shangxi province, western China. In order to apply to be listed as a World Heritage site, and with the encouragement of the Xi'An municipal government and being able to earn a commission, real estate developers invested 12 billion yuan to reproduce a whole new artificial park on the original site in 2010 (Fig. 2.3). Residents on the grounds were removed. The park was initially designed to become a buffer zone protecting the palace. However, many artificial reproduction buildings with reinforced concrete structures were built directly on the site where relics of the ancient Daming Palace site lie underground, and surrounding the 3.5 km² park there is 19.16 km² of a high-priced commercial real estate. Fu Qingyun, the former general engineer of China Cultural Heritage

Fig. 2.3 Daming Palace Park



Institute, stated “Relocating the residents out of the heritage site and improving the environment are beneficial for protection of heritage, but construction of artificial architecture on the heritage site is actually damage rather than protection because the underground relics will never be able to be unearthed” (Chang 2012). Subsequently, Shan Jixiang, the former secretary of the State Administration of Cultural Heritage, stated that he required the “illegal architecture” to be removed; indeed, he came twice to personally supervise the removal on-site during the course of construction. But finally, the Xi’An municipal government removed just one building. The rest still remain.

The Highest and Fastest Outside Elevator in the World

Where is the highest and fastest outside elevator in the world? It is not in New York City or in Chicago. It is in the World Heritage natural site of Wulingyuan, Hunan province, south China! The Bailong elevator (Fig. 2.4) was built in 2002, with an investment of 120 million yuan, on a typical stone cliff in the central area of Wulingyuan, which was established as a World Heritage natural site in 1992. Professor Lingao (Xie 2001) of Peking University stated, “A contemporary elevator building in the protective area of the World Heritage site, which was created during the Cretaceous era, is a damage to this landscape.” CCTV (the National TV Station in China) made a series of reports specifically against the construction of the Bailong elevator. Although receiving significant criticism from across Chinese society, this elevator still operates regularly. The most obvious reason why it continues to function is because it contributes 3 million yuan in taxes annually to the local government, being a great tourist attraction.

Fig. 2.4 Bailong Elevator

Characteristics of the Present Institution of Property Rights For Heritage in China

A state-owned ownership system has been the dominant economic system in China since the founding of the Peoples Republic of China in 1949. This approach to governance also underwrites the management of cultural heritage in China. The first Chinese “Constitutional Law,” enacted in 1954, prescribed that “minerals, water, forests, land and other natural resources are owned by the whole Chinese people.” Since that time this provision has never been changed but has been expanded. The fifth article of the latest “Cultural Relics Protection Law,” revised in 2007, prescribed that “all cultural relics remaining underground or in the inland waters or territorial seas within the boundaries of the Peoples Republic of China are owned by the State. Sites of ancient culture, ancient tombs and cave temples are owned by the State.” These are the provisions that have established the state-owned ownership system of heritage resources in China. The system means that heritage belongs to all Chinese people, everybody has a share of the ownership of heritage, and everyone can enjoy the benefits from heritage protection and utilization. Under this kind of system, the following logic obtains: public ownership means public use, public use means public management. Therefore, the government, always viewed as the defender of public interest, became the actual occupant and dominant overseer of heritage resources. The characteristics of the present property rights institution of heritage in China are as follows:

Property rights of heritage are defined vaguely. The executive power of government replaces the property rights of heritage.

The property rights theory suggests that property rights are actually a band of rights rather than a single right. Property rights can be divided into many domains, such as the right to management, the right to earnings and ownership etc. According to the present legal rules, the ownership of heritage belongs to the State, but the other rights of heritage are not clearly defined. In this circumstance, the government monopolizes the entire realm of property rights of heritage and the executive power of government replaces the property rights of heritage.

First, the exercise of property rights of heritage is mainly reflected as the government administration of heritage; the allocation of heritage resources is closely related to the executive power. In order to manage heritage resources, the government set up different branches according to different types of heritage.

Second, the administrative management system of government replaces the legal rules of the property rights of heritage. Because of the absence of legal rules of property rights, the management and operational matters related to heritage are included in the scope of government decision-making. The administrative system established by the government became the main basis for the exercise of property rights of heritage. In fact, the administrative management system of government replaces the legal rules of property rights of heritage.

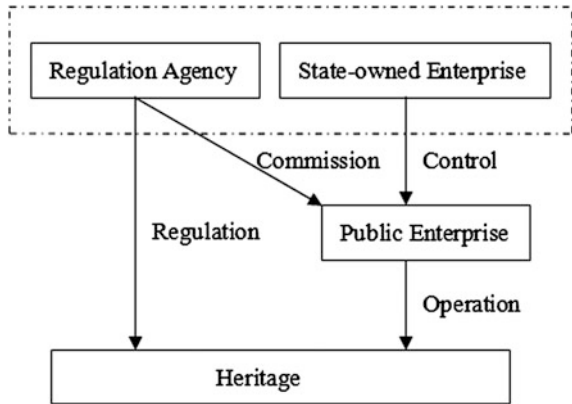
The government monopolizes property rights of heritage seriously. The regulation of heritage changes into the monopoly of heritage.

Since property rights are defined vaguely, the administrative system established by different branches of government requires all matters related to heritage to be within the scope of their authority. Any government branch which has a single right of property rights begins to fight for the entire corpus of property rights of heritage in practice. Eventually, heritage resources are divided intangibly to be owned, managed, and operated by those different branches of government respectively.

Because of the serious monopoly of government, regulation of heritage is actually absent.

In order to protect and utilize the heritage resources, government usually sets up state-owned enterprises to be responsible for the matters of protection and utilization of heritage. Since the property rights of heritage have been seriously monopolized by government, the regulation agency of government and the development enterprises of heritage become the same (Fig. 2.5). When heritage damage and inappropriate utilization occur in practice, the regulation agency cannot make an objective and fair judgment and take effective measures to stop those behaviors because they have common interests with the state-owned enterprises. This regulation system does not aim to maintain the sustainable development of heritage, but rather is concerned with economic profit. Thus, the system will not only be a serious impediment to the formation of a real market mechanism for heritage protection and utilization, but also causes great damage to the precious heritage resources.

Fig. 2.5 The present heritage regulation system in China



The Practical Consequences Led by the Present Institution of the Property Rights of Heritage

The present institution of property rights turns heritage resources into a “free-lunch.”

Under the present institution of property rights of heritage, the subject of state ownership of heritage is unique, but the generalization of this subject is reality. The executive power of government replaced the property rights of heritage, and the free right of utilization of heritage for state-owned enterprises further weakened the effect of incentive and constraint of property rights. Under the guidance of the wrong logic of “public ownership means public use, public use means public management,” people exploit heritage resources in accordance with the principle of maximization of personal utility. The “tragedy of the commons” is inevitable.

The present institution of property rights results in conflicts among different branches of government.

On the one hand, since the executive power of government has replaced the property rights of heritage, executive power becomes an important resource by which different government branches achieve their own interests. Driven by their own interests, different government branches compete with each other for the executive power related to heritage. On the other hand, since the purpose is mainly for economic interests, when they acquire executive power the branches exercise the power in a manner so as to fulfill their own interests. A large number of social recourses are not used to stop heritage damage and inappropriate utilization, but rather to resolve and coordinate the conflicts among them.

The present institution of property rights of heritage hinders innovation in practice.

Under the present institution of property rights, the administrative management system of government replaced the institution of property rights, and the innovation of the property rights institution of heritage is reflected as the transition of the administrative management system. Thus, the property rights institution of heritage

becomes the consequence of sector choice or group choice, rather than public choice as a law. And the spontaneous innovation of the property rights institution in practice, which would not meet with specific group interests but be conducive to sustainable development for heritage, will not develop into law or provisions. We must ask why the present institution of property rights for heritage in China has not changed for such a long time, in which group interests play a key role.

Conclusions

The institution of property rights is the core point in the heritage management system. The characteristics of the present institution of property rights of heritage in China include vague definition, government monopoly, and actual absence of regulation. This kind of institution goes against the sustainable development of heritage resources. Heritage is a special kind of commons. In order to avoid the “tragedy of the commons,” effective measures depend on the various types of heritage. According to international experience, effective measures can be either government-led governance or the market mechanism. There even could be a third way, by which I mean that approaches to solve the same issue should be varied rather than an either-or choice. The key point is to find a specific arrangement for the institution of property rights of heritage that is suitable for China’s specific current situation.

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