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Articles

A Tragedy of the Commons: Property Rights Issues in Shanghai Historic Residences

Kara L. Phillips and Amy L. Sommers*

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Shanghai is renowned for its distinctive urban architecture which combines traditional Chinese dwellings, starkly urban high rises and European-inspired buildings from a by-gone era. A stroll through certain residential streets in central Shanghai that remain populated with pre-1949 housing will leave a visitor with the impression of being in a place distinct, one that is definitely Chinese, as evidenced by the street signs in Chinese characters, but which also bears a vaguely European or even North American cast. Single-family houses are few, and most residences are either in the form of apartment buildings or rows of townhouses, which are situated abutting the sidewalk, with little or no setback from the road. Their exteriors are covered in stucco or are made of red brick or concrete, not the gray bricks of traditional one-story Chinese courtyard-style dwellings. The building designs are diverse, but the reference points are non-Chinese: Spanish colonial, Tudoresque, Art Deco, French¹ and various other styles.² These styles are represented, not in the gleaming, restored version one sees in revitalized urban centers in Europe or even America, but rather in a shabby style, laced with miscellaneous wires that have been added on over the years, laundry drying and a hodge-podge of air conditioning units that have been retrofitted to aid in enduring Shanghai's summer heat.

1. For views of "French Town" residences, see TESS JOHNSTON & DONGQIANG ER, *FRENCHTOWN SHANGHAI: WESTERN ARCHITECTURE IN SHANGHAI'S OLD FRENCH CONCESSION* (2000).

2. See Ackbar Abbas, *Play it Again Shanghai: Urban Preservation in the Global Era*, in *SHANGHAI REFLECTIONS: ARCHITECTURE, URBANISM AND THE SEARCH FOR AN ALTERNATIVE MODERNITY* 37, 42 (Mario Gandelsonas ed., 2002) ("It was this foreign presence—first British, American, and French, and then, after 1895, Japanese—that within the space of a hundred years turned Shanghai into a city of legend, into . . . a metropolis with distinctive, sometimes bizarre, characteristics. . . . This anomalous state of affairs helped Shanghai develop its own special brand of cosmopolitan urban culture. By the 1920s and 1930s you could see it at once in the different styles of architecture—the Tudor-style villas, Spanish-style townhouses, Russian-style churches, and German-style mansions, together with the internationalism of the buildings on the Bund and, of course, the Shanghaiese lane houses or lilong housing complexes. It was all a question of style imported from elsewhere, a shallow kind of cosmopolitanism, a dream of Europe even more glamorous than what Europe itself had to offer.").

Peering past the layer of detritus that has accrued on the surface of these residences, the overwhelming impression they give is one of charm, whimsy and poise. However, when so much of Shanghai is gleaming, shining and spit-polished, why have these delightful structures been allowed to decay into Miss Haversham-like shambles? When China was distracted by decades of invasion, civil war and reconstruction, niceties such as painting and repair were abandoned. But in the decades that followed, what transpired to leave so many of Shanghai's architecturally noteworthy structures and neighborhoods in disarray?

Originally single family residences, these apartments, houses and townhouses commonly were subdivided into housing for five to eight (or more!) families³ during socialization and the Cultural Revolution, with the original occupant relegated to one or two rooms depending on the size of the family.⁴ All the occupants shared such common areas as the kitchen⁵, bathroom⁶, courtyard, etc; however, the buildings were not maintained and the formerly chic residences sank into disrepair and decay.⁷ With the skyrocketing Shanghai real estate market, came a

3. See Jiang Jin, *Times Have Changed: Men and Women are the Same, in SOME OF US: CHINESE WOMEN GROWING UP IN THE MAO ERA* 100, 111-12 (Xueping Zhong et al. eds., 2001) ("From the time I was two years old, my family lived in a former colonial high-rise apartment building in the Hongkou district. It is a four-story steel and concrete building erected by the Japanese in the 1920s. For more than half a century it was, until the 1990's, one of the few landmark buildings in the area. . . . The layout of the apartments in our building was identical. On each floor there were two large apartments, which were shared by two to three families. In one of these apartments our family occupied the larger room, originally designed as a living room, and shared the dining room, kitchen, and bathroom with another family. That family had two smaller rooms that were originally bedrooms. Three families shared the apartment next door. . . . At the back of each apartment was a kitchen. . . .").

4. See MARTIN KING WHYTE & WILLIAM L. PARISH, *URBAN LIFE IN CONTEMPORARY CHINA* 80-81 (1984); see also Interviews with Teacher 某, in Shanghai, P.R.C. (various dates, 2007).

5. See WHYTE & PARISH, *supra* note 4, at 81 ("This situation is tightest in large cities where almost half of all families have to share a kitchen. Sharing is the most frequent source of conflict between families. Kitchens are typically so small that only one family can cook at a time. In some buildings built for other purposes and later transformed into housing, people have to use makeshift kitchens erected outside or in the hallways. In the evening when everyone returns home at roughly the same time there is competition for the use of this small space and there is a potential for conflict over who is using whose supplies and whose garbage is being left lying on the counter and floor.").

6. See *id.* Today, in situations where shared housing arrangements have left residents without access to a bathroom, chamber pots are sometimes necessary. See e.g. SYLVIE LEVEY, *SHANGHAI WAITING FOR PARADISE* (Artline Films, 2007) (a documentary film depicting the lives of a Shanghai family in a shared housing situation awaiting relocation to new housing in the face of demolition of their residence in the old part of Shanghai).

7. See WHYTE & PARISH, *supra* note 4, at 84.

renewed interest in acquiring either the sites of these properties (for demolition and redevelopment) or the properties themselves (for renovation). However, the rights to develop or transfer these properties remain complicated and illustrate the ongoing tension between rights obtained under a socialized property regime and rights exercised under a developing privatized system.

For the past three decades, China has initiated sweeping institutional changes in its property and housing regime—changes which introduced privatized models of real property ownership while maintaining the core attributes of a socialist property regime. The developing land and housing market is on the one hand vibrant and lucrative, but on the other hand complex and riddled with vestiges of unresolved contradictions left over from China's earlier iteration of its socialist property and housing system. Who owns these houses? Who can claim rights to them? What happened to the owners or rights holders displaced during socialization and the chaotic decade of the Cultural Revolution? To fully understand the nature of the existing urban property and housing market in China, it is important to recognize its distinctly socialist historical roots as well as the complex economic, social and cultural issues shading the current state of affairs, which have implications for future property development.

Today, Shanghai, with its relatively mature real estate market, booming property development industry and desire to become a world-class city, offers a suitable stage for exploring how the tensions between socialization and privatization play out in the Chinese property and housing regime. The real estate industry plays an important role in Shanghai's urban economy, its growth spurring the frenzied pace of urban construction and the continued robust market for real estate transactions,⁸ notwithstanding various strong measures adopted starting

8. From 2001 to 2005, the real estate price index for Shanghai residences increased as follows:

Year	2001	2002	2003	2004	2005
Shanghai Residential Real Estate Price Index	102.1	111.0	134.7	56.0	170.4

Shanghai Statistical Bureau, Real Estate Price Index, Section 8.12, SHANGHAI STATISTICAL YEARBOOK 2007, available at <http://www.stats-sh.gov.cn/2003shtj/tjnj/2007tjnj/e0812.htm>. Nationally, the residential real estate price index was:

Year	2000	2002	2003	2004	2005
National Residential Real Estate Price Index	101.4	104.0	105.7	109.4	108.4

in 2005 in an effort to slow the rate of such growth and ease the social dislocations being created by the high pace of investment.⁹

This article will analyze how the intersection of various political, legal and economic factors in the past forty years have conspired to create a situation where Shanghai, that unique place in the world that combines aspects of European, American and Chinese urban living into a *mélange* not seen anywhere else, faces loss of considerable elements of its distinctive character. While political movements may have set the decline in Shanghai's architectural history in motion, lack of legal clarity in ownership rights combined with shifting economics may serve to deal the coup de grace to the architectural integrity and distinctiveness of Shanghai's pre-1949 residential districts.

The tension between China's socialized property system and its emerging privatized market are played out in the context of these distinctive Shanghai townhouses (known as "lilongfang"¹⁰), apartments and single family homes (known as "bieshu" 别墅 or "villas").¹¹ Part 1

National Bureau of Statistics on China, Price Index for Real Estate Table 9.17, CHINA STATISTICAL YEARBOOK, available at <http://www.stats.gov.cn/tjsj/ndsj/2006/indexeh.htm>.

9. See, e.g., Circular of the General Office of the State Council on Effectively Stabilizing House Prices No. 8 (2005) (promulgated by General Office of the State Council, Mar. 26, 2005, effective Mar. 26, 2005) LAWINFOCHINA (last visited Nov. 11, 2007); Circular of the General Office of the State Council on Forwarding the Opinion of Such Departments as the Ministry of Construction on Doing a Good Job of Stabilizing House Prices (promulgated by General Office of the State Council, May 9, 2005, effective May 9, 2005) LAWINFOCHINA (last visited Nov. 11, 2007); New Eight State Opinions (promulgated by the State Council, Apr. 27, 2005) http://news.xinhuanet.com/newscenter/2005-04/27/content_2885424.htm (last visited Dec. 26, 2007); Opinions on Regulating the Access to and Administration of Foreign Investment in the Real Estate Market (promulgated by the Ministry of Construction, the Ministry of Commerce, National Development and Reform Commission, the People's Bank of China, the State Administration for Industry of Commerce and the State Administration of Foreign Exchange, Sept. 11, 2006, effective Sept. 11, 2006) LAWINFOCHINA (last visited Sept. 20, 2007); see also China Daily, *Reins on Foreign Investment to Remain*, PEOPLE'S DAILY ONLINE (Mar. 26, 2007), available at http://english.peopledaily.com.cn/200703/26/eng20070326_360981.html.

10. See ALAN BALFOUR & ZHENG SHILING, WORLD CITIES: SHANGHAI 95-96 (2002) ("The li long and terraced houses, covering an area of 23 million square meters, demonstrate the unique building styles that came into being during the urbanization and commercialization of Shanghai. They resulted from the blending of Chinese and Western architectural forms and lifestyles. Concrete, brick and stone were used decoratively to imitate the Western neoclassical pattern. Li long houses that imitated the European town house turned up in the 1870s. The structure and building materials of the early li long houses were essentially traditional. Subsequently, they underwent a series of shifts to the new-style li long house and finally to the terraced house, which gradually became increasingly Westernised and modern. . .").

11. See MODERN URBAN HOUSING IN CHINA 1840-2000 29 (Lu Jianhua et al. eds., 2001) ("[W]estern housing types were introduced to China in the form of detached

of this article will describe the history and causes of the campaigns to socialize housing and property in urban areas from 1949 to 1965, an effort that was characterized by a measure of gradual change and moderation. Part 2 will discuss how the measured urban housing reallocation of the previous period radically shifted to a militant squatting¹² movement during the Cultural Revolution period (1966-76) to reallocate housing resources. Part 3 describes the laws and policies instituted in the early 1980's to privatize the housing market. Part 4 will explore the remaining contradictions of property and housing ownership due to socialization and confiscation of housing, including the national and local-level policies intended to resolve these questions and the potential issues amongst the various property rights holders. Part 5 will offer some conclusions.

PART 1—SOCIALIZATION OF URBAN HOUSING AND PROPERTY

Pre-1949

The history of Chinese land ownership is long and complex and vacillated with the policies of successive dynasties.¹³ After the downfall of the Qing Dynasty in 1911, the Guomindang Government and Communist Party controlled various regions in China. Their land policies differed: the Communist Party, under the influence of the Soviet Union,¹⁴ advocated land reform¹⁵ while the Guomindang Government

houses, apartment buildings and houses with gardens. Generally, these first appeared in the concessions of trading port cities before gradually spreading to other cities.”).

12. Note that use of forcible occupation or squatting as a means of obtaining housing is by no means limited to the P.R.C. context. *See generally* ROBERT NEUWIRTH, *SHADOW CITIES: A BILLION SQUATTERS, A NEW URBAN WORLD* (2005) (describes squatting in various world cities as well as in European and American history). The United Kingdom experienced extensive use of forced occupation of residences during the 1960's as a means of obtaining housing for those without fixed residences or with inadequate housing. *See* NICK ANNING et al., *SQUATTING: THE REAL STORY*, Chapter 3 (1980). This activity was led by the London Squatters Campaign, launched by activists at the end of 1968 with the hope of sparking squatting on a mass-scale using radical methods. *See id.* New York also experienced illegal occupation of residences. *See* Eric Hirsch & Peter Wood, *Squatting in New York City: Justification and Strategy*, 16 N.Y.U. REV. L. & SOC. CHANGE 605 (1987-1988). This paper will argue however, that the occupation of residences in Shanghai during the Cultural Revolution phase of the socialized housing movement was distinctive, and particularly destructive, because such residences were in fact occupied by their rightful owners or leaseholders at the time the “squatting” began and the resulting lack of clarity in rights of ownership and responsibilities for maintenance led to a physical degradation of historically significant structures as well as significant economic impacts observable to this day in Shanghai.

13. For a brief history of Chinese real estate law, *see* PATRICK A. RANDOLPH JR. & LOU JIANBO, *CHINESE REAL ESTATE LAW* 1-27 (2000).

14. *See* CAO PEI, *REAL ESTATE LAW IN CHINA* 3 (1998).

supported private ownership¹⁶ and was influenced by Germany's civil law system.¹⁷ In Guomindang-controlled urban areas, land ownership included leases to foreign countries or persons, land consolidated into the hands of certain families, land owned by domestic real estate companies, land owned by the government or other organizations and land owned by private individuals.¹⁸ Urban living conditions were frequently poor and crowded, often with several generations living in a small space with a shared kitchen and bathroom if available.¹⁹ Houses were commonly single-story, made out of bricks and timber with a brick or straw roof.²⁰ Much of the urban housing stock was destroyed in the twenty years of warfare during the 1930s and 1940s,²¹ and the remaining housing stock was overburdened by the influx of wartime refugees,²² especially in Shanghai.²³ Moreover, a small percentage of wealthy families occupied a large percentage of the housing stock, while the remainder of the population lived in crowded conditions.²⁴

1949-1955

In 1949, following establishment of the People's Republic of China (the "P.R.C."), the P.R.C. government was initially cautious in socializing land and housing in urban areas.²⁵ First, it did not want to antagonize private owners and business people.²⁶ Second, it did not at

15. See RANDOLPH & JIANBO, *supra* note 13, at 6-8.

16. See *id.*

17. See PEI, *supra* note 14, at 3.

18. See RANDOLPH & JIANBO, *supra* note 13, at 7-8.

19. Note however, that notwithstanding the efforts of the P.R.C. national and local governments to remedy this state of affairs, they continue to the present day. See, e.g., LEVEY, *supra* note 6.

20. See YA PING WANG & ALAN MURIE, HOUSING POLICY AND PRACTICE IN CHINA 46-47 (1999).

21. Starting in 1937, Japan invaded China, and after the conclusion of hostilities in World War II in 1945, civil war broke out in China until victory of the Chinese Communist Party and establishment of the People's Republic of China in 1949. See MODERN URBAN HOUSING IN CHINA 1840-2000, *supra* note 11, at 29 (noting that this period was "a time of relative stagnation in urban construction").

22. See WANG & MURIE, *supra* note 20, at 48-49.

23. For example, in the chaotic period before 1949 after the Japanese had invaded and continuing during the civil war that broke out after World War II ended, one interview subject with whom we spoke indicated that "housing was so hard to find that one needed a gold bar or U.S. dollars to rent even a space with a kitchen (much less an entire house)." Interviews with Teacher 某, *supra* note 4.

24. See WANG & MURIE, *supra* note 20, at 50 (explaining that in Shanghai, 10% of rich families occupied one-third of the housing while the remaining 90% of the population lived in low quality housing).

25. See PEI, *supra* note 14, at 4.

26. Zhou Enlai, the first Premier of the P.R.C., stated in the United Front Session held in 1952 that as the bourgeoisie was needed in order to resolve problems of China's

that point have the expertise to manage urban housing and land.²⁷ Thus, rather than immediately commencing a wholesale restructuring of urban land use rights, the government chose to differentiate between housing that was rented at reasonable rates to tenants and that belonging to identified anti-revolutionary parties who exploited the masses (which was confiscated).²⁸ Land and housing belonging to Guomindang government officials, war criminals, traitors, absent overseas Chinese and foreigners was targeted.²⁹ The government also took over property and housing that were unoccupied or abandoned.³⁰ During this period, the local governmental housing bureaus assumed control over urban housing transfers and leasing, eliminating middlemen and private real estate agencies.³¹

Nonetheless, as urban populations continued to rise in the early 1950's, housing conditions became even more crowded and per capita living space decreased.³² The supply of housing stock also suffered

economic recovery, the State would intentionally provide concessions to this class. *See* Zhou Enlai, Report of Zhou Enlai at the United Front Session (June 19, 1952), <http://www.lbx777.com/ywfy/jt/0619/061908.htm>; *see, e.g.*, Interviews with Teacher 某, *supra* note 4 (describing how the lifestyle of his parents, who had owned a successful cigarette factory started by Teacher 某's paternal grandfather, had generally continued unchanged until the commencement of the Cultural Revolution; for example, his parents continued not to work and their chief occupation remained pursuing their interest in amateur Chinese opera performance groups, notwithstanding the family factory's conversion to [joint] management during the mid-1950's, and the general reduction of their economic standing that had occurred as a result).

27. *See* Yan Song, Gerrit Knaap & Chengri Ding, *Housing Policy in the People's Republic of China: An Historical Review*, in *EMERGING LAND AND HOUSING MARKETS IN CHINA* 163, 164 (Chengri Ding & Yan Song eds., 2005).

28. *See* WANG & MURIE, *supra* note 20, at 52-53.

29. *See* PEI, *supra* note 14, at 4-5; *see also* William Soileau, *Past is Present: Urban Real Property Rights and Housing Reform in the P.R.C.* 11-12 (May 20, 1994) (unpublished thesis, University of Washington School of Law) (on file with Gallagher Law Library, University of Washington School of Law) (Portions of the thesis were subsequently published as follows: William Soileau, *Past is Present: Urban Real Property Rights and Housing Reform in the People's Republic of China*, 3 *PAC. RIM L. & POL'Y J.* 299 (1995)). (noting that "the property of the Zhiang, Song, Kong and Chen families, for example, was singled out for confiscation in one central government opinion."). For policies specific to Shanghai, *see* Shanghai City Local Records Office, *Expropriation of Public Property, Enemy Property*, <http://www.shtong.gov.cn/node2/node2245/node64514/node64521/node64555/node64565/userobject1ai58272.html> (last visited Oct. 9, 2007); Shanghai City Local Records Office, *Chu Li Wai Guo Ren Zhan You de Fang Di Chan*, [Dealing with Foreigners Occupying Real Estate], <http://www.shtong.gov.cn/node2/node2245/node64514/node64521/node64555/node64565/userobject1ai58273.html> (last visited Oct. 9, 2007) (indicating that in Shanghai, property owned by foreigners and foreign enterprises was confiscated, voluntarily transferred, and recovered from churches).

30. *See* RANDOLPH & JIANBO, *supra* note 13, at 14.

31. *See* PEI, *supra* note 14, at 5.

32. *See* WANG & MURIE, *supra* note 20, at 56-59 (in 1957, seventeen major cities reported that average floor space per person was less than three square meters); *see also*

because urban landlords sold, gifted or divided up their property in fear of confiscation.³³ The shortage was exacerbated by the government's focus on investing resources in the industrial and military sectors to the detriment of other sectors such as farming and housing.³⁴ Housing was considered a "non-productive" investment and "authorities labeled any attempt to improve housing conditions as 'revisionist.' The emphasis at that time was upon 'production first, living conditions later.'"³⁵ In Shanghai, the housing shortage created inequalities in housing stock. Estimates indicate that fifteen percent of Shanghai's population lived "in post-1949 housing with an average of over four square meters per person, and the remaining 85 per cent [of the population] living in the pre-1949 old stock with an average of less than two square meters per person."³⁶ The Shanghai Housing Administrative Bureau actively persuaded housing owners with excess space to move into smaller dwellings or sublet rooms, resulting in single-family dwellings occupied by multiple families.³⁷

In the mid-1950s, the government began socializing the means of production in the industrial, agricultural and handicraft sectors.³⁸ At the same time, it took its first steps toward housing socialization—through the introduction of rent control mechanisms.³⁹ Rent control was a means

Christopher Howe, *The Supply and Administration of Urban Housing in Mainland China: the Case of Shanghai*, 33 CHINA Q. 73, 79-80 (1968).

33. See WANG & MURIE, *supra* note 20, at 59.

34. See Song et al., *supra* note 27, at 164; Wang Yong Xian, China's Housing System Reform Process of Review (Oct. 23, 2007), http://www.lrn.cn/zjtg/society/Discussion/200710/t20071023_160507.htm ("From 1958 to 1977, for 20 years, China implemented its housing system, but during that time, the Chinese government adhered to the development of production first, the scale of investment and construction in basic housing was reduced year after year, thus, inadequate housing supply has become a serious social problem.").

35. See Yok-shiu F. Lee, *The Urban Housing Problem in China*, 115 CHINA QUARTERLY 387, 388 (1988); see also Xiangming Chen & Xiaoyuan Gao, *China's Urban Housing Development in the Shift from Redistribution to Decentralization*, 40 SOCIAL PROBLEMS 266, 268 (1993) (estimating that housing investment in China from 1953 to 1975 remained under 10% as compared with 23% in the United States and 18% in Japan and the Soviet Union from 1958 to 1974); Jieming Zhu, *The Changing Mode of Housing Provision in Transitional China*, 35 URBAN AFFAIRS REVIEW 502, 507 (2000) ("Housing development was consistently kept very low in proportion to the total capital investment over three decades. State investment in urban housing as a proportion of gross national product (GNP) averaged only 0.78% from 1949 to 1978.").

36. Howe, *supra* note 32, at 80.

37. See LYNN T. WHITE III, CAREERS IN SHANGHAI: THE SOCIAL GUIDANCE OF PERSONAL ENERGIES IN A DEVELOPING CHINESE CITY, 1949-1966 183 (1978). Individuals who would not give up housing space voluntarily were criticized in residential street committee or work units meetings. See *id.*

38. See WANG & MURIE, *supra* note 20, at 72.

39. See *id.* at 59-63.

to curb exploitation of the masses by use of excessive rents.⁴⁰ Faced with increasing complaints about high rents and uneven rents levels, urban rent control standards were implemented.⁴¹ Over the course of time however, the rent control system contributed to the deterioration of the housing stock as rental income was too low to cover the cost of repair and maintenance.⁴²

1956–1965

In 1956, the “Socialist Transformation” movement was launched in which rural farmland was collectivized and businesses were nationalized.⁴³ Land and housing policies became increasingly politicized under renewed efforts to socialize Chinese society.⁴⁴ The central government urged local governments “firstly to strengthen state control of the private housing market; secondly to transfer the ownership of private housing to the public sector.”⁴⁵ The Housing Administrative Bureau,⁴⁶ the government agency charged with managing and allocating housing, faced continued resistance from landlords and property owners to relinquishing their excess housing stock.⁴⁷ Under a new campaign

40. See Song et al., *supra* note 27, at 164.

41. See WANG & MURIE, *supra* note 20, at 60-61.

42. See Lee, *supra* note 35, at 393-94 (funds that could be used for new housing construction were entirely needed for repair and maintenance, thereby reducing the amount available for new construction); see also WANG & MURIE, *supra* note 20, at 62; PEI, *supra* note 14, at 8.

43. PEI, *supra* note 14, at 6.

44. See Howe, *supra* note 32, at 83 (“[The] appearance of editorials in the People’s Daily with titles such as ‘Thoroughly Solve the Problems of Workers’ and ‘Staff Livelihood Hardships’ and ‘Solve the Accommodation Problems of Workers and Staff’ unleashed in Shanghai and in other cities demands which put tremendous pressure on the Building and Land Bureau. . . . In 1957 during the Hundred Flowers and rectification campaigns, Bureau officials were given a rough time. One report stated that four hundred wall posters appeared in the Bureau. . .”).

45. WANG & MURIE, *supra* note 20, at 77.

46. In Chinese known as the “房地产管理局.”

47. The term “excess” referred in Shanghai to houses over 150 square meters in downtown areas and houses over 70 square meters in the suburbs. Shanghai Di Fang Zhi Bang Gong Shi [Shanghai City Local Records Office], *Si Ying Fang Di Chan She Hui Zhu Yi Gai Zao* [Socialist Transformation of Private Real Estate], <http://www.shtong.gov.cn/node2/node2245/node64514/node64521/node64555/node64565/userobject1ai58274.html> (last visited Nov. 12, 2007); see also Howe, *supra* note 32, at 82 (“The problems faced by the Bureau in this work appear to have been formidable. In particular, the obstinacy and unrealistic demands of individuals and enterprises seem to have been a major obstacle in the quest for efficient use of this scarce resource. It was reported, for instance, that units hung on to office space at standards of up to 20 square metres per person, rather than agreeing to relinquish anything for other residential or non-residential purposes. The Bureau employed 18 people whose full-time work consisted of searching Shanghai for under-utilised floor space, and then trying to persuade occupants to agree to rational rearrangement schemes.”). Unable to meet the demand for space, the

called “the Socialist Transformation of Private Housing,” urban landlords were targeted and their rental properties were “brought into state control through joint state-private ownership, unified management and rent retention with state supervision.”⁴⁸

Despite the political overtones of the effort, the methods attempted to follow a rules-based approach; in other words, upon adoption of the policy, the central government delegated authority to the local governments to use size limits to determine how properties would be treated. Local governments were to assume control of rental housing over certain size limits.⁴⁹ The average national dimension of residence requiring seizure by the government of rental housing was 150 m² (about 10 rooms) in large cities, 100 (6-7 rooms) in middle-sized cities and 50 to 100 (3-6 rooms) in small cities and towns.⁵⁰ Housing used for personal living was not to be socialized.⁵¹ The government assumed responsibility for operating the real estate and in exchange, the landlords were initially minimally compensated through receipt of rental income for a certain period of time.⁵² At times, rules and limits were inconsistently applied and resulted in instances of housing under the size limits as well as housing for the owners’ personal use being confiscated.⁵³

Apart from reallocation of housing owned by individual citizens, the government also implemented socialized housing through the “danwei” or “work unit” system.⁵⁴ Under this system, all workers were assigned

Bureau came under criticism. See B. MICHAEL FROLIC, MAO’S PEOPLE: SIXTEEN PORTRAITS OF LIFE IN REVOLUTIONARY CHINA 229–34 (1980) (a widow whose living space was so crowded she slept in the kitchen with her feet sticking out in the hall described the housing bureau as “just a bunch of people sitting in an office making rules and shuffling papers without regard to the people’s needs”). The widow eventually took over a vacant apartment in her unit much to the chagrin of the housing bureau. See *id.*

48. WANG & MURIE, *supra* note 20, at 72.

49. See *id.* at 77. These size limits would later be used as a basis for returning confiscated property during the 1980s. See *infra* Part 4.

50. PEI, *supra* note 14, at 6; WANG & MURIE, *supra* note 20, at 83. But see Soileau, *supra* note 29, at 28-29 (noting that there was significant variation at the local level on the square meter limit or ceiling for confiscation of rental property as there was no single authoritative national standard); see also Howe, *supra* note 32, at 92 n.40 (noting that standards were not applied uniformly). “Urban political activists, quite understandably, could not distinguish between the rights of house owners and those of the owners of factories and other forms of property which were freely taken over in 1956.” *Id.*

51. See PEI, *supra* note 14, at 6.

52. See PEI, *supra* note 14, at 6-7; RANDOLPH & JIANBO, *supra* note 13, at 10 (stating that the period of time was usually fifteen to twenty years, but that the payment period was in actuality shorter); WANG & MURIE, *supra* note 20, at 78. Teacher 某 recounted that by the mid-1950s, “All housing was nationalized. You paid rent to the housing bureau and they handled repairs.” See Interviews of Teacher 某, *supra* note 4.

53. See PEI, *supra* note 14, at 7.

54. See Song et al., *supra* note 27, at 165.

housing and other benefits through their work unit or “danwei.” The private housing market was eliminated as housing and land were nationalized and the government, via the “danwei,” assumed control over rent, taxes, repair and investment in new housing.⁵⁵ Through these measures, the government had effectively eliminated incentives for investing or developing private-sector housing by controlling the availability of land and setting rent controls to an unprofitable level.⁵⁶ The table below illustrates the transition from private to public housing:

Share of Housing in the Private Sector versus Public Sector⁵⁷

1949	100%
1956	52%
1958	23%
1977	15%

The private market for land and housing was eliminated in the course of the socialization process as these commodities became benefits of the welfare state and not subject to market forces.⁵⁸

PART 2—THE CULTURAL REVOLUTION 1966-1976⁵⁹

In 1966, the Cultural Revolution⁶⁰ initiated the most chaotic period in the history of China’s urban housing and property⁶¹ (and in Chinese post-1949 society generally).⁶² The social revolution engendered by

55. *See id.* The government did not expressly prohibit private purchase and sale transactions in housing, but functionally, such transactions became increasingly difficult. *See id.* Few people had funds to purchase a house or apartment and those that did, did not necessarily want to risk having their house confiscated later. *See Kang Chao, Industrialization and Urban Housing in Communist China*, 25 J. ASIAN STUD. 381, 391 (1966).

56. *See Song et al., supra* note 27, at 165.

57. *Id.*

58. *See id.*

59. *See* Appendix.

60. For an exhaustive treatment on the origins of the Cultural Revolution, *see* RODERICK MACFARQUHAR, *THE ORIGINS OF THE CULTURAL REVOLUTION (1974-1997)*. For a history of the Cultural Revolution, *see* YAN JIAQI, *TURBULENT DECADE: A HISTORY OF THE CULTURAL REVOLUTION (1996)*.

61. *See RANDOLPH & JIANBO, supra* note 13, at 17.

62. The impacts on education, social stability, family and work life have been documented by numerous writers. *See e.g.*, JUNG CHANG, *WILD SWANS: THREE DAUGHTERS OF CHINA* (Simon & Schuster 1991); NIEN CHENG, *LIFE AND DEATH IN SHANGHAI* (Penguin Books 1988); YUE DAIYUN & CAROLYN WAKEMAN, *TO THE STORM: THE ODYSSEY OF A REVOLUTIONARY CHINESE WOMAN* (1985); FENG JICAI, *TEN YEARS OF MADNESS: ORAL HISTORIES OF CHINA’S CULTURAL REVOLUTION (1996)*; RUTH

Mao's exhortations took a number of different forms. In the housing sphere, increased calls for socialist transformation ended further rental compensation to landlords that had been undertaken a decade earlier.⁶³ Housing and land sank into disrepair⁶⁴ as "urban development completely stagnated, and the urban landscape was extremely rundown."⁶⁵ During the ensuing turmoil, personal "bourgeois" belongings,⁶⁶ property and housing were confiscated from disfavored

EARNSHAW LO, *IN THE EYE OF THE TYPHOON: AN AMERICAN WOMAN SHARES IN THE UPHEAVALS OF CHINA'S CULTURAL REVOLUTION 1966-1978* (Harcourt Brace Jovanovich 1980); ZI-PING LUO, *A GENERATION LOST: CHINA UNDER THE CULTURAL REVOLUTION* (1990); NANCHU, *RED SORROW: A MEMOIR* (2001); WU NINGKUN, *A SINGLE TEAR: A FAMILY'S PERSECUTION, LOVE, AND ENDURANCE IN COMMUNIST CHINA* (1993); CHIHUA WEN, *THE RED MIRROR: CHILDREN OF CHINA'S CULTURAL REVOLUTION* (1995); RAE YANG, *SPIDER EATERS: A MEMOIR* (1997); GAO YUAN, *BORN RED: A CHRONICLE OF THE CULTURAL REVOLUTION* (1987). For alternative memoirs written in response to the narratives focusing on violence and persecution during the Cultural Revolution, see *SOME OF US: CHINESE WOMEN GROWING UP IN THE MAO ERA* (Xueping Zhong et al. eds., 2001); YE WEILI & MA XIAODONG, *GROWING UP IN THE PEOPLE'S REPUBLIC: CONVERSATIONS BETWEEN TWO DAUGHTERS OF CHINA'S REVOLUTION* (2005). For a summary of Cultural Revolution literature generally, see Joseph Esherick et al., *The Chinese Cultural Revolution as History: An Introduction, in THE CHINESE CULTURAL REVOLUTION AS HISTORY 1-28* (Joseph Esherick et al. eds., 2006).

63. See WANG & MURIE, *supra* note 20, at 86; see also RANDOLPH & JIANBO, *supra* note 13, at 10.

64. One resident described the lack of housing upkeep as follows:

We tried our best to make the neighborhood look nice and clean; that wasn't always so easy, however, because the city Housing Administration was responsible for maintaining and repairing the buildings and they wouldn't give us any money for painting or repairing. . . . When there was a real emergency and the Housing Administration refused to come (for example, if a ceiling had fallen down), we put pressure on the street committee to get the Housing Administration to do something. We weren't always successful, but at least we tried.

FROLIC, *supra* note 47, at 229.

65. Shenjing He & Fulong Wu, *Property-led Redevelopment in Post-Reform China: A Case Study of Xintiandi Redevelopment Project in Shanghai*, 27 *J. OF URB. AFF.* 1, 3 (2005).

66. In describing Red Guard raids on the house of a Mongol princess, one author states:

now she [the Mongol princess] was dubbed a representative of feudalism and was consigned to a small, shabby room close to my parents' house. I would often see her when I visited them, one-half of her head completely shaved in what was called a *yinyang* haircut, a humiliating punishment that the Red Guards had also inflicted on perhaps a half dozen people at Beida [Beijing University]. . . . The Red Guards had confiscated from her former home two trunks of her clothing and shoes, saying derisively that the feeding of this parasite for so many years was truly a consequence of following the bourgeois educational line.

YUE DAIYUN & CAROLYN WAKEMAN, *TO THE STORM: THE ODYSSEY OF A REVOLUTIONARY CHINESE WOMAN 169-70* (1985).

groups such as intellectuals,⁶⁷ religious practitioners⁶⁸ and capitalists.⁶⁹ Overseas Chinese,⁷⁰ and those with connections to foreigners,⁷¹ suffered

67. See ANCHEE MIN, RED AZALEA 6-9 (1994) (author, whose parents were intellectuals, recounts being harassed by neighbors into moving to smaller quarters); DAIYUN & WAKEMAN, *supra* note 66, at 235-36 (explaining that Mr. Jian, Vice-President of Beijing University, was attacked during the Cultural Revolution). The author notes that

Jian and his wife had subsequently been removed from their comfortable house on campus and assigned a small, shabby, one-room structure. . . . They had no kitchen, for example, and had to keep their coal stove outside, underneath the porch just beside the street, because of the danger from fumes if they were to cook inside. Just to harass this elderly couple, neighborhood children would shout, "Since you are counter-revolutionaries, it is better that you don't eat," and throw handfuls of water or dirt onto their stove to put out the cooking fire.

Id. Kindergarten Principal 某 came from an intellectual family that had been branded "牛鬼蛇神" (ox ghosts and snake spirits) as part of the Cultural Revolution. See Interview with Kindergarten Principal 某, in Shanghai, P.R.C. (Mar. 16, 2007). Her father had been a graduate student of English at the University of Chicago during the early Republican period and had later become a professor at Tsinghua, but the family had fled to Shanghai at the outset of the Sino-Japanese War in 1937. See *id.* Because of the unsettled situation at that time, the family had initially rented an entire 洋房 (Western house), but as the father had retreated with the government-in-exile to the wartime capital of Chongqing, and remittances were difficult, worsening financial circumstances led the family members remaining in Shanghai to move to the second floor of a 里弄房 (lane house) in a compound on Fumin Lu that had been developed by China's then four largest banks to house their employees. See *id.* The teacher's mother had a younger sister married to a senior executive at one of the banks, and it was through this connection that the general rule requiring bank employment as a condition of residency in the compound was waived. See *id.* The family sublet the second floor from the wife of a bank employee who had also been relocated to Chongqing. She and her son lived on the third floor, and the two families used the first floor in common. See Interview with Kindergarten Principal 某, *supra* note 67. After the Revolution, the legal occupants [whether they in fact owned title to the house was unclear, but the authors suspect that they did not own the house] of the house fled to Taiwan, but Kindergarten Principal 某's family continued to occupy the second floor (two rooms, a bathroom and a mezzanine room (庭之间), paying rent to the Housing Bureau. See *id.* At the time of the Cultural Revolution, the local 房老虎 (Housing Bureau Tiger) came to the house and affixed strips of paper to the door of the mezzanine room, affixing Kindergarten Principal 某's chop as an indication of her assent (she was not at home at the time and her father feared opposing the cadre); the cadre informed Kindergarten Principal 某's father that as the only remaining family members resident were Kindergarten Principal 某 and her then elderly father and mother, there was no need for them to have so many rooms. See *id.*

68. See DA CHEN, COLORS OF THE MOUNTAIN 122 (Random House 1999) (describing a Christian family whose mansion in Putien was confiscated and used as Red Guard Headquarters while the family was sent to the countryside to live in a dirt hut, formerly an animal pen); KANG ZHENGGUO, CONFESSIONS: AN INNOCENT LIFE IN COMMUNIST CHINA 10, 418 (W.W. Norton & Co. 2007) (relates the story of Grandfather Kang, a devout Buddhist). In 1911, Grandfather Kang purchased a two acre piece of property and house in urban Xian and turned it into Buddhist retreat called "Silent Garden." See *id.* Unfortunately, in 1965, during a campaign called the "Four Cleanups," a neighboring commune confiscated the property and buildings at Silent Garden. See *id.* Grandfather Kang and his wife were relegated to living in a few rooms while the remaining rooms were sealed off and the good furniture was marked for confiscation. See *id.* By 1966, the commune evicted Grandfather Kang and his wife and moved them to a cramped flat

where they lived out the rest of their lives. *See* ZHENG GUO at 418. After Mao's death, relatives instituted a legal battle to recover Silent Garden and in the mid-1980's received one and a half acres and some buildings. *See id.* Later, they sold the property to a real estate development company and it was demolished to build a new housing development. *See id.*

69. *See* Zhang Zhen, *The Production of Senses in and out of the "Everlasting Auspicious Land:" Shanghai, 1966-1976*, in *SOME OF US: CHINESE WOMEN GROWING UP IN THE MAO ERA* 155, 161 (Xueping Zhong et al. eds., Rutgers University Press 2001) (describing the struggles and ridicule endured by a family designated as petty capitalists during class struggle at the outset of the Cultural Revolution because they had owned a small electrical equipment factory); *see also* NIEN CHENG, *LIFE AND DEATH IN SHANGHAI* 387 (Penguin 1988) (1986) (recounting a story of a capitalist family who lost their home).

Because my husband was a capitalist, we were thrown out of our home and had to live in a garage when the Red Guards looted the house. Can you imagine seven of us all living in the space of a garage? We had to walk more than two hundred yards to get water and to go to the toilet. The Red Guards made me sweep the streets, and my husband was beaten up and struggled against I don't know how many times. We are only a small, insignificant capitalist family. We didn't have a lot of money. My husband had a small workshop making face cream at the time of Liberation.

Id.

70. *See* Interview of Teacher 某, *supra* note 4. For example, Teacher 某 recounted the experience of the 吴 (Wu) family connected with the 上海申新纺织九厂 [Shanghai Shenxin Ninth Textile Factory—the majority of the equity in the company belonged to the 荣 (Rong) family, but Mr. Wu as a factory manager, had acquired a minority interest]. *See id.* Red Guards affiliated with 中国中学 [China Middle School] seized their family home. *See id.* The Red Guards forced the family (then comprised of two adults and three children) to vacate the house (which was a 洋房 or Western style house) and relocate to a single room on the first floor (Shanghaiese consider the first floor to be an unfortunate location for a home, as first floors of Shanghai houses are often prone to dampness and more vulnerable to burglary) in a house on Taiyuan Lu. *See id.* These events in themselves were not unusual, but the irony was the Mr. Wu had a factory in Hong Kong. *See* Interview of Teacher 某, *supra* note 4. He largely resided in Hong Kong in the years following the establishment of the People's Republic, and had only two months previous to the start of the Cultural Revolution in August 1966, ventured that the situation was safe enough to move back and take up permanent residence in Shanghai. He was not allowed to return to Hong Kong until the 1970's. *See id.*

71. *See* Interview with Doctor 某, in Shanghai (May 2007). For example, Dr. 某, a doctor who became China's first radiology specialist in the 1930's and who studied in Europe, returned to China in 1952 after establishment of the People's Republic. *See id.* In the years after his return, Dr. 某 held positions with various Shanghai-based hospitals and research organizations. *See id.* Dr. 某 owned a three-storey Western style house (洋房) on 188 Kangding Road (康定路). *See id.* During the Cultural Revolution, people like him, who spoke foreign languages and who had studied abroad, were subject to attack. *See* Interview with Dr. 某, *supra* note 71. Dr. 某's house was confiscated and a medically-oriented work unit took it over for use as office space. *See id.* In another example, a foreign teacher voluntarily gave up her space in university housing to others after hearing that "mass organizations were going to reform the housing distribution as part of the revolutionary program." RUTH EARNSHAW LO, *IN THE EYE OF THE TYPHOON: AN AMERICAN WOMAN SHARES IN THE UPHEAVALS OF CHINA'S CULTURAL REVOLUTION 1966-1978* 56-58 (Harcourt Brace Jovanovich 1980).

tremendously as they usually had larger houses and somewhat higher income levels.⁷²

Ideological campaigns emphasized “spiritual purity over material incentives.”⁷³ Policies related to social comfort and welfare were condemned as capitalist and revisionist.

The radicals even attacked improvement of housing quality or new construction as bourgeois luxury, and classified families who owned private housing in urban areas as reactionaries. The radicals or the Housing Bureau officials forced them to share their housing with other families⁷⁴ or in an extreme situation evicted them without compensation.⁷⁵

Privately owned houses were illegally seized⁷⁶ or invaded by squatters.⁷⁷

72. See WANG & MURIE, *supra* note 20, at 88 (“Statistics from 20 major cities revealed that during the ten years of the Cultural Revolution, houses belonging to 5715 such households were either confiscated or taken over by the city government or other public bodies such as the Red Guards. The total area affected was 0.5 million m². . . . In Shanghai alone, 1234 such households were attacked.”).

73. G.C. Lim & M.H. Lee, *Political Ideology and Housing Policy in Modern China*, 8 ENV'T AND PLANNING C: GOV'T AND POL'Y 477, 482 (1990).

74. See Interviews of Teacher 某, *supra* note 52. Teacher 某 recounted how his family was forced to relinquish the first and second floors of their lane house on Gao'an Lu, for the basement, so that other families could occupy the other rooms. See *id.*

75. Lim & Lee, *supra* note 73, at 482. Kindergarten Principal 某 recounted how one of her family's relatives had owned a Western style house across the street from theirs on Fumin Lu, near Changle Lu. See Interview with Kindergarten Principal 某, *supra* note 67. The Red Guards made them leave (literally “swept them out the door” 扫地出门)—forcing them to relocate to a single mezzanine room in another house. See *id.* Their former house had three floors with three bathrooms and three bedrooms. See *id.* Two teams of Red Guards vied for control over the house. See *id.* One of the groups broke through the roof, tossing heavy objects down through all three floors of the house, damaging it severely. See Interview with Kindergarten Principal 某, *supra* note 67. After the Cultural Revolution, and the fall of the Gang of Four, the family was able to get the house back, but received no money to repair the damages. See *id.* They had to supply those funds themselves. See *id.*

76. See RANDOLPH & JIANBO, *supra* note 13, at 17 (“Even incomplete statistics report that in 1974, 10,551 families' rights in houses in Shanghai were encroached upon to varying degrees, and 881,000 sq. m totally seized. For example, only in Shanghai, 1,031 families of Hong Kong, Macao or Taiwan compatriots, overseas Chinese or their relatives were deprived of houses with a total size of 141,000 sq. m. At the same time, many state-owned or collective-owned houses were forcefully occupied or destroyed illegally.”); see also WANG & MURIE, *supra* note 20, at 237-38 (“A central government document reported that in 130 major cities and 265 towns . . . 340,000 households' housing was either confiscated or illegally taken over by the government. The total housing area affected was 27.6 million m²—about 20 percent of all private housing. About half of the housing was owner occupied family houses and the other half was for renting.”).

77. See LYNN T. WHITE III, *POLICIES OF CHAOS: THE ORGANIZATIONAL CAUSES OF VIOLENCE IN CHINA'S CULTURAL REVOLUTION* 291-92 (Princeton University Press 1989). Note, the authors have not been able to identify persons who squatted or took possession of residences during this period; the reasons for the difficulty in identifying such persons

How did housing come to be the focus of animus during the Cultural Revolution? On August 8, 1966, the 11th Plenum of the Chinese Communist Party Central Committee adopted the “Decision Concerning the Great Proletarian Revolution” (also known as the 16 Points).⁷⁸ The 16 Points provided as follows:

Although the bourgeoisie has been overthrown, it is still trying to use the old ideas, culture, customs and habits of the exploiting classes to corrupt the masses, capture their minds and endeavour to stage a comeback. The proletariat must do the exact opposite: it must meet head-on every challenge of the bourgeoisie in the ideological field and use the new ideas, culture, customs and habits of the proletariat to change the mental outlook of the whole of society. At present, our objective is to struggle against and overthrow those persons in authority who are taking the capitalist road, to criticize and repudiate the reactionary bourgeois academic “authorities” and the ideology of the bourgeoisie and all other exploiting classes and to transform education, literature and art and all other parts of the superstructure not in correspondence with the socialist economic base, so as to facilitate the consolidation and development of the socialist system.⁷⁹

As young people became caught up in the call to revolution, their iconoclasm soon took aim against anything established or old,⁸⁰

are complex: many Chinese remain deeply troubled and sometimes, ashamed, of the events that occurred during that infamous decade, so are reluctant to discuss the events of the Cultural Revolution at all, much less in relation to actions that in retrospect are generally viewed as egregious and wrongful. Further, despite the ambitious, and in many cases, admirable goals of the Chinese Communist Party in raising the overall standard of living of China’s citizens, in fact the families of those who were poor or uneducated or rootless at the time of the Cultural Revolution, have often remained on the lower rungs of China’s economic ladder, as evidenced by the fact that many of these subdivided dwellings remain occupied by families who often originally took residence four decades ago.

78. See RODERICK MACFARQUHAR, *THE ORIGINS OF THE CULTURAL REVOLUTION 3: THE COMING OF THE CATAclysm, 1961-1966* 460-65 (Oxford University Press 1997); ROBINSON ROJAS, *LA GUARDIA ROJA CONQUISTA CHINA* 430-40 (Editorial Prensa Latinoamericana 1968), translated at <http://www.rrojasdatabank.info/16points.htm> (last visited Oct. 1, 2007) (providing an English translation of the 16 Points).

79. See ROJAS, *supra* note 78.

80. Multiple references to destruction of traditional Chinese art, religious artifacts and architectural elements appear in materials addressing the events of this period. See, e.g. CHENG, *supra* note 69, at 91 (“On the wall over my bed, where a painting of flowers had hung, someone had written in lipstick, ‘Down with the Running Dog of Imperialism!’ The Red Guards had punched holes in the panels of the lacquered screen. Hanging on the frame of the screen were strips of colored paper with slogans such as ‘Long Live the Dictatorship of the Proletariat’ and ‘Down with the Capitalist Class.’”); D.W. FOKKEMA, *REPORT FROM PEKING: OBSERVATIONS OF A WESTERN DIPLOMAT ON THE CULTURAL REVOLUTION* 19 (McGill-Queen’s University Press 1972) (“[W]orry about easier targets for iconoclasm was justified. . . . Although Red Guards were admitted to various rooms of the old imperial palace, which could serve as dormitories, nothing was

bourgeois⁸¹ or fashionable,⁸² foreign or considered “aristocratic” (贵族化的).⁸³

On August 10, students went to the Central Committee’s office to express support for the “16 Points” and were addressed by Chairman Mao, who uttered words that later became famous: “You must concern yourselves with state affairs and carry the great proletarian cultural revolution through to the end.”⁸⁴ Eight days later, Mao and Lin Biao⁸⁵ stood at Tiananmen wearing red armbands that for the first time bore the legend 红卫兵 (Red Guard), as one million young people marched past.⁸⁶ As the Revolution spread and the power of the Red Guards surged, chaos ensued and invasions of homes, either to remove possessions representing the “four olds”⁸⁷ or the residents themselves⁸⁸ (or in some cases, both), followed. There was no central proclamation or order mandating eviction.⁸⁹ Unlike the Socialist Transformation

destroyed here. However, the Summer Palace was damaged. The paintings in the extensive galleries, where they represented scenes from the bourgeois and feudal past, were covered with pink or white paint.”).

81. See Interviews of Teacher 某, *supra* note 52. Teacher 某 recounted that on August 18th, 1966, as the Red Guards surged in the streets of Shanghai, his mother, upon emerging from their house, observed a Guard on the street corner snipping off the pointed toes of ladies shoes, promptly went to a store to purchase a pair of sensible cloth shoes and hid away her beloved high-heeled shoes. See *id.*

82. See FOKKEMA, *supra* note 80, at 18 (“For Chinese it was dangerous to wear jewelry to dress in Western style. The ‘Hong Kong’ style was officially disapproved of in the press.”).

83. See ANNE F. THURSTON, ENEMIES OF THE PEOPLE 117 (Knopf 1987) (describing how some ransacked houses of families in Shanghai were turned into “living museums” of foreign corruption and excess).

84. FOKKEMA, *supra* note 80, at 15-16.

85. It was during this August meeting, the eleventh session of the Central Committee that Lin Biao was named as Mao’s successor. See FOKKEMA, *supra* note 80, at 14.

86. See *id.* at 17.

87. See Thurston, *supra* note 83, at 170 (the Bai family “[k]nowing that their house would be searched, they burned all their books that the Red Guards might think were ‘four olds.’ . . .”).

88. See JUNG CHANG & JON HALLIDAY, MAO: THE UNKNOWN STORY 521 (2005) (“The regime squeezed something else out of these raids: housing space. The housing shortage was acute, as virtually no new dwellings had been built for ordinary urban residents under the Communists. Now the battered families who had been raided were squeezed into one or two rooms, and neighbors were moved into the rest of the raided houses, often resulting, not surprisingly, in excruciatingly bitter relations.”); see also NANCHU, RED SORROW: A MEMOIR 37 (2001) (“Misfortunes always come hand in hand. In the following weeks, the Hudong University Red Guards drove us out of our spacious apartment and moved our belongings into the compound’s storage room on the fourth floor—a small two-room apartment with thick dust disturbed only by mice and scorpions. Layers of cobwebs hung in the corners. The smell of mold was overwhelming.”).

89. There are examples of Red Guard proclamations regarding the confiscation/surrender of houses. See, e.g., Beijing Shi Si Zhong HongWeiJun [Beijing 14th Middle School Red Guards], Gao Quan Guo Tong Bao Shu [Statement to the National People] (Aug. 26, 1966), http://www.peacehall.com/news/gb/z_special/2002/

movement of the prior decade, no rules or regulations were adopted by agencies to administer the policy aims of the Cultural Revolution as articulated by Mao.⁹⁰ Rather than rules or orders dictating how cases would be treated, events were driven by an overall policy, which was described by one interview subject as “君让臣死，臣不得不死” (“*If the Emperor orders one to die, one cannot not die*”). In other words, if the Red Guards or self-styled members of the proletariat wanted you to do something, you did, including giving up rooms in your home or leaving your home altogether.⁹¹ That judgment—rendered by the “proletariat”—replaced earlier efforts at predictable, rules-based decision-making.⁹²

A pattern emerged that started with someone initiating a criticism of an individual or family. The criticism might come from a group of Red Guards, a member of the proletariat⁹³ or work team.⁹⁴ Not only was

08/200208270238.shtml (“Attention homeowners: before liberation you used the bloody and sweat-stain money from the exploited laboring masses to purchase real estate. And today, you are still receiving rent, continuing to exploit the laboring masses. You parasites who extract the blood and sweat of the laboring masses must cease your bloodsucking ways, and allow all real estate to belong uniformly to the public. Residents, insist on not paying rent to your landlords! Revolutionary comrades in each housing management bureau, we hope that you will handle the procedures necessary to return real estate to the public domain and immediately take control of all real estate.”); Ge Ming Chang Yi Shu [Revolutionary Proposal] (Aug. 22, 1966), <http://www.xfwindow.com/bbs/article.asp?ntypeid=54&titleid=47318> (advocating among other measures, the return of private housing to the public domain and the ceasing of payment of rental amounts to landlords).

90. RANDOLPH & JIANBO, *supra* note 13, at 17 (“Any semblance of an orderly comprehensive real estate management system was either abandoned or distorted during the Cultural Revolution. . . . Real property legislation was at a virtual dead end during this period.”).

91. See Interview with Retired Bureau Chief 某, in Shanghai, P.R.C. (Mar. 6, 2007) (describing that Mr. 某 was a bureau chief of a District-level Housing Bureau in one of the districts comprising the former-French Concession that possesses some of the most distinctive and lovely homes in Shanghai); see also ZI-PING LUO, A GENERATION LOST: CHINA UNDER THE CULTURAL REVOLUTION 19-20 (1990) (In 1966, the author recounts, “[a]fter my parents were convicted in May, Mother was immediately put into jail, and the remaining five of us were chased into one of our four rooms. The other three rooms were now occupied by a worker’s family of seven people. Upon moving in, the worker stood at the door to our room and beat his shoes together while singing, ‘Purge the bourgeois pollution, Join the Cultural Revolution!’ Eventually he switched to shouting, ‘It’s justified to rebel!’”). In 1968, the housing bureau moved the family to a garage with no kitchen and no bathroom. See *id.* at 108.

92. See Interview of Retired Administrator 某, in Shanghai, P.R.C. (Mar. 20, 2007).

93. See YUE DAIYUN & WAKEMAN, *supra* note 66, at 176. (“I returned home to find a poster with the commanding words ‘legal order’ on the wall outside my house. In smaller characters the announcement declared that the people within had no right to live in such surroundings and must give up their fine living quarters to the working class. We were to move all our belongings into three rooms. . . .”).

94. By 1968, factionalism among the Red Guards and their supporters, increasing violence and anarchy prompted the central government to send in work teams comprised

one's person subject to criticism, but one's possessions and one's home were subject to investigation and seizure.⁹⁵ Those holding real property certificates were attacked by Red Guards as "reactionary" and in some cases, turned in their certificates to prevent seizure and criticism.⁹⁶ In some cases, the Red Guards themselves might occupy the house,⁹⁷ and in other cases, "revolutionary masses" or "revolutionary organizations" seized the space.⁹⁸ Unlike the socialist housing movement of the 1950's, no attempt to follow objective criteria guided the decision as to whose home was seized in whole or in part.⁹⁹ The only constant was that one's personal status (身份) often drove the outcome.¹⁰⁰ However, not even

of soldiers and workers to campuses. *See id.* at 230-33. However, struggle campaigns continued against class enemies until the end of the Cultural Revolution. *See id.* at 233-50.

95. *See* THURSTON, *supra* note 83, at 115-16 ("During the Cultural Revolution, Huang Chaoqun's new apartment was searched, its entire contents—furniture, books, clothes, photograph albums, jewelry, everything—removed. Huang Chaoqun was left with only the clothes on his back and not even a change of underwear. . . . Three of his family's four rooms were occupied by two revolutionary rebel families, who quarreled among themselves about how to divide the space.").

96. *See* Guo Yukuan, *Jing Zu Fang Zheng Ce Li Shi Yuan Yuan Ji Zhi Xing Xian Zhuang Diao Cha [The Historical Origins of the Rental Policy and Implementation Status Survey]* (Nov. 4, 2005), <http://www.xschina.org/show.php?id=5255>. Real property certificates that were given up or confiscated during the Cultural Revolution are sold to collectors in the second-hand market. *See id.*

97. *See* Interview with Kindergarten Principal 某, *supra* note 67.

98. *See* PEL, *supra* note 14, at 7; *see also* THURSTON, *supra* note 83, at 169 ("The Red Guards led the house searches, for instance, but it wasn't the Red Guards who actually occupied the houses. The Red Guards were young students, without families. They had no concept of family. It was serious housing problems that led to the occupation of other people's houses, and some of the revolutionary rebels had families. So there was a practical reason for occupying other people's houses. Those who did the occupying weren't satisfied with their own housing. . . . The people who did the occupying were neighbors, workers, younger cadres in the work unit."); RAE YANG, SPIDER EATERS: A MEMOIR 16 (1997) ("In 1966, when the Cultural Revolution broke out, six families who called themselves 'revolutionary masses' moved in [to her grandmother's house] without the consent of Nainai [her grandmother] or anybody else. They put Nainai, who was then bedridden with diabetes, into a small storage room that had no windows. Not even servants of the family in the old society had lived in this room. For more than five years Nainai lived there by herself. In the end, she died in it alone.").

99. *See* Interview of Retired Administrator 某, *supra* note 92.

100. *See* Interview with Kindergarten Principal 某, *supra* note 67 (recounting that she was branded as a "bull-ghost-snake-spirit" 牛鬼蛇神 as well as an "intellectual element" for her past experience with foreigners (teaching them Chinese) during the 1940's and 1950's); *see also* Interview of Retired Administrator 某, *supra* note 92. Retired Administrator 某, formerly employed by the Personnel Bureau (人事局), whose family had owned twenty houses at the time of the socialist housing reform in the 1950's indicated that "[d]uring the Cultural Revolution, there was no government (无政府); the decisions to take houses (or otherwise punish people) were made by the people (i.e., the proletariat) based on the status (身份) of the targeted person. Members of the Black Five Elements (黑五类), such as the bull-ghost-snake-spirit (牛鬼蛇神) were especially suspect." *Id.*

this was a true constant, as the object of the attack could have relatives who would be Party members or might himself be a revolutionary cadre,¹⁰¹ if the party raising the attack was audacious enough to do so, one could *not* “not die.” As the Cultural Revolution progressed, factionalism among participants and leadership became the norm; the objects of attack changed indiscriminately.¹⁰²

PART 3—POST-1976 ERA PROPERTY AND HOUSING REFORMS

In 1976, Mao Zedong died, the Gang of Four, which had controlled the government during the Cultural Revolution, was arrested and the Revolution ended.¹⁰³ Deng Xiaoping came into power in 1978 and began implementing economic reforms, including privatizing the housing sector.¹⁰⁴ The property and housing reforms¹⁰⁵ were designed to lessen the financial burden on the state, increase economic efficiency of land use and allocation, create land as an asset with value and generate tax revenue.¹⁰⁶ Legal reforms were put into place to institutionalize the

101. See THURSTON, *supra* note 83, at 170-71 (telling the fate of Bai Meihua and her little sister, whose father, a revolutionary cadre, was imprisoned during the Cultural Revolution).

Meihua and her sister were confined to a single room, and their apartment was occupied by two revolutionary rebel families. “They were young cadres, younger colleagues of my father,” explains Bai Meihua. They didn’t have any power in the ministry. But they wanted to seize power, to overthrow the old revolutionary cadres, so they became revolutionary rebels. Their whole families lived in our house and used our furniture. “The houses of the revolutionary cadres, like my father, were better than the houses of the ordinary cadres. . . .” With their home occupied by the revolutionary rebels, Bai Meihua and her younger sister ordinarily returned home only to sleep. . . . “At night, usually my sister and I would go home to sleep. But we had to wait until very, very late, until at least twelve or one o’clock, after the revolutionary rebels who were occupying our house were asleep. Sometimes we slept in the corridor just outside the front door. Sometimes we locked ourselves in the one crowded room that was still reserved for my family. Then we would wake up very early, at about four or five, and sneak out, before the revolutionary rebels had woken up.”

Id.

102. See *id.* at 169 (“You must understand that people joined the Cultural Revolution to attack or to be attacked at different times, in different ways, for different reasons. . . . Eventually nearly the whole society joined. You were either the persecutor or the persecuted. Eventually everyone suffered during the Cultural Revolution.”).

103. See YEN CHIA-CHI & KAO KAO, *THE TEN-YEAR HISTORY OF THE CHINESE CULTURAL REVOLUTION 600-609* (1988).

104. See Song et al., *supra* note 27, at 169.

105. For a discussion of the phases of housing reform from 1979 to current, see Song et al., *supra* note 27, at 171-75 and LI LING HIN, *URBAN LAND REFORM IN CHINA 58-127* (1999).

106. See Chengri Ding & Gerrit Knaap, *Urban Land Policy Reform in China’s Transitional Economy*, in *EMERGING LAND AND HOUSING MARKETS IN CHINA 9, 13-15* (Chengri Ding & Yan Song eds., 2005).

privatization of housing and land.¹⁰⁷ By implementing essentially long-term leases, called “land use rights (LURs),” the Chinese government retained ownership of land but allowed individuals to develop and transfer land under the LUR system.¹⁰⁸ The separation of land use rights from state ownership of land was an ingenious means of preserving the socialist ideology of ownership of the means of production while creating a market in urban real estate.¹⁰⁹

With the legal framework for the sale and transfer of LURs in place, the real estate market took off.¹¹⁰ In Shanghai, numerous new

107. See generally ZHONGZHI GAO, *INVEST IN CHINA: A PRACTICAL GUIDE TO REAL ESTATE LAW 15-29* (2005) (referring to Chapter 2 which lists major laws, judicial interpretations, and regulations relating to property in China); ISABELLE WAN ET AL., *A PROFESSIONAL'S GUIDE TO PRC LAND LEGISLATION 101-14* (2004) (referring to Chapter 1 which covers the Constitution, laws, regulations and local laws); RANDOLPH & JIANBO, *supra* note 13, at 18, 29-58 (referring to Chapter 2 which covers major real estate laws); JAMES M. ZIMMERMAN, *CHINA LAW DESKBOOK: A LEGAL GUIDE FOR FOREIGN-INVESTED ENTERPRISES 750* (2d ed. 2004) (listing twelve key laws and regulations on land use and land transfer). For a discussion of the Property Law of China enacted on March 26, 2007 after fourteen years of drafting and discussion, see Wang Zhaoguo, *Explanation on the Draft Property Law of the People's Republic of China*, PEOPLE'S DAILY ONLINE (Mar. 8, 2007), http://english.peopledaily.com.cn/200703/08/print20070308_355492.html; Helen H. C. Peng & David Y. Shen, *Property Law Lays Legal Foundation for Protection of Property in China*, CHINA L. REP., May 2007, at 12; Patrick Randolph, *The New Chinese Property Law: A Real Estate Practitioner's Perspective*, 21 PROB. & PROP. 14 (2007). For an English language translation of the Property Law, see Zhonghua Renmin Gongheguo Wu Quan Fa [Property Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) LAWINFOCHINA (last visited June 3, 2008). The Supreme People's Court has announced that it will issue a legal interpretation of the Property Law that may clarify how the government can be expected to apply the Property Law's provisions. See Xiao Yang, *Zui Gao Fa Yuan Jiang Zhi Ding Wu Xiang Guan Si Fa Jie Shi [Xiao Yang: The Supreme Court Will Develop Timely, Relevant Judicial Interpretations of the Property Rights Law]*, CHINA NEWS NETWORK, Mar. 30, 2007, <http://news.21cn.com/domestic/yaowen/2007/03/30/3156084.shtml>.

108. See Zhonghua Renmin Gongheguo Cheng Zhen Guo You Tu Di Shi Yong Quan Chu Rang He Zhuan Rang Zan Xing Tiao Li [Provisional Regulations of the People's Republic of China Concerning the Grant and Assignment of the Right to Use State Land in Urban Areas] (promulgated on May 19, 1990, by the State Council), translated in CHINA L. FOR FOREIGN BUS. (CCH), para. 14-716 (setting forth the legal foundation for the transfer of land use rights (LURs) in cities); see also LI LING HIN, *PRIVATIZATION OF URBAN LAND IN SHANGHAI 59* (1996) (“This is the first piece of legislation under the Land Use Rights reforms to try to structure and legalize the procedures for the conveyance of land use rights in the market mechanism.”). Land use rights were first used on a temporary basis in the “special economic zones” to attract foreign investment. See LI LING HIN, *URBAN LAND REFORM IN CHINA 24* (1999). The zones were Tianjin, Shanghai, Guangzhou and Shenzhen. See *id.* These zones served as testing grounds for new economic policies not yet available in other geographic areas. See Ding & Knaap, *supra* note 106, at 14.

109. See LI LING HIN, *URBAN LAND REFORM IN CHINA*, *supra* note 108, at 174 (1999).

110. See *China to See Real Estate Market Rise 10% Annually in 15 Years*, SINOCAST, Nov. 7, 2005, at 15:09:09, available in WESTLAW, Farnews Database; *Construction*

developments sprouted up starting in the late 1990s within the city proper, as well as in the suburbs and in the Pudong New Development Zone.¹¹¹ In the 1990's, the government launched trial measures allowing foreigners to purchase housing.¹¹² In addition, starting in 2001 it became possible for foreigners to purchase LURs¹¹³ and a number of them (not only Westerners, but also Chinese from Taiwan, Hong Kong and returned Chinese) began to do so, focusing on Shanghai's distinctive pre-1949 architecture—the gracious Art Deco apartments, whimsical villas and vernacular lilong townhouse dwellings.

Built in the 1920s and 1930s, many of these residences have gone through periods of private ownership, socialization, squatting and now privatization. Many residences that were originally single-family units

Vice Minister: PRCs Growing Real Estate Market Has 30,000 Agencies, WORLD NEWS CONNECTION, May 5, 2005 at 12:37:35, available in WESTLAW, Farnews Database; *AFP: China Warns of Overheating in Real Estate Market*, WORLD NEWS CONNECTION, July 5, 2002, available in WESTLAW, Farnews Database. Trading in real estate has become so out of control that the Chinese government has taken steps to stabilize the market. See *NDRC: Macroeconomic Controls Over China's Real Estate Market Pay Off*, XINHUA ECONOMIC NEWS, Jan. 29, 2007 at 08:48:28, available in WESTLAW, Farnews Database; *China Tightens Land Tax Collection to Cool Real Estate Market*, WORLD NEWS CONNECTION, Jan. 17, 2007 at 12:34:24, available in WESTLAW, Farnews Database; *People's Bank of China Warns of Risks in Real Estate Market*, WORLD NEWS CONNECTION, Aug. 15, 2005 at 19:34:51, available in WESTLAW, Farnews Database.

111. See David Barboza, *Hunger for Homes Drives a Building Frenzy in China*, NEW YORK TIMES, Oct. 19, 2005, at 1, available at LEXIS, News Library, Asia/Pacific Rim Stories File; Bill Savadove, *Shanghai Housing Investment Surges in Heated Market; Statistics Showing Supply has Exceeded Demand are Played Down by Developers*, SOUTH CHINA MORNING POST, Nov. 12, 2003, at 6, available at LEXIS, News Library, Asia/Pacific Rim Stories File; *Boom in Shanghai Real Estate Industry*, PEOPLE'S DAILY ONLINE, Oct. 28, 2002, available at http://english.peopledaily.com.cn/200210/28/eng20021028_105805.shtml (last visited Sept. 9, 2008); *China Expected WTO Entry Stimulates Pudong Real Estate Market*, XINHUA NEWS AGENCY, Apr. 23, 2000, available at LEXIS, News Library, Asia/Pacific Rim Stories File; Dele Olojede, *Ambitious Shanghai: City Aims to Leapfrog its Rival, Hong Kong*, NEWSDAY, June 30, 1997, at A05, available at LEXIS, News Library, Asia/Pacific Rim Stories File; Kevin Kwong, *Pudong to Ease Shanghai Growth*, SOUTH CHINA MORNING POST, July 7, 1993, at Supp. 5, available at LEXIS, News Library, Asia/Pacific Rim Stories File.

112. In the 1990's, foreigners were allowed to purchase housing in developments particularly designated for foreigners. See Dong Tai: *Shanghai Nei Wai Xiao Fang Bing Gui Hu Zhi Yu Chu* [Uniform Policies on House Sales in Shanghai Expected to Come Out Soon for Both Domestic and Foreign Residents] SOUFAN WANG [REAL ESTATE PORTAL], Feb. 15, 2001, <http://news.soufun.com/2001-2-15/26425.htm>.

113. In 2001, foreigners were allowed to purchase houses in Shanghai, without regard to designation as being developed for foreigners. See Shanghai shi guan yu ben shi nei wai xiao shang pin zhu fang bing gui de ruo gan yi jian [Several Opinions regarding Sales of Commercially Developed Housing Inside and Outside the City] (promulgated by Shanghai Development Planning Commission, Shanghai Construction & Management Committee, Shanghai Foreign Investment Working Committee, Shanghai Finance Bureau, Shanghai Urban Planning Authority and the Shanghai Housing, Land and Natural Resources Authority, June 25, 2001), <http://www.hicourt.gov.cn/law/show.asp?fileno=7612> (last visited Sept. 19, 2008).

were gerrymandered into multi-family units. Often, the original owner or resident retained occupancy of a small portion of the space, but the remainder was then divided among other residents who obtained occupancy either through government assignment during socialization or through illegal squatting during the turmoil of the Cultural Revolution.¹¹⁴ Now that the value of the land in the charming quarters of Shanghai where many of the pre-1949 homes are located has risen given the newly constituted market, there is increased interest in selling the buildings, renovating them or redeveloping the sites where they are located. Naturally, those who had rights in the homes pre-1966 have renewed interest in their fate, as do those who have a stake in them through the occupancy gained during the Cultural Revolution period. This dynamic raises several issues regarding restoration of the rights of original owners versus characterization of the rights of the later residents/squatters.

PART 4—RESTORATION OF CONFISCATED HOUSING AND CONFLICTING RIGHTS ISSUES

During the 1980s, the Chinese government embarked on a campaign to restore private property in order to redress some of the excesses and inequities of confiscation. The campaign was headed by the Ministry of Urban-Rural Construction and Environmental Protection under the auspices of the State Council.¹¹⁵ The restoration of private property depended on many factors, including when the property was confiscated and for what purpose, whether the confiscation was legal or extra legal and the status of the original owner.

Generally, properties of former Kuomintang (“KMT”) government, officials, troops and state-owned companies confiscated during the period from 1949-1955 were not returned. Additionally, urban property held by rural landlords confiscated as part of land reform was not returned. However, property of individuals who escaped from China was to be returned to their original owners or heirs provided that: 1) there was documentary evidence; 2) there were no disputes; 3) the property

114. The case of Mr. Hu is illustrative. See Guo Yukuan, *supra* note 96. Mr. Hu’s father was a capitalist and was “slandered and insulted to death” after liberation. See *id.* His houses were confiscated. Though Mr. Hu’s father was posthumously cleared in 1978, the houses were not returned and continued to be occupied by those who struggled against his father. See *id.* The Huangpu local real property management bureau told Mr. Hu that he would not get the houses back as there were thousands of families in the same situation and no new policies had been issued concerning these situations. See *id.*

115. See PEI, *supra* note 14, at 12.

fell within size limits allowing its retention that were set during the Socialist Transformation of Public Housing.¹¹⁶

Urban rental property confiscated during the Socialist Transformation of Public Housing (1956-1966) was restored if it was mistakenly socialized. Private rental houses were mistakenly socialized when: 1) the owner used the home as his or her private residence; or 2) the square footage of the house fell under the minimum levels set by national policy (150 square meters in big cities; 100 square meters in medium sized cities; 50 to 100 square meters in small cities).¹¹⁷ In the first situation, the house was to be returned to the original owner and the squatter/tenant had to find another residence. In the second situation, the ownership of the house was restored to the original owner; however, the squatter/tenant could remain in the house as a tenant and pay rent to the original owner.¹¹⁸ Original owners of property legally socialized at the specified standards cannot regain their property¹¹⁹ and those who attempt

116. *See id.* at 13. If the property was used for public purposes and could not be returned, the claimant was entitled to compensation. *See id.* The party could not claim rent or maintenance for the time the property was under government control. *See id.*

117. *See* PEI, *supra* note 14, at 14; *see also* Guanyu chengshi siyou chuzu fangwu shehuizhuyi gaizao yiliu wenti de chuli yijian [Opinion on Handling Problems Remaining from the Socialist Reform of Urban Private Rental Property (promulgated by Urban-Rural Construction and Environmental Protection Bureau, Feb. 16, 1985), <http://www.law110.com/law/lishi/28027.htm> (last visited Mar. 10, 2007) [hereinafter Opinion on Socialist Reform].

118. *See* PEI, *supra* note 14, at 14; Opinion on Socialist Reform, *supra* note 117. As tenants, the lease terms continues indefinitely, the rent is set at uniform rates by the land administration bureau, and the original owner, as landlord, is responsible for maintaining the house and property. *See* Wu Guojie, *Zai Zhongguo Cheng Zhen de Jiu Fang Chai Qian Zhong Si Ren Fang Chan De Chan Quan Ren Shi Da Shu Jia* [Private Property Owners are the Big Losers in the Old Demolished Buildings in China's Cities and Towns] (Oct. 10, 2003), <http://www.epochtimes.com/gb/3/10/10/n391271p.htm>.

119. Mr. Yang's case is a good example. *See* He Cheng, *Gang Shang Hao Zhou Peng Zhuang Shanghai Li Shi Yi Liu Jing Ying Zu Lin Hu Jian Qu Huo Yue* [Shanghai Historic Houses Meet Today's Rich Businessmen: The Previous Owners of Socialized Houses Actively Work on Getting Their Ownership Back], QING NIAN CAN KAO [Youth Reference] (Apr. 13, 2004), <http://news.sina.com.cn/s/2004-04-13/15593123692.shtml>. Mr. Yang brought suit in a Shanghai court, seeking compensation for his old house, worth over one million dollars at market prices. *See id.* Built in 1932, the house was two stories occupying 592 square meters and boasted a large 400 square meter garden. *See id.* The house was socialized in 1958 because its size exceeded limits for living space. *See id.* The Yang family vacated the premises and squeezed into a smaller residence. *See id.* The local housing department managed and rented out the house to a local police office and then a hospital. *See* Cheng, *supra* note 16. In 2003, the house was demolished. *See id.* Although the Red Guards destroyed Mr. Yang's ownership certificate during the Cultural Revolution, luckily, his uncle in Hong Kong possessed a second copy. *See id.* In 2003, Mr. Yang began contacting various governmental agencies seeking compensation to no avail and eventually, hired a Shanghai law firm to pursue his claim. *See id.* The government office rejected Mr. Yang's claim because his house was legally socialized under the local standards. *See id.* For another example of a similar situation, see Nao Ren de Shanghai Lao Si Fang [Annoying Old, Private Shanghai

to get their houses back by force will be “criticized and brought to justice.”¹²⁰ In other words, the “self-help” approach taken during the Cultural Revolution era would not be continued.

Urban private property confiscated by extra legal acts or revolutionary violence¹²¹ during the Cultural Revolution (1966-1979) was to be returned to its owners.¹²² The government estimated that a total of 28,860,000 square meters from 388,615 families had been confiscated during the Cultural Revolution.¹²³ Property of intellectuals, famous individuals and overseas Chinese (including former KMT officials) was to receive priority for return.¹²⁴ A series of special policies were developed to address property confiscated from overseas Chinese¹²⁵

Homes], XIAO KANG ZA ZHI [AFFLUENT MAGAZINE], Jan. 11, 2005, <http://news.runsky.com/homepage/n/civi/n/userobject1ai517767.html> (describing the case of Grandmother Fu Shilan who owned several houses in Shanghai). In 1989, ninety-three year old Fu Shilin passed away, leaving a note that her houses at Zhonghua Road and Xiaoshi Street had been socialized. *See id.* Her relatives decided to pursue the claim with the housing authorities. Archival research confirmed that the houses did originally belong to Grandmother Fu. *See id.* In 2004, her heirs applied to get the houses back. *See id.* The Shanghai Huangpu Real Estate Management Bureau determined that the houses could not be returned. The houses were not used as private living space and had been properly socialized and leased to enterprises. *See id.*

120. Opinion on Socialist Reform, *supra* note 117.

121. *See* LYNN T. WHITE, III, UNSTATELY POWER: LOCAL CAUSES OF CHINA'S INTELLECTUAL, LEGAL AND GOVERNMENTAL REFORMS 218 (1999) (describing that personal and real property were more likely to be returned when “previous predations against a family had been egregious. . . . Far more common were cases of partial restoration to families from whom space had been taken but had suffered only ordinary injustices during the late 1960s. The government does not publish information about this or any other topic that might further stoke the outrage of many Shanghai families about their treatment during the Cultural Revolution.”); *see also* Annoying Old, Private Shanghai Homes, *supra* note 119 (describing Mr. Chen’s failed attempt in the return of his property). Mr. Chen’s father built a villa of 300 square meters before liberation. *See id.* After liberation, Mr. Chen’s father put the villa in the trust of the local government for rental purposes. During the Cultural Revolution, Mr. Chen, himself, was struggled against and Mr. Chen’s father turned over the villa to the government. *See id.* Mr. Chen claimed that the villa was operated and rented by the government in trust and that ownership did not transfer to the government. *See id.* However, the government determined that the house should not be returned, noting that the villa had been voluntarily transferred to the government during the Cultural Revolution. *See id.*

122. *See* PEI, *supra* note 14, at 15.

123. *See id.*

124. *See id.*

125. *See id.* at 17-18; Guan Yu Jia Kuai Luo Shi Hua Qiao Si Fang Zheng Ce de Yi Jian de Tong Zhi [Notice of the Opinion Concerning the Accelerated Implementation of the Overseas Chinese Private Housing Policy] (promulgated by the Office of the Chinese Communist Party Central Committee and the Office of the State Council on Dec. 24, 1984) CHINALAWINFO (last visited Mar. 10, 2007) (“[P]rivate houses of overseas Chinese that were confiscated, requisitioned during land reform or wrongly involved in the private house socialization reform and those in custody have not been returned for a long period of time. Returned overseas Chinese, the family members of overseas Chinese and overseas Chinese have expressed strong opposition to this situation. The leadership of

as a means to improve relations and foster investment.¹²⁶ By the end of the 1980's, the government indicated that most confiscated property had either been restored or the claimant compensated.¹²⁷ Housing confiscation cases are to be resolved by the local housing administrative bureaus rather than the courts.¹²⁸ Interestingly, as a legal matter, there seems to be no statute of limitations imposed on these kinds of claims.¹²⁹ However as a practical matter, for original owners or rights-holders who seek redress for property and housing legally or illegally socialized before and during the Cultural Revolution, the current system can be frustratingly complex.¹³⁰ Issues include the difficulty in obtaining access

various levels should be aware that the implementation of the policies for the private houses of overseas Chinese has great implications for protecting the legitimate rights and interests of overseas Chinese, stirring up their patriotic enthusiasm and boosting the Four-Modernizations Drive and realizing national reunification.”). For a discussion of measures to redress property of overseas Chinese confiscated by the Chinese government during the Korean war and during the Cultural Revolution, see Elaine Sit, Comment, *Broken Promises: the Status of Expropriated Property in the People's Republic of China*, 3 ASIAN L. J. 111 (1996).

126. See WANG & MURIE, *supra* note 20, at 89 (“At the beginning of the 1970s the relationship between China and the west, particularly the United States was improving and home visits made by overseas Chinese increased rapidly. Their housing interests had become an important element in obtaining their support both inside and outside of China. However the tenure and usage of housing was now so complicated that solving disputes and returning properties to the original owners were major tasks for local housing authorities throughout the 1970s and the 1980s.”).

127. See PEI, *supra* note 14, at 23.

128. See *id.* at 19-23; see also Guan Yu Fu Cha Li Shi An Jian Zhong Chu Li Si Ren Fang Chan You Guan Shi Xiang de Tong Zhi [Opinion Concerning Review of the Cases of Private Real Property Left over from History] (promulgated by the Supreme Court and Ministry of Urban and Rural Areas Construction and Environment Protection on Oct. 22, 1987, effective Oct. 22, 1987), <http://cylib.jlu.edu.cn/gtzygl/fq/dw/dw3/x200.htm> (last visited Dec. 26, 2007); Guan Yu Zhi Xing ‘Fu Cha Li Shi An Jian Zhong Chu Li Si Ren Fang Chan You Guan Shi Xiang de Tong Zhi’ Di Liang Tiao Zhong de Ji Ge Wen Ti De Dian Hua Hui Da [Telephone Answer Concerning the Implementation of the Second Article of “Opinion Concerning Review of the Cases of Private Real Property Left over from History”] (issued by the Supreme Court on Mar. 21, 1988), http://www.lawbook.com.cn/law/law_view.asp?id=4930 (last visited Dec. 26, 2007). When one of the authors tried to visit the Implementation of Private Housing Policies Office of Shanghai to interview them about their work, they refused to speak with her unless she had a claim herself.

129. See Jing Zu Fang “Cuo Gai” Cun Zai Si Da Li Shi Yi Liu Wen Ti [Four Causes of “Mistakes” in Housing Socialization] (Apr. 6, 2005), <http://www.house.gx.cn/display.asp?keyno=1472> (in deciding that an owner is entitled to the return of his original flat, but not legally socialized rental flats, the Fujian High Court rules that the dispute is not governed by civil law and the statute of limitation does not apply).

130. See LI LING HIN, PRIVATIZATION OF URBAN LAND IN SHANGHAI 39 (1996). The author notes that there

is a major problem haunting real estate development in China. It is not merely that there is no proper legal framework to protect private property rights. There are concerns with the overall concept of legal means of settling disputes and safeguarding personal interests over real estate. . . . Incidents are known of

to archival property records (especially if real property certificates were appropriated or given up during the Cultural Revolution) and non-transparency of local regulations regarding access to property record archives.¹³¹ Local housing offices may have conflicts of interest in that they are typically the agency responsible for deciding whether the house should be returned to the original owner and yet, the office may receive rental or other proceeds from operating or demolishing the housing.¹³² Additionally, there are issues about relocating and compensating existing tenants, especially if tenants have connections to housing office employees.¹³³ Finally, the sheer number of cases involved may be a factor.¹³⁴

Adding to the complexity are the rights of those individuals now occupying the property. Whether we call these residents, squatters or tenants, the fact remains that they have occupied the property for significant periods of time, enough time to claim some rights and the type of rights accorded them may depend on the locality. The rights issues are further complicated when the original owner occupies the house along with residents who were assigned this house during socialization or who took up residence by force during the Cultural Revolution as is illustrated by the historic Shanghai houses.

For example, in the case of urban rental property which fell under the square footage limits set by the Socialist Transformation of Public

unenforceable court orders for repossession by legal owners, especially those who were dispossessed during the Cultural Revolution.

Id.

131. See Fu Xuming, *Fang Guan Ju Bu Ken Gong Kai Dang An de Yuan Yuan* [The Reason why the Real Property Management Bureau Refused to Open Archives], CHINA ECONOMIC TIMES, Feb. 2, 2005, <http://house.qianlong.com/33/2005/02/02/1440@2500788.htm> (discussing two cases involving access to real property record archives). Mr. Jiao, an overseas Chinese visited the Qingdao Ministry of Construction and Real Property Management Bureau to seek return of privately leased property violently seized during the Cultural Revolution. See *id.* The Bureau rejected his request because the house had been leased by Mr. Jiao's grandmother and was over 100 square meters. See *id.* Thus, it was properly socialized under the policies at the time. See *id.* Mr. Jiao requested to see the archival records. See *id.* The Bureau showed copies of the records which proved that the house was rented. See Xuming *supra* note 131. Mr. Jiao distrusted the copies and requested access to the actual archives. See *id.* The Bureau maintained that the archives are closed due to the fragility of the material. See *id.* In the other case, Mr. Yang sued the Shanghai Real Property Management Bureau for refusal to allow him access to similar archives. See *id.* Mr. Yang was trying to obtain information on his grandfather's house, built in 1932, and later demolished. See *id.* The Jingan District court held that the Real Property Management Bureau was the managing authority for the archives. See Xuming *supra* note 131. While the Bureau had a legal responsibility to provide the archives for the public, it also had the authority to approve usage of the archive. See *id.*

132. See *id.*

133. See *id.*

134. See *id.*

Housing and mistakenly confiscated, the squatters have long term tenant rights.¹³⁵ This is in contrast to a typical tenancy arrangement in which the landlord and tenant negotiate the terms of the lease agreement¹³⁶ (including termination) and the lease should not exceed twenty years.¹³⁷ The type of tenancy that has evolved from the Cultural Revolution-era invasions/seizures allows a tenant to live in the house for his or her life while the landlord is deprived of the ability to terminate the tenancy.

For original rights-holders deprived of control of the premises (either because they were entirely evicted or because they were relegated to one or two rooms), before reclaiming their rights, they must consider the following drawbacks: the original owner will be responsible for paying back the fees the government paid during the period of socialization for maintenance of the property; the original owner must enter into a lease agreement with the squatters/tenants; the squatters/tenants can remain indefinitely or the original owner must find them comparable housing; the rental rates are set by the government at very low levels; the original owner becomes responsible for repairing and maintaining houses¹³⁸ which may take a considerable sum of money to restore to their original condition. In sum, while there may now be a legal remedy for the extra-legal seizures or evictions that took place four decades earlier, it is a remedy that lacks equitable characteristics. As a result,

the re-privatization of these resources does not reverse the results of socialization generally by returning all confiscated property to original owners. . . . Nor does this re-privatization policy fully restore all the rights of former owners and landlords. Hence, these reforms leave significant irrationalities of the old system in place.¹³⁹

In Shanghai, in addition to the tenants rights discussed above, another type of right¹⁴⁰ developed in the mid-1990s, called usage rights (使用权).

135. See discussion *supra* notes 117-20 and accompanying text.

136. See Contract Law of the People's Republic of China (promulgated by the National People's Congress, Mar. 15, 1999, effective Oct. 1, 1999), arts. 212-36, LAWINFOCHINA (last visited Sept. 19, 2008).

137. See *id.* at art. 214.

138. See Wu Guojie, *supra* note 118.

139. Soileau, *supra* note 29, at 38.

140. The existence of multiple rights may derive from China's reliance on the civil law concept of "usufruct," which recognizes that rights in real property can combine a range of interests, apart from the common law notion of "fee simple ownership." See 31 *C.J.S. Estates* § 1 (2008) ("A usufruct is the right of using and enjoying and receiving the profits of property that belongs to another, so long as that property is not damaged or altered in any way. A "usufruct" is also sometimes referred to as a license to use real property. The exercise of usufructuary activities is not contingent upon actual ownership of land, since the fee owner retains title and can reap the fruits of his land as well. . . . The three types of usufructs are natural profits produced by the subject of the usufruct,

When exactly the concept of a “usage” right, rather than an ownership right first came to exist is not clear.¹⁴¹ Although there does not appear to have been adopted a statute or regulation creating a “usage right” as a distinct right separate from a rental right as well as from an ownership right (LUR), at some point, lawyers and commentators acknowledged that such rights do in fact exist.¹⁴² Moreover, while a usage right shares

industrial profits produced by cultivation, and civil profits, which are rents, freights, and revenues from annuities and from other effects or rights.”); *Zhi Gong Qu De De Gong Fang Shi Yong Quan Shou Min Fa Bao Hu* [Workers to Obtain the Right to Use Public Houses under the Protection of the Civil Law] (July 30, 2007), <http://www.jd37.com/tech/20077/34097.html> (“[A] usufruct is a type of servitude or *ius in re aliena*, derived from another person’s property ownership, or a legal right to possess, use or benefit from the property of another person. Its basic legal features are set forth below: (1) It’s a right built on the capacity of ownership and has certain restrictions on the exercise of ownership. (2) It’s a right to direct control over another’s property obtained by a non-owner person according to law, by contract or other legal means. (3) It’s a relatively independent servitude separated from the capacity of ownership. (4) The right to possess, use and benefit from another’s property obtained by the holder of a usufruct, known as the usufructuary, according to law, causes the original owner to lose part or all of the capacity of the property tentatively or for a long time.”); see also General Principles of the Civil Law of the People’s Republic of China (promulgated by the National People’s Congress, Apr. 12, 1986, effective Jan. 1, 1987), art. 80, LAWINFOCHINA (last visited Sept. 29, 2008).

141. In a civil law system, which theoretically, requires an authorizing or organic statute in order for a property right to exist, it is fascinating that no statute or regulation creating the concept of a “usage right” (at least not in Shanghai and not nationally) appears to have been adopted. See Property Law of the People’s Republic of China (promulgated by the National People’s Congress, Mar. 16, 2007, effective Oct. 1, 2007), art. 5, LAWINFOCHINA (last visited Sept. 29, 2008). Roughly speaking, China’s civil law system divides rights into two categories, namely rights based on contracts (债权) and property rights (物权). The General Principles of the Civil Law of the People’s Republic of China discusses rights (contractual and property) at Chapter 5 and contains four sections, addressing Property Ownership and Related Ownership Rights, Creditors Rights, Intellectual Property Rights and Personal Rights. See General Principles of the Civil Law of the People’s Republic of China (promulgated by the National People’s Congress, Apr. 12, 1986, effective Jan. 1, 1987), ch. V Civil Rights, LAWINFOCHINA (last visited Sept. 29, 2008). An authorizing or organic statute is needed to provide a basis for the creation of a property right to exist, but rights based on contracts can be created by people, subject to relevant mandatory laws and regulations. See General Principles of the Civil Law of the People’s Republic of China (promulgated by the National People’s Congress, Apr. 12, 1986, effective Jan. 1, 1987), art. 85, LAWINFOCHINA (last visited Sept. 29, 2008). In terms of usage rights, it is a right relevant to or existing in respect of property, but it generally arose out of a contractual relationship, usually employment. If considered as a property right, theoretically, it should be created by a certain law or regulation. Yet, none appears to exist, which may lend to support to some commentators’ characterization as a contractual right.

142. See e.g., *Zhi Gong Qu De De Gong Fang Shi Yong Quan Shou Min Fa Bao Hu* [Workers to Obtain the Right to Use Public Houses under the Protection of the Civil Law] (July 30, 2007), <http://www.jd37.com/tech/20077/34097.html> (“Public housing use rights are an expression of China’s traditional system of housing allocation as employee benefits. The holders of public housing use rights are employees with State organs or state/collective-owned enterprises or institutions. Through their employers’ actions in

characteristics of a contractually-derived right such as a rental or tenancy right,¹⁴³ it also has characteristics of a property right.¹⁴⁴ So, although the legal origins of usage rights are a bit murky, the fact of their existence is without doubt.¹⁴⁵ Their existence is evidenced by issuance in the mid-1990's of a series of temporary measures by the Shanghai government to address the process of selling public housing;¹⁴⁶ public housing allocated

allocating housing, such employees are entitled to the use of homes with certain areas owned by their employers. On the surface, a public use right is a kind of right to lease housing, or a creditor's right, since employees are normally required to pay a certain amount of rent to their employers. In substance, however, public use rights as a creditor's right have actually evolved into a [real] property right. Since public housing use rights are long-term in nature and can even be inherited, the rights holder may reside in the house on a long-term basis and so has actually possessed its occupation and use rights. Furthermore, public housing rent is not something that has been subject to the parties' agreement and is far less than the market rate, or employers refund the rent to the use right holders in the form of housing repair allowance, or even expressly allowing the use right holders to use the residences free of charge, as indicated in this case. It can be seen that use right holders have actually obtained permanent occupation and use rights, as well as the rights to benefit from the low-rent or rent-free houses.”).

143. One must obtain the consent of the renting party, who granted the usage rights, before an effective transfer of such rights to a third party may be concluded. *See* Shanghai GaoYuan Guan Yu Shen Li Gong Fang Cheng Zu Quan Que Ding Ji Shi Yong Quan Zhuan Rang Jiu Fen An Jian Ruo Gan Wen Ti de Yi Jian (2004 44号) [Opinions of Shanghai Higher People's Court on Several Issues Concerning the Trial of Disputes in Public Housing Leases Rights Determination and Use Right Transfer] Question 3, http://shbbs.soufun.com/esf~-1~2555/56464209_56464209.htm (last visited Sept. 29, 2008) [hereinafter Shanghai Higher People's Court Opinions on Public Housing Leases]; *see also* *Mai Mai Shi Yong Quan Fang Feng Xian Da* [The Risks of Trading Land Use Rights are Great] (Sept. 2, 2004), <http://xz6.2000y.net/mb/1/ReadNews.asp?NewsID=221745> (“In addition, for transactions involving use rights, documents—including an application—shall be submitted to the entity that owns the property right, and the use right may be traded only upon consent from the entity that owns the property right. To say the least, even though developers possess the housing use rights, they may transfer the use rights only upon receiving consent from [legal] owners.”).

144. One can inherit such rights, regardless of the renting party's consent. *See* Shanghai Higher People's Court Opinions on Public Housing Leases, *supra* note 143.

145. For example, a questioner posted a query on June 15, 2006 to real estate-related Chinese language web-site asking a lawyer, “[i]f one has only a usage right in a residence, can one enter into a purchase and sale transaction in respect of such rights? To which the lawyer responded, “If one has only usage rights, one can enter into a purchase-sale transaction, but of course, if you want to end up with full ownership rights, you need to pay the land usage fee associated with the site.” Fa Lu Zi Xun: Qing Wen Zhi You Shi Yong Quan de Fang Zi Ke Yi Mai Ma? [Legal Advice: If You Have Land Use Rights Only in Your House Can You Sell Them?], June 15, 2006, <http://esf.gz.soufun.com/secondhouse/news/732602.htm>. There is no discussion of whether usage rights have a legal basis—the fact of their existence is accepted.

146. *See e.g.* Guan Yu Chu Shou Gong You Zhu Fang de Zan Xing Ban Fa [Interim Measures of Selling Public-Owned Residential Houses] (promulgated by the Shanghai Municipal Government, May 18, 1994) <http://www.shanghai.gov.cn/shanghai/node2314/node3124/node3177/node3180/userobject6ai619.html> (last visited Oct. 21, 2008); “Guan Yu Chu Shou Gong You Zhu Fang de Zan Xing Ban Fa” de Wen Ti Jie Da Zhi San, [1994] No. 63, [Answer No. 3 for Questions concerning Interim Measures of Selling

from national level agencies or state-owned or collectively-owned enterprises, being the major original sources of usage rights.¹⁴⁷

Thus, in Shanghai, it is also possible that squatters may have a higher level usage right (transferable and convertible to other Shanghai residents) that is greater than a mere right of tenancy, but certainly less than a full LUR.¹⁴⁸ Usage rights, as marketable commodities in a bustling real estate market, may encourage usage rights holders to try and convert to full ownership rights or to argue that they should be compensated for their share of the housing and often places them at odds with the original owner (similar to the tenancy situation).

Whether the squatters' rights are characterized as usage rights or long term tenancy rights, their rights inevitably conflict with those of the

Public-Owned Residential Houses, [1994] No. 63.] (promulgated by Shanghai Municipal Urban and Town Residential Houses System Reformation Leadership Group and Shanghai Municipal Administration of Real Estate and Natural Resources, Nov. 22, 1994) http://www.chinesetax.com.cn/fagui/fagui/difangfagui/shanghai/shanghaitudifagui/199411/fagui_1550136.html (last visited Oct. 21, 2008).

147. See e.g. Guo Hong Peng, *Gong Fang Shi Yong Quan Jiu Fen Xiang Guan Fa Lu Wen Ti Tan Tao* [Discussion of Several Legal Issues Regarding Disputes over the Right to Use Public-Owned Residential Housing] (Sept. 29, 2007) <http://www.bandcn.com.cn/html/2007/10/396.htm> ("The so-called public housing use right means the right to lease houses owned by the state or state-owned enterprises or institutions at a rent less than the market price, obtained by the rights holder on lease, in name, but from allocation as employee benefits, in substance. Such housing include public housing directly managed and owned by the Property Administration Department and public housing self-managed and owned by employers. The system of housing allocation by employers as an employee benefit is a part of China's planned-economy. The lessees of public housing must be employees with enterprises, institutions or state organs, and the size of the housing allocated to them varied depending upon their years of service, position level, contributions, number of family members and other factors. Under the residential lease relationship established thereby between employees and their employers or the state housing administration department, housing ownership rights are held by the State or employers while employees may use the housing units at low rental rates.").

148. See Dr. 某's father's situation is a case in point. See Interview with Dr. 某, Appendix. After the Cultural Revolution, Dr. 某's father demanded return of his house. See *id.* The house is located on a particularly attractive and tree-lined street in a quiet part of the former French Concession, where today high level city officials are reputed to reside. See *id.* But, the organization occupying his house refused to move. Therefore, arrangements were made to allocate an apartment in one of Shanghai's most famous and desirable apartment buildings, known in the pre-1949 era as the Normandie Apartments and after 1949 as Wukang Mansions (五康大楼). See *id.* Because the Normandie was one of the more desirable publicly-owned housing units, apartments tended to be allocated (when housing was allocated by work units) to people with leadership positions or status. See Interview with Dr. 某, Appendix. Dr. 某's family was allocated an entire 176 square meter apartment for his family's use. See *id.* So, although he did not regain possession of his former house, he did receive compensation in the form of a desirable alternative residence. See *id.* Interestingly however, he received only usage rights in the apartment (使用权) not full ownership rights (产权). See *id.* When his heirs wanted to sell the apartment, they paid to convert the usage rights to ownership rights. See Interview with Dr. 某, Appendix.

original owner, illustrating the tensions between the previous socialized property system and the newly developing private property system. The resulting situation is that these unique architectural gems are slowly sinking into disrepair¹⁴⁹ as neither the original owner nor the tenants assume responsibility for maintaining the common areas, and the local housing bureaus lack the resources adequately reverse the erosion of

149. Given the architectural distinctiveness of these historic residences, it is worth considering whether historical preservation laws may be applied to their maintenance and repair. In 2002, China revised the Law on Protection of Cultural Relics to give more attention to historic preservation nationally. See Zhonghua Renmin Gongheguo Wen Wu Bao Hu Fa [Law of the People's Republic of China on Protection of Cultural Relics] (promulgated by the Standing Committee of the National People's Congress, Nov. 19, 1982, amended on June 29, 1991 and revised again on Oct. 28, 2002), translated at http://english.gov.cn/laws/2005-10/09/content_75322.htm; see also *New Law Increases Effectiveness of China's Protection of Cultural Relics*, WORLD NEWS CONNECTION, Oct. 28, 2003, available in WESTLAW, Farnews Database. For statistical information on protection of cultural relics nationally maintained by the Nanjing Museum, see Nanjing Museum, Relevant Information on Cultural Relics Protection in China, Oct. 7, 2003, <http://www.chinacov.com/EN/classify.asp?id=97&cate=24&page=1> (last visited Nov. 20, 2009). In 1986, the Chinese government designated Shanghai as a "national historic city." See BALFOUR & SHILING, *supra* note 10, at 95 ("The Preservation Plan for the Historic City of Shanghai covers 234 complete blocks of 22 historical areas and 440 building groups. The whole land area is about 13.85 square kilometers, with buildings occupying 10 million square meters."). On a local level, historic preservation is gaining recognition as Shanghai endeavors to maintain its distinctly cosmopolitan character with a mixture of architecture from the past, the present and the future. See ABBAS, *supra* note 2, at 38; Marie-Claire Bergere, *Shanghai's Urban Development: A Remake?*, in ARCHITECTURE AND URBANISM FOR MODERN CHINA 36, 47 (Seng Kuan & Peter Rowe, eds., 2004). In 2002, the Shanghai city government passed local regulations addressing historical preservation of important historical and cultural buildings. See Shanghaishi Li Shi Wen Hua Feng Mao Qu he You Xiu Li Shi Jian Zhu Bao Hu Tiao Li [Shanghai Regulations on Protecting Areas of Historical and Cultural Spots and Outstanding Historical Buildings] (promulgated by the Standing Committee of the Shanghai People's Congress on July 25, 2002, effective Jan. 1, 2003) http://www.ggsnsj.com/space/?action_viewnews_itemid_448.htm (last visited Nov. 20, 2009). By the end of 2005, architectural preservation funding in Shanghai was over twenty-four billion. See China Real Estate Business, *Shanghai Face the Collection of Architectural Preservation Funding*, <http://www.china-crb.cn/HTML/2007/zxbd/20063367.html> (last visited Nov. 20, 2009). There is growing concern about preserving the character of old neighborhoods. See Christian Peralta, *Preserving the Architectural Heritage of Shanghai's French Concession: Gentrification and Redevelopment Threaten the Historic Homes and Buildings in the Former Foreign Settlement Area of China's Largest City*, Jan. 17, 2007, <http://www.planetizen.com/node/22605>. However, homes in historic neighborhoods are still at risk for destruction as they are often located on land which can command high prices on the open market. See Cathleen McGuigan, *Building Up: China's Biggest Cities are Struggling to Balance Modern Design with their Historical Structures*, NEWSWEEK, Oct. 12, 2003, available at <http://www.msnbc.com/id/3158255/print/1/displaymode/1098>. It is unlikely that repair and maintenance of these residences will receive special consideration under historic preservation laws, especially when 50 percent of the building stock that existed in 1949 has been razed—including at least thirty-nine structures supposedly on a government list of protected buildings. See *id.*

prior decades.¹⁵⁰ The owner does not want to maintain the common areas if he or she cannot reap the benefits of sole ownership and the tenants avoid the responsibility altogether assuming that the owner or the governmental housing authorities should step up to the plate. Shanghai is left with a situation in which the remains of China's socialist past continue to affect the developing system of privatization in the present. It is likely though that as these historic residences continue to decay, they will be torn down, the residents relocated and the remaining ownership issues will become moot—part of Shanghai's social, legal and architectural history, rather than a continued part of its vibrant present and optimistic future.

PART 5—CONCLUSIONS

1. Urban housing confiscation in post-1949 China occurred during various campaigns spanning three decades.¹⁵¹ While housing confiscation was certainly motivated by ideological convictions,¹⁵² the practical realities of an inadequate supply of housing stock and crowded living conditions also played a role in shaping policy.¹⁵³ Unfortunately, the marginal improvements for individual families achieved through the musical chair-like reshuffling and confiscation of private homes wreaked considerable hardship and suffering on those who were driven from their residences or crowded into a small corner of what had previously been their home.

2. By seizing residences from their rightful owners or occupants and putting the units into the common “pool,” a dynamic referred to in Western literature as the “tragedy of the commons”¹⁵⁴ was set in motion.

150. With the existing stalemate between the original owner and other residents or squatters, a co-ownership model (condominium) might merit exploration. Converting the existing tenants in these historic residences to co-owners with an ownership stake in the residence and corresponding responsibilities for their share of upkeep in the common areas might be a viable option for maintaining/restoring the residences and increasing their property value. Condominium relationships, including responsibility for common areas, are regulated by various local laws and are included in the new Property Law. See *Zhonghua Renmin Gongheguo Wu Quan Fa* [Property Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007), arts. 70-83 *LAWINFOCHINA* (last visited June 3, 2008); see also Qiao Li, *Chinese Property Rights Law: Old Wine in a New Bottle?*, 2007 *LAWASIA JOURNAL* 163, 172. On the other hand, the original owner must be willing to give up ownership rights to the entire structure for a percentage share in a condominium relationship which may be completely unacceptable to those who wish to reap the benefits of owning the entire structure.

151. See *supra* Parts I, II.

152. See *supra* notes 43-48, 60-71, 83-89 and accompanying text.

153. See *supra* notes 32-37, 55-58, 64-65 and accompanying text.

154. See Wikipedia, http://en.wikipedia.org/wiki/Tragedy_of_the_commons (last visited Nov. 22, 2008).

Responsibility for maintaining and improving the common areas of the building amongst the various parties involved (original owners, tenants/squatters, housing bureaus) was passed to the housing bureau, who lacking resources often did the most minimal amount needed to maintain the buildings. And so, buffeted by the humid and damp Shanghai climate, the houses sink into decay and disrepair. While housing values in Shanghai have risen, the process of rejuvenating the now dilapidated stock of historic housing is hindered as existing residents (whether original owners or tenants/squatters) lack funds necessary to buy out the other residents and to renovate the dwelling.

3. Additionally, the existing residents may lack incentive to sell their rights (whether they are usage rights 使用权 or have converted to ownership rights 产权) as they may not be able to find affordable alternative housing in their locality. Thus, they are faced with the alternative of staying where they are in cramped and inadequate housing or moving to the distant suburbs where they can afford a well-equipped, comfortable apartment¹⁵⁵ that will require a distant commute to work and abandonment of familiar surroundings and their community of neighbors. Faced with these options, many choose to remain where they are, even though their current situation is often lacking in space, comfort and sanitary arrangements.

4. Due to lack of clarity of rights in gerrymandered multifamily residences, if an investor is willing to buy out the various families occupying what used to be a single-family residence, the investor is forced to negotiate with all rights holders (renters, original owner, usage rights holders, etc) in order to obtain full rights in the property. Hold-outs can doom the effort or skew economics of the transaction, thereby adding another barrier to the redevelopment of Shanghai's historic housing stock.

5. In the face of this impasse, the majority of pre-1949 residences continue to look increasingly shabby and in ill-repair, thereby lending credence to the view that much of Shanghai's historic housing stock is in such poor shape that it should simply be demolished and replaced with more shiny new complexes. Unfortunately, if events follow this path, Shanghai will lose a key part of its character and flavor, becoming more like Tokyo, Singapore and Hong Kong and less like Paris, London or Rome, which have all retained significant elements of old residential architecture in a modern, thriving city. Beijing, too, has largely eliminated its vernacular residential architecture in a flurry of demolitions in the late 1990's and stretching to the massive preparations for the 2008 Olympiad. Shanghai has the chance to be the last major

155. See e.g., LEVEY, *supra* note 6.

Asian metropolis that retains a significant element of its pre-World War II housing stock, while at the same time pursuing a vision of a thriving twenty-first century world capital.

In sum, as so many writers—from eminent China scholars to individuals recording their personal experiences—have chronicled, the Cultural Revolution wreaked dislocation on China on a scale that it is still difficult to comprehend. Its effects were felt not only politically, but also educationally and economically, as well as in terms of family structure and the nature of interpersonal relationships, many of which were irretrievably damaged by the events of that decade. As this article has attempted to show, the effects also extended to the very pragmatic and mundane issues of one's dwelling place (did one keep it? was one thrust from it or forcefully relegated to a small corner of what had been one's sanctuary, deprived of one's homely and familiar possessions?). And, over forty years after the cataclysm began, the effects of it can still be observed simply by walking down any number of streets in the booming, gleaming metropolis of today's Shanghai. As Shanghai prospers and thrives, it is hoped that it will retain a measure of the physical environment that led to its being christened "the Paris of the Orient"—that place that is evocative of a mixture of Europe and Asia, but somehow distinctively its own.

Appendix

In researching the events that occurred during the Cultural Revolution period, the authors found relatively little legal literature about the grounds for housing seizure and the ways such seizures actually took place and their rights terminated. To aid in the understanding of this vital period, they interviewed individuals who had lived in Shanghai during that period and either had housing taken from their family or worked for the government during the period such seizures were taking place. Given the sensitive nature of this topic and the unwillingness of the government agency involved in returning seized housing to prior owners to talk with non-litigants, these subjects were identified through personal introductions or relationships the authors had. Their selection was not conducted in a scientific or methodical manner. Some subjects approached refused to speak on the subject, but the authors are most grateful to those who did. Their interviews serve as the source of many of the observations in Part 2 of this article. The authors generally agreed to refer to them anonymously, (by use of the character “某” pronounced “mou”), which is similar to English designations such as “John Doe” or “Witness A.” Below are brief descriptions of the interview subjects, to whom the authors are indebted for sharing their insights of what it was like to be in Shanghai at the turbulent time when people were ousted from their homes, vilified and deprived of their possessions. The authors owe a considerable debt to the Shanghai residents who agreed to be interviewed about their experiences during the Cultural Revolution for purposes of better understanding the specifics of how the seizures took place, how the housing was reallocated and how the efforts after the conclusion of the Cultural Revolution to reclaim occupancy (or ownership) of the seized premises fared.

Kindergarten Principal 某—this subject was born into a family of academics and clergy. She had been raised in Beijing, but her family was forced by the outbreak of the Sino-Japanese War to relocate to Shanghai. As the national government moved inland to Chongqing, she was left in Shanghai, with her mother and siblings, where they were able through family connections to find accommodations in a lane house that was part of a complex for employees of China’s largest banks. The landlord later fled to Taiwan, but Principal 某’s family (including her father who rejoined them after the end of the Second World War) continued to live in the portion of the house (an entire floor, including a mezzanine room) they had originally rented, until the Cultural Revolution led to their being relegated to two rooms (by then only Principal 某 and her parents were still living together, the other children having married and moved to their own homes). Principal 某 was unable

to regain rights in the seized space at the end of the Cultural Revolution but did receive some usage rights (使用权) for the two rooms remaining, and following sale of these rights, she was able to use the proceeds (plus additional savings) to purchase a one-bedroom apartment in a building in central Shanghai.

Teacher 某—this subject came from a capitalist family that had its factory and Teacher 某's grandfather's house nationalized during the 1955-56 reform period. Through the rental income they received as a result of the nationalization process, the family members were able to continue to live largely as they had prior to 1949, albeit more quietly and unobtrusively than had been the case before the establishment of the PRC. Teacher 某's family home was in the center of the former French Concession on a lovely street called "Gao'an Lu" (High Peace Road). His mother held a long-term lease to the townhouse, but not outright ownership. In the course of the Cultural Revolution, their home was invaded, and the eight or nine family members then resident there were forced to relocate to two rooms in the basement, which had formerly been used as servants' quarters. Their personal possessions were also seized. Teacher 某's youngest sister still lives at the house, but the family never regained full occupancy of the entire house.

Vice Director 某 of the Xuhui District Housing Administration Bureau—The Vice Director went to work for the Xuhui District (which is where Gao'an Lu is located, along with many of the other streets lined with the pretty houses of the former French Concession) in 1970. Eventually he was promoted to Vice Director and left for another position in 1976. In his role, he observed first hand how houses were taken and the pressures faced by the bureaucrats. For example, if a member of the proletariat criticized you, your future could be ended; you dared not challenge them when they went after someone. There was no government control. The Vice Director asserted, however, that with the advent of the "对私改造落实政策" (Socialist Reform Campaign for Urban Private Ownership) policy in the early 1980s it became possible to reclaim one's house, and that every person who had (or even to this day, can demonstrate that he or she has) legal rights in a house that was improperly taken during the Cultural Revolution or even the socialist housing reform period could get it back.

Retired Government Administrator 某—A retired government administrator (formerly employed by the Personnel Bureau (人事局)), this subject's views and insights came from his family's own experience. His family had owned over twenty houses that had been confiscated during the socialist housing reform period in the 1950s. Although retired government administrator 某 claimed to have all the relevant documentation, his family had been unable, despite years of efforts, on

his part to reclaim any of the houses. He currently works for a local law firm as a consultant in identifying housing stock that is ripe for being acquired from the housing bureau following relocation of the current tenants. He claims that Shanghai housing agencies controlled hundreds of residences that were abandoned when their owners (either foreign or Chinese) fled at the time the Communists seized power and are either empty or currently rented, and awaiting an opportunity to be purchased and renovated.

Doctor 某—Himself trained as a doctor, this subject was the son of a pioneering medical specialist in China who did advanced training abroad in the 1930s before coming back to China after the Revolution and serving in various responsible positions in the Shanghai health administration. Dr. 某's father had owned a three-story Western style house at 188 Kangding Lu, which was seized from the family during the Cultural Revolution. A medical-related work unit had occupied the house, and after the Cultural Revolution ended, Dr. 某's father had demanded its return. The work unit was unwilling or unable to do so, but through his connections, he was able to secure allocation of an apartment in the Wukang Dalou (formerly known as the Normandie Apartments). The building is among the most historically prominent pre-1949 apartment buildings in Shanghai. See The Normandie, <http://www.hudec.sh/index.php?id=97> (last visited Oct. 15, 2008). Thus, arguably the exchange had some rough approximation of comparable value. The unit allocated to them was large (176 square meters), and unlike many others, the family had it entirely to themselves. However, they received land-use rights, not ownership rights, so if they wanted to sell the apartment to either a foreign or non-Shanghaiese domestic purchaser, they needed to convert the rights to ownership rights.

