Broken Promises: The Status of Expropriated Property in the People’s Republic of China

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The property rights of many Chinese Americans and Chinese nationals residing in the United States have been affected by the People’s Republic of China’s (China or P.R.C.) government action during this century. In addition to the widespread destruction and seizure of property by the Red Guard during the Communist Revolution, China seized property of United States nationals in response to the United States’ blocking of Chinese assets during the Korean War. The author argues that the claims programs instituted by both the United States and China to redress these takings largely have failed to redress the losses suffered by overseas Chinese and United States citizens of Chinese descent. In this Comment, she explores the reasons for these failures.

PROLOGUE

My mother loved to tell tales about the village where my father’s family lived and about their home in the country. Rice fields surrounded the house, which my mother said was no ordinary house, but an estate, a collection of buildings which several generations of the extended family occupied in traditional Chinese fashion. There was also property in Canton City, apartment buildings, and a hotel, bought with money earned by my grandfather in America. When I asked what happened to all these holdings, and how we came to live in a modest Chicago-style bungalow, my mother said simply, “Everything was taken by the Communists. Your grandmother was thrown out of her own home. It’s all gone now, gone forever.” There were no photos or mementos of the properties that my mother described with so
much pride, and in my mind's eye they became mere phantoms of another
world and time.

Years later, while watching television one night, I came across a re-run
of the film Dr. Zhivago. Yuri Zhivago had been conscripted to serve in the
army against his will and had escaped. On foot he stumbled through the
misery of a Russian blizzard, struggling to walk across the steppes to get
back to the comfort of his family's home in Moscow. But instead of relief
at coming home, he found a score of rowdy peasants arguing amongst
themselves before a roaring fire in the shoulder-high fireplace of his once
grand foyer. Panic and disappointment filled his face. ‘Who are you?
Where is my family? What are you doing in my house?’ Zhivago asked.
‘Comrade,’ one of the peasants disdainfully replied, ‘this isn't your house
anymore, it belongs to the people now.’ And finally I understood the power
of my mother's words.

INTRODUCTION

In December 1950, President Truman blocked all assets of the Peo-
ple's Republic of China in the United States when Chinese troops inter-
vened in Korea.1 In response, the P.R.C. expropriated all property in China
belonging to United States nationals and froze all United States deposits in
the territory under its control on December 28, 1950.2 Almost thirty years
later, representatives of the United States and China signed the Claims Set-
tlement Agreement of 1979,3 thus resolving a roadblock that had signifi-
cantly hindered diplomatic and economic relations between the two nations.
By 1981, administration of the Agreement was complete and since that
time, Sino-American relations have moved forward to enjoy a period of
unexpected cooperation.

The half-century of communist domination in China now overshadows
the previous millennia of its former imperial traditions, but in the context of
the nation's historical memory, the dramatic changes over the last 50 years
may someday be a mere footnote in the story of the Chinese people. There

1. Howell Jackson, International Settlement—Agreement Concerning the Settlement of Claims,
20 HARV. INT'L L.J. 681, 681 (1979). Truman's decision to freeze all Chinese assets in the United
States was executed by the U.S. Treasury Department under the authority of the Trading with the Enemy
Act. See Laurie A. Pinard, United States Policy Regarding the Nationalization of American

2. Jackson, supra note 1, at 681. A United States national is (1) a natural person who is a citizen
of the United States, or (2) a corporation or other legal entity if 50 percent or more of the outstanding
stock or beneficial interests is owned by citizens of the United States. FOREIGN CLAIMS SETTLEMENT
COMMISSION OF THE UNITED STATES, 1972 FINAL REPORT OF THE CHINA CLAIMS PROGRAM, reprinted
from the 1972 ANNUAL REPORT TO CONGRESS AT 426 [hereinafter 1972 FINAL REPORT].

3. Id. Agreement Concerning the Settlement of Claims, May 11, 1979, United States-People's
Republic of China, T.I.A.S. No. 9306, reprinted in 18 INT'L LEGAL MATS. 377 (1979) [hereinafter
Agreement].
are vast differences between the China of today and the Middle Kingdom of the past. There are also two common threads that bind together any nation regardless of who or what system governs: the land and the people.

Nearly 2000 years ago, China established a system of private landholding. This feudal system of organized land holdings culminated in as many as 120 million individual family farms, many of which were merely scattered strips of land that served as China’s agricultural backbone. There were several attempts at land reform during the dynastic periods preceding the Communist revolution, but probably none was as traumatic to the Chinese people as that which took place from World War II through the early 1950s. Against a backdrop of China’s long-standing tradition of private and alienable land, the reforms initiated by the People’s Liberation Army are commonly regarded as the most extensive expropriation of land and property in recorded history.

Whether the abuses that occurred during the Great Proletarian Cultural Revolution (GPCR) (1966-1976) were more traumatic for the Chinese than the revolution following World War II is arguable, although the widespread seizures and destruction of personal property at the hands of the Red Guard did not attract the same degree of worldwide attention. The Bamboo Curtain that stood between China and the West from the liberation period of the 1950s until the normalization of Sino-American relations in the 1970s kept China’s internal struggles hidden from the world’s view. Nonetheless, in

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4. W.T. DeBary, *Chinese Despotism and the Confucian Ideal*, in *Chinese Thought and Institutions* 188 (John K. Fairbank ed., 1984) (stating that private landholding was established in the Ch’in and Han dynasties). These dynasties lasted from 200 BC to 200 AD. *Chinese Thought and Institutions*, Chronological Chart in Introduction.


6. Id. at 283.

7. For an overview of the difficulties western journalists faced in reporting about China, see *John Fraser, The Chinese: Portrait of a People* (1980). Following the post World War II liberation period, western news coverage of events within China was limited for at least two reasons. First, the government agency which controls access of foreign correspondents to officials, the Information Department of the Foreign Ministry, pursued a policy of refusing to grant international journalists interviews with senior officials. Visiting journalists who did enjoy the rare privilege of an interview were permitted to meet with officials only because of their stature as publishers or as “distinguished and well-known journalists” and because their stays in China were brief. *Id.* at 124. Second, for nearly twenty years there was only one North American news agency permanently operating in China: the *Toronto Globe and Mail*. *Id.* at 15. Not only was access by foreign correspondents to officials controlled by the Foreign Ministry, opportunities to access “ordinary” citizen-sources was virtually nonexistent until the late 1970s. According to Fraser, seven journalists from the *Globe* had preceded him before his posting to China in late 1977, but he was the “very first” to entertain Chinese persons in his home and to be invited to a private Chinese home. *Id.* at 16-17.

Another factor contributing to the scarcity of western journalism coverage before Sino-American normalization of relations arose from conflicts between the pro-Kuomintang propaganda machine based in the Republic of China (Taiwan) and others. For example, the legendary founder and publisher of *Time* magazine, Henry Luce, was born in China to missionary parents and maintained a life-long loyalty to the Kuomintang policies of Chiang Kai-shek. In his position as editor-in-chief, Luce was therefore influential in directing the magazine’s critical stance against the *Globe’s* coverage of post-revolutionary China. *Id.* at 15-16.
China quietly initiated a program of reparations to individual victims of the Red Guard, including overseas Chinese. In this program, China brought together Chinese within its borders who suffered losses, as well as Chinese from outside its borders. This latter group is referred to as overseas Chinese who claim China as their place of birth.\(^8\)

The status of overseas Chinese, many of whom are United States citizens, is significant because they number in the millions,\(^9\) and unlike other groups who were forced to leave their countries due to "ethnic" or "religious" cleansing or persecution, many left China voluntarily to escape the corruption and economic stagnation of the last dynasty. The majority of Chinese immigrating to America from the Gold Rush era to World War II trace their ancestral roots to the villages of the southern provinces of China. In some villages, up to eighty percent of the men were overseas and their villages relied on them for income.\(^10\)

Although Chinese emigration and overseas travel was banned by imperial edict for centuries, the tidal wave of emigration from China that began in the mid-nineteenth century lasted for almost 100 years.\(^11\) These industrious emigrants became the backbone of a twentieth century phenomenon that was directly impacted by the post World War II Chinese communist revolution, that being a new class of land and property owners which owed its existence to the power of the dollar.\(^12\)

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8. China enacted a program of reparations to victims of the GPCR in November, 1982. Applicants for reparations may be either Chinese citizens or overseas Chinese, meaning citizens of countries other than China who were either born in China or are of Chinese descent. Interview with Consul spokesperson, Consulate General of the P.R.C., Chicago, Ill. (Dec. 1, 1994) [hereinafter Consul Interview]. The Consul spokesperson requested anonymity from the author.


10. Victor G. Nee & Brett de Bary Nee, *Longtime Californ’ A Documentary Study of an American Chinatown* 16 (1973) ("For many peasants, sending a boy to Hong Kong or abroad, wherever there was a labor market and money to be earned, was the only way to survive. . . . [A]bove all things, 'try to leave the village.' "). This landmark historical and sociological study of San Francisco’s Chinatown includes eloquent oral histories of Chinese immigrants who span the socio-economic spectrum.

11. Chinese settlers had already been in Northern California for a decade by the time gold was discovered in 1848. Immigration from China to the United States was essentially unabated until the Communist Revolution of 1948. See Lynn Pan, *Sons of the Yellow Emperor* 53 (1990) (discussing the history of the Chinese diaspora including a thorough discussion of the changes in imperial policies regarding emigration and overseas travel). After the Gold Rush, Chinese continued to emigrate to the United States in large numbers in spite of restrictive immigration laws, such as the Chinese Exclusion Act of 1882. The Act was repealed in 1943. The repeal finally granted naturalization rights to Chinese aliens who were, until that time, barred from United States citizenship. These restrictions on Chinese immigrants were doubtless a strong motivation for overseas Chinese in the U.S. to plan for their future repatriation to China. See Nee & de Bary Nee, supra note 10, at Appendix 2.

12. See Nee & de Bary Nee, supra note 10, at 17 ("They had been peasants, pressed by unendurable poverty to seek work abroad, who borrowed money to pay their passage across the Pacific and spent the first years in California paying off the debt. In ten years, twenty years, a few did well
Worker-sojourners from China helped build railroads, roads, and highways throughout the hills and mountainsides of America's emerging west. They dug irrigation channels that transformed arid landscapes into agricultural Edens and toiled in the cotton fields of the South, hoping to eventually improve their status (and by extension the lifestyles of their families in China) through the sacrament of labor and property acquisition. Those who succeeded either returned to China with the means to purchase the land their families farmed, or stayed in the United States, working, saving, and planning for their future return to their motherland.

Some worker-sojourners became hybrids by maintaining permanent connections to both countries, and by doing so, achieved unofficial dual-national status. The descendants of those worker-sojourners therefore occupy a unique position in the reparations program now in effect in China. Through inheritance and other relations based on consanguinity, overseas Chinese are compatriots who have legislatively mandated rights in China, yet they are not citizens of China. In this way, the land reforms initiated by the Chinese Communist Party and the excesses of the GPCR have a direct effect on many overseas Chinese and United States citizens of Chinese descent.

This Comment argues that the claims programs instituted by both the United States and China — programs which purported to redress the losses suffered by overseas Chinese and United States citizens of Chinese descent from China's expropriation of their property — have been largely unsuccessful. The Comment focuses on the losses suffered by United States citizens of Chinese descent and their claims, which fall within the scope of both programs, rather than on the claims of P.R.C. citizens against the P.R.C. government, due to the difficulties of obtaining reliable information.
from Chinese consulates and researching Chinese case law in the United States.

Part I consists of an overview of the systems of land ownership and management that have existed in China, including an account of pre- and post-revolutionary approaches to land reform. The various attempts to manage the private ownership of land throughout thousands of years of dynastic change are fundamental to an understanding of the reforms imposed by the communist government in the 1950s because they are the foundation which not only permitted the unprecedented expropriation of land and private property executed by the communist government, but made it inevitable. Part I also describes the land reform executed by China and its effects on the Chinese people, many of whom include the families of overseas Chinese and United States citizens of Chinese descent.

Part II examines the “claims/assets” problem that resulted from the United States’ blocking of Chinese assets held in American banks following the intervention of Chinese troops in Korea, and China’s taking of property belonging to United States nationals in response to the blocking of those assets. A discussion of the resolution of the claims/assets problem under the terms of the People’s Republic of China Claims Agreement of 1979 and its administration by the United States Foreign Claims Settlement Commission is included to provide a point of reference for the differences between the solutions devised by the United States and China to the same problem: how to devise a system of just and equitable compensation for the taking of private property by a foreign government. Part II also analyzes the reported claims that were resolved under the 1979 Claims Agreement and points out how the majority of eligible United States citizens of Chinese descent were left out of the program. The failure to provide redress for many United States claimants of Chinese descent can be attributed to three fundamental shortcomings: (1) inadequate notice to potential claimants of the program’s existence; (2) standards of proof of ownership that were too high for most claimants to meet; and (3) difficulties in appraising the fair market values of expropriated property.

Part III presents policy reforms instituted under Deng Xiaoping including developments in property rights law, such as provisions in the 1982 Constitution of China pertaining to ownership and inheritability rights to private property and various regulations promulgated during the 1980s. The policy reforms under Deng Xiaoping provide a necessary legal basis for the current reparations program, for absent these legal reforms, in partic-

16. The term "United States nationals" encompasses citizens of Chinese descent as well as corporations and institutions, such as religious organizations and associations, controlled by citizens of the United States, i.e., "natural and juridical persons." FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, 1981 ANNUAL REPORT, INCLUDING THE FINAL REPORTS OF THE GERMAN DEMOCRATIC REPUBLIC CLAIMS PROGRAM AND THE SECOND CHINA CLAIMS PROGRAM, at 20 [hereinafter 1981 ANNUAL REPORT].
ular the recognition of private property rights, the government’s redress program might not exist.

Finally, in Part IV, the criteria and methods for filing claims under the ongoing 1982 reparations program are set out along with the reasons for the program’s failure to provide the meaningful redress that it purports to offer to qualified claimants.

I.
PRIVATE PROPERTY RIGHTS IN CHINA

A. Attempts at Land Reform in Pre-Revolutionary China

1. History of Land Ownership in China

China’s systems of private land ownership and established landlord class sustained its society throughout the exigencies of dynastic change for a period of more than 2,000 years. The current system under the communist government is less than 50 years old, and the profound changes in Chinese society during this century now overshadow the tumultuous history of land reform of previous millennia. Even a thumbnail sketch of modern land reform in China shows that whatever the source of political and social change, whether imperial or communist in origin, systems of private land ownership and attempts at land reform have yielded mixed results and inequities in land distribution.

One of the earliest recorded attempts to control and manage large tracts of land occurred in the second century B.C. when Emperor Wu of the Han dynasty confiscated rural properties on such a scale that the state became China’s largest single landowner. In the 5th century during the Northern Wei period (387-534) the Dowager Empress Feng devised a reform plan which called for proportionate allocations of land based on the resources held by individuals. Under her “equalized fields,” or juntian system, owners of slaves and draft animals received more acreage than non-slave holding peasants, and rural households were organized into groups with leaders who were responsible for delivering taxes and procuring forced labor as required by imperial edicts. The juntian system remained essentially intact for nearly two centuries until the Tang dynasty (618-907), when the government began to register land and people, and impose strict limits and controls on the acquisition of real property.

17. DeBary, supra note 4, at 188.
18. CAROLINE BLUNDEN & MARK ELVIN, CULTURAL ATLAS OF CHINA 125 (1983). “In the latter part of the 2nd century BC Emperor Wu of the Han dynasty broke [the regional aristocracy’s] power by declaring 127 out of the 197 princes and marquises to be guilty of some crime or without a proper heir. Their lands were confiscated on such a scale that the state itself became the largest single landowner.” Id.
19. CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 181.
20. Id.
21. Id. at 187.
During the 8th and 9th centuries major changes took place in China's economy and social structure while the locus of wealth and power shifted from the "metropolitan elite" to provincial, landed society. These changes resulted from the meritocracy that emerged when the civil service examination system was established and from the military successes enjoyed by China's armies. A rising class of individuals from lowly origins — some who reached positions of material success through service as officials in the imperial government and various "generals" whose victories were rewarded with imperial land grants — could "more easily acquire status as rural landowners since the juntian land allocation [system] was abandoned and a free land market developed." The end of the Tang dynasty introduced the beginning of a "new elite": the rural landed gentry. Two schemes were responsible for this phenomenon. First, as a consequence of China's burgeoning agricultural traffic, the government's laissez-faire land policy allowed significant land accumulation and encouraged the emergence of a new landlord class. Second, during the reign of Wang Anshi (1021-1086), a national land survey was undertaken and state loans were made available to peasants at low rates of interest. The swelling ranks of landlords in the Sung period (960-1279) could realize the symbiotic benefits of expanded commercial markets in growing urban centers and increased opportunities to invest their entrepreneurial profits in the acquisition of more land. Concomitantly, during the Sung period the appeal and development of urban areas drew people out of the provinces and away from village life, and the "phenomenon of absentee landlordism began to appear." China flourished during the Ming dynasty (1368-1644). The dynasty's founder, the Hung-wu Emperor, is generally credited with improving China's government and the lives of poor farmers. These achievements in turn gave rise to the need for sub-county local governments and the systematic organization of village households into groups, as well as the requisite appointment of bureaucrats. Local officials, or lijia, were responsible for levying and collecting property, grain, and labor taxes, tabulating the decennial census, and most importantly, maintaining maps of the

22. Id. at 192.
23. Id. In an ironic foreboding of the change in status suffered by 20th century landowners under the communist-led reforms, "many of the displaced persons uprooted in the rebellions of the 8th century became tenant farmers on their [former] estates." Id.
24. See id. at 201.
25. Id. at 201.
26. Id. at 203.
27. See id. at 201.
28. Id. at 201.
29. See id. at 219.
30. Id. at 219.
31. See id.
village’s landholdings. In the aggregate, these activities stabilized peasant life. The success of these Ming innovations is demonstrated by their survival in some form into the twentieth century.

The last dynasty, the Manchu Ch’ing (1644-1912), began with an unprecedented period of stability and prosperity. The non-Han Manchu rulers doubtless felt pressured to retain as much of the Chinese bureaucratic status quo as possible in order to husband their resources, sustain their supremacy over, and gain the loyalty of the Chinese people. Hence the relative absence of significant reforms affecting land ownership may not be the result of Manchu indifference as much as a reflection of their pragmatic approach to retaining power.

In place of addressing domestic land reform, the Manchus focused on breaking the resistance of the Ming loyalists. The Manchus inherited a centuries-old tradition of imperial opposition to private overseas trade so that with the exception of “licensed” traders, any private Chinese merchant who either travelled abroad or engaged in overseas business became an “outlaw.” The Manchus issued a decree known as the great “Boundary Shift of 1661” which called for the coastal regions to be evacuated and the population to be moved inland several miles. The Boundary Shift also included a ban on overseas travel and rendered the southern coasts a “no man’s land.” The southern region of China did not remain a mere colonial outpost; eventually it became the source of China’s largest wave of emigration and the region from which the vast majority of overseas Chinese trace their ancestral roots.

China in the 18th century had only two emperors: K’ang-hsi (1669-1722) and Ch’ien-lung (1722-1796). With long periods of domestic peace under the Manchus, the population grew and prospered, although it did so without an accompanying expansion in government. Control of the Manchu Ch’ing government remained in the hands of a limited number of bureaucrats, and corruption in the centuries-old civil service bureaucracy spread throughout the country.

32. Id.
33. Id.
34. Id.
36. PAN, supra note 11, at 5-6 (noting that the licensing scheme was launched during the Ming dynasty in 1567). The imperial ban on overseas travel was not lifted until 1893. Id. at 52.
37. Id. at 7.
38. Id.
39. See id. at 15-16. “The overseas Chinese world, then, was very far from a microcosm of the Chinese world, for they were mostly people from the two maritime provinces who migrated overseas, and few went from the Mandarin-speaking areas in northern China, and practically none at all from the western or far western provinces.” Id. at 16-17.
40. FAIRBANK, supra note 35, at 38.
41. Id. at 31.
In the nineteenth century, the introduction of steamships to international waters facilitated great waves of illicit emigration from China throughout the world but particularly to the United States. This technological advancement also stimulated a rebirth of international trade in the hands of individual entrepreneurs. These developments, along with an implosion in China’s population, further weakened the Manchu’s grip.

The beginning of the end of dynastic supremacy in China had begun.

Like other movements before it, the Taiping Rebellion (1850-1864), provided a glimpse into the future of land reform under China. Led by Hong Xiuquan (1813-1864), the Taiping (“Heavenly Kingdom of Great Peace”) society was essentially a Christian cult which overran China and seized power over the region from Guangxi Province in southern China, south of the Yangtze valley. Eventually, the rebels exerted military control over sections of the central and lower Yangtze and attempted, unsuccessfully, to extend their power toward Beijing. The Taiping agenda shared the goal of land reform with the dynastic institutions against which it struggled.

The rebels’ land reform plan was based on a “utopian ‘land system’ ... which defined a social-political order based on state ownership of property (in trust for God), a hierarchy of residential producer groups ... and a merging of political and military command at all levels.” Because of the rebellion’s peripatetic nature, its military units were forced to leave “local elites in place in order to collect taxes efficiently,” and it is likely that this desire for efficiency led to the rebellion’s failure to maintain power in the regions it overtook. The Taiping Rebellion lasted for fourteen years but remained a regional regime which was defeated by the Qing irregular army with the support of British and French forces.

42. See PAN, supra note 11, at 52-53.
43. See id. at 52-54.
44. See FAIRBANK, supra note 11, at 63. See also PAN, supra note 11, at 47 (citing John K. Fairbank’s estimates that during the 19th century, China’s population doubled from 150 million to 300 million with a further jump to 410 million by 1850).
45. CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 237.
46. Id. The Taipings were turned back near Tianjin, but did manage to capture the city of Nanjing. Id.
47. Id. It also encompassed “prohibitions against opium, wine and tobacco [and] a strict segregation of the sexes (later abandoned).” Id.
48. Id.
49. Id. See also CLARE HOLLINGWORTH, MAO AND THE MEN AGAINST HIM 9 (1985) (“The Taiping Revolt, weakened by corruption, succumbed to the supporters of the emperor. But the fact that slaves were freed, women accepted, in theory, as equals and a flavour of a European way of life was introduced had a lasting effect on the population.”).
50. CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 238. In addition to troops led by Chinese commanders, a “foreign-led and armed auxiliary force” under the command of Charles Gordon, a British officer, eventually defeated the Taiping rebels. French military advisers and troops also participated in the suppression. Id.
By the beginning of the twentieth century, the cumulative effects of opium consumption and the Anglo-Chinese Opium War (1839-1842), the Taiping Rebellion and the Boxer Rebellion of 1900, and China’s humiliating defeats at the hands of better organized and armed invaders had not only damaged China’s national psyche but set the stage for the dramatic changes to come. Western influences gained an unprecedented foothold on Chinese soil as a result of China’s ignominious loss to the British during the Opium War. These influences gave rise to a focus on reviving China’s strength which turned first to economics and later to politics. In economic matters, a middle class bourgeoisie began to make inroads in emerging industries largely dominated by Westerners, including cotton and tobacco production, food processing, shipping, and banking. Political changes were not far behind.

The rise of Sun Yat-sen’s political fortunes filled the void in leadership that followed the death of the Empress Dowager in 1908. By 1911, Sun was credited with spearheading the Republican Revolution and was elected Provisional President of the Republic of China. In order to signal a break from the old imperial order, Sun named Nanjing the new republican capital of China and assumed leadership of the country there. But the child emperor Pu-yi had been installed on the throne after the Empress’ death, leaving imperial power in the hands of Yuan Shih-k’ai, the so-called “strongman” who was recognized and supported by the majority of foreign governments and represented the continuation of the imperial order. Sun’s presidency was to be short-lived, for he resigned after only one month in return for Yuan’s promise that Pu-yi would abdicate, and in the hope that Yuan would implement the reforms that Sun and his followers advocated.

In the end, neither Sun’s republican forces (now under the banner of the Kuomintang party) nor Yuan’s continuation of imperial interests could impose a unified authority over the country. The overthrow of the Manchus had only worsened life in China. As Sun continued to pursue his dream of a unified republican China, he “left administrative responsibil-

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52. Id. at 65-66.
53. Id. at 117 (stating that the “diffusion of power” following the death of the Empress Dowager and succession of Pu-yi “left China without effective leadership”).
54. Id. at 121.
55. See id.
56. Id. at 123.
57. Id. at 123-24.
58. Id. at 128-29.
59. Id. at 145.
ities to a group of sycophants, many of whom were quite incompetent at anything but conspiracy."\(^{60}\)

In spite of the legal reforms that took place following the Republican Revolution of 1911,\(^ {61}\) China’s system of land ownership (documentation through the maintenance of deeds and records at the local county or provincial level) continued mostly undisturbed until the end of World War II. Although Sun made certain proposals to equalize land ownership, his paradigm for improving China’s social and economic organization by paying landowners a set appraised price and then rendering increases in value to the state to be “shared by all the people” did not come to pass.\(^ {62}\) Prophetically, Sun wrote, “[t]hose who dare to control the livelihood of the people through monopoly shall be ostracized.”\(^ {63}\) During this short-lived republican period, China’s labor-intensive rice culture contributed to the stability of its old system of land ownership because low levels of per person productivity reinforced a self-perpetuating and rigid stratification of relationships between government, landlord, and peasant unlikely to change despite improved agricultural techniques or occasional increases in production.\(^ {64}\) The hopes for democratic reforms through political change held by Dr. Sun and his republican followers at the beginning of the century were to be fulfilled, but at a cost that even Sun Yat-sen might not have foreseen.

2. Effects of Pre-Revolutionary Standards of Land and Property Rights

China’s history of land reform is rife with paradox. Imperial standards for the management of land and property rights and grass roots influences like the Taiping Rebellion presaged the structures and practices that were imposed during the early period of Communist land reform. The strict allocation and control of land ownership, albeit at an imperial distance, inevitably gave way to more laissez-faire systems, but the concepts of administration and management of land at the village, county, or provincial level prevailed. Whether the difference between “allocation” and “redistribution” of land was one of semantics or the amount of force used to designate the possession of land and property certainly depends on the amount of land one ultimately received or the force to which one was subjected.\(^ {65}\)

While the Chinese recognized state responsibility for the enforcement of law as early as the Tang dynasty,\(^ {66}\) they also retained a traditional mis-

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\(^{60}\) Id. at 167.

\(^{61}\) CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 122 (noting that “extensive reforms took place in China, particularly during the 1930s and 1940s when various new codes adopted from the Japanese and Western models were promulgated”).


\(^{63}\) Id.

\(^{64}\) FAIRBANK, supra note 35, at 5.

\(^{65}\) See discussion infra part II.

\(^{66}\) CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 124.
trust for and fear of governmental authority.\textsuperscript{67} The lengthy distances between population centers, rural areas, and the seat of imperial power created an atmosphere which discouraged most people from initiating formal legal redress.\textsuperscript{68} In the event that a dispute required arbitration, Chinese customary law of informal dispute settlement controlled at the local levels of society such as clan, village and guild.\textsuperscript{69}

Imperial attempts at land reform were imposed on a country with a government bureaucracy that interfered very little in the local affairs and disputes of its people. Likewise, the centuries-old \textit{juntian} system of land allocation worked well for the then-existing society in which the people looked toward local arbitration and resolution of their disputes.\textsuperscript{70} With the fall of the imperial court, it was clear by the end of the nineteen century that China could no longer rely on these “primitive” methods in the face of the modern world. The everyday lives of Chinese in the twentieth century, especially in the southern provinces, remained as it had been for hundreds of years — an endless struggle for survival which was not assuaged regardless of the democratic ideals introduced in Sun Yat-sen’s Republican Revolution of 1911.\textsuperscript{71}

China’s entry into the modern age was marked by a state of nationwide chaos and hunger. Neither Beijing nor the democratic ideals of 1911 could protect people from random acts of violence committed by roving bandits under the leadership of relentless warlords.\textsuperscript{72} China’s labor force fled from a country that was seemingly out of control except for the continuation of the old system of land ownership. Thus, the nation was ripe for changes that would revolutionize the very notions of private property and land ownership. By 1921, the Chinese Communist Party had been formally established in Shanghai.\textsuperscript{73}

\textbf{B. The Nationalization of Private Property During the Revolutionary Period}

\textbf{1. Overview of Communist Land Reform}

Under the Communist regime land reform was of the highest priority. First, it was a necessary principle of a revolution which considered the disproportionate ownership of land to be a source of social injustice and a cause of rural economic stagnation.\textsuperscript{74} Second, land reform was a way to gain and maintain the loyalty of the vast peasant population. Third, land

\textsuperscript{67} See id.
\textsuperscript{68} Id.
\textsuperscript{69} Id.
\textsuperscript{70} Id. at 187.
\textsuperscript{71} NEE & DE BARY NEE, supra note 10, at 16.
\textsuperscript{72} Id.
\textsuperscript{73} SEAGRAVE, supra note 51, at 149.
\textsuperscript{74} CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 282.
reform was perceived as a way to strengthen the authority of the new regime in rural areas.75 Communist-led land reforms began as early as the 1930s and continued in spite of the diversion of resources and attention to the Anti-Japanese War of 1937-1945. In 1946 the Chinese Communist Party launched a widespread movement to change the policy of land reform from rent and interest reductions for landowners to confiscation and distribution of landlord estates among the peasants in north and northeast China and in Shandong province (along the eastern coast of China), areas where the Communist regime's control was strongest.77

In order to implement Mao Zedong's Land Reform Act of 1950, land was to be taken from owners and redistributed among the poor peasants. Although Mao's plan was intended to maintain agricultural production and maximize effective redistribution while minimizing economic and political upheaval, in practice it took the form of “persuasion, intimidation, nationalization and confiscation.”79 The government organized “mass meetings,” in which peasant cadres brought all residents of a village together for the purposes of determining individual class status, and “trials,” in which landlords and other villagers would appeal their class status before the cadres and neighbors. These meetings and trials often resulted in the imprisonment and death of many landlords.80

One year later, the Agrarian Reform Law of 1951 was passed.81 The 1951 Act accorded certain protections to “rich peasants,” i.e., the resident landowners who rented some of their land to tenant farmers and were commercial farmers themselves.82 Land reform under Mao was based on the abolition of tenure on existing farms rather than on egalitarian redistribu-

75. Id. at 282-83.
77. Id. at 79. Reforms in south and southeast China — areas where the Chinese have a longstanding reputation for their iconoclastic and obstreperous attitude toward authority — were initiated more slowly. Further, the Chinese Nationalists in 1946 still held power in scattered regions of China, especially the southern coast. See SPANCS, supra note 14, at 493 (“In the summer of 1946, for instance, the Guomindang massed 150,000 troops, many of whom now had excellent American or Japanese arms, equipment, and vehicles, to move on the 29 counties held by the Communists in Jiangsu province”).
78. The Land Reform Act of 1950, also known as the Agrarian Reform Law of the P.R.C., adopted by the Central People’s Government Council on June 30, 1950, translated in GOVERNMENT AND POLITICS IN REVOLUTIONARY CHINA: SELECTED DOCUMENTS, 1949-1979, 11 (Harold C. Hinton ed., 1982) [hereinafter Agrarian Reform Law]. China's rural population fell into five categories: landlords (largely absentee owners), rich peasants (nonabsentee owners who rented out some land and farmed the rest), middle peasants (owner farmers), poor peasants (tenant farmers), and agricultural laborers. The Reform Act of 1950 was intended to “dispossess the landlords in favor of the last two groups; in theory, rich peasants were to be left alone, except for being dispossessed of the land that they rented out. In practice when applying this law, many cadres (Party workers) classified people as landlords who actually were not and deprived them not only of their land but often of their lives as well.” Id.
79. CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 125.
80. Id.
81. Id. at 283.
82. Chen, supra note 76, at 77.
tion, and the reform movement was organized from the bottom rather than imposed from above. While the confiscation of land took place without compensation to the former landlords, the intent was to permit rural landowners to retain control over enough land to support themselves and to let them keep their commercial and industrial assets. In reality, these Communist-led reforms did not result in the equal distribution of land in rural areas; after the reform, some villagers still controlled twice as much land as their poorest neighbors.

By 1952, land reform in China was complete. Execution of the reform was hailed for its thoroughness, speed and effectiveness. About eighty percent of China's rural population—more than 310 million people—had been affected.

2. Effects of Communist Land Reform

Despite some propagandists' glowing views of land reform successes under China's early communist regime, other writers acknowledge that the 1950 land reform campaign showed little resemblance to the proposed plan

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83. CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 283. See also Chen, supra note 76, at 81-83 (describing the four steps of land reform. First, a study was made of conditions in "one hsiang (an administrative unit comprising many villages)." Local peasant cadres then explained the government's policy to the people. "Through accusation meetings and other means, the facts of past abuses by the landlords [were] brought to light... Despotic landlords guilty of serious crimes [were] tried and punished."

Second, the class status of the village people was ascertained by means of a "general meeting of the peasants" followed by meetings of smaller groups. Landlords and others who wished to appeal their categories could present their cases before a village-wide meeting. The five class categories derived from the Land Reform Act of 1950. See supra note 78. In practice, exceptions were made in the classification process, so that some individuals who were of "landlord origin" would not be classified as such if they were "revolutionary army men, workers, pedlars [or] professional people." These individuals were the "peasants" who might be permitted to retain 200 per cent of the average per capita holding in a rural area; land in excess of this amount would then be subject to redistribution. In addition, the elderly living alone, orphans and invalids with no other means of support would also be exempt.

Third, landlord holdings were confiscated and redistributed. Villagers would accomplish this task in a series of public meetings during which rich and middle peasants "voluntarily" disclosed the size of their holdings. Decisions on redistribution were then made and announced. The general rule was that no compensation was given for "requisitioned land and property" except for subsistence reasons.

Fourth, title deeds to land as well as mortgages or "IOUs" were surrendered, inspected and burned in public bonfires. New deeds would then be issued to the peasants to legalize their freshly received holdings.

84. CAMBRIDGE ENCYCLOPEDIA OF CHINA, supra note 5, at 283.

85. Id.

86. See CHINA IN TRANSITION: SELECTED ARTICLES 1952-1956 75 (1957) there were no more tenants or farm labourers who owned nothing but their hands. Every tiller of the soil, man or woman, became an owner. This was the democratic revolution on the farm, which ended feudalism.

87. Chen, supra note 76, at 84. See also HOLLINGWORTH, supra note 49, at 82 ("Indeed, by 1952 an agrarian revolution had been completed. 700 million mou (one mou = one-sixth of an acre) had been redistributed to 300 million peasants. In the heavily populated and productive areas of the south and south-east the peasants received only one mou which rose to two mou in the north and as much as seven in Manchuria.").
as outlined in the 1950 law. Reform efforts were explicitly described as a class struggle against landlords. Furthermore, land reform was linked to the Korean war effort by the Communist Party leadership. Both Chinese landlords and the United States were deemed enemies of the Chinese people and treated accordingly through the passage of the 1951 and 1952 Laws Against Counter-Revolutionaries. These laws inflicted severe punishments on traitors, spies and "reactionary" or "stubborn" landlords.

In practice, the "thoroughness, speed, and effectiveness" of land reform owed its success more to the arbitrary nature of the mass meetings and trials than to any consideration for procedural rule of law. The protections promised to qualified landlords under the Land Reform Act of 1950 were seldom granted. The law also promised that after agrarian reform was completed, the P.R.C. government would issue "title-deeds" and "recognise the right of all land owners to manage, buy, sell or rent out land freely," but these promises were likewise broken. Traveling party investigators assisted peasant associations in village meetings which were held to categorize rural residents into various classes for the purpose of redistributing the property of landlords and rich peasants. According to one authority, "executions of landlords numbered at least several thousand, and tens of thousands were most likely fined or placed for several years in forced labour camps. In one South China county a total of 400 counter-revolutionaries and landlords were shot. This number included fully 20% of the local gentry."

88. JAMES P. BRADY, JUSTICE AND POLITICS IN PEOPLE'S CHINA: LEGAL ORDER OR CONTINUING REVOLUTION? 81 (1982). See also HOLLINGWORTH, supra note 49, at 335 (noting that "Mao is severely criticised for the deaths and acute suffering he caused as a result of his too speedy efforts to establish People's Agricultural Communes. No sooner had the landlords' property been divided amongst the peasants than they were forced into co-operatives . . . . Then the peasants were pressed into vast agricultural communes which caused the death of hundreds of thousands of sheep and cattle.").

89. BRADY, supra, note 88, at 81. In a December 1950 broadcast, Teng Tzu-hui, Director of the Rural Work Department and a top administrator in land reform criticized "peaceful land reform." Teng delivered what amounted to an exhortation of the Chinese people to "Resist-America . . . . We all know that the landlord class . . . . stands together with our great enemy, Imperialism and is not a weak and effeminate form but has a history of exercising deep-rooted authority over the country for over 2000 years. We realize that it is no easy task to wipe out this cruel and stubborn foe, the landlord class. The job must be done with fierce class struggle." Id. at 81-82.

90. Id. at 82-83.

91. See id. at 82. "Neither lawyers nor rigid codes of legal procedure regulated the tribunal's process, as peasants came forward to bite, kick and spit upon the assembled gentry. Witnesses and spectators frequently numbered thousands and entire villages left the fields to participate in the business of social justice." Id. at 82-83.

92. See id. at 83 ("[T]he Communists recorded some 143,761 cases against landlords and counter-revolutionaries over one six-month period in Central-South China alone").

93. Chen, supra note 76, at 83.

94. BRADY, supra note 88, at 83 (stating further that "it appears to have been a government policy to shoot at least one landlord in every village.").
II.
THE "CLAIMS/ASSETS" PROBLEM

A. Background

The "claims/assets" problem is a phrase which refers to the linking of claims of United States nationals for the taking of their property in China by the Communist government to the Chinese assets in American banks that were blocked by the United States government.\(^9\) The issue arose in December of 1950 when President Truman froze all Chinese assets in the United States in retaliation of China's military intervention in Korea.\(^9\) In response, the Chinese government expropriated all property belonging to United States nationals in China and froze all U.S. deposits in the territory under its control.\(^9\) The United States estimated that the value of seized property and assets belonging to U.S. nationals totalled approximately $197 million; the assets belonging to Chinese nationals in the United States amounted to roughly $80.5 million.\(^9\)

After the assets seizures by the United States and China in 1950, resolution of the claims/assets problem languished for more than 25 years. Before taking office, President-to-be Richard Nixon set the stage for rapprochement in 1967 when he urged China's entry into "the world community" and suggested that the time was ripe for a Sino-American dialogue to

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96. Pinard, supra note 95, at 148 n.1 (citing Trading With the Enemy Act of 1917, 50 U.S.C. § 1 app. (1976) and detailing origins of executive power to block foreign assets in amendments to § 5(b) of the Trading with the Enemy Act as well as the primary blocking provision, The Foreign Assets Control Regulations, 31 C.F.R. § 500.201 (1983)).

97. Jackson, supra note 1, at 681.

98. Id. at 682. See also id. at 682 n.7 (noting that the U.S. Treasury Department investigated U.S. claims of property seized in China and accounted for all Chinese assets blocked in the U.S.). The figure of $197 million was compiled in 1972, and was based on the claims of some 384 American nationals which had been validated by the FCSC. 1972 FINAL REPORT, supra note 2, at 507. The figure of $80.5 million of P.R.C. assets was a sum later revised at the time of the Agreement of 1979 (see discussion infra part II.B.2) from the original sum of $76.5 million reported by the Office of Foreign Asset Control as of July 31, 1972, U. S. Department of Treasury, Press Release (Sept. 28, 1979) and Treasury Department, Office of Foreign Asset Control, 1970 Census of Blocked Chinese Assets in the U. S. (1970).
begin. Both Peking and Washington recognized that the problem was a significant stumbling block to normalized economic and political relations between the two nations. Consistent with Nixon’s campaign to part the Bamboo Curtain, Secretary of State Henry Kissinger viewed resolution crucial to the expansion of trade relations. The claims aspect of the problem threatened trade relations because United States nationals could potentially attach Chinese assets to compensate them for their claims. Not only were there no Chinese ships entering United States ports, there were no direct banking transactions, no official trade agreements, and no maritime or aviation accords. During the period of the claims/assets problem, Chinese assets subject to attachment did not knowingly enter the jurisdiction of United States courts. Despite reports in 1973 that an agreement was imminent, the problem lingered for nearly ten more years. One commentator reasoned that while China did not appear to find the claims/assets problem a diplomatic priority, associating a negotiated agreement with greater

99. Hollingworth, supra note 49, at 225 (discussing an article written by Nixon before the upcoming election and published in the October 1967 issue of FOREIGN AFFAIRS). This non-diplomatic communication came to the attention of both Chairman Mao Zedong and Premier Zhou Enlai because it also appeared in REFERENCE NEWS, a publication in which translations of important articles on China from the western press appeared and were circulated among a limited Chinese audience of officials and senior cadres.

100. See Fitzpatrick & Prodgiers, supra note 95, at 449-50 n.6 (quoting Secretary of State Henry Kissinger who stated during a press conference on February 22, 1973, “The initial step in a further expansion [of trade] has to be the discussion of the two issues... [of] blocked assets and private claims. When these two issues are resolved, which we can expect to be fairly soon, then further steps can be taken.”). The authors also cite measures under the Nixon administration designed to relax barriers to trade expansion between the two nations, and note that the claims/assets problem was “one crucial obstacle that must be surmounted before any serious bilateral trade agreement can be effected.” Id. at 449.

The authors assert that the United States had maintained a “rigid adherence to a four point policy” with respect to China prior to Nixonian rapprochement. Id. at 452. The four points are:

1. Economic defense—American financial facilities and dollars would not be made available for the benefit of China.
2. Preservation/Marshalling—pursuant to either unilateral action or as a part of a bilateral settlement between the two countries, the Chinese assets frozen in the United States can be used to offset American assets frozen, destroyed, or nationalized in China.
3. Protection of Chinese nationals’ interests—the assets of Chinese nationals, especially of those living outside China, would be immune from confiscation by the Chinese government as long as those assets were kept in this country.
4. Isolation—in an attempt to isolate the Chinese economy no commercial or financial transactions were permitted by American firms or American controlled foreign firms.

Id. at 453. See also Pinard, supra note 95, at 153-54 (linking resolution of the claims/assets problem and China’s efforts to reinitiate diplomatic level discussions with the U.S. early in 1977 to China’s deteriorated international economic situation in late 1976).

101. Carlson, supra note 95, at 254. See also Jackson, supra note 1, at 683 n.16 (“For US-China trade, the significance of the ‘Claims/Assets’ settlement is manifold. Prior to the resolution of this problem, PRC property entering the US was subject to attachment by US claimants.” (citing Bayur, The Blocked Chinese Assets: Present Status and Future Disposition, 15 Va. J. Int’l L. 960 (1975))).

102. Carlson, supra note 95, at 254-55. The impact of sovereign immunity and jurisdiction in relation to the claims/assets problem are beyond the scope of this article. For a comprehensive discussion of these aspects, see id. at 261.

103. Id. at 255.
amounts of U.S. trade might be an effective incentive for China to break the legal bottleneck.104

The lack of incentive for China to settle the claims/assets problem was complicated by several difficulties. First, there was a large discrepancy in the estimated value of the assets blocked by the two countries. Chinese assets in American banks totalled some $80.5 million while American-owned property was roughly $197 million. If the United States and China had pursued a solution like the one reached between the United States and the Soviet Union to resolve the mutual blocking of assets that followed the Bolshevik Revolution, each country would have assigned title to the assets held by the other country. In turn, each country would satisfy the interests of claimants from those assets.105 Under this method, however, United States claimants would have received only forty-one cents on the dollar in settlements based on assets valued at $197 million to be paid from the blocked Chinese assets of $80.5 million.106 This method of exchanging title on assets also assumes that the countries hold good title to the seized properties when, in fact, “[t]here was no guarantee of the strength of P.R.C. title to the [blocked] assets.”107 The United States could therefore have become involved in protracted litigation over title to the assets, as it did in the Russian context.108

Second, claimants on both sides faced significant obstacles to establishing good title to the properties that were taken. Individuals who fled the mainland but failed to claim their assets after departure would have faced obvious difficulties in proving ownership. Although landlords were promised that new titles and deeds would be issued to them, in many cases, the documents were never delivered. Similarly, China was not able to identify Chinese nationals whose property had been taken or blocked by the United States because the United States took a position of confidentiality regarding ownership information of specific assets.109

Third, fluctuations in the value of United States dollars compared to deflated Chinese currency made it difficult to arrive at fair market appraisal values of the properties at issue. Arriving at reasonable appraised values for expropriated property was problematic because of the devaluation of Chinese currency. While items of real or personal property taken by the Chinese Communist regime were found to have comparable dollar values regardless of the currency used, some intangibles such as cash, accounts receivable, prepaid items and the like, when expressed in Chinese currency,

104. Lichtenstein, supra note 95, at 26 (discussing the technical problems involved in a “mutual assignment” type of agreement like the Soviet-U.S. Litvinov Assignment).
105. See generally id.
106. Id. at 26.
107. See id. (“Under general principles of assignment, the U.S. would have received title to the blocked property only as good as the title of its assignor, the PRC.”).
108. Id.
109. Lichtenstein, supra note 95, at 26-27.
frequently ended in conversions that resulted in zero values. The effect of these zero values on the claims program is that if a claimant’s losses included such intangibles, a successful claim would be even more unlikely than if the loss were real or personal property. Additionally, whether accurate appreciation would be a factor in valuation also complicated matters. Given these difficulties, individuals on both sides of the claims/assets problem were virtually assured that they would be unable to prove the validity of their claims.

B. The Foreign Claims Settlement Commission (FCSC) of the United States

The International Claims Settlement Act of 1949 protects property belonging to United States citizens abroad. The legislative history of this Act and its frequent Congressional amendments demonstrate Congress’ continuing acceptance of the President’s claim settlement authority and provide for the resolution of particular problems arising out of settlement agreements. The FCSC, or the Commission, is an independent federal agency within the United States Department of Justice which administers the claims of United States nationals against foreign governments. In 1954 it was established to replace the International Claims Commission and War Claims Commission. Congress amended Title V of the Internal Claims Settlement Act in 1964 to establish a scheme for the systematic review of claims belonging to United States nationals against Cuba. Two years later Congress amended Title V again “in order to obtain information concerning the total amount of claims of nationals of the United States against

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110. 1972 Final Report, supra note 2 at 422-23. This outcome was comparable to the FCSC’s position on currency conversions in other claims programs. For instance, certain Russian rubles were worthless, as were bank accounts and mortgages expressed in Hungarian pengő; Greek currency reforms deflated the drachma to such an extent that debts expressed in that currency were extinguished for all practical purposes; Bulgaria leva, Rumania lei, and Polish zlotys were severely devalued, and debts expressed in such currency were reduced accordingly. Id. at 423.

111. See generally id.

112. 22 U.S.C. § 1621 et seq. See also Jung, supra note 95, at 94 (noting that the Act was originally enacted to allocate funds received from a settlement agreement with Yugoslavia and to provide a procedure to distribute funds from future settlements).

113. Id. at 95. But see id. at 94-95 (citing Dames & Moore v. Regan, 101 S. Ct. 2972, 2987 (1981) in a discussion of the President’s constitutionally-based authority to enter into Executive Agreements which by their terms settle all claims of United States nationals against foreign countries. Whether settlement agreements reached by Executive Agreement preserve a claimant’s 5th Amendment due process rights is beyond the scope of this paper, however it has been an element of dispute according to commentators who have addressed claims alternatives for those U.S. nationals whose claims have not been “fully satisfied.”). See generally Tarnapol, supra note 95; Pinard, supra note 95.


115. Jung, supra note 95, at 96-97 (noting that “pre- and post-Castro creditor interests of American nationals . . . [became] eligible for consideration by the Foreign Claims Settlement Commission under this title . . . so long as the ‘taking’ . . . of such property interests arose for the first time after January 1, 1959,” and n.26 House Committee on Foreign Affairs, H.R. Rep. No 706, 89th Cong., 1st Sess., 3 (1965)).
the Chinese Communist Regime.\textsuperscript{116} This 1966 amendment authorized the FCSC:

to receive and determine in accordance with applicable principles of substantive law, including international law, the validity and amount of certain claims of nationals of the United States for: (1) losses resulting from the nationalization, expropriation, intervention, or other taking of, or special measures directed against, property of nationals of the United States; and (2) disability or death, resulting from actions taken by or under the authority of the Chinese Communist regime. All such claims must have arisen since October 1, 1949.\textsuperscript{117}

The statutory regulations which governed both the Cuban and the Chinese Claims Programs were identical; there were no modifications to the statute covering the Cuban claims program except for the difference between the dates on which claims arose.\textsuperscript{118} Further, neither of the statutes provided for the actual payment of awards granted by the Commission. Rather, the statutes merely authorized a pre-settlement adjudication of claims “for the purpose of any future negotiations with the Government of China.”\textsuperscript{119}

The FCSC has the jurisdiction to “receive, examine, adjudicate, and render final decisions with respect to claims of nationals of the United States included within the terms of any claims agreement concluded between the government of the United States and a foreign government . . . .”\textsuperscript{120} A claimant is required to prove: (1) United States nationality; (2) some degree of ownership in the property on which the claim was based; (3) the value of the property lost; and (4) the date and circumstances of the loss asserted.\textsuperscript{121}

FCSC decisions are final and conclusive, free from judicial review.\textsuperscript{122} Justification for the FCSC’s exclusive jurisdiction over all such claims is that the United States’ ability to reach agreements with “taking countries” would be reduced if those foreign nations could not rely on the finality of

\textsuperscript{116} 1972 Final Report, \textit{supra} note 2, at 417.

\textsuperscript{117} \textit{Id.} at 417 (citing title V of the International Claims Settlement Act of 1949 (78 Stat. 1110), as amended by Public Law 89-780 (80 Stat. 1365), approved November 6, 1966).

\textsuperscript{118} \textit{Id.} at 417. See also Pinard, \textit{supra} note 95, at 152 n.21 (noting that when Congress amended Title V to authorize the China Claims Program, it made “no substantive changes other than to allow the determination of claims against the PRC arising since October 1, 1949.”).

\textsuperscript{119} 1972 Final Report, \textit{supra} note 2, at 417.

\textsuperscript{120} \textit{Id.} at 13 (referring to Section 4(a) of Title I of the International Claims Act of 1949 [Public law 81-455, approved March 10, 1950, 64 Stat. 12, 22 U.S.C. 1623, as amended]).

\textsuperscript{121} \textit{Id.} at 5.

\textsuperscript{122} Jung, \textit{supra} note 95, at 92. (“The decisions of the Commission with respect to claims shall be final and conclusive on all questions of law and fact, and shall not be subject to review by the Attorney General . . . or by any court by mandamus or otherwise.” (citing 22 U.S.C. § 1622(g), amending 22 U.S.C. § 1623(h) (emphasis added)).
those claims settlement agreements. In addition, federal case precedent
supports the FCSC’s plenary jurisdiction over claims of U.S. citizens.

The FCSC’s plenary authority is consistent with the traditional rule of
international claims law that “only states have rights under international
law.” This rule precludes individuals from presenting international
claims directly to foreign states, in accord with the theory that “whoever
wrongs an individual indirectly injures his state.” Therefore, in order to
seek redress, an aggrieved person must demonstrate to her government that
it should adopt her private grievance and espouse it as an international
claim against the offending foreign state.

The impact of the FCSC’s work in adjudicating claims, much of which
extends over some fifty years of global upheaval, can scarcely be
ignored. The FCSC’s jurisdiction has encompassed the administration of
thirty-nine claims programs including the Chinese and Cuban claims pro-
grams; more than 654,000 claims have been filed through the Commission,

123. See id. at 92-93 (“[N]o federal statute explicitly states that the jurisdiction granted to the
Commission to determine claims is exclusive. However, such an interpretation of the Commission’s
mandate is necessary if the United States is to continue to reach claims settlement agreements with
foreign governments as it has in the past. . . . [I]f U.S. citizens had the option to file separate claims in
U.S. courts and thus win separate individual judgments against foreign governments, the effectiveness
of claim settlement would be illusory and would signal the end of internationally negotiated agreements.”).

124. Id. at 96.

125. RICHARD B. LILlich & Gordon A. CHRISTENSON, INTERNATIONAL CLAIMS: THEIR
PREPARATION AND PRESENTATION 8 (1962).

126. Id. at 7.

127. Id.

128. Id. at 228. Under the International Claims Settlement Act of 1949, claims against 12 nations
have been completed: Bulgaria, China, Cuba, Czechoslovakia, German Democratic Republic, Hungary,
Italy, Panama, Poland, Rumania, Soviet Union, and Yugoslavia. Id. at 228. See also Table VIII, Index
of Completed Programs, id. at 230.

The FCSC and its predecessor, the International Claims Commission, have administered 19 claims
programs for property expropriated by foreign governments. Id. at 4. Out of approximately 44,300
claims filed under the various titles of the International Claims Settlement Act of 1949, about half of
them received awards totalling approximately $2.5 billion. Id.

While China’s property expropriation and land reforms were on an unprecedented scale, they were
by no means unique. In fact, the claims/assets problem between China and the United States was
analogous to conflicts that existed between the former Union of Soviet Socialist Republics and the
United States, as well as between the United States and other nations. Claims and counter-claims
between the governments of the U.S.S.R. and the United States and claims of their nationals for losses
resulting from the expropriation, nationalization, or other taking of property required systematic
resolution were similar to the circumstances at issue between the United States and China. See
Fitzpatrick & Prodgers, supra note 95, at 453.

In 1933 the United States and the U.S.S.R. entered into the Litvinov Assignment, which provided
for claims due the U.S.S.R. to be released and assigned to the United States as a condition precedent to
the United States’ formal recognition of the U.S.S.R. Id. at 454. Notwithstanding problematic elements
of the Litvinov Assignment, similar agreements using the Litvinov Assignment as a model have been
fashioned between the United States and Rumania, Bulgaria, Hungary, and Peru. See Carlson, supra
No. 4451); with Bulgaria, July 2, 1963 [1963] 1 U.S.T. 969, T.I.A.S. No. 5387); with Hungary, March 6,
T.I.A.S. No. 7792). See also Lichtenstein, supra note 95, at 26 (referring to “protracted litigation over
title” to assets in the aftermath of the Litvinov Assignment).
of which 413,450 have been awarded settlements in excess of $3 billion. The FCSC's official position is that the claims period for many programs under its jurisdiction have long since passed. The FCSC will no longer accept any future claims of United States nationals against China, because officially, all claims that it has received under the China Claims Program have been resolved.

I. The First China Claims Program

Pursuant to the 1966 amendment to Title V of the International Claims Settlement Act authorizing the FCSC to review the claims of United States nationals against China, the Commission established the First China Claims Program in order to cover the losses of United States nationals during the period between October 1, 1950 and November 6, 1966. The program commenced on November 8, 1967 and was completed by July 6, 1972 (the deadline for filing claims being July 6, 1969). Under the First China Claims Program, a total of 579 claims were filed; 384 claims were verified for awards totalling $196,861,844. The claims of fifteen corporate or business entities comprised some $120 million of the total sum awarded. At first glance, these numbers appear to be substantial, but the FCSC itself acknowledged that the number of claims filed against the Chinese Communist regime "was only a small fraction of the number of Cuban claims." The Commission suggested that one reason for the relatively lower number of claims against China was that supporting evidence for claims was not as readily available as in the case of Cuban claims.

The structure of reviewing and administering claims under the China Claims Program was essentially the same methodology applied to the Cuban Claims Program. "[T]he property must have been owned directly or indirectly by a U.S. citizen on the date of the loss, and the claim must have

130. Telephone Interview with David Frost, Staff Attorney, FCSC (Nov. 29, 1994) [hereinafter Frost Interview] (stating that the 1979 Agreement has characteristics of lump-sum settlements, which by their nature, are limited in the period of time during which a nation may espouse claims against the other nation; as a practical matter, therefore, once an agreement has been reached, a nation is unlikely to open diplomatic channels to pursue further claims). Cf. Jung, supra note 95, at 93 (“Only the claims against Cuba have not been and do not appear likely to be settled in the near future.”).
131. The author proposes that in contrast to the U.S. government's official position, in fact, not all claims of United States nationals against China were resolved in either the First or the Second of the China Claims Programs.
133. 1972 FINAL REPORT, supra note 2, at 417.
134. Id. at 506-07. The total number of claimants was 677, of which 539 were individuals, 56 were corporations or businesses, and 82 were religious or other non-profit organizations (such as educational institutions). Approximately seven percent of the total awarded ($14,377,726) went to individuals. By contrast, 93 percent of the total awarded ($182,484,118) went to 138 corporate, religious or non-profit claimants. Id.
135. Id. at 508.
136. 1972 FINAL REPORT, supra note 2, at 418.
137. Id. at 418.
been held continuously thereafter by one or more U.S. nationals until the
date of filing with the Commission." 138 Other elements of the Chinese
expropriations of property, however, were uniquely problematic. For
example, in addition to the difficulty in obtaining supporting evidence for
claims, in some areas of China, recording title to property in the name of an
American was strictly prohibited. 139 A practice developed in which Ameri-
can property owners who wished to protect their property rights retained
Chinese agents in whose names title to the properties were recorded, then
mortgages were executed for the full values of the properties in favor of the
Americans. 140 The issue of currency devaluation was another element of
Chinese expropriation that was unlike the Cuban Claims Program. In the
latter program, the Cuban peso was found to be equivalent to the United
States dollar. 141

These issues were probably secondary to most claimants, however,
since the "Notice to Claimants" of the First China Claims Program
expressly advised them that the program would "not be officially inaugu-
rated until such time as appropriations for its administration become avail-
able to the Commission . . . ." 142 Furthermore, in view of the bamboo
curtain that stood between Sino-American relations for two decades, the
settlement expectations for most China-watchers, claimants or otherwise,
remained dim until 1979 when President Carter and Deng Xiaoping reached
their historic accord. 143

2. The Settlement Agreement and the Second China Claims Program

The Agreement Concerning the Settlement of Claims between the
United States and the People's Republic of China (the "Agreement") was
signed on May 11, 1979. 144 This Agreement purported to resolve the
claims/assets problem. Under the terms of the Agreement, China was per-
mitted to reclaim the assets and accounts frozen by the United States in
1950; in return, China agreed to remit to the United States a "lump sum"
payment of $80.5 million. 145 The Agreement appeared to open another

§ 1643C (1970)).
139. 1972 FinaL REPORT, supra note 2, at 419.
140. Id. at 419.
141. Id. at 422.
142. Id. at 425 (Exhibit 18).
143. See Pinard, supra note 95, at 154 (noting that the United States recognized the People's
Republic of China on January 1, 1979 and that negotiations to resolve the "claims/assets"
problem began almost immediately when Vice Premier Deng Xiaoping met with President Carter and Treasury
Secretary Blumenthal in Washington, D.C.).
144. Lichtenstein, supra note 95, at 25. While the two governments agreed to solve the claims/
assets problem as early as 1973, a settlement was not negotiated until 1979. Jackson, supra note 1, at
681 n.1.
145. Lichtenstein, supra note 95, at 25. However, Lichtenstein adds that "[i]f the claims/assets
problem was truly as simple as that . . . its resolution would doubtless have come sooner." Id. In fact,
the "agreement in principle" that was reported to have been reached in 1973 was never consummated.
window of opportunity for potential claimants because the claims period was extended from the earlier dates of the First China Claims Program, supposedly covering losses sustained between November 6, 1966 and May 11, 1979. However, in the areas of responsibility of the state for injuries to aliens and protection of property belonging to United States citizens abroad, the losses suffered by a great many U.S. nationals of Chinese descent have not been redressed. In fact, during the Second China Claims Program, all of the eighty-two claims received by the FCSC were ultimately denied.

Once the initial astonishment that an accord had been reached dissipated, the practical realities of administering the Agreement proved daunting. Some claimants who had received preadjudicated awards under the First China Claims Program found their settlements severely limited. The settlements available to many claimants, particularly those with large awards, amounted to only forty-one cents on the dollar.

The United States received its first installment of $30 million from China as called for by the Agreement on October 1, 1979. The United States Treasury then began to make payments on those claims that had been certified by the FCSC. Claimants whose awards were $1000 or less were to receive the full value of their claims; claimants with awards of $1000 or more were to receive $1000 plus a pro rata share of the remaining funds. No interest was paid to the China claimants since interest on the claims was only available if the principal on all awards had been paid.

Id. at 26. The payment schedule consisted of $30 million on October 1, 1979 and the balance of $50.5 million in five equal annual installments of $10.1 million each, commencing on October 1, 1980. Id. at 27.


147. The figures referenced in the FCSC's 1972 Final Report included very few eligible claims of United States citizens of Chinese descent. Among the 15 claims reported, only five represented claims of individuals (as opposed to corporate or institutional claimants). None of these five claimants were identified in the report as individuals of Chinese descent. 1972 Final Report, supra note 2, at 509.

148. 1981 Annual Report, supra note 16, at 15. See also Lichtenstein, supra note 95, at 28 (noting that "[a]s of this writing, the Commission has issued proposed denials on all but a handful of claims filed within that time period.").

149. 1981 Annual Report, supra note 16, at 1. The FCSC candidly stated, "[t]he Peoples [sic] Republic of China surprised many in 1979 by agreeing to establish diplomatic relations with the United States and to provide funds for the settlement of outstanding United States claims." Id.

150. The calculation of 41 cents on the dollar is based on a comparison of $197 million in FCSC claims to China's $80.5 million payment to U.S. But see Carlson, supra note 95, at 256 n.16 (comparing the compensation of the China Claims Program to the case of Czechoslovakia where claimants received 42 cents on the dollar).

151. Lichtenstein, supra note 95, at 28. Title I of the International Claims Settlement Act requires that five percent of payments made to the U.S. by foreign countries go toward the Treasury's miscellaneous receipts as reimbursements for administrative expenses. Id.

152. Id.
There were many problems below the surface of the Agreement, other than claimants receiving only partial payment for certified awards. The unblocking of the Chinese assets held in the United States and the question of the actual nationalization of property held by United States citizens in China were particularly problematic. First, the assets originally blocked in 1950 were frozen not because they were per se property belonging to China or Chinese nationals, but "rather because of the existence of a P.R.C. interest of any nature whatsoever, direct or indirect, in the property." Individual P.R.C. nationals therefore had the additional hurdle of proving good title to their assets separate from a P.R.C. interest.

Second, unlike the precedent setting Litvinov Assignment, where there were official decrees nationalizing the property in question, commentators disagree on whether official decrees were issued by China. Even if official decrees were issued, they would likely have had little administrative impact on the seizures of property held by overseas Chinese who were United States citizens. Thus the property of United States citizens of Chinese descent was subject to expropriation or nationalization under the land reform of the 1950s because of the threat that American-owned property posed to the Communist regime of that period.

Third, the new filing period for post-1966 claims, from June 1 through August 31, 1979, was not effective in drawing out a significant number of new claimants.

Finally, the status of overseas Chinese with American citizenship was problematic in the context of international claims law. Generally, "formulations of compensation standards have ... focused almost exclusively on the property of non-nationals." Here, U.S. citizens of Chinese descent are not considered per se non-nationals by China; rather, they are "compatriots," i.e., natives, but non-citizens of China. Thus, overseas Chi-

\[\text{\footnotesize 153. See id. at 27 (discussing details of the schedule for respective responsibilities to be fulfilled by the United States and China, including U.S. notification of holders of blocked assets and modifications to the original date of unblocking Chinese assets).}\]

\[\text{\footnotesize 154. Id.}\]

\[\text{\footnotesize 155. Compare id. (stating that \textquotedblleft[in]o ... decrees appeared to be available in the Chinese situation, and the absence of such official action, combined with probable factual uncertainties, could have made proof of ownership difficult." with J. COHEN & H. CHIU, PEOPLE'S CHINA AND INTERNATIONAL LAW 686-87 (1974) (noting \textquotedblleft[the controls were intended to prevent the United States Government from engaging in economic disruption and endangering the interests of the people of China."\textquotedblright).}\]

\[\text{\footnotesize 156. Lichtenstein, supra note 95, at 26.}\]

\[\text{\footnotesize 157. Id.}\]

\[\text{\footnotesize 158. See 1981 ANNUAL REPORT, supra note 16, at 15.}\]

\[\text{\footnotesize 159. Jessica Heslop & Joel Roberto, Property Rights in Unified Germany, 11 B.U. Int'l L.J. 243, 274 (1993) (footnote omitted) (citing John Herz, Expropriation of Foreign Property, 35 A.J.L. 243, 254 (1941) (\textquoteleft\textquoteleft[W]e can state as a general rule of international law that expropriation of foreign property obliges the state to indemnify the foreign owner.\textquoteright\textquoteright).}\]
BROKEN PROMISES

Chinese occupy a sort of hybrid, or sub-class of Chinese nationals according to the Chinese government.  

The Agreement and the efforts of the FCSC to adjudicate and administer the claims of United States nationals is clearly a testament to the United States’ determination and commitment to uphold the standards of international claims law. As a diplomatic achievement, the Agreement has given rise to great improvements in Sino-American relations as well as to the development of enormous economic opportunities on both sides. But the fact remains that in the areas of “responsibility of the [state] for injuries to aliens” and “diplomatic protection of citizens abroad,” the injuries and losses suffered by a great many U.S. citizens of Chinese descent have not been redressed. A further irony in the attempt by China to accept responsibility for its injuries to “aliens” is the fact that the period covered by the Second China Claims Program (November 6, 1966 through May 11, 1979) roughly coincides with the dates of China’s second Communist upheaval, the Great Proletariat Cultural Revolution (1966-1976), which represented a decade of near catastrophic destruction of Chinese society.

III. REFORMS UNDER DENG XIAOPING

A. Background: The Cultural Revolution

The most vivid image which captures the power of the GPCR is a sea of thousands of Chinese youth each clutching a palm-sized copy of Mao’s infamous “little red book.” Fired by the Chairman’s exhortations to return to “traditional” communist values, some 10 million Red Guard volunteers, ranging in age from nine to eighteen, committed countless acts of violent disrespect to property and to individuals.

160. Provisional Measures of Guangzhou Municipality on Preferential Treatment for Overseas Chinese and Hong Kong and Macao Investors, Chinalaw No. 232 (1984) [hereinafter Provisional Measures] (using the nomenclature “compatriot” to describe individuals of Chinese descent who reside outside China’s borders and providing for either a “monument or the title of Honorary citizen of Guangzhou Municipality” to be conferred on an individual if a “particularly outstanding contribution is made.”).


162. FAIRBANK, supra note 35, at 276.

163. Id. at 328. In committing their acts of “ideological patriotism,” the Red Guard defied explicit admonishments set out in The Agrarian Reform Law of 1950. Article 20 states that “[a]ll grave-yards and woods surrounding the graves must remain intact during the confiscation and requisitioning of land.” Article 21 states, “[a]ncestral shrines . . . and landlords’ houses should not be damaged” and Article 24 states that “[l]and and houses owned by overseas Chinese should be handled in accordance with appropriate measures determined by the people’s governments . . . on the principle of having regard for the interests of overseas Chinese and in keeping with the general principles of this law.” Agrarian Reform Law, supra note 78, at 13-14.
Over a three month period, young people were transported from all over China to attend six rallies in Beijing,\(^\text{164}\) where they were incited to mount a two pronged attack on the “Four Olds” (old ideas, culture, customs, and habits) and on individuals tainted by any touches of “foreignism or intellectualism.”\(^\text{165}\) Inspired by Mao’s “moral justice,” these bands of young adults and students rampaged through China perpetrating acts of “hooliganism, breaking into the homes of the better-off and the intellectuals and officials, destroying books and manuscripts, humiliating, beating, and even killing the occupants . . . \(^\text{166}\)

Driven by peer pressure and eager to curry the favors of the local Red Guard cadres, these youths turned on their own family members to show their loyalty to the communist regime. Even the elderly, once revered as the fabric of Chinese society and culture, were not immune. Doomed by the Red Guard because they embodied the Four Olds, many of the elderly were dragged from their homes and beaten until they confessed their crimes against the state, which generally consisted of being tainted by foreign influences.\(^\text{167}\) The number of GPCR victims is estimated to be about one million, a considerable number of whom did not survive.\(^\text{168}\) All types of property belonging to rich peasants that had been spared in the early 1950s — ancestral graveyards, family shrines, genealogical records, and other personal items — were desecrated or demolished by the Red Guard. The destruction of those remaining vestiges of Chinese civilization, including books, temples, art, and any property stigmatized as “foreign,” was so great that there are no reliable estimates of the losses sustained.\(^\text{169}\)

The hooliganism that took place at the hands of the Red Guard was so great that the movement was eventually disbanded by Mao himself in July of 1968.\(^\text{170}\) Some members of the Red Guard were sent to distant villages to begin the arduous process of re-education through labor.\(^\text{171}\) But the GPCR and the ideological campaign inspired by Mao and executed by the Gang of Four continued until 1976, not coincidentally, the year in which

\(^\text{164.}\) Fairbank, supra note 35, at 328.
\(^\text{165.}\) Id. at 328.
\(^\text{166.}\) Id. at 328.
\(^\text{167.}\) See Spence, supra note 14, at 605-06 (“With all schools and colleges closed for the staging of revolutionary struggle, millions of the young were encouraged by the Cultural Revolution’s leaders to demolish the old buildings, temples, and art objects in their towns and villages, and to attack their teachers, school administrators, party leaders, and parents.”).

The author’s maternal and paternal grandmothers and step-grandmother were disenfranchised, imprisoned, and tortured during the post-World War II liberation period and during the GPCR. During the Red Guard’s purge of the Four Olds, the author’s paternal grandmother “confessed” to the crime of possessing a collection of baby pictures of her American grandchildren for which she was punished with a physical assault from which she did not survive. She died at the age of 87 in 1967.
\(^\text{168.}\) Fairbank, supra note 35, at 336.
\(^\text{169.}\) Id.
\(^\text{170.}\) Id. at 330.
\(^\text{171.}\) Id. at 336.
Mao died. Later the Gang of Four was arrested, tried, and sentenced. The Cultural Revolution was over, but its effects lingered. In 1982 China initiated a new revolutionary concept: a fundamental reform of its legal system.

B. Deng’s “Open-Door” Policy

One of the highest ranking victims of the abuses that took place during the GPCR was Premier Deng Xiaoping. The Gang of Four wielded so much power that in addition to the widespread chaos caused by the Red Guard under their exhortations and Mao’s implicit approval, they and a small group of Mao’s inner circle were able to purge the Communist Party of those who opposed them. Deng Xiaoping was a prime target for he had attempted to quell the disturbances that the Red Guard created on college campuses during the GPCR. In fact, Deng was displaced twice; first in 1966 when he was removed from office and subjected to mass criticism and humiliation, and again in 1976, ousted from all of his political posts “inside and outside the Party . . . .” He was left with only his party membership intact.

Thus, Deng’s ascent to political power following Mao Zedong’s death was nothing less than the proverbial phoenix rising from its ashes. Upon assuming power, Deng set into motion a comprehensive agenda of reform in the areas of foreign relations, land and agricultural management, and modern legal thought. The reforms enjoyed so much success that a new slogan became commonplace in China: “Mao gave us liberation. Deng gives us prosperity.”

After the fall of the Bamboo Curtain, China abandoned its rejection of western influences and welcomed foreign contact. This “open-door” policy was driven by the nation’s deteriorating economic situation which could only be met by an infusion of technology and capital from abroad. The P.R.C. government established trade relations with foreign countries, and in short order, the economy benefitted from Most Favored Nation status with the United States.

172. Id. at 340.
173. The Gang of Four consisted of Mao’s wife, Jiang Qing; Security Chief Kang Sheng; speechwriter and Politbureau member Chen Boda; and third in power after Chairman Mao and Premier Zhou Enlai, Wang Hongwen. HOLLINGWORTH, supra note 49, at 60, 100, 121, 269.
174. SPENCE, supra note 14, at 604, 606.
175. Id. at 605-06.
176. Id. at 648.
177. Id. at 342-68.
179. FAIRBANK, supra note 35, at 343.
180. Pinard, supra note 95, at 153.
181. FAIRBANK, supra note 35, at 348-49.
While life in urban areas improved, this betterment did not spread throughout the countryside. Agricultural productivity remained sluggish, due to a lack of incentives for farmers to produce anything other than grain. Therefore, a principal move by Deng's party was to encourage by-product and sideline production on farms. The idea was that farmers could sell those by-products in local free markets as well as raise their incomes by doing so. The next logical step was to move responsibility for agricultural production down to the individual farm family in order to provide a greater incentive for farmers to increase production; the more they produced, the more they could keep for themselves or sell. The return to individual farming was carried out under contracts between the farmers and the state, and permitted rural families in the 1980s to profit from their harvests once they made their requisite contribution of crops to the team. This "new" approach to farming came to be known as the baogan system. The agricultural reform, however, stopped short of permitting farmers to purchase land outright.

The increase in foreign trade, joint ventures, and reforms in agricultural production methods created a need for a similar modernization of the legal system in China. Since the rule of law under the communist regime originated from the power of the party, law and political policy tended to coincide. Government action that was contrary to party policy was therefore "ipso facto illegal." This approach to law was doubtless discouraging for the growing ranks of foreign traders seeking assurance that a legal system embodying western notions of the rule of law would be in place in the event that dispute resolution was required.

C. A New Constitution and the Introduction of the Rule of Law to Private Property

In 1982, China adopted a new constitution. Not unexpectedly it explicitly set forth the principle that land in the cities was owned by the state and land in rural and suburban areas was owned by collectives. But

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182. Id. at 346.
183. See id. at 347 ("In approaching the reform of agriculture after 1976 planners recognized that rural management had been faulty, first of all in the motivation of the farmer.").
184. Id.
185. Id.
186. Id.
187. Id.
188. Id.
189. Id. at 356.
190. P.R.C. Const. art. 10 (adopted December 4, 1982 by the Fifth National People's Congress of the P.R.C. at its Fifth Session) ("Land in the cities is owned by the state. Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives. The state may in the public interest requisition land for its use in accordance with the law. No organization or individual may appropriate, buy, sell or lease land, or otherwise engage in the transfer of land by unlawful means. All organizations and individuals using land must ensure its rational use.").
the 1982 Constitution also astonished many observers because it expressly acknowledged the state’s responsibility for protecting the “right of citizens to own . . . houses and other lawful property” as well as the “right of citizens to inherit private property.” In the same year China enacted its first Civil Procedure Law, notable for its legislation on international judicial cooperation.

Reforms in the legal system did not stop there. During the 1980s, China reiterated its constitutional commitment to the property rights of its citizens time and again. In 1986, the Fourth Session of the Sixth National People’s Congress adopted the General Principles of Civil Law of the People’s Republic of China. Among other notions with a distinctly western flavor, the General Principles enumerated a citizen’s personal property rights, including the right to possession of “lawful income and house.”

The General Principles not only set out the government’s responsibilities and role in protecting those rights, but has also given rise to a system for dispute resolution with respect to the right to use or own land.

This dispute resolution system was strengthened by adoption of the Land Administration Law of China. The Land Administration Law provides that “[o]wnership of land and right to the use of land shall be protected by law. No unit or individual shall infringe upon such ownership and right.” It also states that “[d]isputes concerning ownership of land and the right to the use of land shall be solved through consultation between the parties. If no agreement can be reached through consultation, they shall be decided by the people’s government.” In a break with traditional Chinese methods of limiting dispute resolution to the local level, this 1986 law specifies that disputes “between units under ownership by the whole people according to law.”

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191. P.R.C. CONST. art. 13; see also art. 76 (“A citizen enjoys the right to inherit property according to law.”).
194. Id. at 42. Ch. 5, art. 75 (“[P]ersonal property includes the citizen’s “lawful income, house, savings, articles used in daily life, cultural objects, books and reference materials, etc.”).”
195. Id. (“The lawful property of a citizen is protected by law: it is forbidden for any group or individual to interfere with possession or to loot, destroy, or illegally impound, sequester, freeze, or confiscate it.”).
196. Id. at 73. ¶ 4. ¶ 96 (“Any dispute with respect to the right to use or to own land . . . must first be handled by the relevant administrative agencies. A party who disagrees with a decision of an administrative agency may bring a lawsuit in the People’s Court in accordance with the relevant provisions of law and administrative regulations. The People’s Court, however, may directly accept and handle cases based on tort.”).
197. Land Administration Law of the P.R.C., adopted at the 16th Meeting of the Standing Committee of the Sixth National People’s Congress, promulgated by Order No. 41 of the President of the People’s Republic of China on June 25, 1986, effective as of Jan. 1, 1987, Chinalaw No. 359.
198. Id. at Ch. II, art. 11.
199. Id. at art. 13.
and units under collective ownership shall be decided by the people's governments at or above the county level."  

By contrast, disputes "between individuals, between individuals and units under ownership by the whole people, or between individuals and units under collective ownership shall be decided by the people's governments at the township or county level."  

The law also provides for an appeal process. Parties who refuse to accept the decision of the relevant people's government may file a lawsuit in a people's court within thirty days from the date of receiving notice of the decision.

Finally, in 1988 China "liberated" land as a commodity and amended its constitution in April of that year to stipulate that while the state would retain land ownership, individuals could retain or transfer land-use rights. These legislative developments in laws respecting private property and land use rights were designed by China to encourage foreign trade and investment under the economic reforms and open-door policy of the 1980s. In addition to facilitating dispute resolution crucial to the maintenance of foreign trade, the legal system must also accommodate the growing volume of international litigation between China and overseas Chinese. Overseas Chinese number in the millions and the potential for a concomitant measure of international litigation to follow is correspondingly great, especially if China is successful in its efforts to entice overseas Chinese to participate in the country's economy. Participation may come in either of two forms — through new investment or the 1982 claims settlement program.

200. Id.
201. Id.

Id. Cf. Ch. VI, art. 43 ("Units under ownership by the whole people and urban units under collective ownership that unlawfully encroach upon land without approval or with fraudulently obtained approval shall be ordered to return such land and demolish, within a definite period of time, any structures or other installations newly erected thereon, or such structures or installations shall be confiscated and fines shall be imposed concurrently. Disciplinary sanctions shall be adopted against those who bear the main responsibility in their respective units for such unlawful encroachment, either by the units to which they belong or by offices at a higher level.").

203. Alexa Lam, Regulating Real Estate, CHINA BUS. REV., Sept/Oct. 1993. See also Pitman Potter, China's New Land Development Regulations, CHINA BUS. REV., Mar. 1991 ("[L]and-use rights are conveyed in four ways: by grant, transfer, lease, and pledge. Grants of land-use rights are issued by the State or its authorized agencies for specific periods of time in exchange for payment of transfer fees, generally paid up-front in a lump sum. The grants are conditional upon the recipients' (the 'land users') investing, developing, and using the land in accordance with a master plan developed by the local land administration bureau and the local planning, construction, and real estate departments. Grants may be extended through simple agreement or by bidding and auction.").

204. See Chen, supra note 192, at 389.

205. China's recognition of overseas Chinese relations to Chinese within its borders are particularly important in the matters of "marriage and divorce proceedings, custody of children, division of property, and questions of inheritance." Id.

206. In the United States alone, citizens of Chinese descent and residents of Chinese ancestry are estimated at between 1.6 and 1.7 million. See supra note 9.
1. Preferential Treatment of Overseas Chinese

In the mid-1980s the municipality of Guangzhou enacted a provisional measure designed to offer preferential treatment to overseas Chinese, Hong Kong, and Macao investors. This statute was formulated "to encourage Overseas Chinese and Hong Kong and Macao compatriots to invest in Guangzhou Municipality in accordance with the requirements of municipal economic construction and social development plans." The provisional measure also purports to offer overseas Chinese investors land use fees levied at the discounted rate of eighty percent and grant priority approval to applicants in return for their contribution of foreign investment to the Guangzhou Municipality.

In 1990 the State Council of the People’s Republic of China enacted its sweeping Regulations for the Encouragement of Investment by Overseas Chinese and Compatriots from Hong Kong and Macao. Like the Guangzhou provisional measure, these regulations were formulated “with a view to promoting national economic development and encouraging overseas Chinese and compatriots from Hong Kong and Macao to invest in mainland China.” While the regulation proclaims that the state “shall not nationalize the investments and other assets of investors,” it also provides that “[b]ased on the need of the social public interest, investment enterprises may be expropriated in accordance with legal procedures and appropriate compensation shall be paid.”

The efficacy of these promises to attract a meaningful number of overseas Chinese investors remains to be seen. In spite of the recent headlines touting the real estate boom in markets concentrated in the coastal areas of Canton, Shenzhen and Shanghai, many China-watchers are skeptical. Property and land use rights have developed so rapidly that critics question the reliability of the legal system in China and whether China will, in practice, follow the rule of law.

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207. PROVISIONAL MEASURES, supra note 160.
208. Id.
209. Id. at art. 1.
210. REGULATIONS OF THE STATE COUNCIL FOR ENCOURAGEMENT OF INVESTMENT BY OVERSEAS CHINESE AND COMPATRIOTS FROM HONG KONG AND MACAO, promulgated by the State Council on August 19, 1990, Chinalaw No. 495 [hereinafter REGULATIONS].
211. Id. at art. 1.
212. Id. at art. 8.
213. Id. at art. 9.
214. See Jesse Wong and Hongmin Qui, Small investors Flock to China Property, ASIAN WALL ST. J., Sept. 1, 1992 (“Though China has discarded the radical politics of the past, the rule of law remains a very long-term goal. The country still operates largely at the whim of those in power. What is right or wrong, or what is legal or illegal, isn’t always clear.”). See also Christopher Lingle and Kurt Wickman, Is China Ready for GATT?, ASIAN WALL ST. J., May 12, 1994 (“Until property rights are extended and enforced by an honest legal system, China’s emerging middle class will remain stunted and cowed by the state.”).
2. Procedures and Standards for Reclaiming Expropriated Property

In 1983 the State Council enacted a provision for owners of urban property to file claims with the government to regain ownership of their homes.\textsuperscript{215} This provision followed the establishment of a program permitting overseas Chinese to apply for compensation or the return of expropriated property in 1982.\textsuperscript{216} According to a government spokesperson at the Consulate General of the People's Republic of China in Chicago, the 1982 program was initiated as a direct result of the destruction and seizure of property that took place during the Cultural Revolution. The program was intended to provide redress for overseas Chinese whose properties were illegally taken and occupied by China from 1966 to 1976, a period that coincides with the GPCR.\textsuperscript{217} At first blush the existence of the redress program indicates a willingness by China to comply with generally accepted rules of international claims law, but the reticence of consular staff to discuss the program and the lack of printed materials and application forms for claimants indicate that China is less than eager to draw attention to the program.

In addition to being difficult to discover, the program enacted by China is also rigorous in its requirements. Overseas Chinese who wish to file claims for their expropriated property must (1) have had their property taken against their will;\textsuperscript{218} and (2) produce documentation of ownership, or in the case of ownership through inheritance, documentation of familial relationship, certification of death, and power of attorney granted to a Chinese resident who will represent the applicant in China. Documents must be notarized in the United States by the county in which the individual resides and by the office of the appropriate secretary of state prior to being submitted to China's regional consulate for authentication. Following authentication, the individual must submit the documents to the housing bureau of the city or province where the subject property is located.\textsuperscript{219}

\textsuperscript{215} REGULATIONS ON ADMINISTRATION OF PRIVATE URBAN HOUSES, promulgated by the State Council on December 17, 1983 at 1 (translated in STATUTES AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA (UEA Press Ltd. & Institute of Chinese Law Ltd. 1987). See Sec. V, art. 25, at 3 ("If the owner of a private house in the city shall apply for return of a house being taken care of by the administrative organs for real estate, he shall present all necessary documents and show that no claims dispute his ownership of the house, and shall then have the house returned to his care after official examination and approval.").

\textsuperscript{216} The provision was enacted in November, 1982. Consul Interview, \textit{supra} note 8.

\textsuperscript{217} Id.

\textsuperscript{218} Telephone Interview with Yin Xiong, China Law Specialist at the Chicago office of Baker & McKenzie, Chicago, Ill. (Dec. 17, 1994) [hereinafter Yin Interview] (noting that in some cases, Chinese property owners "donated" their property to China's government in order to forestall more drastic measures against them).

\textsuperscript{219} Conflict exists between two sources on whether the individual must submit the documents to the provincial or county bureau of housing or whether the regional consulate may do so for the claimant. According to the consulate spokesperson, it is the individual's responsibility, but Yin Xiong advises that a Chinese consulate in the United States might submit documents to the appropriate Chinese bureau on behalf of a claimant.
The standards of review and criteria for approval of claims may vary depending on the level of government occupied by the reviewing bureau and the notoriety of the claimant. If a claim is approved, China may return the property (i.e., the right to use the building or land), compensate the claimant for the value of the property, or offer the claimant a substitute property. If the property is returned, China may play a mitigating role. For example, if squatters have occupied the property, the government may evict them and move them into other housing before returning the property to the claimant. Overseas Chinese owners also have the option to retain the former squatters as tenants by entering into lease-rental agreements which must be formalized through the execution of contracts signed by both owner and renter. Generally, these transactions are handled by Chinese notaries rather than attorneys. The conversion from "private" property to rental property may have tax consequences for the owners, for property taxes may be imposed subject to the local housing bureau's review. In the event that a building has been destroyed or razed for new construction, the owner may be offered either cash compensation or a substitute property (i.e., a housing unit in the same location, if available, or in another location). Even a successful claimant faces a long and arduous wait before receiving any form of compensation from China.

IV.
Recommendations

Richard Lillich, the leading expert on foreign claims law, has suggested that international claims law is an area where the abundance of substantive law stands in marked contrast to the scarcity of procedural remedies. A studied analysis of the terms and administrative methods of

220. Consul Interview, supra note 8.
221. Yin Interview, supra note 218 (suggesting that "famous" people are more likely than others to receive favorable decisions on their claims).
222. Provisional Regulations of the P.R.C. on Real Estate Tax, issued on Sept. 15, 1986 by the State Council, Chinalaw No. 372, art. 3 ("The Tax will be calculated on the residual following subtraction of between 10 and 30 percent of the original value of the property. Details of the scope of the subtraction will be determined by the provincial, autonomous region or directly administered by the municipal people's government. . . . Where the property is leased, the rental income from the property will be used as a basis for Tax calculations.").
223. Relatives of the author who have undertaken the claims process report a minimum of eight years for validation of their claims and an open-ended wait for receipt of substitute property. One claim, for example, involving the daughter and nephew of a Chinese decedent, was opened in 1985 at China's Chicago consulate. Both claims were approved in 1993; the nephew's claim was settled in 1994, but the daughter's claim is still outstanding. The daughter is a California resident and while she has received a document which purportedly entitles her to a unit in the condominium that was built on the site of her father's building, she is still waiting for official notice that she can assume occupancy, or title to the unit. Telephone interview with Mrs. Jean Ko and Ms. Louise Ko (Jan. 23, 1996) [hereinafter Ko Interview].
224. Lillich & Christenson, supra note 125, at 156.
both the 1979 Claims Settlement Agreement and the current Chinese claims program supports Lillich's viewpoint.

In the 1979 Agreement, for example, many potential claimants were shortchanged by the lack of notice that the program existed; people either simply did not know that they could be compensated for their expropriated property by the United States government, or once they had notice, the filing period had closed. Regarding the 1982 P.R.C. reparations program, the standards for review may be subject to regional variances because the program is administered at the provincial level of government. Furthermore, some successful claimants have waited as long as nine years before receiving their settlements while other claimants suffer even longer delays. Differences in the waiting period for receipt of settlement awards appear arbitrary, since China has not been forthcoming in offering explanations for the time variance.\footnote{225}{Ko Interview, supra note 223.}

Additionally, in both programs, effective procedural remedies have been scarce. For instance, the standards of proof of ownership are too high for most legitimate claimants to meet. Moreover, arriving at fair market values for expropriated properties has been complicated by conversions of deflated post-war currency and the inability to accurately calculate appreciation in property values over time. The passage of time also means that potential claimants have diminished opportunities to pursue redress for their losses. Even though China recognizes the inheritability rights of overseas Chinese who are potential claimants, the claimants' heirs are burdened by the extra procedural hurdle of proving consanguinity to the deceased claimant and their inheritability rights.

Insofar as addressing the outstanding potential claims, China is in a better position than the United States to take action. This is because under conventional rules of international claims law and the Congressional mandate which authorizes the FCSC to administer foreign claims, individual claimants are barred from taking action against China for their losses. The 1979 Agreement specifically states that, once signed, "neither government will present to the other, on its behalf or on behalf of another, any claim encompassed by this Agreement. If any such claim is presented directly by a national of one country to the government of the other, that government will refer it to the government of the national who presented the claim."\footnote{226}{1981 Annual Report, supra note 16, at 21.}

Furthermore, claimants who have sought equitable remedies in American courts have not succeeded in obtaining judicial redress. For example, in Shanghai Power v. United States\footnote{227}{4 Cl. Ct. 237 (1983).} and Jackson v. People's Republic of China,\footnote{228}{794 F.2d 1490 (11th Cir. 1986).} the claimants challenged the efficacy of the settlement agreement

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225. Ko Interview, supra note 223.
228. 794 F.2d 1490 (11th Cir. 1986).
formula for their losses. Brocken promises Both the Shanghai and Jackson courts were unwilling to second-guess the power of the President to enter into an agreement that disposed of international claims. These cases did, however, expose the shortcomings of the 1979 Settlement Agreement in the scope of its coverage and the disposition of unsettled claims. Since United States claimants have not successfully found remedies through judicial methods, they must look elsewhere.

If claimants sought relief through legislative means, they would have to convince Congress to re-open the China Claims program. This would require the United States to admit the shortcomings of the 1979 Agreement, and through Congressional mandate, re-open the China Claims Program. However, there are no existing resources to honor future approved claims since all the funds received from China under its terms were paid out when the FCSC announced the completion of the Agreement in 1981. The Second China Claims Program was created under the authority of Section 4(a) of Title I of the International Claims Settlement Act of 1949, which followed the 1979 Claims Settlement Agreement and anticipated China’s promise to pay $80.5 million to the United States. In order for the United States to obtain the funds needed to administer an extension of the 1979 Agreement, it would have to re-enter into negotiations with China and reach a new agreement that would require the latter to pay further monies for such compensation.

In the alternative, China could modify its existing claims program. Since it bears sole responsibility for the expropriation of property belonging to United States citizens of Chinese descent, China owes a duty in equity to bear the consequences of its expropriation. This is a duty that China has already acknowledged in connection with the property rights of overseas Chinese investors. In the event that China expropriates an “investment enterprise” belonging to an overseas Chinese, it has promised to pay the investor “appropriate compensation.”

China could modify the procedural remedies of its existing 1982 reparations program to make it more uniform, thereby reducing provincial and regional differences and ambiguities in administration. Essentially, China could create a “federal” jurisdiction or agency — much like the United States’ FCSC — “to receive, examine, adjudicate, and render final deci-

229. Tamapol, supra note 95, at 369.
230. For an in-depth discussion of these cases and the limitations of the opinions vis-à-vis plaintiffs litigating claims settled by executive agreement, see generally id.
231. Id. at 369.
232. In fact, the FCSC administered two China Claims Programs. The First China Claims Program was devised merely to allow the FCSC to solicit and receive claims from United States nationals. The FCSC’s jurisdiction over those claims expired on July 6, 1972. 1981 ANNUAL REPORT, supra note 16, at 14.
233. Id. at 13.
234. Regulations, supra note 210, at arts. 5, 9.
sions” with respect to the claims of overseas Chinese for their expropriated property. Such an agency would replace the administrative provincial agencies that currently render subjective decisions on claims in China. Another alternative would be for China to adopt the administrative model used by other countries for compensation of similar war-time expropriations, such as Germany’s reparations scheme following the nation’s reunification.

Ultimately, however, any recommendations made by the United States, regardless of whether they originate at the diplomatic or individual level and whether they are related to expropriated property, copyrights, or human rights, will likely have little effect on government practices in China. The last fifty years of Chinese history illustrate that China is a nation which changes at its own pace, regardless of, and sometimes in spite of, world opinion. That the 1979 Agreement was achieved at all is a testament to the desire of both countries to overcome the claims/assets problem and move forward into a new millennium of Sino-American relations.

CONCLUSION

In the context of international claims law, the efforts of China and the United States to adjudicate the grievances of injured parties are fairly recent developments. It is one thing to establish an adjudicatory system to right wrongs but quite another to right those wrongs in practice. The demands of global politics and diplomacy aside, fundamental problems exist in both programs which have hindered their efficacy. In spite of the good intentions of both claims programs, the vast majority of legitimate claimants will never obtain relief or compensation for their losses due to a number of reasons.

First, the number of potential claimants is so vast and scattered so widely that neither the program administered by the United States (through the FCSC) or by China could possibly reach all those with valid claims. The FCSC did undertake an outreach campaign to disseminate information about the Second China Claims program in the late 1970s. This campaign included publication of an announcement in the Federal Register, publication of a press release which was sent to more than 250 news services, and a mailing to more than 250 individuals who had previously expressed an interest in filing claims after the First China Claims Program was completed in 1972. As of this writing, no further details have been discovered regarding the degree of attention which the press release

236. LILICH & CHRISTENSEN, supra note 125, at 7-15 (discussing the Restatement of Foreign Relations and noting that the United States was one of the last western nations to formulate policies in the 1960s).
238. Id.
received from mainstream media, or whether the press release was distributed to Chinese language newspapers published in the United States.\footnote{Frost Interview, supra note 130. The history of Chinese language newspapers published in the United States extends over a period of more than 100 years. The highest nationwide circulation is probably enjoyed by the New York-based \textit{World Journal} which is a daily newspaper with local editions printed in Chicago, Los Angeles and San Francisco; national news is now sent by satellite to its respective bureaus. The \textit{World Journal}'s closest competitor is the \textit{Chinese Times}, a daily published in San Francisco with a more regional circulation. English language publications targeted to a Chinese readership during the time of the First and Second China Claims programs were limited to one newspaper: \textit{East West Chinese American Weekly} published in San Francisco, California. At its height, \textit{East West} enjoyed a nationwide circulation of less than 25,000. The author suggests that with rare exceptions, most United States nationals of Chinese descent were not aware that such a program existed; those who were aware did not receive “official” notice from the FCSC, but rather relied on word of mouth. Its past policies notwithstanding, the FCSC currently disseminates notices about claims programs to foreign language publications in the United States and is in the process of identifying Albanian language newspapers in connection with administering an Albanian claims program. [This discussion of Chinese language newspapers is based on the author’s personal experience and knowledge of the Chinese press in the United States as 1988-1990 writer/editor & business manager of \textit{East West Chinese American Weekly}.]}

In contrast, for China, the main source of information for United States nationals remains the nearest consulate office. In the author’s experience, the consulate staff has been less than forthcoming with providing information about the program; in fact, they seem to discourage, rather than encourage new claimants from seeking relief.

Second, in spite of China’s recent open-door policy, many overseas Chinese have been reluctant to file claims because they either fear retaliatory actions against family members still residing in China, or object to the potential propaganda value their approved claims might have in benefiting China. For the generation most affected by the last fifty years of global change, old beliefs and prejudices still prevail. Notwithstanding the upheaval of the post-war revolution, the wounds inflicted during the Cultural Revolution have likewise barely healed. Only a small ratio of qualified claimants have pursued compensation from China and those who have undertaken the task of filing claims have found the review and compensation process to be arduous and fraught with bureaucratic subjectivity and frustration. Claimants who lack the requisite documents to file for compensation under the program may have alternative methods of proving ownership, but those methods, such as continuous occupation of the property by family members, may be equally difficult to research and authenticate, particularly for citizens of Chinese descent who have resided in the United States for generations.\footnote{Ko Interview, supra note 223 (The author’s relatives were able to show that lineal descendants of the owner had occupied the property at issue continuously until 1985).}

Third, the United States’ claim program was orderly and systematic in comparison to China’s claim program. Since China has put the review of claims in the subjective hands of provincial, regional, or local bureaucrats, it is likely that application of standards for review and criteria will vary.
For example, there are conflicting opinions about whether documents must be forwarded by an individual claimant or whether they may be forwarded to the appropriate provisional or local government by the consulate to authenticate a claimant's documents.\footnote{241} In addition, overseas Chinese occupy a unique position in the Nationality Law of the People's Republic. While it is unlikely that residents of Hong Kong, Macao, or Taiwan will choose to maintain dual citizenship, China legally considers them nationals. Hence, cases involving those individuals are regarded as domestic matters.\footnote{242} Furthermore, the majority of United States citizens who are overseas Chinese were either branded enemies of China or have been lifelong Kuomintang sympathizers. Thus, it is even more difficult for property belonging to these individuals to be returned, unless the individual occupied or occupies such a high position that China would gain stature by showing its magnanimity in granting a settlement. And, as stated above, United States citizens of Chinese descent whose families were persecuted, are disinclined to pursue claims that may become propaganda tools for China.

While overseas Chinese claimants no longer have redress through the United States government, they do have an avenue of redress through China. Those who follow that route are burdened with the knowledge that their task remains a difficult one. By establishing the reparations program, China has taken a first step in acknowledging its responsibilities and obligations to overseas Chinese and United States citizens of Chinese descent for their expropriated property. However, whether this step is a mere pretext to gaining a dominant position in the global marketplace and generating hard currency, or a principled and enduring commitment to forging the rule of law in China remains uncertain. For most Chinese Americans, however, the expropriated properties acquired by their ancestors at such great cost are indeed gone forever.

\footnote{241} Yin Interview,\textit{ supra} note 218; Consul Interview,\textit{ supra} note 8.
\footnote{242} Chen,\textit{ supra} note 192, at 395-96.