

LET THE LEGAL SYSTEM OF REAL RIGHTS FULLY
RESPOND TO ECONOMIC AND SOCIAL
DEVELOPMENT: A REVIEW OF PROFESSOR SHEN
WEIXING'S CHINESE REAL RIGHT LAW:
PRINCIPLE, POLICY AND PRACTICE

JIANG HUIWEN*

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Abstract:

Chinese Real Right Law: Principle, Policy and Practice, written by professor Shen Weixing is not a traditional legal textbook. It comprehensively reflects the changes in the legal system of real rights and incorporates the key insights developed by the author through long term research on the same topic. The theoretical value of this book is found in the perspective that the real right law interacts with the socio-economic development and it proposes a research method combining both vertical and horizontal dimensions to help researchers identify the institutional role played by the legal system of real rights. The book also guides legal practitioners to pay attention to changes in the real right law and apply the relevant rules of the related part in Chinese Civil Code correctly. The book does not address the changes in possession and controllability due to the technological advancements, however it might be a purposeful decision made by the author to stick on the main task the book trying to accomplish. Overall, the book depicts the trajectory of self-transformation and self-transcendence of law by using the legal system of real rights as an example.

Keyw Words: legal system of real rights; socio-economic development; technical advancements; research method

I. INTRODUCTION

The real rights are important property rights that each civil subject enjoys to achieve their fulfillment.¹ The Civil Code of the People's Republic of China (Chinese Civil Code), implemented in 2020, revises the previous 2007 Real Right Law by deleting, modifying, and adding relevant provisions in the part of real rights. Its purpose is to improve the legal system of real rights and enhance the coherence and adaptability of real right law. Since the implementation of Chinese Civil Code, studying and interpreting

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¹ HUANG WEI (黄薇), ZHONGHUA RENMIN GONGHE GUO MINFA DIAN WUQUAN BIAN SHIYI (中华人民共和国民法典物权编释义) [INTERPRETATION OF THE BOOK OF REAL RIGHTS IN THE CIVIL CODE OF THE PEOPLE'S REPUBLIC OF CHINA] (Law Press China 2020).

it has become a crucial task in advancing the rule of law at the current stage.² It not only requires strengthening the understanding and application capabilities of judicial authorities and legal practitioners, but also entails actively promoting and showcasing this significant achievement in Chinese law's development to other parts of the world to boost the confidence of enterprises and individuals who will invest and operate in China.³

Professor Shen Weixing's book, *Chinese Real Right Law: Principle, Policy and Practice*, places the legal system of real rights within the context of legislative evolution, incorporates the latest research findings in the field of real rights, and elaborates on the principles, rules, and the practical cases of real right law. The positioning of this book could be understood from the following three perspectives. First, as a systematic textbook, it closely centers on provisions related to real rights in Chinese Civil Code, and organizes its chapters in alignment with the Code's framework to fully incorporate the legislative achievements. Second, as a monograph examining the development of legal system of real rights, this book not only introduces the specific legal institutions, but also illuminates the social governance functions performed by the real right law. Third, as a summarize of the author's academic research, this book integrates in several chapters the author's reflections on the cutting edge issues in the field of real rights.

The book is divided into seven chapters. The first three chapters constitute a general introduction to the real rights, while the remaining four chapters explain the normative contents of specific types of real rights. Regarding to the structure of the book, although its arrangements are correspond with both the provisions prescribed in the Chinese Civil Code and the general analysis approaches adopted by most textbooks, the book skillfully integrates several of the author's key insights developed through his long term research, which distinguishes it from other works on the same topic. While the book does not explicitly present these insights, it embeds them within the logic throughout the entire work. The article will first discuss the meaning of these insights and clarify how they match with contents in the book.

The primary insights that the author tries to convey through this book mainly include two aspects. First, the legal system of real rights is not merely a private tool for regulating the property relationship among civil subjects, but more importantly, it serves as

² *Zuigao Renmin Fayuan Guanyu Renzhen Xuexi Guanche <Zhonghua Renmin Gonghe Guo Minfa Dian> De Tongzhi* (最高人民法院关于认真学习贯彻《中华人民共和国民法典》的通知) [*Notice of the Supreme People's Court on Earnestly Studying and Implementing the Civil Code of the People's Republic of China*], SUPREME PEOPLE'S COURT (June 19, 2020), <https://www.court.gov.cn/zixun/xiangqing/237381.html>.

³ Gao Shengping (高圣平), *Minfa Dian Wuquan Bian De Fazhan Yu Zhanwang* (民法典物权编的发展与展望) [*The Development and Prospect of the Part of Property in the Civil Code*], 4 ZHONGGUO RENMIN DAXUE XUEBAO (中国人民大学学报) [JOURNAL OF RENMIN UNIVERSITY OF CHINA] 19 (2020).

a normative mechanism that supports the social governance. The institutional design of real rights is guided by higher level social objectives and it plays a significant role within the social system. Second, with the advancement of technologies, the legal system of real rights will either actively or passively, develop a dynamic evolutionary regime from its existing framework to adapt to the technological progress or reserve the referral clauses for special laws. It allows the real right law to continuously renew itself along with the social progress and contain the new elements. According to the author's conclusion of legal system of real rights, it is not a closed system, but rather a semi-open one that engages in the frequent interactions with external environment. This book offers a valuable perspective, guiding researchers to examine the connection between the property law system and socio-economic development, especially how and to what extent the former meets the needs of the latter.

II. THE PRIMARY INSIGHTS IN THE BOOK AND THEIR CORRESPONDING CHAPTERS

A. THE LEGAL SYSTEM OF REAL RIGHTS SERVES GOVERNANCE FUNCTIONS

a. settling disputes through clarifying the allocation of things

The legal system of real rights defines the clear boundaries for the use of resources by either allocating the resources to specific parties or encouraging them to build the cooperative relationship over the shared resources, thereby enabling civil subjects to conduct economic activities in an orderly manner. Without the legal system of real rights, resources would remain in an unclear state, resulting in unrestricted uses by any party and potentially leading to conflicts and disputes. For example, the book mentions that the attributes of real right include controllability and exclusivity.⁴ The right holder is entitled to use and manage the property according to their own will and to exclude any interference or encroachment by others. The controllability and exclusivity of real right constitute the prerequisite for clarifying the boundaries of resources. If the right holder is unable to control the property or exclude others from using it, the situation would revert to the stage where any party could use the resources without restriction. From the perspective of the structural principle of real right law, both the One-Thing-One-Right Principle and the Numerus Clauses Principle are closely related to the determination of ownership.⁵ This book argues that the One-Thing-One-Right Principle establishes the smallest unit of the objects of real rights. It not only facilitates a clear division of

⁴ SHEN WEIXING, CHINESE REAL RIGHT LAW: PRINCIPLE, POLICY AND PRACTICE 34, 43 (William S. Hein & Co., Inc. 2024).

⁵ Shen, *supra* note 4, at 41, 52.

resources, but also prohibits the excessive and unlimited subdivision of resources.⁶ Needless to say, the overly subdivided resources would cause the complexity in the attribution of resources. The Numerus Clauses Principle eliminates ambiguity in real rights and enhances the predictability of real rights by specifying the types and contents of such rights.⁷ In addition, it is worth considering that even if legislators have allocated the resources, when a situation involving the infringement of rights and interests arises, remedies for the real rights should be provided to recover the initial state of the allocation.⁸ Specifically, the actor who infringed upon the real rights shall be required to cease the infringement, remove the nuisance, or eliminate the dangers.⁹ Therefore, the rules for protection of real rights consolidate the outcomes of allocation of resources from an ex post perspective, invalidating any unlawful changes to the real rights.

b. realizing fullest potential through promoting the utilization of things

After allocating resources to specific civil subjects, the legal system of real rights will provide the commensurate incentives to promote the utilization of resources. These incentives operates through two main approaches. First, once the right holders obtain resources, they are motivated to make continuous investments therein, as any benefits derived from their efforts will accrue exclusively to the right holder. Under this incentive approach, the right holders are willing to strive to improve the method of production and increase the outputs to the fullest extent. Second, if the right holders are unable to devote the sufficient labor to the resources themselves, they may choose to transfer all or part of the resources to another civil subject through transactions and receive the income for supplying the factors of production. Driven by this incentive approach, the right holder will take advantages of the market rules to transfer the resources to the buyer who has the strongest willingness to pay. Regarding the first incentive approach, as it falls within the inherent scope of real rights, no other additional provisions are required. As for the second incentive approach, since it primarily occurs in contexts of transaction and involve changes in real rights, the establishment of a stable and secure transaction order constitutes a prerequisite for achieving the purpose of fullest and optimal use of resources. The book stresses the significant of the Principle of Publicity and Public Trust in establishing such kind of order.¹⁰ The principle means

⁶ Shen, *supra* note 4, at 41.

⁷ Shen, *supra* note 4, at 52.

⁸ Shen, *supra* note 4, at 67.

⁹ Minfa Dian (民法典) [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), arts. 235 and 236 (China).

¹⁰ Shen, *supra* note 4, at 78.

that any changes in real rights must be publicly disclosed to ensure that their statuses are recognizable to other parties. When the disclosed information conflicts with the actual situation, civil subjects who act in reliance on the disclosed information should be protected. The principle involves both the negative reliance and positive reliance on the apparent status of real rights and the positive reliance forms the basis of the bona fide acquisition rule.¹¹ The principle operates to safeguard the security of real rights transaction and aims to balance the relationship between the attribution of resources and their circulation. Meanwhile, in the part of the general theory of real rights, the book further reveals the connection between different models of alteration of real rights and the security of transaction.¹² Under the model of Creditor's Intention of Right, the parties' agreement formed by parties at the time of the conclusion of a contract includes the intention to transfer the real right of thing. As a result, there is no other requirement for publicity serving as validity condition for alteration of real rights, which often leads to the discrepancies between the publicized information and the actual status of the rights. Compared to the model of Creditor's Intention of Right, the model of Claim Formalism and Real Rights Formalism proves superior by treating publicity measures as validity condition for the alteration of real rights. It is commonly believed that the introduction of publicly registration system will enhance the security of transaction.

c. fostering personal development through providing individual with material supports

When the legal system of real rights allocates the resources to the specific individual, it provides the necessary material supports for their independent development. On the face of it, it grants the individuals material benefits, but in the substance, it fosters their growth and progress. The book reveals that the legal system of real rights does not merely focus on the property relationship among civil subjects, but embodies and demonstrates the humanistic ideas and values. To fully explain this issue, in the part of general theory of real rights, the book discusses whether the components of the human body can be regarded as the object of real rights under certain circumstances.¹³ The book argues that although an individual body is a physical entity, the law does not classify it as an object of real rights due to the ethical considerations and its distinct nature. Beyond the general doctrine, there are three exceptions mentioned in the book.¹⁴ First, after the body tissue is separated from human being, can such detached part be deemed as an object of real rights? Second, can an object which is not a

¹¹ Shen, *supra* note 4, at 79, 82.

¹² Shen, *supra* note 4, at 85–86.

¹³ Shen, *supra* note 4, at 45.

¹⁴ Shen, *supra* note 4, at 45–46.

part of human body be deemed as an object of real rights when it is attached to the body? Third, is a deceased human body deemed as an object of real rights and applicable to rules of inheritance? The book takes a cautious stance in determining the scope of objects of real rights in exceptional cases, reflects the legislators' concern for human dignity. As an instrument of social governance, the legal system of real rights should uphold the fundamental value of people-oriented, placing the respect for the protection of human dignity at the central part of the normative system. Except for the discussions on the scope of objects of real rights, this book also focuses on how the rules of right of habitation embody the humanistic care and the pursuit of justice.¹⁵ The right of habitation protects the interests of vulnerable parties through the enforcement power of the state. Compared to the transformation of the house ownership through sale or gift, the right of habitation does not change the status of house ownership. Instead, it creates the usufructuary right on the same property in the purpose of fulfilling the personal needs of the right holder. This kind of arrangement is acceptable to mutually supportive civil subjects. The author of this book was one of the scholars who advocate early for the inclusion of the right of habitation in real right law.¹⁶ Unfortunately, before the implementation of Chinese Civil Code, although the right of habitation was repeatedly proposed, it was not written in the legislative draft for review. Later, driven by persistent appeals from scholars and practitioners, along with the growing prominence of the social function of the house, the Chinese Civil Code prescribed a whole chapter on the right of habitation in the part of real rights.¹⁷ After thoroughly examining the constituent element of the right of habitation, this book further elaborates on its unique value in protecting individuals' residential interests from the perspective of its nature as a usufructuary right.¹⁸

B. THE LEGAL SYSTEM OF REAL RIGHTS ADAPTS TO TECHNOLOGICAL ADVANCEMENT

¹⁵ Shen, *supra* note 4, at 234.

¹⁶ Shen Weixing (申卫星), *Shiye Tuo zhan Yu Gongneng Zhuanhuan: Woguo Sheli Juzhu Quan Biyao Xing De Duochong Shijiao* (视野拓展与功能转换: 我国设立居住权必要性的多重视角) [*Expanding Views and Functional Transformation: Multiple Perspectives on the Necessity of Establishing the Residential Rights in China*], 5 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCIENCE] 77 (2005); Shen Weixing (申卫星), *Cong "Juzhu You Qi Wu" Dao "Zhu You Suo Ju" - Woguo Minfa Dian Fenze Chuangshe Juzhu Quan Zhidu De Lifa Gouxiang* (从“居住有其屋”到“住有所居”——我国民法典分则创设居住权制度的立法构想) [*Shift from the Fulfillment of Owning the House to Utilizing the House*], 2 XIANDAI FAXUE (现代法学) [MODERN LAW SCIENCE] 105 (2018); and Shen Weixing (申卫星) & Yang Xu (杨旭), *Zhongguo Minfa Dian Ying Ruhe Guiding Juzhu Quan?* (中国民法典应如何规定居住权?) [*How Should the Right of Inhabitation Be Stipulated in the Civil Code?*], 6 BILIAO FA YANJIU (比较法研究) [JOURNAL OF COMPARATIVE LAW] 65 (2019).

¹⁷ See *Minfa Dian* (民法典) [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), art. 366 (China).

¹⁸ Shen, *supra* note 4, at 236.

a. the emergence of new types of objects of real rights

The two essential characteristics of real rights are controllability and exclusivity. The aspect of controllability emphasizes the right holder's power to directly control the object and use it according to their will. This book points out that a proper understanding to the real right holder's capacity to control over an object requires an examination of an individual's capacity to control things from an entire perspective, instead of focusing on the specific individual.¹⁹ With the advancement of science and technology, both the categories of objects of real rights and the scope of the objects of real rights controlled by individuals have been steadily growing. The expansion of objects of real rights indicates how the emergent entities are being included in the scope of objects as the capacity for the control strengthens, rather than just a growth in the quantity of resources due to the increased productivity. It is obvious from the process by which the radio frequency spectrum was established as an object of real rights.²⁰ As radio waves were discovered and developed into a medium for signal transmission, legislators began to consider whether to recognize the radio frequency spectrum as an object of real rights and regulate it in a unified way. Some scholars argue that what distinguishes the radio frequency spectrum from other tangible objects of real rights is that the former lacks the substantial characteristic of ordinary objects.²¹ In essence, the spectrum represents the physical characteristic of radio waves. Therefore, the utilization of spectrum resources does not result in the depletion. The exclusivity of spectrum is founded on the principle that the same frequency can't be used by two civil subjects simultaneously, which means that the exclusivity of spectrum arises from the technical constraints while using it in the practice. It demonstrates that the creation of new objects of real rights not only captures the inherent status of the things but also incorporates innovative methods of individual's control over the things under the specific technical circumstances. Entering the 21st century, discussions about the emergent intangible properties continue, though the leading question of the discussions has shifted to the issue on the confirmation of data rights. The author of this book reiterates their position in the pertinent part of the book as one of the representative scholars who advocate the confirmation of data

¹⁹ Shen, *supra* note 4, at 43.

²⁰ See *Minfa Dian* (民法典) [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), art. 252 (China).

²¹ Lou Yaoxiong (娄耀雄), *Lun Wuxiandian Pinpu Shiyong Quan De Zhun Wuquan Tezheng Ji Mianxiang Jishu Jinbu De Zhidu Biange* (论无线电频谱使用权的准物权特征及面向技术进步的制度变革) [*Discussions on the Characteristics of Right to Use the Radio-frequency Spectrum and Institutional Changes Aimed at Technological Progress*], 5 *FALÜ KEXUE* (XIBEI ZHENGFA DAXUE XUEBAO) (法律科学(西北政法大学学报)) [SCIENCE OF LAW (JOURNAL OF NORTHWEST UNIVERSITY OF POLITICAL SCIENCE AND LAW)] 144 (2009).

rights.²² For example, the book says that whether the objects of real rights have tangible form and whether it possesses independence are two different issues.²³ The author argues that the true obstacle to the confirmation of data rights lies not in the intangibility of data but its lack of independence.²⁴ Even though the radio frequency spectrum also lacks the tangible form, the need of independence for the objects of real rights is satisfied that different bands of spectrum could be identified and assigned through the specific technical approach. Applying the same reasoning to data, despite the fact that data is intangible, it is objectively independent from the medium in which it is stored and gains independence once it is separated from the identity of its source. According to this viewpoint, there is no doubt that data qualifies as an object of real rights.

b. breaking through the minimum unit of objects of real rights

As previously mentioned, the One-Thing-One-Right Principle establishes the minimum unit for objects of real rights by prohibiting the infinite subdivision of resources to maintain both the stability of the legal system of real rights and the efficient use of resources. Generally speaking, creating the real rights over the portion of a single thing or a collection of several things is not beneficial. However, as the science and technology progress, people's use of objects continue to grow. The changes of the situation blur the boundaries that were formerly defined by its physical form or original functional designation. The observed conclusion is that the utilization of objects has surpassed the initial restrictions on the minimal unit of objects of real rights. Under the context, to create the real rights over a specific part of an object has acquired the practical value. This book takes the right to use a lot of land for construction purposes as an example, illustrating that in traditional cultures, the boundaries of land were usually defined by its physical shape and inherent function. When it comes to the traditional use of land, such as farming or building structures, the spaces from the above ground, surface and

²² Shen Weixing (申卫星), *Shuju Quequan Zhi Bian* (数据确权之辩) [*The Debate over Data Ownership*], 3 BIJIAO FA YANJIU (比较法研究) [JOURNAL OF COMPARATIVE LAW] 1 (2023); Shen Weixing (申卫星), *Lun Shuju Chanquan Zhidu De Cengji Xing: "San San Zhi" Shuju Quequan Fa* (论数据产权制度的层级性: "三三制"数据确权法) [*Discussions on the Hierarchical Nature of the System of Data Property Rights: the "Three in Three" Method for the Data Rights Confirmation*], 4 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCIENCE] 26 (2023); Shen Weixing (申卫星), *Shuju Chanquan: Cong Liang Quan Fenli Dao San Quan Fenzhi* (数据产权: 从两权分离到三权分置) [*Data Property Rights: From Separation of Two Rights to Tripartite Allocation*], 6 ZHONGGUO FALÜ PINGLUN (中国法律评论) [CHINA LAW REVIEW] 125 (2023); and Shen Weixing (申卫星), *Lun Shuju Laiyuan Zhe Quan* (论数据来源者权) [*On the Data Originator's Right*], 4 BIJIAO FA YANJIU (比较法研究) [JOURNAL OF COMPARATIVE LAW] 104 (2024).

²³ Shen, *supra* note 4, at 44.

²⁴ Shen Weixing (申卫星), *Shuju Quequan Zhi Bian* (数据确权之辩) [*The Debate over Data Ownership*], 3 BIJIAO FA YANJIU (比较法研究) [JOURNAL OF COMPARATIVE LAW] 1 (2023).

underground of the land were used at the same time.²⁵ However, new approaches to the use of land have emerged as the result of technological developments in construction. In 1997, *Provisions on the Administration of the Development and Utilization of Urban Underground Space* were made and implemented by the Ministry of Construction of the People's Republic of China for the first time, and was revised in 2001. In 2024, *Guiding Opinions on Promoting the Exploration and Utilization of Urban Underground Space* were made and implemented by the Ministry of Natural Resources of the People's Republic of China. It suggests the layered urban space design and considers the composite use of spaces from above ground and underground.²⁶ Cities like Shanghai, Hangzhou, Nanjing and Shenzhen have successively released the regulations or administrative measures pertaining to the construction and utilization of the underground spaces.²⁷ The legislation governing the land rights has evolved from the "Planar Legislation" (laws governing the surface development and utilization of the land) to "Spacial Legislation" (laws governing the stratified development and utilization of the land) and legislators separate the spaces from above ground, surface and underground of land as a whole, recognizing them as independent objects of real rights.²⁸ This book believes that the problems brought on by elevated railways, viaducts, subways, underground passageways, underground

²⁵ Shen, *supra* note 4, at 41.

²⁶ Ziran Ziyuan Bu Guanyu Tansuo Tuijin Chengshi Dixia Kongjian Kaifa Liyong De Zhidao Yijian (自然资源部关于探索推进城市地下空间开发利用的指导意见) [Guiding Opinions of the Ministry of Natural Resources on Exploring and Advancing the Development and Utilization of Urban Underground Space] (promulgated by the Ministry of Natural Resources, July 31, 2024, effective July 31, 2024), art. 2, para. 3, CLI.4.5 231346(EN) (Lawinfochina).

²⁷ See Shanghai Daxia Kongjian Guihua Jianshe Guanli Tiaoli (上海市地下空间规划建设管理条例) [Shanghai Municipality Regulations on the Planning and Construction Management of Underground Space] (promulgated by the Standing Comm. Shanghai Mun. People's Cong., Dec. 27, 2013, amended May 24, 2018, amended Dec. 30, 2020) Shanghai Mun. People's Cong., Dec. 30, 2020; Hangzhou Daxia Kongjian Kaifa Liyong Guanli Banfa (杭州市地下空间开发利用管理办法) [Hangzhou Municipality Administrative Measures on the Development and Utilization of Underground Space] (promulgated by the Hangzhou Mun. People's Gov't, July 31, 2017, effective Aug. 1, 2017) Chin. Gov. Legal Info., July 31, 2017; Nanjing Daxia Kongjian Kaifa Liyong Guanli Banfa (南京市地下空间开发利用管理办法) [Nanjing Municipality Administrative Measures on the Development and Utilization of Urban Underground Space] (promulgated by the Nanjing Mun. People's Gov't, Apr. 8, 2018, effective May 14, 2018, as Nanjing Mun. People's Gov't Order No. 323) Nanjing Mun. People's Gov't, May 14, 2018; and Shenzhen Daxia Kongjian Kaifa Liyong Guanli Banfa (深圳市地下空间开发利用管理办法) [Shenzhen Municipality Administrative Measures on the Development and Utilization of Underground Space] (promulgated by the Shenzhen Mun. People's Gov't, Apr. 13, 2021, effective Aug. 1, 2021) Shenzhen Mun. People's Gov't, Aug. 1, 2021.

²⁸ Wang Yang (汪洋), *Dixia Kongjian Wuquan Leixing De Zai Tixi Hua: "Ka-Mei Kuangjia" Shiye Xia De Jianshe Yongdi Shiyong Quan, Diyi Quan Yu Xianglin Guanxi* (地下空间物权类型的再体系化: "卡-梅框架"视野下的建设用地使用权、地役权与相邻关系) [*Re-systematization of the Types of Underground Space Property Rights: Usufruct of Construction Land, Easement and Neighbour Relation from the Perspective of "Calabresi-Melamed Framework"*], 5 ZHONGWAI FAXUE (中外法学) [PEKING UNIVERSITY LAW JOURNAL] 1377 (2020).

parking facilities and subsurface drainage systems could be resolved by the creation of stratified land rights for construction purposes on the surface below, of and above the lot of land.²⁹ The book also acknowledges that adjusting the boundaries of resources might add the complexity on the legal system of real rights. It highlights that any changes to the standards used to define the unit of objects of real rights should align with the trends of development. Such adjustments should not impede the realization of the purpose of real rights, the requirement for transparent public registration, and the security of transactions.³⁰

III. THEORETICAL AND PRACTICAL CONTRIBUTIONS OF THE BOOK

In addition to systematically organizing the contents of current real right law and regulations, the book also integrates the author's primary insights on the topics including the social governance role played by the legal system of real rights and how the system should respond to the technological advancements. These insights, with their profound understanding and broad vision, could provide a distinctive research viewpoint for the development of theoretical framework of real rights and institutional innovation. This book also presents an analytical method that combines both vertical and horizontal dimensions while clarifying the position of legal system of real rights.

On the vertical dimension, the book returns to the legislative history of real right law to examine the major concerns that legislators addressed during different periods. It asserts that the early development of real right law could be traced back to the period of New Policies of the late Qing Dynasty, whose legal structure had typical traits of an adopted legal system.³¹ The more recent evolution of real right law began with the era of Reform and Opening up in 1978.³² The legislative needs and practical orientation of real right law became more apparent as the state prioritized economic development and gradually built the market economy system. During the drafting of 2007 Real Right Law, the National People's Congress conducted seven rounds of deliberation on the draft. It took 13 years to complete the whole work from its inclusion on the legislative agenda to its ultimate adoption.³³ These seven rounds of deliberation focused on distinct matters. For example, the first round of deliberation focused on the precise definition and protection of real rights. The second round of deliberation focused on the topic which was approximately the same as it was in the first round of deliberation.

²⁹ Shen, *supra* note 4, at 41.

³⁰ Shen, *supra* note 4, at 42.

³¹ Shen, *supra* note 4, at 2.

³² Shen, *supra* note 4, at 4–5.

³³ Shen, *supra* note 4, at 7–12.

The third round of deliberation emphasized equal protection of real rights enjoyed by various parties. The fourth round of deliberation focused on ownership of a building's units and the interests enjoyed by the unit owner. The fifth round of deliberation discussed rules pertaining to the right of habitation, although these clauses were eventually dropped. The sixth round of deliberation concentrated on issues concerning the nature of rural lands during the urbanization to strictly regulating the conversion of land for agriculture to land for construction from a legislative standpoint. The seventh round of deliberation added provisions on the right to use house sites and clarified that the illegally acquired property would not be protected under the real right law. In 2020, the Chinese Civil Code (with the part of real rights) further refined the rules prescribed in 2007 Real Right Law, which showed the choices of values and coordination of interests that lawmakers had to deal with while creating the institutional structures.³⁴

On the horizontal dimension, this book extensively refers and draws upon the normative contents and doctrinal perspectives from comparative law to employ the comparative analysis to determine the institutional paths chosen by various legal system. For example, the book provides a thorough overview of the models of alteration of real rights adopted by several significant law system.³⁵ It points out that the social backgrounds of various jurisdictions influence the choice of models of alteration of real rights. China has chosen the hybrid and mixed model due to the substantial differences in the transaction of properties between the urban and rural areas, as well as considerations of the practical challenges in achieving the unified registration.³⁶ In analyzing the acceptable constraints on ownership, this book compares the rules of expropriation of China and United States, indicating that although the rules are different, their fundamental goals are basically identical.³⁷ Chinese law authorizes the government to expropriate collectively owned land, as well as houses and other immovable properties of organizations or individuals, within the statutory procedures, as long as it serves the public interests. In the United States, the principle of public use as the condition for expropriation was affirmed in the case of *Kelo v. City of New London*. The terms of "public interests" and "public use" are both defined in opposition to private interests aiming to serve the more generalized welfare of the broader community.

The book adopts an analytical method that combines both the vertical and horizontal dimensions to provide a theoretical paradigm for the study of particular legal system. The method not only presents the initial state of legal system and explains the

³⁴ Shen, *supra* note 4, at 14–15.

³⁵ Shen, *supra* note 4, at 85.

³⁶ Shen, *supra* note 4, at 86.

³⁷ Shen, *supra* note 4, at 180.

internal logic of its formation, but also by building up the connection between the legal system and its broader social system, clarifies its normative significance. Generally speaking, there are two aspects to the legal system of real rights. On the one hand, as the important component of modern property system, there are similarities among different jurisdictions in areas such as the definition of real rights, the rules of protection of real rights, and the alteration of real rights. On the other hand, the legal system of real rights also incorporates a much greater degree of special factors since it reflects the basic economic system, the overall plan of resource allocation and the development strategies. While conducting the comparative studies, a sensible strategy regarding these special factors is to determine whether the parts of the social system to which they are connected have changed. If the social system remains steady, such factors or features should be preserved.

The practical value of the book arises from its recording and explanation of the revisions and updates made to the part of real rights in Chinese Civil Code, providing accurate guidance for legal practitioners in applying the law. Sometimes, these modifications are subtle and not easily discernible, necessitating the systematic interpretation in accordance with the rules of relevant departmental statutes. For example, regarding the utilization of “four types of uncultivated lands” (barren hills, gullies, slopes, and tidal flats), Article 133 of the 2007 Real Right Law allows parties to contract such land through bidding, auction and open negotiation to obtain the right to contractual management of land. The ways in which such uncultivated lands are used have also changed as the result of the reform that divided rights of rural land to ownership, the right to contractual management of land and the right to management of land. Article 342 of the Chinese Civil Code stipulates that a certain kind of right may be obtained following the authorized registration for land through bidding, auction and open negotiation. However, this provision does not explicitly specify the exact kind of right obtained by the contractor. Therefore, it is necessary to interpret this issue by referring to the provisions of relevant departmental laws. According to Article 48 of the *Law on Land Contract in Rural Areas*, bidding, auction and open negotiation are used for contracting the “four types of uncultivated lands”. Meanwhile, Article 49 of the same law stipulates that the contractor will obtain the right to management of land. The book clarifies the nature of the right obtained through methods such as bidding, auction and open negotiation, and points out that within the framework of rights established for the “four types of uncultivated lands”, a true “separation of three rights” has not been established.³⁸ Instead, the “separation of two rights” model continues. The contents of this “separation of two rights”

³⁸ Shen, *supra* note 4, at 201.

differ fundamentally from the original “separation of two rights” before the reform of division of rights of rural land. The book provides a detailed analysis of conceptual differences between the two structures. The pre-reform “separation of two rights” consisted of the ownership and the right to contractual management of the “four types of uncultivated lands,” while the post-reform “separation of two rights” consists of the ownership and the right to management of the “four types of uncultivated lands.”

In addition to these subtle adjustments, other changes, though they are more apparent, can't be fully understood in terms of their institutional essence unless they are related to the whole legislative design. For example, the book points out that the Chinese Civil Code combines the rules pertaining to the mortgages and floating charge of movable properties, specifying that the establishment of the floating charge of moveable properties should follow the general rules for establishing the mortgage of moveable properties.³⁹ Before the implementation of Chinese Civil Code, Article 188 and Article 189 of the 2007 Real Right Law have uniformly adopted the rule of “registration against third parties” with regard to the establishment of mortgage and floating charge of moveable properties. Therefore, it appears that the Chinese Civil Code combines and simplifies the requirements for establishing these two kinds of mortgages. But actually, the modifications to the part of security rights in Chinese Civil Code go beyond the purpose of simplifying the provisions while considering the context of reform to unify the security rights over moveable properties and rights. The ultimate purpose of the reform is to provide a consistent framework for the transaction of security rights by broadly applying the rule of “registration against third parties” to different kinds of security rights.⁴⁰ The framework is also designed to include the arrangement of non-typical security rights to the greatest extent. The book also discusses the role of non-typical security rights in supplementing the typical security rights since the latter is unable cover all circumstances of transaction, as well as the crucial significance of the associated reform for optimizing the business environment.⁴¹

IV. SUPPLEMENTS ON THE ISSUE NOT COVERED BY THE BOOK

The book focuses on two developments in the legal system of real rights that result from the interplay between the technology and the law. First, technological advances have driven the continuous expansion of the scope of objects of real rights, allowing data to become the new object of real rights. Second,

³⁹ Shen, *supra* note 4, at 269.

⁴⁰ Long Jun (龙俊), *Minfa Dian Zhong De Dongchan He Quanli Danbao Tixi* (民法典中的动产和权利担保体系) [*The System of Security Interests in Movable Properties and Rights in the Chinese Civil Code*], 6 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 22 (2020).

⁴¹ Shen, *supra* note 4, at 257.

technological advances have enhanced the humanity's capacity to exploit and utilize the external resources and surpassed the boundaries of the minimum unit of certain resources. However, the book does not address how technological advancements will fundamentally reshape the ways in which people control and utilize the general objects. It primarily refers to the emergence of remotely connected digital devices, which have changed the methods to possess and control the properties and restructured the established concepts and principles of real rights theories. On the one hand, the concept of controllability of real rights is reshaped by the remotely connected digital devices. After purchasing such a device, the user could exercise the control through both the physical possession and non-physical remote access over the internet. The network connection becomes essential to realize the controllability of real rights with regard to how these devices operate. In some situations, this form of non-physical controllability of real rights might hinder the realization of the physical-based controllability of real rights. For example, the provider may remotely suspend its function if the user fail to pay the service charge for the device. As a result, the locked condition prevents the device from being used even though the user physically possesses the device. On the other hand, the concept of delivery has also been changed by the remotely connected digital devices. In general terms, delivery refers to the transfer of possession of an object, creating an obvious claim of ownership over a certain property when the transaction is finished. However, even after the delivery, the seller could still retain the capability to exert remote control over the device. It prevents the full effect of the possession from being realized in practice. As a result, the concept of delivery becomes formalized and it establishes a state of joint control and possession shared by both users and sellers.

Although the topic is relative new, comparative studies have already produced the substantial body of the research on issues of the legal system of real rights brought by the remotely connected digital devices. For example, professor Christiane Wendehorst described and defined the legal status of each component involved in such device using the sale of the device as a case study. The idea that the users ability to get access to the device as a concrete manifestation of the controllability of real rights was denied by professor Christiane Wendehorst. But she also insisted that the protection of these rights ought to be comparable to that of ownership.⁴² Professor Thomas Riehm contended that the concept of possession inevitably involves the potential to use the property,

⁴² Christiane Wendehorst, *Verbraucherrelevante Problemstellungen zu Besitz- und Eigentumsverhältnissen beim Internet der Dinge*, report submitted to the German Ministry of Justice and for Consumer Protection, 2016, available at <https://www.svr-verbrauch-erfragen.de/verbraucherrelevante-problemstellungen-zu-besitz-und-eigentumsverhaeltnisse-n-beim-internet-der-dinge/>.

and if such probability is controlled by the seller when it comes to the remote access, the right holder of the device might pursue remedies through the claim for removal of the nuisance or elimination of the danger.⁴³ Professor Hanno Magnus described the relationship between the buyers and sellers as parties sharing the state of possession over the device.⁴⁴ Professor Linda Kuschel presented the idea of “digital private remedies”, which is founded on the special qualities of these devices.⁴⁵

In recent years, the Chinese scholars have started to pay attention to the related issues due to these developments, though the researches still remain at their early stage. The existing works have mainly focused on the idea of “digital private remedies” and have not yet developed a systematic study on the normative positioning, structure of rights and rules of transaction of the remotely connected digital devices.⁴⁶ From the standpoint of current developments in legal system of real rights, addressing the above issue would significantly enhance the completeness of the book’s contents. The author may have refrained from discussing it for three possible reasons. First, the author viewed the remotely connected digital devices and related researches as isolated examples of theoretical adaptation of legal system of real rights which do not yet the call for a thorough reorganization of the real rights theories. Second, some remotely connected digital devices as the objects of real rights are questioned since they are defined as being a part of the continuing service contracts between users and sellers. The question is better suited for a specific article since the systematic classification of the models for transaction of remotely connected digital devices in practice would be required. Third, the author tries to make the book as easy to understand as possible. Its main purpose is to present and introduce the basic regimes and institutions of legal system of real rights. Therefore, topics which have not been widely studied in China were excluded from the discussions.

V. CONCLUSIONS

In conclusion, the legal system of real rights is not only

⁴³ Thomas Riehm, *Smart Contracts und verbotene Eigenmacht*, in SMART CONTRACTS 85 (Martin Fries and Boris P. Paal eds., 2019).

⁴⁴ HANNO MAGNUS, *FERNKONTROLLE IM INTERNET DER DINGE* (Universitätsbibliothek Trier 2022).

⁴⁵ Linda Kuschel, *Digitale Eigenmacht: Digitale Eingriffe in vernetzte Sachen als Herausforderung für den possessorischen Besitzschutz*, 220 ARCHIV FÜR DIE CIVILISTISCHE PRAXIS (ACP) 98 (2020).

⁴⁶ Wang Qi (王琦), *Shuzi Sili Jiuji—Jiyu Yuancheng Kongzhi Wanglian Wu De Quanli Shixian* (数字私力救济——基于远程控制网联物的权利实现) [*Digital Private Remedies: Realizing the Function of Rights in Remotely Controlled Internet Connected Objects*], 5 FAXUE YANJIU (法学研究) [CHINESE JOURNAL OF LAW] 57 (2023); Chen Haolin (陈浩林), *Shuzi Sili Yu Wanglian Wu De Zhanyou Baohu* (数字私力与网联物的占有保护) [*Digital Private Remedies and the Protection of Possession of the Internet Connected Objects*], 9 HEBEI FAXUE (河北法学) [HEBEI LAW SCIENCE] 80 (2025).

essential to Chinese establishment of the market economy but also intimately related to the growth and development of each individual. The book *Chinese Real Right Law: Principle, Policy and Practice* clarifies the function of the legal system of real rights in the social system by placing it within the broader context of the socio-economic development. The book presents the key insights developed by professor Shen Weixing through his long term research in the field of real rights. It provides a multifaceted and multilayered positioning of Chinese real right law by using the method which combines the vertical and horizontal dimensions. The book also examines the changes made to the legal system of real rights by Chinese Civil Code and demonstrates the detailed explanations of the provisions. It offers a clear guidance for legal practitioners in accurately understanding and applying the rules of real rights. It is worth saying that the achievements in the legal system of real rights have been influenced by the conditions and circumstances of socio-economic development. Consequently, the system will avoidable continue to develop in accordance with the social advancements. The book depicts an evolutionary path in which the law experiences the self-transformation and self-transcendence under the impact of technical variables by using the legal system of real rights as a vivid example.