

Reconsidering various theories on the relationship between property rights and economic performance. Hajime SATO (PhD(London), IDE, Japan)

This paper addresses issues relating to economic and legal theories on property rights. On the one hand, major economic theories presume that the better protection and enforcement of property rights will bring better economic performance. On the other hand, legal theories on property rights tend to rely on these economic theories. Based on these theoretical bases, legal assistance by various organisations has prevailed on earth, not least since the 1990s. In order to contribute to truly interdisciplinary study between political economy and legal study on property rights, this paper attempts to reconsider property rights in relation to social relations.

In general, as Barzel (1997, p.3) does, property rights are defined as individual's right or ability to consume a commodity (or an asset). This methodological-individualism approach to property rights is basically shared by the other definitions of property rights by use of the notions of residual claim and of transaction costs. Based on these definitions, economic theories have been elaborated, pointing to the ideas that secure and stable property rights can reduce and prevent conflicts over resources and that they can assure and affirm stable expectations regarding future rewards, thus promoting investment and economic growth.

However, these definitions clearly detach the concept of property rights from their social relations, as implicitly suggested in 'Debates on law on thefts of wood' (Marx 1842), in which for the first time Marx turned his attention to economic issues. What was at stake in the debates was traditional custom that allowed the collection of fallen branches for firewood, which was finally denied by 'modern' law that sanctioned 'modern' private property rights, pushing commodification of nature forward. Kawashima (1949), who was a pioneer in the field of sociology of law, noted that this kind of customary law, or rights of common, would disappear as a society develops, because these are a remnant of the feudal system and property rights would be defined only for individuals in the modern society.

In contrast, the paper reconsiders property rights through trying to situating them in their social relations. First, this paper analyses and categorises various aspects of property rights, such as the subjects and objects of property rights, and their exchanges and effects. Second, the restraints on and redistribution of property rights are discussed, such as the principles of public interest and of eminent domain. Based on these arguments, the paper attempts to reveal the multi-facets of property rights and points to the continuing need to understand them not only from the economic viewpoint, but also from the political economy viewpoint.