



## The property of contemporary Chinese art\*

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### ABSTRACT

Signaling China's rise as a major soft power, the global emergence of contemporary Chinese art from the mid-1990s also reflected sea changes in how Chinese citizens internalized concepts of private property. Although Communist economic systems sought to end private property by collectivizing the means of production, the liberalization of property ownership in the 1990s and 2000s encouraged an altogether different approach to artistic production, one that required considering how social relations were shaped by new forms of legal discourse. Through property law, the state and its citizens shuttled between practical considerations and pressures to accommodate Western laws to which Chinese economic interests were inextricably tied. Indeed, the very rise of contemporary Chinese art as a major cultural and economic phenomenon crucially turned on competing perceptions of what it meant to be an author on international, national, and local registers.

**KEYWORDS** Chinese law; privatization; art market; collaboration; art law; property; performance; photography and law; authorship; contemporary Chinese art; copyright

It was the drop heard, or rather, seen, around the international art world. Three large black-and-white photographs from 1995 show Ai Weiwei dropping a Han dynasty vase allegedly worth thousands of U.S. dollars. Known collectively as *Dropping a Han Dynasty Urn*, the photographs have been discussed as evidence of a wilful iconoclasm, despite their having been made under far more prosaic circumstances – according to one account, Ai was simply attempting to test the speed of his new camera.<sup>1</sup> (Figure 1) His act was seen not only as vandalism, or the wilful destruction of property, but as a breach of public interest. The urn belonged to a general public in the name of cultural patrimony, a concept many jurisdictions uphold through various forms of regulation, from export bans to registration requirements. That the final photograph shows Ai making no attempt to clean up the

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<sup>1</sup>Dario Gamboni, 'Portrait of the Artist as an Iconoclast,' *Ai Weiwei: Dropping the Urn*, (Köln and London : Walther König, 2011), 86.

smashed urn shards might be especially galling. But by letting the vase drop, Ai takes to a logical extreme the belief that owners may do with their property as they see fit, a belief that in the U.S. had only been challenged a few years before Ai took up residence in New York from 1981 to 1993. Until Congress amended U.S. copyright law in 1976, artists' intellectual property rights were far less recognized than the ownership rights of buyers.

Both the creation and reception of *Dropping a Han Dynasty Urn* illustrated just how inseparable the artwork was from conceptions of property, whether the artwork belonged to a private individual, the state, or the general public. What 'property' actually entailed, however, remains open to speculation, especially as artworks and owners move between different legal regimes and have varying degrees of legal knowledge. Further complicating the idea of property are tensions between law and ethics, differences between common and civil law systems and between codified law and unofficial transactional practices.

Given its international visibility as a market and art historical phenomenon, the frequency with which leading Chinese artists toggle between different jurisdictions, and the vigour some display in policing their intellectual property rights, contemporary Chinese art offers particularly salient examples for thinking about the unsettled terrain known as property. Art historians often date the emergence of contemporary Chinese art from 1979, the year when the Chinese state under Deng Xiaoping introduced market reforms, including opening certain markets to foreign investment.<sup>2</sup> More relevant still was when artists began to exhibit and sell their work overseas from the mid-to-late 1990s following the dissemination of contemporary Chinese art in high-profile exhibitions such as the Venice Biennale. In major art world hubs like New York, Paris and London, artists like Ai Weiwei, Zhang Huan, and Ma Liuming negotiated a new set of legal values including the premium accorded to notions of originality and individual authorship as well as the right to exclude others from using one's property without permission. Artistic identity was shaped by proprietary claims legible to international audiences. An exemplary case concerns the tensions between Zhang Huan and Rong Rong over works produced in Beijing in the mid-1990s but later sold for substantial amounts from the early 2000s. Now among the major stars of the contemporary Chinese art firmament, both are celebrated for their experimental work: Zhang for his performances and installation, Rong for his photographs. Both artists were involved in the production of key works to which they made competing proprietary claims. Yet the most compelling arguments concerning art and property turn more decisively on how property reveals itself to

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<sup>2</sup>For an account of the impact on market reforms on contemporary art in China see Jane Debevoise, *Between State and Market: Chinese Contemporary Art in the Post-Mao Era*, (Leiden: Brill, 2014).

be the result of reciprocal pressures stemming from the overlap and conflict between multiple cultural and personal imperatives.<sup>3</sup>

## Art and law in the New China

Ai Weiwei's storied drop took place in 1995, seven years after the legalization of private ownership of real property in the People's Republic of China, albeit subject to a flurry of restrictions. Chinese state recognition of private individual ownership between 1979 and 2007 was nothing short of revolutionary, affecting not only the relationships between citizen and state, but between individuals on an irrevocable and unprecedented scale. In contrast to how the former absence of copyright laws reflected Chinese state belief in obligating citizens to share their creations with others, Deng Xiaoping's government introduced intellectual property laws as part of its push for economic liberalization.<sup>4</sup> The Civil Code, created in 1987, defines ownership as the rights to possess, use, dispose and benefit from property obtained lawfully. Private ownership expanded in 2004, allowing individuals to own built structures even as the land still belonged to the state. Eventually the state introduced the Property Law in 2007, thereby extending the same guarantees to private investor interests as it did to national property interests. Seismic policy shifts as these produced what sociologist Zhang Jing terms 'competing logics of entitlement.'<sup>5</sup> Such logics recast social interaction as a network of misaligned claims that artists, particularly those committed to performance, photography and direct intervention into preexisting social structures, were especially well positioned to address. For such artists, the ownership of private property, by which I mean the ownership of real estate, intellectual and personal property, was a seminal topic.

Soon after the People's Republic of China was established in 1949, production was collectivized and land exclusively owned by the state or collectives so large as to diminish the possibility of genuine collaboration. With the collectivization of agricultural and industrial production established by Mao as part of his ill-fated Great Leap Forward campaign in 1958, collective authorship (*jiti chuangzuo*) became the standard for cultural production, with groups of anonymous workers producing mostly large-scale paintings, posters and sculptures.<sup>6</sup> Their lack of attribution made it easier for the state to absorb them into a larger socialist imaginary. Post-1990, however, the

<sup>3</sup>See, for example, Laikwan Pang, *Creativity and its Discontents: China's Creative Industries and Intellectual Property Rights Offenses*, (Durham and London: Duke University Press, 2012); Winnie Wong, *Van Gogh on Demand: China and the Readymade*, (Chicago: University of Chicago Press, 2013).

<sup>4</sup>Guan Hong Tang, *Copyright and the Public Interest in China*, (Cheltenham: Edward Elgar, 2011), 102–103.

<sup>5</sup>Zhang Jing, 'Resolution Mechanisms for Land Rights Disputes,' *Creating Wealth and Poverty in Postsocialist China*, eds. Deborah Davis and Wang Feng, (Stanford: Stanford University Press, 2009), 127.

<sup>6</sup>For an introduction to collective production in socialist China see Christine Ho, 'The People Eat For Free and the Art of Collective Production in Maoist China,' *Art Bulletin* 98:3 (2016): 348–372.

emphasis was on rights and entitlements. Neighbourly relations were increasingly expressed through contracts, even if their enforcement was often arbitrary and sometimes non-existent. Such expression was the point of a work like *Circulation-Sowing and Harvesting*. Between October 1993 and May 1994, the artist Wang Jianwei contracted a farmer to plant one *mu* (Chinese acre) of wheat for a season. (Figure 2) The work illustrated how private property ownership often meant individuals ventriloquizing state function; instead of the state taking a percentage of the farmer's output, it was Wang who did so here. Artworks increasingly revolved around the exercise of rights, for instance, the right to smash a vase, to obstruct traffic, or to sell oneself to others.<sup>7</sup>

The early nineties saw several artists and critics take a keen interest in legal matters. Initiated by the critic and curator Lu Peng in 1991, the magazine *Yishu Shichang* contained several articles on copyright infringement, U.S. tax law and artist-dealer contracts.<sup>8</sup> The idea of a distinct 'art law' field in China may be traced to the activities of the artist Wu Zuoren, a graduate of the prestigious China Central Academy of Fine Arts (CAFA) whose interest in art and law coincided with the passing of the new Chinese Copyright Law in 1992.<sup>9</sup> That same year saw artists participating in the first art fair held in China, the First 1990s Guangzhou China Biennial (commonly referred to as the Guangzhou Biennial Art Fair). Organized by private citizens and not the state, it required participants to sign contracts permitting the organizers to sell their works for a set period of time and even to relinquish their copyrights should they receive a cash award from the organizing committee.<sup>10</sup> As if to help artists defend their rights against such exploitative agreements, the lawyer Zhou Lin, who taught art law at CAFA from 1994, translated US legal manuals like *Art Law in a Nutshell*. Written by Leonard Duboff, a leading advocate of artists' rights in the U.S. since the early 1970s, the manual stressed legal issues concerning the purchase and sale of art. Overseas sales of Chinese art prompted some artists to more vigorously police their authorial status. Among

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<sup>7</sup>The most extreme instance of this approach to artmaking may be Zhu Yu's infamous performance *Eating People*. Allegedly performed in October 2000, the work involved Zhu cleaning, cooking and eating a dead human foetus the artist procured from a Beijing hospital. Photographs of the performance were published in the catalogue accompanying 'Fuck Off,' the exhibition organized as a refusal of the 2000 Shanghai Biennale. In the catalogue, Zhu stated that his work probed the difference between what was legally permissible and morally impermissible. For an analysis of *Eating People*, see Meiling Cheng, 'Violent Capital: Zhu Yu on File,' *TDR: The Drama Review* 49:3 (Fall 1995): 58–77.

<sup>8</sup>Debevoise, 221.

<sup>9</sup>Wu was one of the first artists in China to advocate for moral rights. His International Foundation of Fine Arts co-sponsored a symposium with the Association of Chinese Artists, the Copyright Society of China and *Legal Daily* that discussed the new Copyright Law. Participants included artists, critics and legal scholars. Wu Zuoren's speech can be found in *Legal Daily*, 3 October 1990, 3; Also see *Legal Daily*, 17 December 1990, 1.

<sup>10</sup>For a description of the 1990s Biennial Art Fair and its organization, see Peggy Wang, 'Art Critics as Middlemen: Navigating State and Market in Contemporary Chinese Art, 1980s–1990s,' *Art Journal* 72:1 (Spring 2013): 13–18. Also see Debevoise, 223.

the most internationally prominent Chinese artists of his day, the painter Wu Guanzhong became the first artist to file an infringement claim after two auction companies in Hong Kong and Shanghai respectively, sold a portrait of Mao Zedong they identified as an early work by Wu. Rising auction prices for Wu's paintings throughout the early 1990s likely tempted both auction houses to ignore the artist who formally disclaimed the work as a forgery prior to its October 1993 sale.<sup>11</sup> In a striking affirmation of moral rights enumerated in the Chinese Copyright Law, namely the right of authorship, the Shanghai Higher People's Court decided in Wu's favour in 1996.<sup>12</sup>

Chinese art world interest in legal matters exploded in the fall of 1995 when *Chairman Mao on His Way to Anyuan* was sold through a domestic auction house for the record figure of 5.5 million yuan to the Guangzhou branch of the Construction Bank. (Figure 3) Arguably the most reproduced painting in post-1949 history, it was painted in 1967 by Liu Chunhua at the behest of fellow Red Guards seeking to commemorate the apocryphal miners' strike at Anyuan. Considered a major achievement under Cultural Revolution standards for artistic production, it fell out of favour by the late 1970s, allowing Liu to quietly reclaim his work from the Museum of Revolutionary History. In October 1995, he sold his work at auction for what was then the record price of more than \$750,000. The sale was initially blocked by the Beijing No. 2 Intermediate People's Court, which held that although Liu owned the painting's copyright, the 'proprietary right' belonged to the state.<sup>13</sup> Not only did the court effectively carve out an additional class of property rights exclusive to the state, it also delineated a hierarchy between intellectual and real property rights. Absent further clarification, the ruling implied that individual copyright was superseded by the state's rights to the work as its real property, or possibly that the state owned a master copyright to works regarding as having national significance. The ruling demonstrated how an underinstitutionalized copyright system left artists vulnerable to overt displays of executive power.

The Museum of Revolutionary History also filed suit against Liu, claiming the work as state property, thus provoking a countersuit from Liu who stoutly maintained the work as his. Liu's claims in turn enraged the former Red Guards who organized the exhibition for which the painting had been

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<sup>11</sup> *Wu Guanzhong v. Shanghai Duoyunxuan Firm and Hong Kong Wing Sing Fine Arts Auctioneers*, *Shanghai Higher Court Gazette* 2 (1996): 66–68.

<sup>12</sup> Known primarily for abstract ink paintings that attracted a loyal clientele, particularly in Hong Kong, Wu also painted figurative landscapes just after the Cultural Revolution. One such work, *Lu Xun's Hometown* from 1977, sold at Christies Hong Kong in May 1994 for the unusually high price (for Wu) of approximately USD \$173,000. Wary, perhaps, of setting any precedent in the calculation of damages to artistic reputation, the Shanghai Higher Court awarded only nominal damages to Wu who had originally requested that the court award him the full sale price of his work.

<sup>13</sup> 'Oil Painting 'Chairman Mao Goes to Anyuan' State Owned,' *China Daily*, 3 April 2002. <http://www.china.org.cn/english/MATERIAL/30023.htm>, accessed 1 May 2017.

commissioned; the painting, they declared, was collective property. Through logic so byzantine as to approximate concrete poetry, the court, in 2002, eventually allowed Liu to keep the auction proceeds, while admonishing him for selling a work on the open market.<sup>14</sup> But because the buyer was a bank, and thus a state-institution, the sale was permitted as the work remained in state possession. Any legal distinction between real and intellectual property paled in comparison to the executive power of the state.

Certainly law would have struck many artists as a functionary of state power, reflecting the outsized role politics had and continues to have. One need only turn to the sudden exhibition closures that shaped artistic everyday life in the 1980s and 90s or more recently, to the highly publicized travails of Ai Weiwei at the hands of a mercurial state whose authority stems from the arbitrariness with which it metes punishment. Being legal often meant being ideologically correct. As Xu Bing, another internationally prominent artist wryly suggested, contemporary art was acceptable 'as long as it's not illegal.'<sup>15</sup> Notable, however, was how some artists actually channelled the state by ventriloquizing their personal disapproval of works made by their contemporaries. In 2002, a teacher from the Guangzhou Fine Arts Academy filed a court complaint against the Guangdong Museum of Art claiming that two video works, Zhang Huan's performance *Twelve Square Meters* and Cui Xiuwen's 2000 video comprised of surveillance footage taken of a women's bathroom in a Beijing nightclub (*Ladies' Room*, also known as *Bathroom*) prominently featuring nudity, damaged his well-being.<sup>16</sup> The court dismissed the case, stating that the museum was not responsible for audience well-being, but the complaint nevertheless illustrated how litigation emerged as another means of negotiating intra-artistic relations.

In 1999, the Sichuan Fine Arts Institute threatened to sue the Venice Biennale, its curator Harald Szeemann, and the artist Cai Guo-qiang – whose fame now rivals that of Ai but at the time was an emerging new light of the Chinese art wave – for showing a copy of the *Rent Collection Courtyard* as Cai's work. (Figure 4) An epic tableau of life-size sculptures depicting various sufferings inflicted by a cruel landlord on peasants, the original work had been collectively made in 1965 by numerous sculptors to allegorize the protests of the people.<sup>17</sup> (Figure 5) Cai retained the services of Long Xuli, one of the original team members responsible for the work's initial creation. The inclusion of Long among the nine tasked to recreate the *Rent Collection Courtyard* suggests not only a desire to have the recreation possess some of the aura

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<sup>14</sup>Elizabeth J. Perry, *Anyuan: Mining China's Revolutionary Tradition*, (Berkeley: University of California Press, 2012), 262.

<sup>15</sup>Quoted in Jamil Anderlini, 'Apolitically engaged; Xu Bing makes art that plays wittily with traditional styles,' *Financial Times* 30 April 2011, 8.

<sup>16</sup>Thomas Berghuis, *Performance Art in China*, (Hong Kong: Timezone 8, 2006), 284.

<sup>17</sup>For a history of the sculpture's initial creation see Vivian Li, 'Redefining Artistic Value in Communist China: Rent Collection Courtyard,' *Oxford Art Journal* 39:3 (December 2016): 377–398.

of the original but also to pre-empt charges of improper appropriation. That strategy backfired, especially as Long was the only sculptor named for his creative contributions. Cai's work further provoked a highly contentious fracas that pitted the sculptors against the Sichuan Fine Arts Institute and the museum in Dali that currently houses the work.<sup>18</sup> The Institute claimed that it owned the copyright to the *Rent Collection Courtyard*, an assertion further complicated by the lack of transparency regarding which version of the work was at issue: was it the initial version made in clay in 1966 or the fiberglass version produced in 1974? Moreover, who owned each version? Was it the Institute, the individual artists who physically made the works or the museum where the works were located?<sup>19</sup> Likely deterred by the prospect of negotiating multiple legal jurisdictions in addition to the cost and the possible lack of legal standing, the Sichuan Fine Arts Institute did not go through with their lawsuit.<sup>20</sup> Yet the lawsuit read as a protest against what some of the sculptors might have felt was a violation of the collectivist nature of artistic production.

A few years after the aborted suit, artist and critic Zhu Qi pointedly dismissed the legal issues as 'immaterial' in relation to what some Chinese artists and critics insinuated was Cai's attempt to perform for a Western audience hungry for politically incendiary or subversive material.<sup>21</sup> Born at the onset of the Cultural Revolution with no lived experience of collective authorship, Zhu criticized the artists who filed suit for diminishing considerations of artistic value and instead holding to 'copyright as the only reliable standard.'<sup>22</sup> He was right, of course, to argue for other criteria of value. But the aggrieved creators of the *Rent Collection Courtyard* were struggling for recognition in a broader art world governed by systems of regulation that defined artists based on whether they profited from the sale and circulation of their works. The very idea of a lawsuit nevertheless represented a new affiliation with a culture of litigation entrenched in Western jurisdictions. Going further, litigation served as a new, if antagonistic channel of social interaction. In the economic and legal regimes of the putative 'West,' contemporary art was most legible as property that could be bought and sold. A group of artists able to navigate the treacherous politics of the turbulent Cultural Revolution

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<sup>18</sup>Britta Erickson, *Art in Turmoil: The Chinese Cultural Revolution 1966–1976*, ed. Richard King, (Vancouver: University of British Columbia Press), 134.

<sup>19</sup>*Ibid.*, 134.

<sup>20</sup>For a discussion of the legal merits of the possible claims the Sichuan Fine Arts Institute could have raised in Chinese, Italian and U.S. jurisdictions see Brett Rowland, Mervyn Flatt and Samantha McGonigle, 'Breaking Down the Borders: International Copyright Conventions and Jurisdiction,' *Dear Images: Art, Copyright and Culture*, eds. Karsten Schubert and Daniel McClean, (London: ICA, 2002), 98–99.

<sup>21</sup>Zhu Qi, 'We Are All Too Sensitive When it Comes to Awards!—Cai Guoqiang and the Copyright Infringement Problems Surrounding Venice's Rent Collection Courtyard,' *Chinese Art at the Crossroads: Between Past and Future, Between East and West*, ed. Wu Hung (Hong Kong: New Art Media; London: Institute of International Visual Arts, 2001), 56–65. Translated by Krista Van Fleit.

<sup>22</sup>Zhu, 'We Are All Too Sensitive When it Comes to Awards!'

were undoubtedly canny enough to realize that claims to property legitimated existence circa 1999. The world was now divided between the possessors and the possessed and there was no question where the artists preferred to stand. Above all, the legal claims made by the original sculptors of the *Rent Collection Courtyard* solidified the break embodied by the staggered emergence of concepts like *dangdai yishu* and its English analogue, 'contemporary Chinese art.' Collective authorship, the standard of artistic production both imposed by the state and to some extent internalized by its citizens, had decisively given way to claims of individual authorship.

### The artistic subject of possession

It is 1996, around midday in the bustling provincial hub of Zhengzhou in central China. The occasion is the christening of a new mall, the first of its kind in the area, and, by definition, a major civic event. The shopping mall developers have spared no expense, even going so far as to commission an artist to produce a work to amplify, or in the developers' words, 'augment' the festivities.<sup>23</sup> The developers had asked the artist Wang Jin to produce a work brimming with 'aesthetic beauty and conceptual content.' The centrepiece of Wang's latest creation is a thirty-meter long wall comprised of six hundred blocks of ice. (Figure 6) An estimated ten thousand spectators flocked to the city centre, exceeding all expectations. Those who came noticed how the blocks contained an abundance of consumer goods, from plastic bowls to television sets. The fruits of Chinese state policy intended to encourage the manufacturing industry, the goods were donated by the mall and then encased by Wang in ice in a work known as *Ice: Central China*.

Demonstrating a wry sense of prevarication, Wang later stated that his intention was to 'cool down' the public with ice, but documentation abundantly shows, the event was primed to ignite social conflict, police presence notwithstanding. Seeing the goods encased in near-transparent ice, the audience wasted little time in chipping, boring, drilling, and even burning the wall to obtain the goods. Instead of working in exchange for output, citizens destroy – destruction becomes the new means of production in nineties China. Acquisition is framed as a process of destruction; one must destroy in order to possess. The thickness and inherent difficulty of destroying the ice wall underscores a system of exchange where consumption is prefaced by the expenditure of labour and time. Each individual must hack away at the unforgiving ice for considerable lengths of time before even getting to the goods buried. And even then, it is not assured if the goods will work or emerge from the wall intact and functional. Here the work brought people

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<sup>23</sup>Meiling Cheng, 'Catalyst, Praxis, Habitat: Performative Objects in Chinese Time-Based Art,' *Performance Research* 12:4 (2007): 151.



who might not ordinarily encounter one another only to tear them apart through competition for the same resources. It emphasized the irony of public assembly – how a public is often formed through the accumulation of individual interests. The public formerly tasked with the role of production was now one defined by its capacities to consume and amass capital. Where citizenship once depended on individuals yielding to the state whatever ownership claims they had, Wang's ice wall allegorizes how the reverse now holds.

Such images were treated as evidence of a public easily susceptible to mob action. Individual actions were pejoratively described by commentators as 'looting' or 'pillaging,' even though the activity seemed pre-approved as indicated by the lack of police intervention.<sup>24</sup> Seen as a performance of greed, and therefore of the moral shortcomings of a society now framed by market economy, *Ice: Central China* has been canonized as a morality tale, as further ammunition against the corrupting influence of capitalism. The criminalization of the ordinary citizens that comprised this audience coincided with how other commentators described them as 'rabid,' thus implying that humanity was debased. Even Wang would later note how 'there are moments in life where society can make one feel inhuman and animal-like.'<sup>25</sup>

But the documentary photographs show members of the presumed horde in different states of attention. One woman calmly scrapes at the surface of the wall with a triangular brick wedge. For others, the event was much a source of pleasure as it was a conspicuous illustration of how the concept of being public had been recalibrated along lines of acquisition. The thickness of the ice slows the process of immediate gratification, and results in a different kind of experience. Wang states how 'this particular mode of performance brings forth new perspectives on examining life' through 'relationships that culminate from the form of the work.' The performance is all-encompassing, not only because of how it galvanized ordinary citizens into action, but because it folded even the police into the work. Even if the state did not explicitly condone the specific work, it nevertheless permitted it to happen. Above all, *Ice: Central China* is ultimately the creation of Wang's property.

*Ice: Central China* encourages us to ask what role art plays in the negotiation of individual claims to space, to definitions of the public, and to social interaction. Outsourcing the labour of intervention to ordinary citizens, Wang's project reads as an invitation to Zhengzhou's inhabitants to claim their 'right to the city.' Coined by the French philosopher and theorist Henri Lefebvre in 1968, 'the right to the city' figured as a call to reclaim the city from the rampant inequalities arising from unchecked capitalism. As David

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<sup>24</sup>Wu Hung, 'Television in Contemporary Chinese Art,' *October* 125 (Summer 2008): 88; Aric Chen, 'The Dream of the Artist,' *Wang Jin*, (New York: Friedman Benda, 2007), u.p.

<sup>25</sup>Wang, quoted in Meg Maggio, 'An Interview with Wang Jin,' *Wang Jin*, (New York: Friedman Benda, 2007), n.p.

Harvey observed in his important gloss on Henri Lefebvre's idea, the 'right to the city' exceeds questions concerning individual access to city resources to include questions of collective self-transformation by changing the city itself.<sup>26</sup> On one level, *Ice: Central China* illustrated how commodity desire easily translated into feral behaviour. Yet it also made possible a different set of social relations not mandated by the state.

For some artists, the task was to consider how their works might offer ways of thinking about the structural changes to civil society made by individual action. During 1998 and 1999, visitors and residents of Beijing might have stumbled upon crudely spray-painted images of what vaguely resembled silhouetted profiles on crumbling walls slated for demolition. Sometimes these images would be accompanied by the tag 'AK-47,' a reference not only to the semiautomatic weapon but also to an international community of graffiti artists, many of whose members signed their works with the same phrase. Called *Dialogue*, or literally in Chinese, *Conversation with Demolition (Duihua de chai)*, these images by Zhang Dali initially figured as an attempt to rescale urban sprawl to accommodate individual bodies or as a gesture of occupation. (Figure 7) As the project expanded, it became an attempt to lay claim to urban space, which until 1988, was considered the property of the state. His depictions gave others the opportunity to think about the city as more than a unit of political/spatial organization, or more recently, as a marketable resource. Zhang recuperated property intended for demolition by maximizing the limited time left for these buildings and objects now considered eyesores or obstructions. In this way, he worked to reverse the process inherent in the high-rise. Instead of transforming space into land and then into exchangeable units, the graffiti attempted to convert land into spaces of speculation. Estimated to have made over two thousand images, Zhang actively and aggressively occupied physical space in ways that altered how other forms of occupation such as state collectivization and state-abetted development would be perceived by an audience that included domestic and international viewers. Zhang Dali displaces the state and the developer in the field of representation. He called attention to destruction and to how the city existed on borrowed time, in that period between destruction and construction.

The title 'dialogue' foreshadowed how the work probably excited more outright discussion of art's legal status than any other work made in the decade prior or after. Considered *wuran*, or pollution, Zhang's acts were discussed by representatives of government and of professional arts organizations in the official newspaper of the Civil Aviation Administration of China. The subject of *Dialogue's* legal status inadvertently compelled authorities not ordinarily accustomed to explaining themselves to verbalize their

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<sup>26</sup>David Harvey, 'The Right to the City,' *New Left Review* 53 (September-October 2008): 23.

feelings and attitudes. Predictably, city officials like Wang Dalun regarded *Dialogue* as unequivocally illegal. Speaking as an agent of the state, he described the law as a function of enforcement and how it merely framed the extent of government action. 'Whatever the law allows, we do,' he said.<sup>27</sup> In his view, law was a pretext for justifying state action, at one point stating somewhat disingenuously that the role of the Beijing Municipal Commission on City Appearance was simply to 'enforce the law.'<sup>28</sup> Unusual, however, was how Wang phrased the appropriate punishment for Zhang's transgression. In the true spirit of paternalistic Maoist jurisprudence, Zhang would have to be 'admonished,' per Chapter 5 of the Beijing Municipal Appearance, Environment and Sanitation Regulations.<sup>29</sup> Yet he would also be fined up to 500 yuan, a not-insignificant amount in a time and place where the average yearly income was 12,700 yuan.

Reflecting the gap between so-called 'official' and 'unofficial' art was the response of Zhang Zuying, the secretary of the China Association of Oil Painting. Wang Dalun conceded that the location of an action or object might be significant ('artistic performance should be in galleries and not on public structures'). Zhang, however, contended that art ceded any special status when any action undertaken in its production was deemed illegal. Art must yield to law, he claimed, because 'people belong to society.'<sup>30</sup> Such possession nullifies the individual right to create (downgraded by Zhang as 'predilections'). This is a claim art critics also repeated ('an invasion of individual conduct into the public space'). Still, Zhang seemed to be affected by outside influences. He cited overseas instances where you have to get a permit to 'decorate a building' – the mention is telling as urban space in China could hardly be conflated to urban space in Europe or North America where graffiti circa 1998 was an increasingly accepted part of the landscape.<sup>31</sup> The appeal to norms outside China intersected how state organizations themselves invoked Western approaches to legal concepts in order to maximize their legibility.

Identified in the discussion of *Dialogue* as simply an 'avant-garde artist,' a designation that insinuated how artists were to a degree recognized by the state, Ai Weiwei declared 'it's hard to judge art with the yardstick of the law, and it's hard to effect change in the law by means of art.'<sup>32</sup> But Ai was also admitting the limits of art as a means of political and social change. It was not that art's legitimacy depended on how conspicuously it could exist

<sup>27</sup>Wang Dalun, quoted in Jiang Tao, 'Report on Zhang Dali's *Dialogue (Duihua)* (1998),' trans. Kela Shang, republished in *Contemporary Chinese Art: Primary Documents*, eds. Wu Hung and Peggy Wang, (New York: Museum of Modern Art, 2010), 209.

<sup>28</sup>*Ibid.*, 210.

<sup>29</sup>*Ibid.*, 209.

<sup>30</sup>*Ibid.*, 211.

<sup>31</sup>*Ibid.*, 211.

<sup>32</sup>Quoted in Jiang Tao, 'Report on Zhang Dali's *Dialogue (Duihua)* (1998),' 211.

outside the law, but that the legibility of art was embedded in the discrepancies between one set of rules and another. *Dialogue* initiated dialogue by opening up a rhetorical space of dissent and disagreement in a way that wasn't possible before. It was neither collectivism nor private property but the commons. Individuals from all walks of life, including foreigners, were asked to weigh in on the validity of Zhang's work, thus emphasizing how the discussion of law might be a social process. *Dialogue* opened up a space between legality and legitimacy, particularly in the years immediately after Tiananmen where art was considered legally suspect yet enjoyed new validation outside of China. The images and the dialogue they produced emphasized how the relationships between citizens and the state were increasingly founded on the right to own or occupy, a theme that carried over into the activities of the East Village in Beijing, arguably the most important artistic community to emerge in post-Tiananmen China.

### Collaboration between community and conflict

On a June afternoon in 1994, a young Fujianese named Rong Rong photographed Zhang Huan, a recent graduate of the prestigious Central Academy of Fine Arts in Beijing. In the searing heat typical of Beijing even in early summer, Zhang smeared himself with a pungent concoction of fish oil and honey, then sat naked on a derelict public toilet Rong proudly described as the 'dirtiest and smelliest' in the world.<sup>33</sup> Flies came to Zhang in droves, attaching themselves to the delicious stickiness which Zhang later rid himself of by plunging himself into a nearby pond. Of the photographs Rong Rong took that day, it was a black-and-white landscape image of a contemplative Zhang that has lingered longest. (Figure 8) Zhang is positioned in the left half of the image, his eyes trained on an object outside the picture frame. The direction of his gaze opens up the space of the photograph, allowing us to indulge in our desire to peer into the mysterious tunnel-like space immediately behind him. The performance itself is called *Twelve Square Meters* to refer to the compressed space occupied by the toilet, yet the angle at which the photograph is taken insinuates considerable depth. We see only Zhang's upper body, a cropping decision that brings us into his personal space. Visible at the extreme left-hand edge, is the character for 'life,' a pointed indication of how photography's charge pivots around the tension generated between what the picture includes and what it omits.

When the photograph was taken Zhang and Rong Rong belonged to a loose configuration of artists working in a derelict part of Beijing's outskirts. Dubbed the East Village after the New York City neighbourhood famed for

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<sup>33</sup>Rong Rong, letter to his sister Liu Yali, quoted in *Rong Rong's East Village, 1993–1998*, (New York: Chambers Fine Art, 2003), 70.

its history as a mecca for counterculture and avant-garde art, the area where Zhang, Rong and others worked saw many key experimental artworks produced, often by artists working together. In a letter to his sister, Rong excitedly wrote of how he and other artists planned the performance eventually known as *Twelve Square Meters*, which took place in front of three artists, including Ai Weiwei.<sup>34</sup> The 'we' seemed more collectivist than authorial – in the politically sensitive post-Tiananmen years, the pressures of daily survival made cooperation necessary. For his part, Zhang Huan stated that the only audience was his 'friends who helped to take photos and video.'<sup>35</sup>

But after East Village artists and photographers attracted overseas attention, including invitations from galleries to show and potentially sell their works, the spirit of community quickly unravelled.<sup>36</sup> A major turning point is the disputes provoked by a colour photograph of the performance *To Add One Meter to an Anonymous Mountain*. (Figure 9) Executed in 1995, it involved Zhang Huan, Cang Xin, Ma Liuming and other artists that lay naked on top of each other to form a hill of flesh that was subsequently photographed. Foreign audiences consistently attributed the work to Zhang, the work's 'organizer,' particularly after its display in what amounted to an IPO for contemporary Chinese art, its large-scale display at the 1999 Venice Biennale.<sup>37</sup> Referring to Zhang, the influential British critic Adrian Searle observed that 'he also produces rather lovely photographs ... a pile of naked people on a mountaintop, *To Add One Meter To An Unknown Mountain*.'<sup>38</sup>

The possibility of future misattribution may have been why Zhu Fadong declined the invitation to participate in *To Add One Meter To An Unknown Mountain*. Known for works such as *Person for Sale*, a humorous satire of the commodification of bodies in postsocialist China that involved him traipsing the streets of Beijing for a year wearing a sign, 'Person for Sale, Price Negotiable,' Zhu was likely more attuned to how the circulation of contemporary art often depended on identifying specific authors. (Figure 10) Wary of Zhang's insistence that the performance was his idea, and thus his work, an assumption borrowed from the artistic practice known as conceptual art which prioritizes the intangible concept responsible for an artwork's creation, Zhu refused to have his intellectual and physical labour appropriated in another's name.<sup>39</sup> Other participants later circulated various photographs of

<sup>34</sup>Ibid., 70.

<sup>35</sup>Zhang Huan, quoted by Qian Zhijian, 'Performing Bodies: Zhang Huan, Ma Liuming, and Performance Art in China,' *Art Journal* 58:2 (Summer 1999): 66.

<sup>36</sup>Keith Wallace suggests that a group show of three Chinese photographers, including Rong Rong and Xing Danwen at the Tokyo Gallery in Tokyo in 1995 cued the artists that their images might be regarded as standalone artworks as well as documentation. Keith Wallace, 'Action-Camera: Beijing Performance Photography,' Thomas Berghuis, Keith Wallace and Maya Kovskaya, *Action-Camera: Beijing Performance Photography*, (Vancouver: Morris and Helen Belkin Art Gallery, 2009), 74.

<sup>37</sup>Zhang himself strenuously rejected being described as the work's 'organizer.' Qian, 66.

<sup>38</sup>Adrian Searle, 'Dearth in Venice,' *The Guardian*, 15 June 1999.

<sup>39</sup>Quoted in Qian 65.

the event as their work, affirming the claim that the performance was in fact communal property from which all participants could profit through the sale of its documentation in the form of editioned photographs.<sup>40</sup> The difference between these photographs is slight. Photographs of *To Add One Meter To An Unknown Mountain* credited to Cang Xin, for example, show the arm of one performer positioned at a different angle than can be seen in the version attributed to Zhang Huan. (Figure 11) Black-and-white gelatin prints of the same work attributed to Ma Liuming, another performance artist who also catapulted to prominence in the late 1990s, are virtually identical to those attributed to Zhang. (Figure 12) Museums, however, showed colour photographs of the performance taken by Rong Rong and Ba Gen'na but presented as the work of Zhang.<sup>41</sup> Prices for similar photographs varied widely; a Zhang Huan version (101.6 × 152.4 cm) was sold for as much as \$50,400 at auction while a smaller Cang Xin version (65 × 100 cm) fetched only \$12,300.<sup>42</sup>

Between 1998 and 1999, the Asia Society in New York and the San Francisco Museum of Modern Art co-hosted 'Inside/Out: New Chinese Art,' the first major survey of contemporary Chinese art in North America. The catalogue, one of the first major English-language resources for contemporary Chinese art, identifies a colour photograph as a work by Zhang Huan with a brief credit line naming Rong as the photographer.<sup>43</sup> (Figure 13) Taken at close range, Zhang is depicted in profile. His eyes are closed, as if he was willing himself to move outside his immediate surroundings. The same photograph was later exhibited at Max Protetch Gallery in New York in the summer of 1999; *New York Times* art critic Roberta Smith brooked no hesitation in describing Zhang a 'photo-performance artist' who 'photographs himself.'<sup>44</sup> That same year, Sean Kelly, another New York gallerist, recommended one of his artists, the performance artist Marina Abramović to enter into a contract formalizing the division of her joint performances with former partner Ulay.<sup>45</sup> The two had officially parted ways on the Great Wall

<sup>40</sup>This claim was seconded by two sources I interviewed separately. Both wished to remain anonymous given ongoing sensitivity regarding competing authorship claims; one is a well-known Chinese critic with first-hand knowledge of the performance and the other a comparably prominent U.S.-based curator with extensive knowledge of Chinese photography. Personal communication with the author, March 28 and 30, 2018.

<sup>41</sup>Lu Nan was responsible for the black and white photographs of the performance. Sheldon Lu notes how the owner of the photographs' copyright and that of the video are different. Lu, *Chinese Modernity and Global Biopolitics*, (Honolulu: University of Hawaii Press, 2007), 81.

<sup>42</sup>Chin-Chin Yap, 'The Case of the Readymade Mountain,' *Art Asia Pacific* 55 (September/October 2007). <http://artasiapacific.com/Magazine/55/StateOfTheArtTheCaseOfTheReadymadeMountain>, accessed 11 June 2017.

<sup>43</sup>A similar comparison is how a photograph of Ma Liuming's performance by Xing Danwen was credited to Ma. A small credit line indicated Xing as the photographer with her surname misspelled as 'Xin.'

<sup>44</sup>Roberta Smith, 'Art in Review,' *New York Times*, 12 February 1999.

<sup>45</sup>For a description of the contract's contents and its circumstances see Noah Charney and Edgar Tjihuis, 'Ulay vs. Marina Abramović: how the epic legal battle between art-world giants went down,' *Salon*, 25 September 2016. <http://www.salon.com/2016/09/25/ulay-vs-marina-abramovic-how-the-epic-legal-battle-between-art-world-giants-went-down/>, accessed 1 June 2017. The contract proved no guarantee

of China in 1988, and Kelly had been selling photographs of Abramović performances since. The market for photographs of Abramović's performances was relatively modest then; two photographs of *Role Play* (1974–1975), where the artist exchanged places with an Amsterdam sex worker were sold for US\$4025, just above the low estimate at Sothebys New York in November 1998.<sup>46</sup> Still, Kelly seemed to put immense stock in the growth potential of the performance art market by urging Abramović to enter into a contract, then considered overly formal and largely unnecessary in the gallery world, to guard against the potential future litigation that might destabilize the market for Abramović's works.<sup>47</sup> Ulay agreed to sell the physical archive of their joint performances to Abramović, thus enabling her to make and sell photographs and other reproductions of their works. In exchange, she was to let Ulay know of any activity concerning their joint works and to pay him royalties on the sale of their joint works.

No such agreement is known to have existed between any of the Beijing East Village artists. 'Actually at that point we didn't realize that what we were creating would become valuable,' Ma Liuming stated.<sup>48</sup> But images of *Twelve Square Meters* became something of a land grab between Zhang Huan and Rong Rong from 2002, when those photographs attributed to Zhang Huan appeared at auction.<sup>49</sup> Many were acquired from Zhang directly or from primary galleries like Max Protetch and Jack Tilton, early movers in the contemporary Chinese art market. Initial prices were modest; even an artist's proof sold for about US\$4500 in Hong Kong, traditionally the strongest market for contemporary Chinese art. Not long after, Rong Rong issued a limited-edition bilingual photobook, *Rong Rong's East Village 1993–1998* that included materials given to the photographer by other East Village artists.<sup>50</sup> Among the works it included was an image remarkably similar to the colour photograph

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as Ulay's legal suit against his former partner in the fall of 2015 indicated. While his primary claim was Abramović's failure to pay him royalties according to the terms of their contract, Charney suggests that the initial trigger was Abramović refusal to permit the reproduction of images depicting some of her joint works with Ulay for a book about the latter's work in 2014. Noah Charney, 'Ulay v Marina: how art's power couple went to war,' *The Guardian*, 11 November 2015. <https://www.theguardian.com/artanddesign/2015/nov/11/marina-abramovic-ulyay-performance-art-sued-lawsuit>, accessed 12 May 2017.

<sup>46</sup>Photos of *Role Play* showing Abramović in the actual space of the brothel were taken by Ulay, who was not credited in the auction sale.

<sup>47</sup>Kelly's faith was justified many times over. Photos of *Role Play* identical to those sold in 1998 were sold at Phillips de Pury New York for US\$27500 in October 2011. The provenance for these images was Sean Kelly Gallery.

<sup>48</sup>Ma Liuming, quoted in *Between Past and Future: New Photography and Video from China*, (Chicago: Smart Museum of Art, University of Chicago; New York: International Centre of Photography; Göttingen: Steidl Publishers, 2004), 182.

<sup>49</sup>The final price of HKD 35850 was considerably less than the pre-auction estimate of HKD 60000–80000. Christies Hong Kong, April 2002.

<sup>50</sup>According to interviews conducted by Thomas Berghuis with unidentified East Village artists in 2003, Rong Rong obtained some of these materials through false pretences, including 'enticing' one artist into donating archival material for a study on performance art in the East Village. Berghuis, 'Contemporary Chinese Art 'After' Performance Art,' *Action-Camera: Beijing Performance Photography*.

prominently reproduced in 'Inside/Out,' now titled *East Village No. 27*. (Figure 14) Here Zhang's eyes are open and the composition is bathed with light that appears to mimic painted illumination. The golden light romanticizes, or at least mitigates Zhang's abjection, siphoning attention away from the control Zhang exerts over his body and towards the choices Rong Rong made in depicting this work. Certainly Rong considered his work separate from Zhang's performance as he wrote in a June 1994 letter to his sister about photographing *Twelve Square Meters*: 'I'm not simply recording what I see, though. I have my own ideas and views.'<sup>51</sup> The photobook, which contains both images Rong Rong took directly as well as archival material obtained from other East Village artists is a strategic move, for it establishes other images of Zhang Huan as Rong Rong works. His intentions are reinforced by the pointed inclusion of a letter Rong Rong allegedly wrote his sister in 1999, telling her how he 'used' Zhang, Ma Liuming and other East Village residents as 'models.'<sup>52</sup> If the photobook was indeed an attempt to secure his authorial position, it worked: with the exception of two photographs, nearly all images of *Twelve Square Meters* are credited as his works.

Yet the images of Zhang Huan's performances credited to Zhang helped establish a significant market for the documentation of Chinese performance art. Collectors of Rong's work benefited from Zhang's exhibition as all photographs of Zhang's performances soared to unprecedented heights, regardless of attribution. Part of an edition of fifteen, the photograph Rong Rong titled *East Village No. 27* sold at Sothebys New York in March 2008 for \$49,000, more than three times the average estimate. Although the historical and scholarly value of photographic documentation initially resides in the events they record, auction prices for images depicting *To Add One Meter To An Unknown Mountain* have varied significantly, with only the images credited to Cang, Zhang, and Ma – the best-known performers – selling for substantial prices.<sup>53</sup> Those attributed to Zhang have yielded the highest sums. At Sothebys New York in March 2006, a black-and-white version sold for US\$50,400; a colour print sold at Christies London for about US\$40,000 in July 2008.

Art historian Wu Hung described how situations like these 'turned old friends and comrades into competitors and enemies.'<sup>54</sup> Certainly artists like Zhang and Ma became territorial, asserting more control over the visual reproduction of their performances, which soon overshadowed the trust that formerly empowered artistic communities like the Beijing East Village to

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<sup>51</sup>Quoted in *Rong Rong's East Village*, 73.

<sup>52</sup>*Ibid.*, 7.

<sup>53</sup>Among them, Zhang's photographs have consistently sold for higher amounts than those credited to Cang and Ma. Cang's version in cibachrome peaked at around US\$18,000 at Sothebys Hong Kong in October 2014 where it sold for double its high estimate. An artist's proof of Ma's black-and-white print fetched about US\$10,000 at Koller in Zurich in June 2008; other versions failed to sell.

<sup>54</sup>Wu Hung, 'Beyond,' *Beyond: Recent Photographs by Rong Rong and Imri*, (Chicago: Walsh Gallery, 2005), 6.



survive under extremely trying political and economic conditions.<sup>55</sup> Tellingly, Zhang stopped working with Rong Rong in 1998, with the photographer leaving the East Village for good.<sup>56</sup> Years later, Zhang stated how he now insists on signing contracts with photographers and videographers 'for every performance piece.'<sup>57</sup> His comment reflected his immersion in a Euro-american art world defined by risk management, particularly with regard to future sales, but also implied how defending property interests represented a new outlet for expressing personal autonomy. The artistic practice of collaboration may have gained significant momentum in the 1990s and after, but as the Zhang-Rong feud demonstrated, competing authorial claims reinforced by stronger copyright protection for individual creators in the U.S. and Western Europe threatened collaboration's utopian aspirations.

### Globalism de jure

As the geographical purview of contemporary Chinese art widened to include the swelling numbers of expatriate, émigré and itinerant artists of Chinese national origin, U.S. and European law affected such artists as they became increasingly embedded in the institutional systems of the U.S. and Western Europe. Chinese performance artists accustomed to thinking of their bodies as property with which they could 'do anything I like,' found themselves challenged by U.S. laws intended to prevent self-harm.<sup>58</sup> Many artists were well aware of how their works now circulated in contexts shaped by different laws. Performance art historian Thomas Berghuis noted that the pressures of the art market compelled performance artists to think of their works as objects that could then form part of a larger 'brand.'<sup>59</sup> Such markets not only demanded that ephemeral works be guaranteed by tangible evidence, including certificates of authenticity, invoices, and documentation, but were also governed by legal systems that protected copyright in artworks that are in 'fixed tangible form.' Anthropologist Aihwa Ong might therefore be right in claiming that it is 'critical' to 'consider non-Europeans and Europeans encountering each other as equivalent actors in reforming the global intellectual zeitgeist,' but more urgent still is to recognize how such equivalence rests

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<sup>55</sup>Wu Hung states that performance artists and photographers maintain 'cautious relations' today, with performance artists paying a photographer to document their works while retaining copyright over the resulting images. Wu Hung quoted in Richard Vine, 'Sixty Ways of Looking at China,' *Art in America* (June/July 2004), 129.

<sup>56</sup>Carlos Rojas, *The Great Wall: A Cultural History*, (Cambridge and London: Harvard University Press, 2010), 162.

<sup>57</sup>Zhang Huan, 'A Piece of Nothing,' *Zhang Huan: Altered States*, (New York: Asia Society, 2007), 66.

<sup>58</sup>He Yunchang, quoted in Meiling Cheng, 'Extreme Performance and Installation from China,' *Theatre Forum* 29 (Summer/Fall 2006): 90. Intending to sit on a rock in Niagara Falls for a full day, He was arrested after a bystander mistook his performance as a suicide.

<sup>59</sup>Thomas Berghuis, 'Forum: 'Is Performance Art today in a state of 'menopause'?', transcript of discussion, Singapore Art Museum, 14 April 2006.

on shared vulnerability to a system of legal concepts incubated in a select number of Anglo-American-European institutions having supranational purchase.<sup>60</sup>

The realization of what might be described as globalism de jure was not exclusive to a younger generation shaped by Deng's policies of market liberalization. Even social networks voluntarily forged out of genuine shared commitments were powerless against the copyright tide on which artistic reputations and market values were borne aloft. Recall the Beijing East Village, which initially began as a presumptive model of social collaboration, whose very lack of organization and hierarchy underwrote its political credibility. Despite its social density, artistic collaboration not only fell apart in the face of its encounter with the global art world, but also expanded into open conflict as evidenced through the conflicting statements of Rong Rong and Zhang Huan. Indicative of how artistic globalization was underwritten by Euro-American juridical thinking that prioritized individual authorship as opposed to in China, where even copyright was subject to state interests, the dispute between the artists revolved around symbiotic questions of status and purpose. What were the photographs: independent creations of an autonomous hand or copies of another's work? And what were they for? Were they artworks that had no other purpose than to reflect the creative powers of their maker or were they primarily used to confirm the details of an ephemeral situation?

The debate was intensified by the institutional recognition of contemporary Chinese photography in the U.S. In 2004, the International Centre of Photography and the Asia Society in New York co-organized 'Between Past and Future: New Photography and Video from China.' Including many works shown in the previous 'Inside/Out' survey, this large group show highlighted the artistic role of photographers and video artists. Yet even before the show opened, works formerly attributed exclusively to the performer were recast as works jointly created with the photographer documenting the performance. Reviewing a solo exhibition by Rong Rong almost exactly four years after Zhang's solo New York debut, *New York Times* critic Holland Cotter described both Zhang and Ma 'as collaborators in Mr. Rong's pictures, which may well capture their best work so far.'<sup>61</sup> Unlike his colleague, the influential critic Roberta Smith, Cotter never described Zhang as a 'photo-performance' artist. His comments suggested an attempt to elevate labour formerly recognized as documentation to the register of art. Aware of the dispute between Zhang and Rong Rong, Cotter implied that the performances of Zhang were most complete because of Rong Rong's photographs.

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<sup>60</sup>Aihwa Ong, "What Marco Polo Forgot": Contemporary Chinese Art Reconfigures the Global,' *Current Anthropology* 53:4 (August 2012): 473.

<sup>61</sup>Holland Cotter, 'Art in Review,' *New York Times*, 13 June 2003.

Zhang was highly cognizant of the implications contained in these and other statements. In the catalogue accompanying his solo show at the Asia Society in New York in 2007, Zhang wrote that he ‘invited photographers with still and video cameras to document the piece,’ suggesting that their images were subordinate to his performance and possibly subject to his proprietary control.<sup>62</sup> The remark was a pointed rejoinder to Rong Rong who had characterized Zhang as a ‘model’ in 1999, the year Zhang had his show at Max Protetch Gallery. Not only does Rong Rong cast the body of Zhang as the site of abstract labour, he implies that the artist lacks authority and agency within the context of the photograph. Certainly *East Village No. 27* reinforces the importance of photography and its guarantor role for performances, often serving as the only point of access for many audiences. In most cases, the relationship between performer and photographer happens outside the purview of contract. The lack of formality can be disastrous for the performer; barring proof of an intent to create a joint work, the law assigns copyright to the photographer who may choose to deny the performer access to documentation of her own work.<sup>63</sup> Profit-minded photographers could legally hold such images hostage, refusing to release them unless paid a substantial fee. Both international art market and institutional art world practices, however, tend to recognize documentation as an extension of the performance artist’s work, despite the increasing tendency to identify the photographer. Abramović, one of today’s most visible performance artists, derives a substantial percentage of her income selling photographs of her performances. The artist recognizes these images taken by someone else as having their own identity, or their own ‘energy and charisma,’ yet both she and the art market treat the photographs as Abramović works.<sup>64</sup> Ma Liuming, who hired photographers to document his work, suggests that documentation might constitute a separate, copyrightable work: ‘he made decisions about where the pictures would be taken and in what order they would be exhibited. These were artistic decisions about the arrangement of the documentation.’<sup>65</sup> Yet museums, galleries and scholars routinely attribute the resulting documentation as the work of Ma, with no mention of the actual photographer.

*East Village No. 27* is unusual, then, in how collectors, auction houses, dealers and museums recognize it as a work by either Rong Rong or Zhang Huan (named *Twelve Square Meters* when credited to the latter). The scene is cropped so that Zhang shares pictorial space with the spatial recession in

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<sup>62</sup>Zhang ‘A Piece of Nothing,’ *Zhang Huan: Altered States*, 58.

<sup>63</sup>A prominent example is Carolee Schneemann, who laments being unable to access documentation to her early work. Quoted in *Perform, Repeat, Record: Live Art in History*, eds. Amelia Jones and Adrian Heathfield, (Bristol: Intellect Books, 2014), 447.

<sup>64</sup>Sarah Thornton, *33 Artists in 3 Acts*, (New York: W.W. Norton, 2014), 291.

<sup>65</sup>Ma Liuming, quoted in *Between Past and Future: New Photography and Video from China*, 182.

the other half. Towards the upper right-hand corner is a dispersion of light, while the public toilet is made to seem much more cavernous than it actually was. We see the flies that have only begun to colonize the surface of Zhang's body, yet the skin is glowing and the body taut and primed for action. The emphasis on the optics of Zhang's performance suppresses the extent to which his work was more immediately legible through smell and touch. Overpowering even in the best of circumstances, the stench of fish oil and honey on a June day in a non-ventilated public toilet would have been the first thing to affect Zhang's audience. The photograph also suppresses the tactility Zhang regarded as paramount to his work: here the flies are a minimal, and even incidental presence. Yet siding with Zhang means potentially diminishing the status as photography as mere documentation, or even worse, as tangential ephemera.

The proverbial gauntlet was thrown in 2007 when an image of *Twelve Square Meters* was published in the catalogue for Zhang Huan's ostensible breakout moment, his solo exhibition at the Asia Society in New York in 2007. In contrast to earlier publications crediting Rong as the photographer, no such acknowledgement accompanied this photograph.<sup>66</sup> Rumours of a lawsuit between the two artists began to circulate in 2008, when contemporary Chinese art had become a commercial juggernaut. The potential for litigation threw into stark relief the fragility of a global art world valorised for its promises of a borderless world, particularly as the legal outcome depended on where the suit took place. In the Zhang-Rong dispute, China was the default option given that Chinese citizens made the disputed work in China. Given state disapprobation towards performance-based works, it could be argued that Zhang never had copyright under the Copyright Law of the People's Republic of China that went into effect in 1991. Intended to promote the creation of works 'conducive to the building of a socialist society,' the law allowed courts to refuse to enforce the copyright of works 'prohibited by law,' which in the aftermath of the Tiananmen Square protests potentially included artworks perceived as anti-government or against social morality.<sup>67</sup> Performance art involving nudity attracted intense scrutiny as reflected by the arrests of Zhang and Ma Liuming, with the latter imprisoned for three months on pornography charges.<sup>68</sup> Zhang himself was released soon

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<sup>66</sup>Zhang Huan: *Altered States*, 31.

<sup>67</sup>For an English translation of the Copyright Law see the official site of the National People's Congress, China's national legislature. [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383888.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383888.htm), accessed 11 May 2018.

<sup>68</sup>The crackdown on performance art curiously resonates with U.S. government scrutiny of performance art during the 1990s. One wonders whether Karen Finley, whose works provoked high-profile condemnation from conservative U.S. politicians and bureaucrats who regarded her nude performances as indecent, would have been stripped of her copyright if her works took place in China. For a discussion of how Finley and three other performance artists had their government grants vetoed by the chairman of the National Endowment for the Arts (NEA) in 1990, see Steven C. Dubin, *Arresting Images: Impolitic Art and Uncivil Actions*, (London: Routledge, 1992), 125–158. The controversy included *National Endowment for*

after his arrest, yet it is nevertheless possible to imagine that *Twelve Square Meters*, which involved sitting naked in a filthy restroom, might have triggered the content standard of Chinese copyright law. Should *Twelve Square Meters* be ‘prohibited by law,’ Zhang might have no claim at all while Rong Rong could retain copyright over images deemed inoffensive, namely those not showing nudity and which presented the site in a highly aesthetic light.

By 2008, when *Twelve Square Meters* had been extensively shown in major international exhibitions, it would be more likely for Chinese courts to honour Zhang’s copyright. Chinese law was and is more predisposed to moral rights, or the legal doctrine that grants creators certain rights over their own works even after their sale or transfer. It distinguishes between ‘artistic and photographic works,’ suggesting that a court could have regarded the photographs as Rong Rong’s work absent an agreement between the two artists. Other jurists might have considered whether the photographs were part of a joint work, an idea Chinese copyright law acknowledges but on which it remains conspicuously silent. Evidence of intention would likely have been considered, and here we return to Rong Rong’s letter where he referred to himself and Zhang as ‘we.’ Wu Hung has stated that the ‘we’ is evidence of a collaborative mindset, which some institutions came to accept; in the Getty Museum show ‘Photography from the New China,’ Zhang is described as Rong Rong’s collaborator.<sup>69</sup> Compare this photograph with another image of *Twelve Square Meters*. (Figure 15) Consistently credited as Zhang’s work despite its publication in Rong Rong’s photobook as *East Village No. 20*, this image shows the abjection of Zhang’s physical surroundings.<sup>70</sup> Taken from above, Zhang seems much less aware of being observed than in the previous work, where his gaze appears much more staged. The image here aligns more with what Zhang wrote in his personal account of the work, affirming his interest in people ‘at their most ordinary, during typical daily moments when they are most prone to being overlooked.’<sup>71</sup>

Strategy-wise, it would have been more advantageous for Rong Rong to file suit in U.S. court on grounds that Zhang was resident in New York since 1998. U.S. law holds that copyright belongs to the original creator of the work absent any agreement to the contrary. Zhang might respond by citing scholarly opinion holding that ‘performance art documentation participates in the fine art tradition of the reproduction of works rather than the ethno-

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*the Arts v. Finley*, in which the U.S. Supreme Court held that ‘general standards of decency’ could be factors when deciding NEA grants. 524 U.S. 569 (1998).

<sup>69</sup>‘China’s Change of Focus,’ *Orange County Register*, 11 December 2010.

<sup>70</sup>In one instance, the photograph was actually lent to an author by Rong Rong even though it was credited as Zhang’s work. Robin Visser, *Cities Surround the Countryside: Urban Aesthetics in Postsocialist China*, (Durham and London: Duke University Press, 2010), 69.

<sup>71</sup>Gao Minglu, *Total Modernity and the Avant-Garde in Twentieth-Century Chinese Art*, (Cambridge: MIT Press, 2011), 279.

graphic tradition of capturing events.<sup>72</sup> Was Rong Rong's work a copy of Zhang's? If so, who has the authority to determine where the photographs can be exhibited and who might profit from their sale? Applicable here is the legal doctrine of fair use allowing unauthorized reproduction under certain circumstances. Section 4 of the Copyright Law of the PRC states that fair use applies when a photographer photographs a work displayed outdoors in a public place. The outhouse where *Twelve Square Meters* took place was sufficiently exposed as to qualify as a public place under fair use guidelines. Indeed, the performance came under police scrutiny because of a villager who happened upon the work. U.S. law, however, takes into consideration the nature of use, including how the market value of the copyrighted work might be affected by subsequent appropriations. Yet mere commercial use was not enough to discount fair use claims, as the U.S. Supreme Court held in the 1994 case *Campbell v. Acuff-Rose Music, Inc.*; 'the cognizable harm is market substitution.'<sup>73</sup> When Rong took his pictures, few, if anyone present saw them as potential sources of income, although Rong seemed to hope that his works might sell in the immediate aftermath of *Twelve Square Meters*.<sup>74</sup> A court might regard their sale during the late 1990s and the 2000s, however, as having a negative impact on the market for Zhang's performance given how the latter was monetized through photographs, particularly the image Rong Rong called *East Village No. 20*. For Zhang to even contemplate litigation, a long and expensive process, he must have felt threatened by sales and rising prices for Rong's photographs of a performance he regarded as his. But while Rong Rong's images of Zhang's performance often sold at auction for well above their high estimates, their prices were far below those of identical photographs credited to Zhang.

The sale of visual art differs from other forms of property transfer in that industry custom sometimes outweighs the law. The repeated behaviours and accumulated opinions of institutions, collectors, dealers, critics, curators and art historians exerted just as much, if not more authority than did laws enforced in a court or issued by a government. Performance art poses a special conundrum in its ephemeral nature. Often created without scripts, instructions, or other tangible forms of expression that would merit copyright protection, its existence is largely affirmed by materials by others, who, barring a work-for-hire agreement, would have their own copyright claims. Nevertheless, the commercial and critical prominence of certain performance artists, together with art world custom to regard performance

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<sup>72</sup>Philip Auslander, 'The Performativity of Performance Documentation,' *Performance Art Journal* 84 (2006): 6.

<sup>73</sup>*Campbell v. Acuff-Rose Music Inc.*, 510 U.S. 569 (1994).

<sup>74</sup>As Rong wrote a month after the performance, 'Suddenly it [the East Village] has become a famous place! But as far as I know, none of us East Village artists have sold anything yet.' *Rong Rong's East Village, 1993–1998*, 73.

documentation as an extension of a performer's work provoked doubts in those entitled to enforce their authorial claims. Xing Danwen, the other key photographer known for documenting the East Village performances, had consulted an intellectual property lawyer in New York who reassured her that the copyright belonged to her alone. Still, Xing, who had relocated to New York in 1998, was not entirely convinced: 'I still wondered if they were my own artwork – in a way it's not, but they are my photographs.'<sup>75</sup> Her doubt resonated with widespread belief that performance was intrinsically collaborative. It was impossible to imagine the performance without photography. At the same time, it was equally difficult to imagine a performance unaffected by the photographer, especially as performance art often depends on the presence and response of an audience. Initially the photographs were considered as both Rong Rong's work and equivalent to Zhang Huan's performances. That most institutions now credit Rong Rong as the artist reflects the elevated artistic status of photography. Ironically Zhang's own vigilance in documenting his subsequent performances lent credence to Rong Rong's claims. Art historian Martha Buskirk argues, for instance, how Zhang's 2005 performance *My Boston* was 'compromised' by multiple deliberate interruptions for photo-taking: the performance became 'raw material for the photographs,' a remark suggesting that the photographs constituted the final work.<sup>76</sup>

The potential devolution of the Zhang-Rong dispute exemplified how artistic production collapsed into privatization. Privatization, in sum, pitted the financial value of artworks against the kind of value inherent in the social bonds enabling the creation of said works. The hypothetical lawsuit indicates how the work of affiliation is now outsourced to an adversarial juridical system. That Zhang and Rong settled their dispute outside the courts further signalled their embedment in a form of globalization whose true laws were non-disclosure, extreme privacy and the vigilant exclusion of others.

For decades, the collectivization of artistic production in China made any attempt at separation between culture and politics impossible. Only when private property was introduced did the idea of autonomy seem feasible. But such autonomy also incurred very real costs, namely the breakdown of the social structures that had sustained a spirit of artistic community. The very suggestion of litigation quashed even ties so intensely felt as to verge on kinship. Indeed, Rong Rong's photobook reads as much an act of mourning for a lost community as it does proof of his artistry: to this date, Rong and Zhang do not speak.

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<sup>75</sup>Xing Danwen, quoted in Gaby Wood, 'Photography: State of the Art,' *The Observer*, 4 Sept 2005.

<sup>76</sup>Martha Buskirk, *Creative Enterprise: Contemporary Art Between Museum and Marketplace*, (New York: Continuum, 2012), 191.

## Speculating beyond property

The story might end here with a pessimistic reflection on the triumph of the neoliberal legal system, especially given the degree to which contemporary Chinese art has been a target of financial speculation. More than half of the fifteen editioned photographs of *To Add One Meter to an Anonymous Mountain* were sold at auction within a decade of their being made; number fourteen was flipped in less than two years. The work is perhaps better known as a testament to contemporary Chinese art's liquidity than as an autonomous, self-sustaining visual world or even a record of a particular event.

An unexamined legacy of the Zhang Huan-Rong Rong conflict was its untapped potential to disrupt the commercial art market. Both artists pushed the art world practice of selling works as editions to its furthest possible limit. From 2002, both artists seemed to have issued a plurality of different editions of what in U.S. copyright parlance would qualify as 'substantially similar' works. It was as if they were seeking to expand their market through diversifying their products, or in this case, the work. Zhang Huan appeared to have issued at least four different editions of *To Add One Meter to an Anonymous Mountain*: cibachrome prints, silver gelatin photographs that were somewhat smaller, artist's proofs and 'edition printers' proofs.' Edition numbers seem to have been assigned at random, and the number of artists' proofs exceeded the industry standard of 15% of all editions.<sup>77</sup> Rong Rong was even more ambitious. As if to consolidate his authorial claims to *Twelve Square Meters*, he produced display-ready editions depicting Zhang from various distances as well as of different moments during the performance. Several smaller works are portraits focused on Zhang's face (*Beijing East Village No. 19*), while another work is a series of images showing Zhang wading into a nearby pond to bathe (*Beijing East Village No. 2*). (Figure 16) Each of these photographs were given the prefix 'Beijing East Village No.' rather than *Twelve Square Meters*, an umbrella title Zhang used to identify all images of his performance.

Both artists laid bare the arbitrariness of an already precarious economics of editions, a market-propelled fiction giving copies the status of an original and based on little more than habit and faith.<sup>78</sup> In lockstep with its growing recognition as fine art, photography began to resemble large-format painting in the late 1970s and 1980s. Photographs became larger, more challenging and expensive to produce yet also more suitable for display as parallel, or

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<sup>77</sup>Neither Zhang nor Rong Rong developed further editions intended for particular countries, which would have further expanded the edition size without compromising the perception of scarcity implied by edition sizes of 10, 15, or even 20.

<sup>78</sup>Rong Rong and Zhang Huan were not unique in this regard; Cang Xin apparently had two editioned sets of *To Add One Meter to an Unknown Mountain*; one was a smaller edition of 5, and the other was out of 15, like the edition issued by Zhang Huan. However, there were other editioned sets of 10 and 24. Number 3 was sold at Rombon Auction Beijing in December 2007 for approximately US\$12000.



surrogate paintings.<sup>79</sup> This last quality was especially important for creators of performance art and other ephemeral works who sold images of their work to collectors, an economic group defined by its abiding interest in preserving and raising the exchange value of its purchases.<sup>80</sup> Yet by the mid-2000s, the market for photography was increasingly populated by images attributed as the work of certain high-profile performance artists. Indeed auction sales records indicate egregious instances of Rong Rong photographs mislabelled as Zhang Huan works.<sup>81</sup>

But while the incentive for such mislabelling was reinforced by the higher prices commanded by Zhang works, the cavalier misattribution of works has rich potential for disrupting transactional efficiency should both Zhang and Rong Rong intentionally and simultaneously disclaim their own works. 'Sometimes American and English art can be very boring because it's restrained by political correctness. We have no such restraints,' Zhang remarked to an Australian reporter in 2000.<sup>82</sup> One wonders whether the same prescription might hold if somewhat differently worded: that commercially successful art can be boring unless it pushes back against the economics of its own success. The task now may be for artists like him and Zhang to self-sabotage the exchange value of their works by whatever means necessary, or more broadly, to think beyond the confines of the property regime. Only then can artworks avoid the fate Rong Rong so ardently hoped to avoid in 2007 when he commented 'we don't want the photographs to be treated like stocks for investing.'<sup>83</sup> What possibilities might arise if collaboration was transformed into collusion and where the goal was not profit but chaos? If Zhang and Rong are to be held to their implicit commitments to radicality, the next challenge is to hold originality irrevocably hostage by whatever means necessary, including randomly disclaiming authorship, including exploiting the fiction of editions by producing so many 'originals' as to render the idea of an original print defunct.

One possibility is to embrace non-pejorative attitudes towards copyright infringement. Thus rather than automatically condemn infringers as criminals and their works forgeries to be confiscated or even destroyed, it might prove

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<sup>79</sup>On the philosophical and creative motivations behind the turn to large-scale photography see Michael Fried, *Why Photography Matters as Art as Never Before*, (New Haven and London: Yale University Press, 2008), 143–189, 281–294.

<sup>80</sup>Along with the expanded market for editioned photography, the ability to create display-ready copies also played a critical role in the expansion of the market for video works in the 1990s. Erika Balsom, *After Uniqueness: A History of Film and Video Art in Circulation*, (New York: Columbia University Press, 2017), 127–165.

<sup>81</sup>Examples include a work titled *Beijing East Village No. 27* (the title Rong Rong ordinarily used) which Bonhams London sold as a Zhang Huan in June 2006. The work was sold as part of an edition of 20, which was the number used by Rong Rong; a very similar work by Zhang Huan were issued in an edition of 15. Another example is an identical work sold at Artcurial-Briest in 2006.

<sup>82</sup>Georgina Safe, 'Display Ruffles Chinese Feathers,' *The Australian*, 2 June 2000.

<sup>83</sup>Rong Rong, quoted in Sheila Melvin, 'Framing Photos as Art in China,' *International Herald Tribune*, 8 August 2007.

more fruitful to explore the implications of *shanzhai*.<sup>84</sup> Originally referring to bandit enclaves beyond government control, the word 'shanzhai' was initially used as a pejorative description for the manufacture of counterfeit goods. By the late 2000s, however, it came to refer to grassroots innovation and even a kind of laudatory counterculture potentially doubling as social commentary.<sup>85</sup> According to *shanzhai* logic, the authority of the original must yield to a new set of values, particularly the open and promiscuous borrowing of sources.

Let us revisit Ai Weiwei's urn drop, which continues to resonate more than 20 years later. I am drawn to his outstretched hands, both gestures so theatrical as to make unduly palpable the question of intention. They go beyond the magician's voila moment. The right palm faces downward. It establishes Ai as the cause of destruction. The left hand is more ambiguous. Raised slightly higher than the right, it is vaguely angled towards us, the viewer. Splayed fingers suggest invitation, but also surrender. Is the scene one of *fait accompli* or a space for question? Are we doomed to be legible only through the regime of private property or is it still viable to doubt its operations, a doubt amplified by the destruction of Ai's Beijing studio by unnamed 'authorities' in the summer of 2018?<sup>86</sup> Refusing to decide either way in the name of makeshift consensus or convenient dialectic is perhaps the next step in contemporary Chinese art's long march.

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<sup>84</sup>A highly publicized example is Anish Kapoor's threat to sue a Chinese artist who produced a near-identical copy of his renowned Cloud Gate. The disputed sculpture was erected in 2015 in Karamay, in the northwest region of China. 'Anish Kapoor Accuses China of Copying 'Bean' Sculpture,' BBC, <http://www.bbc.com/news/entertainment-arts-33886678>, accessed 11 July 2017.

<sup>85</sup>William Hennessey, 'Deconstructing Shanzhai – China's Copycat Counterculture: Catch Me If You Can,' *Campbell Law Review* 34:3 (2012): 609–660.

<sup>86</sup>Emma Graham-Harrison, 'Ai Weiwei's Beijing Studio razed by Chinese authorities,' *The Observer*, 4 August 2018. The studio was rented in an area slated for redevelopment, yet a representative for the artist stated that no advance warning was given about the impending destruction, either from the government or the landlord.

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## Disclosure statement

No potential conflict of interest was reported by the author.