

Article

Dian in the Civil Code Era: A Historical, Systematic, and Axiological Reassessment

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Abstract

As an inherent part of Chinese indigenous legal tradition, dian originated from customary practices and was gradually incorporated into the national legal framework, reflecting a distinctive historical evolution, structural composition, and value orientation. Historically, dian evolved from a simple customary transaction into a formalized legal institution. It first took shape during the Tang Dynasty and matured through the Ming and Qing Dynasties. Structurally, long-term practice produced unique concepts and rules that embodied the dual nature of both usufructuary and security rights. In terms of value, dian was not merely an economic transaction tool but also reflected ethical norms and pragmatic wisdom of traditional society. It played a vital role in protecting the interests of the mortgagor, promoting circulation of land, and alleviating financial shortages. In the Civil Code era, the value of dian lies particularly in its ability to reconcile individual interests with social needs and to enhance the efficiency of property utilization.

Keywords: dian; historical perspective; systematic perspective; axiological perspective; civil code

1. Introduction

With the promulgation and implementation of the Civil Code of the People's Republic of China, "dian", as an important civil law institution within China's indigenous legal tradition, was ultimately not incorporated into the current doctrinal system of civil law. The longstanding debate over the nature of dian and whether it should be codified has thus come to an end (Zhao 2019). Generally, dian denotes a transaction in which a dian creditor pays a dian price to the dian giver, thereby obtaining possession, use, and the right to derive profits from the dian object—immovable property—for a fixed term (T. Zhang 2017; van der Sprenkel 1962; Bodde and Morris 1967). In this arrangement, the dian object is transferred to the dian creditor for use, while the dian giver retains the right to later redeem the dian object upon repayment of the original dian price. Notably, no interest is paid during the dian term; rather, the dian creditor's use of the dian object serves in lieu of interest payments.¹

However, this does not render the dian obsolete or unworthy of contemporary scholarly attention. Beyond serving as a classic subject in Chinese legal history, dian still carries significant implications for legal practice in the codification era (Lai 2021). Specifically, it holds unexplored referential and supplementary value for the Civil Code's property law system. The existing literature on dian is generally bifurcated. One camp focuses purely



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¹ The most sustained Western engagement with dian as a legal institution remains a doctoral study, which provides detailed doctrinal analysis (Glück 1997; T. Zhang 2014).

on legal–historical analysis through external social science perspectives, often lacking an internal legal–doctrinal examination (Dai 2011; Long and Wen 2014). The other camp relies strictly on legal–doctrinal construction, thereby neglecting essential historical and sociological contexts (X. Zhang 2005; Sui 2011).

Traditionally, jurisprudence encompasses three main methodological paradigms: the positivist–analytical (Kelsen 1941), the historical–sociological (Kantorowicz 1906), and the natural-law–philosophical (Larenz 1969). As Roscoe Pound metaphorically noted, these serve as the three weapons in the jurist’s armory (Pound 1923). While various integrative theories (Pound 1923, pp. 141–64) and frameworks of “general jurisprudence” have emerged to synthesize these perspectives (Tamanaha 2001), theoretical synthesis is not a panacea (Tamanaha 2001, pp. 11–56). Nonetheless, relying exclusively on a single dimension risks devolving into self-referential discourse (Larenz 1969). Consequently, this article adopts an integrated research paradigm to offer a comprehensive analysis of dian’s structure, values, and historical evolution. The multifaceted approach underpins the article’s central thesis: the exclusion of dian from the Civil Code is doctrinally unjustified and practically regrettable. Far from a historical relic, dian possesses a coherent doctrinal structure, a sustained social function, and normative values that are highly compatible with contemporary civil law principles.

2. The History of Dian

The term “dian” appeared prior to the Han Dynasty, though it did not originally refer to the right of redemption. In early usage, it denoted meanings related to official documents, control, or management (Zhao and Liu 2004). It was only after the Han Dynasty that the concept of “diandang” (pawn) gradually emerged, with dian coming to signify a method of secured transaction. By the Tang Dynasty and the period of the Five Dynasties and Ten Kingdoms, dian had evolved into a recognized form of land transaction (Han 2013).

At this stage, however, the official legal codes did not clearly distinguish among “dian”, “zhi” (pawn), and “mai” (sale); instead, they were often used together in compound expressions such as “dianmai” or “dianzhi”. The legal concept of dian thus remained ambiguous, even though it had already become widely practiced among the populace (Han 2013, pp. 159–67). During the Song Dynasty, dian continued to develop on the basis of earlier traditions. In the Song Legal Code, four legitimate methods of transferring ownership of land and houses were established, among which “chudian” (the act of dian) was a major one. As such, the dian system of ancient China was formally institutionalized (Guo 2009).

By this time, dian transactions involving land and houses were subject to strict formal requirements, including the execution of a written contract made in duplicate, with each party retaining one copy. In the Ming Dynasty, dian was officially incorporated into statutory law and further differentiated from other types of civil transactions. At this point, dian had acquired a distinct functional identity, separate from ordinary sales. As the institution continued to evolve through the Qing Dynasty, the right of dian became increasingly defined and refined. The codes and regulations of the Qing Dynasty provided clear provisions concerning aspects such as the duration of dian rights and the taxation of contracts. Thus, during the Qing period, the dian system functioned as a mature legal system governing the transfer, usufruct, and security of land (Feng 2025).

Before the mid-Tang period, dian was essentially a customary form of secured lending transaction—commonly known as “dianmai”—whereby a borrower would transfer possession of land to the lender as collateral for a loan, regaining possession upon repayment. The phrase “di huan qian huan” (land returned when money repaid) embodied the rudimentary spirit of dian. The emergence and development of this civil custom were closely tied to

the socio-economic conditions of the time (Jin and Chen 2015). Since the Han Dynasty, although the feudal economy had seen substantial growth, it remained largely agrarian and dependent on natural conditions, with land and houses as the primary means of production. When common people faced financial hardship, they often found it difficult to raise funds quickly, while official restrictions on land sales further exacerbated the problem. As a result, spontaneous practices such as dianmai arose among the populace (Sui et al. 2010).

These customary practices gradually gained official recognition. In the Tang Legal Code, dian retained the traditional meaning of pledge, while “lin” referred to lease. The substitution of “tielin” (pledged lease) for dianmai reflected the Tang legislators’ intention to avoid openly sanctioning land sales, instead using the terminology of pledging and leasing to accommodate land transfers (J. Zhang 1998). At this stage, dian had not yet fully exhibited the characteristics of a real right, functioning primarily as a contractual civil custom. Nevertheless, this early practice laid crucial groundwork for its later substantive and functional development. Specifically, by restricting its scope to immovable property, early dian practices diverged from diandang (pawn), which involved movable property and pawn establishments. This divergence allowed dian to eventually crystallize into an independent real right (Zhao and Liu 2004, pp. 61–67). Functionally, dian is distinct from both non-possessory mortgage (diya) and outright sale (mai), acting instead as a possessory pledge of immovable property.

Secondly, as a civil custom originating from spontaneous private ordering, dian exemplifies how grassroots transactional norms shape formal legal architectures. Through centuries of refinement, it was eventually incorporated into the official legal codes. Over time, its legal parameters crystallized: functioning as a unique land transaction in late imperial China, dian granted the dian creditor possession and profit rights over an immovable property in exchange for a dian price (Zhao and Liu 2004, pp. 61–67). The dian giver retained title and a right of redemption. If the dian giver failed to redeem the property at the end of the term, the dian creditor could acquire ownership of the dian object (Zhao and Liu 2004, pp. 61–67).

Thus, dian embodied the dual characteristics of usufructuary rights and security rights found in modern civil law.² By the Qing Dynasty, the system had reached a high level of maturity, accompanied by its own set of specialized concepts, notably “zhaotie”, which is defined as a supplementary payment made by the dian giver to adjust the original dian price when it had been set too low, and “zhuandian”, which is defined as the transfer of dian rights by the dian creditor to a third party (Feng 2025, pp. 167–82). Emerging during the Tang Dynasty and persisting for over a millennium without abolition—indeed, later being adapted into modern civil codes—dian clearly possessed enduring socio-historical functions that made it difficult to discard. Within specific historical contexts, it played a distinctive role in mediating social and economic relations. The historical and social foundation of dian lay in the relative fluidity of feudal land ownership and the simplicity of the smallholder agrarian economy. From the mid-Tang period onward, restrictions on land circulation were gradually relaxed, and small-scale commodity trade under the peasant economy began to flourish (Han 2013, pp. 159–67).

Although dian in the mid-to-late Tang period arose as a customary practice circumventing formal legal prohibitions, it was officially recognized and widely adopted in the more commercially oriented Song Dynasty (Jin and Chen 2015, pp. 228–42). This evolutionary trajectory of dian vividly confirms the core thesis of the historical school of law—that

² The classification of dian rights within modern civil law remains highly contested in Chinese legal scholarship. The dominant interpretations variously characterize dian as a usufructuary real right, a security real right, or a composite right combining both attributes (Wang 2002).

every legal institution necessarily develops from its own socio-historical environment and follows an organic process of growth rather than arbitrary invention (von Savigny 1814).

The history of dian exemplifies this truth: it evolved from a local customary practice into a distinctive and enduring source of indigenous Chinese law. To study the history of dian properly, one must not only trace its vertical continuity—its diachronic evolution—but also examine its horizontal operation within concrete historical contexts. This methodological approach has been emphasized by numerous scholars. The sociology of legal history treats law as an empirical phenomenon in history, explaining how law actually functioned in historical contexts—its origins and causes, transformations and reasons, and the relationship between individual agency and legal norms (Scholz 1977).

Similarly, Phillip Huang proposed the framework of “historical-social jurisprudence”, which emphasizes both the excavation of traditional legal resources and the study of how such traditions operated in real practice (P. Huang 2013, pp. 11–14; 2001; 1996). Dian, as an indigenous legal institution of China, perfectly illustrates this duality. Within its historical context, it functioned as a vital mechanism for the circulation of land and the mobilization of capital. The dian giver, in need of temporary funds but unwilling to part permanently with their land, would pledge their property, while the dian creditor obtained possession and enjoyed its use and profits during the term of dian (Feng 2025, pp. 167–82).

The dian custom—essentially a reserved sale of land—embodies both the precommercial logic inherited from the past and the increasingly market-oriented logic of the late imperial smallholder economy. It also reflects a survival ethic, an economic morality born out of constant livelihood insecurity. On the one hand, in accordance with the precommercial ideal of permanent land ownership, it offers special protection to those who can no longer subsist on their own land, allowing them to redeem it indefinitely. On the other hand, following market logic, it permits the sale and resale of dian itself, even allowing profit from price increases (P. Huang 2006).

Although dian had already been codified in written form as early as the Song Dynasty and was extensively referenced in Qing codes and regulations, many of its actual practices and customs were never fully incorporated into substantive legislation. Even the Qing Legal Code, the most complete and mature codified law of imperial China, failed to explicitly regulate numerous transactional practices associated with dian, such as “zhaojia”—which is distinguished from “zhaotie” as a supplementary payment directed toward eventual outright purchase of the property by the dian creditor, effectively converting the dian transaction into a sale, rather than continuation of dian—and “zhuandian” (Feng 2025, pp. 167–82). Moreover, while dian was formally distinguished from diandang and zhiya, in practice, the distinctions were often blurred, and at times the application of dian was extended to human persons. The custom of “dianqi” (wives as dian objects) was characterized as one of the normal legal outcomes of a dian transaction. Under this practice, a husband could make his wife or concubine as the dian object in exchange for a payment, with a nominal right of redemption. The structure of this transaction replicates the logic of immovable-property dian. From a retrospective value judgment, this dian transaction is a degenerate form of dian and a deeply entrenched social malpractice which persisted until the late Qing and early periods of the Republic of China. Nevertheless, far from constituting a separate or inferior institution, dianqi falls squarely within the functional scope of dian as defined above, independently of any value judgment (Glück 1997, pp. 62–63; Buoye 2000). This striking discrepancy between static legislation and dynamic practice was especially pronounced in the case of dian, underscoring precisely the kind of legal–social disjunction that the sociology of law seeks to examine (Zhang and Xu 2013).

From a functionalist perspective, while dian was a uniquely Chinese institution, similar functional equivalents could be found in other legal traditions—for example, reciprocal

utilization arrangements in ancient Greece, or pledge-based security mechanisms inherited from Roman law and adapted during the Frankish period (Mi 2001). In sum, dian endured for over a millennium in Chinese legal history. Originating as a spontaneous customary practice, it functioned as a traditional civil and commercial right that facilitated the circulation of immovable property and alleviated capital shortages. It reflected both the vitality of private economic activity and the emergence of a proto-commercial economy in ancient China (Mi 2001, pp. 23–34).

Despite its enduring presence, dian was never fully systematized or clearly defined within written law, remaining somewhat at the margins of official codification. Although Song Dynasty and subsequent dynasties regulated the external formalities of dian transactions—such as procedures, durations, and tax obligations—they never articulated a substantive, doctrinal definition of the institution. In fact, the conceptual term dian does not explicitly appear in the statutes of successive dynasties. None of these codes engaged in theoretical construction: they did not identify the right’s underlying legal nature, classify it within a broader system of real rights, or delineate its conceptual relationship to other rights. Rather, dian as a legal category is a modern scholarly abstraction, derived from the aggregation and interpretation of numerous individual customary practices (Glück 1997; Chen 2025). Even in the Qing Legal Code, only the external formalities of dian transactions were prescribed—there was no substantive doctrinal definition or theoretical construction of the concept. Thus, in imperial China, dian remained a right predominantly governed by social custom rather than state regulation, exhibiting the dual attributes of usufructuary and security rights. Its underlying practices and norms continued to influence later generations (Lai 2024).

By the time of the Nanjing government of the Republic of China, dian still existed widely in Chinese society and was frequently practiced in rural and urban settings alike. It was eventually incorporated into the Civil Code of the Republic of China (1930) (Y. Huang 1977 cited in Li 2002). However, the concept of dian codified in the Civil Code of 1930 was not identical to its traditional counterpart (Guo 2009, p. 5). Influenced by Western civil law theory, the version of the Republic of China had evolved into a purely statutory real right, stripped of the rich socio-economic and ethical connotations that characterized the traditional dian system in the Chinese legal context.

3. The System of Dian

The dian system is deeply intertwined with its historical development. The founder of the Historical School of Law, Friedrich Carl von Savigny, derived a series of influential conceptual systems in civil law—such as the notion of juridical acts—through his study of Roman legal history. His work also laid the theoretical foundation for the later emergence of Conceptual Jurisprudence.³ However, Savigny’s historical–systematic approach demonstrates that systematic legal construction can and should be derived from historical sources. This method, which he himself applied to Roman legal sources in deriving the conceptual framework of the German civilian tradition, illustrates that the absence of a formal doctrinal systematization of dian in the imperial era is not an obstacle to reconstructing dian as a coherent systematic legal institution (P. Huang 2013, pp. 11–14; Kielsingard and Chen 2013). Indeed, prior to the period of the Republic of China, dian in China had never been “systematized” in the sense understood by modern legal doctrine. But this acknowledgment does not mean that by applying Eurocentric doctrinal standards to a distinct legal tradition,

³ Savigny regarded Roman law as a source of German law and, on this basis, authored *The History of Roman Law in the Middle Ages*. In his later years, adhering to the same intellectual commitment, he completed his monumental work *System of the Modern Roman Law*. With respect to the relationship between legal–historical sources and systematic construction, see (Rückert 1989).

dian is framed as a deficient legal institution. Rather, it means that the relative informality in the pre-modern period is a characteristic feature of its legal tradition, not a failure, and the task of modern codifiers is to translate that tradition without distorting its essential character (Zelin 2004; Chen 2012). After all, the use of continental European categories as an analytical frame is a tool of comparison, not a standard of judgment.

It was only during the Republic of China that, with the comprehensive reception of Western legal systems, dian was doctrinally recognized as a type of real right (Guo 2009, pp. 4–5). Nevertheless, it is important to note that the dian thus codified was not identical to the traditional Chinese concept. The version of the Republic of China had been detached from its historical and social context and transformed into a purely statutory real right, fully integrated into the modern civil code system. Despite this transformation, dian in the period of the Republic of China was neither a product of mere legal transplantation nor an arbitrary creation. Rather, it evolved through the refinement and abstraction of traditional dian customs and earlier statutory provisions. This continuity is particularly evident in the institutional fate of dian during the Republic of China (Li 2002, p. 157).

At the beginning of the Republic, civil law largely continued the legal framework of the Qing Dynasty, provided that it did not conflict with the new political order, until the promulgation of the Property Book of the Civil Code of 1930 (Li 2002, p. 157). After the establishment of the Nanjing government of the Republic of China, the codification of civil law was accelerated. While fully introducing concepts and structures from Western civil law, the drafters also made it explicit that China's indigenous institution of dian should be preserved and formally recognized (Guo 2009, p. 229).

Thus, although the concept of dian in history and the dian codified in the modern Civil Code were conceptually disjointed, the former—with its rich customary practices, unique concepts, and functional values—nonetheless offered vital insight and inspiration for the construction of dian as a doctrinally recognized legal system. Even though traditional dian lacked the systematic formality characteristic of modern legal dogmatics, it nonetheless contained systemic elements—concepts, rules, and logical relations—rooted in historical practice and statutory references. Accordingly, it is possible to reconstruct a view of the system of dian within its traditional context (Feng 2025, pp. 167–82).

From its historical development, dian was a right involving the transfer of possession of immovable property for the purpose of use and profit. On this basis, the system of dian must logically include the elements and conditions for its formation and acquisition, as well as the rights and obligations of the parties involved. Since dian is a substantive proprietary right, its transfer, alteration, and extinction must also be considered. Moreover, the exercise of such rights necessarily requires a temporal limitation. Finally, the system must include remedial measures and protective mechanisms (Feng 2025, pp. 167–82).

These institutional features did not arise arbitrarily but were the product of long-term historical practice. Through the process of customary development and continuous interaction with formal state law, they were gradually absorbed into the legal order and came under the regulation and protection of official legal norms. Owing to the need for differentiated regulation and protection of the various aspects of dian, a rudimentary system of dian within the framework of traditional state law gradually emerged (Feng 2025, pp. 167–82).

First, since the dian giver was typically the economically weaker party, the law recognized and protected the right of redemption to prevent such individuals from losing their last means of livelihood. To further safeguard the dian giver when the dian price was set too low, the law also recognized the right to zhaotie. This right allowed the dian giver to renounce redemption and instead exercise the right of resale, thereby ensuring that the dian giver would not be placed in an unduly disadvantaged position (Feng 2025, pp. 167–82).

Second, the state law did not exclusively favor the dian giver. To maintain fairness and ensure the reasonable and effective functioning of the dian system, the dian creditor was also granted important proprietary entitlements. These included the rights of possession, use, and profit, as well as the right to zhuan dian. The system further encouraged active utilization and improvement of the possessed land or buildings by the dian creditor, allowing them to lease or rent out the property for profit. In addition, the dian creditor enjoyed a form of preemptive purchase right, meaning that if the dian giver sought to permanently sell the dian object (land or house), the dian creditor had the preferential right to purchase the property before any third party (Han 2013, pp. 159–67).

These substantive rights of dian necessarily presupposed its valid establishment and acquisition, which therefore constituted essential elements of the dian system, which were logically connected with its substantive content. The establishment and acquisition of dian required the conclusion of a valid contract of dian as a procedural prerequisite; the dian existed externally in the form of this effective contract. The rights and obligations of both parties were determined according to the contract, demonstrating a strict formalist character. Government authorities adjudicating disputes concerning dian also relied exclusively on the contractual terms (Han 2013, pp. 159–67).

On the other hand, influenced by traditional Confucian ethical norms, the formation and acquisition of dian were subject to several substantive restrictions, distinguishing it sharply from its modern counterparts. First, inferiors or juniors were forbidden from independently transferring property under dian; if such a person entered into a contract of dian without notifying their elders or superiors, the contract was deemed invalid, and the acquisition of dian could not take effect. Second, the principle of “first inquire among kin and neighbors” (xianwen qinlin) required that when a dian giver sought to transfer land or housing, they must first ask whether relatives or neighbors wished to purchase it under dian. These kin and neighbors thus possessed a preferential right to purchase. Failure to comply with this procedure entitled them to file a legal complaint for annulment of the contract, resulting in the termination of the dian (Han 2013, pp. 159–67). Finally, there were restrictions on the objects of dian: “clan property” (zuchan) and “ancestral burial lands” (mutian) could not be transferred under dian or sold, as these carried profound ritual and moral significance and were thus excluded from commercial alienation (Guo 2009, pp. 78–79).

As for the duration and remedies of dian, its term was generally determined by contractual agreement. Where no duration was specified, it was often treated as indefinite. Although the Qing Dynasty later introduced statutory time limits for dian, these differed markedly from the longstanding customary practices of the people (Guo 2009, p. 4). Disputes involving dian were adjudicated strictly in accordance with existing contractual documents and mandatory state provisions, and were subject to statutes of limitation.

From the foregoing analysis, we can roughly delineate the structural prototype of dian as it existed in history. Although this early framework was far from the systematic codification characteristic of modern European civil law traditions—and indeed was interwoven with custom and traditional ethics—it nonetheless reveals a discernible internal logic. If one sets aside these traditional elements and suspends the positivist mode of thinking, then from a comparative law perspective, the traditional system of dian bears a remarkable resemblance to Germany’s system of security and usufructuary rights, performing essentially the same social and economic functions (Mi 2001, pp. 23–34).

Both systems exhibit the characteristics of special usufructuary rights, requiring transfer of possession and conferring upon the holder the right to use and profit from the object, while at the same time ensuring the circulation and effective utilization of capital and property and maintaining the stability of ownership (Mi 2001, pp. 23–34). Both embody

similar structural constructions, prescribing comparable sets of rights and obligations for the respective parties involved.

Since the advent of modernity, Chinese civil law has largely followed the continental tradition of Europe, yet *dian* has always remained an indigenous Chinese legal institution. The process of theoretical abstraction and doctrinal refinement of this traditional legal source—followed by its adaptation and incorporation into codified law—reveals a striking functional and structural similarity to Western civil law systems. This not only demonstrates a functional parallelism between the two but also highlights the universality of codified legal systems that emerged in the modern era. In short, the system constructed with *dian* as its conceptual nucleus—rooted in traditional Chinese legal sources—is by no means inferior to the legal systems developed in the West (Feng 2025, pp. 167–82).

In light of this, it is clearly insufficient to analyze *dian* merely from a historical or sociological perspective, treating it as a “local resource” or a component of indigenous legal knowledge. To extol the notion of “local experience” without developing any systematic theoretical construction would, in fact, betray the original intent of the historical-sociological jurisprudential approach. The study of any legal source or phenomenon must ultimately engage with the existing legal system, contributing intellectual insight to the process of systematizing customs and legal rules (Zhu 2022).

Although the system of *dian* established during the Republic of China differed in some respects from its traditional antecedent, it was nonetheless built upon the mature theoretical foundations of the European-continental legal tradition, while integrating historical experience and value considerations unique to China. Through this synthesis, jurists in the Republic-era successfully constructed a functionally universal system of rules, rooted in indigenous tradition yet aligned with modern legal rationality (Chen and Wu 2019).

4. The Value of *Dian*

When examining the value of a legal institution or rule, it is often closely intertwined with the legitimacy of the law itself. From the perspective of natural law, every legal rule carries an inherent value dimension, and *dian* is no exception. The development of the system of *dian* was not merely a product of deduction of legal rules and concepts, nor, unlike in formalistic jurisprudence, is it devoid of value considerations. Historical evidence also supports this: the emergence of *dian* in ancient China was closely linked to the ethical and moral values of the society at the time. Land and property were largely inherited from ancestors; outright sale of ancestral estates for immediate monetary gain was seen as a breach of filial duty, often attracting the label of a “prodigal child”. This reflects traditional moral philosophy: “Descendants must continually offer sacrifices and pray for the protection of their ancestors; they must not commit acts of injustice that anger them. Ancestors serve as heavenly subjects and form the emotional bridge between humans and the divine. . . Those who fail to honor their ancestors provoke their wrath, which in turn arouses the anger of Heaven, bringing misfortune upon themselves.” (Fan 2001).

Over time, however, this moral dimension gradually diminished in significance, and in the modern era it has largely disappeared. Nevertheless, these ethical considerations were instrumental in the initial development of *dian*. Originally devised as a compromise to retain land while accessing capital, *dian* gradually evolved into a recognized type of real right in the modern sense. As the institution developed, its underlying values became more fully articulated and institutionalized. The rights of *dian* embody fundamental civil-law values such as honesty, good faith, and the pursuit of self-interest (Feng 2025, pp. 167–82). However, this is not to say that legal concepts such as “good faith” already possessed established corresponding terms or doctrinal categories in traditional Chinese law. Rather, it was emphasized that the values behind those modern concepts were

rooted in dian practices—rich norms of fairness, reciprocity, and relational trust embedded in Confucian social ethics performed analogous regulative functions. This functional equivalence suggests that the social needs addressed by modern good-faith doctrines were operative in Chinese society long before those doctrines were formally received and that dian was one of the institutional vehicles through which those needs were met (T. Zhang 2011; Glück 1997). In other words, these intrinsic values align with the objectives pursued by the legal rules themselves. The system of dian is thus shaped and sustained by these values. In protecting economically weaker parties, the law grants the dian giver the right of redemption and the right to zhaotie, while simultaneously ensuring that dian creditors enjoy full freedom of use and the right to derive benefits from the dian object, in accordance with principles of honesty and fairness. These value-based provisions provide the system with legitimacy (X. Zhang 2008).

Natural law theory emphasizes the a priori and universal nature of values, seeking a rule system grounded in general principles. While this framework offers a useful lens for analyzing the internal coherence of a legal system, it is not universally applicable. Viewed from this perspective, the values embodied in dian are neither a priori nor universal; rather, they emerge from long-term historical practice and are deeply rooted in specific social and historical contexts. For dian in the modern era, their value—shaped both by historical development and by modern civil law principles—provides a moral foundation for the system of dian. Since the modern period, dian rights have gradually freed themselves from the constraints of traditional ethical norms, reflecting values more aligned with contemporary thought. They respect individual autonomy under the framework of personalism while simultaneously protecting the equal interests of disadvantaged parties; in other words, when inequality exists, they grant the weaker party rights or benefits that help achieve equality (Rawls 1971).

In other words, the appropriate natural-law inquiry is whether the values that dian operationalizes—protection of the economically weaker party from permanent dispossession, facilitation of property circulation, and equality of treatment when structural inequality exists—are values that the contemporary legal order endorses. These values are articulated in the Civil Code's own objectives and in the Rawlsian principle that when structural inequality is present, legal institutions should confer rights or benefits on the weaker party to move toward equality. The natural-law case for dian is therefore not that it embodies eternal values but that the historically contingent values it developed over a millennium are values that contemporary law endorses on independent grounds (X. Zhang 2008, pp. 95–102).

Dian rights have managed to achieve this balance effectively, and they also illustrate the principle of maximizing utility in real rights, as discussed in law-and-economics theory. Specifically, from a law-and-economics perspective, dian addresses a specific and well-identified market failure—the illiquidity of immovable property in contexts where owners need capital but cannot or will not sell. In rural economics with thin credit markets and strong cultural or practical attachments to land, owners face a stark choice between retaining their land and selling it. Dian resolves this dilemma by creating a temporary transfer of use-rights in exchange for a lump-sum payment, thereby mobilizing the productive value of property without effecting a permanent transfer of ownership (Posner 1973). As Posner's economic analysis of law would frame it, dian is a mechanism for moving resources to higher-valued uses while preserving the option value of the dian giver. The right of redemption further addresses a specific contracting hazard—the risk that the dian giver in financial distress will accept an undervalued dian price, effectively transferring a disproportionate share of the property's value to the dian creditor. The right to zhaotie functions as a mandatory corrective against this form of exploitation, analogous to modern

doctrines of unconscionability or unfair terms in consumer contracts. On efficiency grounds, dian generates outcomes superior to the available alternatives: outright sale, mortgage, and lease (X. Zhang 2008, pp. 95–102).

However, the dark side of dian cannot be set aside as a marginal concern. The practice of dianqi demonstrates that dian, as a legal institution whose core logic was historically extended to persons, cannot be revived without confronting this history. In other words, a modern reinstatement of dian must eliminate this applicative extension, which clearly violates the human rights norms of modern civilization. It must explicitly and unambiguously confine its object to immovable property and exclude any application to persons or personal services. This is a basic requirement, not a doctrinal obstacle (X. Zhang 2008, pp. 95–102).

Furthermore, as a unique form of real right, dian rights are distinct from mortgages and from real-estate pledges, constituting a type of atypical real right (Chen and Wu 2019, pp. 47–54). Atypical real rights, represented by dian, can be seen as a flexible adaptation of the principle of statutory real rights, reflecting the modern trend of property law moving from a self-contained system toward a more open and adaptable framework. This value orientation is evident in the widespread practical application of dian, which in turn reinforces and shapes the internal logic of the system of dian. Thus, the value of dian is neither abstractly suspended above the rules nor hidden behind them; it is embedded within the system itself. Rooted in the historical development of dian, these values both validate and actively shape the structure and functioning of the system of dian (Feng 2025, pp. 167–82).

5. The Contemporary Fate of Dian

After the Civil Code of the Republic of China (1930) was abolished in mainland China in 1949, the system of dian ceased to exist in the contemporary civil law framework of the mainland. Consequently, dian rights are no longer a statutory type of real right in modern Chinese law but rather survive as a source of customary law. Before the promulgation of the Property Law, scholars engaged in extensive debate over whether dian should be retained. Advocates of abolition argued that the traditional functions of dian had already been lost and that the system itself contained inherent defects; for the relatively few remaining customary practices, judicial interpretations could suffice to resolve disputes (X. Zhang 2005, pp. 6–10). On the other hand, proponents of retention maintained that dian, as a mechanism for financing or borrowing while retaining ownership, still served a practical purpose (Wang 2002, p. 513).

Although draft versions of the Property Law included a dedicated chapter on dian, the 2007 enactment of the Property Law ultimately omitted any provisions on them. Even prior to the codification of the Civil Code, scholars once again debated whether dian should be incorporated into the property law section, but the final code ultimately excluded them, returning the historical system of dian to its point of origin. Examining the history, system, and values of dian provides a basis for reflecting on their abolition or retention. The long evolutionary history of dian does not necessarily justify their compatibility with the modern legal system, but their practical operation in historical social contexts may help address gaps that arise from transplanting foreign legal models. Historically, dian rights do not merely represent an elusive cultural or national spirit; they also embody a forward-looking source of legal wisdom (Feng 2025, pp. 167–82).

Critics of dian argue that the system fails to reflect contemporary characteristics, violates principles of fairness, is prone to disputes, and is difficult to integrate into the current property law framework (Wei and Liu 2018). Supporters, however, note the widespread contemporary existence of dian practices and suggest that, by drawing on

examples such as South Korea's rights of Jeonse, dian could be adapted to conform with the principle of statutory flexibility in property law (Yang 2017). Some scholars also emphasize that dian rights are a distinctive feature of Chinese legal heritage, reflecting venerable moral traditions of ancestor reverence and social support for the disadvantaged. Retaining dian, they argue, helps preserve national culture, as the system functions as a dual-purpose usufruct with unique values that cannot be fully replaced by other real rights or obligatory rights (Cui 2017).

Moreover, retaining dian today carries practical significance. First, it can promote and stabilize evolving property relations among individual citizens, enhancing the efficiency of wealth utilization. Second, it contributes to the improvement and completion of the property law system. Third, historical and cultural consciousness compels us to take seriously those traditional legal elements that remain viable (Mi 2001, pp. 23–34). These three factors aptly illuminate the value-oriented, system-oriented, and history-oriented dimensions of dian. Some scholars have further noted the conceptual relevance of dian in the contemporary Civil Code: "In today's Chinese civil law system, the system of dian, viewed from the perspective of usufructuary rights, may lose its social significance due to replacement by other civil law institutions such as leases. However, as a mechanism grounded in 'ownership-based security', dian, even outside the statutory categories of typical security rights, retain enduring relevance because of the ongoing social demand for ownership-based guarantees." (X. Zhang 2008, pp. 95–102).

In short, considering dian from these three dimensions collectively underscores their contemporary significance for both the civil law system and a market-oriented society. Specifically, as noted earlier, dian possess a dual character as both a security right and a usufructuary right. They are distinct from mortgages and real-estate pledges in property law, and also differ from contractual instruments such as buy-back clauses or leases in law of obligations. As an independent primary right, dian not only performs the function of financing security but also prevents the idling of property, ensuring its full utilization while protecting the ownership rights of potentially disadvantaged dian giver (X. Zhang 2008, pp. 95–102).

In contrast, mortgages and real-estate pledges under the current Civil Code, as accessory rights, clearly cannot fully realize the function of maximizing property use. Similarly, buy-back clauses and leases, as purely contractual rights, cannot serve as financing security instruments, nor can they protect the original owner of the dian object in the same way that dian—with their property-rights nature—can. Accordingly, some domestic scholars, while summarizing the progress, preservation, and shortcomings of the property law section in the Civil Code, have observed: "Dian constitute a uniquely Chinese property-rights institution; their dual function as both usufructuary and security rights confers a distinct advantage." (Wen 2021). It follows that the failure to reincorporate dian into the property-rights section remains a significant shortcoming.

Beyond the broader trend of relaxing the principle of statutory real rights, dian, by virtue of their unique functions and well-developed structure, can theoretically integrate seamlessly into the current property law system while also holding considerable practical significance for contemporary Chinese legal practice.⁴ Critics have argued that the recognition of dian as a new type of real right outside the Civil Code's existing categories would disrupt systematic coherence and create uncertainty for third parties. This objection is genuine but not decisive. First, the Civil Code itself reflects a moderate rather than absolute version of *numerus clausus*. Furthermore, the general trend in Chinese legal scholarship has

⁴ In this regard, prior to the promulgation of the Civil Code, some scholars had already provided detailed analyses of the feasibility and direction of incorporating dian rights into the Civil Code, particularly with respect to institutional design and systematic classification (Lian 2019).

avored a relaxation of the *numerus clausus* principle to accommodate atypical real rights that serve well-identified social needs (Yang 2017, pp. 14–27). Second, dian does not merely add another right to an already complete catalog; rather, it fills a genuine structural gap. Existing usufructuary rights under the Civil Code are purely obligational and do not confer real-right protection against third parties. Existing security rights are accessory rights that presuppose an underlying debt obligation and do not transfer possession. Dian, as an independent primary real right that simultaneously confers possession, use, and profits while creating a lump-sum financing mechanism secured against the property, occupies a distinct structural position that neither existing category fills (Lian 2019, pp. 99–104; Huang and du Plessis 2024; Chen and Zelin 2015). Third, the third-party notice concern that animates the *numerus clausus* principle can be addressed through registration requirements. The Civil Code of the Republic of China already demonstrated that dian rights were subject to registration as a condition of effectiveness against third parties, a requirement that can be adapted to the current Civil Code framework. The Korean institution of jeonse, which performs closely analogous functions, has been maintained as a registered statutory real right within the Korean Civil Code, demonstrating the feasibility of precisely this integration. In short, dian can be integrated into the current framework without systemic disruption, provided that its subject matter is confined to immovable property, its creation is subject to registration, and its relationship to existing security and usufructuary rights is clearly delineated by statute (Wang 2019).

For instance, dian could, at the level of property law, provide a unique institutional guarantee for the reform of rural land contract management rights and rural homestead-use rights in China. Specifically, against the backdrop of the clear delineation of the “three rights” in rural land (ownership, contract, and management), the introduction of dian could greatly facilitate the transfer of rural land, prevent land from lying idle, maximize farmers’ income from agricultural land, and provide necessary financing guarantees for farmers in need. This aligns precisely with the objectives of the latest round of rural land system reform (Wang 2002, pp. 3–13).

Dian rights are particularly suited to addressing the challenges associated with the transferability of rural homestead-use rights.⁵ On one hand, the system allows farmers to pledge their homestead-use rights to obtain financing, preventing waste of idle resources; on the other hand, the right of redemption safeguards farmers from losing their rights entirely, thereby maximizing the protection of rights for farmers, who are often in a vulnerable position. In sum, dian can help resolve the theoretical dilemma posed by the “three-rights separation” in rural land and facilitate both rural housing and land transfers (Zhang and Zhang 2019).

Thus, dian rights do not rely solely on their long historical tradition or on natural-law values of supporting the weak to claim legitimacy within China’s contemporary civil law system. Based on their functional, systemic, and value-oriented characteristics, dian rights have already demonstrated their capacity to integrate effectively into both the doctrinal framework and practical operation of modern Chinese civil law. Furthermore, although the evolved system of dian from the Republic of China was by no means fully perfected, it remains in force in Taiwan, demonstrating the feasibility of its incorporation into a modern civil law framework, particularly within property law. From a positive law perspective, this systematization itself serves as a testament to the legitimacy of dian (Zou 2014).

⁵ With respect to the possibility of codifying dian over rural residential land, see (Wu and Wang 2020).

6. Conclusions

Returning to the original point, analyzing a legal institution from the three dimensions of system, history, and value is by no means arbitrary. Any single-perspective theoretical approach is inevitably partial, and a comprehensive, integrated perspective is both possible and desirable. Bodenheimer's so-called integrative approach to jurisprudence provides an excellent theoretical example in this regard (Bodenheimer 1962). The renowned German legal historian Franz Wieacker also observed: "If, due to the collapse of abstract rational law, historical understanding were to become the sole pillar of jurisprudence, law would have to abandon its public mission. Only by adhering to an ethical, methodologically conscious rationalism can jurisprudence maintain its scholarly status. . . Conversely, only by returning to the historical sources of European law—at least to the parts of social reality present at the time—can the naive, hollow models and premises of dogmatic rational law be concretized and connected with the ancient legal tradition." (Wieacker 1967).

From a systematic perspective, dian possesses a coherent rights structure that fills a genuine structural gap in the current property law framework. Existing mortgages and real-estate pledges, as accessory rights under the Civil Code, cannot fully realize the function of maximizing property use because they do not transfer possession to the party best placed to exploit the asset. Existing contractual instruments such as buy-back clauses and leases, as purely obligational rights, cannot function as financing security instruments and do not bind third parties as real rights do. Dian, as an independent primary real right that combines the usufructuary function with the security function, fills this gap and does so in a manner compatible with the Civil Code's property law architecture once appropriate registration requirements are in place. The case for reinstatement is particularly compelling in the context of rural land reform and the facilitation of property circulation, where dian offers institutional tools that existing property and obligation rights cannot replicate.

From a historical-sociological perspective, dian's endurance for over a millennium, its incorporation into the Civil Code of 1930, and the documented persistence of informal dian-like arrangements in rural China all demonstrate a sustained social demand that cannot be dismissed as cultural inertia. The historical-sociological argument is not that age entitles dian to legal recognition; it is that sustained social demand is evidence of a genuine unmet need and that the failure to provide a statutory vehicle for that demand does not eliminate it—it merely pushes it into informal and legally uncertain channels.

From an axiological perspective, the values that dian operationalizes—protection of the economically weaker party, prevention of permanent dispossession, and facilitation of productive property use—are values that the Civil Code itself endorses. For example, dian generates outcomes superior to the available alternatives for the specific problem of rural property illiquidity.

In short, dian, as a distinct element of China's indigenous legal tradition, possesses its own history, values, and systemic characteristics. Accordingly, it should find a place within the current Civil Code and be applied in civil law practice (Liu 2024).

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