

2001年3月，受邀与其他三位学者一同前往匈牙利罗兰大学法政学院，参与在这里举行的“法律与经济中匈会议”。在此次学术研讨会上，本文得以宣读，随后于2002年刊载于贵校学术期刊。本文原文为英文，中文仅供参考。

英文原文

ON THE ESTABLISHMENT OF REAL RIGHT SYSTEM TALLYING WITH THE NATIONAL CONDITIONS OF CHINA

LIU WEIMING

Northwest University of Political Science and Law

Abstract

The real right system bears close relation to the economic system of a country. However, for historical reasons, there has been no Code of Civil Law in China. Besides, owing to the misperception that legislation should be made one by one and in general, as far as real right is concerned, first, the regulations in effect are very simple; second, separate civil laws are disperse and disorderly; third, important legal systems are imperfect; lastly, all the so-called one-by-one-made laws and regulations contain the marked colour of *renzhi*, the rule of men. The legislation of real right lags behind, thus no perfect real right system has formed, and so far even the term *real right* has not been put into formal use. As a result, although the market economy has been developing very quickly and the change of property ownership is very brisk, the economic order of property ownership is unstable and the demarcation of property right is extremely vague. Therefore, only by establishing the perfect real right system tallying with the national conditions of China, regulating the real rights of all kinds and preventing them from being infringed upon can China bring the economic effectiveness of property into play, produce profit and maximize the value of property now at hand. This paper aims to discuss the necessity, general principle and approaches of establishing the perfect real right system tallying with the national conditions of China.

Necessity

There has been an exciting development regarding the market economy in China since the open policy was put into practice, but there exists one serious problem; namely the

demarcation of property rights is extremely vague in the state-owned enterprises, collective economy and all the other spheres of economic life throughout the country. As a result, state-owned and collective property has been lost and the first of the rich due to the open policy, foreign investors and overseas Chinese, are all worried about whether or not their property can really be protected. All these phenomena are due to the contradictions and conflicts between the present economic system, cultural and social background, the imperfect real right system and other social factors.

Besides, the nature of the reform of China's economic system lies in the perfection of socialist public ownership, and the approaches to the reform and perfection of socialist public ownership are to handle the relations between the ownership and use of public property correctly, which must be realized by the perfect real right system. Therefore, on condition that the whole-people and collective property ownership is not infringed upon, only by establishing the perfect real right system tallying with the national conditions of China to regulate the real rights of all kinds and prevent them from being infringed upon can China bring the economic effectiveness of property into play, produce profit and make the property now on hand increase in value to the most extent.

At present, there exist many real right patterns in China. With the development of society and the economy, some new real right patterns will for sure come into being. If these real right patterns are put into abstract real right concepts to stipulate common guiding principles generatly, it will not only help people understand the features of various real rights, but will also contribute to the formation of China's real right system, develop and coordinate to the socialist market economy. The perfect real right system can bring various real right patterns into the orbit of legality, which will be extremely necessary for the maintenance of social and economic order.

Real right law has the feature of intrinsic law, thus different countries have different real right law due to different peoples and historical traditions. However, the international trend of real right law is softening this feature. How to solve this contradiction is an important, realistic problem. China is now making great efforts for this purpose when establishing and perfecting real right system tallying with national conditions.

General Principle

Chinese laws in effect, such as *General Principles of the Civil Law*, *Law of Land Administration*, *Guaranty Law*, *Fishing Law*, *Law of Urban Real Estate Administration*, *Law of Mineral Resources*, *Maritime Law* and *Water Law*, etc., all stipulate numerous right patterns. These patterns can be divided into two categories: rights concerning civil law and

rights concerning special laws.

Rights concerning civil law (General Principles of Civil Law):

Property ownership, right to the use of state-owned land, land operation right by contract, business operation right of the enterprises owned by the whole-people, mining right, neighbouring right, mortgage, right of lien.

Rights concerning special laws:

Priority of bankrupt property, mortgage of ship, maritime lien, mortgage, pledge, right of lien, land-use right, woodland-use right, prairie-use right, right to exploitation of mineral resources (prospecting right and mining right), fishing right, hunting right, water right, etc.

Obviously, the two categories of rights are unfavourable to the establishment of a perfect real right system, and can cause many problems, e.g. 1. these rights are numerous and extensive, but disperse and disorderly, and besides, their concepts are repetitious and lack system and common guiding principles; 2. except ownership, mortgage and right of lien, the terms which are coined go against the real right concepts of traditional civil law; 3. some important legal systems are wanting; 4. the term real right is not put into use, etc. Though the nature and effect of these rights are not clearly defined, they have the features of real right. So Chinese experts commonly define these rights as real right. As a result, suppose that there exists a real right system in China, but is only substantive and imperfect. Judging from this, one may well say that the establishment of a real right system tallying with the national conditions of China is a heavy task with a long way to go, and of course the experts express their ideas differently, and are unable to agree or decide which is right.

One general principle that should be adhered to is that the intrinsic law feature and the international trend of real right law are combined with each other concerning the establishment of a real right system tallying with the national conditions of China. The adherence to the feature of intrinsic law means the combination with the national conditions of China; the adherence to the international trend means avoiding complacency conservatism and impracticability. Only under the guidance of this general principle can genuine real right system tallying with the national conditions of China be established. Anything partial will run counter to the present objective of economic regularity.

The reform of the legal system towards the end of the Qing Dynasty of China led to the drafting of a civil code consulting the European legal systems, which contained the strongest colour of the intrinsic law because many traditional systems, such as real right law, were retained. After the foundation of New China, the civil code drafted by the Republic of China (1912-1949) was abolished, and the newly-established socialist economic system, especially

the regulations with regard to the state-owned and collectively-owned land also made the substantive real right system have too much influence of intrinsic law.

At present, the open policy of China urges us to stress the modernisation and internationalism of the legal system in particular. Objectively speaking, the so-called real right system of China has fallen far behind the one of developed countries, and therefore, we should not be complacent and conservative and should not reject the successful experience now available from foreign countries. As to the protection of intellectual property, China has just spent over ten years in finishing the work that took developed countries one to two hundred years. Such a successful example is worth following.

Today, the international trend of real right development has not only reduced the categories of real right gradually, but also made the contents of real right unified day by day. The real right system of each country from continental legal system has been mostly alike except for slight differences, and the differences between the two legal systems (continental and common) are being reduced, too. With the development of international trade, the traffic convenience of the world and the link between the domestic market and international market, the international trend of real right development will become more and more obvious.

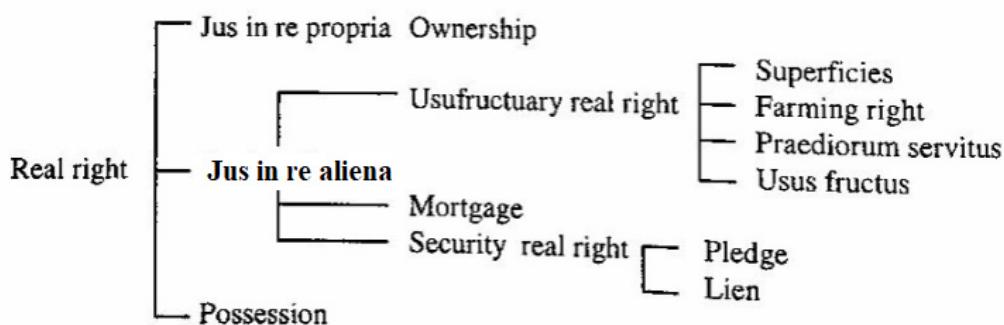
The two aspects mentioned above indicate the general principle which should be followed to establish the real right system tallying with the national conditions of China.

Approaches

Real right can be divided into different categories by different standards. The real right system of Roman law centered on *ownership*, and formed abstract real right system together with usufructuary real right, security real right and possession. This system was widely adopted by the countries from the continental legal system and so the real right in the civil codes of France and Germany were especially influenced. The two codes, especially the German one, well adopted and developed the real right system of Roman law and became the well-conceived and perfect codes. They themselves formed unique styles and had a deep influence on the real right system of other countries. The majority of Chinese scholars suggest that this should become a frame or common guiding principle to reduce and abstractly generalize the given real right patterns of China. However the scholars have quite different ideas as to which of the given real right patterns should be adopted and what legal terms should be used to generalize, especially the disputes on usufructuary real right.

The legal system of New China was established on the basis of smashing the old legal system, and so it lacks inheritance. The inherent defect has surely resulted in the imperfect real right system, disorderly real right patterns and repetitious concepts. Now, attention

should be paid to the fact that the transformation from ownership-centered to use-centered has made usufructuary real right become the core of modern real right law. With the development of market economy, in order to make the most of property value, it is not necessary for owners themselves to possess the property, use it and profit from it. They can provide the use value of ownership for others at their disposal, and both parties can gain reasonable benefits from the property. This is the so-called the value trend of real right. Therefore, under the present circumstances, first, China should adapt itself to the value trend of real right, and take usufructuary real right as the center to form a complete real right system, together with ownership, security real right and possession. Second, it should place emphasis on the perfection of usufructuary real right system because usufructuary real right is changeable with the changes of society. Third, it should draw on actual conditions of economic life, take the practical needs of market economy development into account, and at the same time maintain the intrinsic law feature of real right law on the basis of elimination of unnecessary old real right. Finally, in order to adapt itself to the international trend of real right, it should reduce and abstractly generalize the existing real right patterns and the ones put forward by Chinese scholars to stipulate the common guiding principles, and at the same time borrow the international commonly-used legislation and customs to integrate with the international advanced legislation. In view of the above mentioned facts, the real right system tallying with the national conditions of China is as follows:



The diagram mentioned above shows that besides *possession*, *jus in re propria*, *jus in re aliena* define the nature and effect of *ownership*, *usufructuary real right* and *security real right*, and further the definitions of their right limits.

1. Ownership of Chinese civil law can be divided into state ownership, collective ownership and individual ownership, based on the nature of property and the different right subjects. On the establishment of ownership system, China should maintain the *one-thing-one-right* principle and the spirit of equality, and correctly handle the relationships in all aspects in combination with the existing regulations and the economic system reform in

order to meet the needs of the property possession order and property exchange order of socialist market economy, and adapt itself to the trend of international legislation.

2. Usufructuary real right system of China is very disperse and disorderly, and there are coined legal terms whose concepts are vague. For this reason, it cannot guide the economic life well. By generalizing it abstractly, it can be systematized as follows: superficies, farming right, praediorum servitus and usus fructus.

The concept of the existing term land-use right does not define the purpose of use. It is not clear whether it is real right or obligatory right. If the purpose of use is taken as the standard, land-use right can be divided into the following two: superficies (for the purpose of building houses or other structures, etc.) and farming right (for the purpose of cultivation, breeding and livestock-raising). The concept of superficies is pithy, clear and consistent with the current legislation of foreign countries. In China, land is owned by the state and collectives, but social organisations also lead to the relations of rights and obligations between land owners and users when they use the state-owned and collectively-owned land to build houses or plants by law or by contract. In Chinese law, right to the use of residence base, land-use right and right to the use of a site for Chinese-foreign joint ventures all belong to the realm of superficies in nature. The use of superficies can make the nature of the right to the use of state-owned land clear, separate the possession and the use of state-owned land from each other, and make land resources developed, used and safeguarded reasonably, Superficies is usually obtained payment, without payment sometimes, permanently or periodically.

Farming right means the land-use right of agriculture, forest, stock-raising and fishing as production and operation. Since China's open policy, contract letting parties throughout China have frequently been tearing up contracts arbitrarily, so that the lawful rights and interests of contractors are seriously infringed upon. This phenomenon bears close relation to the fact that contracts belong to the relation of obligatory right, and the right to use obtained by contractors belongs to obligatory right. If real right relation or real right system is used and contract relation is replaced by usufructuary real right, farming right can become part of usufructuary real right and accordingly, the arbitrary infringement upon contractors' interests can be eliminated.

Praediorum servitus is the real right to use another person's land for the convenience of using one's own land. In China, the biggest problem is to take praediorum servitus for a neighbouring relation or neighbouring right. Praediorum servitus has something in common with neighbouring right in respect of either conditions and effect or the rights and obligations caused by regulating the use of neighbouring land, but their demarcation is clear-cut. First, neighbouring right is a statutory right and the extension or restriction of ownership. It belongs

to the realm of *jus in re propria*, while *praediorum servitus* usually refers to an appointed right, which belongs to the realm of *jus in re aliena*. Second, neighbouring right is the minimum regulation of land-use relation, while *praediorum servitus* is the relatively extensive regulation of rights and obligations beyond the neighbouring regulation. Third, neighbouring right is applicable either to the neighbouring relation of land or to the neighbouring relation of houses and buildings, while *praediorum servitus* is only applicable to land owners and users. Fourth, neighbouring right must presuppose neighbouring land, while *praediorum servitus* need not so. Lastly, the contents of neighbouring right are many-sided, while the contents of *praediorum servitus* is to use another person's land for the convenience of using one's own land. Based on the differences mentioned above, neighbouring right should be brought into ownership, while *praediorum servitus* should be brought into usufructuary real right in order to meet the needs of various land-use relations in practical life.

Usus fructus refers to the right to use and make a profit of state-owned or collectively-owned natural resources, including mining right, forest-cutting right, fishery right, hunting right, water right and prairie-use right, etc. The purpose of bringing these rights into *usus fructus* is to reduce the number of the norms in special laws, which will give the consideration to the characteristics of the strong practicability and quick changes in special laws, and make the legislation of real right and the system of real right harmonious and unified.

3. Since the promulgation and enforcement of *Guaranty Law*, the basic pattern of security real right system has been set up, so it is not necessary to prove the necessity of security real right. Besides, Chinese scholars have no different ideas about it. The contents of security real right contain mortgage, pledge and lien. The maritime lien of *Maritime Law* can be brought into the system of special laws.

4. The existing legislation of China lacks over-all and unitary regulation of law as for the relations of possession over a thing. This is the gap that urgently needs filling. Possession is a kind of exterior *de facto* condition, and has some effect of legal protection, so possession system should become an important system of Chinese civil law.

As for *emphyteusis*, China's Taiwan changed it into farming right in 1993 because *emphyteusis* goes against current agriculture policy and has been seldom used in practice nowadays. The mainland of China should take warning from it and refuse to accept it. As for *impawn right*, whether *impawn right* system should be adopted, there are some disputes and the arguments of both sides are quite opposite. Because *impawn right* and *impawn* are understood differently in China and the ideas of both sides have their strengths and weaknesses, there is no harm in bringing *impawn right* into law of debt.

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中文参照

论建立适合中国国情的物权体系

刘蔚铭

西北政法大学

摘要

物权制度与一个国家的经济制度密切相关。然而，由于历史原因，中国至今没有民法典。此外，由于存在一种误解，认为立法应该逐个进行且从一般出发。就物权而言，

首先，现行法规非常简单；其次，单行的民事法律分散且杂乱；第三，重要的法律制度不完善；最后，所有所谓逐个制定的法律法规都带有浓厚的人治色彩。物权立法滞后，从而未能形成完善的物权制度，到目前为止甚至连‘物权’这一术语都未得到正式使用。因此，尽管市场经济一直在快速发展，财产所有权变更非常活跃，但财产所有权的经济秩序不稳定，产权界定极为模糊。所以，只有建立符合中国国情的完善的物权制度，规范各类物权并防止其受到侵犯，中国才能发挥财产的经济效能，产生效益并使现有的财产价值最大化。本文旨在探讨建立符合中国国情的完善物权制度的必要性、基本原则和途径。

必要性

自改革开放政策实施以来，中国市场经济方面有了令人振奋的发展，但存在一个严重的问题：即在全国范围内，国有企业、集体经济以及经济生活的所有其他领域中，产权的界定极其模糊。结果是，国有资产和集体资产流失，而因改革开放政策先富起来的人、外国投资者和海外华人都非常担心自己的财产是否真的能得到保护。所有这些现象都是由于当前的经济体制、文化和社会背景、不完善的物权制度以及其他社会因素之间的矛盾和冲突所导致的。

此外，中国经济体制改革的本质在于完善社会主义公有制，而改革和完善社会主义公有制的途径在于正确处理公共财产的所有权与使用权之间的关系。这必须通过完善的物权制度来实现。因此，在不侵犯全民所有制和集体所有制财产所有权的前提下，只有建立符合中国国情的完善的物权制度来规范各类物权并防止其受到侵犯，中国才能发挥财产的经济社会效益，产生利润并将现有的财产价值最大化。

目前，中国存在多种物权形式。随着社会和经济的发展，一些新的物权形式必定会应运而生。如果将这些物权形式归结为抽象的物权概念，并普遍规定共同的指导原则，这不仅有助于人们理解各种物权的特征，而且有助于中国物权体系的形成，使其得以发展和协调社会主义市场经济。完善的物权体系能够将各种物权形式纳入法治轨道，这对维护社会和经济秩序是极为必要的。

物权法具有固有法的特性，因此不同国家由于不同的民族和历史传统而具有不同的物权法。然而，物权法的国际化趋势正在弱化这一特性。如何解决这一矛盾是一个重要的现实问题。中国在建立和完善符合国情的物权制度方面正在为此作出巨大努力。

基本原则

中国现行法律，如《民法通则》《土地管理法》《担保法》《渔业法》《城市房地产管理法》《矿产资源法》《海商法》和《水法》等，都规定了众多的权利模式。这些模式可以分为两类：民法上的权利和特别法上的权利。

民法上的权利（即《民法通则》上的权利）：

财产所有权、国有土地使用权、土地承包经营权、全民所有制企业经营权、采矿权、相邻权、抵押权、留置权。

特别法上的权利：

破产财产的优先权、船舶抵押权、船舶优先权、抵押权、质权、留置权、土地使用权、林地使用权、草地使用权、矿产资源开发利用权（探矿权和采矿权）、渔业权、狩猎权、水权等。

显然，这两类权利不利于建立完善的物权体系，并且会引发诸多问题。例如：一、这些权利数量众多且范围广泛，但分散无序，而且概念重复，缺乏体系和共同的指导原则；二、除所有权、抵押权和留置权之外，所创设的其他术语有悖于传统民法的物权概念；三、一些重要的法律制度缺失；四、物权这一术语未得到运用等。虽然这些权利的性质和效力并未得到明确规定，但它们具有物权的特征。所以中国专家通常将这些权利定义为物权。由此可见，假定中国存在物权体系，但也只是实质性的且不完善的。据此判断，建立符合中国国情的物权体系是一项任重道远的工作。当然专家们的观点各异，无法达成一致意见或者判定哪种观点正确。

应遵循的一个基本原则是，在构建符合中国国情的物权体系时，应将物权的固有法特性与国际趋势相结合。坚持固有法特性意味着要与中国国情相结合；坚持国际趋势意味着避免自满保守和脱离实际。只有在这一基本原则的指导下，才能建立起真正符合中国国情的物权体系。任何片面的做法都将违背当前经济规律的要求。

中国清末的法律改革使得民法典草案借鉴了欧洲法律体系，但由于保留了许多有关物权的传统制度，所以该草案保留了浓厚的固有法色彩。新中国成立后，废除了中华民国（1912-1949）起草的民法典，新建立的社会主义经济体系，特别是关于国有土地和集体土地的规定，也使实质性的物权体系过多地受到固有法的影响。

目前，中国的开放政策促使我们尤其要强调法律体系的现代化和国际化。客观地说，中国所谓的物权体系远远落后于发达国家，因此，我们不应自满保守，不应拒绝国外现有的成功经验。就知识产权保护而言，中国仅用十多年就完成了发达国家一两百年才完成的工作，这样的成功范例值得借鉴。

如今，物权发展的国际趋势不仅逐渐减少了物权的类别，而且使物权的内容日益统一。大陆法系各国的物权体系大多相似，只是存在细微差别，而且两大法系（大陆法系和英美法系）之间的差异也在缩小。随着国际贸易的发展、世界交通的便利以及国内市场与国际市场的联系日益紧密，物权发展的国际趋势将越来越明显。

上述两个方面表明了构建符合中国国情的物权体系应遵循的基本原则。

路径与对策

物权可依据不同标准划分为不同类别。罗马法的物权体系以所有权为中心，与用益物权、担保物权以及占有共同构成了抽象的物权体系。这一体系被大陆法系国家广泛采用，因此法国和德国的民法典中的物权尤其受到影响。这两部法典，尤其是德国民法典，很好地借鉴和发展了罗马法的物权体系，成为了构思精巧且完善的法典。它们自身形成了独特的风格，并对其他国家的物权体系产生了深远影响。大多数中国学者建议，这应成为一个框架或共同的指导原则，以对中国现有的物权模式进行归纳和抽象概括。然而，学者们对于应当采纳哪些现有的物权模式以及使用何种法律术语来进行概括，尤其是关于用益物权的争议，有着相当不同的观点。

新中国的法律体系是在打破旧法律体系的基础上建立起来的，因此缺乏传承性。这种固有缺陷必然导致物权体系不够完善、物权模式杂乱以及概念重复。现在应当注意到，从以所有权为中心向以使用权为中心的转变，使得用益物权成为现代物权法的核心。随着市场经济的发展，为了实现财产价值的最大化，所有者不必亲自占有财产、使用该财产并从中获利。他们可以将所有权的使用价值交由他人支配，双方都能从该财产中获得合理收益。这就是所谓的物权价值化趋势。因此，在当前情况下：其一，中国应顺应物权价值化趋势，以用益物权为中心，构建包括所有权、担保物权和占有在内的完整物权体系；其二，应重视用益物权体系的完善，因为用益物权会随社会的变化而变化；其三，应结合经济生活的实际情况，考虑市场经济发展的实际需求，在消除不必要的旧物权的基础上，同时保持物权法的固有法律特征；最后，为了适应物权方面的国际化趋势，应当对现有的物权模式以及中国学者所提出的物权模式进行精简和抽象概括，以规定共同的指导原则；与此同时，借鉴国际通用的立法和惯例，与国际先进立法相融合。鉴于上述情况，符合中国国情的物权体系如下：

物权：自物权；他物权；占有权

他物权：所有权；用益物权；抵押权；担保物权

用益物权：地上权；农育权；地役权；用益权

担保物权：质权；留置权

上述体系显示，除了占有权之外，自物权、他物权界定了所有权、用益物权和担保物权的性质与效力，进而也界定了它们各自的权利界限。

1. 中国民法上的所有权，依财产性质和主体的不同，可分为国家所有权、集体所有权和个人所有权。在确立所有权制度时，中国应秉持一物一权原则和平等精神，结合现行法律规定和经济体制改革，正确处理各方面的关系，以满足社会主义市场经济的财产占有秩序和财产交换秩序的需要，并适应国际立法的趋势。

2. 中国的用益物权制度非常分散、无序，并且存在一些概念模糊的生造法律术语。

因此，它不能很好地指导经济生活。通过抽象概括，可以将其系统化为以下几类：地上权、农育权、地役权和用益权。

现有土地使用权这一术语的概念并未明确使用目的，也不明确其属于物权还是债权。若以使用用途为标准，土地使用权可分为以下两类：地上权（用于建造房屋或其他建筑物等目的）和农育权（用于耕作、养殖和畜牧等目的）。地上权的概念简洁、清晰，且与国外现行立法一致。在中国，土地归国家和集体所有，但社会组织依法或依合同使用国有土地和集体土地建造房屋或厂房时，也会导致土地所有者和使用者之间产生权利义务关系。在中国法律中，宅基地使用权、土地使用权以及中外合资企业场地使用权在性质上均属于地上权的范畴。地上权的运用能够明确国有土地使用权的性质，将国有土地的占有和使用彼此分离，使土地资源得到合理开发、利用和保障。地上权通常是有偿取得的，有时也可无偿取得，可永久取得亦可定期取得。

农育权是指用于农业、林业、畜牧业和渔业生产经营的土地使用权。自中国实行改革开放政策以来，全国各地的合同订立方经常任意撕毁合同，致使承包方的合法权益受到严重侵犯。这种现象与合同属于债权关系以及承包人所取得的使用权属于债权密切相关。如果采用物权关系或物权制度，并且用用益物权取代契约关系，那么农育权可以成为用益物权的一部分，相应地，对承包人利益的任意侵犯就可以消除。

地役权是为了利用自己土地的便利而使用他人土地的权利。在中国，最大的问题是将地役权当作相邻关系或相邻权。地役权在调节相邻土地使用的条件、效果以及由此产生的权利和义务方面与相邻权有某些共同之处，但二者的界限是泾渭分明的。首先，相邻权是一种法定权利，是对所有权的延伸或限制。它属于自物权的范畴，而地役权通常是指约定权利，属于他物权的范畴。其次，相邻权是对土地使用关系的最低限度规制，而地役权则是对超出相邻关系规制之外的权利和义务的相对广泛的规制。第三，相邻权适用于土地的相邻关系或者房屋和建筑物的相邻关系，而地役权仅适用于土地的所有者和使用者。第四，相邻权必须以相邻土地为前提，而地役权则不必如此。最后，相邻权的内容是多方面的，而地役权的内容是为了便于自己土地的使用而使用他人土地。基于上述差异，相邻权应纳入所有权范畴，而地役权应纳入用益物权范畴，以适应现实生活中各种土地使用关系的需求。

用益物权是指对国有或者集体所有的自然资源享有使用和收益的权利，包括采矿权、采伐权、渔业权、狩猎权、水权、草原使用权等。将这些权利纳入用益物权的目的是减少特别法中的规范数量。这样就会考虑到特别法具有很强的实用性和变化迅速的特点，并使物权立法和物权制度协调统一。

3. 自《担保法》颁布和施行以来，担保物权制度的基本框架已经建立，因此无需再证明担保物权的必要性。此外，中国学者对此并无不同观念。担保物权的内容包括抵押权、质权和留置权。《海商法》中的船舶优先权可纳入特别法体系。

4. 中国现行法律对于物的占有关系缺乏全面、统一的规定。这是亟待填补的空白。占有是一种外在的事实状态，并具有一定的法律保护效力，所以占有制度应当成为中国民法的一项重要制度。

至于永佃权，中国台湾地区 1993 年将其改为农育权，因为永佃权不符合现行农业政策，且在现今实践中已很少使用。中国大陆应以此为戒，拒绝接受永佃权。至于典权，对于是否应当采用典权制度存在一些争议，双方的观点针锋相对。由于典权与典当在中国的理解有所不同，且双方的观念各有优劣，将典权纳入债法并无不妥。

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