Abstract

Based on an eleven-month fieldwork of an informal real estate market in Shenzhen, China, this paper focuses on how property norms interact with the fragmented and layered property laws. It also serves as a case study of the mixture of tragedies and comedies of collective land governance in China, defining the direct conflict between law and social norms as a tragedy and their reconciliation as a comedy. The term tragicomedy captures such a mixture. This paper reveals that the different identities that village leaders simultaneously assume under different social control systems are key to understanding the co-evolution of property law and norms. It also highlights the essential roles of the laws and communities’ legal strategies in governing the commons.

Introduction

Three decades of property law reform in China have consolidated the government’s monopoly over land; in particular, urban use of rural land can only be achieved through government requisition and sales. Mass protests by Chinese farmers...
against the government’s land-grabs under this system have made headlines, but an arguably more significant everyday form of Chinese farmers’ resistance – the evasion of the legal prohibition on rural land development and sales – has received scant attention.

According to the Chinese Ministry of Land and Resources, by 2007, Chinese farmers had built over 6.6 billion square meters of houses in evasion of the legal prohibition on private rural land development and transfer, resulting in a huge market of illegal houses. By way of comparison, in 2007, the total floor space of housing sold on the legal housing market was 0.76 billion square meters.¹ People in China call these illegal buildings “small-property houses” (xiaochanquan) because their property rights are “smaller” (weaker) than those on the urban/formal housing market, which have “big” property rights protected by the government. The market has developed in step with China’s ongoing struggle for a formal property regime.

This research is based on my eleven-month fieldwork in Shenzhen, the first experimental site of China’s market reforms. In the city of Shenzhen, which experienced exponential population growth from 300,000 to over 10 million from 1978-2010, almost half of the buildings are small-property constructions.² These illegal buildings, without legal titles and concentrated in 320 intra-city villages, host most of the 8 million migrant workers in Shenzhen and are the main livelihood of the more than 300,000 local villagers.³ There has formed a huge impersonal small-property market that is supported by a network of institutional innovators, including local villagers and their co-ops, local government officials, real estate developers and brokers, lawyers, etc. Both the risks of

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² Shenzhen is the city with the highest ratio of small-property houses, which make up 47.57% of the city’s total floor space, compared to 30% in Xi’An and 20% in Beijing. 宋林飞（全国政协委员、江苏省政府参事室主任）：《小产权房没有转正“特区”》，《人民论坛》2012 年 7 月 4 日[Song, Linfei, No Special Economic Zone for Legalization of Small-Property Houses, PEOPLE’S FORUM, July 4, 2012], http://theory.people.com.cn/n/2012/0704/c112851-18443279.html (last visited Feb. 15, 2013).
contract breach and of government demolition are greatly reduced because of the implicit consensus on rural land development and transfer.\textsuperscript{4}

Chinese use color to distinguish the legality of organizations and their activities: “black” means totally illegal and often involves mafia\textsuperscript{5} activities marked by violence and crime; “white” means totally legal and official recognition. On most occasions, small property is “grey,” i.e., between black and white. However, as land available for development decreases, the Shenzhen city government has adopted various policies on small property, ranging from legal enforcement of the prohibition to legalization.\textsuperscript{6} These varying and changing policies, together with the tensions and conflicts within the Chinese legal system, have led to different interpretations and applications across time and in different villages, resulting in the diverging destinies of small property.

This paper focuses on how the small-property norms interact with the fragmented and layered Chinese property laws. Further, defining the direct conflict between law and social norms as a tragedy and their reconciliation as a comedy, this paper also serves as a case study of the mixture of tragedies and comedies of collective land governance in China. The term tragicomedy is to capture such a mixture.\textsuperscript{7}

Some villages successfully gain government recognition of their real estate business by making use of various government policies. There are also villages that have gone the opposite route, i.e., giving up any legal dialogue with the official system, and


\textsuperscript{5} Mafia is a vague term with no consensus definition. But generally speaking, their primary activities involve the use of violent intimidation to manipulate local economic activity, in particular illegal transactions. As Milhaupt and West argue, mafia, or organized crime, is “an entrepreneurial response to inefficiencies in the property rights and enforcement framework supplied by the state.” Curtis J. Milhaupt & Mark D. West, The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime, 67 U. Chi. L. Rev. 41, 43 (2000).


\textsuperscript{7} Donald Elliott used this term to reflect that human beings sometimes solve their environmental problems and live in harmony with nature, but in other instances, they fail to solve them and destroy the natural world upon which their own survival depends. Elliott, E. Donald. “The Tragi-Comedy of the Commons: Evolutionary Biology, Economics and Environmental Law.” 20 Virginia Environmental Law Journal 17 (2001).19-20
resorting to bribes most often and sometimes to violence. Both the ‘whitening’ and ‘blackening’ of small property exist in Shenzhen. This paper presents two opposite stories of small property: one village co-op is captured by a mafia and the consequent mafia-style small property business is maintained through violence and the bribing of government officials; the other is a village co-op that from time to time takes actions “in the name of law” in their bargaining for legal property rights with the government and with a hold-out couple who refused to submit their “nailhouse” (the Chinese term for such buildings because they stick out and are difficult to remove, like a stubborn nail) to the village co-op for redevelopment.

The central question to the commons is why some result in a tragedy while others result in a comedy. A typical Demsetzian story that focuses on market incentives would be that there should be no difference in the development of small property across different villages, though there might be a difference in the degrees of market development. Clearly, the resolution to the central question cannot be achieved by focusing on a single level of analysis such as market incentives. The key is that the three social-control systems, the market, the community, and the formal legal and policy system, are co-evolving and mutually influencing. How is institutional change to be understood from such a co-evolving and dynamic perspective? Social scientists have provided us with some clues. John Padgett and Walter Powell provide a theory of the co-evolution of social networks through their infrastructural work of synthesizing social science with biochemistry. They focus on the multiple roles of actors in different arenas, which according to them, are the channels through which mutual interactions and co-evolution is achieved. Elinor Ostrom argued that “individuals who have self-organizing capabilities switch back and forth between operational-, collective-, and constitutional-choice arenas, just as managers of production firms switch back and forth between producing products within a set of technology, introducing new technology, and investing

9 Harold Demsetz, Toward a Theory of Property Rights, 57 AM. ECON. REV. PAPERS & PROC. 347 (1967)
10 JOHN F. PADGETT & WALTER W. POWELL, THE EMERGENCE OF ORGANIZATIONS AND MARKETS (2012). (I am grateful to Xiaohong Xu for recommending this literature.)
resources in technology development.”

Following such a path, I discovered that different identities of village leaders are the key to understanding the co-evolution of property law and norms in Shenzhen. For example, a village leader in Shenzhen has three identities: operator of the village co-op corporation and thus responsible for maximizing its economic performance; villagers’ elected representative that should take care of villagers’ interests; and implementer of governmental laws and policies. How a village leader plays these three roles both influences and is influenced by the three co-evolving systems (market, community, and the law and policies). This paper is structured as following: Part I presents the tragicomedy of small property in detail. Part II introduces the concept of layering and fragmentation of law and discusses its challenge to law and social norms, and explores how choice of rules needs to consider the co-evolving and mutually-influencing nature of different social control systems. Part III applies the multiple-network evolution model to explain the tragicomedy and investigates how the three identities of village leaders influence each other and the systems in which they are embedded. Part IV concludes.

I. Two Legal Destinies of the Commons

The emergence of a small-property market accompanied three decades of rapid urbanization in Shenzhen. Even when facing the same market demand and the same formal institutional structure, however, villages have different destinies. Some villages made their members millionaires and even billionaires. Their rights to develop their land were recognized by the city government and cashed out through village redevelopment projects. Some villages’ development of rural land was strictly restricted by the city government for environmental and other kinds of considerations. In this case, villagers’ rights to develop their land were not recognized, and these villagers remain poor. Some

13 Id.
villages’ small-property businesses were warned and fined by the government and even became a target of criminal prosecution, as in the Wanfeng village case discussed in the following sections. Many other villages are still on their way to gaining government-recognized rights to develop and sell their land.14

Sometimes, even between villages sitting on opposite sides of a small river, completely different outcomes occurred. On one side is a village full of small-property constructions where villagers have shown no respect for the legal prohibition on rural land development and transfer and have “planted” as many houses as possible in each vacant plot.15 On the other side is a village in which construction has been restricted by the village co-ops, which in turn has devoted time and resources to applying for legal rights to develop and sell their land under the adaptive institutional openings. These disparities are possible due to the fragmentation and layering of laws.

From a long-term perspective, with officially recognized rights, villages can get access to capital, strategic investors, business ideas and technology available to the legal real estate business, and can make much more money from their land. This bright but uncertain future involves substantial costs. Many in such “legal” villages complain that, “We’re losing money every day by not developing our land—the cost of complying with law is too high!”16

Violation of the legal prohibition usually does not lead to serious penalties, although villagers pay government officials bribes regularly to reduce the risk of legal

15 See Qiao, Planting Houses in Shenzhen, supra note 5.
16 北京大学国家发展研究院: 《深圳市土地产权制度改革与二次开发利用机制创新研究报告》[NAT’L SCHOOL OF DEV., INVESTIGATION REPORT OF LAND REFORM IN SHENZHEN 18 (2013)]
enforcement. But the “gray” small-property business could also go black and totally flout the law. This involves “flagrant forms of criminal activity”\(^\text{17}\) which often incurs immediate social costs—in such cases, the government often cracks down by law-enforcement.

One must then wonder why and how some villages have stuck to the legal approach, despite the high costs of wandering “before the law.” One must also wonder why and how some villages have been swamped by illegal activities such as bribery and organized crime. Later I will discuss two cases in detail to investigate the above questions.

In one case, Wanfeng village and its leader were prosecuted for bribing government officials to cover up their small-property business, and the leader was also convicted for participating in a mafia, of which the main business was small property in recent years. In the other case, Zhangshubu village co-op has acquired legal rights to redevelop the village land and has even resolved the hold-out problem by the majority vote of the villagers’ assembly and suing a nailhouse holder in court.

A. Wanfeng: The Mafia-Style Small-Property Business

Wanfeng is a village in the Shajing sub-district of Bao’An district. It has an area of 6.8 square kilometers with a total population of 60,000, only 2,067 of whom are official residents of the village. Most of them share the family name Pan. It used to be called one of the top four super-villages in China in the 1990s because of its wealth, which was accumulated mainly through building factories to rent to outside investors.\(^\text{18}\) It


was also the first village in Shenzhen that experimented with village co-ops, a form of collective economic organization that has since been adopted by all other villages in Shenzhen. Under the village co-ops, the board is in charge of the management of collective-owned land and responsible for issuing dividends to villagers each year. It was also one of the earliest villages that conducted large-scale commercial residential housing development under the name of building residential housing for their own villagers, most of which were actually put onto the small-property market.

With the rise and growth of a mafia of local villagers, the small-property market in Wanfeng, and in the Shajing sub-district in general, became a partnership between corrupt government officials, the mafia, and village co-op leaders, resulting in criminal prosecution and a crisis of the market.

1. Brother Dragon and His Xinyian

Xinyian, considered “the biggest mafia in the history of Shenzhen,” was created by a local villager of Haosi village, located in the Shajing sub-district and close to Wanfeng village. Its leader, Brother Dragon (“BD”) became a member of a local mafia in the 1980s, during which time various mafias fought for territory and resources. BD gradually made himself the ultimate leader and mediator of all mafias in the Shajing sub-district and united them under a single name, Xinyian, a famous Hong Kong mafia in which BD’s uncle was a leader.

To be a “little brother” (mazai) of BD means there are rules to follow, the most important three of which include:

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19 See Part III for more details.
(1) No fighting within the mafia; territories are divided according to the boundaries of villages and crossing the boundaries to “develop business” is forbidden;

(2) Mutual support should be offered whenever it is needed; outsiders people must be informed that the little brothers were “Brother Dragon’s man”; and

(3) BD’s orders must be followed absolutely.\(^ {20}\)

Little brothers who violated any of the above rules were beaten. In the case of infighting, prices were clearly set: RMB 3000 for one punch; RMB 30,000 for one cut; the initiator pays.\(^ {21}\) However, the real threat is the loss of BD’s support, in which case this “little brother’s” business would be subject to others’ encroachment without any remedies.\(^ {22}\)

Eventually, Brother Dragon controlled all of Shajing. Almost all of the garbage collection stations, gas stations, strip clubs, and real estate businesses were either managed or owned by his men. It is said that he was “the emperor of Shajing.”

What is more surprising is BD’s influence in village elections and grassroots government operations. BD intentionally chose the most influential men (as determined by wealth or connections) in each village to be little brothers.\(^ {23}\) It is said that almost every elected village official had to get support from BD to different degrees and that BD could control at least one-half of the votes in each village.\(^ {24}\) In some cases, BD’s men would be present in village elections to deter any dissidents.\(^ {25}\)

\(^ {20}\) 广东省深圳市中级人民法院刑事附带民事判决书（2012）深中法刑一初字第 227 号[Shenzhen Intermediate Court Criminal Case First Trial No. 227, at 193 (2012)].(hereinafter Shenzhen Court Decision).
\(^ {21}\) Id. at 198-9.
\(^ {22}\) Id. at 219.
\(^ {23}\) Id. at 145.
\(^ {24}\) Id. at 328.
\(^ {25}\) Id.
A party secretary of a villagers’ group disclosed a case to government officials during the investigation of BD’s mafia:

Two or three years ago in our village election, one person was not obedient; the next morning when he got up, his car was smashed. It is the big brothers of Xinyian that decided our elections, even party-secretary Liu of the Shajing sub-district government did not matter. I feel that is not the country of the Communist Party, but the mafia’s.26

BD also had good connections with the Shajing sub-district government. It is rumored that even party-secretary Liu would follow BD’s orders. Liu was prosecuted as a “protection umbrella” (baohusan) for BD’s mafia: he received over 12 million RMB in total from BD for various conveniences he provided for BD’s businesses. For example, in 2008, BD bought about 20,000 square meters of land from Bogang village. In 2009 the Shajing subdistrict government planned to requisition the same plot: BD invited Liu to dinner and gave him a bag of HKD 2 million in cash afterwards. The plot has still not been requisitioned.27

Meanwhile, it is interesting to note that Liu confessed that he had to rely on BD to govern Shajing. Liu was not from Shajing. He had been appointed as the party secretary of the Shajing sub-district in 2003 and was introduced to BD by a subordinate, who was from Shajing and was BD’s friend. Liu was told that “he can displease anybody in Shajing but not BD.” It turned out Liu had to seek help from BD for official and legitimate government affairs. For example, in 2008, when a little brother of BD organized over 30 villagers to disturb the party branch election in his village, Liu had to ask BD to call this man off.28

26 Id. at 307-8.
27 Id. at 31.
28 Id. at 733-4, 741-5.
Overall, BD’s Xinyian functions like a government. Villagers describe BD as encompassing both the black and the white societies (“hei bai liang dao tong chi”). The following is an example:

Five years ago, our company’s elevator was found in violation of the safety guidelines by the safety inspection department of the Shajing government, which required us to uninstall it within a month. At the expiration of the one-month deadline, the safety inspection department came to uninstall it on site. Somebody in our company called one of BD’s little brothers, who came in less than 15 minutes and told the safety inspection department that it was BD’s business. As a result the officials gave us two-month extension. From this we know that BD is well connected with the government. Moreover, whenever our employees were beaten or things in our factory were stolen, we would notify BD’s men, who would come and check. Then our factory would be more peaceful for a while…. We outside investors all hope to have a good work environment and dare not offend BD’s black society.29

In the early 2000s, BD saw huge profits in the real estate business and found Chen, a real estate developer, to do business with him.30 BD bought a lot of land from villages at low prices. BD had little brothers in each village of Shajing, some of whom were village co-op board members, village party branch members, or villagers’ committee members. Even in villages where BD’s men did not have official positions, they still had influence in the village governance due to their violence, wealth and connections. Moreover, these deals were often opaque. Usually BD only had to deal with one or two village leaders, though legally, transactions involving village assets had to be approved by the village co-op board or at the shareholders’ meeting of the village co-op.31 For example, in 2003, BD bought an industrial plot of 30,000 square meters from SL village at 6 million RMB. The price was 200 RMB for 50-year use rights per square meters. BD sold this plot to Haoyi village for 55.2 million RMB in 2007. The 2003 transaction was

29 Id. at 315.
30 Id. at 282.
31 Id. at 546.
made after BD’s private conversation with the village’s party secretary. As for the 2007 transaction, according to the director of the Haoyi villagers’ committee, “We were willing to sign the contract because it was BD’s company.”

BD made quick profits from such resales. A more significant case occurred in 2007. On September 11, 2007, BD and Chen bought 70-year use rights of 41,549 square meters of land at a price of 30 million RMB from the Shangxing village co-op. After a little over one month, they sold it to the Haosi village co-op at 158 million RMB on October 26, 2007.

In some cases BD and Chen also developed real estate programs with other partners. Violence was used in their pursuit of profits. At the end of 2008, Li, an outside investor, bought three floors of Yufuyuan, a small-property building from Chen. The total amount agreed to was 140 million RMB. Li paid five million RMB as front money and agreed to pay the remaining amount from future sales income. Li very successfully introduced a shopping mall with the three floors; the income from selling the first 25% of the units alone amounted to 70 million RMB. That meant the total amount would be about 280 million RMB. Chen had not expected the three floors to be so profitable, and he asked Li to withdraw from the project. BD brought Li to Chen’s office and told him: “Boss Li, Yufuyuan is not a big deal; Chen told you not to do it—you should not continue; if you withdraw, I can give you several million RMB and another project to do.” BD sat for a while and then left. Chen ordered Li to stay for a whole night and forced him to sign a contract and submit relevant documents, including the project license to them.

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32 Id. at 545
33 Id.
34 Id. at 34.
but Li kept the original contract from them, which prevented Chen from finishing the official transfer procedure. As the result, in October 2009, BD’s men kidnapped Li for a whole week and forced him to sign other contracts and submit the original contract and other remaining documents to finish the official transfer procedure.\(^{35}\)

It was not rare for violence to be used as the last resort to maintain BD’s business. It is said that most of the fighting in Shajing in the past years was related to BD; BD’s mafia members committed quite a few murders.\(^{36}\) Villagers in Shajing can be horrified at the mention of BD’s name. Nobody dared resist what BD planned to do. For example, BD seized some villagers’ land to build a club to treat his men and clients, and the villagers dared not complain until he was arrested.\(^{37}\) A village cadre told another story to the police after BD’s arrest, saying “Don’t like the 24-hour operation of the laundromat near your home? It was BD’s business – keep an eye on your home window during the night (if you complained)!”\(^{38}\)

2. Criminal Prosecution, Wanfeng’s Fall, and A Crisis of the Market

Wanfeng is a village in Shajing that has been heavily influenced by the Xinyian Mafia. The village co-op board chairman, Pan, became a little brother of BD. Pan’s defense disputed this by arguing that Pan had no motivation to participate in BD’s Xinyian mafia, since he was the party secretary and village co-op board chairman. In

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\(^{35}\) Id. at 383-4. Here it means the change of the owner of the company at the business administration bureau. See Chapter Two: though small-property houses are not recognized, business based in small-property constructions are legally recognized.

\(^{36}\) Id. at 307.

\(^{37}\) Id.

\(^{38}\) Id.
other words, his defense claimed, Pan would not profit economically, socially, or politically from joining a mafia.\(^{39}\)

This seemingly plausible argument was contradicted by Pan’s own testimony and the facts. Pan confessed, “I devoted myself to BD with all my heart. Upon BD’s call, I would drop anything at hand and run to his office and call him boss. Their real intention in controlling me was to force me to sell land cheaply to them at the expense of our villagers’ interests, but I cannot control my own fate and have to follow their control.”\(^{40}\)

Pan did keep close ties with BD and sold him village land at low prices. Pan sold a lot of land to BD and even cooperated with BD in small-property development in the name of building concentrated residential apartments for villagers, a plan that was not approved by the village co-op board and was unknown even to many ordinary villagers. Much of the land has been transferred to BD. Wanfeng is located at the central area of the Shajing subdistrict, where land is very valuable. But Wanfeng village co-op has not paid dividends to villagers since 2002 due to bank debt, which amounted to over 1 billion RMB.\(^{41}\) On the other hand, villagers saw village land developed into small-property buildings one plot after another without any benefits for villagers. In reality, most of the buildings were controlled by BD’s companies, even some constructed under the pretense of being “unified buildings for villagers.”

As powerful as BD and his mafia were, they eventually became targets of criminal prosecution. In February 2012, the Guangdong provincial government launched

\(^{39}\) Id. at 69.

\(^{40}\) Id. at 244-5.

a campaign called “three strikes and two build-ups.” The three strikes were striking the “monopolization of the market through violence,” striking the “making and selling of counterfeit products,” and striking “commercial bribes”; the build-ups were building up “a social reputation system,” and building up “a market supervision system.” BD’s monopoly of the small-property market in Shajing and his bribery of government officials became prime targets under the campaign. In early 2012, the police rooted out the Xinyian mafia; 102 mafia members were arrested, leading to over one hundred criminal prosecutions.  

BD was prosecuted for organized crime, murder, kidnapping, bribery, etc. Most interestingly, however, he was also prosecuted for “illegal transfer of land use rights” despite the fact that village leaders who sold the land to his company were not prosecuted for the same crime. Pan, the village head of Wanfeng, was prosecuted for participating in a mafia and bribing government officials but not for “illegal transfer of land use rights.”

The crime of “illegal transfer of land use rights” is set forth in Article 228 of the Chinese Criminal Code, which defines it as “with the purpose of making profits and in violation of land administration laws, transferring land use rights illegally, in a serious situation.” Such “serious situations,” as defined by the Chinese Supreme Court, include “making more than 500,000 RMB profits,” “transferring more than five mu of basic

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42 [Symposium: Guangdong Fully Implements “Three Strikes” and “Two Build-Ups, Xinhua News Guangdong Channel], http://www.gd.xinhuanet.com/zt12/sdlj/. This campaign was initiated by Wang Yang, then governor of Guangdong province and currently Vice Premier of the State Council of China. As stated, the main purpose was to improve the market environment. Before that Bo Xilai, former Mayor of Chongqing and member of the Political Bureau, also had a campaign under his jurisdiction against organized crime. Both politicians were viewed as strong competitors for the new standing committee of the Political Bureau.

agricultural land,” etc. BD’s crime was defined as “particularly serious.” Penalties were increased according to the amount of profits made from the crimes.\textsuperscript{44}

The court decision also cited the findings of the Shenzhen Commission of Urban Planning, Land and Resources to support its decision, which investigated BD’s land transfer businesses and transferred the whole case file to the court.\textsuperscript{45}

First, BD’s lawyer argued that BD’s transfer of land use rights was not among the four situations prohibited by the Decree on Transfer of Collective-Owned Land Use Rights (“No. 100 Decree”) promulgated by Guangdong province. No. 100 Decree is a product of Guangdong province’s efforts to accommodate widespread rural land development and transfer within its jurisdiction, which play a crucial role in its economic development. Second, BD’s lawyer argued that Guangdong province has allowed the lease of rural land with multiyear terms. BD’s transfer of rural land use rights actually took the form of long-term lease and thus was consistent with No. 100 Decree. Third, BD’s lawyer argued that the Guangdong Higher Court also promulgated Guiding Opinions on the Transfer and Lease of Collective-Owned Non-Agricultural Land Use Rights, which further recognize the legality of the transfer of rural land use rights.\textsuperscript{46} Fourth, Guangdong is at the frontier of reform and has experimented beyond the national practice, which is why the above decree and guiding opinions have been made. In

\textsuperscript{44} See also 全国人大常委会关于刑法第 228 条第 342 条第 410 条的解释 (2001 年 8 月 31 日第九届全国人大代表大会常务委员会第二十三次会议通过) [Interpretation of the National People’s Congress Standing Committee on Articles 228, 342 and 410 of the Criminal Code (August 31, 2001) (passed in the 23\textsuperscript{rd} Meeting of the Ninth Nat’l People’s Cong. Standing Comm.)].

\textsuperscript{45} 深圳市规划土地监察局: 《涉嫌非法转让、倒卖土地使用权犯罪案件移送书》（深规土行移字【2012】第 0004 号），引用于前述深圳中院判决书第 543 页[Shenzhen Bureau of Planning and Land Supervision, Document of Transferring Criminal Case of Illegal Transfer and Sales of Land Use Rights No. 0004 (2012), cited in Shenzhen Court Decision, at 543.]

\textsuperscript{46} Shenzhen Court Decision, supra note 27, at 551-2.
practice, small-property transactions have been prevalent and there are cases in which the local courts have recognized the effectiveness of such transactions.\textsuperscript{47} Numerous other transactions occurred without incurring criminal punishment. For example, before BD’s “illegal transfer of land use rights” of one plot of land, its owner, Shangxing village had sold the same plot to a public university and bought it back to sell to BD.\textsuperscript{48} The court did not ask why the Shangxing village or the public university was not prosecuted for the “illegal transfer of land use rights.”

There were other parts of the court decision that showed the carelessness and inconsistency with which this crime of “illegal transfer of land use rights” is defined and punished. For example, among the 22,845 square meters of land BD bought from the Shangliao village, 2286.92 square meters of land has been given legally transferrable rights to the Shangliao village co-op by the Shenzhen Commission of Urban Planning, Land, and Resources.\textsuperscript{49} The court did not bother to distinguish this patently legal part of the transaction from the overall illegal transaction.

Altogether, it is clear that this was not a case of enforcing the current legal prohibition on the transfer of collective-owned/rural land use rights. Instead, it was a case against organized crime, which is a “flagrant form of criminality” that elicits the governments’ legal enforcement. There is a Chinese saying that “a fire on city wall brings disaster to the fish in the moat.” In this case, BD and his mafia are the city wall on fire while small-property business are the suffering fish, i.e., collateral damage. This also explains why the Shenzhen Commission of Urban Planning, Land, and Resources

\textsuperscript{47} Id.
\textsuperscript{48} Id.
\textsuperscript{49} Id. at 543.
bothered to investigate the “crime of illegal land transfer” in this case but rarely does so in other situations.

Pan and his village are other fish that are suffering. After BD and Pan were arrested, Wanfeng villagers finally felt secure enough to claim their land rights. Some Wanfeng villagers then blocked the entrance of a small-property building that buyers had not yet moved into and cut off the supply of electricity and water. Villagers claimed that Pan and his colleagues sold the land too cheaply and demanded a renegotiation of the contract with the real estate developer for a higher price. Their argument was that the conventional division of profits in Shajing between village co-ops and their partners in small-property development was 3:7. But in the original contract, Wanfeng village got much less than that ratio. Wanfeng villagers even blocked a main avenue in Shajing to protest and claimed that they would defend their land interests to the death. On the other hand, buyers, most of whom were from outside Shenzhen, also hung out a banner reading, “Who stole my house? I want to go home! Give back my home!” Thus it became a so-called “mass incident.”

The Shajing government dared not declare the transactions invalid. Rather, it left the renegotiation to the real estate developer and the Wanfeng village co-op. It expected that the real estate developer would pay more money to the village co-op. Recalling my previous discussion on the security of small-property contract, it is worth noting that even after the villagers’ protest, the village co-op actually assured buyers several times that the
apartments were theirs because they paid for them; they should not worry that they would be taken away.\(^\text{50}\)

Nevertheless, the crackdown on the Xinyian mafia created a crisis for Wanfeng village and its small-property business. It also signified that the gray small-property market could be captured by organized crime, a problem that ranks much higher on the agenda of legal enforcement. It is worth wondering why Wanfeng village went from gray to black, i.e. why Pan participated in BD’s mafia and why he sold land so cheaply to the mafia. As Pan’s lawyer would argue, neither seemed a rational decision. I will explore explanations for his decisions in Parts III.

B. Zhangshubu: In the Name of Law

Zhangshubu is a village in the Nanwan subdistrict of Longgang District. It has an area of 0.85 square kilometers, with a total population of 11,270, only 424 of whom are official residents of the village in 2004.\(^\text{51}\) All the villagers share the same family name, Deng.

Since the emergence of the small-property market, formal institutions have adapted to the small-property market and have produced narrow openings for villages to get legal rights to develop and transfer their real estate.\(^\text{52}\) Despite the uncertain and costly nature of such an endeavor, quite a few villages have succeeded. The most successful

\(^{50}\) 陈小瑛：《深圳小产权房冲突祸起集体土地贱卖 危局待解》，《华夏时报》2013年4月20日 [Xiaoying Chen, A Crisis to Be Resolved: Conflicts of Shenzhen Small-Property Houses Were Caused by Cheap Sales of Collective Land, HUAXIA DAILY, April 20, 2013], http://finance.sina.com.cn/china/dfjj/20130420/001615212277.shtml．


\(^{52}\) See Qiao, Small Property, Adverse Possession, and Optional Law, supra note 19.
example, as I introduced elsewhere, is the Caiwuwei case, in which the highest skyscraper in Shenzhen was developed from village land, and villagers got a substantial portion of the profits.\textsuperscript{53} Zhangshubu is a more ordinary example of villages that have gone white. Crucial steps in this decade-long process were undertaken in the name of the law. The village made intentional use of law, sometimes even advancing interpretations of the law opposite to those of the Shenzhen government, in order to achieve its goals. The two key issues in getting legal rights to real estate development are the government’s recognition and support, and the collective action problem of villagers. The corresponding questions are: (1) as villagers are basically free to build small-property constructions with only sporadic inference from legal enforcement, what incentives existed for the Zhangshubu village co-op to bother to spend several years getting approval, incurring costs and lost profits in the process; and (2) why did it bother to sue a nail household, when usually it is the opposite situation, i.e., the nail household seeking legal redress?

As in many other villages, including Wanfeng, as early as in 1982, Zhangshubu began to build factories to then rent to Hong Kong investors. Most such factories did not go through any procedure before construction and are thus small-property constructions. For example, the first outside investor, a private printing house, rented its factory from four village cadres, who rented land from the village collective and built factory space. One of the cadres said that they did this in response to the Shenzhen government’s call for industrial development and the need to create jobs for villagers, but they did not apply

\textsuperscript{53} \textit{Id.}
for any certificate for the building from the government. The factory was built in 1993, and now it has more than 100 employees, quite a few of whom are local villagers.\textsuperscript{54}

Zhangshubu is different from many other villages in that it is close to the Shenzhen Reservoir, a main water source for the city. In 1986 the Shenzhen city government designated part of the village as a protected area, planned to move all factories within this area elsewhere and prohibited any further building within the area. After the designation, the Zhangshubu villagers then confronted the Shenzhen government by developing their land. Before the government fully enforced its prohibition, they built several factories to create a situation in which, as the Chinese saying goes, “the rice is cooked” (i.e., what is done cannot be undone).\textsuperscript{55}

Economic development in Zhangshubu is full of tales of making money from land. In addition to the above industrial land development, housing land development also played a significant role. For example, in 1992, Zhangshubu divided one portion of the village land into small plots and then sold them to outsiders to build residential houses.\textsuperscript{56}

Gradually, land became the main income source for village members. In particular, since the late 1990s, villagers found that they could live a good life just by renting their houses to migrant workers. To accommodate this demand, it became a trend for individual villagers to rebuild and expand houses.\textsuperscript{57}

\textsuperscript{54} 程瑜、刘思霆、严韶：《一个客家村落的都市化——深圳樟树布村改革开放 30 年的发展与变迁》，广东人民出版社 2010 年版。[Yu Cheng, Siting Liu & Shao Yan, URBANIZATION OF A HAKKA VILLAGE: THREE DECADES OF DEVELOPMENT AND CHANGE IN ZHANGSHUBU OF SHENZHEN 115 (2010)].

\textsuperscript{55} \textit{Id.} at 79.

\textsuperscript{56} \textit{Id.} at 80.

\textsuperscript{57} \textit{Id.} at 82-3.
But villagers’ business of “planting houses” did not go much further before it was stopped. In 1999, Deng Yijun, then 32-years old, returned to Zhangshubu from his job as a vice president of a large real estate company in Shenzhen to run for the directorship of the villagers’ committee. He succeeded and decided to stop the chaotic housing construction by his fellow villagers. Meanwhile, under his leadership, Zhangshubu village began to apply for legal rights to redevelop Zhangshubu from the Shenzhen government in 2000.

In 2003, Longgang District government approved the redevelopment plan of Zhangshubu; the Shenzhen City Bureau of Environmental Protection also finished an environmental impact evaluation in 2004. Wanke, the largest real estate company in China, also set up a project company to work on the Zhangshubu village redevelopment; a contract between the project company and Zhangshubu village co-op was signed in 2004.

According to the village redevelopment plan, 191,648 square meters of land would be redeveloped, among which 104,870 would be used for housing development, 32,000 would be used for public green space, and 54,778 would be used for roads. The neighborhood would have more green space and better roads than before. The redevelopment would demolish 173,241 square meters of housing but would eventually add 471,915, including 15,500 square meters of public housing to be operated by the Shenzhen government, 3,200 square meters of housing for a kindergarten, and 2,500 square meters of complementary facilities. Overall, the redevelopment would increase

58 樟树布旧村改造合作合同（2004年12月6日）[Zhangshubu Old Village Redevelopment Cooperation Contract (Dec. 6, 2004)].
both the quantity and quality of housing in the village. As compensation, villagers would be given one or one-and-a-half times of the total floor area actually demolished. Most important, the new houses would have certificates of legally alienable rights.  

No villagers opposed the redevelopment plan in principle, but negotiations with a few did not succeed. As in any other real estate projects, hold-out was a problem. The following is excerpt from a negotiation transcript between Deng Yijun, chairman of the village co-op board and Ms. Deng Xiaohong and Mr. Liang Riliang, a couple who owned a small-property building of about 1,000 square meters:

Deng Xiaohong: Overall 55,000 per square meters, Sister wants this price, you help your sister get this (from the real estate developer).  
Deng Yijun: Impossible! What’s the market price? I can only do that.  
Deng Xiaohong: This is my offer. You do your best!  
Deng Yijun: The market price is a bit over 10,000 and up to 20,000; how can you ask for 55,000 from them? Too far from the market price!  
Deng Xiaohong: It’s impossible to do it according to the market price.  
Deng Yijun: Bargaining has limitations. Give you an example: assuming the market price is 20,000 and you ask for 25,000, that’s okay!—I wouldn’t say you’re over and would only say it’s a bit high. Beyond that, it’s absurd! ……  
Liang Riliang: You tell me whether our house is worth 50 million!  
Deng Yijun: You’re joking!  
Liang Riliang: Not a joke! You tell me yes or no.  
Deng Yijun: Impossible.  
Deng Xiaohong: It’s hard to say impossible. You help me (to negotiate with the developer)!  
Liang Riliang: We’re not threatening. We have our needs. We’re talking to you because we support (your redevelopment plan.) Otherwise we wouldn’t negotiate with you. We support you, but we have our needs. It’s another thing whether such a need is right or not.  
Deng Yijun: It’s absurd for you to ask for such a price. 25,000 would be rational. But the price you asked (55,000) is irrational.  
Liang Riliang: It’s not very absurd. We should have mutual understandings.  
Deng Yijun: That’s beyond what I can do.

59 Most villagers have at least two buildings: one is left by their ancestors and is usually only one floor; the other is more modern and is several floors high. The ancestor’s house would be compensated at 1.5 times the total floor area; the other kind of housing would be compensated as if it were new housing after redevelopment. *Id.*

60 *Id.*
Deng Xiaohong: I don’t even have a job. You help me (get this deal done)!61

In such a situation, what can the village co-op and the real estate developer do to push this redevelopment plan forward? I would like to point out first that violence and threats were involved in this case: one of the nailhouses, not the one discussed above, was demolished in the early morning when the owners were not there. According to a manager of the developer, it was a mixup by the workers.62 A coffin had been put in front of the house before the demolition by unidentified people.63

This actually makes the question more perplexing: if violence and threats are the common and effective way to get things done, why did the village co-op, the developer’s partner, bother to sue the owners of the nailhouse in court, as discussed below?

On August 27, 2011, seven years after the official approval of the village redevelopment plan, the village co-op had an extraordinary shareholders’ meeting that passed a resolution by 83.39% of the total shares to regain the use rights to the collective-owned land within the redevelopment area and to sue the owners of nailhouses who refused to sign a contract with the village co-op.64 The court accepted the case on September 23, 2011. According to the Zhangshubu village co-op, by September 19, 2011, 91.32% of the households had signed contracts with it on 92.20% of total floor area to be

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61 与邓晓红、梁日亮的谈话记录（2011年9月21日）[Transcript of Negotiation with Deng Xiaohong and Liang Riliang (Sept. 21, 2011).]
63 Id.
64 樟树布股份合作公司股东大会决议（2011年8月27日）[Res. of the Shenzhen Zhangshubu Village Coop Shareholders’ Representative Assemb. (Aug. 27, 2011).]
demolished. Only 19 households, i.e., 8.68% of the total, owning 7.80% of total floor area to be demolished, had not signed contracts.65

This was an unprecedented case in Shenzhen and it raises two legal questions: (1) Is the village land still collective-owned after the Shenzhen government’s land nationalization in 2004 and (2) even if the village land is collective-owned, could the village collective by a majority vote reclaim use rights to residential plot that has been allocated to individual households?

In 2004, the Shenzhen government initiated a so-called “land nationalization after urbanization” (chengshihua zhuandi) campaign. The government declared that Shenzhen had finished urbanization and was the first city in China without agriculture. Accordingly, all land within its jurisdiction should be state-owned pursuant to Article 10 of the Chinese Constitution, which states that “urban land is state-owned,” and Section V, Article 2 of the Implementing Decrees of Land Administration Law, which states that, “The following land is state owned: in the case that members of all village collectives are all converted to urban residents, the land originally owned by village collectives.”66

Following its interpretation that the conversion of the status of villagers from rural to urban would convert the collective-owned land to state-owned land, the Shenzhen city government initiated a year-long campaign to replace 300,000 villagers’ rural hukou with urban hukou, integrating them into the urban welfare system. The Shenzhen city government, which was the actual controller and manager of state-owned land within its jurisdiction, intended to grab the collective-owned rural land through this land
65  Longgang Dist. Court Decision Civil Case First Trial No. 4886 (2011). [hereinafter Longgang Court Decision]
66  Implementing Decrees of Land Admin. Law, art. 2, § V (State Council No. 256, Dec. 27, 1998).]
Eventually the Shenzhen city government did grab a lot of rural land, but not all of it as the government had planned—in reality farmers still exercised *de facto* control over 300 square kilometers of the original rural land.

This land nationalization was a serious encroachment on villagers’ land rights. It was also an intentional misinterpretation of the Chinese Constitution and LAL and was designed to get around the increasingly strict approval procedure of the central government in controlling local governments’ land requisitions. Although the Shenzhen government managed to get authorization from the central government leadership and finish the land nationalization before the Ministry of Land and Resource (“MLR”) could stop it, the Chinese MLR still declared publicly that, “This practice in Shenzhen cannot serve as a precedent.” (“*shenzhen zuo fa, xia bu wei li.*”) To minimize the challenge of such a practice to the Chinese land administration system, the MLR even promulgated a special opinion interpreting Section V, Article 2 of the Implementing Decrees of Land Administration Law, stating that when the land of village collectives is requisitioned *according to law* and all its members have become urban residents, the little amount of remaining land can be requisitioned to become state-owned land *according to law*. This means, for example, that when all land allocated to rural households within a village have been requisitioned according to law (in particular the central government’s land use quota system), the remaining land that has not been allocated could also be requisitioned because all the rural residents have become urban residents. Thus a local government cannot nationalize rural land within a village by declaring its members to be urban residents. A certain sequence must be followed to requisition rural land: rural residents

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67 Though urban land is state-owned, in reality it is the city/county governments which control and manage the land.

can lose their rural status only after their land is taken; it cannot be done in reverse order.  

Notwithstanding the above, the central government has essentially acquiesced in the official position of the Shenzhen city government: officially, all land within Shenzhen has been nationalized and no collective-owned rural land remains. The Zhangshubu village co-op’s resolution explicitly contradicted the Shenzhen city government’s official stance that all land was state-owned. The resolution claimed that land in the village was still collective-owned and thus the village co-op had rights to regain the individual use rights to the collective-owned land. The relationship between the village co-op and individual village households is one of “land administration,” as in the relationship between a land owner and land users. As the owner’s rights are superior to that of users, the village co-op has the right to regain the use rights.

The second basis of the Zhangshubu village co-op’s argument was that this redevelopment plan had been passed by the majority vote of the village shareholders, and owners of the nailhouses, as shareholders of the village co-op, were bound by the resolution of the shareholders’ meeting. This is quite an innovative argument. The nailhouse owners challenged this argument on the ground that the shareholders’ meeting did not have the authority to decide this issue because their residential plots and houses were not part of the village co-op’s property. They even checked the asset sheet of the village co-op and found that their property was not listed there.

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Nevertheless, the local court decided that the village co-op had the authority to regain the land underneath the nailhouse and pay compensation to the owners at its objective value, which, according to an appraisal company hired by the village co-op, was only a bit over one million RMB.

The court’s decision consists of two parts. In the findings of fact, the court highlighted the fact that the redevelopment plan would serve the public interest at large, and had been passed by the majority votes of the village co-op shareholders, and that before the suit, over 90% of the villagers had signed a contract with the village co-op.70 In this factual part of the opinion, the court also reviewed the history of this nailhouse plot, which had been allocated to the owners for free due to their village membership.71 In the part of the opinion on the interpretation of laws, the court decided that the relationship between the village co-op and individual households should be governed by the laws applicable to rural residential plots, and thus their relationship was that between owners and users.72 The court avoided explicitly stating that the land was still rural land; rather it said that the relationship between the village co-op and its members should still be governed by the rural land law. This intentional ambiguity left room for the court to pursue what it saw as a decision made in the public interest and the interests of the local government without directly conflicting with the official interpretation. If pressed, the court could say that even if the land is nationalized, the relationship between village co-op and its members should still be governed by the rural land law as the Shenzhen government did not make special provisions about this relationship. In fact, village co-ops are officially recognized by the Shenzhen government as the dominant form of

70 Longgang Court Decision, supra note 72.
71 Id.
72 Id.
collective economic organizations, although in the changed situation, “collective economic organizations” do not have to be rural anymore.\footnote{《深圳经济特区股份合作公司条例》（1994年4月29日深圳市第一届人民代表大会常务委员会第二十二次会议通过1997年9月4日深圳市第二届人民代表大会常务委员会第十七次会议第一次修正2010年12月24日深圳市第五届人民代表大会常务委员会第五次会议第二次修正）[Shenzhen Special Economic Zone Decree of Share Coops (passed on April 29, 1994; revised on Sept. 4, 1997 & Dec. 24, 2010).]}

The court did not really point out the specific laws that grant the village co-op the right to regain use rights from its members. There are no such laws. Even during the Cultural Revolution, People’s Commune’s members had relatively secure rights to their houses and the land underneath, as residential houses were part of “living materials” (shenghuo ziliao).\footnote{韩俊主编：《中国农村土地问题调查》，上海远东出版社2009年版[HAN JUN, ED., SURVEY ON CHINA’S RURAL LAND ISSUES 89 (2009).]} The communist ideology is that “productive materials,” such as water buffalo and agricultural land and facilities, should be owned and used collectively; but land underneath commune members’ houses, though part of the collective ownership of rural land, were “living materials” and members’ rights to use it should be respected.\footnote{Id.} Thus there is no valid legal basis for the village co-op to regain residential plots from its members.

Nor did the court’s recognition of the majority vote for the redevelopment plan have any valid legal basis. Zhangshubu village co-op’s practice is similar to what Heller and Hills propose as “Land Assembly Districts” (“LADs”). Here the problem facing the Zhangshubu village co-op and the land developer is the same problem that LADs are designed to resolve:

After the land assembler has purchased a part of the planned larger parcel, the assembler becomes locked into purchasing the rest of it to avoid duplicating the site-specific investment at another site. Thus, existing owners become monopoly
suppliers of the assembled land. Knowing that the assembler requires each of their parcels, every owner may seek to be the last to sell, and then to hold out for all of the extra value created by the assembly. With several such holdouts, negotiations collapse because the assembler, of course, cannot pay the entire surplus to each owner.\(^\text{76}\)

The only difference is that village co-ops have been created ex ante, rather than ex post as the LADs had, and this might cause intra-group exploitation.\(^\text{77}\) Nevertheless, overall, this solution would be appealing to Chinese local governments as it would “defuse hostility toward eminent domain and avoid drastic limits on local governments' capacity to assemble land.”\(^\text{78}\) Actually, in Shenzhen and several other Chinese cities, the local government has encouraged intra-city villages to do “redevelopment by themselves” ("zixing gaizao"). Village community organizations are often better than local governments at persuading their members to sell their residential plots and houses and thus reduce the probability of hold-outs as members value their connections with other members of the community.\(^\text{79}\) This innovation created by Zhangshubu would further smooth redevelopment of intra-city villages by providing a legal solution to the collective action problem and would increase the village communities’ bargaining power in dealing with nailhouses. Actually, in this case, the owners of the nailhouse accepted compensation of about 25 million RMB, a figure close to the offer the village co-op board chairman gave in the negotiation described above.\(^\text{80}\)

What Zhangshubu village co-op has achieved in this case is astounding. It not only challenged the official definition of land ownership in Shenzhen, but it also provided


\(^{77}\) Id.

\(^{78}\) Id. at 1490.


\(^{80}\) Of course, the extra amount was paid under the table to avoid other villagers’ protests.
a new solution to the collective action problem in village redevelopment projects. What is more astounding is that it won the suit in a local court. Both Zhangshubu and the local court made use of the layering and fragmentation of law and made use of laws in its favor. But still the question remains as to why and how Zhangshubu achieved this.

II. Layering and Fragmentation of Law

Many laws are involved in above two cases, including:

(1) Clauses in the Chinese Land Administration Laws that prohibits rural land transfer and development.\textsuperscript{81}

(2) Clauses in the Chinese Constitution and Land Administration Law on land ownership: “urban land is state-owned; rural land is collective-owned.”\textsuperscript{82}

(3) Clauses in the Chinese Criminal Law that criminalize the “illegal transfer of land use rights.”\textsuperscript{83}

(4) The Guangdong Provincial Decree (No. 100 Decree) that allows transfer of rural land use rights.\textsuperscript{84}

(5) The Shenzhen City Decree that nationalized collective-owned land in Shenzhen.\textsuperscript{85}

(6) Interpretation of the LAL by the Chinese Ministry of Land and Resources that contradicts Shenzhen city’s interpretation of the LAL, on which the above Shenzhen city decree is based.\textsuperscript{86}

\textsuperscript{81} Chinese Land Admin. Law art. 43, 63. For more details, see Chapter One.

\textsuperscript{82} Chinese Land Admin. Law art. 8; Chinese Const. art. 10.

\textsuperscript{83} Chinese Crim. Code art. 228; 关于审理破坏土地资源刑事案件具体应用法律若干问题的解释(2000年 6 月 16日最高人民法院审判委员会第 1119次会议通过)[Chinese Supreme Court Interpretation on the Application of Laws in Criminal Cases of Damaging Land Resources (June 16, 2000)] (passed by the 1119\textsuperscript{th} Meeting of the Supreme Court Judicial Committee).

\textsuperscript{84} 广东省集体建设用地使用权流转管理办法（广东省人民政府令第 100 号）[Guangdong Provincial Decree on the Transfer of Use Rights to Collective-Owned Construction Land (June 23, 2005, Guangdong Provincial People’s Government No. 100 Decree)].

\textsuperscript{85} 《深圳市宝安龙岗两区城市化土地管理办法》（深府【2004】102 号，2004 年 6 月 26 日）[Shenzhen City Government Decree on Urbanization Land Administration in Longgang and Bao’An Districts (No. 102, June 26, 2004)].

\textsuperscript{86} 国务院法制办公室、国土资源部关于对《中华人民共和国土地管理法实施条例》第二条第（五）项的解释意见国函[2005]36 号[Opinion on Interpretation of Implementing Decrees of Land Administration Law art. 2, § V (State Council Office of Legal Affairs and Ministry of Land and Resources, March 4, 2005).]
(7) Variously, the Shenzhen City Decrees on old village redevelopment, on historical illegal buildings, and on enforcement of the national prohibition on rural land development and transfer, which are mutually contradictory to each other.

This case shows both the layering and fragmentation of law. “Layering” refers to variety, competition, and conflicts of laws in the vertical dimension, i.e., between laws made by different levels of authorities, such as those between the Chinese central government, provincial and city governments. “Fragmentation” refers to the fact that even laws along the horizontal dimension, i.e., laws and policies made by the same government could conflict with each other and that reconstitution of the same law at different local settings or different times might lead to different outcomes. The application of laws is far from unified. It is thus a question of which laws would be applied to a situation. Unfortunately, there are often no clear rules defining jurisdiction, as many laws and policies are made ad hoc. Even laws that are supposed to be applied uniformly can be interpreted and applied to unforeseen situations. The use of laws in ways that deviate from their intended purpose can be called “legal conversion,” which is an oft-adopted strategy by actors in a fragmented and layered institutional framework. As we have seen from the Wanfeng and Zhangshubu cases, it is hard to expect these fragmented and layered laws to be applied systematically to all villages. The question is then why Zhangshubu successfully gained legal rights to develop its land despite its challenge to the local government’s definition of land ownership, while Wanfeng suffered from criminal prosecution. In other words, why didn’t the Shenzhen government

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87 See Tsai, supra note 24, at 121.
punish Zhangshubu for challenging its definition of land ownership? Or why did Wanfeng not get legal rights to develop their land from the government? In sum, why did the two villages end up in different social control systems?

A. The Challenge to Law and Social Norms

The layering and fragmentation of law has not received much attention in the existing research on law and social norms, which focuses more on the evolution of social norms and how law can change social norms, but not how social norms can change law and the co-evolution of law and social norms. A systematic theory of the choice between law and social norms, and more broadly, between the five different “social controllers,” though elaborated by Robert Ellickson in his groundbreaking book published in 1991, has not been fully explored.

According to Ellickson’s system of social control, there are five controllers that form the sources of rules. An actor who imposes rules and sanctions on himself is exercising first-party control. A promise-enforced contract is a system of second-party control. Third-party control differs from second-party control in that the rules are ones to which the actor may not have agreed and enforced by persons not involved in the primary interactions; these rules include social norms, organization rules, and law.\(^{90}\) In the above mafia-style small-property business, the controlling system seems to be the mafia’s organization rules; in the “in the name of law” village case, the controlling system seems to be the law.

Professor Ellickson also discusses the choice of different controllers. According to him, there are controller-selecting norms, which are defined as “informal rules through

\(^{90}\) ROBERT ELICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES 126-7 (1991).
which nonhierarchical groups seek to apportion tasks among these various sources of social control." As Ellickson writes:

The crucial role of controller-selecting rules has gone little noticed. In a society replete with governments, private organizations, social forces, contractual arrangements, and individuals potentially capable of self-control, there must be rules that decide, for each domain of human activity, the division of social-control labor among the various controllers. Controller-selecting rules perform this function. They coordinate the social-control domains of, among others, the visible sovereigns that make and enforce laws and the invisible social forces that make and enforce norms.92

Professor Ellickson argues that “[t]he content of controller-selecting norms will reflect general expectations about the comparative efficiencies of social forces and the state in generating and enforcing rules.”93 Any social control system gives rise to certain associated transaction costs and members of a social group must consider various factors to minimize their total costs.94 This theory explains why there is “order without law” in Shasta County: a change in animal trespass law fails to affect resource allocation because “legal rules are costly to learn and enforce.” In the particular setting of Shasta County, between parties with complex continuing relationships, the transaction costs of resolving minor disputes through social norms are lower than through formal legal rules.95 The choice is thus made for the “social norms” controller.

Professor Ellickson’s system of social control, and in particular the controller-selecting norms, develops the Coase theorem and implicates more complicated and diverse relationships between law and social norms, as proved by the studies in the past

91 Id., at 240.
92 Id. at 134-5.
93 Id. at 249
94 Id. at 242.
95 Id. at 242-9; Robert C. Ellickson, Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County, 38 STAN. L. REV. 623, 628-9 (1986).
two decades. It is also consistent with the Coase theorem and the dominating literature on legal enforcement. The most classic statement in economic analysis of legal enforcement remains that “the optimal amount of enforcement is shown to depend on, among other things, the cost of catching and convicting offenders, the nature of punishments—for example, whether they are fines or prison terms—and the responses of offenders to changes in enforcement.”96 This means that whether a person chooses to control his behavior through the legal system or other social-control systems depends on a comparison of the costs and benefits in different systems. The behavioral challenge to law and economics mostly targets the rationality hypothesis, but not the cost-benefit analysis part.97

As the Shenzhen case has revealed, law is layered and fragmented in China. In such situations, what is the law and when is it enforced? Which controller is chosen by a village co-op, a main actor of the small-property market?

Following the cost-benefit analysis in law and economics, we could say that villagers would pursue the law that is most friendly to small property or would decide whether to comply with the legal prohibition on rural land development and transfer based on their calculations of their costs and benefits of complying with or disobeying the law. The problem is that with layering, fragmentation, and mutually-conflicting laws, it is hard to conduct the cost-benefit analysis, which is premised on a static view of the

mutually-influencing and co-evolving social-control systems. The basic idea is, what would happen if we add a third dimension, time, to Professor Ellickson’s two-dimension system of social control?98

When I say the village co-op led by Pan was captured by the mafia system, it is not to say that there had been a mafia system of small property ready for Pan to adopt. It is the confluence between the small-property market and the mafia that conceived the mafia-style small-property business. Similarly, it is not to say that there had been a legal system for the transfer of rural land use rights ready for Zhangshubu’s leader Deng Yijun to adopt. Although the Shenzhen city government has provided various policies that serve as official channels for villages to obtain legal rights, all of which are responses to the emergence of the small-property market, whether a village co-op can obtain legal rights through such channels is also subject to its interactions with the government.

Imagine that you were a village co-op leader in Shenzhen—what are the costs and benefits of developing small-property houses? You would ask whether the government would demolish your small-property constructions and whether you would be sent to prison for “illegal transfer of land use rights.” Or you would consider the question from the opposite angle—what are the costs and benefits of not developing small-property houses? What is the possibility of obtaining legal rights to develop the village land?

There is no abstract answer to give. It all depends on the micro- and macro- economic situations, the internal governance of your village, the strategy you have taken in dealing with the local government, and other factors. In addition the above factors are changing

98 Adding a third dimension to Professor Ellickson’s two-dimension table of the system of social control would transform the table to a cuboid, as each system would evolve across the time, during which they interact and influence each other. For Ellickson’s two-dimension system of social control, see Ellickson, supra note 97, at 131.
and mutually influencing each other. Because a village co-op can, to some extent, actually influence what law is applied and when that law is applied, its cost-benefit analysis is influenced by its own choice.\textsuperscript{99}

For the analysis of this \textit{fluid} situation, we must understand that for any particular actor, behaviors are decided not only by the economic restraints, as Demsetz would argue,\textsuperscript{100} nor only by pure communal settings, which Ostrom would emphasize,\textsuperscript{101} nor solely by interest groups or other political factors, which Levmore and Wyman would argue,\textsuperscript{102} but by all the above factors together. Simply speaking, there are not two or three stories about the evolution of property rights. It is one integrated and fluid story with all factors considered. Moreover, given particular economic, social, and political restraints, different actors still can choose different strategies. It is thus important to add actors into our discussion of institutions as well.

\textbf{B. Multiple-Network Evolution}

Two pieces of recent research in social sciences are particularly helpful in this regard. In their multi-level causal model of institutional change, Nee and Opper discuss how private entrepreneurs under economic incentives developed market practices decoupled from the old communist regime, and then how formal institutions made changes promoted by private entrepreneurs’ collective action and their own legitimacy seeking. The formal institutions also monitor the evolution of informal norms, and private

\textsuperscript{99} \textit{See} Part III for more details.
\textsuperscript{100} Demsetz, supra note 16.
\textsuperscript{101} Ostrom, supra note 15.
entrepreneurs from time to time have to comply with a particular set of formal rules. Overall, a private entrepreneur behaves in response to market incentives, pressures from his fellow businessman and partners, and micro- and macro-level changes in formal institutions. Both the community of private entrepreneurs and the political institutions have kept evolving together with the market.

Padgett and Powell develop a more delicate theory of the emergence of organizations and markets by applying chemistry concepts into social sciences. According to them, “[L]earning at the human level is equivalent to co-evolution of rules and protocols at the ‘chemical’ level. Actors thereby become vehicles through which autocatalytic life self-organizes.”¹⁰³ Their mantra in the book is that, “[I]n the short run, actors create relations; in the long run, relations create actors.”¹⁰⁴

They argue that most social science proceeds according to the logic of methodological individualism—taking as given some constitutive features of the hypothesized individual or actor. In contrast, they argue for a multiple-network perspective:

Our social science disciplines usually segregate their intellectual activities by analyzing only one domain at a time, as if the other domains and disciplines did not exist. At best, external domains are conceptually black-boxed as reified ‘environments’ without examining their internal structures. In contrast, the whole point of a multiple-network perspective is to superimpose multiple domains, with their respective production and exchange networks, and to examine feedback dynamics.¹⁰⁵

As they explain in their investigation of the multiple-network ensemble in Renaissance Florence:

¹⁰³ Padgett & Powell, supra note 14.
¹⁰⁴ Id. at 2
¹⁰⁵ Id.
In the economic domain, for example, the person may be a businessman; in the kinship domain, he may be a father; in the political domain, he may be a politician—all depending upon how he is attached to others in that domain. Properly speaking, individuals don’t have goals; roles have goals. Consistency of motivations across roles should in no way be presumed for complicated persons.\textsuperscript{106}

In the following part, I apply insights from both theories to explain the tragicomedy of small property in Shenzhen.

III. Village Leaders’ Three Identities and an Integrated Explanation

A village co-op leader in Shenzhen has three identities: operator of the village co-op company responsible for maximizing its economic performance; villagers’ elected representative charged with taking care of villagers’ interests\textsuperscript{107}; and implementer of government policies. As a company operator, a village leader should respond to economic incentives, such as the demand for rural land development and transfer. But his leadership and capability is not the only factor that contributes to the economic performance of a village co-op; the specific macro- and micro-economic situations matter as well, among other factors. A village co-op leader has a choice to develop the village land illegally against the legal prohibition or to apply for legal rights from the government, in particular considering the adaptive government policies adopted after the formation of the small-property market. As an elected village representative, a village co-op leader faces pressure for reelection and, thus, must satisfy villagers’ demands for dividend payments and other economic benefits as much and as soon as possible. The source for dividend payments can range from a purely illegal small-property business to other more legal businesses of the village co-ops, such as renting factory space. As an implementer of government policies, a village leader is expected to implement

\textsuperscript{106} Id. at 5.
\textsuperscript{107} Kinship is another factor that might influence village governance and property arrangements. However, as both are single-family-name villages, I assume that the kinship dynamics are not the reason for the difference between them.
government prohibition on rural land development and transfer as effectively as possible. In reality, he has the discretion to implement the prohibition to different degrees.

Choices in each arena are influenced by decisions in others. For example, economic choices and their effectiveness influence the other two arenas. Successful economic choices can increase a village co-op leader’s capacity to negotiate with both the government and ordinary villagers. An economic failure, on the other hand, would make it hard for a village co-op leader to satisfy the demands of either the government or ordinary villagers. As a result, he or she would tend to choose to make quick money from short-term small-property business. In the long run, this further decreases the leader’s capacity to implement government policies or take care of ordinary villagers’ interests, and increases the risk of being captured by organized violence.

Of course, once an economic choice is made, it also has influence on its choices in other two roles. For example, once the choice of going black is made, it would be hard for a village co-op leader to continue to implement government policies; rather, he would rely on bribery to continue his interactions with government agencies and officials. At the community level, being captured by the local mafia would damage a village co-op leader’s ability to respond to ordinary villagers’ interest demands; in the end he would have to rely mainly on organized violence to discourage villagers from demanding economic interests and participation in village governance. The mutual influence between the political and community levels is also significant. Once a village co-op leadership is captured by organized violence, although a relationship with the government could still be maintained through bribery, the hope for that village to be incorporated into the new legal order, i.e., a system that would grant it legal rights to develop its land, diminishes.
In contrast, village co-ops that are proactively implementing government policies, even though sometimes just rhetorically or under a radically different interpretation, might be rewarded by being given priority in entering into the legal system.

The mutual influence of different roles of a village co-op leader can be depicted using the following diagram:

Figure 1. Multiple-Network Evolution of Small Property\textsuperscript{108}

\textsuperscript{108} It is a simple application of the figure of the multiple-network ensemble in Renaissance Florence. See JOHN F. PADGETT & WALTER W. POWELL, THE EMERGENCE OF ORGANIZATIONS AND MARKETS 6 (2012).
A. Investment Failure, Village Crisis and Mafianization\textsuperscript{109} of Wanfeng

The village co-op form originated in Wanfeng. In 1984, Wanfeng began to experiment with village co-ops as a way to collect money for village development. Villagers can buy shares from the village co-op. In the early years, shareholders had good returns and Wanfeng was depicted as a model of “socialist common ownership,” which was said to provide a way to combine the advantages of market and socialism.\textsuperscript{110} Wanfeng village even held a conference on the so-called “Wanfeng Model” in the Grand People’s Hall in Beijing, where important national activities are often held. For a while, Wanfeng seemed to exemplify a new future for rural China. National leaders, including Deng Xiaoping, toured Wanfeng, which was an indication of its success.\textsuperscript{111}

Village co-ops are responsible for the management of collective-owned land that is not allocated to individual households. They use such land to build factories to rent to outside investors. Although village co-ops could participate in many other kinds of economic activities, land rent is the main income for all of the village co-ops in Shenzhen. Village co-ops are responsible for issuing dividends to their shareholders/villagers each year. Dividends become the main indicator for the village co-op’s performance in “representing villagers’ interests.” Villagers often cannot tell and even do not care how well the collective asset is managed by the village co-ops; what they really care about is how much dividend they are paid each year. Their support for the village co-op is also mainly based on the amount of dividends they are allocated. As the board of a village co-

\textsuperscript{109} In the existing literature, mafianization means “the pursuit of organized crime based on the privatization of physical security measures.” STUART CORBRIDGE ET AL., \textit{SEEING THE STATE: GOVERNANCE AND GOVERNMENTALITY IN INDIA} 39 (2005); \textit{see also} \textit{ECONOMIC LIBERALIZATION AND POLITICAL VIOLENCE: UTOPIA OR DYSTOPIA?} 331 (Francisco Gutierrez & Gerd Schonwalder, eds., 2010).

\textsuperscript{110} Tian & Jing, \textit{supra} note 48.

\textsuperscript{111} Southern Metropolitan Daily, \textit{supra} note 21, at 174.
op is elected every three years, village co-op leaders care more about how much dividend they could pay to shareholders/voters than they care about the long-term performance of the village co-op. Additionally, shares are spread among villagers, rather than concentrated among a few villagers. Even members of the village co-op boards have no more shares than ordinary villagers. Thus, there are no controlling shareholders who might have enough incentives to monitor the long-term economic performance of the village co-op.

If a village co-op makes money, issuing dividends is not such a problem. But tensions often arise when a village co-op does not make enough money to issue dividends or even suffers a loss. Unsurprisingly, some village co-ops issue dividends to villagers even when they have suffered an economic loss in that year. They often borrow money from banks to do so. In particular, many village co-ops rely on small-property businesses to issue dividends. Although it might not be the best investment from a long-term perspective, selling a plot of land to an outside investor, or co-operating with a real estate developer to build a small-property compound and then using the sales money to issue dividends, makes perfect sense for village co-ops, as they are under the pressure to issue dividends to their shareholders.

Unfortunately, the success of Wanfeng Village Co-op did not last long. At its height, in 1992, the year Deng Xiaoping toured Wanfeng, Wanfeng village co-op began to buy land in Hainan, Jiangxi, Yunnan, and many other parts of China. All of these investments failed with the meltdown of the real estate bubble in the early 1990s.\footnote{田加刚、刘丽琦、景剑峰: 《审计报告揭开南国第一村集资内幕》，《民主与法制时报》2006年 04 月 09 日 [Tian Jiagang, Liu Liyi & Jing Jianfeng, Audit Report Reveals the Inside Story of Fund}
The leader at the time, who was Pan’s father, tried in 1996 to decrease the amount of the annual dividend payment. This triggered a crisis of confidence. Pan’s father managed to remedy this crisis by asking for forgiveness from his villagers and promising better economic performance in the future.\textsuperscript{113} Afterwards, he began to unseat members of the village co-op board who had disagreed with him during the crisis, and he consolidated control over the village co-op between himself and his close family members. Nevertheless, in 2002, the village co-op could not afford to pay dividends to shareholders anymore.\textsuperscript{114} This ultimately led to a lasting village governance crisis.

In 2005 Pan’s father decided to retire, but he nonetheless supported Pan in his campaign to become party secretary and co-op board chairman of the village. Pan won the positions amidst complaints about the legitimacy of the election. Villagers were unhappy about this, and BD took advantage of this unhappiness. In 2007, a Wanfeng villager who was a little brother of BD stood out and demanded that Pan step down. He and his fellows in the village also mobilized others to go to the sub-district and district governments to report the problems in Wanfeng, including the abuse of power and corruption of Pan’s father, the alleged cheating in election, and non-payment of dividends, etc. The Shajing subdistrict government sent a working team to Wanfeng to investigate the problems. Pan panicked. Neither the villagers nor the sub-district government liked him. It seemed that he and his father would lose everything after the government’s investigation.

\textsuperscript{113} \textit{Southern Metropolitan Daily, supra} note 21, at 177.

\textsuperscript{114} \textit{Id.} at 172.
In this situation, BD became a life-line. According to Pan:

BD is from a nearby village. I knew him before that. I knew that he was very powerful in both the white and black worlds. …… I knew that if I devoted myself to BD, villagers would not dare make trouble anymore and I would keep my position. So I went to BD and begged him to deal with the villagers. One month later, the sub-district government asked me and the dissenting villagers to go to its office, and we made a deal there. Obviously BD can handle problems that the government cannot handle. Since then, I’m his little brother.

This village governance crisis not only explains why Pan was willing to become a little brother of BD and why Wanfeng village co-op sold land to BD’s companies so cheaply. It also influenced the interactions between Wanfeng village and the local government.

First, it led to a relationship mainly based on corruption. Because small property is still technically “illegal,” the Wanfeng village co-op paid regular money to government officials not to enforce the legal prohibition. In addition to participating in a mafia, Pan was also convicted of bribery. Each year, in spring festival and mid-autumn festival, the Wanfeng village co-op sent money to party-secretary Liu of the Shajing subdistrict in the form of gifts. From 2005 to 2012, the total amount was 1.25 million RMB. In 2009 and 2011, when the Bao’An district government decided to demolish several of Wanfeng’s small-property buildings and even to remove Pan from the position of village party secretary, Pan sent money to Liu in the total amount of RMB 1.2 million to resolve the issues. Regarding individual villagers’ building of small property, Wanfeng village co-op did not have the capacity to stop it. As these villagers would complain: “You still

115 Shenzhen Court Decision, supra note 27, at 46.
116 Id.
owe me dividends—how could you further stop me from making a living by building a small house?”

Second, the village governance crisis excluded Wanfeng from the Shenzhen’s government’s village redevelopment plans. In the early 2000s, Pan and his father had been hoping to benefit from the Shenzhen government’s village redevelopment policies. They made a plan for redeveloping the village and even showed their plan for a new village to reporters. As of 2014, Shenzhen government has approved over 300 village redevelopment projects, but Wanfeng has never been on the list. There are no details available for Wanfeng’s application for redevelopment, but its village governance crisis might have caused reasonable concern from the local government about whether the village co-op could persuade villagers to accept the plan and thus to surrender their land for it.

Moreover, the presence of BD would also dissuade any village redevelopment. Because many plots of the village land had been sold to BD or in cooperation with BD, it would be costly to assemble the plots from BD’s hands. The village redevelopment plan would grant legal rights to village land and thus required huge capital investment. BD, although rich enough to develop small-property buildings, did not have the billions of RMB required for a village redevelopment project. Village redevelopment projects are mostly carried out by the top real estate developers in China, who are among the few that have the financial capacity to take on such a project. A local mafia involved in organized crime is usually not a favorite business partner of such big companies, which are more sensitive to legal requirements.
In the end, Wanfeng village was excluded from the legal world and captured by the illegal world of violence and corruption. It was just a matter of time before it became the target of legal enforcement.

B. Increasing Dividends, Governing Capacity and Legalization of Zhangshubu

Zhangshubu village co-op presents an opposite case. On one hand, as the representative of villagers’ interests, it managed to be one of the first groups of villages that were incorporated into the Shenzhen government’s village redevelopment plan, and thus one of the first to get legal rights to develop village land. On the other hand, as the implementer of government policies, it successfully controlled the small-property development within the village. This was an important factor that helped its application for village redevelopment.

Since becoming the village head of Zhangshubu in 1999, Deng Yijun demonstrated his talent in developing the economy. His experience in a big real estate company also gave him a new idea for developing the economy: rather than building more buildings, as many other village co-ops in Shenzhen did, he focused on improving the village environment, following which housing rents were raised. During his leadership, dividends paid to villagers increased at an average annual rate of 10%.

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117 This does not mean there were no small-property constructions—in fact the village coop developed a small-property building, but the local government officials acquiesced in this illegal construction as a reward for the village coop’s support for a government expressway project. Xu Wenge, Up to One Thousand Small-Property Apartments Were Sold Out, SOUTHERN METROPOLITAN DAILY, June 3, 2010, http://focus.szonline.net/Channel/content/2010/201006/20100603/242134.html.

118 Cheng, Liu & Yan, supra note 61, at 81-95.
Increasing dividend payments enabled the village co-op to behave on the basis of long-term considerations. The first thing Deng Yijun did was to build a park to preserve 40,000 square meters of lychee forest. At that time, many village officials would have preferred to develop the land into buildings for sale or rent. But Deng Yijun intentionally played the “sustainable development” card and pushed this project through.  

Part of the success was attributable to the fact that the village co-op was not under much pressure to make money from this land to pay dividends to villagers.

Increasing dividend payments also won the village co-op leader support from the villagers to overcome the collective action problem. In 2000, a company that rented its factory space from the village co-op planned to move elsewhere because the original factory could no longer satisfy its manufacturing capacity. To expand the factory would involve moving dozens of individual households. Deng Yijun successfully persuaded the

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[119] Southern Metropolitan Daily, supra note 21, at 86.
households impacted by the expansion to move. As a result, the company paid three million more RMB per year to the village co-op for rental of the expanded factory space.\textsuperscript{120}

The Zhangshubu village co-op leader also managed to successfully implement government policies on many occasions, even at the expense of short-term village interests. For example, in 2012 the city planned to build an expressway crossing the village and a transformer station. The two projects required over 40,000 square meters of land from the village. Deng Yijun persuaded his villagers to support both projects.\textsuperscript{121}

Under the “sustainable development” umbrella, the Zhangshubu village co-op leader successfully restrained villagers from building small-property constructions. It was such a success that Zhangshubu became an oft-cited case by government officials who were worried about the continuous spread of small property in the city.

All of the above facilitated Zhangshubu’s application for village redevelopment. A leader of the Shenzhen city government said, “We should support villages like Zhangshubu, which strictly control the construction of illegal buildings.”\textsuperscript{122} Another reason for this quick acceptance is that the restriction of small-property development also decreased the cost and difficulty of redevelopment. As Deng Yijun said, “There will not be villagers who could become billionaires through village redevelopment. The top difficulty for village redevelopment is demolition. We don’t have many illegal buildings

\textsuperscript{120}《深圳市十大杰出青年候选人：邓奕军》[Deng Yijun, Candidate for Top Ten Outstanding Youth], http://news.qq.com/a/20071107/003755.htm.

\textsuperscript{121} Id.

\textsuperscript{122} 龙岗区委办公室：《第四次旧村改造工作会议纪要》（2003年8月26日）[OFF. OF THE PARTY COMM. OF LONGGANG DIST., SUMMARY OF THE FOURTH MEETING ON OLD VILLAGE REDEVELOPMENT (Aug. 26, 2003).]
and thus no complicated compensation problems.”

This also made the Zhangshubu village redevelopment an attractive deal for real estate developers. In the end, Zhangshubu village co-op got Wanke, the top real estate developer in China, as its partner.

Good relations with the government and a partnership with a top real estate company increased the village co-op’s capacity to negotiate with nailhouse owners in resolving the hold-out problem. Winning the case against the nailhouse owners gave the latter no choice but to accept the village co-op’s offer. In this instance, the village co-op has actually benefited from the layering and fragmentation of law through its creative interpretation and use of different laws, which was supported by the local court largely because the village co-op had successfully made itself a model of compliance with the law and supporting government policies and projects. In the future, this village co-op’s use of majority voting in village redevelopment might also influence the evolution of related formal institutions in Shenzhen.

In conclusion, Zhangshubu presents an example in which a village co-op made proactive use of the layering and fragmentation of law. It successfully created an advantage for itself in one system, and used it as leverage in other systems, the success of which in turn increased its leverage in the original system. This process went on continuously and not only did the village co-op win legal rights to develop and sell its land, but the accumulation of successful cases could also promote change in the whole system.

123 Southern Metropolitan Daily, supra note 21, at 87.
IV. Conclusion: Law in the Drama of the Commons?

Commons is generally equated to self-governance, and law has been either absent or treated as an outside competitor in the commons literature. In Garrett Hardin’s thought experiment of herds on the pasture, the state or law entered the picture as a possible solution only at the last stage.124 Carol Rose argues that custom is a means different from exclusive ownership by either individuals or governments, through which a commons may be managed.125 As she wrote, the intriguing aspect of customary rights is that they vest property rights in groups capable of self-management.126 Elinor Ostrom’s major contribution was persuasively proving self-governance as an alternative solution besides privatization and state control in governing common pool resources.127 Different from others, however, she took the interaction between local communities and the macro political and legal environment more seriously. As she wrote, appropriators of common pool resources can redefine structure and rules of their behaviors, and usually make decisions in a sequential and contingent manner.128 It is this spirit that this paper endeavors to carry forward one step further. This paper emphasizes that law and social norms are actually endogenous, rather than exogenous to each other. This is particularly true in developing countries with layered and fragmented laws, between which social norms can grow, reinterpret, redefine, and even change subsequently the related laws. Community members’ taken on law, on one hand is contingent on the specific social

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124 Garrett Hardin, The Tragedy of the Commons, 162 SCIENCE 1243 (1968).
126 Id.
127 JOHN F. PADGETT & WALTER W. POWELL, THE EMERGENCE OF ORGANIZATIONS AND MARKETS (2012). (I am grateful to Xiaohong Xu for recommending this literature.)
settings and the macro legal and political environment, and on the other hand, can play a crucial role in determining the fate of the commons.

Perhaps it is more apt to call the collective land management in the Shenzhen villages a drama of the commons.\textsuperscript{129} Tragedy and comedy are just the two most extreme versions of the drama. There are many other villages somewhere on the spectrum between legalization and mafianization. Each village has its own distinct destiny that is determined by the co-evolution of the three systems and its own strategic choices, which are often made on an \textit{ad hoc} basis.

I hesitate somewhat in using the words “legalization” or “mafianization,” as it is easy to imagine a legal system or a mafia system that a village co-op tries to enter or is forced to enter, without recognizing the fact that both systems are changing and evolving together with the small-property norms. In addition, social norms always govern some spheres and will not be replaced by law, as evidenced by the prevalence of shadow economies in developed countries.\textsuperscript{130}

In Part III, I highlighted the role of dividend payments in village governance and the chain effects in the other two systems, but this is not a story about how economic success/failure led to success/failure in politics and community governance. Dividend payments themselves are subject not only to the market, but also to the latter two factors. The three systems, market, community, and law, are mutually influencing.

\textsuperscript{129} ELINOR OSTROM ET AL. ED., THE DRAMA OF THE COMMONS (2002).
\textsuperscript{130} The ratio of shadow economy in GNP ranges from 8.8\% in the U.S. to 28.6\% in Greece in OECD countries; in developing countries, it can be as high as 67.3\% in Georgia. \textit{See} Friedrich Schneider, \textit{Size and Measurement of the Informal Economy in 110 Countries}, Workshop of Australian National Tax Centre, ANU, Canberra. (2002).
The mutual-influence and co-evolution of different social-control systems seem mysterious and are difficult to observe and predict. To understand these phenomena, we need to focus on the different roles of the key actors that play simultaneously in all the social-control systems, none of which are external to or isolated from the others. The key actors connect different systems and make their co-evolution possible. Ultimately, the goal is not “rooting property law in social contracts,” but is instead a new kind of dynamic and symbiotic relationship between different social control systems, in particular between law and norms. Evolution of property rights is a systematic and integrated project.