

“PUT THAT BUCKET DOWN!”: MONEY, POLITICS, AND PROPERTY RIGHTS IN URBANIZING CHINA

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INTRODUCTION

XX [a neighbor] is building a second multi-story house. But who would tell that to the government? Such a filicidal thing, I'd never do!

—*A Resident of Valley Township, Mountain County, China*¹

Why is it “filicidal”—or in the Mountain County dialect, “a thing that condemns one to eternal childlessness” (*duanzijuesun de shi*)—to report a neighbor’s second house construction to the government?² Because in the context of rapid urban expansion, building a second house on one’s own farmland forces state laws and local norms to interact and take on concrete meanings regarding what is right and wrong behavior.³ Building a second house violates Chinese property law, which restricts rural families to owning only one rural house.⁴ Reporting a neighbor’s second house construction to the government could prevent the neighbor from selling or renting an extra house, and hence, from making a substantial profit and living a better life.⁵ Yet, building a second house does not offend local norms, and the norms of decency and community solidarity dictate that reporting a neighbor’s construction to the government is a malicious infliction of harm on others, a betrayal of the community, and an outright violation of basic morality—it is “a thing that condemns one to eternal childlessness.”

The above example illustrates that sometimes formal laws and informal norms are too vague to determine the desirability of conduct independently, but they can determine the desirability of that conduct jointly by giving each

1. Xiaoqian Hu, Fieldwork Journal, at 2014-025C [hereinafter Fieldwork Journal] (on file with author) (translation provided by Xiaoqian Hu).

2. Translations in this Article not otherwise indicated were provided by the author.

3. See *infra* Part V (discussing the interplay between laws, norms, and society with regard to property law).

4. See Tudi Guanli Fa (土地管理法) [Land Administration Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Jun. 25, 1986, effective Jan. 1, 1987), art. 62, translated in *Land Administration Law of the People’s Republic of China (2019 Amendment)*, PKULAW, https://pkulaw.com/en_law/4e5a046905fd9240bdfb.html (last visited Jan. 1, 2020) (outlining what one rural household can own and do on their house site).

5. See *infra* Part V.D (discussing how, prior to the 2011 and 2012 amendments, Chinese law forbid villagers from participation in land value as a result of urbanization).

other clearer meaning.⁶ I call this type of law-norm relationship *instantiation*.⁷ As this Article later shows, *instantiation* is just one of many law-norm dynamics.⁸ Given the ubiquity of formal laws and informal norms in social life (a phenomenon which socio-legal scholars call *legal pluralism*), understanding how they interact and shape human behavior on the ground is integral to efficacious lawmaking and accurate analysis of the law’s effect.⁹ Yet, existing literature on legal pluralism is rich in factual descriptions of plural rules, but poor in conceptual thematization of law-norm interactions.¹⁰ This Article uses a real-world phenomenon and attempts to thematize some law-norm relationships.

For analytic clarity and convenience, I define “law” as rules formally enacted by the state and “norms” as informal rules developed more organically by groups, communities, institutions, and society at large.¹¹ To distinguish norms from common practices, I also rely on Richard H. McAdams’s definition of norms as “informal social regularities that individuals feel obligated to follow because of an internalized sense of duty, because of a fear of external nonlegal sanctions, or both.”¹²

This Article’s empirical context, as the beginning quotation has already suggested, is villager-initiated illegal housing development in China’s urban peripheries, a distinct and ever-shifting space that I call peri-urban China.¹³ As China urbanizes, peri-urban farmland becomes valuable commercial real estate.¹⁴ Unlike in the United States, where landowners can capture that wealth through selling the land to a developer or developing the land themselves within the confines of local zoning law, in Chinese property law, real estate development has been a prerogative of the state and corporate

6. For a general discussion on how laws and norms shape the social meaning of human behavior, see, for example, Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996), and Lawrence Lessig, *The Regulation of Social Meaning*, 62 U. CHI. L. REV. 943 (1995).

7. See *infra* Part V.A.

8. See *infra* Part V.A.

9. For examples of legal pluralism studies, see *infra* notes 48–55. The article that gave this intellectual subfield its formal definition is John Griffiths, *What Is Legal Pluralism?*, 24 J. LEGAL PLURALISM & UNOFFICIAL L. 1 (1986).

10. See *infra* text accompanying notes 57–60 (summarizing one scholar’s criticism of current literature in the field of legal pluralism).

11. My definition of law as state-made formal rules might come across to some scholars as “state-centric,” as privileging the state as the only (or most important) source of rules. I hope that readers will find ample refutations of such an impression in my analysis. For more explanation of “state centrism” (or “legal centrism”) and its relationship with legal pluralism studies, see *infra* note 55.

12. Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 340 (1997) [hereinafter McAdams, *Origin, Development, and Regulation*].

13. See *supra* note 1 and accompanying text.

14. See *infra* notes 96–99 and accompanying text (explaining that China’s expanding cities need a constant supply of new land for housing).

entrepreneurs, and the law has authorized them to capture that wealth increase to the exclusion of peri-urban villagers.¹⁵ In response, peri-urban villagers across China have sought that wealth by conducting real estate development themselves—in direct violation of the law.¹⁶

Building upon fieldwork in one Chinese county, I show how a dazzling array of state laws and local norms interacted in complex and sometimes hilarious ways and jointly shaped the bargaining positions of villager-developers and demolition officials.¹⁷ These plural rules ranged from property law, tort law, criminal law, and administrative law; to social norms of civility, neighborhood solidarity, filial piety, and peasant stereotypes; to political norms of collegiality, regime legitimacy, and legal obedience; and to religious norms of heavenly punishment and evil-making.¹⁸ I identify four types of concurrent or sequential law-norm interactions¹⁹:

(1) *Instantiation*, where laws and norms delineate each other's meaning in specific instances.²⁰ For example, the property rule of “one rural household, one rural house”; the ambiguous law on household partition; and local norms about marriage, household partition, and filial piety jointly defined rural families' property rights in concrete scenarios.²¹

(2) *Waxing and waning*, where laws and norms reinforce or undermine each other's effect on human behavior.²² In Mountain County, this multitude of rules interacted in ways that happened to undermine the effect of land use law but reinforce the effect of procedural laws that restrict officials' demolition power.²³

(3) *Transformation*, where laws and norms gradually transform each other's meaning.²⁴ For example, as property law pitted villager-developers against demolition officials, villagers turned stereotypes of “the vulgar

15. See *infra* text accompanying notes 117–30 (describing the legal framework that siphoned new wealth from rural land development to the government). I am using the past participle tense because the Chinese legislature recently amended the Land Administration Law to break up this state-corporate prerogative and to allow rural collectives to initiate real estate development. See *infra* note 112 and accompanying text (discussing the amendment's change to existing law). The law is too new to have an effect on Chinese society. For a detailed analysis of the new law, see *infra* text accompanying notes 159–72.

16. See *infra* text accompanying notes 191–97 (describing the phenomenon of illegal real estate development in peri-urban China).

17. See *infra* Parts III, IV.

18. See *infra* Part V.

19. See *infra* notes 20–27 and accompanying text.

20. See *infra* Part V.A (describing how rules take on “concrete” meaning in Mountain County).

21. See *infra* Part V.A.

22. See *infra* Part V.B (analyzing the relationship between strengthening and weakening norms and laws in Mountain County).

23. See *infra* Part V.B.

24. See *infra* Part V.C (discussing the transformation of legal norms in Mountain County).

peasant” and “the hysterical peasant woman” upside down by acting them out to harass or humiliate officials.²⁵

(4) *Rule production*, where overtime laws and norms interact to produce new rules.²⁶ For example, when villagers bribed officials in exchange for non-enforcement, the social norms of reciprocity and gift-giving interacted with other laws and norms and were producing a political norm of “resource sharing” (*ziyuan gongxiang*, a euphemism for corruption) between villagers and officials (*rule production*).²⁷

The rest of this Article is comprised of five Parts and a conclusion. Part I identifies two theoretical weaknesses in the legal pluralism literature that may have contributed to a lack of thematic interrogation of law-norm interactions.²⁸ It also explains why I chose villager-initiated illegal housing development in China as a case study and where and how I conducted ethnographic work.²⁹

Part II explains the structural background of villager-initiated illegal housing development in peri-urban China, and in this process introduces some of the most important formal laws that shaped villager and official behaviors in Mountain County (pseudonym).³⁰ Part II is also a novel analysis of an important property phenomenon in China—villager-initiated illegal housing development.³¹ It argues that this phenomenon is not just about market norms of entrepreneurism trumping inefficient state law.³² Fundamentally, it is symptomatic of a class problem created by the Chinese legal system, particularly property law, which has denied two classes of vulnerable citizens access to wealth and opportunities created by urbanization: peri-urban villagers who risk displacement by urban development and rural migrants who face underemployment and impoverishment in the countryside.³³ In response, these two classes ally with each other, defy Chinese property law, and seek shared prosperity through

25. *See infra* Part V.C.

26. *See infra* Part V.C.

27. *See infra* Part V.C.

28. *See infra* Part I.

29. *See infra* Part III (setting forth field work completed in peri-urban Mountain County, the case study for this Article).

30. *See infra* Part II.

31. *See infra* Part II.B.

32. *See infra* Part II.B (discussing how villager-initiated housing development is a class problem as opposed to a market problem).

33. *See infra* Part II.B.

illegal means.³⁴ Peri-urban villagers seek landed wealth; rural migrants seek urban jobs and services.³⁵

Part III provides an intimate account of how villagers negotiated or fought with officials over the construction and legality of commercial housing in peri-urban Mountain County.³⁶ This account presents an image of Chinese authoritarianism that contrasts with depictions presented by many social scientists writing about today's China.³⁷ In the latter iterations, the Chinese state frequently flouts its own laws, or uses law as a weapon to suppress protests and repress large sections of the population, often by violent and arbitrary methods.³⁸ My fieldwork indicates that officials and police officers in Mountain County seemed substantially constrained by formal and informal rules, to the extent that they were unable to stop villagers from illegally building commercial real estate.³⁹ Given the seeming contradiction between my findings and prior scholarly expositions of state violence and violations of the law, Part III also addresses a concern about the credibility of my fieldwork data and situates my findings within a broader literature that examines the more mundane and less draconian manifestations of Chinese authoritarianism.⁴⁰

One underlying premise of this Article is that people do not follow laws or norms automatically, and, hence, not all laws and norms that exist are equally binding. Part IV investigates why officials in Mountain County obeyed some rules but violated other rules, and how certain state laws and social and political norms (particularly the norms of legitimacy and gift-giving) may have motivated them to behave in these ways.⁴¹ I argue that officials in Mountain County showed restraint in using force in part because instances of local state lawlessness exposed by Chinese media had produced an image of a "violent, land-grabbing state."⁴² This image had eroded the legitimacy of the government and of officials in Mountain County. Showing

34. See *infra* Part II (noting how villager-initiated housing development is not only illegal, but is a class problem created by Chinese law).

35. See *infra* Part II.B.

36. See *infra* Part III.

37. See *infra* Part III.

38. See, e.g., *infra* notes 133–44 and accompanying text (discussing violent tactics that local governments would use against their citizens); see also *infra* notes 238–49 and accompanying text (describing and analyzing the Chinese state's use of intimidation and violence against residents in rural and urbanizing China).

39. See, e.g., *infra* Part III.B (narrating two events that demonstrate the inability of Mountain County officials to stop illegal construction).

40. See *infra* Part III.C.

41. See *infra* Part IV.

42. See *infra* Part IV.A–B (providing multiple explanations for why Mountain County officials exercised restraint).

restraint was officials’ effort to regain some legitimacy in a local society of mutual acquaintance and geographic immobility. Ironically, however, as officials tried to build legitimacy through public compliance with demolition procedural laws, they (or their colleagues) were also undermining their legitimacy-building effort by engaging in the private practice of corruption.⁴³

Having identified the relevant laws and norms and how they may have incentivized Mountain County officials and citizens in certain ways, Part V presents the four themes in which these laws and norms interacted and together shaped villager and official behavior in Mountain County’s illegal urbanization.⁴⁴ The Conclusion goes beyond Mountain County and discusses the ubiquity of legal pluralism in the United States and the Article’s theoretical implications for property legal studies.⁴⁵

I. THE STASIS OF LEGAL PLURALISM STUDIES

Two accounts of law-norm relations have emerged from the legal pluralism literature.⁴⁶ In one account, laws and norms are alternative mechanisms of social control, each exerting influence over territories of social life in competition with, and to the exclusion of, the other, and frequently, norms come out as the winner.⁴⁷ This account has described property relations in rural and urban neighborhoods,⁴⁸ animal theft in herding communities,⁴⁹ and commercial relations among merchants and companies.⁵⁰

43. See *infra* Part IV.C.

44. See *infra* Part V.

45. See *infra* notes 521–28 and accompanying text.

46. See *infra* notes 47–56 and accompanying text.

47. See *infra* notes 48–50 (listing examples of scholarship supporting the *competition-exclusion* view of law and norms).

48. See generally Boaventura de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasagarda*, 12 L. & SOC’Y REV. 5 (1977) (illuminating the informal legal systems in Rio de Janeiro’s squatter settlements); ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991) (exploring the norms of informal dispute resolution among cattle ranchers); Duncan Kennedy, *Legal Economics of U.S. Low Income Housing Markets in Light of “Informality” Analysis*, 4 J.L. SOC’Y 71 (2002) [hereinafter Kennedy, *Legal Economics*] (understanding transitions in low-income urban neighborhoods, in part, as the product of norms); Gregory M. Duhl, *Property and Custom: Allocating Space in Public Places*, 79 TEMP. L. REV. 199 (2006) (attributing the arrangement of lunch trucks on the Temple University campus to norms); Ryan Thomas Devlin, “*An Area That Governs Itself*”: *Informality, Uncertainty and the Management of Street Vending in New York City*, 10 PLAN. THEORY 53 (2011) (discussing the power of norms in governing street vending in New York City).

49. See Julio L. Ruffini, *Dispute Over Livestock in Sardinia*, in *THE DISPUTE PROCESS—LAW IN TEN SOCIETIES* 209–46 (Laura Nader & Harry F. Todd, Jr. eds., 1978) (explaining that the Sardinian shepherd relies almost exclusively on informal social systems rather than formal state power to resolve disputes over livestock).

50. See generally Stewart Macaulay, *Non-Contractual Relations in Business: A Preliminary Study*, 28 AM. SOC. REV. 55 (1963) (finding that business people preferred to resolve disagreements

In the other account, laws and norms coexist in the same socio-legal space, superimpose upon each other, and evolve in relation to each other to affect human behavior.⁵¹ Such co-regulation exists in property relations in rural, suburban, and urban communities;⁵² dispute resolution in village, tribal, or community life;⁵³ and social movements across the globe.⁵⁴ The first account cautions against viewing formal law as the only source of rules and helps explain why some laws fail to achieve intended effects.⁵⁵ However, this

without resort to attorneys and contract provisions); Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992) (examining the elaborate internal rules that diamond traders and merchants observe); BARAK RICHMAN, *STATELESS COMMERCE: THE DIAMOND NETWORK AND THE PERSISTENCE OF RELATIONAL EXCHANGE* (2017) (using the diamond industry as a case study of communities that reject state laws and institutions in favor of norm-based self-governance).

51. See, e.g., Jane Kaufman Winn, *Relational Practices and the Marginalization of Law: Informal Financial Practices of Small Businesses in Taiwan*, 28 L. & SOC'Y REV. 193, 195 (1994) (arguing that government regulation and traditional economic networks have reinforced one another to nourish economic development in Taiwan); see also *infra* notes 52–54 (listing other examples of scholarship supporting the *co-existence* view of law and norms).

52. See generally Boaventura de Sousa Santos, *Law, State and Urban Struggles in Recife, Brazil*, 1 SOC. & LEGAL STUD. 235 (1992) (analyzing the social, political, and legal dynamics behind conflicts in urban Brazil); Kennedy, *Legal Economics*, *supra* note 48 (explaining how landlord-tenant relationships in low, middle, and upper-income markets are shaped by both formal laws and informal norms); RICHARD R.W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* (2013) (tracing the legal and social history of racially restrictive covenants in American residential neighborhoods); SHITONG QIAO, *CHINESE SMALL PROPERTY: THE CO-EVOLUTION OF LAW AND SOCIAL NORMS* (2018) [hereinafter *CHINESE SMALL PROPERTY*] (discussing how property laws and social norms interact to create a market for illegal buildings in Shenzhen).

53. See generally Jane F. Collier, *Political Leadership and Legal Change in Zinacantan*, 11 L. & SOC'Y REV. 131 (1976) (tracing the effect of Mexican development programs on a Maya community's dispute handling); KEEBET VON BENDA-BECKMANN, *THE BROKEN STAIRWAYS TO CONSENSUS: VILLAGE JUSTICE AND STATE COURTS IN MINANGKABAU* (1984) (examining life in a West Sumatran village where normative forces include traditional societal norms, Islamic law, and Dutch colonial law); Sally F. Moore, *Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study*, 7 L. & SOC'Y REV. 719 (1973) [hereinafter Moore, *Law and Social Change*] (using Manhattan's textile industry and land reform in Kilimanjaro, Tanzania as case studies to demonstrate how actors deploy both informal norms and state law).

54. See generally Jeremy Perelman & Lucie E. White, *Stones of Hope: Experience and Theory in African Economic and Social Rights Activism*, in *STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY* 149 (Lucie E. White & Jeremy Perelman eds., 2011) (drawing on case studies of African human rights activists); Sally Engle Merry, *Legal Pluralism and Transnational Culture: The Ka Ho'okolokolonui Kanaka Maoli Tribunal, Hawai'i, 1993*, in *HUMAN RIGHTS, CULTURE AND CONTEXT: ANTHROPOLOGICAL PERSPECTIVES* 28 (Richard A. Wilson ed., 1997) (observing how Hawaiian indigenous communities have adopted and modified the international concept of human rights).

55. The idea that formal law is the only source of rules is "legal centralism," which the subfield of legal pluralism was set out to denounce. See generally Griffiths, *supra* note 9 (setting forth the first definition of legal pluralism). This denunciation is most vehemently made by late legal sociologist John Griffiths. *Id.* at 2–8; accord John Griffiths, *The Social Working of Legal Rules*, 48 J. LEGAL PLURALISM 1, 66 (2003), and Gad Barzilai, *Beyond Relativism: Where Is Political Power in Legal Pluralism?*, 9 THEORETICAL INQUIRIES LAW 395, 396 (2008). Not all law and society scholars share Griffiths's view of

account cannot explain non-competing interactions between laws and norms. The second account opens a conceptual space for observing non-competing types of law-norm interaction, and—in scenarios where laws and norms do compete—for describing the process through which laws and norms compete for influence.⁵⁶

Despite (or perhaps partly because of) these broad observations, legal pluralism studies are—according to Sally Falk Moore, a founding figure of the subfield—in crisis.⁵⁷ Moore criticizes a tendency in legal pluralism literature “for factual reporting to replace theorizing.”⁵⁸ She bemoans that law and society scholars have placed so many miscellaneous phenomena under the umbrella of legal pluralism that the concept has become an *omnium gatherum* with little analytic utility.⁵⁹ She urges, “it is time to reconfigure the way ‘legal pluralism’ is used as a concept,” and refine and distinguish “the kinds of circumstances in which these rule systems operate.”⁶⁰

As I see it, two reasons may have contributed to a lack of analytic utility and, as a result, an intellectual *stasis* in legal pluralism literature. First, law and society scholars have been looking only at laws and norms that directly regulate what actors can and cannot do when bargaining with or confronting each other in specific situations.⁶¹ These are “foreground rules.”⁶² Behind these lurk the “background rules”—rules that shape what actors can and

legal centralism, however. Brian Z. Tamanaha, *The Folly of the ‘Social Scientific’ Concept of Legal Pluralism*, 20 J. L. & SOC’Y 192, 197 (1993). Brian Z. Tamanaha provocatively describes Griffiths’s critique of “legal centralism” as “to combat a non-existent enemy,” and asserts that “legal pluralists have created a fearsome, hegemonic opponent—legal centralism—in order to inflate the significance of their conception of legal pluralism.” *Id.* Tamanaha’s critiques aside, emphasizing the importance of social norms can backfire and indeed, has won law and society scholarship an anti-statist reputation and the label of “legal peripheralism.” Boaventura de Sousa Santos, *State, Law and Community in the World System: An Introduction*, 1 SOC. & LEGAL STUD. 131, 133 (1992); ELLICKSON, *supra* note 48, at 147–49

56. See, e.g., Moore, *Law and Social Change*, *supra* note 53, at 720 (introducing her approach to studying formal law and informal norms in context).

57. Sally Falk Moore, *Legal Pluralism as Omnium Gatherum*, 10 FIU L. REV. 5, 13 (2014) [hereinafter Moore, *Legal Pluralism*]. Moore does not use the very expression “in crisis.” See generally *id.* Her critique is soft in tone but sharp in substance.

58. *Id.* at 13 (emphasis omitted).

59. *Id.* “Omnium gatherum” means “a miscellaneous collection of a variety of things or persons.” *Omnium gatherum*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (Philip Babcock Gove ed., 1993).

60. Moore, *Legal Pluralism*, *supra* note 57, at 5, 18.

61. See Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 LEGAL STUD. F. 327, 330, 342 (1991) (highlighting a type of rule—“foreground rule”—that directly relates to what people are permitted to do in the context of protest).

62. See *id.* (proposing the term “foreground rule[]” to encapsulate rules governing strikes, lockouts, picketing, blacklisting, sabotage, and boycotts, among other things).

cannot do if they exit the current situation.⁶³ I suspect law and society scholars may have overlooked these background rules.

This omission seems particularly salient in the competition account. An example is Robert C. Ellickson's work on law and norms, which has sparked a long-lasting interest among legal scholars in social norms and is recognized as a major contribution to the study of legal pluralism.⁶⁴ Building upon fieldwork in farmer-rancher communities in Shasta County, California, Ellickson observes that some of the time formal law trumps social norms, but most of the time social norms trump formal law as the code of conduct for individuals, and he hypothesizes that social norms tend to maximize the aggregate group welfare.⁶⁵ The law-norm relationship emerging from this account is one in which law and norms regulate social affairs in competition with, and to the exclusion of, each other.⁶⁶ In reaching these observations, Ellickson treats "ground rules"—rules that protect personal safety and equality; and rules that create, define, and protect private property interests—as exogenous.⁶⁷ He limits the analysis to norms governing "workaday affairs"—rules that directly regulate "matters conducted on the stage that the ground rules have set."⁶⁸ Hence, when he observes that "law" is mostly irrelevant in Shasta County communities,⁶⁹ he is referring only to legal rules on animal trespass, which are foreground rules. The "ground rules" of property and personal safety, which Ellickson excludes from his analysis, are background rules.⁷⁰ These rules shape how neighbors negotiate animal

63. *Id.* at 330 (defining the term "background rules" in the context of labor disputes).

64. See generally ELLICKSON, *supra* note 48, at 1 (noting how, in at least one field study, people tend to follow norms "rather than formal legal rules[] to resolve most of the issues that arise among them"). For Ellickson's role in bringing norms to the attention of legal scholars, see, for example, McAdams, *Origin, Development, and Regulation*, *supra* note 12, at 344 (emphasis in original) (footnote omitted) ("Order Without Law created, or at least anticipated, a burgeoning new subfield of legal studies [on law and norms]. . ."). For recognition from legal pluralism scholars, see, for example, Moore, *Legal Pluralism*, *supra* note 57, at 11–12 (a two-page review of Ellickson's work in an overview of the legal pluralism literature of the past 50 years).

65. See ELLICKSON, *supra* note 48, at 52–64 (explaining how neighbors used informal norms, not formal law, to settle cattle trespassing disputes); *id.* 94–103 (describing how locals used courts to adjudicate highway collision disputes involving cattle); *id.* 167–83 (explaining the welfare-maximizing hypothesis).

66. See *supra* notes 47–50 and accompanying text (providing a sampling of the literature adhering to the competition-exclusion account of law-norm dynamics).

67. ELLICKSON, *supra* note 48, at 174–75.

68. *Id.* at 176. Ellickson does not analyze the influence of ground rules on workaday affairs, hoping that treating ground rules as exogenous (i.e., fixed) can help "provide a measurement of welfare that is essentially independent of the content of the workaday norms themselves." *Id.* at 175 (footnote omitted). However, different ground rules lead to different measurements of wealth. Hence, treating them as exogenous cannot truly prevent a measurement indeterminacy.

69. *Id.* at 280.

70. *Id.* at 174.

trespass disputes by telling them that if they refuse to negotiate, they cannot injure the other person or their cattle.

Another important set of background rules omitted by Ellickson is the set of rules that determines residents’ property rights regarding open-range and enclosed pastures and that authorizes the state to change people’s property rights by creating open-range or enclosed pastures. Supervisor John Caton was able to make the local bully, Frank Ellis, erect fences at his own expense and to make Doug Heinz finally give up on fighting, because he coerced the disputants using the state’s power to create open-range or enclosed pastures.⁷¹ In other words, the inclusion of ground rules in the analysis would reveal that, while some laws and norms may compete with and exclude each other in regulating behaviors, these same laws and norms may work in tandem with other norms or laws to reach the intended effect.

The second reason why legal pluralism literature lacks theoretical richness may be that it has a tendency to presume that law and norms each have distinct logic and meaning, and that while they may interact with each other through competition or collaboration, their internal logic and meaning remain unchanged.⁷² For example, Boaventura de Sousa Santos, another prominent voice in legal pluralism studies, visualizes legal pluralism as “different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions.”⁷³ However, the relational intimacy and potential dynamism portrayed in this visual image are drastically weakened by a static notion of law.⁷⁴ For, in a later article, Santos analogizes these plural rules to layers of text on a palimpsest (i.e., a manuscript sheet on which new texts are written over old texts).⁷⁵ The palimpsest metaphor conveys—perhaps beyond the intention of the author—that these plural rules have more or less pre-determined contents and interact with each other only in effect.⁷⁶

By presuming that law and norms have a distinct, unchanging essence, the legal pluralism literature misses many opportunities to explore the surprising ways in which plural rules intermix and co-regulate.⁷⁷ The presumption makes it harder for scholars of legal pluralism to perceive that

71. See *id.* at 33–39 (chronicling a power struggle between local authorities and ranchers).

72. See *infra* notes 73–76 and accompanying text.

73. Boaventura de Sousa Santos, *Law: A Map of Misreading. Toward a Postmodern Conception of Law*, 14 J.L. & SOC’Y 279, 297–98 (1987).

74. Boaventura de Sousa Santos, *The Heterogeneous State and Legal Pluralism in Mozambique*, 40 L. & SOC’Y REV. 39, 47–54 (2006) (analogizing laws and norms as archeological layers that superimpose upon each other).

75. *Id.*

76. See *id.* (creating a metaphor between laws and norms and a palimpsest).

77. See, e.g., *id.* (assuming that laws and norms are merely layered on top of each other and do not cause each other to change).

law-norm interactions can give definition to, or transform the established meaning of, laws and norms. That is, new laws and norms may emerge, not as a result of existing laws and norms incorporating each other, but as a result of that transformation. Hence, as Moore criticizes, legal pluralism literature is thick with factual descriptions of how actors use plural rules, but thin on theoretical analysis of how plural rules themselves are affected by their interactions.⁷⁸

This Article tackles these two weaknesses by expanding the purview of law and norms to include rules that shape actors' alternatives, and by operating on the idea that the meaning of laws and of norms can be redefined and even transformed. I hope that, like a sculptor's hammer and chisel, these approaches can enable me to carve into the formless blocks of the competition and co-regulation models and bring life and texture to law and norms.

I chose villager-initiated illegal housing development for exploring law-norm relations for two reasons. From extensive prior personal exposure, I know that this is an area where both laws and norms influence human behavior in prominent and profound ways. More recently, Western scholarship on law and norms has also been brought to bear on illegal housing development in Shenzhen, China by property scholars Frank Upham and Shitong Qiao.⁷⁹ Drawing insights from Ellickson and others, Upham and Qiao describe how market norms of entrepreneurship trump Chinese property law and create a vibrant illegal housing market in China's most prosperous city.⁸⁰ Lately, Qiao leans toward the co-regulation account of law-norm relations and, adding the dimension of time, argues that state law and social norms have a symbiotic, co-evolving relationship.⁸¹ Regarding Shenzhen's illegal housing market, social norms initially developed faster than property law; over time, property law began to catch up by incorporating social norms.⁸²

My fieldwork was conducted in Mountain County, a mountainous and, until a decade ago, agrarian county in southern inland China. It comprises five months of on-site interviews, conversations, and participant observation conducted on two trips between 2014 and 2016; and follow-up online conversations with several key interlocutors between 2016 and 2018. I talked

78. Moore, *Legal Pluralism*, *supra* note 57, at 13.

79. See generally Shitong Qiao & Frank Upham, *The Evolution of Relational Property Rights: A Case of Chinese Rural Land Reform*, 100 IOWA L. REV. 2479 (2015) [hereinafter Qiao & Upham, *Relational Property Rights*] (discussing Chinese property law reform and illegal housing).

80. *Id.* at 2500.

81. CHINESE SMALL PROPERTY, *supra* note 52, at 123, 147, 159.

82. *Id.* at 189–90 (describing the “long and bumpy road toward the convergence of property law and norms”).

to county and township officials; village cadres; builders, buyers, and renters of illegal housing units; corporate real estate developers; construction contractors and workers; bank managers; rural residents displaced, or soon to be displaced, by urban development; and ordinary rural and urban residents. I chose Mountain County as the fieldwork site, because, as a native of the region, I have both rich knowledge of local norms and extensive ties with local people. The former enabled me to detect the full scope of norms in play. The latter gave me quick access to a wide range of interlocutors: from villagers who violated the law to officials who enforced the law. It also allowed me to gain their trust as both an insider who was one of them and who understood them, and an outsider whose work and life were safely far away from theirs. My prior knowledge of Mountain County also enhanced my ability to obtain pertinent information and assess the credibility of the information obtained.

II. CHINA’S “PERI-URBAN SITUATION”

China is divided into two worlds: rural China and urban China. This division is institutionalized through the household registration (*hukou*) system, established by the Chinese Communist Party (CCP) in 1958 to prevent rural labor from migrating to the cities, and is enforced by China’s administrative apparatus.⁸³ During the Mao era (1949–1976), rural residents lived in houses inherited from ancestors or previously owned by landlords

83. The national legislation that established the strict *hukou* system was the 1958 Household Registration Regulations. *Hukou Dengji Tiaoli* (户口登记条例) [Household Registration Regulations] (promulgated by the Standing Comm. Nat’l People’s Cong., Jan. 9, 1958, effective Jan. 9, 1958), http://www.npc.gov.cn/wxzl/gongbao/2000-12/10/content_5004332.htm. For rural residents, their household registration (*hukou*) was in their native village, and, for married women, their husband’s native village. *Id.* art. 3. For urban residents, their *hukou* was usually with their work unit (*danwei*), as it was common for the latter to provide housing for its employees. *Id.* art. 3. The strict conditions imposed by this law made changes of residence virtually impossible for the overwhelming majority of Chinese villagers. *See id.* art. 10 (imposing numerous obstacles to moving, including the requirement to obtain a certificate of employment, academic admission, or admission to the city registration authority). During the Mao era, the Chinese state monopolized the supply of essential goods such as housing, grain, oil, sugar, and clothing fabric, and citizens’ eligibility to acquire these goods was tied to their *hukou*. R.P. Sinha, *Chinese Economic Performance*, 30 *WORLD TODAY* 33, 38, 39 (1974) (touching on the system of food and supply rationing in Mao’s China). As a result, the *hukou* system effectively prevented rural people from moving to the cities. China’s administrative apparatus resembles a five-tier pyramid, and in descending order of authority comprises the central, provincial (or equivalent), prefectural-municipal, county, and township (commune for the Mao-era) governments. *See China—Local Government*, *NATIONS ENCYCLOPEDIA*, <https://www.nationsencyclopedia.com/Asia-and-Oceania/China-LOCAL-GOVERNMENT.html> (last visited Jan. 6, 2020) (discussing China’s various levels of governance). The village committee is not part of the administrative apparatus, although village governance is heavily influenced by the Party and the government. All levels of government are under the leadership of the CCP. *XIANFA* arts. 1, 30, 111 (1982), http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm.

and distributed by the Communist government during the Socialist Land Reform, and worked on the collective farm owned first by their commune (the size of a township) and, after 1962, by their production team (two levels below the commune).⁸⁴ Urban residents worked in state-run enterprises and lived in houses owned by their enterprise.⁸⁵ Mao-era China was highly agrarian.⁸⁶ Although agriculture accounted for only 28% of the GDP, 82% of the population lived in rural China.⁸⁷ Like the internal passport system in the Soviet Union, the *hukou* system secured a cheap labor force for agricultural production and transferred wealth and resources from agriculture to urban and industrial development.⁸⁸

When it came to real property, there was no real estate market in either rural or urban China: housing was not for sale and all construction land was allocated for free by a rural or urban authority.⁸⁹ Things began to change when Deng Xiaoping, Mao's successor, decided to focus on economic development.⁹⁰ In the early 1980s, China opened four coastal cities to foreign

84. HUAIYIN LI, VILLAGE CHINA UNDER SOCIALISM AND REFORM: A MICRO HISTORY, 1948–2008, at 11–19 (2009) (providing an overview of pre- and post-1949 China); see also *China Under Mao 1949–1976*, CHINA ONLINE MUSEUM, <http://www.chinaonlinemuseum.com/history-mao.php> (last visited Jan. 6, 2020).

85. Donald Clarke, *China's Stealth Urban Land Revolution*, 62 AM. J. COMP. L. 323, 327 (2014) [hereinafter Clarke, *China's Urban Land*] (describing the status of urban real estate before 1979).

86. See Y.Y. Kueh, *Mao and Agriculture in China's Industrialization: Three Antitheses in a 50-Year Perspective*, CHINA Q. 700, 700–701 (discussing Mao Zedong's focus on China's agricultural sector).

87. These numbers are calculated based on statistics for the year 1978, two years after Mao's death. Guojia Tongji Ju (国家统计局) [NATIONAL BUREAU OF STATISTICS], CHINA STATISTICAL YEARBOOK §§ 2-1, 3-2 (2017), <http://www.stats.gov.cn/tjsj/ndsj/2017/indexch.htm>.

88. The Communist government gave the following reasons for the promulgation of the 1958 Household Registration Regulations: (1) to restrict the “blind” (*mangmu*) migration of rural populations to the cities, which was creating intense situations (*jinzhang jumian*) for urban transportation, housing, food provision, employment, and education; (2) the massive out-migration of rural labor affected agricultural production; (3) the migration disrupted the state's uniform plans for rural and urban labor; and (4) rural populations who “blindly migrated” to the cities could not find employment, and, hence, would face hardships and create shocks to social order. Wang Yuesheng (王跃生), *Zhongguo Dangdai Renkou Qianyi Zhengce Yanbian Kaocha: Lizu yu 20 Shiji 50–90 Niandai* (中国当代人口迁移政策演变考察—立足于 20 世纪 50–90 年代) [*A Study of the Policy Evolution Regarding Population Migration in Contemporary China: From the 1950s to the 1990s*], J. RENMIN U. CHINA, no. 5, 2013, at 103, 105. The *hukou* system was the “mother system” from which rural property and tax systems were created. *Id.*

89. For historical accounts of rural property relations, rural labor relations, and other aspects of rural life in Mao-era and reform-era China, see generally XIAOSHAN ZHANG ET AL., CHINA'S RURAL DEVELOPMENT ROAD (2018), and HUAIYIN LI, *supra* note 84. For a brief description of China's urban property regime during Mao's era, see Clarke, *China's Urban Land*, *supra* note 85, 326–28.

90. The political event that announced Deng's ascension to power and the beginning of post-Mao economic reform was the third plenary session of the eleventh Central Committee of the CCP, held in December 1978. Dong Le, *Q&A: China's Third Plenum*, BBC (Nov. 8, 2013), <https://www.bbc.com/news/world-asia-china-24846812>.

investors as special economic zones.⁹¹ As both foreign and domestic enterprises needed land to build factories and office buildings, coastal governments sold construction land to these enterprises—in violation of China’s socialist property system.⁹² To support industrialization, the National People’s Congress (China’s legislature) amended the Constitution in 1988 to legalize market transfers of land use rights.⁹³ Two years later, the State Council, the executive branch of China’s central government, operationalized such transfers.⁹⁴ As newly-built factories needed labor, the Chinese government also loosened the *hukou* system to allow citizens to work in other parts of China on the condition of obtaining a temporary residence certificate (*zanzhuzheng*).⁹⁵

In a matter of years, export-led industrialization transformed these special economic zones and spread along the coast from the south to the north, and later to inland cities and urban county seats.⁹⁶ The rapid economic development and influx of laborers created a large and growing demand for industrial, commercial, and residential buildings.⁹⁷ Original urban areas ran out of space.⁹⁸ Cities, county seats, and town centers expanded into the surrounding rural areas.⁹⁹

91. The Chinese government’s proposal to open Shenzhen, Zhuhai, Shantou, and Xiamen as the first four special economic zones was approved at the fifteenth session of the fifth Standing Committee of the National People’s Congress in 1980. Ann Fenwick, *Evaluating China’s Special Economic Zones*, 2 INT’L TAX & BUS. LAW. 376, 379 (1984).

92. For an account of such transactions in Shenzhen, see generally Shitong Qiao, *Planting Houses in Shenzhen: A Real Estate Market Without Legal Titles*, 29 CANADIAN J.L. & SOC’Y 253 (2014) [hereinafter Shitong Qiao, *Planting Houses*].

93. See XIANFA amend. 1, cl. 2 (1988), http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4498.htm (amending Article 10 of the Chinese Constitution to repeal the prohibition on land transfers).

94. Chengzhen Guoyou Tudi Shiyong Quan Churang he Zhuanrang Zanxing Tiaoli (城镇国有土地使用权出让和转让暂行条例) [Temporary Regulations on the Assignment and Transfer of Use Rights to State-Owned Urban Land] (promulgated by the State Council, May 19, 1990, effective May 19, 1990), translated in *Interim Regulations of the People’s Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-Owned Land in the Urban Areas*, PKULAW, https://pkulaw.com/en_law/32476a8fea17a15dbdfb.html (last visited Jan. 1, 2020).

95. The system of temporary residence certificates was created in Gong’an Bu Guanyu Chengzhen Zanzhu Renkou Guanli de Zanxing Guiding (公安部关于城镇暂住人口管理的暂行规定) [Temporary Stipulations on the Management of Temporary Populations in Cities and Towns] (promulgated by the Ministry of Public Security, July 13, 1985, effective July 13, 1985), <http://www.chinalawedu.com:8080/falvfagui/fg22598/36944.shtml>.

96. See MEG RITHMIRE, *LAND BARGAINS AND CHINESE CAPITALISM: THE POLITICS OF PROPERTY RIGHTS UNDER REFORM* 40–43 (2015) (noting that economic change rippled outward from the special economic zones).

97. See *id.* at 40–50 (detailing the real estate boom of the 1980s and early 1990s and its collapse in 1993 and 1994).

98. See *id.* at 86–92 (describing growth in the city of Dalian).

99. See LI ZHANG, *IN SEARCH OF PARADISE: MIDDLE-CLASS LIVING IN A CHINESE METROPOLIS* 137–42 (2010) (identifying urban takeover of farmland as one of two primary types of land development).

The expanding city and the contrasting countryside created a *peri-urban situation*.¹⁰⁰ Rural farmland on the urban outskirts now was in close proximity with urban and factory jobs.¹⁰¹ Previous economic backwaters suddenly became new centers of development, transforming previously rural, now peri-urban, land into huge wealth springs sought after by local governments and corporate entrepreneurs.¹⁰² Villagers found themselves swirled into an historic land struggle: how to stay on the land, and how to get a share of the urbanization pie.¹⁰³

A. Villager-Initiated Housing Development Is Against the Law

Property law structures peri-urban villagers' struggle for landed wealth in this peri-urban situation. Deng's policy of reform and opening-up (*gaige kaifang*) led to a bifurcated property law system.¹⁰⁴ In urban China, land and housing were commercialized after the 1988 legalization of transfers of construction land use rights.¹⁰⁵ As industrialization gathered pace, city and county governments all over China sold construction land use rights to industrialists and commercial developers.¹⁰⁶ Such rights were then exercised, resold, or used to obtain bank loans.¹⁰⁷ Previously public housing was also sold to resident families, often at discounted rates.¹⁰⁸ New buildings also came with fully alienable ownership rights.¹⁰⁹ Although use rights to urban construction land have terms ranging from 40 to 70 years, the renewal has now become automatic, with no preconditions and no need to apply.¹¹⁰ These

100. See RITHMIRE, *supra* note 96, at 86–92 (chronicling the city of Dalian's expansion into the countryside).

101. See *id.* at 62 (noting the rapid pace of urbanization and sprawl).

102. See *id.* at 44 (recalling the "real estate craze" and the large number of people and companies involved).

103. See *id.* at 62 (reporting that many villagers were displaced by land transfers and placed in "village redevelopment" projects).

104. See *infra* text accompanying notes 105–20 (describing the differing legal statuses of China's urban and rural land).

105. See *supra* text accompanying notes 93–94 (introducing the legal reforms that created land markets in China).

106. See RITHMIRE, *supra* note 96, at 42–43 (describing initial experimentation by cities in selling land use rights to raise revenue and the subsequent explosion in government sales to private developers); see also LI ZHANG, *supra* note 99, at 52–62 (illuminating the structural changes in real estate development, including the proliferation of private-state cooperation).

107. See LI ZHANG, *supra* note 99, at 59 (describing the ease with which state-connected developers obtained bank loans).

108. *Id.* at 37–38.

109. See Clarke, *China's Urban Land*, *supra* note 85, at 329, 334–35 (explaining that, after 1988, local governments had the freedom to transfer land for a negotiated price).

110. Donald Clarke, *Has China Restored Private Land Ownership?: The Implications of Beijing's New Policy*, FOREIGN AFFAIRS (May 16, 2017), <https://www.foreignaffairs.com/articles/china/2017-05->

changes, according to Chinese law specialist Donald C. Clarke, amount to nothing less than the restoration of private land ownership in China.¹¹¹

In rural China, however, construction land and housing were not commercialized.¹¹² Although property law stipulates that rural land is owned by a rural “collective” (usually the village), while urban land is owned by the state, the rural collective by no means has the kind of rights and powers the state has.¹¹³ The collective has a duty toward member households to lease, for free, parcels of farmland for 30 years and a parcel of residential land for an indefinite period.¹¹⁴ Forest and grass land are also leased to member households for free, usually for longer periods.¹¹⁵ Although the law defines the household as the owner of the house, should the household sell or rent the house, it loses the privilege to build a house again.¹¹⁶

Before the latest amendment of the Land Administration Law on August 26, 2019, neither the rural collective nor the individual households could use the land for industrial or urban purposes.¹¹⁷ The only non-agricultural use

16/has-china-restored-private-land-ownership (announcing the Chinese government’s decision to grant essentially full property rights for land in China’s cities).

111. *Id.*

112. This changed on August 26, 2019, when the thirteenth Standing Committee of the National People’s Congress passed a series of amendments to the Land Administration Law, allowing, for the first time, rural collectives to sell the right to use rural construction land or to lease such land to industrial and commercial players. Land Administration Law (amended 2019), art. 63.

113. Wuquanfa (物权法) [Property Law] (promulgated by Nat’l People’s Cong., Mar. 16, 2007, effective Oct. 1, 2007), arts. 47, 58, 60, *translated in* 2007 P.R.C. LAWS 3, 13, 14, 15.

114. *Id.* arts. 124, 126, 130, 131, 149. As use right holders, individual households have unobstructed possession of agricultural and housing land and can sublet farmland or transfer farmland use rights to other parties. *Id.* arts. 125, 128, 152. However, they cannot sublet housing land or transfer housing land use rights. Land Administration Law (amended 2019), art. 62. They cannot mortgage land. Property Law, arts. 128, 133, 180, *translated in* 2007 P.R.C. LAWS 3, 25–26, 33. Reaffirming the *hukou* system, non-village members cannot buy use rights to residential plots in the village, although the newly-amended Land Administration Law may open the door for real estate development on rural construction land, which will allow urban dwellers to buy built apartments. Land Administration Law (amended 2019), art. 63. In reality, not all member households have free parcels of farmland or housing land. Households formed after the last round of land redistribution in the village often do not have land, unless they receive land from the parents’ household. In industrialized areas on China’s east coast, construction land has become so scarce and valuable that newly-formed households no longer can obtain housing land for free or at all.

115. Property Law, art. 126, *translated in* 2007 P.R.C. LAWS 3, 25 (allowing grassland leases of up to 50 years and forest land leases up to 70 years).

116. Land Administration Law (amended 2019), art. 62.

117. Property Law, art. 128, *translated in* 2007 P.R.C. LAWS 3, 25–26 (allowing leasing of rural land but restricting use to agricultural purposes); Tudi Guanli Fa (土地管理法) [Land Administration Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 25, 1986, effective Jan. 1, 1987), arts. 36, 62, 63, 73, 74, 76, 77, *translated in* 2004 P.R.C. LAWS 399, 413, 421, 422, 424, 425 (proscribing conversion of agricultural land to non-agricultural use and authorizing fines and injunctive-style relief against violators); Nongcun Tudi Chengbao Fa (农村土地承包法) [Rural Land Contract Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 29, 2002, effective Mar. 1, 2003), arts. 8, 17, 33, *translated in* 2002 P.R.C. LAWS 103, 106–07, 109, 113 (requiring lessees of rural land to maintain the land’s agricultural use).

they could make of the land was to build village-owned enterprises.¹¹⁸ Village-owned enterprises and enterprises owned by township governments (jointly called “township and village enterprises” or TVEs in the English-language literature) were enormously successful in China in the 1980s and 1990s.¹¹⁹ However, starting in the late 1990s, TVEs all over China were closed down or sold to private individuals in the nationwide economic reform.¹²⁰

Hence, in the shadow of the *hukou* system that divides rural and urban China, commercial housing development has been out of bounds for both the rural collective and individual villagers. For commercial development to take place, the county or municipal government would expropriate the land and convert it to state-owned urban construction land.¹²¹ The government would then sell the right to use construction land to a licensed developer, who could then build, possess, use, lease, sell, or mortgage commercial properties on the land.¹²² In exchange, villagers would receive compensation based on the government’s estimate of the land’s previous productivity.¹²³ If there were structures on the land, villagers would be compensated for the construction costs of the structures, also estimated by the government.¹²⁴

Such have been the four broad strokes in which Chinese property law intended to divide the economic pie of peri-urban land development: the commodification of urban construction land and housing;¹²⁵ the non-commodification of rural construction land and housing;¹²⁶ the state’s monopoly in initiating real estate development;¹²⁷ and compensation

118. Land Administration Law (amended 2004), art. 43, *translated in* 2004 P.R.C. LAWS 399, 415.

119. See CHIH-JOU JAY CHEN, *TRANSFORMING RURAL CHINA: HOW LOCAL INSTITUTIONS SHAPE PROPERTY RIGHTS IN CHINA* 7 (2004) (reporting that, by the mid-1990s, TVEs accounted for half of China’s exports and a third of China’s employment). See *generally* SUSAN H. WHITING, *POWER AND WEALTH IN RURAL CHINA: THE POLITICAL ECONOMY OF INSTITUTIONAL CHANGE* (2001) (describing the changes in China’s rural industrial sector and attributing much of China’s economic growth to TVEs). See *generally* JEAN C. OI, *RURAL CHINA TAKES OFF: INSTITUTIONAL FOUNDATIONS OF ECONOMIC REFORM* (1999) (explaining the institutional factors that contributed to China’s rural industrial growth in the 1980s and 1990s).

120. CHIH-JOU JAY CHEN, *supra* note 119 (explaining that, by 2003, the collectively-owned TVEs had completely vanished, replaced by private and foreign ventures); WHITING, *supra* note 119, at 89–90 (discussing the privatization of collective enterprises starting in 1996).

121. See Land Administration Law (amended 2004), arts. 43–46 (providing government procedures for expropriating land for development).

122. See *id.* arts. 54, 55 (specifying the rights of developers who have obtained land from the government).

123. See *id.* art. 47 (establishing guidelines for government compensation for expropriated land).

124. *Id.*

125. See *supra* text accompanying notes 106–11.

126. See *supra* text accompanying notes 112–18.

127. See *supra* text accompanying notes 121–22.

standards based on the land’s previous use value.¹²⁸ In this legal design, the enormous increase in land value resulting from rural-to-urban conversion goes to the government, corporate developers, and banks that finance real estate development.¹²⁹ Peri-urban residents whose lease rights are taken receive no share of the increase.¹³⁰

This legal fact has had profound consequences for peri-urban villagers whose farmland was expropriated for urban development. In most parts of rural China, land is scarce in comparison with the size of the population.¹³¹ Scarcity is particularly pronounced in more industrialized peri-urban areas, which often have higher population densities than villages far away from industrial and urban centers.¹³² The small land size was doubly devastating to peri-urban villagers facing expropriation: the government often expropriated all of their land and rendered them landless, and the compensation was too small to help them set up a new livelihood.

Could peri-urban villagers keep the land by physically refusing to move, so that no expropriation or commercial development could take place? For a long time, the feasibility of this strategy was limited by two rules of legal permission.¹³³ First, prior to 2011, Chinese property law had no criteria for

128. See *supra* text accompanying notes 123–24.

129. See *supra* text accompanying notes 122–24.

130. See *supra* notes 121–24 and accompanying text (discussing how the government would expropriate the land from the peri-urban residents).

131. China has 577 million rural *hukou* holders and nearly 135 million hectares of arable land, averaging to 0.23 hectare per rural citizen. Guojia Tongji Ju (国家统计局) [NATIONAL BUREAU OF STATISTICS], CHINA STATISTICAL YEARBOOK §§ 2-1, 8-1 (2017), <http://www.stats.gov.cn/tjsj/ndsj/2017/indexch.htm>.

132. A map of China’s cultivated land per capita reveals that the northernmost strip of China has the highest figure; the further south the location, the lower the figure. Lu Qi et al., *Cultivated Land Loss Arising from the Rapid Urbanization in China*, AGRIFOOD RES. REPS., no. 68, 2005, at 313, 319 fig.1. Relatedly, below the northernmost strip, the further east the location, the lower the figure. *Id.* China’s industrialization, urbanization, and population migration present the opposite pattern: the further south and east the location, the higher the rates for industrialization, urbanization, and population increase. Elfie Swerts, *A Data Base on Chinese Urbanization: ChinaCities*, CYBERGEO, no. 830, Sept. 21, 2017, <https://journals.openedition.org/cybergeogeo/28554>.

133. They are rules of permission in the Hohfeldian sense. See generally Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710, 710 (1963) (discussing the following legal concepts: “right duty,” “privilege no-right,” “power liability,” and “immunity disability” in the context of “judicial reasoning”). In conventional legal thinking, one would say that there is no law prohibiting the government from employing certain tactics. Hohfeldian theory takes a different view. See generally *id.* (granting an actor one of several possibilities within “judicial reasoning”). In the Hohfeldian theory of legal relations, rules of permission create a “privilege no-right” legal relationship and give the privileged actor a license to harm others. *Id.* That is, the fact that a person lacks certain rights of legal redress against the government effectively grants the government the permission, or “privilege,” to harm that person. *Id.* For a detailed analysis of the significance of privilege-no right legal relations, see Joseph William Singer, *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld*, 82 WIS. L. REV. 975, 986–89, 993–94 (1982).

defining “public interest” for purposes of expropriation, and under the state’s GDP-centered development policy, economic development was by default for “public interest.”¹³⁴ This allowed local governments to liberally expropriate villagers’ land and sell it for real estate development.¹³⁵ Second, before 2011, Chinese property law had no due process procedures to regulate local governments’ power to evict residents and demolish their property.¹³⁶ This again gave local governments permission to forcefully evict people and demolish their houses.¹³⁷ The effect of these rules was strengthened by public security law and criminal law, which prohibit and punish actions that obstruct law enforcement.¹³⁸ Through a combination of these legal permissions and

134. See, e.g., Matthew S. Erie, *China’s (Post-)Socialist Property Rights Regime: Assessing the Impact of the Property Law on Illegal Land Takings*, 37 HONG KONG L.J. 919, 921–24, 942–44 (2007) (noting the perfunctory treatment of the “public interest” requirement and charging that the National People’s Congress intentionally left the term “public interest” undefined); see also Guoyou Tudi Shang Fangwu Zhengshou Yu Buchang Tiaoli (国有土地上房屋征收与补偿条例) [Regulations on the Expropriation and Compensation of Houses on State-Owned Land] (promulgated by St. Council, Jan. 21, 2011, effective Jan. 21, 2011), translated in *Regulation on the Expropriation of Buildings on State-owned Land and Compensation*, PKULAW, https://pkulaw.com/en_law/a023ee72c7df32b4bdfb.html (last visited Jan. 1, 2020) (discussing “public interests” within the larger framework of expropriation).

135. *Id.* A lack of clarity in the legal concept of “public interest” does not necessarily lead to rampant takings. In the United States, the Fifth Amendment does not define “public use.” U.S. CONST. amend. V. United States takings jurisprudence, from *Charles River Bridge v. Warren Bridge*, 36 U.S. (11 Pet.) 420, 421 (1837), to *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455, 459 (Mich. 1981), overruled by *Cty. of Wayne v. Hathcock*, 684 N.W.2d 765, 787 (Mich. 2004), and to the highly controversial *Kelo v. City of New London*, 545 U.S. 469, 472 (2005), is fraught with tensions and ambiguities. Nonetheless, the United States has a deep reservoir of legal and political norms that champion the sanctity of private property rights and that demand government forbearance from rearranging existing property relations. See Josh Blackman, *Popular Constitutionalism After Kelo*, 23 GEO. MASON L. REV. 255, 255 (2016) (“In an unprecedented legal backlash, Americans from across the political spectrum united to oppose what they overwhelmingly viewed as a grievous constitutional error.”). These norms restrict government’s eminent domain power. See e.g., *id.* at 260 (chronicling how, in California, groups added propositions to their ballot in response to *Kelo v. City of New London*). The strong backlash against *Kelo* is a visceral illustration of the power of these norms. See *id.* at 255–56 (“Through both legislative and judicial channels, Americans manifested a wide-ranging constitutional repudiation of the Supreme Court’s decision.”). China, as of now, does not have as deep a reservoir of such norms.

136. Land Administration Law (amended 2004), arts. 43–46, translated in 2004 P.R.C. LAWS 399, 415–17, and Property Law, art. 42–43, translated in 2007 P.R.C. LAWS 3, 12, 13, regulate the procedures of land expropriations. However, these laws are vague and concern mostly the relationship between the expropriating government and upper-level governments regarding the approval of an expropriating decision. They do not stipulate what the expropriating government or the private individual whose property is expropriated can and cannot do when an expropriation is being decided or implemented.

137. SARAH M. DAVIS, HUMAN RIGHTS WATCH, DEMOLISHED: FORCED EVICTIONS AND THE TENANT’S RIGHTS MOVEMENT IN CHINA 3 (2004).

138. Zhi’an Guanli Chufa Fa (治安管理处罚法) [Public Security Administration Punishments Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 28, 2005, effective Mar. 1, 2006), art. 50, translated in 2005 P.R.C. LAWS 53, 67; Xingfa (刑法) [Criminal Law] (promulgated by the Nat’l People’s Cong., Mar. 14, 1997, effective Oct. 1, 1997), art. 277, translated in 1997 P.R.C. LAWS 21, 101.

prohibitions, Chinese law reduced the costs of expropriation for local governments, while it increased the costs of resistance for residents.

As a result, local governments across China expropriated peri-urban land on large scales at high speed.¹³⁹ One scholar estimates that as many as “88 million became landless between 1990 and 2008,” and another 50.4 million would become landless “between 2009 and 2030.”¹⁴⁰ Some local governments forcefully took people’s land; refused to pay or paid grossly inadequate compensation; and worse still, deployed the police, hired thugs, or allowed developers to hire thugs to beat residents or drive them to commit suicide.¹⁴¹

Unjust and violent property expropriations caused widespread resistance. Many residents risked their lives by refusing to move (they are called “nail-households,” *dingzihu*, in China).¹⁴² Many petitioned higher authorities to seek redress, and many launched outright protests.¹⁴³ While these conflicts were largely hidden from the Chinese public before 2007, starting around 2007, Chinese media, including state media, began to publicize violent expropriations and instances of resident resistance.¹⁴⁴

139. See *infra* note 140 and accompanying text

140. Sally Sargeson, *Violence as Development: Land Expropriation and China’s Urbanization*, 40 J. PEASANT STUD. 1063, 1068 (2013).

141. See, e.g., Xiaolin Guo, *Land Expropriation and Rural Conflicts in China*, CHINA Q., June 2001, at 422 (relating accounts of the government using violence and bulldozers to forcibly expropriate land); Alvin Y. So, *Peasant Conflict and the Local Predatory State in the Chinese Countryside*, 34 J. PEASANT STUD. 560, 570 (2007); Qiao Long, *Three Peasants Self-Immolate*, RADIO FREE ASIA (Nov. 7, 2011), <https://www.rfa.org/english/news/china/fire-11072011185343.html> (reporting on a protest by villagers after the government hired thugs to seize their land); Matthew S. Erie, *Property Rights, Legal Consciousness and the New Media in China: The Hard Case of the “Toughest Nail-House in History”*, 12 CHINA INFO. 35, 42–47 (2012) (detailing cases in which local governments provided paltry compensation for expropriated land); AMNESTY INT’L, *STANDING THEIR GROUND: THOUSANDS FACE VIOLENT EVICTIONS IN CHINA* (2012), https://www.amnestyusa.org/wp-content/uploads/2017/04/standing_their_ground_asa_17_001_2012_web_email.pdf (reporting that a villager was arrested for protesting the local government’s expropriation of farm land and died in custody).

142. See Steve Hess, *Nail-Houses, Land Rights, and Frames of Injustice on China’s Protest Landscape*, 50 ASIAN SURVEY 908, 908 (2010) (explaining that holdouts against development have earned the name “nail-house[s]” because they resemble “stubborn ‘nails’ (*dingzi*) on a plank of wood that cannot be easily hammered down”); see also Erie, *supra* note 141, at 37 (analyzing *dingzihu* experiences in the buildup to the 2008 Olympic Games in Beijing).

143. For statistics on expropriation-inflicted petitions and protests, see CHRISTOPHER HEURLIN, *RESPONSIVE AUTHORITARIANISM IN CHINA: LAND, PROTESTS, AND POLICY MAKING* 56–57, 61, 78–81, 83 (2016) (explaining that resistance against land takings, including petitions and protests, took off in the early 2000s—the number of repeat petitions protesting demolitions tripled, the number of repeat petitions protesting land takings doubled every year, and instances of protestors surrounding government offices doubled between 2000 and 2010).

144. See, e.g., Guo Hongli & Hui Tangyi (郭虹李、慧唐奕), *Fayuan Pilu Chongqing Zui Niu Dingzi Hu Chaiqian Anzhi Xieyi Neirong* (法院披露重庆最牛钉子户拆迁安置协议内容) [*Court Reveals Demolition and Relocation Agreement with Chongqing’s Biggest Nail-Household*], SOHU (搜狐网) (Apr. 3, 2007), <http://news.sohu.com/20070403/n249169455.shtml> (republishing a story originally

Although resistance attempts were localized actions conducted by individual or community evictees, their stories and strategies spread beyond the locality through networks of friends, relatives, neighbors, co-workers, and the media, and inspired strategic resistance and bargaining in other places.¹⁴⁵ Through the media, these instances of struggle gained national public sympathy, and eventually pressured the CCP to view expropriations as a matter concerning national stability and prompted the Chinese state to enact more protective legislation and regulations.¹⁴⁶

reported by ZHONGXINWANG (state media) about a settlement agreement with a “nail household”); *Chongqing “Dingzi Hu” Shijian Tuoshan Jiejue, Gedi Lingdao Tan Chaiqian* (重庆《钉子户》事件妥善解决，各地领导谈拆迁) [*Nail-House Incident Appropriately Resolved, Leaders from Various Regions Discuss Demolitions and Relocations*], PEOPLE’S DAILY (人民网) (Apr. 2, 2007), <http://leaders.people.com.cn/GB/70158/5556436.html> (reporting on a “nail house” settlement, in state media); *Chengdu Jiang Chaiqian Zifen Shijian Dingxing Wei Baoli Kang Fa Sizhe Zhangfu Beiju* (成都将拆迁自焚事件定性为暴力抗法 死者丈夫被拘) [*Chengdu Characterizes Self-Immolation as Violent Obstruction of Law Enforcement, Deceased’s Husband Arrested*] PEOPLE’S DAILY (人民网) (Dec. 3, 2009), <http://house.people.com.cn/GB/10500222.html> (documenting a resident’s self-immolation and the city’s effort to delegitimize her protest); *Tangfuzhen Shijian Chengguan Juzhang Fuzhi Jinnian Chaiqian Zifen Wuguan Wen Ze* (唐福珍事件城管局长复职 近年拆迁自焚无官问责) [*Former Director of Urban Management Department in Tang Fuzhen Incident Returned to Original Position, No Officials Have Been Held Accountable For Demolition-Inflicted Self-Immolations in Recent Years*], SINA (Apr. 8, 2010), <http://news.sina.com.cn/c/sd/2010-04-08/101320031324.shtml> (republishing a story reported by NANFANG ZHOUMO (南方周末), one of China’s leading newspapers, examining the lack of official accountability for self-immolations, violent expropriations, and deaths of villagers buried alive during demolitions); Wang Xian (王娴), *Beijing Zui Niu Dingzi Hu Panju Naoshi Qi Nian Fangguan Ju Xia Chaiqian Caijue* (北京最牛钉子户盘踞闹市七年 房管局下拆迁裁决) [*Beijing’s Biggest Nail-House Remained in Noisy Downtown for Seven Years, Housing Management Bureau Issues Demolition Verdict*], CHINA NATIONAL RADIO (中广网) (Dec. 10, 2010), http://news.jcrb.com/jxsw/201012/t20101212_478015.html (chronicling the seven-year dispute between residents and a developer seeking to evict them); Chen Lu (陈璐), *Guangxi Shehei Zuzhi Baoli Chaiqian Shoushen, Biancheng Zaibang Zhengfu Zuo Haoshi* (广西涉黑组织暴力拆迁受审 辩称在帮政府做好事) [*Guangxi Gang Tried for Violent Demolitions, Argue They Were Doing the Government a Service*], PHOENIX NEWS (Dec. 18, 2013), http://news.ifeng.com/society/1/detail_2013_12/18/32216598_0.shtml (republishing a story originally reported in CHINA YOUTH DAILY (中国青年报), describing the prosecution of a violent demolition gang).

145. See, e.g., Yongnian Zheng & Guoguang Wu, *Information Technology, Public Space, and Collective Action in China*, 38 COMP. POL. STUD. 507, 508 (2005) (describing two cases in which local events sparked online discussion, which grew into “[i]nternet-based collective actions” against the Chinese government); YONGSHUN CAI, *COLLECTIVE RESISTANCE IN CHINA: WHY POPULAR PROTESTS SUCCEED OR FAIL* 88–89 (2010) (explaining that residents use social media to share stories and organize; for some, social media is also a springboard to news media coverage, which is an effective tool for influencing authorities); Erie, *supra* note 141, at 37, 46, 48 (documenting various strategies *dingzihu* use to share eviction stories on blogsites and in the community); HEURLIN, *supra* note 143, at 78–80 (explaining that the success of a small number of petitioners inspired many others to petition).

146. In great detail, Christopher Heurlin describes how the number, scale, and disruptiveness of petitions by landless farmers and evictees contributed to national and provincial policy changes, leading to higher compensation and the establishment of social security for landless farmers. HEURLIN, *supra* note 143, at 90–146.

Central to the legal reforms were the 2012 Administrative Enforcement Law, enacted by the National People’s Congress, and two regulations issued by the State Council: Regulations Concerning the Implementation of the Land Administration Law (amended in 2011) and Regulations on the Expropriation and Compensation of Houses on State-Owned Land (released in 2011).¹⁴⁷ The latter regulation sets forth: (1) much more detailed criteria for deciding whether an expropriation is in the public interest, and (2) housing compensation based on fair market value assessed by independent appraisal agencies.¹⁴⁸

Jointly, these three laws have delineated a sequence of procedures for demolishing expropriated or illegally constructed buildings.¹⁴⁹ First, a county- or higher-level government agency (usually the Department of State Land and Resources) issues a decision against the resident that the building shall be demolished by a specific time.¹⁵⁰ The resident has a right to dispute the decision in court or appeal to the next higher-level agency to reconsider it.¹⁵¹ If the resident does not sue or appeal, or if the decision is affirmed, and the resident refuses to demolish the building voluntarily, then the original agency has to petition the enforcement chamber of the county- or higher-

147. Xingzheng Qiangzhi Fa (中华人民共和国行政强制法) [Administrative Enforcement Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 30, 2011, effective Jan. 1, 2012), translated in 2011 P.R.C. LAWS 125; Guoyou Tudi Shang Fangwu Zhengshou yu Buchang Tiaoli (国有土地上房屋征收与补偿条例) [Regulations on the Expropriation and Compensation of Houses on State-Owned Land] (promulgated by St. Council, Jan. 21, 2011, effective Jan. 21, 2011), translated in *Regulation on the Expropriation of Buildings on State-Owned Land and Compensation*, PKULAW, https://pkulaw.com/en_law/a023ee72c7df32b4bdfb.html (last visited Jan. 1, 2020); Tudi Guanli Fa Shishi Tiaoli (土地管理法实施条例) [Regulations Concerning the Implementation of the Land Administration Law] (promulgated by the St. Council, Jan. 8, 2011, amended Jan. 8, 2011), translated in *Regulations Concerning the Implementation of the Land Administration Law (2011 Revision)*, PKULAW, https://pkulaw.com/en_law/1d19a3f8c9e9a910bdfb.html (last visited Jan. 1, 2020).

148. Regulations on the Expropriation and Compensation of Houses on State-Owned Land, arts. 8, 19, 20. This regulation concerns only state-owned land. Following this regulation, the Supreme People’s Court issued a judicial interpretation explicitly allowing rural residents and collectives to sue government agencies over a variety of administrative actions, including expropriation procedures concerning rural property. Zuigao Renmin Fayuan Guanyu Shenli Sheji Nongcun Jiti Tudi Xingzheng Anjian Ruogan Wenti de Guiding (最高人民法院关于审理涉及农村集体土地行政案件若干问题的规定) [Stipulations by the Supreme People’s Court on Several Issues in the Trial of Administrative Cases Concerning Rural Collective Land], <http://www.court.gov.cn/shenpan-xiangqing-3113.html> (Sup. People’s Ct. May 9, 2011). In particular, it allows rural residents to get a share of the value increase of peri-urban construction land if the expropriated land has been included in the local government’s urban zoning plan but residents have not been compensated for houses and other structures on the land. *Id.* In this case, a court may approve the resident’s demand for compensation based on the fair market value of the house and structures, minus the already-received compensation for the land. *Id.*

149. See *supra* notes 147–48 and accompanying text.

150. Regulations on the Expropriation and Compensation of Houses on State-Owned Land, art. 13; Administrative Enforcement Law, art. 35, translated in 2011 P.R.C. LAWS 125, 137.

151. Regulations on the Expropriation and Compensation of Houses on State-Owned Land, art. 14; Administrative Enforcement Law, art. 35, translated in 2011 P.R.C. LAWS 125, 137.

level court to execute the decision.¹⁵² Meanwhile, the law prohibits the government from using violence or threat of violence; enforcing the law at night or on weekends and holidays; or shutting off water, gas, heat, or electricity in inhabited buildings.¹⁵³

These newly enacted legal rules are designed to reduce unjust land expropriations and enhance peri-urban villagers' bargaining power when negotiating with the local state over distribution of peri-urban landed wealth.¹⁵⁴ One study has found that these reform measures have decreased expropriation conflicts in China.¹⁵⁵

The effect of these procedural legal reforms was limited by the fact the 2011 and 2012 reforms did not change the substantive distribution of increased wealth unleashed by urban real estate development.¹⁵⁶ Despite much public optimism in 2012, the Standing Committee of the National People's Congress (NPCSC) failed to amend the Land Administration Law to allow villagers to capture a share of increased wealth when rural land was expropriated for urban development.¹⁵⁷

As this Article entered the journal editing phase, an exciting major development occurred in the Chinese legislature.¹⁵⁸ On August 26, 2019, the NPCSC amended the Land Administration Law with the intention to fundamentally redraw the lines of wealth distribution in industrial and urban

152. Regulations on the Expropriation and Compensation of Houses on State-Owned Land, art. 28; Administrative Enforcement Law, art. 13, *translated in* 2011 P.R.C. LAWS 125, 130; Regulations Concerning the Implementation of the Land Administration Law, arts. 35, 36, 45.

153. Regulations on the Expropriation and Compensation of Houses on State-Owned Land, art. 27; Administrative Enforcement Law, arts. 43, 51, *translated in* 2011 P.R.C. LAWS 125, 138, 140.

154. Qiaowen Lin et al., *Conflicts of Land Expropriation in China During 2006–2016: An Overview and Its Spatio-Temporal Characteristics*, 76 LAND USE POL'Y 246, 250 (2018).

155. *Id.* The authors of this study collected and verified online data on land expropriation conflicts reported by the Chinese government, researched by academics, or published by the media. *Id.* at 247. They found that expropriation conflicts were on the rise between 2006 and 2010, peaked between 2010 and 2013, and began to decline drastically after 2013. *Id.* at 248.

156. *See supra* notes 147–55 (discussing the impacts and the ramifications that the reforms had on Chinese property law).

157. Heurlin analyzes why the Chinese state now allows urban residents to capture a share of the increase in land value when their houses are expropriated by the government, while still precluding rural residents from sharing the same benefit. HEURLIN, *supra* note 143, at 147–81. He attributes this to the internal struggle among the relevant policymaking bodies at the central and provincial levels: Ministries have single functions, and when a ministry is not negatively affected by stricter rules, it will align its interest with the residents and push for policy reform. *Id.* at 149–51, 180. Provincial governments have multiple functions and oppose policy reforms that hinder growth and tax collection. *Id.* at 149–51. The policy change regarding urban land expropriations was made by the State Council, where the ministries had more say; yet, policy changes regarding rural land expropriations are taking place within the National People's Congress, where provincial governments have more say. *Id.* at 151–53.

158. *See infra* note 159 and accompanying text.

land development.¹⁵⁹ First, the law deleted the old Article 43, which limited market transactions to state-owned construction land, and allowed rural collectives to transfer rural construction land use rights to private individuals and entities on the market.¹⁶⁰ Following such transfers, the private user of rural construction land can transfer, exchange, or give away the use right; or use it as capital to establish or join a company or as security for bank loans.¹⁶¹ In other words, the new law brings rural, collective-owned construction land to the same market that for decades has been reserved exclusively for urban, state-owned land.

Second, the law made several changes designed to increase compensation for rural citizens facing expropriation. In evaluating expropriation compensation, the law requires the government to consider not only the land’s original use and productivity, but also market and equity factors, including the location of the land, the supply of and demand for land, demographics, and the level of social and economic development of the region.¹⁶² For a rural citizen whose house is expropriated, the law requires the government to allow citizens to choose among three forms of compensation: a free residential plot for building a house, a free new house, or cash compensation.¹⁶³ The law also requires the government to ensure that citizens will receive compensation before vacating the expropriated house and that their post-expropriation living conditions shall improve rather than decline.¹⁶⁴ Last, but not least, the new law requires the government to provide social security to rural residents whose land is expropriated by incorporating them into the government’s pension and other social insurance systems previously reserved only for urban residents.¹⁶⁵

Third, the new law lists specific categories of land use as satisfying the “public interest” requirement for expropriation.¹⁶⁶ These categories are in

159. Land Administration Law (amended 2019). The amended law was released on September 5, 2019 and becomes effective on January 1, 2020. *Decision of the Standing Committee of the National People’s Congress on Amending the Land Administration Law of the People’s Republic of China*, PKULAW, https://pkulaw.com/en_law/56ddc57d4fba3b6dbdfb.html (last visited Jan. 1, 2020).

160. *Compare* Land Administration Law (amended 2004), art. 43, *translated in* 2004 P.R.C. LAWS 399, 415 (requiring developers to apply to the state for use of state-owned land), *with* Land Administration Law (amended 2019), arts. 11, 63 (providing that collectively-owned land shall be operated and managed by the collective, and granting the right to use construction land acquired via transfer).

161. Land Administration Law (amended 2019), art. 63.

162. *Id.* art. 48.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.* art. 45 (listing land uses deemed to be in the “public interest,” including military, energy, or water infrastructure; natural resource and cultural relics protection; affordable housing construction; and large-scale development approved by provincial or upper governments).

harmony with and encompass the earlier definition of “public interest” in Regulations on the Expropriation and Compensation of Houses on State-Owned Land.¹⁶⁷

Fourth, the amended law delineates the specific procedures for land expropriation.¹⁶⁸ Before the local government can apply to the appropriate upper-level government to approve an expropriation plan, the local government is required to: (1) conduct a current situation analysis regarding the land at issue and a social stability risk analysis of the proposed expropriation; (2) publicize the expropriation-compensation proposal in the concerned township, village, or production team within the village for at last 30 days to allow for public feedback; (3) hold a public hearing if many village members think that the proposed expropriation-compensation plan violates laws or local regulations and make appropriate changes after the hearing; (4) allow a period of time for all relevant property right holders to register their rights for compensation; (5) make sure sufficient funds are allocated for compensation; and (6) reach compensation agreements with individual land owners (rural collectives) and users; and if such an agreement cannot be reached, explain why in the proposal.¹⁶⁹ Like the case of defining “public interest,” these procedural guarantees are in harmony with and encompass the procedural guarantees in Regulations on the Expropriation and Compensation of Houses on State-Owned Land.¹⁷⁰

Essentially, the amended Land Administration Law abolished the decades-old dualist land system.¹⁷¹ In the new system, rural land is on an equal footing with urban land for industrial and commercial development, and rural collectives can initiate and benefit from such development in the same way as urban governments.¹⁷² As the amendments are new, it remains to be seen whether they will be enforced by local governments across China, and whether they will lead to a more equitable distribution of landed wealth in China’s continuous urbanization.

167. See Regulations on the Expropriation and Compensation of Houses on State-Owned Land, art. 8 (presenting a list of land uses deemed to be in the “public interest,” which closely resembles the list appearing in Article 45 of the recently amended Land Administration Law).

168. Land Administration Law (amended 2019), art. 47.

169. *Id.*

170. Regulations on the Expropriation and Compensation of Houses on State-Owned Land, arts. 10–12.

171. See *supra* notes 159–70 (chronicling what the 2019 amendment entails).

172. See *supra* notes 159–61 and accompanying text (explaining that the private market is no longer reserved for urban land—under the new law, rural collectives can transfer construction land).

B. Villager-Initiated Housing Development Is an Illegal Solution to a Law-Created Class Problem

If villager-initiated housing development violates the law, why would the central Chinese state tolerate legal violations on so massive a scale? I argue that this is because, fundamentally, villager-initiated housing development is an effective, though illegal, solution to an enormous class problem created by the Chinese legal system. While China’s urban economy depends upon hundreds of millions of rural migrant workers, China’s legal system has denied these workers affordable housing and social benefits enjoyed by local urban residents. Villager-initiated housing development is a class alliance between two institutionally-marginalized groups—peri-urban villagers who risk displacement by urban development and rural migrants who need housing in the city. Although the Chinese state denounces villager-initiated housing development as in violation of the law, it realizes the crucial functions that such development performs for China’s economy and institutional stability. Economically, villager-initiated illegal housing development solves the housing problem for 300 million working-class families.¹⁷³ Institutionally, it allows the Chinese state to maintain the *hukou* system, deny equal treatment to these 300 million residents, and concentrate resources to satisfy the demands of China’s growing urban middle class.

Prior to the latest legal amendments, Chinese intellectuals and policy advisors debated whether villagers should be allowed to capture the increased value of peri-urban farmland.¹⁷⁴ The dominant voice was that, as a matter of equality, villagers should be treated like urban residents and get a share of the pie through higher compensation for expropriation or direct negotiation with corporate developers.¹⁷⁵ A minority intellectual voice was that the solution to China’s rural-urban inequality lies in the strengthening of rural society, rural organization, and rural welfare; that is, peri-urban landed

173. See *infra* text accompanying notes 186–89 (estimating that over 226 million long-distance rural migrants and some of the 116 million intra-county rural *hukou*-holders live in urban areas but do not have access to affordable legal housing).

174. See *infra* notes 175–77 and accompanying text.

175. ZHOU QIREN (周其仁), CHENGXIANG ZHONGGUO: XIUDING BAN (城乡中国：修订版) [RURAL-URBAN CHINA: REVISED EDITION] 427–32, 445–46, 469–74 (2017); Liu Shouying (刘守英), *Zhongguo Chengxiang Er Yuan Tudi Zhidu De Tezheng, Wenti Yu Gaige* (中国城乡二元土地制度的特征、问题与改革) [Characteristics, Problems, and Reforms of China’s Rural-Urban Dualist Land System], 3 GUOJI JINGJI PINGLUN (国际经济评论) [INT’L ECON. REV.] 9, 11, 21–24 (2014); WEN GUANZHONG (文贯中), WU MIN WU DI: CHENGZHEN HUA, TUDI ZHIDU HE HUJI ZHIDU DE NEIZAI LUOJI (吾民无地：城镇化、土地制度和户籍制度的内在逻辑) [OUR PEOPLE HAVE NO LAND: THE INTERNAL LOGIC OF URBANIZATION, LAND SYSTEM, AND HOUSEHOLD REGISTRATION] 14–16, 31–32 (2014).

wealth should go to the government for funding rural development.¹⁷⁶ Allowing peri-urban residents to capture this wealth would produce a big land rentier group and weaken the government's ability to finance development in remote rural areas, which are in much greater need for support than peri-urban areas.¹⁷⁷

However, if we look at publicized data from the 2000s, the argument that peri-urban landed wealth should go to the state so that the state can fund rural development is not supported by facts.¹⁷⁸ In 2004, the State Council issued a policy document in response to nationwide land grabbing by local governments and to crises in agricultural and rural development.¹⁷⁹ The document requires local governments to divert at least 15% of the net revenue from land transfers to agricultural and rural infrastructure.¹⁸⁰ Although the policy was meant to transfer part of the peri-urban landed wealth to rural China, the 15% *net* revenue requirement is too little and ends up perpetuating rural-urban inequality, as net revenue, by definition, is whatever remains after all other parties have been paid and all other uses have been made. To illustrate, government figures suggest that from 2008 to 2010, only 3% of gross land transfer revenue was spent on rural infrastructure.¹⁸¹ By comparison, 33–40% of gross revenue was spent on urban infrastructure.¹⁸² This distribution of wealth, in effect, exacerbated rather than reduced rural-urban inequality.¹⁸³

176. HE XUEFENG (贺雪峰), DIQUAN DE LUOJI: ZHONGGUO NONGCUN TUDI ZHIDU QUXIANG HECHU? (地权的逻辑：中国农村土地制度去向何处) [THE LOGIC OF LAND RIGHTS: WHICH DIRECTION FOR CHINESE RURAL LAND POLICY?] 82–151 (2013).

177. *Id.* at 8–9, 61–67, 69–70; He Xuefeng (贺雪峰), *Xiao Chanquan Fang, Tudi Shouyi Yu Chengxiang Chaju* (小产权房、土地收益与城乡差距) [*Small Property Housing, Land Profit, and Rural-Urban Disparity*], 106 GUANGDONG SHANG XUEYUAN XUEBAO (广东商学院学报) [J. GUANGDONG BUS. SCH.] 54, 56–57, 58 (2009) (outlining various inequitable distributional consequences of allowing peri-urban villagers to capture the value increase of peri-urban land).

178. *See infra* notes 179–83 and accompanying text.

179. Guowuyuan Guanyu Jiang Bufen Tudi Churang Jin Yong Yu Nongye Tudi Kaifa Youguan Wenti de Tongzhi (国务院关于将部分土地出让金用于农业土地开发有关问题的通知) [Notice of the State Council on Relevant Issues Concerning Using Part of the Land Transfer Fees for the Development of Agricultural Land] (promulgated by the St. Council, Mar. 22, 2004, effective Mar. 22, 2004), *translated in Notice of the State Council on Relevant Issues Concerning Using Part of the Land Transfer Fees for the Development of Cultivated Land*, PKULAW, https://pkulaw.com/en_law/fb49a1ad7522a32cbdfb.html (last visited Jan. 5, 2020).

180. *Id.* ¶¶ 1–2.

181. I calculated these percentages based on expenditure and cost figures reported in LIU SHOUYING (刘守英), ZHIMIAN ZHONGGUO TUDI WENTI (直面中国土地问题) [CONFRONT CHINA'S LAND PROBLEM] 87, 89 (2013).

182. *Id.*

183. A note of clarification: The Chinese government does fund the construction of agricultural and rural infrastructure through other means. For example, the Ministry of Agriculture invested ¥32.85 billion (\$4.6 billion) in the construction and improvement of basic agricultural infrastructure in 2013. MINISTRY OF AGRIC., CHINA AGRICULTURE YEARBOOK 53 (English ed. 2014), <http://english.agri.gov.cn/>

Although class was not explicitly discussed in the Chinese debate, the debate boiled down to wealth distribution among the various classes in contemporary Chinese society—corporate elites, urban middle-class homebuyers, peri-urban villagers, and people of truly rural areas (including migrants in the cities and those remaining in the countryside). The dominant intellectual voice found an alignment of interests among the first three classes,¹⁸⁴ while the minority voice found this alignment of interests threatening to the fourth and weakest class.¹⁸⁵ Despite their opposite positions, neither voice discussed the current alliance between migrants from rural areas and peri-urban villagers in villager-initiated illegal housing development.

Today, China has at least 226 million rural migrants in the cities, of which 173 million are workers and 53 million are families (spouse and children).¹⁸⁶ Because rural migrants cannot change their *hukou*, they are ineligible for social benefits such as healthcare, poverty relief, housing allowance, and children’s education that city governments provide to local *hukou*-holders.¹⁸⁷ Hence, although migrant workers have helped build Chinese cities and many of their children grew up in these cities, the *hukou* system renders them permanent outsiders to the city. Denied housing allowances and the privilege to send their children to public schools, migrant workers have to look at alternative sources for a place to stay and for their children’s education.¹⁸⁸

In fact, the total number of rural *hukou*-holders working in urban China is even larger, as China also has 116 million rural *hukou*-holders who work in urban towns near their rural home.¹⁸⁹ Both these people and rural migrants working in faraway cities are called “farmer-workers” (*nongmin gong*) in

service/ayb/201511/P020151104554155448130.pdf.

184. For dominant voices, see ZHOU QIREN, *supra* note 175, at 427–32, 445–46, 469–74; Liu Shouying, *supra* note 175, at 9, 11, 21–24; WEN GUANZHONG, *supra* note 175, at 14–16, 31–32.

185. For minority voices, see HE XUEFENG, *supra* note 176, at 8–9, 61–67, 69–70, 82–151; He Xuefeng, *supra* note 177, at 54, 56–57, 58.

186. The 226 million number is compiled from government statistics. *Zhonghua Renmin Gongheguo 2018 Nian Guomin Jingji he Shehui Fazhan Tongji Gongbao* (中华人民共和国 2018 年国民经济和社会发展统计公报) [2018 Statistics Report on the Economic and Social Development of the People’s Republic of China], GUOJIA TONGJI JU (国家统计局) [NATIONAL BUREAU OF STATISTICS] (Feb. 28, 2019), http://www.stats.gov.cn/tjsj/zxfb/201902/t20190228_1651265.html. By the end of 2018, 59.58% of the Chinese population were urban residents, yet only 43.37% of the total population had urban *hukou*. *Id.* The total Chinese population in 2018 was 1,395 million. *Id.*

187. Hayden Windrow & Anik Guha, *The Hukou System, Migrant Workers, & State Power in the People’s Republic of China*, NW. J. INT’L. HUM. RTS., Spring 2005, at 1, ¶¶ 8–14.

188. *Id.* ¶ 13 (emphasizing that rural *hukou* registration holders are ineligible for benefits available to urban *hukou* registration holders, causing rural *hukou* holders to rely on agriculture for survival).

189. NATIONAL BUREAU OF STATISTICS, *supra* note 186 and accompanying text.

China and “migrant workers” in the English-language literature.¹⁹⁰ My fieldwork in Mountain County reveals that many rural residents keep and live in two homes: one in their native village and one in the urban town near their village. This allows them to work both on and off the farm and to send their children to urban schools, which are much better funded and staffed than rural schools. Those who are well-off purchase or rent apartments built by corporate developers in the urban town. Yet, for the vast majority, such apartments are beyond their means.

Hence, nationally, China has a housing problem for as many as 300 million working-class people. Where do they go?

China’s rapid industrialization and urbanization,¹⁹¹ under a law that distributed peri-urban landed wealth exclusively to the state and corporate entrepreneurs,¹⁹² prompted peri-urban villagers whose land was not yet expropriated by the government to take advantage of the land’s strategic location. These villagers built commercial units, sold or rented them to migrant workers and less affluent city dwellers, and made (and continue to make) handsome and even dazzling profits.¹⁹³ The Chinese public euphemistically call these illegal buildings “small property” (*xiao chanquan fang*), as they come with “smaller” property rights than those of legal buildings.¹⁹⁴ A 2007 government report estimated that small property housing constituted 20% of the total built space in Beijing and Tianjin, and 20–25% of the total built space in Xi’an.¹⁹⁵ Shenzhen has the highest percentage of small property housing in China: 49% of the total built space,

190. Wei Wang, *Identities of Migrant Worker: From Nongmin Gong (农民工) to Xin Shimin (新市民)*, ASIA DIALOGUE (June 18, 2015), <https://theasiadialogue.com/2015/06/18/identities-of-migrant-worker-from-nongmin-gong-%E5%86%9C%E6%B0%91%E5%B7%A5-to-xin-shimin-%E6%96%B0%E5%B8%82%E6%B0%91/> (discussing, in an English-language publication, different Chinese names for rural migrants including *nongmin gong* (“peasant worker”), and, all the while, using the English term “migrant worker”).

191. See *supra* text accompanying notes 90–103 (describing China’s economic transformation beginning in the Deng Xiaoping era).

192. See *supra* text accompanying notes 112–30 (summarizing the effect of China’s property law on peri-urban land development).

193. Will Buckingham & Kam Wing Chan, *One City, Two Systems: Chengzhongcun in China’s Urban System*, 27 J. CONTEMP. CHINA 584, 584, 586, 591 (2018) (explaining that small property housing is attractive to migrant workers because of its low cost and good location, despite the poor infrastructure in peri-urban villages); CHINESE SMALL PROPERTY, *supra* note 52, at 6 (explaining that farmers in peri-urban villages can make far more money by illegally building and selling housing than they can by farming); YOU-TIEN HSING, THE GREAT URBAN TRANSFORMATION: POLITICS OF LAND AND PROPERTY IN CHINA 127 (2010) (reporting that income from rents is the primary source of income for intra-urban villagers).

194. See Shitong Qiao, *Small Property, Big Market: A Focal Point Explanation*, 63 AM. J. COMP. L. 197, 197 (2015).

195. Wooyeal Paik & Kihyun Lee, *I Want to Be Expropriated!: The Politics of Xiaochanquanfang Land Development in Suburban China*, 21 J. CONTEMP. CHINA 261, 266–67 (2012).

according to a 2017 report.¹⁹⁶ Small property housing is also prevalent in smaller cities and towns. For example, in 2014, a journalist found that in one county in industrial Jiangsu, small property housing was so prevalent that it was hard to find “big property hous[ing].”¹⁹⁷

Hence, in China’s peri-urban situation, there have been two conflicting yet concurrent modes of urbanization: the state-corporate mode in the name of property law¹⁹⁸ and the villager-migrant mode in defiance of property law.¹⁹⁹ The two modes are different in terms of physical appearance, legality, actors, and wealth distribution.²⁰⁰ The fundamental divide, however, is class.²⁰¹ At the most general level, the state-corporate mode of urbanization directly serves corporate entrepreneurs and the urban middle class,²⁰² while the villager-migrant mode directly serves peri-urban villagers, migrant workers, and less affluent urban dwellers.²⁰³ In this multi-tiered class hierarchy, corporate elites occupy the very top, followed by China’s growing urban middle class, then by peri-urban residents who manage to share the pie of urbanization, and, lastly, by rural migrants and their fellow villagers who remain in the countryside.

196. *Shenzhen Huo Gei 5 Yi Pinfang Mi Xiao Chanquan Fang Tigong Chulu: Zulin* (深圳或给 5 亿平方米小产权房提供出路：租赁) [*Shenzhen May Offer a Way Out for the 500 Million Square Meters of Small Property Housing: Leasing*], HEXUN NEWS (Dec. 7, 2017), <http://news.hexun.com/2017-12-07/191907307.html>.

197. *Xiao Chanquan Fang Gaoya Zhi Xia Cheng Manyan Zhi Shi Difang Moxu Taidu Ling Ren Jingya* (小产权房高压之下呈蔓延之势地方默许态度令人惊讶) [*Small Property Housing Expands Despite Strict Restriction, Local Governmental Acquiescence Is Surprising*], SINA FIN. (May 26, 2014), <http://finance.sina.com.cn/china/20140526/005919218984.shtml>.

198. See *supra* text accompanying notes 121–24 (describing the legal process of rural land development and highlighting the fact that government and private developers dominate that process).

199. See *supra* notes 186–97 and accompanying text (describing the phenomenon of illegal housing development in peri-urban China and the economic pressures which have driven its spread across China).

200. Compare Buckingham & Chan, *supra* note 193, at 585 (noting China’s “skyscrapers, expressways, and state-of-the-art high-speed trains”), with YOU-TIEN HSING, *supra* note 193, at 127–29 (depicting—with words and photos—small property neighborhoods with extremely high population density and buildings so close they leave only a thread of sky above the street).

201. See text accompanying *supra* notes 184–97.

202. See *supra* text accompanying notes 181–82 (estimating that out of the revenue from legal development projects over ten times as much went to urban infrastructure improvements as did to rural infrastructure improvements).

203. See Buckingham & Chan, *supra* note 193, at 586 (explaining that the small property system gives migrant workers access to the city because it offers affordable housing and a good location).

III. ILLEGAL HOUSING DEVELOPMENT IN PERI-URBAN MOUNTAIN COUNTY

A. A Macro View

Mountain County has over 20 townships and roughly 400,000 residents.²⁰⁴ Illegal housing development occurred in Mountain County relatively late.²⁰⁵ Due to poor transportation and a lack of capital, Mountain County had very little industry in the 20th century. The mountainous terrain and high taxes and grain quotas kept people barely above starvation. In the mid-1990s, some young men and women joined the army of rural migrants to work in factories on the east coast. Since then, Mountain County has been a labor exporter, with roughly 20% of the population engaging in migrant work.

In the 2000s, the provincial government funded the construction of the first highway to connect Mountain County to the outside world. After the 2008 recession, more infrastructural projects were built in Mountain County as part of the Chinese government's ¥4-trillion stimulus package. These time-consuming, capital- and labor-intensive projects elicited a strong multiplier effect, and the county economy soared.

With remittances from migrant family members, wages from working on local construction sites, or profits from doing business, people in Mountain County were eager to live in a modern home. Real estate construction boomed in the countryside. When I went back to Mountain County in the summer of 2014, 90% of villagers already lived in a newly-built, two- or three-story house with well-lit rooms, tiled or paved floors, and modern appliances. This was a sea change for the locals, as for hundreds of years people had lived in single-story mud houses with battered dirt floors, no running water, and no indoor bathroom.

The newly-arrived affluence, yearning for urban life by young rural adults, and luxuries and opportunities in urban areas also created a prosperous urban housing market in the county seat and a few large town centers. The outskirts of the county seat were being turned into multi-story apartment buildings, restaurants, stores, squares, and parks. To attract home buyers, developers built splashy sales centers staffed with saleswomen who spoke Mandarin instead of the local dialect and served customers tea or even

204. The background information on Mountain County comes from a combination of personal observation, local knowledge, and government documents that I viewed during my visits to Mountain County. In an effort to protect the anonymity of those who provided me with information, I have not cited Mountain County documents.

205. Fieldwork Journal, *supra* note 1, 2014-025A, 032C.

coffee, a Western drink new to most locals. In this once poor, agrarian county, these sales centers symbolize a new era of urban, cosmopolitan life.



Figure 1. An apartment complex in the making in peri-urban county seat (photo provided by author)

These same economic forces also motivated resourceful villagers on the outskirts of the county seat and large town centers to become small land developers. Taking advantage of the land they possess under Chinese property law, they built multi-story buildings, sold or rented them to rural families and small businesses, and made handsome profits which would have been unimaginable a decade ago.

Illegal housing development in Mountain County did not happen spontaneously. It was encouraged by a landmark event. In the early 2000s, the county government decided to build an expressway linking the county seat to Valley Township.²⁰⁶ When the expressway was completed, more than 20 families from Valley Village—whose land had been expropriated by the government but who still had some land left next to the expressway—decided to each build a three-story, commercial-residential house by the road.²⁰⁷ Anticipating that the government would stop their construction, these families began construction on the same day.²⁰⁸ After months of

206. Fieldwork Journal, *supra* note 1, 2014-025A, 032C.

207. *Id.*

208. *Id.*

confrontation and failed negotiation with the county government, Valley Villagers petitioned to the provincial government with a narrative that the county government had taken their land; they “had to eat”; and building a commercial-residential house was the only way to support themselves.²⁰⁹

This was a time when expropriation conflicts were escalating nationally, the Chinese media was not prohibited from reporting dispossession stories, and the national leadership pledged to “guarantee rural people’s livelihoods” and “build a new harmonious socialist countryside.”²¹⁰ The provincial government pressured the county government to “guarantee the livelihoods” of villagers who had lost land.²¹¹ After an intense and drawn-out struggle, the county government finally allowed Valley families that had lost most of their land to the road construction to each build a three-story, commercial-residential house by the expressway.²¹²

Encouraged by Valley Villagers’ success, residents from other villages down the expressway, who also had lost land to the road construction but who still had land next to the road, also began erecting commercial-residential buildings.²¹³ Like Valley Villagers, they began the construction on the same day, confronted the county government, petitioned the provincial government with the same narrative, and won the same right to build a commercial-residential house by the expressway.²¹⁴

From that point on, hard-won legal rights spurred new rounds of defiance and illegality. In Valley Village, families that did not lose land or lost only a small portion of their land also built a commercial-residential house next to the expressway.²¹⁵ Their construction led to the Valley Village section of the expressway being packed with buildings, one row on each side.²¹⁶ A lack of space between buildings in the same row enabled Valley Villagers to secretly build a second, and in some cases, third, building behind their first one, hence creating a second and third row of buildings behind the first (see Figure 2).²¹⁷

209. *Id.*

210. *Id.*; see also *supra* note 144 (providing examples to illustrate the boom in media coverage of expropriation conflicts).

211. Fieldwork Journal, *supra* note 1, 2014-025A, 032C.

212. *Id.*

213. *Id.*; *id.* 2015-198C.

214. *Id.* 2014-025A, 032C.

215. *Id.*

216. *Id.*

217. *Id.*



Figure 2. Second-row buildings under construction in Valley Village (photo provided by author)

Down the expressway, villagers abused their right in order to take better advantage of their closer proximity to the county seat. They erected four-story buildings with storefronts on the first floor and apartments on the upper floors.²¹⁸ To make it harder for the government to target a specific building, all buildings looked alike and the walls of the buildings touched those of the adjacent buildings.²¹⁹ Like in Valley Village, these densely packed buildings enabled villagers to secretly build a second and a third building behind their first one.²²⁰ Those who did not have the capital to erect a multi-story building “sold” their roadside land to those who did, at prices as high as ¥200,000 (\$32,000) a plot.²²¹

The failure of the township and county governments to stop these illegal buildings emboldened villagers in other peri-urban areas to break the law. Hence, in less than five years, thousands of illegal commercial buildings were erected just in Valley Township and the outskirts of the county seat.²²²

To get a closer look at how villagers managed to build illegal housing in Mountain County, I describe two events that I witnessed over the course of a

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

single day. These events were, using Moore's term, "diagnostic events"—singular occurrences that reveal broader patterns in a society.²²³ As Part IV explains, the strategies revealed in these two events were not only common in Mountain County, but also constituted alternative tools of bargaining. Hence, the laws and norms that shaped one strategy constituted the background rules that shaped the other strategy.²²⁴

*B. Two Diagnostic Events: "Feast" and "Feces"*²²⁵

It was a bright summer morning. I was drinking tea and talking with Director Zhu in his office. Director Zhu was the head of the state land and resource office at Valley Township, the office that approved rural housing construction. A plainly dressed man in his 60s entered and invited Director Zhu to lunch at his house. The occasion was, the man said, that his wife had picked wild sage in the forest and made some sage pies. Director Zhu declined. At about half past eleven, Vice Mayor Huang walked into the office and announced that we were going to eat sage pies at this man's house. Vice Mayor Huang was the person in charge of regulating and coordinating all construction projects in the township. Together, he and Director Zhu were the officials in charge of stopping villagers in Valley Township from illegally building commercial properties.

Our host lived in an old house next to the expressway that connected Valley Township to the county seat. The area had been marked by the county

223. Sally Falk Moore, *When Transnational Authority Is Contingent: Three African Instances, in AUTHORITY IN TRANSNATIONAL LEGAL THEORY: THEORISING ACROSS DISCIPLINES* 300, 317 (Roger Cotterrell & Maksymilian Del Mar eds., 2016) (emphasis omitted) (footnote omitted). The term "diagnostic event" was recently coined by Moore. *Id.* (describing the "diagnostic event[]" as a discrete event that, when carefully analyzed, produces an understanding of broader circumstances). A diagnostic event differs from an anecdote in one critical respect: a diagnostic event reveals broader circumstances of a society while an anecdote may not. The analytic was first used by anthropologist Max Gluckman and subsequently by legal anthropologists, most famously by anthropologist Clifford Geertz. See Max Gluckman, *Analysis of a Social Situation in Modern Zululand*, 14 BANTU STUD. 1 (1940) (beginning his analysis of Zululand (part of modern-day South Africa) by recalling a series of revealing events observed in a single day); Clifford Geertz, *Deep Play: Notes on the Balinese Cockfight*, in CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES: SELECTED ESSAYS* 412–53 (1973) (narrating the story of how the anthropologist and his wife endeared themselves to Balinese villagers by joining the villagers in fleeing a police raid of an illegal cockfight); Moore, *supra* (exploring transnational authority in Africa through three "diagnostic events"). Outside the discipline of anthropology, legal scholars have also used singular, representative cases to illustrate broader themes in particular legal systems. See William P. Alford, *Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China*, 72 CAL. L. REV. 1180, 1188 (1984) (exploring the legal process in Imperial China by analyzing one of the most celebrated criminal cases in Chinese history).

224. See *infra* Part IV.

225. I have narrated the two incidents in Part III.B based on my fieldwork journals. I witnessed both events on the same day in 2014. Fieldwork Journal, *supra* note 1, 2014-025A, B, C.

government for urban development and, as explained above, was laced with hundreds of commercial properties illegally erected by local villagers.²²⁶ The man wanted to build a three-story house on the same housing plot. As the government intensified law enforcement against illegal construction in the area, he decided to seek government approval by showing hospitality to the officials.

Hospitality he showed. As we sat at the table, the man took out bottles of liquor, and his daughter-in-law brought in dishes of chicken, beef, lamb, fish, and animal intestines—23 dishes altogether. We were too full to truly enjoy the sage pies, which came last in a big porcelain bowl.

After lunch, I returned with Vice Mayor Huang to his office. Two patrolmen came in and reported that two families in Valley Village up the expressway were resuming construction of their second building behind their first one, after they had just been told to stop by the township government two days before. Realizing the severity of the situation, Vice Mayor Huang decided to launch a “real” law enforcement mission by seeking help from county departments.

About two hours later, more than ten people, all men and mostly from the county Urban Law Enforcement Authority, gathered in the courtyard of the township-government compound. Before departure, a policeman handed me a camera and asked if I could film the entire mission. “I won’t have time to do it myself,” he explained. I asked if the purpose of filming was to make sure that officials would only use force with care and restraint. The men all laughed. The policeman said it was to protect themselves from potential false accusations by villagers, such as, “Officials beat me and broke my leg.” “You’ll never know what kind of things they’d make up to get us into trouble,” another official commented lightheartedly.

We arrived at the first construction site. Two buildings were in the making. As officials encircled the site with yellow strips, the head of the family, a man seemingly in his 60s, said hastily, “Leaders (*lingdao*), don’t bother with your hands. I’ll do it myself.” Then, he walked between the posts and complained that officials were unfairly picking on his family. Seeing his complaints fall on deaf ears, he began to take down a vertical wooden post. As the post was giving way, a wooden beam fell and hit his elbow. He dropped the post, knelt on his knees, one arm hugging his head, and cried, “Ou-ch! Ou-ch!” He crouched and seemed in agony. Officials froze in shock and confusion.

Several seconds later, one official asked me if I had taken a picture of the scene. I answered, “I’ve been videotaping.” Vice Mayor Huang raised his

226. See *supra* notes 215–21 (describing illegal housing development along the expressway).

voice, “So you *have* videotaped the scene.” I suspected the man had heard this, for he did not make another sound. He remained still for a little while. Then he stood up and gently rubbed his head. Officials asked if he was hurt and needed to be taken to the hospital. He said, “No.” One official held his arm and took him to the side, “You shouldn’t do this job. It’s not safe.”

About half an hour later, we left the site. Most wooden frames set up for pouring concrete had been taken down and laid aside. The already-poured concrete structures remained. I counted the prospective rooms: the first building had a floor plan of nine, and the second of ten. If the buildings were to have four stories like other second-row buildings, there would be 76 rooms altogether.

Officials moved to the second construction site. The family was not home, and officials entered from the back.²²⁷ The structure of the first two floors was completed, and the thin, long rebar rods suggested a third and even a fourth floor were on the way. Officials began to bend the rods. Soon, a woman in her 60s walked up to the roof and tried to stop them. Her gesture was meek and she was quickly intercepted by a policeman. A young woman with a baby girl in her arms walked up and argued with Vice Mayor Huang, while other officials continued to bend the rods.

A man in his late 60s rushed upstairs, one hand holding a half-full chamber pot. He tilted the pot as if about to dump the contents on the officials and bellowed with rage, “I f*** your mother’s c***. What is all this? What do you mean? I ask, what do you mean? . . .”

Both women tried to restrain him. The scene scared the baby, and she screamed. An official came and held the man’s empty arm. The man resisted and continued to wave the bucket. He disregarded the officials’ admonishment “not to do anything wrong” (*mo luangao*), the older woman’s plea not to scare the baby, and a policeman’s suggestion “to sit down and take a rest.”

“Father (*laozi*, a swearword implying “I fathered you”), I have served in the army for so many years, and this is how you are treating me!” Fury twisted his heavily-tanned face: “I f*** your mother’s c***. Are you the Nationalist government or the Communist government?”²²⁸

227. In hindsight, it was likely that the second family was notified by neighbors that officials were enforcing the law against the first family. Hence, they sent away all the workers and left the construction site, hoping that officials would leave them alone.

228. The Nationalist government was defeated by Mao’s Communist army in 1949. See *The Chinese Revolution of 1949*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/chinese-rev> (“On October 1, 1949, Chinese Communist leader Mao Zedong declared the creation of the People’s Republic of China (PRC).”) (last visited Jan. 6, 2020). In contemporary Chinese politics, the Nationalist government is demonized as corrupt, exploitative, and tyrannical, and Mao’s victory is

As tension grew, one township official shouted at him, “I will let you pour your bucket! You know the consequence.” The man shouted back, “You are from this town. How dare you! I know where you live!”

Finally, a neighbor came, snatched the bucket away, came back again, and eventually carried the man downstairs. Just as officials thought the crisis was over, a young man walked upstairs, went straight to the edge of the roof, and threatened to jump: “You don’t want us to live. I’ll die before your eyes.”

Officials immediately stopped bending rebar rods and tried to coax him to come back. He shouted, cursed, and refused to move. Officials said they would leave, and some began to walk away. Finally, another neighbor came, walked to the edge, and pulled the young man up. As several neighbors helped him downstairs, one of them shouted at Vice Mayor Huang by his name, “Why are you doing this? Are you happy if a life is lost? Don’t be excessive! Someday you will have your turn, too.”

When officials hopped in the cars, three neighbors swore at them. The more civil words were “XXX (a former local official) is in jail for corruption. If you do this again, just think about him.” Officials seemed to suppress their anger and defended themselves sheepishly, “Why are you swearing? Don’t swear” Finally, they drove away, foul language audible in the street.

Two weeks later, Vice Mayor Huang told me that the township government approved the construction of the first family from Valley Village.²²⁹ It advised the family to register with the police as two households: the older son formed one household, while the younger son and the parents formed the other. The township government approved the younger son’s household to build a home. Splitting the family in two was legal, and it made the family technically compliant with the property law that a rural household is entitled to one—and only one—rural house. The government did not approve the second family’s construction, as the parents had only one son.

On a later visit to Valley Village, I learned that the second family had resumed construction.²³⁰ They hired “professionals” to straighten the rebar rods. “Straightening rebar is cheap and easy, and the [straightened] rebar is as good as new,” a Valley Villager told me nonchalantly.²³¹ When I stayed

glorified as the CCP liberating the Chinese people from the oppression by the Nationalist government. See *Mao Zedong: Tyrant or Idol? China’s New Debate*, DW (Sept. 6, 2011), <https://www.dw.com/en/mao-zedong-tyrant-or-idol-chinas-new-debate/a-6545139> (discussing how, while the overall perception of the Chinese government and Mao Zedong’s “legacy” is changing, Chinese youth glorify Mao Zedong); see also Macabe Keliber & Hsinchao Wu, *How to Discipline 90 Million People*, THE ATLANTIC (Apr. 7, 2015), <https://www.theatlantic.com/international/archive/2015/04/xi-jinping-china-corruption-political-culture/389787/> (categorizing the pre-1940’s Nationalist government as “corrupt”).

229. Fieldwork Journal, *supra* note 1, 2014-040A.

230. *Id.* 2014-032C.

231. *Id.* (translation provided by Xiaoqian Hu).

in Valley Village between December 2015 and January 2016, both families had completed the new buildings and were using them for rental and commercial purposes.

C. Contrasting Images of Chinese Authoritarianism and Fieldwork Data Credibility

Readers may be as astonished as I was by the “meekness” of Mountain County officials. Readers may suspect that my presence at their law enforcement missions led to their meekness. I have strong reason to believe that this was not the case. First, for the law enforcement mission in the “feces” event, the majority of the crew were officials from the county Urban Law Enforcement Authority, who did not know me.²³² Vice Mayor Huang introduced me as his “younger sister,” not a researcher from some American university.²³³ Hence, it would be unlikely that my presence substantively altered their actions. Second, I talked to a large number of peri-urban villagers in Mountain County.²³⁴ Many of them had conducted, or were conducting, illegal housing development.²³⁵ Many of them had experienced, or were experiencing, a land expropriation.²³⁶ One of them was leading community resistance against government expropriation.²³⁷ On my second fieldwork trip, I lived in Valley Village and talked to many villagers. People had various complaints about the government. Yet, none of my peri-urban interlocutors, including those who held acute animosity against the government, mentioned that officials had beaten them up.

My findings are in tension with an academic literature that describes the Chinese state as possessing immense power and Chinese officials as frequently abusing that power to exploit and mistreat citizens. Between the 1980s and 2000s, local Chinese governments implemented the family planning policy through intense control over women’s bodies and motherhood, forcing them to have abortions and regular medical checkups, and forcing parents who desired a son to abandon their baby girls.²³⁸ In the

232. *Id.* 2014-025C.

233. *Id.*

234. *See generally* Fieldwork Journal, *supra* note 1.

235. *Id.*

236. *Id.*

237. *Id.* 2015-199D.

238. SUSAN GREENHALGH & EDWIN A. WINCKLER, GOVERNING CHINA’S POPULATION: FROM LENINIST TO NEOLIBERAL BIOPOLITICS 249–53 (2005) (tracing government control over women’s bodies through forced sterilizations, abortions, birth control, and lifestyle control); KAY ANN JOHNSON, CHINA’S HIDDEN CHILDREN: ABANDONMENT, ADOPTION, AND THE HUMAN COSTS OF THE ONE-CHILD POLICY (2016) (describing draconian efforts to control women and births in China and explaining that officials primarily directed these efforts at rural, not urban, populations).

1990s and 2000s, local governments used violence to collect excessive taxes and illegal fees from rural residents, triggering mass riots and “rightful resistance,” as described by China political scientists Kevin O’Brien and Lianjiang Li, where rural protest leaders used national legal and policy documents and sought alliances from higher-level state apparatus to refuse local state exactions.²³⁹

From the mid-1990s onward, China’s urbanization has been a central venue where state violence is committed.²⁴⁰ As mentioned earlier, local governments evicted residents from their homes through police actions or hired thugs.²⁴¹ Social scientist Alvin Y. So argues that China’s neoliberal reforms since the 1990s have resulted in a bifurcated state, with a “benign” center, with which peasants ally, and a “predatory” local apparatus, against which peasants protest.²⁴² Describing land expropriations as local state “gangster capitalism” and “a process of primitive accumulation,” So observes:

While it is true that [the] smallholder dispossession and resource appropriation that characterize such primitive accumulation are an effect of neoliberal policies linked to [the] global capitalist system . . . the social forces commodifying the means of production are located in the Chinese countryside. It is there, at the rural grassroots where the predatory local state is based, that primitive accumulation, and the response to this by peasants, takes its most dramatic form.²⁴³

239. CHRISTIAN GOBEL & LYNETTE H. ONG, *SOCIAL UNREST IN CHINA* 40 (2012) (“The late 1990s and early 2000s saw a rise in arbitrary taxes, administrative fees and fines collected by townships, such as agriculture-related retained funds (*tiliu*) and fees (*tongchou*), township and village levies and various surcharges, fees and funds for education and other local infrastructure projects.”). *See also* KEVIN O’BRIEN & LIANJIANG LI, *RIGHTFUL RESISTANCE IN RURAL CHINA* 3 (2006) (documenting instances in which protestors used official policies, Communist party rhetoric, and existing law to frame their claims); *see also* CAO JINQING, *CHINA ALONG THE YELLOW RIVER: REFLECTIONS ON RURAL SOCIETY* 136 (Nicky Harman & Huang Ruhua trans., RoutledgeCurzon 2005) (drawing a comparison between the contemporary rural resident’s strategy of petitioning higher government officials and a similar strategy of petitioning in feudal times); THOMAS P. BERNSTEIN, *TAXATION WITHOUT REPRESENTATION IN CONTEMPORARY RURAL CHINA* (2003) (explaining that peasants drew encouragement to resist from statements by the central government and sought to gain the attention of central authorities by staging larger protests).

240. *See* GOBEL & ONG, *supra* note 239, at 8, 40 (discussing how protests in China “ha[ve] been increasing at an alarming rate” based on several factors, including the injustices of the Chinese government).

241. *See supra* note 144 (citing media coverage of violent evictions and demolitions).

242. *See* So, *supra* note 141, at 562, 571–72.

243. *Id.* at 578 (citation omitted).

It has been reported that local governments continued to use violence even after the 2011 and 2012 legal reforms.²⁴⁴ Eva Pils lists various forms of state coercion and violence in expropriations in China.²⁴⁵ Acting out of an illiberal, statist development logic, the Chinese state denied evictees a say in takings; used infantilizing language to coerce evictees into compliance; created a climate of fear among evictees; and, when ordinary tactics failed, committed direct violence to carry out evictions and demolitions and punish those who protest or complain to higher-level governments.²⁴⁶ Borrowing from Bernadette Atuahene's work, Pils describes land expropriations in China as "dignity takings": "processes in which a state directly or indirectly destroys or confiscates property from owners or occupiers whom it deems to be subpersons, without paying just compensation or without a legitimate public purpose."²⁴⁷

Examining China's development discourse, political scientist Sally Sargeson describes violence as not only endemic to, but constitutive of, China's urbanization:

Violence authorizes development, because the rural spaces surrounding cities and towns are characterized as institutionally insecure, disorderly, economically under-productive and incompatible with modernity. It comprises development, because it involves the forced urban improvement of the nation, rural property, governance and people's subjectivity.²⁴⁸

Violence as development involves dispossession, as well as the definition and assignment of exclusive property rights, the centralization and extended reach of authoritarian government, the

244. See *supra* notes 147–148; see, e.g., Lynette H. Ong, *Thugs and Outsourcing of State Repression in China*, CHINA J., no. 80, 2018, at 1, 5 (reporting—based on research interviews conducted between 2011 and 2014—that local governments in China continue to use thugs to expropriate farmland, evict residents, and quell protests); Jun Mai, *11 Detained After Woman, 60, Died in Forced Demolition of Her Home*, S. CHINA MORNING POST (July 13, 2016), <https://www.scmp.com/news/china/society/article/1989313/11-detained-after-woman-60-died-forced-demolition-her-home> (reporting that a woman was buried in the rubble of her house as it was forcibly demolished); Ian Johnson, *Picking Death Over Eviction*, N.Y. TIMES (Sept. 8, 2013), <http://archive.nytimes.com/www.nytimes.com/2013/09/09/world/asia/as-chinese-farmers-fight-for-homes-suicide-is-ultimate-protest.html> (reporting on villager suicides, including by self-immolation).

245. See generally Eva Pils, *Resisting Dignity Takings in China*, 41 L. & SOC. INQUIRY 888 (2016) (chronicling the "climate of fear" that has arisen due to the government's tactics in expropriations).

246. *Id.* at 897–902.

247. *Id.* at 889 (citation omitted).

248. Sargeson, *supra* note 140, at 1066.

reclassification of people’s utility that results in some losing their livelihoods and social, familial and self-respect.²⁴⁹

Why did officials in Mountain County seem compliant with laws that restrict their use of violence, while in countless media reports and scholarly accounts Chinese officials act the opposite? Though my findings may be surprising, they in fact echo a substantial body of scholarship that reveals and examines the more mundane and less draconian ways in which Chinese authoritarianism constructs and manifests itself. In a 2005 article, China security analyst Murray Scot Tanner investigated writings and speeches by Chinese law enforcement leaders and analysts.²⁵⁰ According to Tanner, many senior police officials viewed China’s political system as “leav[ing] countless legitimately aggrieved citizens with few choices but to engage in illegal protest—and the police with few choices but to invite social scorn for containing and suppressing them.”²⁵¹ “[D]ecr[ying] the severe damage such situations cause[d] to the police’s reputation and police-mass relations” and “tired of being caught between despot and mob,” many police leaders sought ways to forge a less reactive and repressive, and more active and intermediary role for the police to play.²⁵² While Tanner’s research investigates China’s police politics of the Jiang Zemin era (1989–2003), political scientist Yao Li finds that the same trend continued in police politics in the Hu Jintao and Xi Jinping eras.²⁵³

More recently, O’Brien and his colleague Suzanne E. Scoggins exposed pervasive feelings of grievance and powerlessness among street-level police in China.²⁵⁴ Interviews with these police officers revealed that they were unhappy about the “[h]eavy caseloads”; “administrative drudgery”; inability to elicit necessary policy change; time, funding, and staffing constraints; “low pay”; a lack of respect from citizens and superiors; and “a system that many believe is stacked against them.”²⁵⁵ The “rife, if not universal” feeling

249. *Id.* at 1081.

250. Murray Scot Tanner, *Rethinking Law Enforcement and Society: Changing Police Analyses of Social Unrest*, in *ENGAGING THE LAW IN CHINA: STATE, SOCIETY, AND POSSIBILITIES FOR JUSTICE* 193–212 (Neil J. Diamant et al. eds., 2005).

251. *Id.* at 206.

252. *Id.* at 203–06.

253. YAO LI, *PLAYING BY THE INFORMAL RULES: WHY THE CHINESE REGIME REMAINS STABLE DESPITE RISING PROTESTS* 64–66 (2019) [hereinafter YAO LI, *INFORMAL RULES*] (explaining that, in the aftermath of Tiananmen Square, the government tries to maintain control and prevent mass protests without escalating confrontation); see *Profile: Jiang Zemin*, BBC NEWS (Oct. 23, 2012), <https://www.bbc.com/news/world-asia-china-20038774> (discussing Jiang Zemin’s reign and how long he occupied the office).

254. See generally Suzanne E. Scoggins & Kevin J. O’Brien, *China’s Unhappy Police*, 56 *ASIAN SURVEY* 225 (2016) (highlighting the mental states of police officers in recent years).

255. *Id.* at 227–34.

of discontent led to low morale, shirking, corruption, and waste among police officers.²⁵⁶ Though “self-serving,” these police officers’ accounts depicted them as “overburdened, under-armed, and unhappy men and women trying to make the most of a difficult” and “thankless” job.²⁵⁷ The authors caution us: “[P]lunging into the world of street-level police helps us see why cops are often seen as lazy and corrupt, and gives us cause to rethink the image of officers as tools of a highly securitized state, quashing protests at every turn.”²⁵⁸ “Their stories show how coercive power in one highly hierarchical, authoritarian system can dissipate long before it reaches the street.”²⁵⁹

In a 2019 book, Li observes that the Chinese state is more accommodating of some protests and more repressive of others.²⁶⁰ Li presents a spectrum of “regime-engaging” protests and “regime-threatening protests” to explain the differences.²⁶¹ Regime-engaging protests recognize and are perceived by the Chinese state as recognizing the legitimacy of the CCP-led political regime;²⁶² they are generally about economic or moderately political (such as anti-corruption) issues,²⁶³ and their organization is or appears to be informal and spontaneous.²⁶⁴ Regime-threatening protests aim to undermine, or are perceived by the Chinese state as aiming to undermine, the CCP-led political regime;²⁶⁵ they are generally about radical political issues (e.g., advocating multi-party democracy or secession from China),²⁶⁶ and their organization is or appears to be by a specific leader or entity.²⁶⁷ Li finds that accommodating informal norms plays a dominant role in regime-engaging protests.²⁶⁸ These norms prompt *both* protesters to self-select non-transgressive tactics *and* state officials to allow for more protest space than formally allowed by the law.²⁶⁹ In contrast,

256. *Id.* at 234–36, 241.

257. *Id.* at 227, 242.

258. *Id.* at 242.

259. *Id.* at 228.

260. *See generally* YAO LI, *INFORMAL RULES*, *supra* note 253 (examining the Chinese government’s varied response to protests).

261. *Id.* at 16–20 (emphasis omitted) (footnote omitted).

262. *See id.* at 17 (noting that the government is willing to acknowledge the legitimacy of protests when the protests acknowledge the government’s legitimacy).

263. *See id.* at 17–18, 48 (offering examples of *regime-engaging protests*, including protests over severance pay, rising taxi fares, and the privatization of a hospital).

264. *Id.* at 85.

265. *Id.* at 18.

266. *See id.* at 120 (providing examples of *regime-threatening protests*, including separatist religious or ethnic movements and pro-democracy campaigns).

267. *See id.* at 132–40 (identifying the individuals leading the Falun Gong campaign and the Charter 08 pro-democracy movement as examples of visible leaders of *regime-threatening protests*).

268. *Id.* at 17.

269. *See id.* at 17–18 (noting that authorities are willing to “show leniency” when protestors “frame their claims according to official rhetoric, formalized rights, established norms, and conventions”).

antagonistic informal norms dominate regime-threatening protests, producing a vicious cycle where protesters deploy radical, transgressive claims and tactics, and state officials use extreme methods of suppression.²⁷⁰ Although a protest may shift from the regime-engaging type to the regime-threatening type and vice versa and the Chinese state has final say on whether to treat a protest as regime-engaging or regime-threatening, Li examines national protest data and observes that most contentious protests in China fall on the regime-engaging side.²⁷¹

Li’s analysis echoes the prior research by sociologists Ching Kwan Lee and Yonghong Zhang.²⁷² Building upon fieldwork in Beijing and Shenzhen, Lee and Zhang show that the local Chinese state dealt with social unrest through a combination of three tactics and describe Chinese authoritarianism as “bargained authoritarianism.”²⁷³ The primary tactic was to bargain with protest leaders and, upon reaching an agreement, make cash payments or deliver public services.²⁷⁴ The second tactic was to open up bureaucratic avenues, such as petitioning, mediation, litigation, and elections, to compartmentalize social unrest; buy officials time and order; and provide citizens with some possibility of protection, redress, and vindication.²⁷⁵ Lastly, the local state cultivated patron-client relationships with civil servants, retirees, Communist Party members, and even former protest leaders, who then used familial and social capital to mediate conflicts.²⁷⁶ The following excerpt illustrates how the local Chinese state handled social unrest:

Upon arrival at the scene of a mass incident, the typical first move is to accomplish “emotion[al] control.” Grassroots officials display remarkably astute sensitivity to people’s psychology, character, and social dynamics. They used metaphors of “making friends” and “talking love” to describe the social skills entailed in stability preservation work. Even highly charged confrontations, such as threats of suicide by homeowners resisting a demolition

270. See *id.* at 18, 132–40 (citing the lack of informal norms of accommodation and the prevalence of antagonistic norms at play in *regime-threatening protests* and describing violent crackdowns on anti-regime groups).

271. *Id.* at 44–45.

272. See generally Ching Kwan Lee & Yonghong Zhang, *The Power of Instability: Unraveling the Microfoundations of Bargained Authoritarianism in China*, 118 AM. J. SOC. 1475 (2013) (examining authoritarianism in China).

273. *Id.* at 1504.

274. *Id.* at 1485–86 (reporting that every district government the researchers investigated had a fund dedicated to “buying stability” from disgruntled citizens).

275. *Id.* at 1495–1500.

276. *Id.* at 1500.

order or workers threatening to jump off high-rise buildings to demand wage payment, are handled calmly by grassroots officials, who see such displays as routinized performances by citizens trying to strengthen their bargaining position.²⁷⁷

The most conspicuous example of a lack of local state repression is Shenzhen's illegal housing market studied by Qiao and Upham.²⁷⁸ Qiao describes how villagers, village collectives, small land developers, real-estate brokers, lawyers, a local bank, and even some local officials in Shenzhen collaborated in a group effort to circumvent the legal prohibition of real-estate development on rural land.²⁷⁹ Together, these actors established smooth networks, routinized practices, and innovated mechanisms to enhance the formality, transparency, and credibility of illegal property holdings and transactions.²⁸⁰ In a coauthored work, Qiao and Upham argue that Shenzhen's illegal housing development is a case in which social relations defy state law, create property rights, and form "the basis of [a] spontaneous order" that is an illegal but prosperous property market in China's richest city.²⁸¹ When it comes to state presence, Shenzhen's illegal real-estate development "is eloquent testimony to the fact that China has its own version of the type of informality that we associate with, e.g., the Peru of Hernando de Soto."²⁸²

The body of scholarship examined above exposes the Chinese state's limitations and fragilities.²⁸³ It will not be surprising that these weaknesses may compel the Chinese state to innovate and adopt easier and cheaper ways (in terms of the combined economic, social, and political costs) to address civil disobedience when possible. If paying cash, delivering services, setting up avenues of dispute resolution, and tolerating some illegality can mollify large numbers of people, the Chinese state may find it worthwhile to do these

277. *Id.* at 1487–88.

278. *See infra* notes 279–82 and accompanying text.

279. Shitong Qiao, *Planting Houses*, *supra* note 92, at 260–70.

280. *Id.*

281. Qiao & Upham, *Relational Property Rights*, *supra* note 79, at 2489, 2499–2506 (footnote omitted).

282. Shitong Qiao & Frank K. Upham, *China's Changing Property Law Landscape*, in *COMPARATIVE PROPERTY LAW: GLOBAL PERSPECTIVES* 311, 330 (Michele Graziadei & Lionel Smith eds., 2017) (citation omitted). De Soto is known for his diagnosis of poverty as caused by informal property relations and his prescription of property rights formalization as a development strategy. *See generally* HERNANDO DE SOTO, *THE OTHER PATH: THE ECONOMIC ANSWER TO TERRORISM* (Basic Books 2002) (1989) (examining why poverty can be a breeding ground for terrorism); HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM TRIUMPHS IN THE WEST AND FAILS EVERYWHERE ELSE* (2000) (exploring why capitalism thrives in some environments and not in others).

283. *See supra* notes 250–82 and accompanying text.

things.²⁸⁴ As all governments are subject to resource constraints, these softer, more conciliatory means of governance may allow the Chinese state to concentrate resources on issues and populations it deems the most subversive.²⁸⁵

IV. WHY DID MOUNTAIN COUNTY OFFICIALS OBEY SOME RULES BUT VIOLATE OTHER RULES?

Before analyzing how laws and norms interacted in villager-initiated illegal housing development in Mountain County, it is necessary to investigate which laws and norms had potential to affect this phenomenon and whether those laws and norms actually affected the phenomenon. Part II identified the formal property rules that regulate land use, wealth allocation, and expropriation and demolition procedures regarding land development in China’s urbanization.²⁸⁶ Part IV completes the investigation of relevant binding rules in two ways.²⁸⁷ First, it introduces two important norms that shaped citizen-official relations in Mountain County: the political norm of legitimacy and the social norm of gift-giving.²⁸⁸ Second, given that people do not obey rules mechanically, Part IV also explains how the interactions between formal laws and informal norms (particularly the norms of legitimacy and gift-giving), in the particular milieu of 2010s Mountain County, may have motivated local officials to obey some restrictive rules but disregard other restrictive rules.²⁸⁹

My main argument in this Part is three-fold. First, Mountain County is in a particular historical time—sufficiently modern such that citizens can use technologies to identify officials and their homes and families within the county, yet sufficiently close-knit such that local officials, just like ordinary

284. See *supra* notes 272–76 and accompanying text (discussing three tactics the Chinese state uses to control social unrest).

285. A recent example of targeted use of state resources to address perceived subversion would be state-built “vocational training camps” in Xinjiang, which, according to Western estimates, have detained up to one million or more Muslim Chinese citizens to receive compulsory political education for months or years at a time. See Chris Buckley & Steven Lee Myers, *China Said It Closed Muslim Detention Camps. There’s Reason to Doubt That*, N.Y. TIMES (Aug. 9, 2019), <https://www.nytimes.com/2019/08/09/world/asia/china-xinjiang-muslim-detention.html> (describing the expanse and tactics of the camps); see also Nectar Gan & Mimi Lau, *China Changes Law to Recognise “Re-Education Camps” in Xinjiang*, S. CHINA MORNING POST (Oct. 10, 2018), <https://www.scmp.com/news/china/politics/article/2167893/china-legalises-use-re-education-camps-religious-extremists> (calling out the Chinese government’s attempt to mask human rights violations as upholding the rule of law).

286. See *supra* Part II.

287. See *infra* notes 288–89 and accompanying text.

288. See *infra* Parts IV.A, IV.C.

289. See *infra* Parts IV.B–C.

residents, are blessed with community support and burdened with community sanctions.²⁹⁰ As a result, local officials might find that building legitimacy is essential for avoiding personal harm (on the negative end) and maintaining their elite social status (on the positive end). Second, as negative media reports from 2007 onward had produced an image of “the violent, land-grabbing state,” officials in Mountain County felt compelled to avoid the most conspicuous forms of illegitimacy, namely, use of violence on public occasions.²⁹¹ This, in combination with a host of state laws, local norms, and social networks, increased the likelihood that officials would comply with procedural laws that restrict their demolition power. Third, when risks of detection were low, officials might succumb to the financial incentives offered by villager-developers and trade with the latter non-enforcement of the law or even legalization of illegal buildings for money.²⁹² Hence, the legitimacy built through their public compliance with demolition procedural laws was weakened and arguably undermined by their private practice of corruption (and by popular perception of corruption).

For “legitimacy,” I adopt the definition of sociologist and political scientist Seymour Martin Lipset that it “involves the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society.”²⁹³ This definition looks at legitimacy from the insiders’ perspective, which is apt for explaining the functioning of the political norm of legitimacy in Mountain County.²⁹⁴

A. Why Would Local Officials Care about the Norm of Legitimacy?

Until a decade ago, Mountain County had been agrarian. Most people lived in their native village, or for women who had cross-village marriages, in their husband’s village. People formed life-long connections with fellow villagers. Critical moments of life relied on these connections. A child was born, and the parents needed money to buy food and clothes. A son was

290. See *infra* Part IV.A.

291. See *infra* Part IV.B.

292. See *infra* Part IV.C (examining the pervasive practice of bribery in Mountain County).

293. SEYMOUR MARTIN LIPSET, *POLITICAL MAN: THE SOCIAL BASES OF POLITICS* 64 (Johns Hopkins Univ. Press, Expanded ed. 1981).

294. Lipset’s definition has also been used by other China scholars. See, e.g., Alex L. Wang, *The Search for Sustainable Legitimacy: Environmental Law and Bureaucracy in China*, 37 HARV. ENVTL. L. REV. 365, 375 (2013) (adopting the definition of “legitimacy” used by Seymour Martin Lipset); Christopher Marquis & Yanhua Bird, *The Paradox of Responsive Authoritarianism: How Civic Activism Spurs Environmental Penalties in China*, 29 ORG. SCI. 948, 950 (2018) (applying Lipset’s definition of “legitimacy”); Anne-Marie Brady, *Mass Persuasion as a Means of Legitimation and China’s Popular Authoritarianism*, 53 AM. BEHAV. SCI. 434, 436 (2009) (discussing Lipset’s “narrow definition” of “legitimacy”).

getting married, and the family needed money for the wedding. A grandmother was ill and needed money to receive treatment. A grandfather passed away, and the family needed money to hold a funeral. On these occasions, relatives, neighbors, and fellow villagers would give money or gifts to help the family overcome the financial hardship.²⁹⁵ Weddings and funerals were the most important social events, and the whole village would mobilize to host them, providing not only material support, but also venues, organizers, workers, performers, and, of course, the audience.²⁹⁶ The social practice of giving money and gifts is called *songli* (giving gifts) in Mountain County. The affective and reciprocal nature also gave it a second name, *renqing wangli*, human affections and gift exchange.²⁹⁷

Although no longer an agrarian economy, Mountain County has retained many characteristics of a small society. In-migrants from outside the county are rare. Most people live in their native or marital village. Even those who have moved to the county seat or who are doing migrant work in other parts of China still maintain the connections with their village, either because they expect to come home, or because their family still lives in the village.²⁹⁸ The vast majority of local officials and police officers come from within the county. Many of them work in the town where they grew up or where they currently live. For most officials, upward mobility means a better position within the county; only the luckiest few move up to the prefectural or higher government.

The combination of sharing the same social and geographical space (with little opportunity to escape) pressured local officials to care about their sociopolitical image and legitimacy. At the most extreme, demolition officials had to worry about their personal safety and the personal safety of their family, particularly children.²⁹⁹ Recall in the “feces” event described in Part II.B, the man waving the chamber pot shouted at a township official (and

295. See also Ling Li, *Performing Bribery in China: Guanxi-Practice, Corruption with a Human Face*, 20 J. CONTEMP. CHINA 5, 13 (2011) (identifying traditional occasions for the giving of gifts of support in China).

296. I personally attended many such events, both as a former resident and as a field researcher. See, e.g., Fieldwork Journals, *supra* note 1, 2014-039D, 056A; *id.* 2015-199A; see also *id.* 2014-003C, 023D, 038A2, 051A (noting the expense of buying gifts for such occasions).

297. In fact, *songli* is an age-old custom in China. See generally ANDREW B. KIPNIS, PRODUCING GUANXI: SENTIMENT, SELF, AND SUBCULTURE IN A NORTH CHINA VILLAGE 58 (1997) (exploring the historical practice of gift-giving to build lasting social bonds); Mary Szto, *Chinese Gift-Giving, Anti-Corruption Law, and the Rule of Law and Virtue*, 39 FORDHAM INT’L L.J. 591 (2016) (examining the practice of gift-giving in the context of corruption and the rule of law).

298. See, e.g., *infra* text accompanying notes 304–05 (quoting a mother and daughter, both describing the community expectation that people will maintain a connection with their home village).

299. See *supra* Part III.B (quoting the threats lobbed by villagers in confrontations with demolition officials).

other officials), “You are from this town. How dare you! I know where you live!”³⁰⁰ This was a threat to harass and even harm officials’ family members.

During my 2014 fieldwork, this tactic was effectively deployed by the family of a trucker who became paraplegic in a construction accident in a government project. The county court initially held that the trucker was not an employee of, but was an independent contractor to, the construction company that undertook the project, and, therefore, the company was not responsible for the trucker’s injury. The trucker’s entire family, with his mother pushing his wheelchair and his wife holding their two-year-old son, went to the county mayor’s home.³⁰¹ When the mayor expressed “deference” to the court’s judgment, the trucker’s mother threw a soiled diaper used by the trucker at the mayor’s face and threatened to give the mayor no peace if he refused to address the injustice.³⁰² The case was eventually retried, and the court held that, despite the lack of an employment relationship, the construction company was liable for all the losses, including medical expenses, lost wages, future earnings, future care expenses, and expenses for raising the trucker’s son and supporting the trucker’s mother.³⁰³

In less extreme instances, demolition officials were subject to various community sanctions. In a world of mutual acquaintance and geographic immobility, the costs of disesteem are high. If officials in Mountain County commit a flagrant injustice, the citizen could, through social networks, spread the news to the officials’ social circles and harm their reputations. Even if officials hang out only with other officials, the wronged citizen could spread the news to the officials’ native village where their parents live, and harm the parents’ reputations. As the magnitude of reputational damage is correlated with the social distance between the official and the citizen, officials who work close to home or their native village are under more pressure to act appropriately than officials who work far away.

The costs of disesteem are not just about feelings, but entail tangible consequences. The following remarks by an elderly villager, whose children

300. See *supra* Part III.B (narrating the story of a villager confronting demolition officials with his chamber pot).

301. Fieldwork Journal, *supra* note 1, 2015-193D.

302. *Id.*

303. Under Chinese law, adult children are responsible for supporting elderly parents. Laonian Ren Quanyi Baozhang Fa (老年人权益保障法) [The Law on the Protection of the Rights and Interests of the Elderly] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2018, effective Dec. 29, 2018), arts. 13–18, translated in *Law of the People’s Republic of China on the Protection of the Rights and Interests of the Elderly (2018 Amendment)*, PKULaw, https://pkulaw.com/en_law/60ff5933d32dc7ccbdfb.html (last visited Jan. 5, 2020). By the time the new court rendered the judgement, the trucker and his wife had divorced and the latter had remarried. Fieldwork Journal, *supra* note 1, 2018-001D.

have left the village, and by her daughter who lives in the county seat, illustrate this:

[Mother:] My late husband was lucky. He did a lot for the village. When he died, a lot of people came and it was a big, lively funeral. I'm not as lucky. My children are far away. When I die, my funeral may be quite lonely Look at XXX. He is so successful, a big official in Beijing. He thought he didn't need people from the village. When his father died, no one was willing to carry his father's coffin from the house to the grave. He had to hire people from outside the village. What a horror! What a disgrace!³⁰⁴

[Daughter, on a separate occasion:] Whenever people from my maiden village ask me to loan them money or help them find a job, I do my best to help them. My siblings and I have to rely on them when my mother is ill or passes away. Even after that, we'll have to rely on them to guard our parents' graves.³⁰⁵

On the positive end, officials in Mountain County are considered a social and political elite. In a world of mutual acquaintance and geographic immobility, the benefits of esteem are also high, and, similar to disesteem, can be profoundly consequential. China political scientist Lily Tsai has observed that in communities with longtime residents and close-knit networks, good moral standing is of great importance to officials' job performance.³⁰⁶ Tsai explains,

When officials are embedded in the group, they can earn moral standing and use the group's resources to elicit compliance from citizens with state policies. But if they fail to meet the ethical standards of the group, citizens not only can sanction them but also deny them access to moral authority and the group's resources. In this way, the solidary group's institutions become informal institutions of accountability.³⁰⁷

As officials are subject to informal norms endorsed and enforced by local social networks, they may feel obligated to perform well and provide public goods and services, despite the absence of formal mechanisms of

304. Fieldwork Journal, *supra* note 1, 2014-016C (translation provided by Xiaoqian Hu).

305. *Id.* 2015-024D (translation provided by Xiaoqian Hu).

306. See generally LILY L. TSAI, ACCOUNTABILITY WITHOUT DEMOCRACY: SOLIDARY GROUPS AND PUBLIC GOODS PROVISION IN RURAL CHINA (2007) (examining the informal rules and norms that shape the behavior of government officials).

307. *Id.* at 16–17.

accountability.³⁰⁸ In fact, social approval and disapproval shape human behavior across physical, cultural, or political boundaries. The universality of this phenomenon has prompted scholars to explain the emergence, persistence, and decay or death of social norms through the lens of societal attitudes of approbation and reproof.³⁰⁹

The political norms of collegiality and community bonding may create additional incentives for officials to care about their reputations. China political scientists Thomas Heberer and Gunter Schubert argue that leading officials at the Chinese township and county levels form a strategic group with a shared identity.³¹⁰ This collective identity “emerges as a result of their belonging to common networks, their shared experiences and life-style patterns, their mutual exposure to pressure from upper-levels and the populace, and their having access to specific information that others do not have,” namely, “knowledge of the political institutions in a locality and their operational modes.”³¹¹ When facing the local, often rural, populace, this shared identity is one of the elite, the “avant-garde of local development” that possess economic, cultural, symbolic, social, and structural capital.³¹² When facing upper-level governments and Party apparatus, this identity allows the local leadership core to steer policymaking and implementation by exploiting higher authorities’ information asymmetry, personnel insecurity, and lack of specificity in policy guidelines.³¹³

My fieldwork confirms their observation of a shared identity among local political elites. In fact, not only did leaders of township and county governments form a community of elites, but each department and office also formed its own community. In conversations with me or among themselves, my official interlocutors casually referred to their or each other’s department as “*wojia*” (my family) and “*nijia*” (your family), and people from their or each other’s department as “*wojia de*” (of my family) and “*nijia de*” (of your family).³¹⁴ Although we cannot interpret such linguistic usage literally (and family is not all about love or harmony), it does reflect a basic fact about bureaucratic life, that officials working in the same department share many

308. *Id.* at 4.

309. See generally McAdams, *Origin, Development, and Regulation*, *supra* note 12 (proposing the esteem theory of norms to reconcile disparate scholarship on norms and support new connection between laws and norms); Philip Pettit, *Virtus Normativa: Rational Choice Perspectives*, 100 *ETHICS* 725, 742–50 (1990) (presenting a second explanation of the emergence and resilience of norms as deriving from positive and negative social attitudes toward individual behavior).

310. Thomas Heberer & Gunter Schubert, *County and Township Cadres as a Strategic Group. A New Approach to Political Agency in China’s Local State*, 17 *J. CHINESE POL. SCI.* 221, 227 (2012).

311. *Id.* at 236–37.

312. *Id.* at 228, 236, 237 (footnote omitted).

313. *Id.* at 241–46.

314. See, e.g., Fieldwork Journal, *supra* note 1, 2014-025C.

things: special knowledge, interests, assignments, pressures, pride, and even grievances.

For this Article, Heberer and Schubert’s research has the following implications.³¹⁵ Local officials at the county and township levels are motivated to maintain their elite status.³¹⁶ Local officials also have substantial discretion in interpreting and implementing policies from above, even in an authoritarian country with a centralized political system.³¹⁷ If maintaining an elite status in the local society requires officials to deviate from central policy, they may have the capacity to do that.³¹⁸

Local discretion in legal implementation may lead to bad results.³¹⁹ For example, Qiao and Wei Cui have independently argued that broad discretion leads local Chinese officials to not enforce the law, or to enforce it in divergent ways that weakened private property rights and state efforts of building a rule of law.³²⁰ My fieldwork points to a different direction that enforcement discretion may take. In Mountain County, as of 2018, it had led to *de facto* tolerance of private property interests which were not recognized by national law, and not always through clientelism or corruption. Because the national law at issue (property law) was unjust, the impact of its local non-enforcement on China’s rule-of-law efforts would also be mixed.³²¹ On the one hand, the systemic violation and non-enforcement of property law weakened the overall legitimacy of law.³²² On the other hand, full enforcement of property law might have caused worse harm to the Chinese state’s rule-of-law initiatives.³²³ Similar to how Latin American politicians tolerate informal property rights and economic activities and trade this “informal welfare policy” for political support,³²⁴ officials in Mountain County might tolerate illegal housing development and trade this “informal

315. See *infra* notes 316–18 and accompanying text.

316. Heberer & Schubert, *supra* note 310, at 245.

317. *Id.* at 241–44.

318. *Id.* at 227.

319. See *infra* note 320 and accompanying text.

320. Shitong Qiao, *Rights-Weakening Federalism*, 102 MINN. L. REV. 1671, 1674 (2018); Wei Cui, *The Legal Maladies of “Federalism, Chinese-Style”*, in *THE BEIJING CONSENSUS? HOW CHINA HAS CHANGED THE WESTERN IDEAS OF LAW AND ECONOMIC DEVELOPMENT AND GLOBAL LEGAL PRACTICES* 97–118 (Weitseng Chen ed., 2017).

321. See *supra* text accompanying notes 125–30 (explaining that the rural-urban divide in property law extracted wealth from rural villagers for the benefit of the government and urban developers).

322. See *infra* text accompanying notes 453–54 (discussing how the interaction of laws and norms in Mountain County resulted in weakened government legitimacy).

323. See *infra* Part IV.B (highlighting the enhanced public scrutiny and criticism of local officials charged with enforcing property law).

324. See generally HOLLAND ALISHA, *FORBEARANCE AS REDISTRIBUTION: THE POLITICS OF INFORMAL WELFARE IN LATIN AMERICA* (2017) (asserting that governments intentionally forbear from enforcing laws against poor citizens to maintain their support).

welfare policy” for political support. Seen in this light, non-enforcement reflected a compromise by the Mountain County government between fully enforcing property law, on the one hand, and maintaining basic legitimacy (and the harsh reality of limited enforcement capacity and rent-seeking motives by some officials), on the other.

Mountain County officials had a real need to safeguard their legitimacy, which had been jeopardized in recent decades. In the 1990s, family planning officials in Mountain County were notorious for using violence to implement China’s family planning policy.³²⁵ Some women were dragged into government vehicles and carried to the hospital to receive abortions.³²⁶ Many families with illegally-born children saw their pigs or TV sets taken away, and in the rarest, worst cases, were rendered homeless as officials tore their houses down as punishment.³²⁷ Local governments also aggressively collected agricultural taxes and various fees.³²⁸ The image of a township official was that of a merciless, exploitative, and potentially violent man. This lasted until around 2003, when all agricultural taxes and fees were abolished in the county, and the local population growth rate fell to 1%, the lowest in history.

Around 2007, the economy of Mountain County began to take off, and a lot of farmland and rural houses were expropriated to build factories, urban infrastructure, and commercial real estate. As mentioned earlier, this was a time when Chinese media began to expose expropriation and demolition conflicts.³²⁹ The central and provincial leadership were giving televised speeches condemning local officials as corrupt and abusive, and vowing to

325. See also Isabelle Attane, *China’s Family Planning Policy: An Overview of Its Past and Future*, 33 *STUD. FAM. PLAN.* 103, 110 (highlighting that family planning policies only became stronger in the 1990s: “In fact, enforcement of the birth-limitation program has been tightened nationally since 1991, which may have reduced the number of unauthorized births, and consequently total births”).

326. See Fieldwork Journal, *supra* note 1, 2014-053A; see also Emma Graham Harrison & Tom Phillips, *End of China’s One Child Policy Comes Tragically Late for Many*, *GUARDIAN* (Oct. 29, 2015), <https://www.theguardian.com/world/2015/oct/29/end-of-chinas-one-child-policy-too-late-many-orphaned-parents-illegal-second-children> (describing local governments’ brutal and merciless enforcement of China’s One Child Policy).

327. See Fieldwork Journal, *supra* note 1, 2014-053A; see also Harrison & Phillips, *supra* note 326 (quoting a man who did not have a second child with his wife because they feared that the government would tear down their house and fire them from their jobs).

328. Fieldwork Journal, *supra* note 1, 2015-195A; see also John James Kennedy, *From the Tax-for-Fee Reform to the Abolition of Agricultural Taxes: The Impact on Township Governments in North-West China*, 189 *CHINA Q.* 43, 48–49 (2007) (explaining that tax reforms in 1994 diminished local governments’ external revenue stream and tightened their budgets, driving local governments to pursue aggressive collection of local fees).

329. See *supra* notes 144–45 and accompanying text (describing the phenomenon of increased media coverage of violent expropriation conflicts and the resulting public outcry, and citing numerous examples).

guarantee the livelihoods of farmers whose land had been taken.³³⁰ Demolition officials told me that the speeches by the then-Premier Wen Jiabao were the most damaging to their reputation, as he was “expert” at deploying human emotions and identifying himself with the poor and the displaced.³³¹ Several demolition officials in Mountain County described their situation as “under attack from all sides.”³³² In their accounts, the media constructed an image of the “corrupt and violent demolition official.”³³³ The central government, in an effort to boost its own legitimacy, “scapegoated” local officials for problems caused by its own policies.³³⁴ The county leadership pressured demolition officials to enforce the law against illegal villager-developers, particularly in areas planned for urban development.³³⁵ Illegal villager-developers treated demolition officials like “nonhumans” and “twisted” stories to portray them in a bad light.³³⁶ Even their own families resented them for taking on this “dangerous,” “offensive” (*dezuiren*), “hard yet thankless” (*chili bu taohao*) job.³³⁷ There was certainly a self-serving, self-pitying element in these accounts. Nonetheless, they also reveal a morally-, politically-, and legally-cornered situation that demolition officials found themselves in.³³⁸

The loss of respect was intensely personal for some demolition officials. On the afternoon after we left Valley Village, Vice Mayor Huang complained, “My job is not a job for a human being.”³³⁹ His job was not for a human being because villagers whose illegal construction became his target did not give him the respect that they would give to an ordinary human being. Several officials lamented to me that they had never been so insulted in their lives.³⁴⁰ One commented, “It is as if the hatred between them and me is as

330. See, e.g., Hu Jintao, Gen. Sec’y, Cent. Comm. of the Communist Party of China, Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in All Respects (Oct. 15, 2007), english.china.org.cn/english/congress/229611.htm (reporting government corruption and promising reforms aimed at protecting economic welfare of rural areas and ensuring compensation for property transfers); see also Fieldwork Journal, *supra* note 1, 2014-025A, 050A.

331. Fieldwork Journal, *supra* note 1, 2014-025A, 038A1.

332. *Id.* 2014-010A, 025A, 038A1, 050A; *id.* 2015-185C, 200B, 200C3; *id.* 2016-002A2 (translation provided by Xiaoqian Hu).

333. *Id.* 2014-025C, 026A; *id.* 2015-200B (translation provided by Xiaoqian Hu).

334. *Id.*

335. *Id.* 2014-025A, 025C.

336. See *supra* Part III.B (relating my conversation with Mountain County officials who asked me to film their interaction with the local villagers to protect against false accusations).

337. Fieldwork Journal, *supra* note 1, 2014-062D (translation provided by Xiaoqian Hu).

338. See *supra* notes 329–37 and accompanying text.

339. *Id.* 2014-025C (translation provided by Xiaoqian Hu).

340. *Id.*; see also *id.* 2014-038A1, 050A; *id.* 2015-200B, 200C3.

deep as a sea of blood (*xuehaishenchou*).”³⁴¹ In a world of immobility and mutual acquaintance, it would not be surprising that demolition officials in Mountain County would want to regain some legitimacy and basic respect, by avoiding the most blatant forms of citizen-state conflict.

B. Legitimacy Built Through Public Restraint in Using Force

In my fieldwork, I saw an effort by Mountain County officials to regain some legitimacy by exercising restraint in using force in public. This Subpart explains how formal laws and institutions, as well as local norms and networks, shaped officials’ risk-benefit calculations when they decided whether to use force in specific situations.³⁴²

As mentioned in Part II.A, reformed demolition procedures now require that demolition decisions be issued by county or higher-level agencies and that forceful demolitions be carried out by courts.³⁴³ Township governments have neither the authority to decide whether to demolish a building, nor the authority to demolish buildings themselves.³⁴⁴ Vice Mayor Huang of Valley Township confided his dilemma to me:

The county government orders us to enforce the law, but we don’t have the legal authority to use force. Some of our people aren’t even formal government employees. If something happens, how can we bear the responsibility? . . . I’m stuck left and right. I have to stop illegal construction, but I have no legal authority to use force. I can pretend as much as I like. But people won’t obey if you don’t use force³⁴⁵

One way to coerce people to tear buildings down themselves would be to shut off water, gas, and electricity in the building, rendering the building uninhabitable.³⁴⁶ Local governments commonly used this tactic in violent

341. *Id.* 2015-200C3 (translation provided by Xiaoqian Hu).

342. *See infra* notes 343–93 and accompanying text.

343. *See supra* text accompanying notes 149–53 (describing three legal reforms in 2011 and 2012 and how they changed demolition procedures).

344. *See supra* text accompanying notes 149–53 (describing three legal reforms that took the authority to make and enforce demolition decisions away from township governments).

345. Fieldwork Journal, *supra* note 1, 2014-025A (translation provided by Xiaoqian Hu).

346. *See infra* note 347 and accompanying text.

demolitions,³⁴⁷ but it was outlawed by the 2011 and 2012 legal reforms.³⁴⁸ If a local government violates this prohibition, the affected citizen is allowed to sue the government in court.³⁴⁹

The fact that the law prohibits certain behaviors does not mean that these behaviors will be punished. In fact, my interlocutors in Valley Village did not seem to know that Vice Mayor Huang’s crew had no legal authority to forcefully tear down their illegal construction. They might not even know the specific procedures for tearing down illegal buildings. If state law makes demolition of illegal buildings so time-consuming and difficult to carry out, why wouldn’t officials in Mountain County disregard the law and demolish illegal buildings with violence, like their colleagues from the 1990s who used, or threatened to use, violence to collect taxes and fees and punish violators of the family planning policy?³⁵⁰

I do not have a definitive answer to this question. Several institutional factors may offer important clues.³⁵¹ In the 1990s, local officials were under tremendous pressure to collect revenue, while local residents lacked ways to publicize government violence or identify officials who had committed violence.³⁵² In 1994, the central government initiated a tax reform and drastically increased its own tax revenue at the expense of local governments.³⁵³ This was a financial calamity for the Mountain County government. Public projects were halted. Teachers were frequently not paid. Many public employees were fired to downsize the government payroll.³⁵⁴ Officials were pressured to keep population growth in check (lest they be

347. See, e.g., AMNESTY INT’L, *supra* note 141 (summarizing reports from academics, activists, and lawyers of eviction campaigns interrupting water, heat, and electricity); see also, *Three Gorges Project Results in More Evictions, Land Scandals, and Corruption Cases*, CONG.-EXEC. COMMISSION ON CHINA (Jan. 3, 2006), <https://www.cecc.gov/publications/commission-analysis/three-gorges-project-results-in-more-evictions-land-scandals-and> (describing an instance where the government gave residents seven days to abandon their homes and shut off water to force residents out).

348. See *supra* text accompanying note 153 (explaining that the amended law and regulations prohibit the use of such tactics by the government).

349. See Xingzheng Susong Fa (行政诉讼法) [Administrative Litigation Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 27, 2017, effective July 1, 2017), art. 12(2), 70(4)–(5), 75, 76, translated in *The Administrative Litigation Law of the People’s Republic of China (2017 Revision)*, PKULAW, https://pkulaw.com/en_law/76c54b08f88ee7efbdfb.html (last visited Jan. 5, 2020) (granting aggrieved citizens the right to challenge an expropriation as illegal or an abuse of power).

350. See *supra* notes 238–39, 325–28 and accompanying text.

351. See *infra* notes 352–93 and accompanying text.

352. See *infra* notes 353–54 (describing the tight financial situation that local governments faced in the 1990s).

353. See Tsang Shu-ki & Cheng Yuk-shing, *China’s Tax Reforms of 1994: Breakthrough or Compromise?*, 9 ASIA SURV. 769, 778 (1994) (explaining that the reforms aimed to increase central government tax revenue 50% by shifting tax revenues from local governments).

354. These consequences were common among poorer regions in inland China. So, *supra* note 141, at 563–66.

punished with no salaries or promotion) and to collect agricultural taxes (now a local tax) and levy family-planning fines (an extra-budgetary source of revenue).³⁵⁵ Several statistics illustrate this drastic change.³⁵⁶ The agricultural tax increased more than ten-fold between 1993 and 2000.³⁵⁷ The annual birth rate in Mountain County decreased by 57% between 1990 and 2000. Most dramatically, the proportion of local government revenue composed of non-tax fees and fines increased from practically zero in 1993 to 20% in 2000.

Meanwhile, in the 1990s, Mountain County had no Internet, no cable TV, and no highways. Most villagers had no phones, many had no TV sets, and some had no electricity. Hence, if officials used violence, there was no effective way for the mistreated villager to get outside attention. The lack of easy transportation and means of communication also hindered the flow of information. Family-planning officials took advantage of this obstacle by catching legal violations in villages and towns far away from their home, so that they could remain anonymous when committing violence.

By the time I was doing fieldwork in Mountain County, officials were no longer under such pressure to collect revenue, while residents had easier ways to publicize government violence and identify officials who committed violence. Between 2000 and 2014, the County gross domestic product (GDP) had increased more than four times (inflation adjusted), and the total county government revenue had increased eleven times (inflation unadjusted). The County government was now well-financed by taxes from local businesses, development funds from higher-level governments, revenues from land transfers, and bank loans collateralized with urban construction land. For example, the total expenditure of the County government in 2013 was ¥2.5 billion, of which one-third came from local revenue bases and two-thirds from provincial and central government transfers. In addition, the director of the County land reserve station told me, that in 2013, the County government had obtained ¥1.3 billion in bank loans through land financing.³⁵⁸

Meanwhile, cable TV, the Internet, and smartphones have become highly popular in Mountain County. As a matter of fact, smartphones and online chatting apps were so popular in Mountain County in 2014 that I had to buy the first smartphone in my life in order to communicate with my rural and peri-urban interlocutors. These devices made it much easier for villagers

355. See *supra* note 328 (discussing the pressures on local governments during this period).

356. See *infra* note 357 and accompanying text.

357. This meant that in 2000, rural residents had to pay 28% of their income to the government as agricultural tax. This did not even include other taxes, fees or illegal exactions. See *supra* note 204 (explaining that, in order to protect the anonymity of Mountain County, the author cannot provide sources for her statistics).

358. Fieldwork Journal, *supra* note 1, 2014-025A.

to publicize government malfeasance. These modern technologies, in conjunction with heightened economic and social activities, also made it easier for residents to identify strangers, including government officials.

Although the Chinese government exerts much stronger control over the media and the Internet than most other governments, citizens find ways to publicize land conflicts.³⁵⁹ One tactic I heard Mountain County residents deploy was to appeal to news media one level higher than the County government.³⁶⁰ Another, and a more common, tactic was to publicize land conflicts on social media platforms such as WeChat, QQ, and Weibo. Social media postings are also subject to government censorship.³⁶¹ Nonetheless, my fieldwork in rural China, as well as my experience reading news about isolated expropriation and demolition conflicts, seems to indicate that, in the current political climate, censorship regarding expropriation and demolition conflicts is less severe than in openly-political topics (for example, Tibet or human rights violations).³⁶² The wind of censorship changes. Before the early 2000s, land conflicts were heavily suppressed in Chinese media.³⁶³ Around 2007–2008, however, expropriation and demolition conflicts were increasingly reported in the media, and the media was instrumental in fostering national public support for evictees and pressuring the central state to enact more protective laws and regulations.³⁶⁴

Lee and Zhang intimate that, as long as the conflicts are isolated and show no “inkling of cross-class and cross-locality mobilization,” the Chinese state may be willing to tolerate protesters and even pacify them.³⁶⁵ More concretely, Li observes that the Chinese state sets firm boundaries about

359. See *infra* notes 360–61 and accompanying text.

360. *Id.* 2016-005C.

361. See PEN AMERICA, FORBIDDEN FEEDS: GOVERNMENT CONTROLS ON SOCIAL MEDIA IN CHINA 18, 24 (2018) (listing Chinese censorship requirements for social media platforms and users).

362. Cf. *supra* notes 260–71 and accompanying text (discussing Yao Li’s work to explain the Chinese government’s differing response to what Li terms “regime-engaging” and “regime-threatening protests”).

363. See *supra* text accompanying note 144 (noting that the media could not cover land conflicts before 2007).

364. See, e.g., HEURLIN, *supra* note 143, at 79–80 (highlighting the important role that media coverage played in drawing national attention to nail households); Erie, *supra* note 141, at 37 (reporting that media coverage of government settlements created a body of de facto precedent that residents could draw on in their petitions and campaigns for compensation); Qin Shao, *Waving the Red Flag: Cultural Memory and Grassroots Protest in Housing Disputes in Shanghai*, MOD. CHINESE LITERATURE & CULTURE, Spring 2010, at 197, 198 (describing some residents’ tactic of using communist symbols, like the flag, to protest in a way calculated to enhance the protest’s media optics).

365. “On the one hand, selective but systematic repression is still meted out to dissident intellectuals, human rights lawyers, and organized religious and political dissenters who show any inkling of cross-class and cross-locality mobilization. On the other hand, the government has launched policy reforms to address the most salient socioeconomic grievances.” Ching Kwan Lee & Yonghong Zhang, *supra* note 272, at 1504.

which claims are intolerable (e.g., calling for toppling the communist regime);³⁶⁶ suppresses formal organization, but condones informal, “spontaneous” protest organization;³⁶⁷ and is more flexible with specific protest tactics where protesters and officials engage in a “tug of war” of negotiation and compromise.³⁶⁸ It is possible that due to years of publicity; the economic nature of the protestors’ claim; the lack of cross-class, cross-location formal organization; and the frequent desire or incentive for both sides to negotiate, expropriation and demolition conflicts have exhausted their political explosiveness in the minds of the CCP and the Chinese government.³⁶⁹

Another factor that may have contributed to officials’ unwillingness to act aggressively was low morale. A lack of respect from the local population invited low morale.³⁷⁰ So did low pay, especially when officials thought about how much money illegal villager-developers were making.³⁷¹ For example, in 2014, the annual salary for Vice Mayor Huang was ¥33,000 and for Director Zhu was ¥25,000.³⁷² Meanwhile, a Valley Villager could collect as much as ¥100,000 of rent a year from tenants.³⁷³ With great irony, Director Zhu himself lived in an illegal apartment built by a peri-urban villager.³⁷⁴ “It’s half the price of a legal apartment. My salaries are low,” he said with a shrug.³⁷⁵ Like the street-level police described by Scoggins and O’Brien, low morale led to shirking.³⁷⁶ I attribute some of Mountain County officials’ meekness and compliance with restrictive procedural laws to an unwillingness to take on hard tasks. Laws that restrict their power could come in handy when they try to explain their less-than-enthusiastic job performance to their superiors. To the extent that law is useful in that regard, demolition officials might welcome, instead of loathe, restrictive laws.³⁷⁷

366. YAO LI, *INFORMAL RULES*, *supra* note 253, at 21.

367. *Id.*

368. *Id.*

369. *See supra* notes 359–68 and accompanying text.

370. *See supra* notes 255–57 and accompanying text.

371. *See infra* notes 372–75 and accompanying text.

372. *Fieldwork Journal*, *supra* note 1, 2014-026C.

373. *Id.* 2014-032C; *id.* 2015-185D.

374. *Id.* 2014-026C.

375. *Id.* (translation provided by Xiaoqian Hu).

376. Scoggins & O’Brien, *supra* note 254; *see also supra* text accompanying notes 254–59 (discussing Scoggins and O’Brien’s interviews with low-level police).

377. An example in this regard is the legal rule that officials should not demolish buildings at night or on weekends and holidays. Administrative Enforcement Law, art. 43, *translated in* 2011 P.R.C. LAWS 125, 138. Whether or not officials would obey the law for the law’s sake, this prohibition makes it easier for them to resist a superior’s order to work on such days and times. *Id.* In several peri-urban villages where I did fieldwork, the practical knowledge that officials were unlikely to enforce the law at night or on weekends and holidays was deployed to great effect. After officials left, villagers would resume

Right now, the Chinese government’s cadre evaluation system would also increase the costs for demolition officials to use violence.³⁷⁸ In response to the increasing social unrest in the 1990s and 2000s, the CCP and the Chinese government placed high priority on maintaining sociopolitical stability.³⁷⁹ An effective way to achieve this goal is by tying the number, scale, and sociopolitical impact of citizen-government disputes to the job performance and, hence, the career advancement of the officials in charge.³⁸⁰ *Xinfang*, or “letters and visits,” is a primary tool for upper-level governments to obtain information on citizen-government disputes.³⁸¹ It allows citizens to petition higher governments to rectify local governmental malfeasance and is a long-established and highly popular institution in China.³⁸² In the current political climate, the Chinese government seems to give more weight to land conflicts than to many other types of conflicts.³⁸³ China political scientist Christopher Heurlin documents that, between 1998 and 2010, land takings were on the annual “hot issue” agenda of Chinese provincial petitioning bureaus 63.6 % of the time, and demolitions were on the “hot issue” agenda 87.5% of the time.³⁸⁴ He coins the term “responsive authoritarianism” to describe the current Chinese state³⁸⁵:

construction on such days and times, until the building was completed or the risk of officials enforcing the law again decreased to a normal level. *Fieldwork Journal*, *supra* note 1, 2014-062D, 032C, 050A.

378. *See infra* notes 379–82 and accompanying text.

379. HEURLIN, *supra* note 143, at 17, 29.

380. Under China’s cadre evaluation system, officials are scored for their performance of specific categories of tasks (economic development, stability maintenance, environmental protection, documentation, etc.). *Id.* at 29–30. The higher the total score, the likelier a promotion. *Id.* at 30. There are also “veto” scores; failure to perform specific tasks would prevent an official from being promoted, regardless of how high his or her total score is. *Id.* Heurlin describes how the Chinese cadre evaluation system works at both the central-provincial and local levels in contemporary China, and how petitions, economic development, and stability maintenance affect officials’ career prospects. *Id.* at 17, 29–30, 58–61, 119. Explaining how the cadre evaluation system works in the context of environmental governance in China, Alex Wang argues that cadre evaluation plays a more prominent role than formal laws and legal institutions in the government’s effort to deliver “performance legitimacy.” Wang, *supra* note 294, at 378–86.

381. *China’s Citizen Complaint System: Prospects for Accountability Before the Cong.-Exec. Comm. on China*, 111th Cong. 4 (2009) (statement of Carl Minzner, Associate Professor of Law, Washington University School of Law).

382. Petitioning directly to higher authorities was also a popular means of seeking justice in Imperial China. *See, e.g.*, Alford, *supra* note 223, at 1208–09 (explaining that an individual could appeal a case through a special petition procedure known as *ching-k’ung* (capital appeal)).

383. *See infra* note 384 and accompanying text.

384. HEURLIN, *supra* note 143, at 104.

385. *Id.* at 3. Several other scholars also demonstrate that the Chinese government is becoming more responsive to some kinds of popular demand. Li, *supra* note 253; Ching Kwan Lee & Yonghong Zhang, *supra* note 272; XI CHEN, SOCIAL PROTEST AND CONTENTIOUS AUTHORITARIANISM IN CHINA 92–93, 182 (2012); YONGSHUN CAI, *supra* note 145, at 88–89 (identifying social networks and media coverage as tools that residents can use to put pressure on the central government). My 2014–2016 fieldwork in Mountain County and in a northeastern Chinese county also indicates that citizens frequently

By responsive authoritarianism, I refer to a regime that proactively monitors citizen opposition to state policies and selectively responds with policy changes when it gauges opposition to be particularly widespread. Responsiveness, moreover, is intended to strengthen the state and avoid the development of a revolutionary opposition rather than being a sign of state weakness.³⁸⁶

Xi Jinping's anti-corruption campaign might be another consideration when Mountain County officials decided on the use of violence on public or potentially public occasions. Just prior to my 2014 arrival, nearly 40 officials had been arrested for corruption, including the former chief of the County's urban construction corporation and land reserve station.³⁸⁷ During my second trip to Mountain County, around the time of the Chinese New Year, the provincial government dispatched an anti-corruption investigator, who worked and slept in a newly-built hotel right in the middle of the County's largest real estate development project.³⁸⁸ His job was to receive and report to the provincial government any citizen or organizational complaint about corruption in Mountain County.³⁸⁹

The presence of these laws, institutions, political campaigns, technological devices, and social networks does not mean that officials in Mountain County would necessarily obey the law, or that villagers would always sue the government or expose official malfeasance.³⁹⁰ Nevertheless, these institutions and networks were plausible threats that villagers could deploy against demolition officials. In conversations with me, demolition officials in Mountain County expressed their worries about these threats. Vice Mayor Huang, who read media and government reports on demolition violence, told me that if he and his crew failed to manage a demolition conflict and a villager died on the scene, a higher government might investigate, and he might be punished for unauthorized use of violence.³⁹¹ He

used petitions as a threat when negotiating land issues with local officials. *But see* Carl Minzner, *Intelligentsia in the Crosshairs: Xi Jinping's Ideological Rectification of Higher Education in China*, CHINA LEADERSHIP MONITOR (Dec. 1, 2019), <https://www.prleader.org/carl-minzner> (documenting how the CCP under Xi's leadership is tightening control over China's intelligentsia through renewed emphasis on ideology, censorship, funding, and direct repression); CARL MINZNER, *END OF AN ERA: HOW CHINA'S AUTHORITARIAN REVIVAL IS UNDERMINING ITS RISE* 67–141 (2018) (explaining officials' pacification of protestors as reflective of societal radicalization and political decay caused by a frozen, increasingly authoritarian regime, rather than government responsiveness; documenting tightened repression of religious freedoms in China in recent years).

386. HEURLIN, *supra* note 143, at 3.

387. Fieldwork Journal, *supra* note 1, 2014-003C.

388. *Id.* 2015-198C.

389. *Id.*

390. *See supra* notes 351–89 and accompanying text.

391. *Id.* 2014-025C, 026A; *id.* 2015-200B.

revealed to me that as a husband, father, and son from a peasant family with no powerful patron in the government, he would rather err on the safe side.³⁹² The director of the state land and resource office of another township complained about how “unfairly” the public and the government treated demolition officials: “Even if you [demolition officials] have been 100% right and they [villagers] 100% wrong, if something bad happens (*chushi*, usually death), you are 100% wrong.”³⁹³

C. Legitimacy Undermined by Private Practice of Corruption

Although officials in Mountain County would care about legitimacy, caring about legitimacy would not turn them into moral “saints” or slaves to the people. Corruption corroded their legitimacy, yet I did not see a concerted effort on their part to stop being corrupt. The “feast” event described in Part III.B was an illustration of the various practices of networking, collusion, and corruption between peri-urban villagers and officials who enforced the law against illegal construction.³⁹⁴

Feast-type strategies centered on *songli*,³⁹⁵ giving gifts to officials. Although *songli* used to be a crucial means of community support to overcome moments of hardship, it has acquired a more popular second meaning of bribery. *Songli* could take many forms, from the very mild to the very strong: inviting officials to a feast at home (as in the “feast” event); taking officials to dine in private rooms in expensive restaurants (I personally attended three such dinners);³⁹⁶ giving officials “a good time” in private chambers in entertainment facilities such as karaoke bars, foot massage salons, spa centers, and secret places of prostitution; giving officials expensive gifts, such as exotic cigarettes and liquor or foreign brand-named watches and purses; giving officials or their parents or children large sums of money on social occasions of gift-giving; taking officials or their families on vacation; and directly bribing officials with cash, shopping cards, or ATM debit cards. To a significant extent, whether there was “bribery” between the giver and the recipient was a matter of self-designation, and both parties had

392. *Id.* 2015-200B.

393. *Id.* 2015-200C3 (translation provided by Xiaoqian Hu). Heurlin also records similar statements made by local officials in other parts of China. HEURLIN, *supra* note 143, at 72.

394. *See supra* Part III.B (recounting a resident’s attempt to secure local government approval of his building plans by serving local officials a sumptuous lunch).

395. *See supra* notes 295–97 and accompanying text (providing historical context for the practice of *songli* in Mountain County).

396. Fieldwork Journal, *supra* note 1, 2014-026D, 033D, 057D.

a strong obligation to describe the transaction in affective, euphemistic, or, at the very least, business-like terms.³⁹⁷

While it was relatively easy to inquire about the “art” of *songli*, it was very difficult to learn (and unwise to ask directly) about concrete instances in which a specific villager had bribed a specific official in order to conduct illegal housing development. For self-preservation and reasons of neighborly solidarity, no villager-developers confided in me that they or their neighbors had “bribed” officials. Nor did any officials reveal to me that they or their colleagues had taken “bribes” from illegal villager-developers. Nonetheless, I did learn from peri-urban villagers and construction contractors that particular officials were “corrupt” and would “openly demand money” in exchange for non-enforcement or a particular interpretation of the law, or for other types of favors.³⁹⁸ I also learned that some villager-developers had been village cadres themselves or were relatives of officials in charge of stopping illegal housing development.³⁹⁹

In addition to giving money or gifts to officials, there were also monetary transactions between peri-urban villagers and township governments. For instance, some township governments fined villager-developers for violating the fire code.⁴⁰⁰ These fines had become a regular monetary exchange between the government and the villager-developer and understood by both parties to be a solution to (or price for) short-term peace.⁴⁰¹ There were also “donations” if the township government incurred an expense. At the Chinese New Year, some township offices might receive *hongbao*, red envelopes with money inside, a gift that parents and relatives give to indulge children at the most festive time of the year.⁴⁰²

The severity and pervasiveness of bribery in Mountain County were widely known. When I asked Mountain County residents about officials, *tan* (corruption or greed) almost always came up as their first description of

397. The ubiquity of gift exchange and corruption in China and the affective, rhetorical, and behavioral tactics involved in them are analyzed by scholars. See generally Szto, *supra* note 297 (exploring anti-corruption law and whether gift-giving can help combat corruption); Ling Li, *supra* note 295 (outlining scholarly analysis of corruption in China through bribery or gift-giving); Alan Smart & Carolyn L. Hsu, *Corruption or Social Capital? Tact and the Performance of Guanxi in Market Socialist China*, in CORRUPTION AND THE SECRET OF LAW: A LEGAL ANTHROPOLOGICAL PERSPECTIVE 167 (Monique Nuijten & Gerhard Anders eds., 2007) (discussing the different uses and functions of *guanxi* practice, its ambiguous nature, and its conflation with corruption).

398. Fieldwork Journal, *supra* note 1, 2014-010A, 025C, 032C; *id.* 2015-198C, 200B.

399. *Id.* 2014-055C; *id.* 2015-185D, 198C.

400. *Id.* 2014-050A; *id.* 2016-012A.

401. *Id.* 2016-012A.

402. See Ling Li, *supra* note 295, at 13 (noting that some people who want to bribe Chinese officials literally and figuratively wrap their gifts in the tradition of *hongbao*).

official behavior.⁴⁰³ The perception that officials were invariably corrupt was particularly strong among businesspeople who, according to popular perception, were the biggest and most frequent gift-givers.⁴⁰⁴

How effective the provincial anti-corruption investigator was in curbing corruption in Mountain County remains a mystery. Many peri-urban villagers I talked to did not know about his presence.⁴⁰⁵ Those who did were skeptical of his effectiveness or had reservations about visiting him.⁴⁰⁶ After the investigator had been stationed there for a while, I noticed a sign by the road reading, “Want to see the provincial investigator? Call [cell phone number]!”⁴⁰⁷ One day, I was in a car with a doctor and his childhood buddy, who was the police chief from another township.⁴⁰⁸ We passed this sign again.⁴⁰⁹ I expressed my amazement that the county government would fight its own corruption.⁴¹⁰ The doctor, who was a close interlocutor of mine, laughed at my naïveté, “Ha-ha, do you think that number will take you to the real investigator? They’d make sure you complain to a fake investigator in a different room in the hotel! Ah, you are indeed a student!”⁴¹¹ The police chief also laughed, neither affirming nor rebuking his friend.⁴¹² Just that morning, the police chief had received a red envelope of ¥5000 (\$800) from a business in his town, which he told me was to cover “office expenses” (*bangong jingfei*) at his station, not money for himself.⁴¹³

Corruption is a collective action problem that anti-corruption laws and norms cannot overcome.⁴¹⁴ On the one hand, the material value of a bribe was substantial and was often not shared with other officials (it would be much cheaper for the gift-giver to bribe the official in charge than to bribe everyone in the department).⁴¹⁵ On the other hand, the risk of detection was low, particularly compared with a public display of official violence. Both

403. See, e.g., Fieldwork Journal, *supra* note 1, 2014-029A; *id.* 2015-186C, 188C, 200B; *id.* 2016-002A1 (recording only a small subset of such conversations).

404. *Id.* 2014-010A; *id.* 2015-195C; *id.* 2018-004D.

405. See, e.g., *id.* 2015-198C; *id.* 2016-006C.

406. *Id.* The most common skepticism was, “It’s window dressing! They [the provincial and local governments] are wolves of the same pack.” *Id.* (translation provided by Xiaoqian Hu). Some residents were unwilling to visit the investigator for fear of retaliation by the official they would be accusing of corruption. *Id.*

407. *Id.* 2016-012C (translation provided by Xiaoqian Hu).

408. *Id.*

409. *Id.*

410. *Id.*

411. *Id.* (translation provided by Xiaoqian Hu).

412. *Id.*

413. *Id.* 2016-012A, 012C.

414. See *supra* notes 415–17 and accompanying text.

415. *Id.* 2014-010A; *id.* 2018-004D (recording a conversation with a businessperson describing their bribing practice).

the giver and the recipient had an incentive to hide the transaction. The low risk of detection was further sustained by political norms of secrecy and solidarity.⁴¹⁶ To the extent we discussed corruption, my official interlocutors either felt powerless to change the situation, and, as a result, were resigned about it, or showed righteous indignation that the “bad apples” had ruined their own reputations and the people (*laobaixing*) now viewed them as also corrupt.⁴¹⁷ In neither case did I see an effort by them to collectively fight corruption. Corruption is a tragedy of the political commons of government legitimacy.⁴¹⁸ Fundamentally, the very legitimacy that officials were trying to rebuild through public restraint in using force was undermined by their private practice of corruption and by popular perception of their corruption.⁴¹⁹

V. INTERACTIONS BETWEEN LAWS AND NORMS IN MOUNTAIN COUNTY

As peri-urban villagers and demolition officials reckoned with, deployed, or defied formal laws and informal norms in expected or unexpected ways, they pulled and pushed laws and norms in various directions. In this Part, I outline four types of law-norm dynamics in villager-initiated illegal urbanization in Mountain County.⁴²⁰ These four types are an effort to bridge the gap between detailed factual reporting and general accounts of law-norm relations in law and society literature.⁴²¹ They are: (1) *instantiation*, where law and norms delineate each other’s meaning in specific instances; (2) *waxing and waning*, where law and norms reinforce or undermine each other’s effect on human behavior; (3) *transformation*, where law and norms gradually transform each other’s meaning; and (4) *rule production*, where, over time, law and norms interact to produce new rules.⁴²² Through these four themes, law and norms shed the still mass of conceptuality and come alive. Given that rule production often results from

416. For sure, the norms of secrecy and solidarity also exist in other political cultures, including law enforcement in the United States. See Earl Ofari Hutchinson, *It’s Time for Cops to Break the Blue Code of Silence*, HUFFINGTON POST (Sept. 24, 2016), https://www.huffingtonpost.com/earl-ofari-hutchinson/its-time-for-cops-to-brea_b_12173778.html (reporting on the “code of silence” among police officers, which leads many police departments to cover up, rather than address or report, misconduct); accord Rick Bragg, *Blue Wall of Silence: Graft Shielded Behind Old Code*, N.Y. TIMES (Apr. 26, 1994), <https://www.nytimes.com/1994/04/26/nyregion/blue-wall-of-silence-graft-shielded-behind-old-code.html> (discussing the “code” of silence followed by New York police officers).

417. Fieldwork Journal, *supra* note 1, 2014-035D, 050C, 062A, 069D.

418. See *supra* notes 394–417 and accompanying text.

419. See *supra* notes 295–418 and accompanying text.

420. See *infra* notes 421–23 and accompanying text.

421. See *infra* notes 422–23 and accompanying text.

422. See Parts V.A–C.

continual transformations of laws or norms, I combine the third and fourth types of law-norm dynamics under one subheading to avoid redundant analysis.⁴²³

A. Instantiation Through Mutual Definition

By *instantiation*, I refer to the process in which a rule is given or takes on a concrete meaning. By *mutual definition*, I refer to instances in which law and norms delineate and even give new meaning to each other. I give two examples of such interaction in Mountain County’s illegal housing development.⁴²⁴

First, law and norms defined each other to regulate rural families’ property rights. As children grow up and get married, household partition is frequently practiced in rural China.⁴²⁵ Under Chinese property law, a rural household is allowed to have only one rural house and only one housing plot.⁴²⁶ Hence, the number of households a rural multi-member family can split into is extremely important for determining the family members’ property rights. Yet, formal law is unclear on this question. Article 5 of the Household Registration Regulations reads: “Persons living with a person in charge (*zhuguanren*) form one household, with the person in charge being the head of the household. Persons living alone form one household and are the head of the household”⁴²⁷ If literally interpreted, Article 5 would allow any person to split from his or her household and establish a separate one by simply moving out and living alone. In Mountain County, social norms expect a man to form his own household and to take care of his elderly parents. These norms have come to inform the interpretation of household partition rules for purposes of housing construction and expropriation compensation. For example, the first Valley family in the “feces” event managed to split into two and obtain approval to construct a second building, because it had two sons.⁴²⁸ The second family in the “feces” event could not use this strategy, because it had only one son, even though the son was married and had a child, and the family comprised three generations and was

423. See Part V.C.

424. See *infra* notes 425–38 and accompanying text.

425. Myron L. Cohen, *Family Management and Family Division in Contemporary Rural China*, 130 CHINA Q. 357, 369 (1992).

426. Land Administration Law (amended 2004), art. 62, *translated in* 2004 P.R.C. LAWS 399, 421.

427. Household Registration Regulation, art. 5 (translation provided by Xiaoqian Hu).

428. Fieldwork Journal, *supra* note 1, 2014-050A.

larger in size than the first family.⁴²⁹ In this case, social norms gave meaning to state laws on household partitions and family members' property rights.

Second, property, criminal, and tort law; the political norm of collegiality; the social norms of civility and retribution; and even the religious norm of karma define each other to motivate civil and uncivil behaviors. In the "feast" event, the family decided to lavish hospitality on the officials, because property law granted the latter the power to approve the family's housing construction.⁴³⁰ When villagers and officials are in open confrontation, law and norms shape the relative riskiness of various confrontational tactics by demarcating permitted-approved or prohibited-condemned behaviors and their respective consequences. Although most villagers I observed were civil to law enforcement officials, those who did swear at officials deployed this strategy, in part, because they correctly guessed that state law does not punish the mere use of foul language. Putting a curse on officials works the same way. The atheist Chinese state does not believe in the efficacy of laying curses, and, hence, state law does not punish people for cursing officials to have no descendants or to die horrible deaths, or for cursing officials' parents or children to die horrible deaths.⁴³¹ However, such curses are extremely offensive and hurtful to people in Mountain County, because they are invocations and enactments of the religious norm of karma, the social norm of retribution, and the witchcraft of putting a curse on someone. In karma, a person who has committed a serious wrong shall be punished by heaven (*tian*), either directly, or more painfully, through his or her children or parents.⁴³² The norm of retribution justifies the victim's revenge.⁴³³ The witchcraft of cursing is the person's activation of the supernatural forces of evil.

The same would apply to officials, but for the fact that when officials enforced the law against illegal construction, they acted in a group. In Vice Mayor Huang's law enforcement mission, for example, the crew included his inferiors, senior officials, and regular employees from the Urban Law Enforcement Authority and the Department of State Land and Resources.⁴³⁴

429. *Id.* 2014-025C, 050A.

430. *See supra* Part III.B (narrating the "feast" event).

431. Again, the fact that state law does not punish people for casting a curse on officials does not mean that officials would not use other means to punish villagers for doing that.

432. Although karma originated from India, Buddhism was introduced to China as early as 2000 years ago and has become an essential part of traditional Chinese culture. Wing-tsit Chan, *Transformation of Buddhism in China*, 7 PHIL. E. & W. 107, 107 (1957). Mountain County has many Buddhist temples, and the idea of karma has blended with folk religious beliefs.

433. *See* Li Jie, *A Comparative Study of Revenge and Law in the Chinese and Western Cultures*, 11 CANADIAN SOC. SCI. 180, 182 (2015) (describing how revenge is reinforced in Chinese culture through history, religious norms of filial piety, and a social stigma against failure to take revenge).

434. Fieldwork Journal, *supra* note 1, 2014-025C.

Both departments answered directly to the county mayor and had more power and money than his township government. If officials retaliated against a swearing or cursing villager in kind, their lack of civility would be displayed, not only in front of other villagers who might spread the news socially, but also, and more importantly, in front of their superiors, inferiors, colleagues, and rivals (for promotions) who might judge their vulgarity as unprofessional, incompetent, barbaric, or plainly stupid.

On the other hand, state law also restricts villagers from defying civility in whichever way they please.⁴³⁵ This helps explain why the more common, uncivil tactics Mountain County villagers deployed were either self-regarding actions, such as wailing, working up a rage or hysteria, feigning injury or mental breakdown, threatening to do something unseemly, and threatening self-injury or suicide; or verbal abuses, such as swearing and putting curses on officials.⁴³⁶ Very infrequently did villagers deploy threats of violence against officials. In the “feces” event, no actual assault was committed by the villagers against the officials.⁴³⁷ Recall one official’s remark, “I will let you pour your bucket. You know the consequence.”⁴³⁸ This was a threat to invoke state law that punishes assault. The villager’s threat of pouring feces remained a threat. His gesture, which seemed to me so reckless and out of control at the time, appeared artfully choreographed when I studied the videotape after the incident. While an official was holding his free arm, the arm with the chamber pot was unhindered and he could have poured the contents on the officials if he had so wished. Yet, he waved the bucket in such a way so that the contents were sloshing inside but never actually came out. In one moment the contents flew above the bucket, and he instantly backed away to avoid splashing on the officials near him.

State law punishing assault may also help explain why Vice Mayor Huang’s team preferred to have the mission on tape to protect themselves against false accusations of malfeasance.⁴³⁹ Similarly, it may also have made his team more hesitant to have physical contact with Valley Villagers. Officials’ gingerly behavior toward villagers made it easier for villagers to

435. See, e.g., Criminal Law, art. 277, translated in 1997 P.R.C. LAWS 21, 101 (establishing punishments for behavior that interferes with or obstructs enforcement of laws); Public Security Administration Punishments Law, art. 50, translated in 2005 P.R.C. LAWS 53, 67 (echoing the Criminal Law’s punishments for this behavior).

436. Township officials interviewed by Heurlin also had been cursed by local residents. HEURLIN, *supra* note 143, at 72. Lee and Zhang show that threats of suicide were also deployed by residents in Shenzhen and Beijing. Ching Kwan Lee & Yonghong Zhang, *supra* note 272, at 1487.

437. See *supra* Part III.B (relating my account of the “feces” event).

438. *Id.* (translation provided by Xiaoqian Hu).

439. Criminal Law, art. 277, translated in 1997 P.R.C. LAWS 21, 101.

use vulgarity and threats of violence and suicide to deter officials from tearing down their construction.

B. The Waxing and Waning of Law and Norms

Illegal housing development in peri-urban Mountain County placed enormous pressure on formal laws and informal norms. As villagers and officials negotiated or fought with each other, some laws and norms were being strengthened, while others weakened.⁴⁴⁰

At the most general level, Chinese property law (before the amendments in late August 2019) conflicted with the social norms of fairness, reciprocity, and sharing.⁴⁴¹ The law intentionally distributed peri-urban landed wealth to the state and corporate entrepreneurs, and excluded villagers whose land was expropriated for urban development from sharing this wealth.⁴⁴² Under the social norms of reciprocity, sharing, and fairness, when one person gives something away so that another person can obtain a substantial benefit, the beneficiary is socially obligated to show gratitude by sharing part of that benefit.⁴⁴³ Urbanization is an extreme case of sacrifice and profit-making. The villagers sacrificed their farmland—a source of livelihood, a farm life, and, in many instances, their home and community—while the state and corporate entrepreneurs made enormous profits.⁴⁴⁴ Peri-urban villagers in Mountain County who conducted illegal housing development invoked reciprocity, sharing, and fairness.⁴⁴⁵ Their endorsement and use of these norms strengthened the validity of these norms and weakened the exclusionary distributive effect of Chinese property law.

Other social norms were also being invoked and strengthened in Mountain County. Most instances of illegal construction were done secretly, without the knowledge of the government.⁴⁴⁶ Just as there is a norm of secrecy among local officials, there is a norm of secrecy within rural

440. See *infra* notes 441–61 and accompanying text.

441. See Kennedy, *Legal Economics*, *supra* note 48, at 82–84, for an analogous case in which formal property law conflicts with norms of fairness and reciprocity.

442. See Land Administration Law (amended 2004), art. 47, *translated in* 2004 P.R.C. LAWS 399, 417 (establishing that the government need only compensate a parcel's user for the value of the land's original use, not for the value of the land for development); see also *supra* text accompanying notes 123–24, 129–30 (explaining that villagers do not share in the profit from development of village land).

443. See Jerry M. Berger, *The Norm of Reciprocity as an Internalized Social Norm: Returning Favors Even When No One Finds Out*, 4 SOC. INFLUENCE 11, 11–12 (2009) (defining the norm of reciprocity).

444. See *supra* text accompanying notes 129–30 (explaining that Chinese property law has authorized the state and developers to capture all the profits of peri-urban development).

445. See, e.g., Fieldwork Journal, *supra* note 1, 2014-025C, 050A.

446. See *supra* text accompanying notes 217, 219–20 (describing tactics villagers used to conceal illegal construction).

neighborhoods. This norm kept villagers’ mouths shut when officials tried to pry about illegal housing development in peri-urban areas. It was for this reason that township governments (to the extent they were pressured by the county government and could afford it) had to hire outside patrolmen to detect illegal construction in peri-urban Mountain County.⁴⁴⁷

In a way, the norm of secrecy is a sub-norm of “community solidarity,” or to use Ellickson’s term, “neighborliness.”⁴⁴⁸ Another sub-norm that was being strengthened in peri-urban Mountain County and that blunted the efficacy of law enforcement efforts was the norm of helping neighbors. When officials targeted a villager’s illegal construction, very often they found themselves surrounded by a crowd of villagers.⁴⁴⁹ These fellow villagers could spread the news of official malfeasance and testify against governmental malfeasance if such an occasion ever came up. They could join in the fight by morally condemning officials as “corrupt,” “capricious,” and “excessive,” or by verbally abusing officials.⁴⁵⁰ When the conflict escalated to a dangerous level, they could mediate between the villager and the officials.⁴⁵¹ As the “feces” event shows, sometimes a neighbor could complete the villager’s performance of a threat by “forcefully” carrying the villager away, giving the villager a safe exit, while, at the same time, lending credence to the threat.⁴⁵²

Chinese property law pitted peri-urban villagers, who strove to stay on the land and share peri-urban landed wealth, against officials, who were assigned to enforce the law against illegal real-estate development. The resulting negotiation and confrontation over legality and illegality of property relations bred corruption, animosity, and resentment among both villagers and officials in Mountain County.⁴⁵³ These negative consequences weakened the general political norms of government legitimacy and legal obedience and the political norm that officials should be dutiful and devoted agents of the state.⁴⁵⁴ The weakening of legitimacy pressured demolition

447. Fieldwork Journal, *supra* note 1, 2014-025A, 021C, 061A.

448. See ELLICKSON, *supra* note 48, at 52–64, 71–81 (discussing neighborliness as an influence in the ranching community).

449. See *supra* Part III.B (describing various ways in which neighbors helped one another and intervened when officials came to demolish illegal construction).

450. See, e.g., Fieldwork Journal, *supra* note 1, 2014-025C.

451. See, e.g., *id.*

452. See, e.g., *supra* Part III.B (recounting that a neighbor stepped in to rescue the villager who was threatening to jump off the roof of his house).

453. See, e.g., *supra* text accompanying notes 332–41 (describing Mountain County officials’ impressions of residents’ deep animosity for them).

454. See, e.g., *supra* text accompanying note 403 (reporting that Mountain County residents directly associate officials with corruption and greed).

officials to use force with restraint, which further undermined property law's prohibition of commercial housing development on rural land.

Conversely, the effect of the 2011 and 2012 procedural reforms that restrict officials' demolition power was reinforced by the Chinese state's petitioning and cadre evaluation systems,⁴⁵⁵ and by national political events, most notably, the political sensitivity of land conflicts and Xi Jinping's focus on maintaining stability and investigating corruption.⁴⁵⁶ The effect of these reforms was also reinforced by local norms. The weakening of legitimacy motivated demolition officials to regain some legitimacy and basic respect by publicly complying with laws that restrict their power.⁴⁵⁷ It also caused low morale among demolition officials and, to some extent, motivated them to use restrictive laws to justify their less-than-earnest job performance.⁴⁵⁸ The effect of restrictive laws was further strengthened by the particular historical time that Mountain County is in, that is, sufficiently modern to enable citizens to easily identify demolition officials, yet sufficiently close-knit to ensure that demolition officials live and work within the county and their parents are life-long residents of their native village.⁴⁵⁹

Lastly, law and norms have interacted to produce consequences which each on their own would be unable to produce. Absent the neighborhood norm of secrecy, government officials would have known or have been able to know instances of illegal construction at an early stage.⁴⁶⁰ Officials might have been able to stop illegal construction despite laws and norms about appropriate official behavior. Absent laws and norms about appropriate official behavior, it would have been much easier for officials to tear down illegal construction with force, despite the neighborhood norm of secrecy.⁴⁶¹ However, the presence of *both* the norm of secrecy *and* laws and norms about appropriate official behavior produced illegal housing development in Mountain County and, in that locale, drastically weakened Chinese property law's prohibition of real estate development on rural land.

455. *See supra* notes 379–84 and accompanying text (discussing the Chinese state's efforts to reduce social unrest by counting citizen complaints and protests against a responsible official's job performance record).

456. *See supra* notes 384 (discussing the Chinese state's focus on reducing social unrest, particularly around land conflicts).

457. *See supra* Part IV.B (analyzing Mountain County officials' efforts to regain legitimacy).

458. *See supra* Part IV.B (analyzing the effect that heightened scrutiny had on Mountain County officials).

459. *See supra* Part IV.A (constructing Mountain County officials' social need for legitimacy).

460. *See supra* notes 448–52 and accompanying text (discussing norms of "community solidarity").

461. *Cf. supra* text accompanying note 391–93 (relating officials' fears that, in the absence of laws authorizing force, they would bear full responsibility for any violence, regardless of whether officials or villagers were at fault).

C. The Production and Transformation of Law and Norms

The mutual definition and the fluctuating effects of law and norms as manifested in Mountain County’s illegal housing development were creating new laws and norms. The norm of neighborhood solidarity prompted Valley Villagers (and later, residents in neighboring villages) to begin their illegal construction on the same day;⁴⁶² collectively negotiate with the township and county governments;⁴⁶³ petition the provincial government when negotiation failed;⁴⁶⁴ and, eventually, compel the County government to grant all the villagers who had lost land to the expressway a right to build a commercial-residential house by the expressway.⁴⁶⁵ In this case, the norm of neighborhood solidarity drastically reduced the costs of collective action and ultimately pressured the County government to formally reverse the law’s prohibition on real estate development for these villagers.

Conversely, state law can change social norms and produce new ones. In Mountain County, the social norms that a son is expected to form a family and to support his parents have produced concrete rules regarding household partition. Traditionally, household partition would occur when there were at least two sons, and one son had married. In this case, the married son would form his own household, while the parents lived with the unmarried son(s). On the other hand, if there was only one son, household partition would be viewed with disapproval, and the son and daughter-in-law would be viewed as “unfilial.” With the advent of illegal housing development, property law’s “one household, one house” rule motivated many peri-urban households to split early and to split into smaller units so that they could build more houses.⁴⁶⁶ Many single-son families managed to convince the town police that the parents and the daughter-in-law could not “stand each other under the same roof” and had to split in order to have peace.⁴⁶⁷ These new practices were producing a new norm in peri-urban Mountain County: that it is *smart* to split into as many households as possible.⁴⁶⁸

462. See *supra* text accompanying notes 208, 214 (describing the tactics pioneered by 20 Valley Villager families and, later, replicated by other villagers).

463. See *supra* text accompanying notes 209, 214.

464. See *supra* text accompanying notes 209, 214.

465. See *supra* text accompanying notes 210–12, 214.

466. Fieldwork Journal, *supra* note 1, 2014-003B, 010A, 010B, 025A. Cf. Chun Huang et al., *Rural Housing Land Consolidation and Transformation of Rural Villages Under the “Coordinating Urban and Rural Construction Land” Policy: A Case of Chengdu City, China*, 4 *LOW CARBON ECON.* 95 (2013) (reporting on a similar phenomenon of household partition in Chengdu City).

467. Fieldwork Journal, *supra* note 1, 2014-025A.

468. China legal historian Teemu Ruskola describes how during Ming and Qing China (1368–1911) state law exempting clan property from taxation incentivized entrepreneurial families with no kinship ties to strategically combine into one fictitious clan so that they could put their wealth in an

Additionally, state law and social norms can create political norms.⁴⁶⁹ Property law's exclusion of peri-urban villagers from peri-urban landed wealth compelled villagers and officials in Mountain County to negotiate peri-urban property rights. These negotiations, along with other citizen-official negotiations, were transforming the social norms of *songli* and *shouli* (giving and receiving gifts) into political norms. Though *songli* and *shouli* in this context are essentially practices of corruption, as discussed below, they also constitute political norms.⁴⁷⁰

McAdams distinguishes norms from conventions: with norms, most or all of a population approve conformity or disapprove nonconformity, while conventions do not entail such consensus of approval or disapproval.⁴⁷¹ Essentially, conventions are agreements between parties that aim to maximize mutual benefit.⁴⁷² Conventions may become norms as the relevant population develops a consensus that approves conformity or disapproves nonconformity.⁴⁷³ The political practices of *songli* (giving gifts to officials) and *shouli* (accepting gifts from citizens) in Mountain County may have emerged as what McAdams defines as conventions.⁴⁷⁴ Initially, there may have been no consensus of approval of conformity or disapproval of nonconformity. Quite the contrary, these practices are immoral, as they violate the political norm of integrity.⁴⁷⁵ When *songli* is used to outcompete rivals or procure a benefit that the gift-giver is otherwise ineligible for, *songli* and *shouli* also violate the social norm of *desert* and the political norm of *impartiality*.⁴⁷⁶ Nonetheless, my fieldwork indicates that the growing prevalence of *songli* and *shouli* had weakened these norms to an extent that citizens increasingly felt compelled to *songli* on occasions when they thought

“ancestral trust” and avoid paying taxes. Teemu Ruskola, *Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective*, 52 STAN. L. REV. 1599, 1636–45 (2000). This would be an example in which state law and the social norm of clan solidarity jointly created a norm that it was smart to fake one's clan identity for tax purposes.

469. See, e.g., *infra* notes 470, 474–77 and accompanying text.

470. See *infra* notes 474–77 and accompanying text.

471. Richard H. McAdams, *Conventions and Norms: Philosophical Aspects*, in 4 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL & BEHAVIORAL SCIENCES 844, 847–48 (2d ed. 2015).

472. *Id.* at 844–47.

473. *Id.*

474. See *supra* notes 471–73 and accompanying text.

475. Cf. Liang Han, *Songli (China)*, GLOBAL INFORMALITY PROJECT, [http://www.informality.com/wiki/index.php?title=Songli_\(China\)](http://www.informality.com/wiki/index.php?title=Songli_(China)) (last updated May 23, 2019) (describing the “grey zone” between bribery and *songli*).

476. See *Desert*, STAN. ENCYCLOPEDIA PHIL. (Oct. 9, 2015), <https://plato.stanford.edu/entries/desert/> (“A typical desert claim is a claim to the effect that someone deserves something from someone on some basis.”); *Impartiality*, STAN. ENCYCLOPEDIA PHIL. (Feb. 6, 2017), <https://plato.stanford.edu/entries/impartiality/> (“[A]n impartial choice is simply one in which a certain sort of consideration (i.e. some property of the individuals being chosen between) has no influence.”).

others would—even when their request was legitimate or legally entitled. Officials, too, felt increasingly compelled to *shouli* on occasions when they thought their colleagues would, for fear that their colleagues would ostracize them if they refused to conform. Hence, these practices may be described as *in the process of becoming* political norms.

Even though both the giver and the recipient were aware of the immorality of the gift exchange, both felt socially and politically compelled to undertake it. For these reasons, *songli* and *shouli* were both condemned and practiced in Mountain County; in fact, as condemned in word as practiced in action.⁴⁷⁷ They are “negative norms.”⁴⁷⁸

Although *songli* and *shouli* comport with McAdams’s description of norms, they do not comport with an esteem theory of norms on which his norm definition is based.⁴⁷⁹ Advancing Ellickson’s hypothesis that norms tend to maximize group welfare, McAdams shows that individuals’ desire for esteem can, under certain conditions, overcome collective action problems and create norms that prescribe desirable behavior (or refrain from an undesirable behavior, at least initially).⁴⁸⁰ This desire for esteem also ensures that those who do not internalize a norm do, nonetheless, conform to it, so as to avoid external sanctions.⁴⁸¹ Under the esteem theory of norms, a norm is “a decentralized behavioral standard that individuals feel obligated to follow . . . for the esteem reasons described above, *or* because the obligation is internalized, or both.”⁴⁸²

477. Such hypocrisy or dualism also exists in corruption practices elsewhere. *See, e.g.*, J.P. Olivier de Sardan, *A Moral Economy of Corruption in Africa?*, 37 J. MOD. AFR. STUD. 25, 27 (1999) (explaining that the dualism of corruption in Africa is one of “banalisation” and “cultural legitimacy”).

478. “Negative norms” were first studied in psychology, and the term has spilled over to other disciplines. *See, e.g.*, Robert F. Allen & Saul Pilnick, *Confronting the Shadow Organization: How to Detect and Defeat Negative Norms*, 1 ORGANIZATIONAL DYNAMICS 3, 5–6 (1973) (discussing the influence of negative norms in the context of organizational success and failure); IMMANUEL WALLERSTEIN, *WORLD-SYSTEMS ANALYSIS: AN INTRODUCTION* 39 (2004) (“Racism and Sexism . . . are negative norms, in that most people deny their belief in them. Almost everyone declares that they are vices, yet nonetheless they are norms.”); Stacy-Ann Elvy, *A Postcolonial Theory of Spousal Rape: The Caribbean and Beyond*, 22 MICH. J. GENDER & L. 89, 95–96 (2015) (looking at the negative norm of sexual violence against women and the continued survival of the spousal-rape exception in Commonwealth countries); Francois B. Botha et al., *Reducing the Stigma of Depression Among Asian Students: A Social Norm Approach*, 48 J. CROSS-CULTURAL PSYCHOL. 113, 118–19 (2017) (reporting the results of an experiment that measured students’ responses to portrayals of positive and negative descriptive norms of depressed people).

479. *See generally* McAdams, *Origin, Development, and Regulation*, *supra* note 12 (discussing norms and conventions); Pettit, *supra* note 309 (examining the emergence and resilience of norms).

480. *See generally* McAdams, *Origin, Development, and Regulation*, *supra* note 12 (proposing the esteem theory of norms).

481. *Id.* at 381.

482. *Id.* (emphasis in original) (footnote omitted).

Songli and *shouli* are morally ambiguous. On the one hand, to the extent *songli* and *shouli* have become obligatory, they are sub-norms of the more general norms of reciprocity, sharing, and gratitude.⁴⁸³ Hence, *songli* and *shouli* cover a much wider range of actions than outright bribing and taking bribes. It is when they contradict norms of desert, integrity, and impartiality that they become morally suspect. On the other hand, the boundaries between moral and immoral performances of *songli* and *shouli* are slippery, and actors exploit this slipperiness to justify and normalize their immoral behavior.

Songli and *shouli* are distinct from negative group norms that are offensive to the values of a larger society. McAdams identifies various group norms to which group members ascribe, but which the larger society condemns, and explains why such norms exist.⁴⁸⁴ While a person may gain respect within a white nationalist group for practicing white supremacy, there is no esteem to be gained for those who conform to the norms of *songli* and *shouli*. This is why those who conform to the norms make great performative effort to deny the true nature of the exchange.⁴⁸⁵

There is another type of norm that was being transformed by illegal housing development in Mountain County and that also carries this moral ambiguity: stereotypes of the “vulgar peasant” and “hysterical peasant woman.” There are even terms in the Mountain County dialect for peasant vulgarity and female hysteria: *shigao* and *fapo*. *Shigao* literally means “play shit” (it was not an accident that the man in the “feces” event chose a chamber pot as his weapon!), and includes many kinds of uncivil behaviors: swearing, putting curses on people, pretending to have a mental breakdown, or literally playing with shit. *Fapo* originally refers to a child throwing a fit. A woman who *fapo* is a *pofu*: a hysterical, irrational, and incorrigible peasant woman.

To be unruly or hysterical is by no means unique to Mountain County villagers or rural Chinese citizens more broadly. Benjamin L. Liebman describes how in medical disputes in urban China, families of deceased

483. See Berger, *supra* note 443, at 11 (explaining that the norm of reciprocity embodies the idea that people should give back to those who have given to them).

484. McAdams, *Origin, Development, and Regulation*, *supra* note 12, at 386–90.

485. See *supra* text accompanying notes 413 and see *infra* text accompanying notes 508–10 (recounting instances of both Mountain County residents and officials acknowledging *songli* while denying bribery); see also Fieldwork Journal, *supra* note 1, 2014-033D. In the 20th century United States, when mainstream society began to question the moral hegemony of racism, advocates of racial zoning, racially-restrictive covenants, and redlining defended these legal instruments on nonracist grounds, arguing that these instruments preserved or reflected property values and reduced racial conflict. Racist norms during these transitioning periods resembled *songli* and *shouli* in terms of their moral ambiguity. See, e.g., BROOKS & ROSE, *supra* note 52, at 39–41, 90–93, 107, 161–63 (examining racially-restrictive housing covenants); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 46–48, 51–54, 63–67, 93–94 (2017) (explaining how government policies promoted discrimination).

patients put corpses in the hospital lobby to force hospitals to buy peace with money, regardless of whether the death had been caused by medical malpractice.⁴⁸⁶ In the United States, vulgarity, obscenity, and other types of moral offense have also been used creatively by oppressed groups to defy oppression and demand justice.⁴⁸⁷ The wearing of the “pussy hat” by women protesters in the 2017 Women’s March was an example of such creative use.⁴⁸⁸ Creative performances of morally offensive acts are also deployed in the Black Lives Matter movement.⁴⁸⁹

Most people view negative stereotypes as strongly constrictive and are willing to avoid conducting the stereotyped behavior at high costs.⁴⁹⁰ However, people occupy different social positions, and possess different moral values or value priorities.⁴⁹¹ These differences may result in them possessing different capacities to avoid the negatively-stereotyped behavior or internalizing different norms with different intensities at a particular point in time.⁴⁹² Some people to whom specific stereotypes apply may believe that, at times, these stereotypes reduce their reputational costs of conducting the stereotyped behavior, and that acting them out is not as big a loss as for people to whom no such stereotype applies. This reasoning is captured by a woman interlocutor who remarked, “What have I to lose [by acting hysterically]? They [the officials] see me as a rural woman (*nongcun funü*). So, I act like a rural woman.”⁴⁹³

486. Benjamin L. Liebman, *Malpractice Mobs: Medical Dispute Resolution in China*, 113 COLUM. L. REV. 181, 228–29, 232 (2013).

487. See *infra* notes 488–89 and accompanying text.

488. Melia Robinson & Leanna Garfield, *Thousands of Women Wore Pink “Pussy Hats” the Day After Trump’s Inauguration*, BUS. INSIDER (Jan. 21, 2017), <https://www.businessinsider.com/pussy-hats-womens-march-washington-trump-inauguration-2017-2>.

489. See Austin D. Hoffman, *Black Lives Matter: Pain, Protest, and Representation*, 7 MIDWEST J. UNDERGRADUATE RES. 223, 230–41 (2017) (describing tactics employed by the Black Lives Matter movement, including protests, re-enactments of police brutality and killings, and mock funerals).

490. See, e.g., Robert Cooter, *Do Good Laws Make Good Citizens? An Economic Analysis of Internalized Norms*, 86 VA. L. REV. 1577, 1584 (2000) (analyzing the costs and benefits of obeying a social norm).

491. This is also one reason why some officials were notoriously more corrupt than most others in Mountain County. For these officials, community disapproval was not as strong a deterrent as it was for other officials.

492. Given that people internalize the same norms to different extents, Robert Cooter applies consumer theory to measure the extent to which a person internalizes a norm by the amount that person is willing to pay to comply with the norm. Cooter, *supra* note 490, at 1581–96. Just like people’s willingness to pay for a consumer good may change with changed cost-benefit calculations, people’s willingness to pay for a norm may also change with changed cost-benefit calculations. *Id.*

493. Fieldwork Journal, *supra* note 1, 2014-041C (translation provided by Xiaoqian Hu).

As often happens with stereotypes, the stereotyped group tries to defend itself by reinterpreting and even glorifying the stereotyped behavior.⁴⁹⁴ China has a long history of such re-making of stereotypes through folk stories and story-telling.⁴⁹⁵ During my fieldwork in Mountain County, a couple of villagers who adopted such “unruly” tactics later boasted, or had their neighbors boast for them, about their boldness, ingenuity, and ability to “teach officials a lesson.”⁴⁹⁶

During my fieldwork, I witnessed or learned of several instances in which a woman deployed stereotypes about rural women.⁴⁹⁷ The mother of the paraplegic trucker throwing a soiled adult diaper at the county mayor’s face was one example.⁴⁹⁸ In another example, over 100 government officials and police officers came to stop a peri-urban family from erecting a third commercial building.⁴⁹⁹ When they arrived, they found the daughter-in-law of the family standing on the loosely-made bamboo scaffolding on the third floor—her feet in slippers, her hand holding an ax—swearing and threatening to jump off the building.⁵⁰⁰ Officials managed to coax her down.⁵⁰¹ Thinking that she was on the ground, officials were about to tear down the construction.⁵⁰² The daughter-in-law snuck up to the roof and threatened to jump again.⁵⁰³ The confrontation ended with all the officials leaving the scene, having gained nothing but a series of curses from the villagers and a harsh reprimand by the township mayor.⁵⁰⁴

Acting hysterically and faking insanity were most frequently deployed in Mountain County in the 1990s, when officials tried to take pregnant women who violated the family-planning policy to have abortions against their will. After the mid-2000s, illegal housing development and the

494. See Elizabeth MacBride, *Stereotyping Makes People More Likely to Act Badly*, STAN. GRADUATE SCH. BUS. (June 5, 2015), <https://www.gsb.stanford.edu/insights/stereotyping-makes-people-more-likely-act-badly> (revealing the impacts of stereotypes and how they can lead stereotyped people “to defy or undermine group norms”).

495. For example, two classic novels from traditional Chinese literature from the 1500s, *Outlaws of the Marsh* (水浒传) by Shi Nai’an and *Journey to the West* (西游记) by Wu Cheng’en, are literary works of this kind. *Outlaws of the Marsh* turns the stereotype of bandits as ruthless and lawless murderers and rapists into faithful, moral, and brave men and women. *Journey to the West* turns the stereotype of an uneducated savage with an obscure family origin (a monkey born from an opened rock) into a clever, caring, powerful king of the people who exposes and defies the dull and inhuman imperial court hierarchies.

496. Fieldwork Journal, *supra* note 1, 2014-032C, 041C (translation provided by Xiaoqian Hu).

497. See *infra* notes 498–503 and accompanying text.

498. See *supra* text accompanying notes 301–03.

499. Fieldwork Journal, *supra* note 1, 2015-191A.

500. *Id.*

501. *Id.*

502. *Id.*

503. *Id.*

504. *Id.*

increasing conflicts between peri-urban villagers and demolition officials provided new venues to revive this enabling use of stereotypes. My fieldwork indicates that the increasing performance by peri-urban villagers of stereotyped behaviors against demolition officials was producing a political norm that villagers can deploy peasant stereotypes to justify unruly behavior toward officials. This emerging political norm decreased the moral negativity of such performance and contributed to the emergence of a social norm among peri-urban villagers that it is entrepreneurial to be “a vulgar peasant” around demolition officials.

Stereotypes deployed this way no longer impose an obligation on the villager to avoid the stereotyped behavior.⁵⁰⁵ Instead, they grant the villager a license to act in a way that a person from a non-stereotyped group may find too costly.⁵⁰⁶ This use of stereotypes has not been seriously discussed in legal scholarship.⁵⁰⁷ It alerts us that not all norms are obligatory all the time and that some norms may enable individuals, instead of restrict them.

Songli and *shouli* also illustrate this point. When I was in Mountain County, many interlocutors in the construction business told me that *songli* was their way of winning the competitive bidding process to obtain government projects.⁵⁰⁸ “We include the costs of *songli* in the total costs of the project,” my interlocutors told me.⁵⁰⁹ One couple in the construction business estimated that a third of their profits went to officials as “gifts.”⁵¹⁰ To these people, *songli* was similar to other ways of doing business in a competitive market.

An obligatory norm in one context can become an empowering norm in another context. For example, the norms that men should get married and establish their own family could also empower a married son to demand partition of the household and of the household property (including housing and land), even if the parents objected to the partition.⁵¹¹ Such partition could then be legalized at the township police station and reshape the family’s property rights.⁵¹²

505. See MacBride, *supra* note 494 (reporting on studies that show people are more likely act out when they perceive that others are attributing their behavior to stereotypes).

506. *Id.*

507. See *Id.* (discussing the adoption of stereotypical behavior in business and academic contexts).

508. Fieldwork Journal, *supra* note 1, 2014-002D, 042A; *id.* 2015-197C; *id.* 2016-023D; *id.* 2018-004D.

509. *Id.* (translation provided by Xiaoqian Hu).

510. *Id.* 2018-004D.

511. Cf. *supra* text accompanying notes 425–29, 466–68 (discussing the traditional norms governing household partition in China and their recent transformation).

512. Fieldwork Journal, *supra* note 1, 2014-025A.

D. Policy Implications

For decades, China's property law has precluded peri-urban villagers from sharing the enormous increase in land value created by urbanization.⁵¹³ This system violates fundamental norms of fairness, reciprocity, and sharing; has created widespread legal violations; pits officials against peri-urban villagers; breeds corruption and citizen-state antagonism; and weakens the legitimacy of the government and local officials, and of property law.⁵¹⁴

Important as they are, the state's 2011 and 2012 procedural reforms alone cannot solve China's peri-urban problems.⁵¹⁵ Although these reforms institutionally increased peri-urban villagers' bargaining power and, in this way, may indirectly help them obtain a share of peri-urban landed wealth,⁵¹⁶ the benefits are realized in ways that undermine rather than foster the general norms of government legitimacy and legal obedience.⁵¹⁷

Similarly, Xi Jinping's anti-corruption campaign alone, even in its best form, cannot solve the corruption problem in urbanizing China. As long as property law forces peri-urban villagers who seek shared prosperity through illegal housing development to negotiate the feasibility and legality of such development with state officials, property law generates occasions for bribery.⁵¹⁸

The fundamental solution to China's illegal housing development, and more broadly, to farmland expropriation conflicts, is to change property law's distribution of wealth. The recent legal amendments allow villages or village enterprises to use rural land to conduct industrial and commercial development.⁵¹⁹ This raises hope that the inequities and conflicts in China's urbanization may begin to be addressed.

However, the new law raises serious concerns about implementation, as local urban governments may find ways to circumvent it or to extract land wealth from rural communities through other means. In addition, the new law brings to the fore the importance of village governance.⁵²⁰ If village elections

513. *See supra* notes 129–30 and accompanying text.

514. *See supra* Part IV.

515. *See supra* notes 147–48 and accompanying text.

516. *See supra* text accompanying notes 147–55 (explaining the procedural legal reforms and summarizing studies of reforms' impact on state-resident dynamics in expropriation and demolition settings).

517. *See, e.g.*, the “feces” event in Part III.B for citizen defiance of law and government authority.

518. *See supra* Part IV.C (describing and analyzing corrupt practices in Mountain County's housing development).

519. Land Administration Law (amended 2019), art. 43; *see also supra* text accompanying notes 159–70 (summarizing the changes included in the new law).

520. *See* Land Administration Law (amended 2019), art. 62 (subjecting villagers' land use decisions to examination and approval by village-governing bodies).

are non-representative or corrupt, and if village governance is dictatorial or opaque, the new law may empower village cadres and their allies to profit from land development at the expense of ordinary village members. If this is the case, the new law might eliminate an external predator (i.e., the county or municipal government), only to replace it with an internal one (i.e., the village ruling elite).

CONCLUSION

Mountain County is not unique when it comes to the ubiquity of norms. Nor is villager-initiated illegal urbanization a “rare find” that contains multiple themes of law-norm interaction. Legal scholars and sociologists have long observed phenomena of legal pluralism in the United States, from Midwestern farming towns to the Manhattan diamond trade, and from the physical world to the virtual world.⁵²¹ While much of this literature describes self-governing groups and communities using norms to the exclusion of laws, many studies have unveiled richer and more intimate law-norm dynamics. In what is now considered a classic in law and society literature, David M. Engel details how, as a rural county in Illinois underwent major socioeconomic changes, traditional norms of individualism played out in divergent ways, authorizing people to sue in court for contract breaches while compelling them to amicably settle tort accidents or even bear the losses themselves.⁵²² Deborah A. DeMott shows that law can prompt a cascade of behavioral changes and ultimately change customs well beyond the law’s formal requirements.⁵²³ Darrell A.H. Miller traces how custom helped maintain slavery both before and after emancipation; how it “can give shape and content to” undefined terms generated by the Thirteenth Amendment; and how the Thirteenth Amendment empowered Congress “to participate in norm

521. See Macaulay, *supra* note 50, at 63 (“[C]ontract and contract law are often thought unnecessary [in exchanges between businesses] because there are many effective non-legal sanctions.”). See generally David M. Engel, *The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community*, 18 L. & SOC’Y REV. 551 (1984) (examining the divergent ways in which local residents handled contract and personal injury disputes in rural Illinois); ELLICKSON, *supra* note 48 (detailing dispute resolution in a California ranching community); Bernstein, *supra* note 50 (studying disputes among diamond dealers in Manhattan); Kennedy, *Legal Economics*, *supra* note 48 (discussing class and housing markets in New York City); Duhl, *supra* note 48 (exploring the role of norms and customs in governing public property); LAWRENCE LESSIG, *CODE: AND OTHER LAWS OF CYBERSPACE, VERSION 2.0* (2006) (analyzing the prevailing laws and norms which control in virtual space); Devlin, *supra* note 48 (discussing property relations among street vendors in New York City); RICHMAN, *supra* note 50 (examining self-governance among ethnic diamond traders in New York City).

522. See generally Engel, *supra* note 521 (examining contract and personal injury disputes).

523. See Deborah A. DeMott, *Artful Good Faith: An Essay on Law, Custom, and Intermediaries in Art Markets*, 62 DUKE L.J. 607, 643 (2012) (using art markets as a case study).

entrepreneurialism” to prevent slavery-analogous behaviors “from ripening into a recognized norm.”⁵²⁴

Norms are important for property law as well. An enduring inquiry of property scholars is whether and when property law should reflect or reject norms and customs. Taking a normative stance, Joseph Singer, Gregory Alexander, and others call for property law to incorporate or jettison particular norms to foster values of equality, dignity, and human flourishing.⁵²⁵ Taking a system-efficiency perspective, Henry Smith explains why certain customs were or were not incorporated into property law by evaluating their information costs, scope of intended audience, and operational costs of formalization.⁵²⁶

A major contribution to the study of legal pluralism in property law is Richard Brooks and Carol Rose’s book on the social and legal history of racially-restrictive covenants in 20th century America.⁵²⁷ In this context, Brooks and Rose trace how property and constitutional law interacted with norms of racism and anti-racism, shaping, not only “[t]he historical arc of racially restrictive covenants,” but also each other in both normative substance and social effect.⁵²⁸ On the whole, however, property scholars are yet to become practitioners of legal pluralism.

Property, as a resource, has multiple dimensions: material, social, political, affective, and even spiritual. Property as an institution is constructed by forces of multiple sources, only one of which is what theorists generally regard and what law schools teach as property law. As property law (narrowly defined) “hits the ground” and regulates social relations, it inevitably interacts with other normative sources that also shape the meaning,

524. Darrell A.H. Miller, *The Thirteenth Amendment and the Regulation of Custom*, 112 COLUM. L. REV. 1811, 1813 (2012).

525. See generally Joseph William Singer, *Democratic Estates: Property Law in a Free and Democratic Society*, 94 CORNELL L. REV. 1009 (2009) (reconceptualizing “property” by arguing for restructured social and political institutions to better attend democratic values, not just the interests of property owners); Joseph William Singer, *The Reliance Interest in Property Law*, 40 STAN. L. REV. 611 (1988) (arguing that property law should incorporate the norm of reliance to maximize social welfare); Gregory Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009) (advocating for a social-obligation norm in American property law as a means to promote human flourishing); GREGORY S. ALEXANDER & EDUARDO M. PEÑALVER, AN INTRODUCTION TO PROPERTY THEORY (2012) (constructing a theory of property to promote the ideal of human flourishing).

526. See generally Yun-chien Chang & Henry E. Smith, *The Numerus Clausus Principle, Property Customs, and the Emergence of New Property Forms*, 100 IOWA L. REV. 2275 (2015) (examining the *numerus clausus* principle and property customs); see also generally Henry E. Smith, *Custom in American Property Law: A Vanishing Act*, 48 TEX. INT’L L.J. 507 (2013) (hypothesizing that the role of custom in American property law has declined because of high informational costs); Henry E. Smith, *Community and Custom in Property*, 10 THEORETICAL INQUIRIES L. 20 (2009) (proposing an information- and cost-based theory to explain the extent to which custom is adopted into property law).

527. See generally BROOKS & ROSE, *supra* note 52 (discussing racially-restrictive covenants).

528. *Id.* at 1–18.

allocation, and permissible uses of property. Thus, whether from a theoretical, policy, or practical perspective, it is important that we uncover these other sources, their relationships with formal property law, and the impact of *property legal pluralism* on specific social groups and on the social legitimacy of formal property law itself. This Article is one study of formal property law, through the lens of property legal pluralism.