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The Three Modes of Appropriation

**Lessons of Chinese Practice for
Theorizing Property**

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The Three Modes of Appropriation

Lessons of Chinese Practice for Theorizing Property

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Abstract

Motivated by our empirical research on an urban village in Shenzhen, China, the paper introduces the distinction of three modes of appropriation: property, possession, and ownership. In the land regime of urban villages, we observe significant family resemblances with conditions in Late Imperial China, which we characterize as 'state-centred legal pluralism'. In state-centred legal pluralism, customary law co-exists with state law, with significant deviations, including illegality; yet the state recognizes customary law as a legitimate concern. A similar constellation characterizes the urban villages, such as in the so-called 'small property housing' phenomenon. Our three-modal approach explains the complex institutional dynamic of forms of appropriation that emerge under state-centred legal pluralism. In particular, we distinguish between statist property and contractual property, resulting in the inversion of the classical Polanyian approach to embeddedness: contractual property (without legal property title) is embedded in structures of social capital (kinship groups and the associated shareholding cooperatives) and thereby enables market exchange by contracting, whereas statist property (with legal title) manifests social and political orders beyond the market. We track the current evolution of modes of appropriation, which result in the emergence of a capitalist real estate sector based on state ownership of land, after nationalization of formerly collective property, with shareholding cooperatives as one of the key players.

Key words: Theory of property; modes of appropriation; legal pluralism; urban villages in Shenzhen; shareholding cooperatives; real estate market in Shenzhen

1. Introduction

In this paper we approach property and land in China from two angles. The first is asking how land ownership in Shenzhen has evolved after 1978, with special focus on the urban villages. The second is whether this empirical record is not only relevant in terms of diagnosing the Chinese conditions, but also for developing a general theory of property.

Our theoretical work is motivated by our ongoing field work in urban villages of Shenzhen which started in 2015 and has explored the interaction between culture and economy (Herrmann-Pillath, Guo and Feng 2020). One of our cases has been Fenghuang village in Bao'an district, which is also prominent in this paper. In the context of the SFB 'Structural Transformation of Property' we continued our research with a focus on property, specifically land property and the various organizational forms of how land is managed, especially the shareholding cooperatives.

In the previous work, we developed the concept of 'ritual space' to analyse the complex phenomena of socio-spatial transformation that have been unfolding during the extremely rapid and disruptive transformation of a rural area into a global megacity, starting out from the establishment of a Special Economic Zone, rapidly spreading out into the surrounding rural areas to which Fenghuang also belongs, and eventually transforming these areas into urban districts and communities (Guo and Herrmann-Pillath 2021). One of our foci has been the role of native villagers resident at the place for centuries. Shenzhen borders Hong Kong and its New Territories (leased to Britain in 1898 and returned to China a century later), where a similar transformation has happened, though over many decades. Many villagers have close relations with relatives in Hong Kong, not only because before 1978 there was a constant flow of people fleeing the conditions in the bordering Mainland, but also, as in our Fenghuang case, because there are branches of the same lineages in both the New Territories and Shenzhen, which reflects the fact that in Imperial times, the entire area was part of one county, Bao'an. Therefore, the social fabrics of the New Territories and of the rural areas of Shenzhen bear many resemblances. This is important in our context, because we are lacking in-depth historical information about property practices in the Shenzhen area, whereas the British colonial administration collected much information after the introduction of Common Law in the newly acquired New Territories.

Our working paper focuses on theorizing property in the light of our empirical observations on property practices in urban villages today. This theorizing aims at synthesizing historical and cultural conceptions of property at particular places and generic concepts, hence developing what Little (1992) calls a 'medium range theory'. One important aspect is the role of translation, that is, making sense of indigenous concepts

in terms of general concepts. However, in doing so we also suggest a generalization, with a twist: The generalization includes the claim that property ultimately cannot be approached in universalist terms, as suggested by liberal and economic theories of property, but involves distinct forms of relationality (Keenan 2015). In other words, our generic concepts must take a form such that they generate medium range theories that only can raise empirical claims. Accordingly, we advance in three steps. First, we introduce the conceptual building blocks – the three modes of appropriation in a rough and abstract form – but with illustrations from Imperial customary law. Second, we look at urban villages in detail, combining secondary literature with our data from the field, especially the Fenghuang case, where we draw on interviews and written materials related to land property. Third, in interpreting this case theoretically we further refine our conceptual frame.

2. Introducing the conceptual framework

2.1. The setting: Socialist land ownership

Land ownership in China does not fit into the grand narrative of ‘transition’ that informs most analyses of the Chinese economy, because land is constitutionally defined as subject to public ownership exclusively, in two forms, state-owned and collective. This is not negotiable as long as China remains a socialist system (Long 2009). Accordingly, the expectation is misguided that the current conditions would manifest forces of change towards a regime of private land ownership that is conventionally recommended by mainstream economics (though not universally, as noticed also in China, see Huang 2011). Although we might concede that the conventional view allows to diagnose ‘inefficiency’, this faces the formidable challenge that throughout Chinese history, land was never defined as being amenable to private ownership (Wang and Li 2019). In other words, the current Chinese constitution only upholds a concept of land ownership that has persisted over millennia. Therefore, we should ask whether notions of ‘inefficiency’ are biased by the idea that China implicitly failed to evolve and must evolve towards a capitalist economy (Ocko 2004). In contrast, the socialist economy may factually manifest systemic deep structures that survive from ancient times until today (for a related ‘grand narrative’, see Hall 2015).

However, how far do the formal institutions of land ownership describe the reality of doing property in China? The conventional economic view might be reinstated in arguing that property practices would approach the economic precepts, in the sense of hollowing out formal institutions and enabling forms of land management that match with

standards of efficiency. There is an intermediate analytical step, which would analyse the formally recognized methods of land management (such as auctions of land use rights) and ask how far these methods approach the model of private property rights as prescribed by economics (Prosterman 2013). This is familiar from the Hong Kong case, where the institution of long-term leasehold of Crown land (all land owned by the British state) was always conceived as functionally corresponding to a system of private landownership.

At a closer look this approach does not catch essential aspects of our specific case, especially when it comes to the Hong Kong reference. The key issue is the role of customary law in doing property. If we recognize that there is a continuity between Imperial land law and modern land law (we will further specify this below), we must also acknowledge that Imperial land law did not reflect actual practices in what is today called the 'Greater Bay area', hence, including both Hong Kong and Shenzhen (Hase 2013: 36f). Indeed, after Hong Kong became a British colony, and the New Territories (part of Bao'an county, also including old Shenzhen beyond the border) were added, the introduction of Common Law meant that the Imperial land law was endorsed and reinstated against customary law. Still the specific regulations for the New Territories recognized some elements of customary law (such as the lineage trusts), and even strengthened this reference in the 1970s, in the context of the 'small house policy' allowing native farmers to build three-storey houses on their premises (Nissim 2016). In the case of the mainland, customary law applied until the establishment of the People's Republic, without any transformative impact of Republican Civil Law (Hayes 2016). This raises the question whether and how custom has influenced ways of doing property until today (while facing the immense challenge that our knowledge of these customs is rather limited, see Haydon 1961).

In posing the question in this way, however, we would simply state a dualism between state-defined formal institutions of property (both Imperial and Communist) and customary practices or informal institutions. This neglects the important issue whether the essence of the related conceptions of property lies in the specific forms of interaction between the two (Migdal 2001). This perspective has been recently emerging from theories of legal pluralism, especially in those versions which do not just posit a co-existence of various legal systems, but which consider the possibility that the state law itself may assume a pluralist structure, for example, when various government entities such as courts recognize elements of customary law, thus deviating from state law (Ho 2022). This is manifest in the simplest form if we recognize that the Imperial government did not enforce the formal institutions beyond specific aspects (such as linking the right

to access the Imperial examinations to paying the land tax as owner). Today, we observe similar phenomena, such as the persistence of the 'small property' system in the Shenzhen real estate sector, despite clear legal prohibitions (Qiao 2018) (we discuss this in section 3.3.). The question is why, in both cases, the state does not fully enforce formal institutions. That means, we should not only distinguish between formal and informal institutions, but also include the meta-institutions that govern their interaction (Huang 2019). For example, we distinguish between 'legality' and 'legitimacy' of informal institutions: Certain practices may be defined as 'illegal', and nevertheless are conceived as legitimate even on the part of the state, and therefore persist. But what determines the ascription of legitimacy to deviant practices? We suggest referring to these phenomena as 'state-centred legal pluralism'.

Before we look at the Shenzhen case in detail, we introduce a conceptual apparatus which allows distinguishing the various aspects clearly. This apparatus is partly motivated by the case, even though we define it almost axiomatically. We aim at achieving a reflective equilibrium between our empirical work and the theory, thus enabling medium-range theorizing.

2.2. Modes of appropriation: Possession, ownership, property

The key historical fact about land ownership in the Greater Bay area is that most land did not belong to single owners, but at least to two, often several, and that this mostly involved kinship groups (lineages, often in the form of lineage trusts) (Watson 1985). This fact contradicted both Imperial law and the colonial enforcement of Common Law which both claimed that property must be exclusively owned by a single person (which might include a corporate group as single owner, such as a lineage trust). The customary system of property was conceptualized in a distinction between the 'skin' and 'bone' of land, with the latter referring to full legal ownership manifest in paying the land tax, while the 'skin' might be the object of complex forms of legitimate possession, even perpetual (Kroker 1959, Hase 2013: 40ff).

Economics suggests a simple way of dealing with such a constellation by distinguishing between various elements of property – the 'property rights' – such as usufruct or the right of alienation (Barzel 1989). However, this conception only refers to economic functions and still relies on the Archimedean point of an ultimate owner who arranges an optimal pattern of property rights, such as a landowner who rents out land (seminally, Cheung 1968). Indeed, the British introduction of Common Law in Hong Kong aimed at

drawing a neat line between authentic property and all other arrangements of specific property rights (such as ending the practice of redeemable sales or permanent tenancy). To grasp the complexity of the Chinese property system, both historically and today, we suggest distinguishing between three modes of appropriation, with an important caveat (compare Ho 2022). The three forms are: (1) Property, (2) Ownership, and (3) Possession. The caveat is that linguistic and legal practices partly endorse such distinctions (for example, in recognizing possession as a distinct category), yet also partly undermine them. One reason is that often linguistic forms may distinguish nouns, but not verbs: For example, ‘own’ is used for both property and ownership, whereas ‘possess’ clearly relates to possession. We do not further discuss these interesting issues and just move to presenting our definitions, while struggling with linguistic deficiencies that we can only remedy in the third stage of our analysis.¹

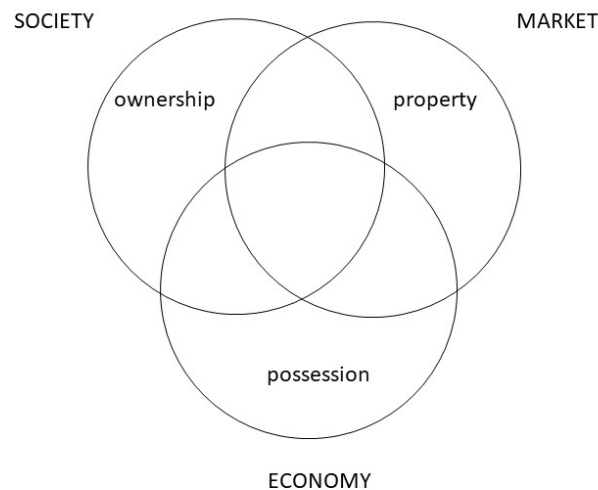


Figure 1: Elementary forms of appropriation

Figure 1 presents an overview of our framework, which we will further develop in the third step of our reasoning. Property, ownership and possession are distinct forms of ‘appropriation’, which can be manifest in different combinations, with absolute property representing the inner area of complete overlap. We interpret appropriation as a social process and practice which results in certain structural states designated as possession, ownership and property, recognized by the various social actors. These states define

¹ We are aware of the complex constellations across different legal systems, where ‘ownership’ sometimes (as in translations of the French Civil Code) means the most complete and absolute form of property, but is also almost absent in US Common Law that only refers to property rights. Our theory does not aim at reconciling these differences in presenting a legal theory, but a sociological and economic approach. Yet, we claim that the variations across the legal systems give sufficient leeway for adopting a new interpretation of these terms. For an exemplary study of these variations on a theme, which go back to the reception of Roman Law in Europe, see Gretton (2007).

certain agential powers related to the objects of appropriation. The law plays a key role in fixing such states, such as in defining and assigning property titles. However, as we will see, the law must also be approached as a process, in the sense that structures must be stabilized by legal actions. This includes the possibility of deviance and even the legitimate co-existence of diverging norms of practice.

We distinguish between different forms of embeddedness which are defining features of the three concepts (following Polanyi 1944). 'Embeddedness' refers to the specific social field or domain in which the agential powers of the modes are enabled and unfold.

- Property is embedded in the context of market in the sense of being an institutional form that enables market transactions and formalizes their results.
- Ownership is embedded in society and relates to many other forms of transactions, such as inheritance or endowment, and represents a relationship between owner and object that implicates social recognition of identity, such as social status.
- Possession is embedded in the economy as practice that is enabled by exerting control over an object: Markets and economy are not coextensive, because uses of objects mostly occur outside the market, such as within households or firms.

We notice that both historically and in current economic reasoning the theoretical approach to property is mostly shaped by references to the market context: For example, economists typically argue that clearly defined property rights are indispensable for markets to operate efficiently (Stiglitz 2013). Modern conceptions of property emerged together with the rise of capitalism as a distinct form of market economy. Let us look at the distinction in some more detail, with references to Late Imperial China and the conditions prevailing in the Greater Bay area.

2.3. Two types of property: Statist and contractual

We refer property to the market context, whereas ownership relates to the social context without necessarily involving markets or even explicitly excluding markets. For example, we own many items with emotional value that we explicitly exclude from the market. The market perspective (grounded in the Coase theorem) implies that the functional needs of enabling market transactions determine forms of property, ultimately resulting in an efficient allocation. Market transactions drive the differentiation of property rights with various economic functions, as in the example of tenancy. However, property in this sense also, and even essentially relates to the distinct level of legal rights, which in the case of land are also embodied in specific titles and registration procedures (de Soto

2001). This differentiation implies that we must distinguish between owning a title and owning the underlying object, a parcel of land (Barzel 1989). This may also apply for the various specific rights (such as a land deed versus a tenancy contract). Owning the object may only refer to possession, without affecting property of the title, hence possessor and proprietor can be different persons.

We summarize these complex arrangements in figure 2. We introduce the strict duality of 'object' and 'right' which together make up 'property', with the latter becoming an object of its own (for example, a share is a right to own a part of a company, but the share is also an object of property that can be traded on markets). Object and right must be neatly distinguished from the functions of the object the fulfilment of which require possession. In economics, this is referred to as 'property rights' (Hodgson 2015). However, these can be embodied in many forms that do not necessarily imply property in our sense, such as just assigning a function to a representative of the proprietor (such as the manager of a lineage trust in Imperial China). There are many intermediate forms of enacting functions in this sense, with the deed as land title being the purest form of property, in the sense of an absolute property right.

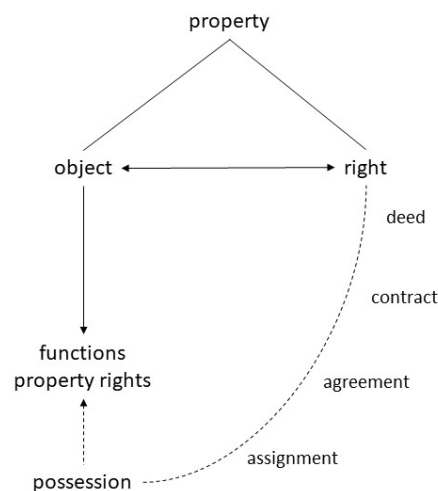


Figure 2: Distinction between object, function and right in property

This distinction was very important in Imperial China, as full ownership of the 'bone' was only achieved by entering the land into the tax registry, hence owning a title (Hase 2013: 71ff). However, it must be also emphasized that even this was not the same as absolute property, since firstly, most owners in the Greater Bay region were trusts belonging to kinship groups, which implied second, that the land had been inherited. This explains why alienation of land was tightly restricted, as trust managers could not freely decide about

disposing land property. The only case which came close to an absolute individual property claim was if a man acquired land by himself, via buying or reclaiming land from the sea, for example (women were mostly excluded from owning land). That means, the Imperial land titles were not mainly enabling market transactions with land, which were mostly conducted via the 'skin' arrangements, such as leasing and subleasing. Hence, in the Chinese case we observe a subversion of the relationship between market and property: the titled property often remained outside the market domain, whereas contractual arrangements of 'skin' rights would enable market transactions in highly diverse and flexible forms (Myers 1982). However, even this was limited, as we shall see.

What does it mean to own a right, compared to owning the object? A key aspect in our definition of property is that a title (or an equivalent legal precept such as delivery) allows approaching the juridical system in case of conflicts between the involved parties (Osborne 2004). 'Owning' implies the proprietor can rely on the state for enforcing his claims. That means, property combines the two aspects of market and state in the context of conflicts over property (Cai et al. 2020). Let us refer to this as 'statist property'. As seen, in Imperial China statist property was clearly recognized as a separate category: The owner was someone who paid the land tax according to the registration and would be able to enforce his claims via the Imperial magistrate as a court.

This raises a very important issue: What are alternative means of conflict resolution that may be functionally equivalent to statist property? In Imperial China, this was the contract, hence we suggest the term 'contractual property' (Brockman 1980, Hansen 1995). The key difference is that statist property is an absolute right, whereas contractual property results from the documentation of a transaction in the contract, which cannot be enforced via the state, unless there is a fully developed Civil Law (or Common Law enforced by the state). However, recent research on court archives (including, for example, repositories of local statutes of merchant associations) has revealed that Imperial magistrates, despite the absence of a Civil Law, adjudicated according to both Imperial and customary law precepts, hence manifesting a pluralist state law (Huang 2006; Hayes 2016). Yet, in most cases the contractual arrangement referred to another context of conflict resolution or guarantees. In customary law, these were the middlemen and witnesses who are members of the community. Hence, we can refer to this as a 'relational right', since enforcement is enabled by social relations in the specific local context of the property arrangement. The role of witnesses was not simply a measure to guarantee proper execution of a contract: Since witnesses were members of the local community, they also manifest the collective consensus about the contract (Hase 2013: 143ff).

Our distinction allows for an analytical interpretation of the 'bone' versus 'skin' duality, thus resulting in two forms of property which define an essential divergence from the Western conceptions (see fig. 3) (compare Mazumdar 2001). Owning the 'bone' as statist property was not embedded into the market context but embodied the social status of a group to which the actual possessor of the land belonged, such as the wealthy and powerful clans in the Greater Bay Area. Owning the 'skin', in contrast, did not involve a property title but a contractual relation embedded into the market which was recognized as legitimizing possession in the community, such as permanent tenancy. Insofar as statist property relates to status, it is part and parcel of the ritual order of the Imperial state (also manifest in the complementary right to take part in Imperial examinations), whereas relational property is embedded into the market. Remarkably, this reverses the Polanyian assumptions about social embeddedness and markets as polar opposites (Myers 1982).

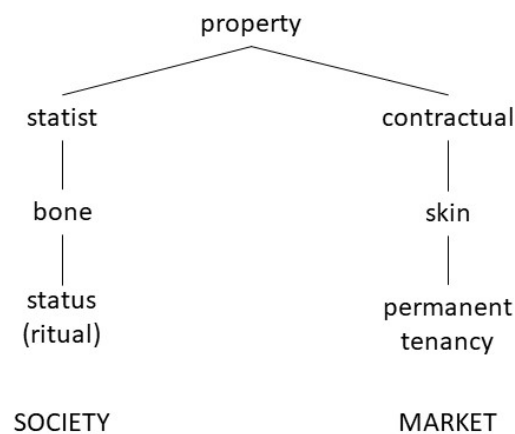


Figure 3: Statist versus contractual property

Permanent tenancy is ambivalent here, as this also manifests a status difference (Watson 1985). Yet, at the same time, permanent tenancy is recognized possession that can in turn enable market transactions mediated by contracts. Specific property rights can be defined and assigned in many ways, in the form of titles, claims (such as a mortgage), contracts (such as tenancy) or mere working agreements. This leads us to consider the other modes of appropriation.

2.4. The neglected mode: From possession to ownership

Possession is essential for realizing property rights in terms of specific functions, understood as actual control and agential power in handling the object: The tenant must

possess the land to till it. However, possession often has a more powerful status in determining the degree of ownership (in Imperial China, this was implicated in the notion of *ye* 业), Wang and Li 2019). This mostly relates to first, the length of possession, second, the recognition of possession and third, the factual utilization of the object. In Imperial China, this was highly significant in rendering tenancy permanent, independent of contractual arrangements. That means, if a tenant continuously tills the land, the owner does not reinstate his claims, and the community recognizes this status quo, the land is considered as being permanently possessed by the tenant, which includes rights such as inheriting the land. That means, contracts would be extended without questioning, hence becoming endogenous to the manifest status of possession. In the tightly settled Greater Bay Area, most villagers and their families rented land over several generations, with only marginal changes in times of dire straits.

Possession can take different forms, as there is also the variant of might makes right, meaning the occupation of an object against the claims of others who have neither the power to resist nor can rely on the state as a third party to resolve the conflict. This must be neatly distinguished from the recognition of possession, even if just for sheer disinterest. As seen, a remarkable feature of the Imperial customary law was that contracts always involved middlemen, whose task was mainly to ensure social recognition of the contract, which includes equity concerns: most importantly, that the contract was not forced upon one party, and that even in dire straits the arrangement was fair.

Reflecting on what has been said so far, many practices in Imperial China appear to involve ownership, and less so property, at least in the 'Western' sense. As we have already stated, ownership is not congruent with property as it need not be related to the market context, and many forms of ownership even explicitly keep the object out of that. Therefore, ownership often refers to different types of transactions: For example, a gift transfers ownership of the object while expecting that it will not be sold afterwards. In China, this rule applied for land that accrued to the owner via inheritance: the actual owner as possessor was factually seen as steward of the family line, and therefore would be tightly constrained in exerting his property rights. For example, when selling land, close relatives would have the explicit right to veto and exert a right of first refusal. This example points to a key difference between property and ownership, as ownership refers to a specific type of relationship with the object owned, which we diagnose as the object constituting the identity of the owner, whereas property always implies the possibility to alienate the relationship via a market transaction. By implication, ownership is mainly based on social recognition of the status of the owner.

This shows that permanent tenancy arrangements with kinship groups as owners in Imperial China would not count as property but as ownership, even for the permanent tenancy part. This is reflected in the tight constraints on alienating the land, even to the degree that many transactions with land keep the possibility of redemption open, thus indicating the continuing relationship between the original owner and the sold land ((which can be regarded as a special variant of a pawn, *dian* 典). There was the distinction between ‘live sales’ (*huo* 活) and ‘dead sales’ (*jue* 绝), with only the latter cutting the relationship between land and seller definitively. In addition, even if land was sold, this should not involve outsiders but remain within the community, that is the village and/or the kinship group. As we see, in these cases the distinction between ‘bone’ and ‘skin’ became fuzzy, which is also reflected in many efforts of ‘skin’ owners to acquire a minimum amount of ‘bone’ rights which would recognize status equivalence between the two groups.

It is important to notice that property and ownership both involve property rights in the functional sense, which explains why the two concepts are often merged. But the fundamental difference in terms of the relationship between object and subject of owning should not be marginalized. This is salient when considering another difference. Property is exclusively defined in terms of rights over the object. There are no obligations in dealing with the object, only in relation to other individuals who might be affected by using the object: These are liability rules tied to property. Obligations towards the object follow from these liabilities: For example, as owner of a garden I might be obliged to take care of trees which might fall on neighbours.

By comparison, ownership means that I care for the object, such as taking care of a dog that I legally own as property, because I have a personal relationship with the animal. When it comes to land ownership, there are important constellations that clearly reveal the difference between property and ownership, even to the degree that the two can stay in conflict. For example, First Nations’ claims on land are mostly claims of ownership, even if property legally belongs to other parties (including the state), because the land is seen as sacred and forming a part of the identity as a group. In Chinese custom, ownership is a key aspect of legitimizing possession of land: The current steward of the land was obliged to till it and keep it fertile for the next generation. One important aspect is the treatment of forests and other land that is not exploited by agriculture (Hase 2013: 61ff; Coggins et al. 2012). On the one hand, this land is owned by the emperor. However, the village community relates to the land via the flows of *qi*, that is *fengshui* patterns that render the land into a sacred place. Most significantly, this is manifest in the use of those areas as burial grounds determined by *fengshui*. In dotting the area with tombs,

ownership is asserted, which is then manifest in also exploiting the area economically, such as for collecting firewood. Yet, legally the land was an Imperial commons which does not assign property to single individuals.

For summing up, it is inspiring to reflect upon the Hong Kong case after the British Common Law was introduced, followed by a full cadastral survey of the land and clear ascription of property titles. This measure radically overturned social structure in the New Territories (Watson 1985). Yet, the colonial administration also kept its policy to recognize traditional customs. Therefore, via the recognition of Chinese ritual practices, certain elements of customary law have been preserved, such as the role of lineage trusts as proprietors. In keeping these customary forms intact, colonial rule also sustained important elements of social structure, though without the stark status differences of the past (an example is sustaining traditional gender norms) (Watson 2004). The question is whether we can observe similar phenomena in our Shenzhen case.

3. Land and property in Shenzhen urban villages

3.1. Background

Land is a special category of object in contemporary China as private property is mostly absent, although there are limited entitlements for family dwellings in rural areas (which, however, play a significant role in Shenzhen). As said, this continues the Imperial tradition, also in the sense that all particular rights to land are conceptualized as endowments by the state, which therefore is legitimized to revoke the rights at will, in principle.

However, after 1978 two important modifications have been made. One is the constitutional recognition of private ownership in general, including the same level of recognition and protection as public property in the Property Law (Zhang 2008). The other is to endorse and to expand the embeddedness of property in markets (Long 2009). In contemporary Chinese socialism, the market is conceived as 'neutral', that is, as a social technology aiming at the generation of wealth, in the Smithian tradition (and less Marx's). This has the important implication that the design of property rights is governed by functional needs defined by markets, which almost exactly matches with the economics view on property rights. Shenzhen was the place where this thinking was first applied to land, conducting the first auctions of land use rights in China in 1987, thus opening the floodgates for the astounding growth of the real estate markets all over China. That means, property rights were increasingly designed according to the function of maximizing the economic value of land. This was bolstered by the increasing reliance of local government budgets on the proceeds of sales of land use rights.

However, this does not imply 'privatization' at all. This follows from a conception of market which is disconnected from the concept of 'individualism' which defines the core of property in mainstream economics since Locke (Zhang 2008). The Chinese view takes the title of Adam Smith's *magnum opus* literally: what matters is the 'Wealth of Nations', that is, of the Chinese commonweal, and not individual welfare. This blanks out distributional aspects of property, in stark contrast to Marxist and socialist traditions: Indeed, the trickle-down theory of markets and growth promoted by Deng Xiaoping, allowing for some getting rich first, must also strictly be seen in terms of the functions of transitory inequality in generating national wealth.

This peculiar approach to property is also manifest in the priority of wealth generation over the status quo of property assignments. That means, the state can always expropriate current owners if that is deemed necessary for generating growth and development, such as when building infrastructure, or in urban renewal. In the case of land, there is an additional criterion that applies for the rural areas specifically: This is safeguarding China's food security, which implies tight restrictions on transferring agricultural land to non-agricultural uses (Qiao 2018: 18ff). Legally, this is only possible by special permission, unless the rural land is nationalized, that is becomes state-owned land. A loophole is the category of 'public construction' in rural areas, which under conditions of rapid urbanization would include infrastructure, but can factually include residential areas, especially when these are bound together in urban redevelopment projects (Lai, Wang and Lok 2017).

This points to two specific features of public ownership of land in China. The first is that the Chinese constitution distinguishes between state-owned land in urban areas and collectively-owned land in rural areas. In the case of Shenzhen and other rapidly growing cities, this implies that territorial growth of urban land requires transformation of collective ownership to state-ownership. We cannot discuss the general aspects here, only focus on the Shenzhen case: With the urbanization of all previously rural suburban areas, in principle this nationalization was completed in 2004, while giving all farmers the status of urban citizens ('hukou'). The second feature is that in principle, all state-owned land is owned by the Central government, and only assigned administratively to lower jurisdictions representing the state. This means that there is a distinction between the state as a proprietor and the specific government entity as possessor. In Shenzhen, that would mean that Shenzhen municipality is the possessor of all urban land, as representing the state. However, the administration of land may be delegated to lower levels of municipal administration, which creates complex patterns of interest, since district and subdistrict administrations have distinct motivations in developing their

administrative area in competition with others, thus creating the conditions for cooperation with other local actors (Qiao 2018: 58ff). In Shenzhen, these are the shareholding cooperatives that most rural villages had established before nationalization. As is well-known, the distinction between rural and urban land has caused serious distortions of wealth generated from land transactions, because farmers often did not get adequate compensation from nationalization, while the subsequent non-agricultural uses generated enormous profits for other parties, including the local governments (Wong 2015; Kan 2019). Shenzhen, however, followed a different path. This is the emergence and growth of 'urban villages' governed by shareholding cooperatives.

3.2. Property, ownership and possession in Shenzhen urban villages

Unlike the case of Hong Kong, the Communist Party pursued a radical program of collectivization in the 1950s, and People's Communes were only abolished legally in 1982. Communes had been organized into two levels, production brigades and production teams. Most native villages in Shenzhen were production brigades in the past. After extreme measures of collectivization were scaled down, brigades became the key organizers of agricultural work and land use, and teams on the operational level. The system included allocation of land to the tillers, as a mere assignment, in terms of formal work arrangements. We know from oral history and more recent fieldwork after 1978, that this allocation often reflected the kinship structures in the villages (Parish and Whyte 1978: 304f; Potter and Potter 1990; Chan, Madsen and Unger 2009): Many villages were single-lineage villages with subdivisions that were manifest in the complex patterns of leaseholds and various lineage trusts that had been crushed in the 1950s. Yet, in the allocation of land to teams often these structures were hidden, if only because they were embodied in the settlement patterns, with closer kin also living together, and sharing a trust before 1949, as in Hong Kong New Territories just a few kilometres away and, including lineages of shared descent in Shenzhen (such as the Wen/Man in Fenghuang, Shenzhen, and Xintian, New Territories, our case study) (on the distinction between village, lineage and settlement patterns reflecting closeness, *qin* 亲, see Chun 2000).

In this sense, in contrast to Hong Kong Common Law, the conditions in Shenzhen remained much closer to customary conceptions of multiple ownership, which even remained embodied in work practices and land assignments. Collectivization did not change the traditional precept that ultimately all land is owned by the supreme authority, and the recognition of collective ownership in rural areas only reinstated the role of kinship units, aka 'collectives', as owners of the 'bones', whereas work arrangements only

referred to the 'skin' (Potter and Potter 1990: 304f; compare Tan 2010: 171, 234). This implicit continuity explains the rapidity de-collectivization after 1978, since the new system of land leases to farmers de facto revived the institution of tenancy, with the brigade as the 'landlord' who owns the 'bones', and farmers turning into tenants who till the 'skin'. On the one hand, the stepwise extension of tenure seemed to converge to a variant of the traditional dual ownership system, yet, at the same time farmers often did not object to reallocation of land rights, since they recognized the need to adapt to demographic changes and changing family patterns (Kung and Liu 1997). In other words, land ownership was still seen in the context of social structures beyond the individual, such as the family with various extensions or 'relatives', often working and living together in the production teams.

In the case of Shenzhen, this transition of socialist property coincided with the explosive growth of the city, which resulted in an urgent need for housing construction for the inflow of millions of immigrants. We do not need to tell this story here (Wang 2016), and only concentrate on the underlying property relations (Lai, Chan and Choy 2017).

There were two key facts. The first is that all farmers owned their homestead on a parcel of collective land assigned to them long-term (*zhajidi* 宅基地). Given their close relationship to Hong Kong, its 'small house' policy may have been an inspiration, where many native villagers violated the administrative restrictions on 'small houses' and added several storeys and other modifications since the 1970s. The same happened in Shenzhen with astonishing speed, resulting in the famous 'handshake buildings', tightly cramped multi-storey apartment blocks owned by farmers (O'Donnell 2021). In this case, we can say that the building comes close to a private property, as there is the right to own it, while the specific realization of that right violated not only administrative regulations, but also the legal circumscription of the underlying land right: The right is explicitly excluded from the market domain. However, since villages were mostly tightly settled (with fields surrounding), this would not directly imply conversion of agricultural land into non-agricultural uses. But this category of land was in limited supply. We will discuss in section 4 how the 'small property' informal institution embedded this property of farmers into the emerging real estate market.

When it comes to the agricultural land, before nationalization most native villages established shareholding cooperatives (henceforth: SCs) as units that manage the economic concerns of the village (Po 2008). This was a crucial step, as this created a duality of government and economic unit, which implied that transforming villages into grassroots level urban units (communities, *shequ* 社区) did not automatically transfer the

property from villages to municipality. The two categories of possession and ownership assume a critical role here.

As economic units, the SCs possessed the collective land of the village, which was rightful collective property before 2004, when all villages were transformed into urban units. However, they could not legally exploit this land for urban construction. Theoretically, the municipality could have nationalized/expropriated the village territory, but within few years, possession materialized in a de facto urbanization of many villages, partly via the individual building activities of farmers, partly via exploiting the loophole of 'rural construction' by the collectives, since the many new buildings also required complementary infrastructure. The legal limbo was not clarified by nationalization, as the possessor is now the SC, and not the village proper, exploiting the legal vagueness of the term 'collective' (Ho 2001). That means, after nationalization the SC possesses the urban land use rights by de facto arrangement. Clearly, this is only possible if recognized by the municipality. We observe an evolving strategic equilibrium here, in which the SC assumes a hybrid role as an economic entity pursuing the interests of the villagers and a public agent that assumes vicarious roles in municipal services and infrastructure provision (Po 2012). This emerged in the first two decades of high-speed urbanization and extremely fast immigration, which overwhelmed the administrative capacities of the municipality. In addition, if the municipality had invested into the necessary urban infrastructure, it could not have employed the low-cost methods of farmers and SCs, because these violated many regulations on construction. Hence, there was a tacit recognition that illegality factually even served a public interest, as it was necessary for rapid and flexible provision of housing for mostly low-income migrant workers. In other words, this created 'illegal legitimacy' in terms of actual possession serving a public interest (i.e., economic development as discussed previously).

Possession can be legalized in redeveloping these first-period urban villages (Lai, Wang and Lok 2017). This involves complex deals where villagers factually sell their buildings to the municipality which then demolishes them, while the SC transfers parts of its land use rights to the municipality and developers in charge of the urban renewal project and agrees to subject the redevelopment plan to the master plan of the municipality and co-investing its own funds. This pattern is also present in our Fenghuang case and creates an intricate relationship between property, ownership and possession. Different from land requisition by the municipality following nationalization, redevelopment implies the recognition of possession in terms of a project specific arrangement in which the collective land is formally expropriated as state-owned, but the land use rights are allocated among the SC and the developer, with the municipality obtaining a share 'for

free' that is devoted to complementary public construction projects (such as highways, public parks, and so on). In one case that we scrutinized, the SC is even a shareholder of the developer, and the developer offers a portion of the apartments and facilities to villagers at a premium price. Hence, there are two important implications: First, the redevelopment project is clearly market oriented, as the role of the municipality as investor is minimal, mainly acting as a regulator; and second, despite full formal transformation of property into state-owned land, the contractual arrangements between developer and SC reinstate a collective pattern of possession in combination with private property of housing. That means, we notice the duality of statist property and contractual property reminiscent of customary law.

In addition, property of land and property of buildings is legally decoupled, with the latter achieving the status of private property. Clearly, a building is also an embodied claim on possessing the land: Hence, SC and developer, in co-owning a building as property, also legitimately claim possession of land, since the redevelopment project has been approved and authorized by the municipality. There is also the variant that villagers give up all original land use rights and move to other places. In this case, the SC becomes footloose, while maintaining its role as a real estate company that collaborates with the developer. There are also cases where SCs gained control of substantial land use rights in other areas of Shenzhen, thus bolstering the wealth of the villagers.

For fully understanding these complex arrangements, we must take ownership into consideration. So far, we have explained the patterns of property in terms of strategic equilibria of possession emerging in the interactions between various stakeholders, typically municipality, developer and village. However, the SCs play a more complex role that involves ownership. This refers to the fact that the land before collectivization was conceived as 'ancestral land', inherited in the family line, with different layers, such as the pre-1949 permanent tenant family possessing pieces of 'skin', and larger lineage trusts owning the 'bone'. The congruence of kinship structures and brigades during collectivization has been reinstated in the structure of many SCs and is no longer hidden, but positively affirmed in closely relating SCs with kinship practices and rituals (Trémon 2014, 2015a; Herrmann-Pillath et al. 2020; Tong et al. 2021).

In principle, an SC resembles the institutions of lineage trusts in defining membership in terms of kinship and allocating shares which cannot be sold to outsiders and are inherited in the patriline. The shareholder assembly is almost identical with the village assembly. In our Fenghuang case, SCs continue the original division of production teams in distinguishing subbranches that relate to distinct territorial assignments inherited from the past, and which follow patterns of 'closeness', *qin*, as mentioned previously. This

creates another layer of complexity: Formally, the Fenghuang SC is regarded to be the agent of the subbranches, which are considered as the ultimate owners, and therefore are the legal parties in contracts involving the land, such as when land is rented out to a factory. If the SC manages buildings of its own located on land owned by former teams, it pays a rent to the subbranches. Hence, we cannot simply treat the SC as an autonomous corporate actor, but as an intermediary with special status in terms of regulatory and political recognition by the municipal government: This corresponds to the concept of 'state brokerage' in relation to Imperial and Republican China (Duara 1990). The SC is double-faced, representing the state vis-à-vis the villagers, and the villagers vis-à-vis the state. This is a delicate balance, which can only be maintained with strong leadership, often personified in individuals with many 'hats': as village head, lineage head, SC CEO, and even member of political bodies (compare the case reported in Tong 2021, similar to our case).

Ownership is manifest in embodying the ritual space of the original village in urban design, even after complete redevelopment, such as retaining a memorial site (Guo and Herrmann-Pillath 2021; Oakes 2019). In living villages, there are dedicated design elements such as cultural squares with ancestral halls or murals showing the history of the native lineage. This can be reduced to the presence of one single artefact, such as the Zeng ancestral hall at Dachong, where villagers concluded a comprehensive agreement with a developer and live in high-end flats in the neighbourhood. Such design elements are officially endorsed as parts of a cultural development strategy of the municipality, which factually recognizes ownership. This can extend to larger territories, such as reinstating claims on forests by ritual actions, even though today their use as burial grounds is prohibited. An example is the renewal of temples and pagodas that have been established by the villages in the past, as in our Fenghuang mountain temple case. Finally, ownership is morally endorsed by recognizing the lineage tradition as an important element of Chinese notions of family and public order (Kubat 2018). This bolsters the leadership role of SCs, especially vis-à-vis the migrant population.

To summarize, we cannot explain current patterns of land appropriation in Shenzhen only by referring to the formal institutions of the law. Indeed, in many circumstances the practice appears outrightly illegal. However, at the same time the practice is often recognized as legitimate, and even endorsed, if only by accepting it as the status quo. This reflects firstly, the role of possession in arranging strategic interests of various stakeholders, and secondly, the recognition of ownership of native villagers. However, this does not avoid legal tensions.

3.3. Tensions between formal institutions and practices

The first and very important aspect where legal tensions exist is the phenomenon of 'small property' (*xiao chanquan* 小产权) (Lai et al. 2017; Qiao 2018). Given the formal institutions, no sale of real estate which includes the land can be regarded as legal. Further, the illegality of converting collective agricultural land to non-agricultural uses also implies that the buyers of housing, i.e., the small property holders, cannot obtain a valid legal title. There is wide scope for conflicts: For example, someone who buys an apartment might be dispossessed if the underlying transfer of land rights would be nullified, even without being aware of this initially. However, on the small property market millions of transactions have been successfully concluded in the past three decades, even though no valid title was transferred, salient in the fact that in legal disputes the courts do not recognize the right. However, the courts recognize possession as evidence in the contract. That means, for example, if a small property is pledged, and the possessor of the pledge would claim possession, that would not be recognized, because there is no title, and hence the pledge is illegal. On the other hand, the original contract that constituted possession is recognized, albeit indirectly, in recognizing the resulting possession (Qiao 2018: 161ff).

That means, small property corresponds to the form of contractual property in Imperial times and can be interpreted as an emergent form of customary law, entailing a similar duality in a modern context. The question is why this can sustain so many transactions without major disruptions? The numbers are astounding: In 2020, close to 50 percent of all housing units in Shenzhen were 'small property', more than 5 million units without legal property title, compared to only about 1.9 million units of 'commercial housing' with legal titles. Since small property housing is traded at a discount compared to commercial housing (which is also explained by quality differences, not just legal risks), demand remains strong, even on the part of 'speculators' who buy small property as traders, not owners. The market is highly liquid and operates smoothly.

The reason is that a small property contract replicates the structure of witness and middleman in a new shape. The 'witness' is a lawyer who factually operates as a notary, but without formal legal validity. Yet, the contract drafted and sealed by the lawyer witnesses that the two parties have agreed on a deal and its terms. The lawyer assumes a position of trustworthiness because she or he is dependent on keeping professional reputation and staying in the market. The 'middleman' is usually the SC, since in the urban villages even private partners of a deal are SC members, that is, native villagers: As we saw for the Fenghuang case, in contracts with third parties the legal partner is the subbranch, whereas the SC as such is a guarantor. This is explicitly recognized in many

contract templates of small property transactions, where the SC confirms the status of the unit and registers the contract. In affirming its moral authority as a lineage, indirectly the SC is a guarantor of the trustworthiness even of an individual villager acting as a private agent. Since the community has an interest and the moral obligation to develop the long-term wealth of the community, trust is a key asset and bound to the community (Tong et al. 2021). One important cultural marker is the emphasis on century-old local traditions, as epitomized in the lineage rules (*jiaxun* 家训) setting standards of morality for all members (Herrmann-Pillath et al. 2020).

Another important observation is that small property transactions are regarded to be legally valid if they are conducted among the members of the village community. This reflects the fact that the underlying ownership relation is still framed in terms of the collective, reminiscent of the 'bone' and 'skin' distinction: Transactions within the village do not affect the 'bone', whereas transactions beyond the village affect the 'bones'. This interpretation is vindicated by the observation that small property holders may obtain a legal title if the unit becomes a part of a redevelopment project as described previously. Even if the proprietor is not a village member, the redevelopment scheme also recognizes the role of the SC as owner of the land and co-possessor together with the developer.

Another area of conflict is the relationship between shares in SCs and land rights. The status of the SCs is legally complicated, as corporate law does not know such a type, but they are recognized by administrative regulations even on the provincial level. In this sense, SCs are legally recognized constructs. This construct implies several layers of appropriation, since formally the land use rights are assigned to the SC, still reflecting the status of 'collective property'. The shares cannot be interpreted as implicating partial individual appropriation of this land, but a right to vote in determining the land use by the SCs. That means, the nature of the share as a title of ownership follows from the precise working of the internal governance structure of the SC. For example, villagers often complain that SCs do not pay out adequate dividends, a fact that reflects a lack of voice even as members of the shareholding assembly. One construct that severs the link between individual property in shares and an SC is the 'collective shares' that are shares owned by the SC as legal entity and which build the legal basis for retaining profits for reinvestment, while reducing dividends on the individually held 'cooperative shares'. Tellingly, the Fenghuang SC recently reduced the proportion of collective shares from 49 percent to 15 percent, thus bolstering the status of villagers as owners.

This is important because it affects the factual possession in SCs. Formally, SC leaders are just representatives of the village, but in fusing the roles of SC leader, village head, and lineage head, perhaps even Party secretary, their position is very powerful. If the voice of

the villagers is weak, leaders emerge as factual possessors, and in the worst circumstances, even as criminal usurpers (Qiao 2018: 125ff). Less serious, but still important is the question, as mentioned, whether original production teams can retain their possession against other claims in the village community. This implies that 'collective property' may relate with a factual allocation of wealth in terms of particular possessions that gives differential advantages to different groups in the village.

A third area of tension relates to appropriation of shares as objects. This is most salient when considering the gender aspect and legal issues such as inheritance (Liaw 2008). As said, shares are exclusive to the village community defined as patrilineage. However, recently new practices have been emerging of issuing new shares to investors. In principle, this does not run in tension with ritual norms, as the formation of alliances was also widespread in historical times (Zheng 2001). However, this does not necessarily imply that basic principles are changed: Indeed, villages also dispense with this legal tool to keep control of their property, as is the case in Fenghuang. An important question is whether women can own shares, which was initially denied (shares were allocated per household, represented by the male heads). However, the original claims on shares were later reinstated according to registration status in combination with the criterion of membership of the collective. The latter is a category that requires a 'living' relation with the collective, also in terms of contributions such as working at collective projects. If women obtain shares, out-marrying women can take shares with them, but cannot further transfer them, only within the native patriliney. Often, the same applies for real estate, such that daughters would receive a dowry, even a rich one, but one which does not affect the core of land related ownership.

In other words, the shares of an SC are titles that define ownership and less so property. As such, they reflect a social status, even relative to urban hukou holders, which, however, operates in tension with the established status hierarchy of modernizing China. This is mostly referred to as 'wealth' that accrued to the villagers. But increasingly, villagers define their identity and hence status in terms of the long history of local descent lines (Trémon 2014). The land is an integral part of this identity.

4. The conceptual framework revisited

Let us now draw conclusions for theorizing property. As a point of entry, we return to figure 1 and consider the empirical counterparts to all seven areas of the overlapping circles representing the modes of appropriation (see fig. 4). These areas represent types of agency in evolving processes of appropriation.

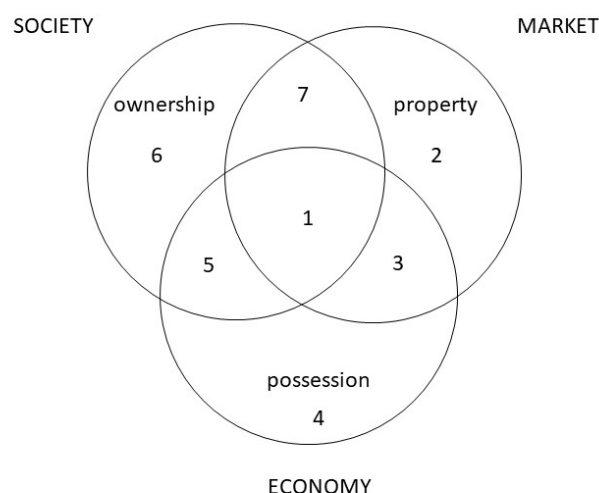


Figure 4: Modes of appropriation and empirical types of agency

1. *This is the case of absolute property of individuals or legal persons, which includes the component of identity.* For example, the proprietor owns a legal title on real estate which is marketable, but at the same time recognizes the land as being a family estate to be preserved over generations. This category does not exist in Shenzhen since private property of land is legally prohibited. In capitalist economies, this type of agency is represented, for example, in many family businesses that do not go public to preserve their ownership. Shares of SCs in Shenzhen manifest a similar logic, as they are not amenable to public trading, even though regulations have offered the possibility to issue shares to external investors.

2. *Here, the proprietor holds a legal title but does not identify with the object nor handles or manages it.* This is the case of a real estate company that would hold land use rights or buildings for mere purposes of reselling ('speculation'). The Chinese government constrains such activities. In capitalist economies, this is the typical case of investors who invest in stocks without taking an active role as a shareholder, focusing on yield exclusively, and sell and buy stocks frequently.

3. *In this case, the proprietor is also the manager.* This is the standard constellation for many developers in Shenzhen which are not only construction companies but acquire land use rights and later also act as service providers in managing the buildings. Yet, the company has no ownership relation with the object. In general, this is the case of the owner-managed firm where the business does not constitute owner identity but is conceived as aiming exclusively at generating profits. In Shenzhen, one variant is that SCs establish separate real estate companies as fully owned subsidiaries which can operate in a market logic, such as when acquiring property at other places.

4. *This is the case of an agent that acts on behalf of proprietors and owners.* For example, an SC may invest into a real estate, and keeps the land use rights, but concludes a service contract with a developer and maintains an arms-length relationship with the management thereafter. In capitalist economies, an example is the large public company with diluted shareholding, hence passive shareholders, where the management assumes an almost autonomous position in controlling the company ('managerial capitalism').

5. *Here the owner is not proprietor of a title that allows trading the object on markets.* This is the case when villagers live on the village territory and are owners of the land since they are shareholders of the SC, with the shares being excluded from markets. The SCs which possess the land use rights after nationalization might in principle trade them, in contrast. Hence, there is a difference between the individual and the legal person for the same object, the land. In capitalist economies, institutional evolution has minimized the role of such constructs, in order to render as many assets marketable as possible. Important cases in developing economies include housing ownership without a legal title.

6. *These are owners who neither possess an object nor have a legal title that would allow trading it on markets.* The typical case is a villager who emigrated but would still be regarded as a member of the village community (hence, would enjoy rights of inheritance). In capitalism, many family businesses distinguish between family members who are active in the firm and those ones who only relate to it as owners, with certain rights to obtain a share of profit, but no rights to interfere with management.

7. *This is the case when after redevelopment villagers moved out of their native territory, but the SC retains the land use rights.* The SC reaches an agreement with a developer about managing the project after completion. Still, the territory is regarded as ancestral land, which explains why land use rights are kept under SC control ('absentee ownership').

As we see, the diagram allows understanding a wide range of differential agential powers that emerge in processes of appropriation. What is left out in this picture is the question of institutional governance: In case of conflicts, who plays a role in regulating disputes? We have distinguished between two ideal types: one is the government, the other society, in the sense of informal conflict resolution. But this would be partly misleading, as 'informal' simply means 'non-governmental': A contract that is endorsed by middlemen and witnesses is a structured written document and hence may qualify as 'formal'. Indeed, as we saw in our discussion of Imperial China, the state might even recognize these contracts to some degree. The small property contracts in Shenzhen certainly are formal, to the extent that a huge market is scaffolded where no personal relationships between buyer and seller exist, yet they are illegal. But illegality only refers to property, not possession: State courts recognize the latter.

Now, why do such complex relations emerge in real world societies? The Polanyian account of capitalism argues that property as a legal category serves to dis-embed assets from social relationships and re-embed them in the market: This corresponds to the Coasean model. However, we see immediately that the key point here must be that this is endorsed and enabled by the state in its role as lawmaker and adjudicator. In capitalism, statist property is marketized, and the state is a key driver of 'marketization' (in the sense of Çalışkan and Callon 2010), not just Coasean economic forces. The Chinese case is radically different. The general background is that the emergence of capitalism in Europe went hand in hand with the creation of unified and coherent legal regimes undergirded by the state monopoly of enforcement power. In China until 1949, a system of state-centred legal pluralism prevailed. As we saw, in this system statist property was not an integral part of the market system but was a key element in sustaining and manifesting the social order and body politic. Markets flourished, though, because their working was undergirded by customary law and its role of activating social relationships for enabling transactions. This overturns Polanyi's duality, without making his basic ideas invalid. We only need to recognize the peculiar role of the state in undergirding processes of appropriation.

As similar picture emerges if we reflect the Shenzhen case. The distinction between public and private appropriation is fundamental in China's socialist system, and land is blocked from private appropriation. Therefore, statist property of land is not geared towards marketization, but primarily towards sustaining the political order. The vibrant real estate market in China is enabled mainly by legal constructs which separate land use rights from full property, thus basically arranging for various forms of possession, even over long time spans. In Shenzhen urban villages we observe another case that activates the full range of modes of appropriation, and which resembles the conditions of state-centred legal pluralism in Imperial China. The Shareholding Cooperatives maintain a distinct pattern of collective ownership (not: property) despite nationalization of land, which is at the same time activating their social capital for market expansion in the small property sector (Tong et al. 2021). Hence, we observe the duality of statist versus contractual property in full operation.

However, to grasp the complete picture it is important to deconstruct the category of the state. This is a leitmotif in Chinese studies for decades now, recognizing the institutional reality of territorial decentralization of state governance, if not outright fragmentation, resulting in a pattern of 'territorial competition' among lower-level jurisdictions (Xu 2011). In the 1980s, this resulted in a paradigm of 'regional property rights', implying that within the state-owned domain, distinct forms of appropriation with stable structural features

co-exist, and are even rules-based, such as assigning property rights in public assets to those public entities that had invested in them (Herrmann-Pillath 1991). We cannot further detail this complex constellation here but highlight the fact that therefore state-ownership of land is shaped by complicated and often opaque de facto rights of various agents of the state, aptly christened ‘socialist land masters’ by Hsing (2006). This includes, for example, large state-owned companies as entities distinct from the municipality. In large municipalities, various government agencies can also assume the status of de-facto owners (Rithmire 2013). Given this general institutional setting, the conditions in Shenzhen have been special from the outset, as the original Special Economic Zone area was directly appropriated by the central government, and the initial construction effort involved actors such as China Merchants, a powerful state-owned company, and the People’s Liberation Army. When the city rapidly expanded, the urban villages started to play a key role. Hence, we can qualify the SCs as a distinct type of ‘socialist land master’ in Hsing’s sense, salient in their hybrid functions as business entities and parafiscal units.

In terms of theory, we can therefore conclude that the pattern of state-centred legal pluralism also reflects the plurality of government entities that form the ‘state’, and which take an active role in processes of appropriation. In the Chinese context, an important aspect is the status difference between different actors (such as central versus local), which is especially significant when it comes to the distinction between urban and rural: In the context of China’s modernization effort, the status of the ‘rural’ is lower than the ‘urban’ in terms of progress and development (Herrmann-Pillath 2017). Accordingly, the struggle over controlling land in Shenzhen is also about relative social status (Cheng 2014; Bach 2017). This is the more specific sense in which we can interpret ‘statist property’ in Shenzhen: The rise of the SCs is redefining relative status, with the native villagers increasingly and visibly appropriating land as a marker of status, embodied in the distinct architectural markers such as ‘cultural squares’ and ancestral halls. This leads to a surprising conclusion: The nationalization of land, as long as it does not deny ownership, is the ultimate recognition of the ‘rural’ in the urban fabric of Shenzhen.

While this is consistent with the status-centred role of statist property in Imperial China, an important consequence is that nationalization implies the formalization of real estate operations involving formerly collective land. This is salient in the alliances between SCs and developers, which go hand in hand with the retreat of the state in directly planning and implementing urban development projects. In this new form of appropriation, therefore, another paradox emerges: State-ownership enables marketization with formal recognition of property rights.

5. Conclusion

To conclude, our analysis departs substantially from both the economics and Polanyian approaches to property rights. This vindicates Kennedy's (2013) evaluation of the state of economic property rights theory: Merely approaching property rights from the angle of economic functions overlooks the complex roles that property relations play in economy and society, such as in the context of distribution. However, the conceptual apparatus for reflecting this complexity suffers from ambiguities and lack of definitional precision. One conclusion can be that ambiguity itself is a virtue (Ho 2013) because it allows for flexible adaptation to functional requirements. But what are those functional requirements? If we eschew the exclusive focus on the economy, this becomes an almost arbitrary criterion. We think the better alternative is to set up a more precise conceptual framework of analysing property, which is demanding in the sense that we must give up established semantics. Unfortunately, this means that we lack a truly general term referring to the different ways to relate to an object, since we assign more specific meanings to the established terms to, property, possession and ownership.

We go for 'appropriation'. Another possibility is just referring to 'having' something. But this seems to neutralize a key fact about the various forms that we discussed in this paper, in light of the Shenzhen case. This is that the forms are modes in social processes of competing over, struggling over, regulating, and debating about access to valuable objects. We summarize these processes as various aspects of 'appropriation' as a dynamic phenomenon, in which the forms of property, ownership and possession evolve endogenously, always open to disruption and change.

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STRUKTURWANDEL DES EIGENTUMS

Motivated by our empirical research on an urban village in Shenzhen, China, the paper introduces the distinction of three modes of appropriation: property, possession, and ownership. In the land regime of urban villages, we observe significant family resemblances with conditions in Late Imperial China, which we characterize as 'state-centred legal pluralism'. In state-centred legal pluralism, customary law co-exists with state law, with significant deviations, including illegality; yet the state recognizes customary law as a legitimate concern. A similar constellation characterizes the urban villages, such as in the so-called 'small property housing' phenomenon. Our three-modal approach explains the complex institutional dynamic of forms of appropriation that emerge under state-centred legal pluralism

In particular, we distinguish between statist property and contractual property, resulting in the inversion of the classical Polanyian approach to embeddedness: contractual property (without legal property title) is embedded in structures of social capital (kinship groups and the associated shareholding cooperatives) and thereby enables market exchange by contracting, whereas statist property (with legal title) manifests social and political orders beyond the market. We track the current evolution of modes of appropriation, which result in the emergence of a capitalist real estate sector based on state ownership of land, after nationalization of formerly collective property, with shareholding cooperatives as one of the key players.