

Cooperating to Resist: Society and State during China's COVID Lockdowns

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Abstract. *China's lockdown during the COVID-19 pandemic was widely considered a stark demonstration of the unconstrained power of an authoritarian state. Yet this power may not be as limitless as it appears. This article, the result of extensive fieldwork encompassing over ninety interviews and on-site visits to Chinese cities, primarily focusing on Shanghai and Wuhan, where the most significant lockdowns occurred, delves into the intricacies of the Chinese party-state's response to the pandemic. It offers a unique perspective on the constraints that societal forces impose on the party-state's exercise of power and, in doing so, challenges conventional wisdom. While the Chinese Communist Party ("CCP") touted its COVID-19 response as a testament to the robustness of its institutions, critics pointed to the widespread infringement of individual rights and the suffering endured during China's pandemic lockdowns. However, one aspect has been largely overlooked: the role of society itself. This study uncovers the hitherto unexamined role of society in monitoring and resisting the party-state's encroachments on individual rights during the pandemic, a phenomenon I term "cooperating to resist." My research reveals the state's inherent limitations in enforcing neighborhood lockdowns and providing essential services to locked-down communities. Crucially, I demonstrate that the cooperation of citizens, particularly homeowners, was indispensable to the state's ability to maintain its COVID-19 control measures. Yet, this cooperation was not without its implications. When homeowners, who had been willing partners of the government, invoked legal narratives to voice their concerns, the government found itself compelled to respond. This interdependence between the government and homeowners unveils a dynamic where dependence begets power, challenging the prevailing narrative of China's "strong state, weak society." It also offers fresh insights into the dynamics of power and legality in authoritarian regimes and casts new light on the relationship between property rights and sovereignty. In an authoritarian regime, property law emerges as a sanctuary of resistance for citizens. In essence, this study not only redefines the state-society relationship in authoritarian contexts but also has far-reaching implications for our understanding of emergency governance. As we navigate a changing world, it reminds us that even in the face of seemingly unassailable state power, the interplay between society and the state can usher in a new paradigm of cooperation and resistance.*

The COVID-19 pandemic has irrevocably changed our world, dividing human history into two distinct eras: "BC" (Before COVID) and "AC" (After COVID).¹ Scholars and policymakers have engaged in debates concerning the

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strengths and weaknesses of various institutions in their responses to the pandemic and how the pandemic may alter institutional development. Several notable strands of literature have emerged.

One such strand centers on the debate between authoritarianism and democracy,² with some arguments going so far as to suggest that the pandemic could lead to democratic backsliding and an “impending authoritarian pandemic.”³ This debate has been fueled by the contrast between China’s success in sealing Wuhan and containing the virus’s spread and the U.S. government’s scrambled responses to the pandemic under the leadership of former President Donald Trump.⁴ In this discussion, Francis Fukuyama argues that the crucial determinant of an effective pandemic response is not “the type of regime, but the state’s capacity.”⁵ Fukuyama has previously asserted that, compared to Western countries, East Asian countries, particularly China, feature a tradition of a strong state (and weak society).⁶ It is no wonder he argues that differences in state capacity can explain China’s success in combating COVID-19 in 2020 and the U.S.’s disorganized pandemic responses during the same period. Fukuyama is not alone in this view, as quite a few scientists⁷ and political scientists⁸ (at least according to their publications in the early stages of the pandemic) share similar perspectives.

Another strand of literature revolves around the use of emergency

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¹ Thomas L. Friedman, *Our New Historical Divide: B.C. and A.C. — the World Before Corona and the World After*, N. Y. TIMES, Mar. 17, 2020, <https://www.nytimes.com/2020/03/17/opinion/coronavirus-trends.html>

² Chinchih Chen et al., *Disease and Democracy: Political Regimes and Countries Responsiveness to COVID-19*, 212 J. ECON. BEHAV. & ORG. 290 (2023); Ilan Alon et al., *Regime Type and COVID-19 Response*, 9.3 FIIB BUS. R. 152 (2020); David Stasavage, *Democracy, Autocracy, and Emergency Threats: Lessons for COVID-19 From the Last Thousand Years*, 74S INT’L ORG. E1 (2020).

³ Stephen Thomson & Eric C. Ip, *COVID-19 Emergency Measures and the Impending Authoritarian Pandemic*, J. L. & BIOSCIENCES, January-June 2020, at lsa064.

⁴ Richard Horton, *Is Democracy Good for Your Health?*, 398 LANCET 2060 (2021), [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(21\)02747-1.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(21)02747-1.pdf)

⁵ Francis Fukuyama, *The Thing That Determines a Country’s Resistance to the Coronavirus*, ATLANTIC, Mar. 30, 2020, <https://www.theatlantic.com/ideas/archive/2020/03/thing-determines-how-well-countries-respond-coronavirus/609025/>

⁶ FRANCIS FUKUYAMA, *POLITICAL ORDER AND POLITICAL DECAY: FROM THE INDUSTRIAL REVOLUTION TO THE GLOBALIZATION OF DEMOCRACY* (2014).

⁷ David Cyranoski, *What China’s Coronavirus Response Can Teach the Rest of the World*, 579 NATURE 479 (2020); Shuxian Zhang et al., *COVID-19 Containment: China Provides Important Lessons for Global Response*, 14 FRONTIERS MED. 215 (2020); Horton, *supra* note 4.

⁸ Stasavage, *supra* note 2; Daron Acemoglu, *The Post-COVID State*, PROJECT SYNDICATE, Jun 5, 2020, <https://www.project-syndicate.org/onpoint/four-possible-trajectories-after-covid19-daron-acemoglu-2020-06?barrier=accesspaylog>.

powers, addressing concerns about preventing the exercise of such powers from infringing upon individual rights, leading to democratic backsliding,⁹ and strengthening authoritarian control,¹⁰ as well as exploring how to exercise them more effectively in response to a crisis.¹¹ The prevailing image of an effective Chinese state, seemingly free from constraints, has haunted scholars as they considered the pros and cons of emergency power. David Stasavage, a leading political scientist, has succinctly summarized this view of China's almighty state: "There was no need for CCP to prove that what it was doing was legal or that it adhered to some fundamental constitutional precept. There was no risk of a court challenge or of protestors demonstrating against it. Implicit in all this was the fact that China had the state capacity to implement this response."¹²

The article argues that Stasavage, Fukuyama, and scholars alike concerned about the "impending authoritarian pandemic" have misunderstood the performance of the Chinese state during COVID-19. What is missing in this literature is a bottom-up view of China's COVID-19 lockdowns and an understanding of the public responses to the exercise of emergency power and how society both enhances the effectiveness and places constraints on the abuse of emergency power.¹³

⁹ Anna Lührmann & Davis Rooney, *Autocratization by Decree: States of Emergency and Democratic Decline*, 53 COMP. POL. 617 (2021). As a comparison, Ginsburg and Versteeg found that overall courts and legislatures played important roles in constraining national executives' exercise of emergency power, see Tom Ginsburg & Mila Versteeg, *The Bound Executive: Emergency Powers During the Pandemic*, 19.5 INT'L J. CONST. L. 1498 (2021).

¹⁰ Ruairidh Brown, *Emergency Powers and Authoritarian Shift*, in COVID-19 AND INTERNATIONAL POLITICAL THEORY: ASSESSING THE POTENTIAL FOR NORMATIVE SHIFT at 21 (2022); Mert Arslanalp & Deniz Erkmen, *Mobile Emergency Rule in Turkey: Legal Repression of Protests During Authoritarian Transformation*, 27 DEMOCRATIZATION 947 (2020).

¹¹ Stasavage, *supra* note 2; Daron Acemoglu, *The Post-COVID State*, PROJECT SYNDICATE, Jun 5, 2020, <https://www.project-syndicate.org/onpoint/four-possible-trajectories-after-covid19-daron-acemoglu-2020-06?barrier=accesspaylog>.

¹² Stasavage, *supra* note 2, at E4.

¹³ There has been research about the role of civic organizations in the pandemic, and how the pandemic influences the development of civic organizations, but little research has touched upon China in-depth, probably because of the lack of access. See Richard Youngs eds, *Global Civil Society in the Shadow of Coronavirus*, CARNEGIE ENDOWMENT FOR INT'L PEACE, Dec. 7, 2020, https://carnegieendowment.org/files/Youngs-Coronavirus_Civil_Society_final.pdf; Toussaint Nothias et al., *Digital Surveillance, Civil Society and The Media During the COVID-19 Pandemic*, DIGIT. CIV. SOC'Y LAB AT STANFORD CTR. PHILANTHROPY & CIV. SOC'Y, Nov. 2021, <https://pacscenter.stanford.edu/publication/digital-surveillance-civil-society-and-the-media-during-the-covid-19-pandemic/>; Geoffrey Pleyers, *The Pandemic is a Battlefield. Social Movements in the COVID-19 Lockdown*, 16 J. CIV. SOC'Y 295 (2020). For a few exceptions that address China, they emphasize the state's leadership and constraints on civic organizations and neglect the latter's role of monitoring and resisting excessive state intrusion. See Ming Hu & Mark Sidel, *Civil Society and COVID in China: Responses in an Authoritarian Society*, 49 NONPROFIT & VOLUNTARY SECTOR Q. 1173 (2020); Qing Miao et al., *Responding to COVID-19: Community Volunteerism and Coproduction in China*, 137 WORLD DEV. 105128 (2021); Yuan (Daniel) Chen et al., *Coproducing Responses to COVID-19 with Community-based Organizations: Lessons from Zhejiang*

It may be hard for the scholars above to believe that a strong society can emerge in China. They now take China as the primary counterexample to the modernization thesis, which argues that as a nation becomes richer, its society becomes freer and more democratic.¹⁴ According to Daron Acemoglu and James Robinson, renowned social scientists and the authors of *Why Nations Fail*,¹⁵ there is little hope for Chinese society to grow strong due to “path dependence,” as the dominance of the Chinese state over society continues to reproduce itself.¹⁶

China’s fight against COVID provides a unique opportunity to examine the evolving dynamics between state and society in China, with implications that extend beyond the pandemic. It is a case in which the authoritarian state pushed the limits of its power: if, in such a case, we observe vibrant civic associations and robust bargaining between society and the authoritarian state, we can be more optimistic about the role of society in China’s governance. This would confidently refute the common view, held by many from prominent scholars to media pundits, that Chinese society lacks autonomy and is merely dominated by the authoritarian state.¹⁷

The party-state in China cites the Wuhan lockdown as a prime example of its strength.¹⁸ Early literature on China’s fight against COVID has generally

Province, China. 80 PUB. ADMIN. R. 866 (2020).

¹⁴ DARON ACEMOGLU & JAMES A. ROBINSON, *THE NARROW CORRIDOR: STATES, SOCIETIES, AND THE FATE OF LIBERTY* 233 (2020); Andrew J. Nathan, *China’s Challenge*, 26 J. DEMOCRACY 156 (2015); A recent empirical study argues otherwise and that the Chinese cases confirms the modernization theory. Yingnan Joseph Zhou, *Is China a Deviant Case? A Societal-level Test of the Modernization Theory*, 69.4 POL. STUD. 834 (2021) (“The modernization theory by its nature is a societal-level theory, and it has not yet been tested at the societal level in China.”)

¹⁵ DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY AND POVERTY* (2012).

¹⁶ ACEMOGLU & ROBINSON, *supra* note 14, at 71.

¹⁷ See e.g., FUKUYAMA, *supra* note 6.; ACEMOGLU & ROBINSON, *supra* note 14.

¹⁸ *Xinhua Shuping: Zuida Chengdu Baohu Renmin Shengming Anquan he Shenti Jiankang* (Xinhua Commentary, Protecting the Lives and Health of the People to the Fullest Extent) [新华述评：最大程度保护人民生命安全和身体健康], XINHUA WANG (新华网) [XINHUA NET], Dec. 18, 2022. http://www.news.cn/politics/2022-12/18/c_1129217342.htm; Xi Jinping (习近平), *Zai Tongchou Tuijin Xinguan Feiyan Yiqing Fangkong he Jingji Shehui Fazhan Gongzuo Bushu Huiyi Shang de Jianghua* (Speech at the Conference on the Integrated Promotion of the Prevention and Control of the COVID-19 Epidemic and the Arrangement of Economic and Social Development) [在统筹推进新冠肺炎疫情防控和经济社会发展工作部署会议上的讲话], XINHUA WANG (新华网) [XINHUA NET], Feb. 23, 2020, http://www.xinhuanet.com/politics/leaders/2020-02/23/c_1125616016.htm; Zhonghua Renmin Gongheguo Guowuyuan Xinwen Bangongshi (中华人民共和国国务院新闻办公室) [The Office of Press, State Council of the People’s Republic of China], *Kangji Xinguan Feiyan Yiqing de Zhongguo Xingdong* (抗击新冠肺炎疫情

embraced the idea of a strong, authoritarian state.¹⁹ Critics of the party-state paint an image of an entity armed with limitless resources, dominating society and causing widespread violations of individual rights.²⁰ The recent Shanghai lockdown serves as the clearest example, showcasing how an omnipotent state can overpower society and misuse its authority.²¹

Based on fieldwork across multiple Chinese cities, with a primary focus

情的中国行动) [The Chinese Approach in Combating COVID], ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [The Central People's Government of the People's Republic of China], Jun. 7, 2020, https://www.gov.cn/zhengce/2020-06/07/content_5517737.htm; Ma Xiaowei (马晓伟), *Laolao Bawo Kangyi Zhanlve Zhudong Quan, Sannian Kangji Xinguan Yiqing Qude Juedingxing Shengli* (牢牢把握抗疫战略主动权 三年抗击新冠疫情取得决定性胜利) [Firmly Grasping the Initiative in the Fight Against the Epidemic, Achieving a Decisive Victory after Three Years], Zhonghua Renmin Gongheguo Guojia Weisheng Jiankang Weiyuanhui (中国国家卫生健康委员会) [National Health Commission of the People's Republic of China], Apr. 1, 2023, <http://www.nhc.gov.cn/xcs/yqfkdt/202304/bc253a0a76c54f9192c4a007939fc6a3.shtml>; Fang Ning (房宁), *Kangyi Douzheng Zhangxian Zhongguo Zhidu Youshi* (抗疫斗争彰显中国制度优势) [The Fight Against the Pandemic Showed the Advantage of the Chinese Government], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY], Sep. 17, 2020, http://www.xinhuanet.com/politics/2020-09/17/c_1126503619.htm

¹⁹ Qiulan Chen, et al., *Rapid and Sustained Containment of Covid-19 is Achievable and Worthwhile: Implications for Pandemic Response*, BMJ, Dec. 2, 2021, <https://www.bmj.com/content/bmj/375/BMJ-2021-066169.full.pdf>; Hualing Fu, *Pandemic Control in China's Gated Communities*, in HOW COVID-19 TOOK OVER THE WORLD: LESSONS FOR THE FUTURE WITH COMPARATIVE PERSPECTIVES FROM HEALTH, POLITICS, AND SOCIO-ECONOMICS 9 (Christine Loh ed., 2022); Victor C. Shih, *China's Leninist Response to Covid-19 From Information Repression to Total Mobilization*, in CORONAVIRUS POLITICS: THE COMPARATIVE POLITICS AND POLICY OF COVID-19 67 (SCOTT L. GREER, ET AL., EDS., 2021); Yuen Yuen Ang, *When COVID-19 Meets Centralized, Personalized Power*, 4 NAT. HUM. BEHAV. 445 (2020); Yutian An & Taisu Zhang, *Pandemic State-building: Chinese Administrative Expansion Since 2012*, YALE L. & POL'Y REV. (Forthcoming Feb. 2023) at 2, Available at SSRN: <https://ssrn.com/abstract=4356026> or <http://dx.doi.org/10.2139/ssrn.4356026>

²⁰ See e.g., Thomson & Ip, *supra* note 3.; Mia Swart, *How the Coronavirus has Deepened Human Rights Abuses in China*, ALJAZEERA, Mar. 12, 2020, <https://www.aljazeera.com/news/2020/3/12/how-the-coronavirus-has-deepened-human-rights-abuses-in-china>; Yaqiu Wang, *China's Covid Success Story is Also a Human Rights Tragedy*, HUM. RIGHTS WATCH, Jan. 26, 2021, <https://www.hrw.org/news/2021/01/26/chinas-covid-success-story-also-human-rights-tragedy>; Howard W. French, *China's Government Is a Self-Made COVID-19 Victim*, FOREIGN POL'Y, Dec. 28, 2022, <https://foreignpolicy.com/2022/12/28/chinas-government-is-a-self-made-covid-19-victim/>

²¹ Cissy Zhou, et al., *Inside Shanghai's COVID Lockdown Nightmare: China's Zero-COVID Policy Devastated the Commercial Capital*, NIKKEI ASIA, Jun. 22, 2022, <https://asia.nikkei.com/Spotlight/The-Big-Story/Inside-Shanghai-s-COVID-lockdown-nightmare>.

on Wuhan and Shanghai, this article offers a grassroots-level perspective. It delves into how the Chinese state and society tackle COVID lockdowns, highlighting the limitations of the party-state, the role of the society, and the state-society interactions in urban China's neighborhoods.

In an average urban Chinese residential neighborhood, there are typically between 1000 to 2000 apartment units in multiple towers, all stemming from a single development project. Larger neighborhoods can even include over 10,000 apartment units.²² Such neighborhoods are the nexus where the party-state's authority intersects with Chinese citizens' private property rights. Since 1954, the party-state has established Resident Committees ("RCs") to govern one or several residential neighborhoods, depending on their size.²³ On the other hand, the majority of urban Chinese neighborhoods today are gated communities under condominium ownership.²⁴ Here, common spaces are collectively owned by members of the homeowners' associations ("HoAs").²⁵ When the state enters a neighborhood to enforce lockdown orders, it steps into a territory legally under the collective control of Chinese homeowners.²⁶ For the party-state, this "neighborhood front" is as vital as "the hospital front" in its battle against the pandemic.²⁷ For homeowners, these neighborhoods are spaces where safety, liberty, and property rights hold tangible significance.²⁸ The question arises: Who holds sway in these communities, homeowners or party-state's local agents?

My fieldwork uncovers significant limitations in the Chinese state's

²² Such as Kangcheng neighborhood of Shanghai, which I visited during my fieldwork. It has 13,000 apartments and over 90,000 residents. See *Shanghai Zuida de Xiaoqu Zai Nali? Shi Nage Xiaoqu, Ni Zhidao Ma?* (上海最大的小区在哪里? 是哪个小区, 你知道吗?), [Where is the largest neighborhood in Shanghai? Which neighborhood is it? Do you know?], SOHU, Mar. 31, 2022, https://www.sohu.com/a/534076272_120972477

²³ Chengshi Jiedao Banshichu Zuzhi Tiaoli (城市街道办事处组织条例) [Organic Regulation of the Urban Street-Level Offices] (promulgated by Standing Comm. Nat'l People's Cong., Dec. 31, 1954, abolished Jun. 27, 2009); Chengshi Jumin Weiyuanhui Zuzhi Tiaoli (城市居民委员会组织条例) [Organic Regulation of the Urban Residents Committee] (promulgated by Standing Comm. Nat'l People's, Dec. 31, 1954, abolished Jan. 1, 1990).

²⁴ Shitong Qiao, *The Authoritarian Commons: Divergent Paths of Neighborhood Democratization in Three Chinese Megacities*, AM. J. COMP. L., Vol. 71, No. 2, 2023, forthcoming.

²⁵ WUQUAN FA (物权法) [PROPERTY LAW] (China), promulgated by Nat'l People's Cong., Mar. 16, 2007, effective Oct. 1, 2007) art. 70. Common property includes hallways, elevators, common ground, water towers, roads, parking lots, etc.

²⁶ *Id.* at Chapter 6.

²⁷ Xi Jinping, *Xi Jinping gei Wuhan Donghu Xincheng Shequ Quantu Shequ Gongzuozhe de Huixin* (习近平给武汉东湖新城社区全体社区工作者的回信) [Xi Jinping's Reply to All Community Workers in Wuhan's East Lake New Town Community], XINHUA NET, Apr. 9, 2020, http://www.xinhuanet.com/politics/2020-04/09/c_1125832314.htm.

²⁸ Benjamin L. Read, *Democratizing the neighborhood? New private housing and home-owner self-organization in urban China*, 49 CHINA J. 31 (2003).

capacity to enforce COVID lockdowns and underscores the pivotal role Chinese society played during these lockdowns. The lockdowns were executed not through the coercive might of the state but through the voluntary cooperation of Chinese society. This cooperative stance during the initial stages of the COVID battle considerably bolstered the state's governance capacity during this public health crisis. Chinese society's cooperation wasn't rooted in a belief that it could control or "shackle" the leviathan; instead, it stemmed from a motivation to combat a shared enemy, i.e., the pandemic, influence state policies, and repel unwarranted state intrusions. Paradoxically, this cooperation serves as a mechanism of resistance and a method to augment societal power, countering Acemoglu's and Robinson's argument about state and societal dynamics, according to which "it is the contest between state and society that underpins greater state capacity."²⁹ I call this Chinese approach "cooperating to resist" ("CtR").

By late 2022, faced with the highly infectious COVID variant Omicron, numerous Chinese citizens reassessed the costs and benefits of lockdowns.³⁰ Many began to resist government overreaches, frequently challenging the legal standing of both frontline governmental agents and specific lockdown measures.³¹ As an increasing number of Chinese citizens began to oppose, withdrawing their support and resorting to legal resistance, the stringent lockdowns eventually dissipated.³² Lacking the requisite manpower and financial resources to enforce lockdowns on such a vast scale, the party-state capitulated within days as resistance transitioned from neighborhoods to broader public spaces.³³ In essence, while hundreds of millions of Chinese citizens initially collaborated with the party-state, enforcing its lockdown measures, they also played a decisive role in terminating those policies through their collective legal resistance. Contrary to the prevailing belief of the party-state's dominance, these COVID lockdown episodes in China reveal a reliance on societal collaboration for governance and a willingness to yield when society advocates change.

This Article is structured as follows. Section I examines various limitations in the party-state's enforcement of COVID lockdown measures. Section II details the reasons, mechanisms, and outcomes of homeowners' cooperation with the party-state during lockdowns, underscoring the indispensability of this collaboration in the fight against COVID. Section III probes into the resistance by Chinese homeowners against overreaching lockdown measures, emphasizing their use of legal narratives to safeguard their

²⁹ ACEMOGLU & ROBINSON, *supra* note 14, at 71.

³⁰ See e.g., Peter Hessler, *What Chinese People Think of Their Government's "Zero COVID" Policy*, <https://www.newyorker.com/news/news-desk/what-chinese-people-think-of-their-governments-zero-covid-policy>

³¹ See *infra* Section III.

³² See e.g., Frances Mao, *China Abandons Key Parts of Zero-Covid Strategy after Protests*, BBC, December 7, 2022, <https://www.bbc.com/news/world-asia-china-63855508>

³³ *Id.*

freedom and property rights. Section IV discusses the broader implications of this research on authoritarian legality, state-society relationship, and property and sovereignty. Section V concludes the article.

I. THE LIMITS OF THE ALMIGHTY STATE

While the PRC Constitution promises RCs as a form of direct democracy,³⁴ this promise has seldom been fulfilled.³⁵ In practice, RCs depend on the government for funding and personnel, essentially serving as the lowest tier of the party-state's bureaucratic hierarchy.³⁶ On the other hand, RCs, constitutionally designated as "mass autonomous organizations," lack the power to enforce laws, as they are not officially part of the bureaucratic system,³⁷ in contrast to their immediate supervisors, the street-level government, which can enforce laws independently or on behalf of city or district-level governments.³⁸ While RCs can monitor and coordinate various stakeholders in urban neighborhoods, such as HoAs and management companies ("MCs"), their limited financial and personnel resources hinder their ability to directly administer or serve hundreds of thousands of residents in a neighborhood.³⁹

During COVID lockdowns, RC party secretaries and workers struggled to ensure citizens remained at home, got tested, and received essential services

³⁴ XIANFA art. 111 (2018) (China); Zhonghua Renmin Gongheguo Chengshi Jumin Weiyuanhui Zuzhifa (中华人民共和国城市居民委员会组织法) [Organic Law of the PRC Urban Residents Committee] (promulgated by Standing Comm. Nat'l People's Cong., Dec. 26, 1989).

³⁵ See e.g., Bing Guan & Yongshun Cai, *Interests and Political Participation in Urban China: The Case of Residents' Committee Elections*, 15 THE CHINA R. 95 (2015).

³⁶ Guo Ying (郭莹) & Wu Aimin (吴爱民), *Woguo Chengshi Jumin Zizhi Fenxi* (我国城市居民自治分析) [*An Analysis of Self-Governance of City Residents in Our Country*], SICHUAN XINGZHENG XUEYUAN XUEBAO (四川行政学院学报) [JOURNAL OF SICHUAN ADMINISTRATION INSTITUTE] (May 15, 2014, 04:37 PM), http://www.cssn.cn/zzx/zgzz_zzx/201405/t20140515_1163710.shtml; see also BENJAMIN READ, *ROOTS OF THE STATE: NEIGHBORHOOD ORGANIZATION AND SOCIAL NETWORKS IN BEIJING AND TAIPEI* (2012).

³⁷ Article 9(2) of China's Infectious Disease Prevention and Control Law (IDPCL) stipulates that RCs should organize residents to participate in the prevention and control of infection disease. Article 55 of China's Emergency Response Law (ERL) stipulates that RCs can organize the masses to implement mutual help. Neither of the article, however, grants RCs the law enforcement power, which would be necessary in the case of enforcing lockdown orders, not to mention issuing their own lockdown orders. See more discussions about RCs' qualification to enforce laws in Section IIIA.

³⁸ Articles 85 and 86 of Organic Law of the Local People's Congresses at All Levels and the Local People's Governments at All Levels of the People's Republic of China (promulgated on July 1, 1979, revised the fifth time on March 11, 2022) Zhu Yingping(朱应平) & Su Minhua(苏敏华), *Ruhe Yong Fa' Wuqi Zuzhi Weigui Fengkong* (如何用法律武器阻止违规封控) [*How to Stop Blocking Violations with Legal Weapons*], SINA, November 27, 2022, <https://finance.sina.cn/china/cjpl/2022-11-28/detail-imqmmthc6230824.d.html?from=wap>

³⁹ Qiao, *supra* note 22.

like food and medical treatment when necessary. Some scholars have argued that the party-state's neighborhood organizations were strengthened and empowered during the COVID-19 pandemic to carry out these tasks.⁴⁰ However, the reality is quite different; neighborhood organizations were neither institutionally nor financially strengthened during the pandemic.⁴¹ Instead, they were tasked with enforcing often excessive lockdown policies, being pushed to their limits and, in some cases, suffering from exhaustion or death from continuous overwork.⁴² Many of them left their posts halfway through the crisis.⁴³

The party-state encountered significant limitations in enforcing lockdowns due to the illegibility of neighborhoods,⁴⁴ even with the assistance of technology, as well as limited human and financial resources, and distorted incentives among its agents. Additionally, the fragmentation of the party-state as an organization added to these challenges.

A. Illegibility

One might find it amusing to suggest that neighborhoods in Chinese megacities are illegible to the all-powerful party-state. Equipped with technologies such as a health code system, which purportedly tracks citizens in their every step of moving, and grid managers dispatched by the party-state to penetrate neighborhoods, how could these neighborhoods be considered illegible? However, my fieldwork reveals that the fear of the almighty party-state is somewhat exaggerated. While instances of excessive control have indeed occurred, their effectiveness is limited. China's efforts to transform urban areas into well-planned and fully legible "gardens," using James Scott's well-known metaphor,⁴⁵ have encountered resistance from citizens and the state's own limitations in terms of human, financial, and organizational resources.

1. The Health Code System

The health code system, widely discussed online and feared as a tool of government control that would plunge Chinese citizens into a real-world version of "1984,"⁴⁶ has proven to be less effective than anticipated and has generated significant criticism without achieving its goal of effective monitoring.⁴⁷ In simple terms, Chinese citizens were required to install an app on their

⁴⁰ An & Zhang, *supra* note 19.

⁴¹ See *infra* Section IB.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ For the relationship between legibility and state capacity, see Melissa M. Lee, and Nan Zhang, *Legibility and the Informational Foundations of State Capacity*, 79 J. POLITICS 118 (2017).

⁴⁵ JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* (1998).

⁴⁶ Sarah Zheng, *The Messy Afterlife of China's Covid Health Codes*, BLOOMBERG, Aug. 16, 2023, <https://www.bloomberg.com/news/articles/2023-08-16/china-begins-to-grapple-with-its-covid-data-collection-machine?embedded-checkout=true>

⁴⁷ Interview WH013, April 25, 2023, Wuhan.

smartphones to report their COVID-related health information: red indicates a positive COVID test result, yellow signifies close contact with an infected individual, and green indicates no known COVID-related issues.⁴⁸ The color may change depending on factors like travel to “high-risk” areas or the completion of required COVID tests.⁴⁹ It’s important to note that this app is not uniform nationwide; different provinces and cities have developed their own apps for COVID control, creating additional barriers for cross-regional travel.⁵⁰

To be clear, the health code app could indeed locate and track citizens, but with certain caveats. Firstly, it was not always accurate, with cases reported where individuals were missing from the government’s app. In one instance in Wuhan, hundreds of residents were waiting in line for regular COVID tests, and one individual with a red code was found among them. When the health worker conducting the tests noticed this, they left the person aside and proceeded to test the next individual. Subsequently, the person with the red code disappeared when nobody was paying attention. This incident led to the entire neighborhood being locked down, and the RCs struggled to identify the individual in question. Ultimately, it was unclear whether the person even lived in that neighborhood.⁵¹

To exacerbate matters, citizens developed techniques to manipulate the app and change their code color as they see fit. Some of these techniques were advanced, involving hacking the system, while others were rudimentary, with citizens who tested negative sharing or selling copies of their health code to others in need. In certain places in Wuhan, such as university campuses, this even became a small-scale trade, particularly among young students who were more creative and rebellious. In one university, campus printing stores became hubs where these health code copies were bought and sold.⁵²

Secondly, even when the app functioned properly, its tracking did not always align with reality. For example, the app might indicate that citizen A has come into close contact with infected citizen B, which was technically accurate as A and B were within five meters of each other. However, A and B were in separate cars on a highway and had a momentary “close contact” when their vehicles were parallel to each other with closed windows. Did this mean that A was at risk of COVID exposure and should have their code changed from green to yellow? Common sense would suggest otherwise, but under the health code

⁴⁸ Chen et al., *Coproducing Responses to COVID-19*, *supra* note 13.

⁴⁹ Haiqing Yu, *Living in the Era of Codes: A Reflection on China’s Health Code System*, BIOSOCIETIES, Dec. 2022 at 1.; Phoebe Zhang, *The Colour-coded Covid App that’s Become Part of Life in China – Despite the Red Flags*, SCMP (Apr. 5, 2022), <https://www.scmp.com/news/china/science/article/3173123/colour-coded-covid-app-thats-become-part-life-china-despite-red>.

⁵⁰ See e.g., *China Axes Travel Tracking App in Latest Easing of Covid Curbs*, CNBC, Dec. 13, 2022, <https://www.cnbc.com/2022/12/13/china-axes-travel-tracking-app-in-latest-easing-of-covid-curbs.html>

⁵¹ Interview WH038, June 7, 2023, Wuhan.

⁵² Interview WH006, April 6, 2023, Wuhan.

system, the answer was yes. Another example involved a Wuhan resident who went grocery shopping, and three days later it was discovered that someone else who had visited the same grocery store tested positive for COVID. The resident was subsequently ordered to undergo a seven-day quarantine.⁵³ The criteria for tracking in such cases remained unclear, as other neighbors who had visited the store at the same time were not subjected to quarantine.⁵⁴ These cases, referred to as “close contact in time and space” (时空伴随) by Chinese media, underscore the gap between technology and reality.⁵⁵

One can argue that the issue with the health code system was its overreach, and there was nothing wrong with overreaching as more control was what the party-state wanted. I disagree, as this overreach did not serve the government's goal of COVID control effectively and instead resulted in widespread anger and resistance, harming both the legitimacy of COVID control measures and the government itself. For instance, the Wuhan resident mentioned earlier cooperated with authorities for the initial seven-day quarantine, even though she was certain she was not infected. However, when the government insisted on another week of quarantine, she became furious and even threatened to commit suicide if forced to comply. She described the health code system as chaotic and absurd.⁵⁶

Lastly, the health code system was plagued by bureaucratic confusion. One would expect that technology provided preliminary information, and government bureaucrats could decide, based on additional on-the-ground facts, whether the information was accurate and whether to rely on it. However, the reality was quite the opposite: technology controlled people, including bureaucrats, rather than the other way around. Nobody knew who had the final authority over the health code color. While citizens theoretically had the option to apply via RCs to correct an incorrect color, in practice, RC party secretaries and other frontline government workers found their applications bounced between different government departments.⁵⁷ While they were tasked with implementing lockdown orders, RCs had no control over the health code system.⁵⁸ The root cause of this chaos lied in the involvement of multiple government departments in COVID control, each with its own information channel or platform and no means to access or verify one another's

⁵³ Interview SZ005, February 27, 2023, Shenzhen.

⁵⁴ *Id.*

⁵⁵ *Guangzhou: Buyi Shikong Bansui Huading Mijie, Hesuan Jiance Bu Kuoda Fanwei* (广州: 不以时空伴随划定密接, 核酸检测不扩大范围) [Guangzhou will no longer classify “close contact in time and space” as close contacts, refrain from expanding the scope of compulsory COVID testing], CAIXIN WANG (财新) [CAIXIN NET], Nov. 30, 2022, <https://m.caixin.com/m/2022-11-30/101972493.html>

⁵⁶ Interview WH038, *supra* note 51.

⁵⁷ Interview WH009, April 11, 2023, Wuhan.

⁵⁸ *Id.*

information.⁵⁹ Additionally, there was a lack of trust in frontline government workers at the neighborhood level.⁶⁰ These factors combined to make it exceedingly difficult to correct technological errors in the health code system.

2. Urban Grid Management

The party-state recognized that it could not rely solely on technology for governance and thus created a system called grid management to enhance its effectiveness in collecting information and delivering services. The idea behind grid management was to divide each city into standard grids consisting of 300-500 households, acknowledging that Chinese neighborhoods were too large to govern effectively.⁶¹ However, the party-state lacked the necessary human and financial resources to make this system work effectively. Grid managers often lacked incentives and expertise to carry out the complex tasks required to make neighborhoods legible and governable, often exacerbating conflicts within neighborhoods.⁶²

Many grid managers were part time, mostly retirees. These retiree grid managers received a modest communication fee as compensation, typically around 100 RMB (USD 13) per month. Their tasks include collecting and reporting information from each household and serving as a communication channel between RCs and residents. However, they themselves did not have access to government information and are not well-connected with or particularly popular among their neighbors.⁶³ When tasked with enforcing unpopular government policies, such as COVID lockdowns in late 2022, their

⁵⁹ Interview SZ003, March 11, 2023, Shenzhen.

⁶⁰ *Id.*

⁶¹ Jean Christopher Mittelstaedt, *The Grid Management System in Contemporary China: Grass-roots Governance in Social Surveillance and Service Provision*, 36 CHINA INFO. 3 (2022).

⁶² In 2013, the CCP Central Committee introduced a resolution on comprehensively deepening reform, which incorporated the concept of grid management. See: Zhonggong Zhongyang Guanyu Quanmian Shenhua Gaige RUogan Zhongda Wenti de Jueding (中共中央关于全面深化改革若干重大问题的决定)[The Central Committee of the Communist Party of China's Decision on Some Major Issues Concerning Comprehensively Deepening Reforms](promulgated by Third Plenary Session 18th Cent. Comm. Communist Party China, November 12, 2013), http://www.ce.cn/xwzx/gnsz/szyw/201311/18/t20131118_1767104.shtml (Aiming towards grid-based management and socialized services, improve the grassroots comprehensive service management platform).; It was reported that Wuhan and Shanghai were pioneers of the grid management system. Wang Xuezhu (王雪竹), *Jiceng Shehui Zhili: Cong Wanggehua Guanli dao Wangluohua Zhili* (基层社会治理: 从网格化管理到网络化治理)[Grassroots Social Governance: From Grid-based Management to Networked Governance], BEIJING DANGJIAN YANJIU JIDI (北京党建研究基地) [RESEARCH CENTRE FOR BEIJING PARTY BUILDING] (March 16, 2022), <https://rcbpb.bac.gov.cn/news/voice/detail-c63-aid601.html>. However, in Shanghai, residents seemed to be unaware of the existence of grid managers, indicating that they did not play a significant role in neighborhood governance. Interview SH032, April 18, 2022. Shanghai.

⁶³ Interview WH017, May 1, 2023, Wuhan.

lack of authority became a significant issue.⁶⁴ They were unable to take a hardline approach with citizens, and those who attempted to do so often intensified conflicts, eroding government legitimacy.⁶⁵ The workload imposed on them far exceeded the compensation they received. Moreover, during the pandemic, the elderly, who were particularly vulnerable, made up a significant portion of the government's grid managers, many of whom resigned.⁶⁶ Consequently, in multiple neighborhoods I investigated in Wuhan, residents complained that they could not reach their grid managers.⁶⁷

Each RC often employed a few full-time grid managers, typically college graduates specializing in social work.⁶⁸ These individuals were more dedicated and professional grid managers but were considered outsiders in the neighborhoods.⁶⁹ They were required to gain a detailed understanding of the neighborhood such as the exact number of residents in each apartment. Such a job often required visiting residents' homes and faced resistance in the form of silence (residents refusing to open their doors) or even threats (such as putting a knife at the door as a sign of resistance to a COVID test).⁷⁰ They were expected to organize COVID tests for hundreds of residents in their grids. Their monthly salaries typically ranged from 3000 to 4000 RMB (400 to 540 USD).⁷¹ When these grid managers walked into a neighborhood, they often found that whatever map they had been given did not match with the landscape on the ground. One young grid manager shared with us that she was brought to tears when she realized that the map did not match the neighborhood layout, and she needed to coordinate a COVID test for the entire neighborhood the following morning. Eventually, she resigned, as did many other full-time grid managers during the pandemic.⁷²

Grid managers spent most of their time collecting information as different government departments requested them to collect all sorts of information, sometimes repetitively, showing the lack of coordination among these government departments. Ironically, despite the availability of health codes and other surveillance technologies, many government agencies still relied on grid managers to visit households and collect information through paperwork and handwritten reports.⁷³ It is evident that grid managers had little capacity to address citizens' demands. When citizens under lockdown relied on

⁶⁴ Interview WH020, May 9, 2023, Wuhan.

⁶⁵ Interview WH012, April 23, 2023, Wuhan.

⁶⁶ Interview SZ006, March 19, 2023, Shenzhen.

⁶⁷ Interview WH022, May 11, 2023, Wuhan.

⁶⁸ Interview SZ003, *supra* note 59.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Interview SZ006, *supra* note 66.

⁷³ Interview WH012, *supra* note 65.; Interview WH011, April 18, 2023, Wuhan; Interview FS001, May 5, 2023, Foshan.

these grid managers for food and had no alternative options, some individuals died from starvation or illness.⁷⁴

B. Limited Resources

In my previous discussion of grid managers' workload and compensation, I touched upon the issue of limited resources. To provide a more comprehensive understanding of the party-state's organization at the neighborhood level, let's take a neighborhood in Shenzhen I visited as an example. In this neighborhood, the RC governs an area of 0.6 square kilometers, encompassing three intracity villages, nine condominium compounds, and two office buildings, with a total resident population of 42,400.⁷⁵ The government employs seven workers for this neighborhood who have regular employment contracts with the government (在编人员), including the RC party secretary.⁷⁶ The RC also has a budget that allows for the hiring of 35 grid managers. However, due to the low compensation discussed above, 60% of these grid managers resigned during the pandemic.⁷⁷

RC party secretaries, serving as the leaders of the party-state at the neighborhood level, received better compensation and were less likely to resign. In Shenzhen, their monthly salaries ranged from 7,000 to 8,000 RMB, roughly equivalent to the pay of skilled factory workers. Being a party secretary comes with institutional prestige and benefits; nevertheless 7000-8000 RMB was a meager salary that party secretaries frequently complained.⁷⁸ The increased workload during the lockdowns exacerbated this dissatisfaction. For example, party secretary Liu in Shenzhen reported that he could only manage four to five hours of sleep each day during the several months of COVID lockdown.⁷⁹ He received a bonus of 2,000 to 3,000 RMB for the extra work he put in during the lockdown period.⁸⁰ The risk of overwork was palpable, with one neighborhood party secretary known to our interviewee succumbing to overwork, aggravated by existing health issues. Such cases were not uncommon, as media reports and official government narratives highlighted the sacrifices made by frontline government employees during COVID lockdowns as heroic acts in service to the party and the people.⁸¹

⁷⁴ Interview WH020, *supra* note 64.

⁷⁵ Interview SZ004, February 27, 2023, Shenzhen.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Interview SZ003, *supra* note 59.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Hubei 14 Ming Xinguan Feiyan Yiqing Fangkong Yixian Xisheng Renyuan Bei Pingding wei Shoupi Lieshi* (湖北 14 名新冠肺炎疫情防控一线牺牲人员被评定为首批烈士) [*Hubei's 14 Frontline Casualties in the Prevention and Control of the Novel Coronavirus Pneumonia Outbreak Were Assessed as the First Batch of Martyrs*], XINHUA NET, Apr. 2, 2020, https://www.gov.cn/xinwen/2020-04/02/content_5498352.htm; Quanguo Gedi Gezu Renmin Shenqie Daonian Kangji Xinguan Feiyan Yiqing Douzheng Xisheng Lieshi he Shishi Tongbao (全国各地各族人民深切悼念抗

Incentivizing frontline government employees required both positive and negative measures. In Nanshan District of Shenzhen, two party secretaries of the street-level government, which supervises the work of RCs, were dismissed during COVID lockdowns for failing to fulfill their duties.⁸² In Futian District of Shenzhen, more party secretaries faced disciplinary action.⁸³ However, these disciplinary measures had limited impact on grid managers who were already inclined to resign and did not receive sufficient benefits from the party-state to match their workload.

As a consequence of the labor shortage, the RC in the Shenzhen neighborhood mentioned earlier allocated most of its resources and attention to controlling the three intracity villages.⁸⁴ These villages were populated by migrant workers who had fewer attachments to any community and were more vulnerable to the economic hardships resulting from lockdowns. Consequently, they were more likely to resist violently and attempt to escape.⁸⁵ Residential condominium compounds were left to self-management, a topic I will delve into further in Section II.

To compensate for the shortage of frontline government employees, the party-state implemented two measures. Firstly, party members were required to “sink into urban neighborhoods.” (党员下沉)⁸⁶ The idea was to utilize the manpower of the 90 million CCP members, who typically exhibit a higher degree of loyalty and incentive to work for the party-state.⁸⁷ CCP members were tasked with various responsibilities in urban neighborhoods, including aiding in lockdown policies such as COVID testing and entry control, as well as service delivery, from trash collection to food distribution.⁸⁸ However, this approach encountered challenges, as it was hard to evaluate such party-members’ volunteering work outside their ordinary jobs. Complaints were common in cities like Shanghai, Wuhan, and Shenzhen, with some CCP members merely

击新冠肺炎疫情斗争牺牲烈士和逝世同胞) [*The People of All Ethnic Groups in All Parts of the Country Deeply Mourn the Martyrs and Compatriots Who Died in the Fight Against the Novel Coronavirus Pneumonia Epidemic*], XINHUA NET, Apr. 4, 2020, http://www.xinhuanet.com/politics/2020-04/04/c_1125813957.htm

⁸² Interview SZ003, *supra* note 59.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*; see also Protesters Confronted Police in Haizhu District of Guangzhou (广州海珠区数百民众冲出封控区上街抗议与警方发生冲突), <https://www.zaobao.com.sg/news/china/story20221116-1333559>.

⁸⁶ *Defend the Frontline of Pandemic Control: Community Party Organizations and Party Members Spare No Effort to Win the “People War” of Stopping the Virus Spreading* (守严守牢疫情防控的关键防线——全国城市社区党组织和广大党员全力打好疫情防控人民战争), XINHUA SHE (新华社) [XINHUA PRESS] March 10, 2020, https://www.gov.cn/xinwen/2020-03/10/content_5489735.htm

⁸⁷ *Id.*

⁸⁸ Interview WH025, May 12, 2023, Wuhan.

taking pictures of their supposed tasks, sending these pictures to their supervisors, and not effectively completing the work. For instance, in Wuhan, a group of CCP members failed to distribute 2,000 eggs despite eight hours of work due to distractions like chatting and taking photos.⁸⁹ Moreover, as most of these CCP members came from government agencies and State-Owned Enterprises (SoEs), they were accustomed to giving orders rather than providing services, often imposing restrictions on homeowners' actions instead of facilitating them. For instance, they were often preoccupied with collecting information on homeowners' purchases rather than procuring food for them. This approach created considerable frustration among homeowners who were tirelessly seeking sustenance for themselves and their neighbors, while CCP members demanded detailed logistics and financial information and dictated what should or should not be purchased.⁹⁰

The second measure, typically employed during emergent COVID outbreaks, involved outsourcing control to market entities, such as private security companies. However, this outsourcing approach had two significant problems. Firstly, these private companies did not consistently deliver high-quality service. In times of surging demand, some of these companies resorted to hiring individuals who did not adhere to established rules and norms. These individuals, often referred to as "thugs," not only tarnished the government's legitimacy through their appearance but also proved challenging to direct when tasked with specific missions by the street-level government that had hired them.⁹¹ In certain cases, these individuals even demanded higher payments, citing excuses such as not being aware that they needed to wear the requisite white protective suits (大白), which posed significant discomfort during hot summer days.⁹² Secondly, these outsourcing arrangements were costly, far exceeding the expenses associated with paying the government's own employees. As one-off contracts, the government had to pay 680 to 1,000 RMB per person per day.⁹³ While local governments were initially willing to do so due to the urgency of COVID outbreaks and the goal of achieving zero COVID, these ongoing outbreaks placed local governments under increasing financial strain. Consequently, they began to default on payments to these private companies, which, in turn, resorted to various means to seek compensation.⁹⁴ The sight of individuals wearing white protective suits and demanding compensation on social media platforms became a significant source of

⁸⁹ Interview WH012, *supra* note 65.

⁹⁰ *Id.*

⁹¹ For research on the government's use of such thugs for other purposes before pandemic, see Lynette H. Ong, *Thugs and Outsourcing of State Repression in China*, 80 CHINA J. 94 (2018).

⁹² Interview FS001, *supra* note 73.

⁹³ Interview SZ003, *supra* note 59.

⁹⁴ *Id.*

embarrassment and damaged the party-state's legitimacy.⁹⁵

Overall, the relentless pursuit of zero COVID placed an overwhelming burden on the party-state. Even in relatively affluent local governments like Shanghai and Shenzhen, the limitations of their human and financial resources became apparent. According to a party secretary in Shenzhen, the most aggressive COVID control measures cost 20 million RMB per confirmed COVID case. Such measures involved testing entire neighborhoods with several thousand households and relocating residents of the affected building and surrounding buildings to hotel rooms.⁹⁶ While I lack specific details regarding the party secretary's estimate, 20 million RMB does not go far when considering that only 1,000 residents might need to be quarantined in hotel rooms for one week. This leaves approximately 2,000 RMB for each resident, without accounting for additional lockdown-related expenses. (A budget hotel room in a Chinese city like Wuhan typically costs about 300 RMB.) The outcome of this relentless pursuit of zero COVID was that local governments found themselves financially depleted, struggling to compensate COVID testing companies, and forced to reduce government employees' salaries, not only in economically challenged cities but also in prosperous ones like Shenzhen.⁹⁷

C. *Distorted Incentives and Fragmented Organization*

Within China's top-down pursuit of zero COVID, local officials face tremendous pressure to prevent COVID outbreaks and exhibit extreme risk aversion. Consequently, it is easier to impose lockdowns on neighborhoods or entire cities than to lift them. Officials who make the decision to lift lockdowns would be held accountable if subsequent COVID outbreaks occurred. However, it is the street-level government and RC employees who grapple with daily turmoil, threats of unrest, and the various challenges associated with lockdowns. Given the fragility of the zero-COVID target, officials were essentially testing the system's limits, evaluating how much pressure it could endure without sparking full-scale unrest. When sparks of unrest did emerge, the system often responded with negotiations, wherein the government requested more patience and renewed promises regarding when lockdowns would be lifted. Unfortunately, this process eroded much of the government's credibility due to unfulfilled promises.

RC party secretaries faced direct pressure from residents and endeavored to pacify them by proposing better solutions to the problems residents encountered. However, resolving such issues during a lockdown

⁹⁵ David Pierson et al., *China's Latest Source of Unrest: Unpaid 'Zero Covid' Workers*, N. Y. TIMES, Jan. 16, 2023, <https://www.nytimes.com/2023/01/16/world/asia/china-covid-protests.html>

⁹⁶ Interview SZ003, *supra* note 59.

⁹⁷ Interview SZ007, June 15, 2023; Laura He, *China's Cities Are Running Out of Cash to Pay Huge Covid Lockdown Bills*, CNN, Dec. 2, 2022, <https://www.cnn.com/2022/12/02/economy/china-zero-covid-sustainability-debt-woes-intl-hnk/index.html#:~:text=They%20spent%2011.8%20trillion%20yuan,threat%20to%20China's%20economic%20health.>

necessitated coordination with multiple other departments. For instance, elderly individuals often required regular medical treatment, which RC party secretaries sought to facilitate by allowing them to leave the lockdown area for treatment.⁹⁸ Nevertheless, hospitals frequently declined to admit patients from neighborhoods under lockdown, fearing that a single COVID case could lead to their own lockdown.⁹⁹ Tragically, people lost their lives due to hospitals' aversion to the risk of COVID lockdowns.¹⁰⁰

Adding to the complexity, the party-state grappled with the perennial issue of fragmentation.¹⁰¹ As discussed in my previous section on illegibility, various government departments maintained their sources of information and platforms, impeding the free flow of information across departments. Simultaneously, they relied on neighborhood workers to collect and report information, effectively making this task the primary responsibility of these workers.¹⁰² Another manifestation of fragmentation was the lack of coordination among different functional and territorial authorities. Each authority issued its own travel permits, which were not necessarily recognized by each other, resulting in segmented "warzones" within Chinese cities.¹⁰³ In one instance, a grid manager was halted on her way back after distributing food to her colleagues as she did not acquire a new form of permit the street-level government had just ordered.¹⁰⁴ The grid manager had to call a leader within the street-level government to gain access. When the system operated with such rigidity and relied on personal phone calls, the burden on each government employee became considerable.

II. COOPERATION

When the Chinese government decided to enforce lockdowns, whether in a building, neighborhood, city block, or, in its most extreme form, an entire city, it faced two primary challenges: (1) ensuring compliance with lockdown orders, ensuring citizens stayed within their apartments or neighborhoods, and (2) providing essential services, particularly food, to those under lockdown. Additionally, the Chinese government organized regular and frequent testing in these areas, which incurred substantial human and financial costs. In tandem with this, COVID-positive patients were relocated from neighborhoods to quarantine centers. These aspects were interconnected; the more effectively basic needs such as food were met, the more likely citizens were to comply with lockdown policies. As discussed in the previous section, the party-state

⁹⁸ Interview SH008, July 20, 2023, Shanghai.

⁹⁹ Interview WH039, June 9, 2023, Wuhan.

¹⁰⁰ *Id.*

¹⁰¹ KENNETH LIEBERTHAL & MICHEL OKSENBERG, *POLICY MAKING IN CHINA: LEADERS, STRUCTURES, AND PROCESSES* (1988); Andrew Mertha, "Fragmented Authoritarianism 2.0": *Political Pluralization in the Chinese Policy Process*, 200 CHINA Q. 995 (2009).

¹⁰² Interview WH025, *supra* note 88.

¹⁰³ Interview SZ003, *supra* note 59.

¹⁰⁴ Interview SZ006, *supra* note 66.

encountered significant challenges in fulfilling both functions.

Emerging from where the authoritarian state often fell short, mutual help and cooperation among homeowners facilitated both the implementation of lockdown orders and the provision of vital services required for their survival during lockdowns. In neighborhoods where homeowners could self-govern, the government was relieved of the responsibility to enforce lockdown orders and provide services. The government prioritized neighborhoods lacking such self-governing capacity, such as aged neighborhoods where elders concentrated and intracity villages where migrant workers lived.¹⁰⁵ Even in these neighborhoods, the government was, at best, able to provide food that met only the most basic needs. For instance, during my visit to Wuhan, one interviewee complained of losing 7.5 kilograms of weight during the COVID lockdown.¹⁰⁶ In another neighborhood, one interviewee reported witnessing the government provide free food on only one occasion, while another interviewee stated that there were multiple such instances, yet the government still couldn't adequately meet residents' basic needs.¹⁰⁷ In a third neighborhood under investigation, an interviewee mentioned that the government distributed food a total of three times, leaving her and her neighbors to fend for themselves. By comparison, she organized group shopping events ten times during the 76-day lockdown in Wuhan, involving sourcing food, arranging transportation, and distributing goods to hundreds of households in the neighborhood.¹⁰⁸ The role of the RC, according to one interviewee, was primarily "comforting"¹⁰⁹ or, in the words of another resident, "doing everything except being helpful."¹¹⁰

A. Why Cooperation?

Why did so many homeowners choose to cooperate? The concepts of homeownership and neighborhood solidarity played a significant role in motivating homeowners to engage in self-help initiatives. Unlike RC workers and grid managers, homeowners had no other place more important than their homes. They needed to safeguard themselves not only from the COVID virus but also from the government's stringent COVID prevention measures. Homeowners were able to work together due to a history of interactions, often involving mobilization against poor management services and housing quality issues.¹¹¹ The leaders who emerged through this process of mobilization and elections possessed superior knowledge about the neighborhood, were more accountable, and had greater ability to mobilize volunteers and resources compared to RC workers.

¹⁰⁵ Interview SZ003, *supra* note 59; Interview SH020, July 3, 2023, Shanghai.

¹⁰⁶ Interview WH017, *supra* note 63.

¹⁰⁷ Interview WH012, *supra* note 65.

¹⁰⁸ Interview WH022, *supra* note 67.

¹⁰⁹ *Id.*

¹¹⁰ Interview WH011, *supra* note 73.

¹¹¹ Interviews ZZ004 and ZZ005, January 27, 2023, Zhengzhou; Qiao, *supra* note 22.

One HoA Chairwoman had left Wuhan to spend the Spring Festival with her parents but returned to Wuhan after the pandemic erupted, as many people were fleeing the city. She expressed, “I was truly torn by the decision and went back and forth: Wuhan wasn’t safe. However, I was the HoA Chairwoman, and our neighborhood needed someone to take care of it.”¹¹² She shared her story on her neighborhood’s webpage, illustrating the presence of a reputational mechanism also at work.¹¹³

Furthermore, homeowners’ interests were closely linked due to the proximity of condominium apartments. One homeowner activist assumed the role of a “food captain”¹¹⁴ who found a reliable food supplier for her entire neighborhood. Her initial motivation was to secure food for her family. She established contact with a nearby grocery supplier and successfully persuaded the supplier by rallying other neighbors to make purchases from the same source. In an effort to “keep the supplier’s business alive,” she even extended her efforts to nearby neighborhoods, encouraging homeowners there to also buy from the same supplier. This exemplifies the concept of “saving neighbors to save oneself.”¹¹⁵

B. Effectiveness of Cooperation

HOAs and other homeowners’ self-help organizations proved significantly more effective than RCs in providing food and maintaining order in neighborhoods. The government’s pursuit of a zero-COVID strategy and its frequent lockdowns obstructed food transportation, making it exceedingly challenging, if not impossible. Starvation tragedies stemmed not from a lack of food, but from the breakdown of transportation and market mechanisms due to the COVID lockdowns.¹¹⁶ The government in Shanghai and Wuhan attempted to remedy the situation by establishing a top-down supply system, introducing various permits to control supply quality and minimize COVID infection. This system, reminiscent of China’s pre-1979 planned economy, failed spectacularly, often falling short of citizens’ basic food demands, and accompanied by numerous scandals regarding food quality and corruption.¹¹⁷

¹¹² Interview WH019, May 9, 2023, Wuhan.

¹¹³ *Id.*; for general discussions on how reputation works, see e.g., Henry F. Lyle & Eric A. Smith, *The Reputational and Social Network Benefits of Prosociality in an Andean Community*, 111 PROC. NATL. ACAD. SCI. U.S.A. 4820 (2014). 201318372.

¹¹⁴ The term did not cause news media’s attention until the 2022 Shanghai lockdown, but food captains were at work in the 2020 Wuhan lockdown too. See Alexandra Stevenson et al., *I Just Want to Help: Amid Chaos, Shanghai Residents Band Together*, N.Y. TIMES, (Apr. 26, 2022), <https://www.nytimes.com/2022/04/26/business/shanghai-volunteers-covid.html>

¹¹⁵ Interview WH022, *supra* note 67.

¹¹⁶ AMARTYA SEN, DEVELOPMENT AS FREEDOM 160 (2001). See also Lee Anne Fennell, *To Solve COVID-19, We Need to See It for What It Is: A Configuration Crisis*, BEHAVIORAL SCIENTIST (Oct. 12, 2020), <https://behavioralscientist.org/to-solve-covid-19-we-need-to-see-it-for-what-it-is-a-configuration-crisis/>

¹¹⁷ *China Covid Lockdowns Leave Residents Short of Food and Essential Items*, BBC (September 12, 2022), <https://www.bbc.com/news/world-asia-china-62830326>; Taiyang Zhong et al.,

Unexpectedly, a “food captain” movement emerged — homeowners and residents who reestablished food markets in locked-down cities like Shanghai and Wuhan. These individuals connected food suppliers with residents, navigating the complicated COVID regulatory framework to ensure food reached those in need.¹¹⁸

In contrast to the RCs, which often lacked real-time information and were slow to respond, HOAs possessed firsthand knowledge about their neighbors.¹¹⁹ They communicated directly with elderly residents via phone calls, bypassing online group chats typically used by neighbors.¹²⁰ The HOAs' efficiency in information gathering can be attributed to their substantial human resources and their knowledge of key contacts within each building and each floor.¹²¹ They managed to procure a comprehensive understanding of neighborhood needs, something most RCs struggled with.¹²² For instance, during Wuhan's 76-day lockdown in spring 2020, an RC could afford only four paid volunteers in HoA Chairman Xiong's neighborhood. In contrast, Chairman Xiong and his HoA team mobilized 26 volunteers who willingly worked without pay, assisting with food distribution and other essential services.¹²³

HOAs not only had more manpower than RCs but also surpassed them in the quality and expertise of human resources. Typically, middle-class homeowners are better educated than the RC employees. In Zhengzhou, an HOA boasted a diverse group of over 40 homeowner volunteers, including lawyers, entrepreneurs, and mental health professionals. These volunteers offered an array of services, even mental health consultations, during the COVID crisis.¹²⁴

HOAs prioritized serving their members over strictly enforcing COVID control measures. One HOA chairman remarked, “I always told my deputy chairman and our volunteers that our primary role was not to follow the government to implement COVID control measures. Our duty was, within our

Emergency Food Supplies and Food Security in Wuhan and Nanjing, China, During the COVID-19 Pandemic: Evidence from A Field Survey, 40 DEV. POL'Y REV. e12575 (2022).

¹¹⁸ John Darwin Van Fleet, *Shanghai Lockdown Diary: The Quest for Food Brings an Apartment Complex Together*, DIPLOMAT (April 6, 2022), <https://thediplomat.com/2022/04/shanghai-lockdown-diary-the-quest-for-food-brings-an-apartment-complex-together/>; Yineng Cai, *How the Lockdown Is Remaking Shanghai Neighborhoods*, SIXTH TONE (April 20, 2022), <https://www.sixthtone.com/news/1010174>; Cai songqining (蔡宋祈凝) et al., *1.6 Wan Tiao Shuju Jiedu: Wo Zai Shanghai Zuo Tuanzhang* (1.6 万条数据解读：我在上海做“团长”)[*Interpreting 16,000 Pieces of Data: My Experience as a 'Group Leader' in Shanghai*], PENGPAI (澎湃) [PAPER] (July 10, 2022), https://m.thepaper.cn/newsDetail_forward_18934563.

¹¹⁹ Interview WH019, *supra* note 112.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ Interview WH003, March 26, 2023, Wuhan.

¹²⁴ Interview ZZ002, January 29, 2023, Zhengzhou.

means, to safeguard ourselves and support the vulnerable groups in our neighborhood. Our focus was to mitigate the adverse effects of these controls. While COVID itself might not kill, its preventive measures might!”¹²⁵

However, HOAs also played a pivotal role in enforcing lockdown orders. When COVID just hit in early 2020, some proactive HOAs initiated lockdown measures independently, even before any official government mandate.¹²⁶ The HOA of the Three Peace Neighborhood, for example, chose to self-impose a lockdown ahead of the official Wuhan lockdown in 2020. Many homeowners in the neighborhood were already alert to the virus’s threat from various sources.¹²⁷ Thanks to effective governance and a foundation of trust established pre-pandemic, HOA leaders persuaded their members to comply with the self-imposed lockdown. When it came to enforcing lockdowns, HOAs outperformed RCs, who often relied on outsiders like dispatched CCP members or contracted security firms. HOAs’ dual advantages of superior information and legitimacy proved invaluable. Regarding information, in multiple situations HOAs were able to get the information much earlier than RCs when a homeowner sneaked in from outside and sent him or her back from wherever he or she came (often workplace).¹²⁸ HOAs and their volunteers were able to communicate with their members in a more effective way to persuade them to follow the control measures as they were neighbors and understood each other.¹²⁹

C. How to Cooperate?

Homeowners and their associations provided food, aided in implementing COVID tests and lockdowns, and became an integral component of China’s COVID control system. Among the three pivotal tasks - lockdown, COVID testing, and food delivery - HoAs prioritized food delivery, followed by COVID testing, and least of all, lockdowns. Below, I detail their involvement in these areas.

Food Supply: This task encompassed sourcing food, organizing group shopping within neighborhoods, and navigating the COVID control system to ensure the transportation and distribution of food. Leveraging homeowners’ diverse social networks was crucial. In communities with several thousand households, there were usually homeowners familiar with a supplier due to familial ties, professional backgrounds, or past interactions. For instance, one neighborhood depended on a milk supplier to provide everything from vegetables to meat during the pandemic.¹³⁰ On another occasion, a homeowner bridged a connection between farmers from his native village outside Wuhan

¹²⁵ Interview ZZ004, *supra* note 111.

¹²⁶ Interview WH001, March 18, 2023, Wuhan.

¹²⁷ *Id.*

¹²⁸ Interview WH026, May 12, 2013, Wuhan.

¹²⁹ Interview WH019, *supra* note 112.

¹³⁰ Interview WH015, April 29, 2023, Wuhan.

and his neighbors.¹³¹ With transportation permits—sometimes acquired through bribes—a covert market for these permits emerged in Shanghai in 2022, offering a workaround to the strict COVID control system.¹³²

Homeowner activists who had led their neighbors fighting against developers and management companies before the pandemic became “food captains.”¹³³ Their connections established before the pandemic, both within and across neighborhoods, now became source of information and credibility.¹³⁴ In Wuhan, an online group of over fifty HoA chairpersons was used to share food supply and demand information.¹³⁵ In Shanghai, food captains had various online groups where they can exchange information.¹³⁶ Such online groups of HoA chairpersons and food captains became the backbones of a, technically speaking, informal economy that supplied food to countless residents in Wuhan, Shanghai and beyond during the prolonged lockdowns from 2020 to 2022.

In some cases, bags of potatoes and cabbages had to be transferred over barbed wire barriers set up by RC workers. Distributing massive quantities of food required an extensive volunteer system. This system operated on the principle of reciprocity:¹³⁷ each household needed to buy food and a wife would feel ashamed about ordering food from the neighborhood captains if her husband had never volunteered for food distribution in the neighborhood.¹³⁸ There was informal and invisible mental accounting every household was keeping and plenty of compliments and complaints to be issued as currencies of punishment and award to sustain the system.¹³⁹ Surely there were disputes and quarrels, and the judicial authorities¹⁴⁰ even issued documents to regulate “group

¹³¹ Interview WH031, May 23, 2023, Wuhan.

¹³² Shanghai Yanda Weizao Maimai Sheyi Tongxingzheng Weifa Fanzui (上海严打伪造买卖涉疫通行证违法犯罪) [*Shanghai Cracks Down on Illegal Crimes of Forging and Trading Epidemic-Related Permits*], SHANGHAI MUNICIPAL PUBLIC SECURITY BUREAU (May 1, 2022), <https://gaj.sh.gov.cn/shga/wzXxfbGj/detail?pa=27cfd74b74a64343a2744fa74bcd4a46e134015f1d110cf85fa654f099b205c182d91bf6eb1e07394f8d5649415718f5>.

¹³³ Interview WH023, May 11, 2023, Wuhan.

¹³⁴ Interviews ZZ004 and ZZ005, *supra* note 111.

¹³⁵ Interview WH011, *supra* note 73.

¹³⁶ Interview SH004, July 15, 2023, Shanghai.

¹³⁷ Robert Axelrod & William D. Hamilton, *The Evolution of Cooperation*, 211 SCIENCE 1390 (1981).

¹³⁸ Interview SH032, *supra* note 62.

¹³⁹ ROBERT ELLICKSON, ORDER WITHOUT LAW (1991).

¹⁴⁰ See e.g., *Guanyu Yiqing Fangkong Qijian Shequ Tuangou Xiangguan Falv Wenti de Wenda – Jiafa Sheyi Falv Shiyong Wenti Xilie Yanjiu zhi Er* (关于疫情防控期间社区团购相关法律问题的问答——嘉法涉疫法律适用问题系列研究之二) [*Q&A on Legal Issues Related to Community Group Buying During Epidemic Prevention and Control Period — Study Series on the Application of Law in Epidemic-related Matters by Jiafa, Part Two*], SHANGHAI JIADING FAYUAN (上海嘉定法院) [SHANGHAI JIADING DIST. CT. WECHAT ACCOUNT], April 18, 2022, https://mp.weixin.qq.com/s?__biz=MzIwNzExNTI5MA==&mid=2649789680&idx=1&sn=156ca89ea244056929702baaba3d4e3f&scene=21#wechat_redirect.

shopping,” but overall nobody disputed the fact that it was food captains that supplied most of the food to citizens under the prolonged lockdowns.¹⁴¹

Lockdown Measures: HoAs implemented these with a flexibility absent in RCs. While exiting one’s home during busy hours was discouraged, late-night dog walks were tolerated by HoAs.¹⁴² The more rigid RC workers, concerned with their liabilities, lacked the manpower to maintain consistent surveillance, making reliance on HoAs for lockdown adherence necessary.¹⁴³

Lockdowns by HoAs gained compliance because they utilized peer pressure. A monitoring and reporting mechanism evolved where neighbors held each other accountable. It was not even HoA board members but someone’s neighbor who would stop this someone from breaking lockdown orders. This was motivated by the shared desire to curb the virus spread and avoid extended lockdowns. A neighbor who broke lockdown orders and put the entire neighborhood at risk would face lots of scolding, critiques, and reputational costs, and would think twice before doing such a thing.¹⁴⁴ In a neighborhood where one and one’s family live, such reputational mechanism worked quite effectively.¹⁴⁵

Support for lockdown measures hinged on the collective belief in the virus’s peril and the government’s handling. Over time, as these measures became unpopular, many HoAs distanced themselves, focusing more on services than on lockdown enforcement.¹⁴⁶

COVID Testing: The sheer scale and efficiency of China’s mass COVID tests astounded many.¹⁴⁷ While the state’s mobilization capacity was significant, the collaboration of homeowners and their associations was indispensable. The government, in most cases, was able to send health workers to neighborhoods to conduct the test, whereas, organizing hundreds of thousands of residents in each neighborhood to participate in regular, sometimes, daily, tests, was mostly done by homeowner volunteers and their associations.¹⁴⁸ In neighborhoods with active HoAs or homeowner volunteer groups, COVID tests were organized in a much more efficient way than those without.¹⁴⁹ In Kangcheng, the biggest residential neighborhood in Shanghai with over 90,000 residents, homeowner leaders were able to mobilize over one hundred volunteers to organize COVID testing within twenty-four hours of

¹⁴¹ Interview ZZ003, January 28, 2023, Zhengzhou; Interview WH037, May5, 2023, Wuhan; Interview WH010, April 12, 2023, Wuhan; Interview WH022, *supra* note 67.

¹⁴² Interview SH032, *supra* note 62.

¹⁴³ Interview SH033, August 2, 2023, Shanghai.

¹⁴⁴ Interview SH005, February 27, 2023, Shenzhen.

¹⁴⁵ *Id.*

¹⁴⁶ Interview SH013, July 1, Shanghai.

¹⁴⁷ Zhongjie Li et al., *Comprehensive Large-Scale Nucleic Acid-Testing Strategies Support China’s Sustained Containment of COVID-19*, 27 NATURE MEDICINE 740 (2021).

¹⁴⁸ Interview WH003, *supra* note 123.

¹⁴⁹ Interview SH012, July 22, 2023, Shanghai.

receiving a notice from the RC party secretary.¹⁵⁰ Towards 2022's end in Wuhan, with dwindling financial resources due to repeated large-scale testing, there was a shift towards neighborhood self-tests. Some HoAs took the initiative, training homeowners to administer tests within their communities.¹⁵¹

However, as the pandemic waned, skepticism arose. Homeowners questioned the continued presence of COVID positive cases in long-locked-down areas, suspecting potential falsification of results by testing companies for profit.¹⁵² Some neighborhoods resisted tests conducted by companies sent by the government and opted for self-conducted tests, a phenomenon I delve deeper into in Section III.

D. Consequences and The Party-State's Reactions

What were the consequences of HoAs stepping in and cooperating with the government to implement COVID lockdowns, organize COVID tests, and provide food to citizens under lockdowns? Such cooperation supported the government in fulfilling its goals and prevented the system from collapsing. In this sense, this collaboration was crucial to China's successful implementation of its COVID lockdowns. This is why the Chinese government tolerated such large-scale civic mobilization, actively engaged with homeowner civic groups, and often took credit for their contributions. Homeowners generally didn't mind the government taking credit as long as they were able to maintain their lifestyles and businesses.

In the Three Peace Neighborhood in Wuhan, the government didn't provide support "for even one second"¹⁵³ as the RC was newly established in December 2019, overseeing seven neighborhoods of over 20,000 residents.¹⁵⁴ When asked about the RC party secretary, the HoA chairwoman responded, "How could he take care of us? He had no manpower. We did everything by ourselves."¹⁵⁵ In 2022, towards the end of the pandemic, a party branch was established in the neighborhood. Consequently, the Three Peace Neighborhood was recognized as a model of party-led grassroots governance in Hubei province.¹⁵⁶ A leader from the Wuhan CCP personnel department advised the HoA chairwoman not to "overemphasize" the role of the HoA, thereby not overshadowing the CCP's contribution.¹⁵⁷ The HoA chairwoman recognized this hint. In her interviews with us, she added that the RC party secretary worked tirelessly during COVID, noting that "our neighborhood was the one he didn't have to worry about since we took good care of ourselves."¹⁵⁸

¹⁵⁰ Interview SH017, July 2, 2023, Shanghai.

¹⁵¹ Interview WH001, March 18, 2023, Wuhan.

¹⁵² Interview WH013, *supra* note 47.

¹⁵³ Interview WH001, *supra* note 151.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

In the Three Birds Neighborhood, where food captains needed to carry bags of potatoes and vegetables over barbed wires erected by RC workers, the RC eventually took over group shopping from food captains at the end of the pandemic when the government finally came around and prioritized “guaranteeing food supply” (保供). The RC then issued an award to the leading captain who started the whole process of group shopping in the neighborhood. By issuing such an award, the RC was able to count this leading food captain as one of its volunteers in fulfilling its task of “guaranteeing food supply” in its report to the upper-level government.¹⁵⁹

In the ProsperityChina Neighborhood, the RC party secretary, having been around for ten years and deeply embedded in the community, effectively mobilized civic groups for COVID control. There were 33 civic groups (including music, dance, sports, etc.) in this neighborhood of 12,429 residents. The RC party secretary had only 17 direct workers, yet he managed to mobilize 235 volunteers to implement lockdown orders and provide food and other essential services during the lockdowns. President Xi Jinping praised the ProsperityChina Neighborhood for its success in COVID prevention during his 2020 visit to Wuhan.¹⁶⁰ The official narrative emphasizes the CCP leadership and how the party secretary led the people fight a war against COVID to the success. It is true that the state can implement its goal much more effectively with the cooperation of a vibrant society than without, but it is not the case that the CCP led or dominated the society. As the RC party secretary acknowledged, he and his workers were able to tap into the resources and energies of these organic and vibrant groups as he had focused on embedding the state in the society.¹⁶¹ It is a case that demonstrates the vital role the society played during China’s fight against COVID and a right approach the CCP should take in handling its relationship with the society.¹⁶²

Furthermore, by demonstrating their utility in governance, autonomous civic groups can influence and shape the government’s policies, even to a certain extent curbing the government’s potential abuse of power. I will delve into the topic of civic organizations resisting government overreach in the next section. However, I’d like to highlight how, by being insiders, organizations like HoAs can subtly mold local government policies.

In 2022, in Zhengzhou, fatigued local government officials, weary from the relentless pursuit of zero COVID, sought suggestions during a closed-door meeting attended by a prominent homeowner activist. This homeowner advised the government leader that (1) they didn’t legally have the authority to lockdown

¹⁵⁹ Interview WH022, *supra* note 67.

¹⁶⁰ Interview WH004, May 11, 2023, Wuhan.

¹⁶¹ *Id.*

¹⁶² Some scholars would call such an approach “the art of political control;” as I will discuss in section VC., cooperation from the society is a key to effective governance. DANIEL C. MATTINGLY, *THE ART OF POLITICAL CONTROL IN CHINA* (2020).

the city or neighborhoods; and (2) if the aim was to keep COVID cases low, then simply limiting the number of tests could be effective—fewer tests meant fewer confirmed cases.¹⁶³ This suggestion was swiftly adopted by the city leadership.¹⁶⁴ This isn't an example of bold defiance but illustrates the subtle influence on governmental policies. The homeowner activist was in a position to offer such advice because he was not a government employee, yet wasn't an adversary, having been invited to the forum to provide insights. This unique insider-outsider status is key to the existence of civic organizations in China, impacting their potential to shape and resist government policies, a topic I'll address in the subsequent section.

III. LEGAL RESISTANCE

Towards the end of China's COVID lockdowns, widespread resistance and conflicts arose in urban neighborhoods in Shanghai, Wuhan, Shenzhen, Zhengzhou, and other cities. Homeowners from various backgrounds, including lawyers, entrepreneurs, and housewives, initiated challenges. The State Council's promulgation of the "Twenty Guiding Principles of COVID Prevention" (hereinafter referred to as the "Twenty Guiding Principles") on November 11, 2022, further bolstered this resistance by publicizing a split within the central party-state regarding COVID policy.¹⁶⁵ The widespread neighborhood resistance across various Chinese cities ultimately led to the end of China's COVID lockdowns.¹⁶⁶ The protest on Urumqi Road in Shanghai, which captured significant international media attention,¹⁶⁷ exemplified and culminated the broad neighborhood resistance. As one participant of the Urumqi Road protest remarked, protesting on the street was his second experience with such resistance; his first involvement was in his neighborhood, protesting a COVID lockdown.¹⁶⁸

¹⁶³ Interview ZZ004, *supra* note 111.

¹⁶⁴ *Id.*

¹⁶⁵ Dake Kang, *Ignoring Experts, China's Sudden Zero-COVID Exit Cost Lives*, AP NEWS, Mar. 23, 2023, <https://apnews.com/article/zero-covid-exit-china-reopening-investigation-abridged-d7e7cf42b8f4b97e2744b640f431a7df>.

¹⁶⁶ Sabrina Tavernise, *China's Abrupt Reversal of 'Zero Covid'*, N. Y. TIMES., Jan. 17, 2023, <https://www.nytimes.com/2023/01/17/podcasts/the-daily/china-zero-covid-outbreak-xi-jingping.html?showTranscript=1>

¹⁶⁷ See e.g., *Protests in Shanghai as Anger Mounts over China's 'Zero-Covid' Lockdown Policy*, FRANCE24, November 27 2022, <https://www.france24.com/en/asia-pacific/20221127-protests-in-shanghai-as-anger-mounts-over-china-s-zero-covid-policy>.

¹⁶⁸ Yuan Li (袁莉), *Naxie Nianqing de Kangyi Zhe (那些年轻的抗议者) [Those Young Protesters: Why We Took to the Streets]*, BUMINGBAI BOKE (不明白播客) [BUMINGBAI PODCAST], Nov. 29, 2022, <https://github.com/bumingbaipod/podcast/blob/d197e856e557d25a8948b63424e6cdfee4410b49/E-P027-%E9%82%A3%E4%B4%A9%E5%B9%B4%E8%BD%BB%E7%9A%84%E6%8A%97%E8%AE%AE%E8%80%85->

Adjacent to Urumqi Road, the TalentsGathering Neighborhood, a relatively upscale one in Shanghai with lawyers and entrepreneurs on its HoA board, was the first to end its lockdown through protests.¹⁶⁹ As early as May 23, 2022, homeowners in this neighborhood began protesting against COVID lockdowns. They argued that, according to standards set by the Shanghai city government, their neighborhood was at low risk for COVID spread and, thus, residents should be free to move.¹⁷⁰ Earlier, when government contract workers arrived to erect barricades for the lockdown, homeowners insisted they provide evidence of legal authorization for such actions. Confronted by homeowner opposition, these workers were compelled to leave without completing their task.¹⁷¹

A hallmark of such neighborhood resistance was homeowners emphasizing their indispensable role in China's fight against COVID and questioning the legal basis for lockdowns. Chinese homeowners called for transparency, respect for their property rights, and the freedom to work. Carefully, they conveyed their intention was not to challenge the party-state or even the entire COVID control system, but merely the unjustified lockdown measures. They grounded their resistance in solidarity and legality, asserting that local officials lacked a proper legal basis or formal authority to enforce lockdowns.

On the ground, police generally refrained from using their legal coercive powers to back such measures. While they were present during mass conflicts, their actual use of legal coercive power was restrained. "Being present to maintain order" was how the police's role was often described when homeowners defied questionable COVID lockdown protocols. RC workers primarily used persuasion and negotiation to appease frustrated citizens. Only rarely did the police formally exercise their enforcement powers, such as arresting non-infected citizens demanding the removal of strict lockdown barriers or protocols.

In this section, I examine the constitutionality and legality of lockdowns and the nature and narratives of homeowners' legal resistance, and explore the limitations of state coercion in response and the source of homeowner power stemming from their symbiotic relationship with the state.

A. The Constitutionality and Legality of Lockdowns

Locking down an entire city is an exercise of emergency power.¹⁷² In

[%E6%88%91%E4%BB%AC%E4%B8%BA%E4%BB%80%E4%B9%88%E8%A6%81%E4%B8%8A%E8%A1%97.md](#)

¹⁶⁹ *Shanghai Huixian Ju Daxiang "Zixing Jiefeng" Diyi Qiang* (上海汇贤居打响“自行解封”第一枪) [*Shanghai Huixianju Fired the First Shot of "Self-unsealing"*], LIANHE ZAobao (联合早报) [K ZAO BAO], May 24, 2022, <https://www.kzaobao.com/shiju/20220524/117723.html>

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Tong Zhiwei (童之伟), *Dui Shanghai Xinguan Fangyi Liang Cuoshi de Falv Yijian* (对

2020, the decision to lock down Wuhan was issued by the Wuhan Covid Prevention and Control Headquarter.¹⁷³ Shanghai never formally issued a lockdown order in 2022. Instead, its decision for “city-wide static management” was announced during a press release about a citywide leadership summit.¹⁷⁴ The Chinese Constitution, however, stipulates that only the National People's Congress Standing Committee (NPCSC) and the State Council can declare an emergency state (紧急状态). While the NPCSC can decide on the implementation of an emergency state nationwide or across a provincial-level jurisdiction,¹⁷⁵ the State Council reserves the right for specific regions within provincial boundaries.¹⁷⁶ As Shanghai is a provincial unit under the central government, only the NPCSC can authorize its entry into an emergency state. Wuhan, being a city within Hubei province, requires the State Council's declaration to enter an emergency state.

上海新冠防疫两措施的法律意见 [Legal Opinion on Two Measures to Prevent COVID-19 in Shanghai], YI BAO (议报), Jul.17, 2023, <https://yibaochina.com/?p=246371>; Joelle Grogan, *States of Emergency: Analysing Global Use of Emergency Powers in Response to COVID-19*, 22 EUR. J. L. REFORM 338, 344-45 (2020).

¹⁷³ Wuhan Shi Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Fangkong Zhihuibu Tonggao (Di 1 Hao) (武汉市新型冠状病毒感染的肺炎疫情防控指挥部通告 (第1号)) [Notice of Wuhan City Command for the Prevention and Control of COVID-19 (No. 1)], HUBEI SHENG RENMIN ZHENGFU (湖北省人民政府) [HUBEI PROVINCIAL PEOPLE'S GOVERNMENT], Jan. 23, 2020, https://www.gov.cn/xinwen/2020-01/23/content_5471751.htm

¹⁷⁴ Wang Shihan (王诗涵), Shanghai Jinru Quanyu Jingtai Guanli Guoneiwai Hangban Tinghang Qingkuang Jiaju (上海进入全域静态管理 国内外航班停航情况加剧) [Shanghai Got Into “Full Lockdown”, Intensifying the Cancellation of Domestic and International Flights], CAIXIN WANG (财新) [CAIXIN NET], Mar. 31, 2022, <https://companies.caixin.com/2022-03-31/101864042.html>; *Shanghai: Quanyu Jingtai Guanli, Quanyuan Hesuan Shaicha, Quanmian Lindiao Paicha, Quanmin Qingjie Xiaosha* (上海: 全域静态管理、全员核酸筛查、全面流调排查、全民清洁消杀) [Shanghai Announces a City-wide Lockdown, a City-wide COVID test, a City-wide Epidemiological Investigation, and a City-wide Sanitization], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA NEWS NET] http://t.m.china.com.cn/convert/c_uCBhdFFy.html. On March 31, 2022, the CCP Shanghai Municipal Committee and Municipal People's Government sent a letter to all Shanghai citizens, signaling that they needed to strengthen control in face of the mutated strain of Omicron. See: CPC Shanghai Municipal Committee and Shanghai Municipal People's Government, *Shanghai Shiwei Shizhengfu Zhixin Quantu Shimin: Ganxie Lijie Zhichi he Fuchu, Rang Women Gongtong Shouhu Jiayuan Shouhu Chengshi* [上海市委市政府致信全体市民: 感谢理解支持和付出, 让我们共同守护家园守护城市] (Shanghai Municipal Party Committee and Municipal Government Sent a Letter to All Citizens: Thanks for Understanding, Support and Dedication, Let's Work Together to Guard Our Homes And Cities!), XINMIN WANBAO (新民晚报) XINMIN EVENING NEWS, Mar. 31, 2022, <https://web.archive.org/web/20220428151554/http://news.xinmin.cn/2022/03/31/32137996.html>

¹⁷⁵ XIANFA art. 67(21) (2018) (China).

¹⁷⁶ XIANFA art. 89(16) (2018) (China).

Another legal foundation for lockdowns can potentially be found in China's public health and pandemic prevention laws. Article 43 of China's Infectious Disease Prevention and Control Law (IDPCL) empowers provincial-level governments to quarantine infection zones (疫区) within their territories, while reserving the decision to lock down larger cities for the State Council.¹⁷⁷ This means that the Shanghai city government, being at the provincial level, can lock down specific neighborhoods as infection zones. However, to lock down a big city such as Shanghai and Wuhan only the State Council can make such a decision.¹⁷⁸

In essence, Shanghai and Wuhan (and other Chinese cities which implemented citywide lockdowns)¹⁷⁹ entered a *de facto* emergency state without the appropriate decision-making bodies authorizing it. Such an extralegal exercise of emergency power was publicly criticized by legal scholars such as the renowned Professor Tong Zhiwei from the East China University of Political Science and Law in Shanghai.¹⁸⁰

Both the Shanghai and Wuhan city governments hold more legal power when it comes to quarantining individual neighborhoods as infection zones. Article 41 of the IDPCL authorizes county-level (or higher) governments to isolate locations marked by the most severe infectious diseases¹⁸¹ and quarantine

¹⁷⁷ CHUANRANBING FANGZHI FA (传染病防治法) [INFECTIOUS DISEASE PREVENTION AND CONTROL LAW] art. 43 (China).

¹⁷⁸ *Id.*

¹⁷⁹ Such as Ruili, Yunan Province and Changchun, Jilin Province. See: Wang Yue mei & Joy Dong, "Mei Banfa Shenghuo": Zai Bingdu Qingling Zhengce Zhong Bei "Zhagan" de Ruili ("没办法生活": 在病毒清零政策中被“榨干”的瑞丽) ["No Way to Live a Normal Life": Ruili "Bled Dry" Under the Zero-Covid Policy], NIUYUE SHIBAO ZHONGWEN WANG (纽约时报中文网) [N. Y. TIMES CHINESE], Nov. 8, 2021, <https://cn.nytimes.com/china/20211108/china-coronavirus-ruili/>; Feng Huamei (冯华妹), Changchun Fengcheng 30 Tian: Gong'an Bumen Gongbanli Sheyi Anjian 143 Jian Chufa 179 Ren (长春封城 30 天: 公安部门共办理涉疫案件 143 件处罚 179 人) [30-Day Lockdown in Changchun: 179 People Were Charged in 143 COVID-related Cases], CAIXIN WANG (财新) [CAIXIN NET], Apr. 7, 2022, <https://china.caixin.com/2022-04-07/101866686.html>

¹⁸⁰ Tong, *supra* note 172; Xinguan Yiqing Xia de Lifa Jianyi: Duowei Xuezhe Huiyu Zaiqi Jinji Zhuangtai Fa Lifa (新冠疫情下的立法建议: 多位学者呼吁再启紧急状态立法) [Legislative Proposals in the Context of the Novel Coronavirus Epidemic: A Number of Scholars Call for the Reintroduction of Emergency Law Legislation], NANFANG DUSHI BAO (南方都市报) [SOUTHERN METROPOLIS DAILY], Mar. 14, 2020, <https://m.mp.oeeee.com/a/BAAFRD000020200314283719.html>.

¹⁸¹ COVID has been officially designated as the second-class infectious disease subject to the management equitable to that of the first-class infectious disease. (乙类甲管) The legality of such an official designation can also be debated. Professor Lin Hongchao argues that "second-class disease should have been subject to second-class management." ("乙类本该乙管") Second-class management of infectious disease would not include isolation and lockdown measures. http://news.youth.cn/jsxw/202212/t20221227_14220501.htm

individuals therein.¹⁸² In these instances, the county-level government must promptly report its actions to the superior government entity, which then determines the approval of the quarantine.¹⁸³ Given that Shanghai and Wuhan are above the county level, they inherently possess this decision-making power. Articles 42 of the IDPCL and 49 of China's Emergency Response Law (ERL) grant governments, at the county level or higher, the right to control and close "sources of danger,"¹⁸⁴ or "places that might spread the disease,"¹⁸⁵ both of which neighborhoods with COVID positive cases can be categorized as.

However, even for locking down individual neighborhoods there are three limitations to the city governments' power: proportionality, qualified enforcement authority, and provision of livelihood.

1. Proportionality: A tenet of China's administrative law, proportionality mandates that emergency response measures align with the potential social harm's nature, extent, and scope.¹⁸⁶ The ERL's Article 11 incorporates this principle and further specifies that of all available measures, those that best safeguard individual rights, ensuring minimal infringement, should be prioritized.¹⁸⁷ Article 12 of the IDPCL adds that citizens can legally challenge the government over rights violations.¹⁸⁸ According to Shanghai's zone-by-zone approach,¹⁸⁹ one confirmed COVID positive case can change the

¹⁸² CHUANRANBING FANGZHI FA, *supra* note 177, art. 41

¹⁸³ *Id.*

¹⁸⁴ TUFU SHIJIAN YINGDUI FA (突发事件应对法) [Law of Emergency Response] (China), art. 7 & 49..

¹⁸⁵ CHUANRANBING FANGZHI FA, *supra* note 177, art. 42 & 43.

¹⁸⁶ Quan Liu (刘权), Xingzheng Panjue Zhong Bili Yuanze de Shiyong (行政判决中比例原则的适用) [The Application of Proportionality in Administrative Litigation Judgments], ZHONGGUO FAXUE (中国法学) [CHINA L. SCI.] Mar. 2019 at 84; Cheng-Yi Huang & David S. Law, *Proportionality Review of Administrative Act in Japan, Korea, Taiwan, and China*, in COMPARATIVE LAW AND REGULATION: UNDERSTANDING THE GLOBAL REGULATORY PROCESS 305, 322 (FRANCESCA BIGNAMI & DAVID ZARING eds., 2016).; Shiling Xiao, *State-Centric Proportionality Analysis in Chinese Administrative Litigation*, INT'L J. CONST. L. (forthcoming).

¹⁸⁷ TUFU SHIJIAN YINGDUI FA, *supra* note 184, art. 11.

¹⁸⁸ CHUANRANBING FANGZHI FA, *supra* note 177, art. 12.

¹⁸⁹ On April 11, 2022, Shanghai launched the first batch of "three zones" list, including *sealing and control zone*, *control zone* and *precautionary zone*. Among them, 7624 sealed control zones, 2460 control zones, 7565 precautionary zones. *Sealed control zones* refer to neighborhoods where positive COVID cases have been reported in the past seven days. The "seven-day closed management + seven-day home health monitoring" would be implemented, and during the seven-day closed management period, the "area is closed, no freedom to leave the house, and the service is provided at the doorstep." *Control zones* are neighborhoods where no positive infections have been reported in the past seven days. In such zones residents are under "seven-day home health monitoring" and "residents must not go out of the zone and are strictly prohibited from gathering." *Precautionary zones* are neighborhoods where no positive covid cases have been reported in the past 14 days, and subject to the "strengthening of social control and strictly limiting the size of the gathering of people." Upon a single case of COVID infection

designation of a neighborhood from *control zone* to *sealed control zone*, essentially locking down the entire building or neighborhood.¹⁹⁰ In Wuhan, the government ordered nine surrounding neighborhoods to be locked down as there was one COVID positive case in a neighborhood near them.¹⁹¹ Such measures, if officially issued, would not bear the test of proportionality in court. This is a reason that urban district governments have avoided issuing official and written lockdown decisions regarding specific neighborhoods, leaving the decision to lower-level street-level governments and even frontline RC party secretaries, whom have neither authority nor the legal enforcement power to do so. Such dodging of responsibilities might have made challenges to government decisions in court more difficult than it would have been but have further weakened the legality of the overall COVID control system, discouraging law enforcement officials from backing up neighborhood lockdowns directly and making homeowners' legal resistance in neighborhoods possible and prevalent.

2. Qualified Enforcement Authority: lockdown decisions must be implemented by qualified authorities.¹⁹² In cities like Shanghai and Wuhan, the urban district government, equivalent to the county level, wields this authority. Therefore, street-level governments do not hold the power to lock down individual neighborhoods. As explored in earlier sections, however, the street-level government and neighborhood RCs took the forefront in COVID control and initiated lockdowns. To put it simply, the street-level government did not have the authority to implement such decisions and must have authorization from the urban district government to do it. RCs, as aforementioned, are not officially part of the bureaucratic system and do not carry any law enforcement power.¹⁹³ Consequently, the primary agents in the "people's war against COVID" lacked the legal qualifications to enforce lockdowns. Their

being confirmed, a precautionary zone would be changed to a control sealed control zone. Li Meng (李萌), *Shanghai Shoupi Sanqu Huafen Mingdan 11 ri Gongbu* (上海首批“三区”划分名单 11 日公布) [*Shanghai's First "Three Districts" Division List Announced on the 11th*], XINHUA SHE (新华社) [XINHUA PRESS], Apr. 11, 2022, https://web.archive.org/web/20220416043355/http://www.gov.cn/xinwen/2022-04/11/content_5684531.htm

¹⁹⁰ *Id.*

¹⁹¹ Interview WH009, *supra* note 57.

¹⁹² Quanguo Renda Changweihui Fagongwei jiu Yiqing Fangkong Youguan Falv Wenti Zaici Fasheng (全国人大常委会法工委就疫情防控有关法律问题再次发声) [The Legal Affairs Commission of the Standing Committee of the National People's Congress (NPC) speaks out again on legal issues related to epidemic prevention and control], RENDA XINWEN WANG (人大新闻网) [NATIONAL PEOPLE'S CONGRESS NEWS], March 6, 2020, <http://npc.people.com.cn/n1/2020/0306/c14576-31619969.html>;

¹⁹³ Li Lingyun (李凌云) & Chen Jie (陈杰), *Yiqing Fangkong Zhong Qiangzhi Geli Cuoshi de Lijie yu Shiyong* (疫情防控中 强制隔离措施的理解与适用) [*Interpreting the Implementation of Involuntary Quarantine during the Epidemic*], XUESHU JIAOLIU (学术交流) [ACADEMIC EXCHANGE] Aug. 2020 at 74.

performance, devoid of clear rules, was appraised against the elusive “zero-COVID” target, often leading to overzealous measures.¹⁹⁴ This is why homeowners’ legal resistance often emphasized the need for an official directive from, at least, the urban district government.¹⁹⁵ The national legal authorities did pay attention to RC workers’ lack of legal authority and tried to remedy the situation by defining them as “individuals not part of the bureaucratic system, but carrying on official affairs related to pandemic prevention and control” (虽未列入国家机关人员编制但在国家机关中从事疫情防控公务的人员) and protecting them with criminal law from violent resistance.¹⁹⁶ Nevertheless, this limited

¹⁹⁴ Chen Qiuyuan (陈秋圆), *Guodu Fangyi Cengceng Jiama, Duodi Bei Guowuyuan Tongbao Baoguang, Minzhong Ke Liuyan Jubao* (过度防疫层层加码, 多地被国务院通报曝光, 民众可留言举报) [Multiple Excessive Prevention Measures Taken by Local Governments were Publicly Criticized by the State Council. Citizens Now Can File Complaints], NANFANG DUSHI BAO (南方都市报) [SOUTHERN METROPOLIS DAILY], Sep. 9, 2022, <https://m.mp.oeeee.com/a/BAAFRD000020220909721072.html>

¹⁹⁵ See *infra* Section IIIB.

¹⁹⁶ *Zuigao Renmin Fayuan, Zuigao Renmin Jianchayuan, Gong'an Bu, Sifa Bu Guanyu Yifa Chengzhi Fanghai Xinxing Guanzhuang Bingdu Ganran Feiyan Yiqing Fangkong Weifa Fanzui de Yijian (Fa Fa [2020] 7 Hao)* 最高人民法院、最高人民检察院、公安部、司法部关于依法惩治妨害新型冠状病毒感染肺炎疫情防控违法犯罪的意见 (法发 [2020] 7 号) [The Supreme People's Court, the Supreme People's Procuratorate, Ministry of Public Security, and Ministry of Justice's Opinion on Lawfully Dealing with Criminal Offenses that Jeopardize the Prevention and Control of the COVID-19 Epidemic (Fa Fa [2020] No. 7)], Feb. 10, 2022, <http://www.nhc.gov.cn/xcs/pfzs/202002/6090ed34d8e64d038fbed94b9f957059.shtml>; *Zuigao Renmin Jianchayuan Sun Qian Fu Jianchazhang Tan Sheyiqing Xingshi Anjian Falv Shiyong Wenti* (最高人民检察院孙谦副检察长谈涉疫情刑事案件法律适用问题) [Associate Chief of the Supreme People's Procuratorate, Sun Qian, Discusses the Application of Law in Criminal Cases Involving the Pandemic], NANCHANG XIAN RENMIN ZHENGFU (南昌县人民政府) PEOPLE'S GOVERNMENT OF NANCHANG COUNTY, May 7, 2022, <http://ncx.nc.gov.cn/ncxrmzf/bmlzyjprnehgnhubbgpreqhcgcddqnm/202205/b26d3a221a1142c9a23914a279d49965.shtml>; *Quanguo Jiancha Jiguan Yifa Banli Fanghai Xinguan Feiyan Yiqing Fangkong Fanzui Dianxing Anli (Hubei Zhushan Liu Moumou Shexian Fanghai Gongwu An, Zhejiang Nanxun Wang Moumou Fanghai Gongwu An)*

(全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例(湖北竹山刘某某涉嫌妨害公务案; 浙江南浔王某某妨害公务案)) [Nationwide Typical Cases of Crimes that Obstructed the Prevention and Control of the COVID Epidemic (Liu, from Zhushan, Hubei, Suspected of Obstructing Governmental Affairs, Wang, from Nanxun, Zhejiang, Suspected of Obstructing Governmental Affairs)], ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA], Feb. 11, 2020, https://www.spp.gov.cn/spp/xwfbh/wsfbt/202002/t20200211_454256.shtml#2;

Quanguo Jiancha Jiguan Yifa Banli Fanghai Xinguan Feiyan Yiqing Fangkong Fanzui Dianxing Anli (Dier Pi): Sichuan Sheng Renshou Xian Wang Mou Fanghai Gongwu An

(全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例 (第二批): 四川省仁寿县王某妨害公务案) [Nationwide Typical Cases of Crimes that Obstructed the Prevention and Control of the COVID Epidemic (Second Batch): Wang, from Renshou,

protection has not changed their overall status as individuals unqualified and lack of legitimacy to enforce lockdown orders by themselves, particularly when the urban district government or above did not issue official lockdown orders.

3. Provision of Livelihood: city governments, even when the legitimacy of their lockdown orders went unquestioned, had the legal obligation to provide for the livelihood of citizens under lockdown.¹⁹⁷ As explored in Section II, citizens, especially homeowners, often had to fend for themselves for food provisions. The amount of food provided by the government was limited. The problematic provision of food was a source of complaints and protests during the lockdowns.¹⁹⁸ Starvation tragedies often resulted in grievance and further eroded the party-state's legitimacy.¹⁹⁹

B. Illegality, not Unconstitutionality, as A Reason for Resistance

In the process of bargaining and resistance, law provides a focal point to unite homeowners and a safe excuse to bargain with or resist the intrusion of the state. As elaborated by scholars in other contexts, rights-based claims provide legitimacy and law provides boundaries and cover for such claims, particularly for the relatively weak party in the bargain.²⁰⁰ Law is a key to

Sichuan, Suspected of Obstructing Governmental Affairs)) ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA], Feb. 19, 2020, https://www.spp.gov.cn/spp/xwfbh/wsfbh/202002/t20200219_454775.shtml;

Quanguo Jiancha Jiguan Yifa Banli Fanghai Xinguan Feiyan Yiqing Fangkong Fanzui Dianxing Anli (Disan Pi): Shandong Sheng Jinan Shi Laiwu Qu Deng Moumou Fanghai Gongwu An (全国检察机关依法办理妨害新冠肺炎疫情防控犯罪典型案例 (第三批): 山东省济南市莱芜区邓某某妨害公务案)[Nationwide Typical Cases of Crimes that Obstructed the Prevention and Control of the COVID Epidemic (Third Batch): Deng, from Laiwu, Jinan, Shandong, Suspected of Obstructing Governmental Affairs)] ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA], Feb. 26, 2020, http://www.moj.gov.cn/pub/sfbgw/zwgkztzl/fkyqfztx/fkyqfztxyqpf/202103/t20210312_195653.html;

Quanguo Jiancha Jiguan Yifa Banli Fanghai Xinguan Feiyan Yiqing Fangkong Fanzui Dianxing Anli (Di Shilun Pi): Hesuan Jiance Guochengzhong Chidao Kanza Geli Shebei, Onda Fangkong Renyuan de Wen Moumou Fanghai Gongwu An (最高人民检察院发布第十六批全国检察机关依法办理涉新冠肺炎疫情典型案例 (核酸检测过程中持刀砍砸隔离设施、殴打防控人员的温某某妨害公务案)) [Nationwide Typical Cases of Crimes that Obstructed the Prevention and Control of the COVID Epidemic (Sixteenth Batch): Wen, Suspected of Obstructing Governmental Affairs, Was Charged of Knife Slashing and Smashing Quarantine Facilities, and Assault on Prevention and Control Personnel During COVID Testing] ZHONGHUA RENMIN GONGHEGUO ZUIGAO RENMIN JIANCHAYUAN (中华人民共和国最高人民检察院) [THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA] Mar. 31, 2022, https://www.spp.gov.cn/spp/xwfbh/wsfbt/202203/t20220331_552924.shtml#1

¹⁹⁷ CHUANRANBING FANGZHI FA, *supra* note 177, art. 41.

¹⁹⁸ Interviews SH025, June 15, 2023, Shanghai; SH027, June 11, 2023, Shanghai.

¹⁹⁹ Interviews SH027, *id.*; WH020, *supra* note 64.

²⁰⁰ MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS

pragmatic resistance under authoritarian regimes²⁰¹ and plays a significant role in shaping social movements in liberal democracies, such as in the civil rights movements and the LGBTQ movements in the U.S.²⁰²

Chinese homeowners frequently referred to the problematic legality of COVID lockdown measures in their resistance. However, they stopped short of publicly challenging the legitimacy of the entire COVID control system or critiquing its constitutional validity during their routine resistance and protests. To them, the constitutionality of the broader COVID control system was outside the purview of homeowners and was not a point of contention in daily neighborhood governance. Nonetheless, the general absence of a legal foundation for COVID lockdowns also implied the illegality of specific measures. When the government relied on entities without the required legal qualifications, including the street-level government and RCs, to enforce lockdown orders, it is hard to guarantee the legality of their enforcement.

Compounding the issue, city and district governments, to elude liabilities, often refrained from producing written directives or official documents to validate neighborhood lockdowns in 2022. The COVID control approach became outcome-driven rather than rule-based, undermining the rule of law that China endeavored to establish over the past four decades, even contradicting President Xi Jinping's advocacy for law-based governance.²⁰³

In a viral video, two homeowners challenged a RC worker attempting to seal a building due to its questionable legality. "Look at this seal—it doesn't even have a date. When a court seals a property, it clearly states the start and end dates. Do you have that? You can't just seal a building on a whim... If someone tried sealing your house with this, would you allow it? Show us the official document issued by the district or city government."²⁰⁴ The worker presented his ID in response, to which a homeowner remarked, "Ah? You think you can seal this building with that? As a government worker, you must understand the

OF LEGAL MOBILIZATION (1994).

²⁰¹ Lynette J. Chua, *Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore*, 46 L. & SOC'Y REV. 713 (2012).

²⁰² See e.g., William N. Eskridge Jr., *Pluralism and Distrust: How Courts Can Support Democracy by Lowering the Stakes of Politics*, 114 YALE L. J. 1279 (2004); William N. Eskridge, *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419 (2001).

²⁰³ See Quanguo Renda Changweihui Fagongwei, *supra* note 192, Question 1. ("As General Secretary Xi Jinping has emphasized, the more urgent and challenging the COVID prevention is, the more we should stick to law. ... Any units or individuals without authorization of the people's government at the county level or above, must not lock down villages or neighborhoods, or take cruel and hard control means such as locking doors or blocking entries; except for persons who are put under medical treatment or observation, must not limit homeowners or rentiers who have taken protective measures and are cooperative in accepting body temperature tests from returning home.")

²⁰⁴ Social Media Video: Volunteers in Shanghai's Xuhui District Refused to Come to the Door to Put Seals On (上海徐汇区志愿者拒绝上门贴封条), on file with the author.

law. You need to follow reason and law, not just obey order blindly.”²⁰⁵

In 2022, in a Wuhan neighborhood, homeowners collaborated with the RC’s lockdown decision, marshalling 80 volunteers for order maintenance and food distribution. However, they rejected the new RC party secretary’s decision to bring external security guards, breaching the understanding they had with his predecessor. The HoA board chairman, a bridge between the RC and homeowners, informed the RC party secretary, “We can handle our issues and safeguard our entrances; we don’t need outsiders.”²⁰⁶ The situation eventually escalated, leading to over 200 homeowners gathering and dismantling the barricades established by the RC. When the urban district government dispatched a deputy director for negotiations, the homeowners pointed to the State Council’s Twenty Guiding Principles, emphasizing its warning against over-prevention.²⁰⁷

Another notable instance of legal resistance occurred in Beijing’s Chaoyang District. On November 23, 2022, a neighborhood was placed under “temporary control” by the Chaoyang District for three days. Residents complied but became restless when the restriction wasn’t lifted as promised. A leading homeowner, who was also a lawyer, mobilized his neighbors to protest and reminded them that “all exercise of public power must have a clear legal authorization:” since the official order of the Chaoyang District was only for a three-day lockdown, the neighborhood’s RC had no legal basis to stop residents from leaving the neighborhood anymore.²⁰⁸ Offering his legal services for free in case of any arrests, the lawyer’s efforts bore fruit, with residents regaining their freedom by noon on the 26th. Solidarity among homeowners and a clear legal stance were pivotal.²⁰⁹

In Shenzhen, proposals began to circulate among homeowner activists in November 2022 about how to resist the government’s unreasonable COVID control policies.²¹⁰ Several factors particularly incensed homeowners: (1) Adults were forced to relocate to quarantine centers, leaving children, who were unable to fend for themselves, alone at home.²¹¹ (2) Positive cases persisted even after nearly two months of lockdown. This led to suspicions that the only source of infection might be the COVID tests themselves, raising concerns about possible data fabrication by profit-driven testing companies.²¹² (3) Extreme lockdown

²⁰⁵ *Id.*

²⁰⁶ Interview WH011, *supra* note 73.

²⁰⁷ *Id.*

²⁰⁸ Yan Senlin (颜森林), Yige Beijing Xiaoqu Bei “Linshi Guankong” Hou Zhengqu Jiefeng de Jingguo (一个北京小区被“临时管控”后争取解封的经过) [*A Beijing Neighborhood under “Temporary Control” and its Struggle to be Unblocked*], ZHONGGUO SHUZI SHIDAI (中国数字时代) [CHINA DIGIT. TIMES] (Nov. 26, 2022), <https://chinadigitaltimes.net/chinese/690149.html>.

²⁰⁹ *Id.*

²¹⁰ Interview SZ002, March 10, 2023, Shenzhen.

²¹¹ *Id.*

²¹² *Id.*

measures, such as blocking building exits with barricades, had tragic consequences, exemplified by incidents like the one in Urumqi, Xinjiang.²¹³ In response, an HoA in Nanshan district of Shenzhen adopted two courses of action: (1) The HoA arranged secondary COVID tests for all members who previously tested positive, effectively checking the accuracy of the government's tests. (2) The HoA issued a letter to its members, urging them to resist “unreasonable COVID control measures.”²¹⁴ The letter prominently quoted the State Council's Twenty Principles, underscoring the importance of adhering to the law during pandemic prevention efforts.²¹⁵ It's vital to understand that this was a formal letter issued by an HoA, constituting a publicly defiant collective action organized by an entity legally recognized by the government.²¹⁶ Eventually, this letter made its way to online homeowner groups in other neighborhoods and cities, including Shanghai, achieving its intended reach and impact.²¹⁷

C. The Limit of State Coercion

Interestingly, police, the core of China's stability-maintaining system and law enforcement system, rarely enforced COVID lockdown orders and played a role of mostly “observers.”²¹⁸ The police were there to maintain order, but as far as order was not broken and there were no physical conflicts, they made no arrests, not even stopping homeowners from breaking down the barricades. Homeowners in cities like Beijing,²¹⁹ Wuhan,²²⁰ Zhengzhou,²²¹ Foshan,²²² and Shanghai²²³ took efforts to remove barricades without being arrested.

The closest instance I found in my fieldwork concerning police enforcement during COVID lockdowns occurred in Shanghai. After a five-hour negotiation between a homeowner wishing to leave and RC workers urging him

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ Fragrant Hill Homeowners' Association, *Yifa Kangyi Changyi Shu* (依法抗疫倡议书) [Initiative to Fight Epidemics in accordance with the Law], No. XSMSYWH(2022)057, (Nov. 29, 2022)(on file with the author).

²¹⁶ Interview SZ002, March 10, 2023, Shenzhen.

²¹⁷ *Id.*

²¹⁸ Interview FS001, *supra* note 73; Interview WH008, April 10, 2023, Wuhan; Interview WH011, *supra* note 73; Interview SH 013, July 1, 2023, Shanghai.

²¹⁹ Video: Beijing Shi Changping Qu Beiqijia Zhen Fengshujiayuan Shequ Jumin Weiyuanhui Ban'gongshi Menkou Taijie Shang, Yezhu Nvzi Yong Laba Xiang Menkou Juji de Qita Jumin Hanhua (北京市昌平区北七家镇枫树家园社区居民委员会办公室门口台阶上, 业主女子用喇叭向门口聚集的其他居民喊话)[On the steps in front of the office of the Maple Home Community Residents' Committee in Beiqijia Township, Changping District, Beijing, the Owner's Woman Used a Loudspeaker to Shout at Other Residents Gathered at the Doorway], (Nov. 26, 2022)(on file with author).

²²⁰ Interview WH 008, April 10, 2023, Wuhan; Interview WH011, *supra* note 73.

²²¹ Interview ZZ 001, January 29, 2023, Zhengzhou.

²²² Interview FS001, *supra* note 73.

²²³ See *Shanghai Huixianju Fired the First Shot of “Self-unsealing,” supra* note 169.

to stay, a police officer interjected, saying, “I can still keep you for 19 hours. Would you prefer to continue here or at the police station?”²²⁴ While this threat underscores the coercive undertones of China’s COVID lockdowns – a point this article acknowledges – it also highlights the restraint shown by the police, especially given the murky legal grounds of many lockdowns. In this case, the police tacitly recognized the maximum detention time (24 hours) and the unlikelihood of any legal repercussions for the homeowner.²²⁵

The “typical cases” publicized by national legal authorities substantiate the above observation of police self-restraint: people did get arrested for violent attack on government workers enforcing lockdown orders, but only when violence was involved.²²⁶

Two reasons account for this police self-restraint. Firstly, police authorities were reluctant to enforce lockdowns without official authorization from a legally qualified entity. Secondly, homeowners frequently recorded and broadcasted their actions. The risk of nationwide media exposure also influenced police behavior.²²⁷

Generally speaking, Chinese police often find their hands tied when handling the so-called “conflicts among the people” (人民内部矛盾) initiated by the regime’s insiders, neither directly challenging the party’s authority nor breaking the law, and even safer, based on rights recognized by the party-state, such as the right to work and the right to property. Take another example: in Shanghai, on November 28, 2022, homeowners called police to stop RC workers from locking down the neighborhood. In the presence of two parties of the conflict (homeowners demanding freedom and RC workers intending a lockdown), a homeowner asked specifically what the police would do if the RC workers assaulted or detained him, the police responded that such workers would face assault charges.²²⁸

Remarkably, the party-state exercised significant self-restraint, even when confronted with organized challenges to its COVID control measures, as long as these challenges were legally grounded and posed by homeowners

²²⁴ Interview SH014, July 1, 2023, Shanghai.

²²⁵ ZHIAN GUANLI CHUFA FA (治安管理条例) [LAW OF ADMINISTRATIVE PUNISHMENT ON PUBLIC SECURITY OFFENSES] (China), art. 83.

²²⁶ The Supreme People’s Procuratorate publicized 18 series of typical cases during covid, which regularly include cases of disrupting government work (妨害公务罪). I examined all these cases and found that violently attacking a government worker was a common element. *See supra* note 196.

²²⁷ Interview WH038, *supra* note 51.

²²⁸ Video: 2022 Nian 11 Yue 28 Ri, Shanghai Mou Xiaoqu Chuxian Quezhen Bingli, Wuye Dui Zhengge Xiaoqu Jinxing Fengkong, Yezhu Baojing (2022 年 11 月 28 日, 上海某小区出现确诊病例, 物业对整个小区进行封控, 业主报警) [On November 28, 2022, There Was a Confirmed Case of the Disease in A Neighborhood in Shanghai, and the Property Owners Sealed Off the Entire Neighborhood, and the Owners Called the Police], on file with the author.

generally compliant with the regime. Consider the letter from the Shenzhen HoA calling for resistance against unreasonable COVID measures. Its widespread circulation swiftly caught the party-state's attention. On the very day of its release, a deputy secretary of the CCP Nanshan District Political and Legal Committee visited the HoA board chairman.²²⁹ Surprisingly, the only request was to retract the letter; no punitive actions were suggested. This was because the letter neither violated the law nor posed a direct challenge to the CCP's authority.²³⁰ The retraction, which was less formal and appeared hastily written,²³¹ was rightly interpreted by many as a coerced move.²³² Despite the public's interpretation, the government had no basis for action, as the HoA had complied with every request.²³³

The Shenzhen incident illustrates the authoritarian state's limited capacity to manage dissenters who are also regime collaborators. When these collaborators adhere to the rules and exhibit cooperative gestures, the state finds it challenging to exert coercion.

D. The Source of Homeowner Power: Dependence, Not Independence

Homeowners' legal resistance proved effective because they were not only insiders but also the backbone of the regime, having consistently shown their cooperation. When they began to withdraw or even merely threatened to withdraw their cooperation, the regime found itself compelled to acquiesce. The party-state was well aware of this dynamic. In his 2023 New Year TV speech, just a few weeks after widespread protests led to the end of China's COVID lockdowns, President Xi Jinping noted, "it is common to hold different opinions regarding the same issue."²³⁴

Understanding their critical role in China's COVID response, homeowners smoothly transitioned from being volunteers aiding the

²²⁹ Interview SZ002, March 10, 2023, Shenzhen.

²³⁰ *Id.*

²³¹ Fragrant Hill Homeowners' Association, *Guanyu Yezhu Weiyuanhui Fabu "Yifa Kangyi Changyishu" de Zuofei Shuoming* (关于业主委员会发布《依法抗疫倡议书》的作废说明) [Note On the Nullification of the Issuance of the Initiative to Fight the Epidemic in Accordance with the Law by the Fragrant Hill Mansion Owners' Association] (on file with author)

²³² Interview SZ002, March 10, 2023, Shenzhen. The HoA board chairman was sneaky: he asked the government to draft the letter for him and then put the official seal of the HoA on such a letter immediately upon receiving it. The trick was the formality: the first letter was much more formal and longer with a document series number and the second one was much shorter, looked much more informal and in a rush.

²³³ *Id.*

²³⁴ *Guojia Zhuxi Xi Jinping Fabiao Er Ling Er San Nian Xinnian Heci* (国家主席习近平发表二〇二三年新年贺词) [President Xi Jinping Delivers a New Year's Address for the Year 2023], ZHONGHUA RENMIN GONGHEGUO ZHONGYANG RENMIN ZHENGFU (中华人民共和国中央人民政府) [CENTRAL PEOPLE'S GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA], Dec. 31, 2022, https://www.gov.cn/gongbao/content/2023/content_5736705.htm

government in implementing COVID policies, to champions defending their neighbors and their own rights against excessive COVID control measures. Protesting the government's order to seal a building, one homeowner in Shanghai, standing between the building to be sealed and the government worker attempting to seal it, said in a tired voice, "during this period we were working very hard for COVID prevention, but we were disgusted by such an action. Isn't that our law superior to your leader's will? Do you follow your leader or the law?"²³⁵ This homeowner continued, "it is not that we do not cooperate, but as a volunteer we cannot do such a thing, right? ... What kind of a person would I be (if I did this)? How would I face my neighbors? We would like to quit!"²³⁶

In another instance in Shanghai, a homeowner questioned a RC party secretary about the exact number of COVID cases and the expected duration of the lockdown. When informed that this data was only shared with party members in the neighborhood, the homeowner retorted, "how many volunteers are in this neighborhood? Can your party-member volunteers meet the needs of 5,000 households for food distribution? Can you even guarantee that those volunteers guarding the east gate are party members?! Can you?! How could you share the information only with party-member volunteers?"²³⁷ This homeowner continued, "as a resident I have my right to information and my right to monitor. How could it be possible that COVID cases have become more and more while we all have stayed at home?"²³⁸

In China's urban neighborhoods, the authoritarian state has struggled to govern alone, both in ordinary times²³⁹ and during crises like the pandemic. To achieve effective governance, it requires societal collaboration.²⁴⁰ This outcome, which even the party-state acknowledges as "co-governance," emerges from a balance of interests and negotiations between the government and homeowners, as well as the broader citizenry. Both the government and its citizens cooperate and contend with each other in the co-production of social order.²⁴¹ Neither side achieves its complete goals, often feeling "forced" to compromise.²⁴² An authoritarian state must strike a balance in this co-governance: between a society reluctant to cooperate, driving up the cost of governance, and a society willing

²³⁵ Social media video on Shanghai Xuhui volunteers, *supra* note 204.

²³⁶ *Id.*

²³⁷ Social media video: Changfeng Third Neighborhood Residents Speak with the Neighborhood Committee Party-secretary (长风三村居民与书记对话), on file with the author.

²³⁸ *Id.*

²³⁹ Qiao, *supra* note 22.

²⁴⁰ *Id.*

²⁴¹ Duncan Kennedy, *The Stakes of Law, or Hale and Foucault*, 15 *LEGAL STUD.* F. 327, 328 (1991).

²⁴² *Id.*

and able to govern itself that might challenge authoritarian rule.²⁴³ Given that homeowners offer an indispensable service to this system, it's logical for the state to concede certain points to prevent widespread disruption.

The power of Chinese homeowners originates from the state's dependence on them. It is essentially what Heather Gerken calls "the power of the servant," which, is "like the checks and balances model, turns not on independence, but on dependence." Such power is also held by French mayors²⁴⁴ and Chinese mayors,²⁴⁵ who are much more powerful than their American counterparts because they are part of the national political machine rather than being independent and separate as local politicians.

The overall picture is that when homeowners, cooperators of the government, protested by law, the government needed to give in. Dependence brought power. Neither the government nor homeowners were free from the constraints imposed on them by each other. Facing homeowners' united and legal resistance, the authoritarian state has limited ways of responses, particularly that its use of naked violence is quite limited to respond to such challenges.

IV. IMPLICATIONS

This section summarized the implications of my study of Chinese covid lockdowns on our understanding of legality, state-society relationship, and the relationship between property and sovereignty. Most importantly, it introduces a new mechanism of how society bargains with a strong and authoritarian state: cooperating to resist ("CtR").

A. Legality in Authoritarian Regimes

Authoritarian regimes across the world and history have an interest in building up a legal system to reduce agency cost, provide predictability and even establish credibility to its own citizens and foreign investors, and ultimately increase their legitimacy.²⁴⁶ However, a limitation of authoritarian regimes' instrumental use of law is that it isn't always the most effective for achieving political aims. Despite the fact that President Xi Jinping has emphasized fighting COVID according to law, consistent with his emphasis on law-based governance in the past decade, the entire bureaucratic system understood that fighting COVID came before following the law, and that law was merely instrumental from the beginning to the end. Under the paramount goal of pursuing "zero-COVID," legal formalities were casted aside and the party-state launched a "people's war," relying on campaigns and RCs which do not have law enforcement power rather than laws to regulate people's behaviors. China's

²⁴³ Qiao, *supra* note 22.

²⁴⁴ Richard C. Schragger, *Can Strong Mayors Empower Weak Cities-On the Power of Local Executives in a Federal System*, 115 Yale L. J. 2542 (2005).

²⁴⁵ Shitong Qiao, *Rights-weakening Federalism*, 102 MINN. L. REV. 1671 (2017).

²⁴⁶ See e.g., TOM GINSBURG & TAMIR MOUSTAFA, *RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES* (2008); YUHUA WANG, *TYING THE AUTOCRAT'S HANDS* (2015); Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545 (2018).; MARY E. GALLAGHER, *AUTHORITARIAN LEGALITY IN CHINA: LAW, WORKERS, AND THE STATE* (2017).

extralegal enforcement of Covid lockdowns question the credibility of authoritarian regimes' efforts to build a law-based governance system.²⁴⁷ At the very least, it suggests that it is more challenging for a legal system within an authoritarian regime to maintain its integrity in the face of a crisis than it is in a liberal democracy. This hypothesis warrants further comparative investigation.

The more important lesson for legality in authoritarian regimes is to consider society's role, rather than just the state's, which has been the primary focus of the existing literature. Authoritarian regimes' pursuit of law might result in legal mobilization and resistance from the society, an unintended consequence from the regimes' perspective. Going back to the question of whether authoritarian regimes can successfully build a law-based governance system, the answer is negative solely from the perspective of the authoritarian states but might be more promising if we take into the reactions of the society.

It is not that legal mobilization or resistance by society in authoritarian regimes is an entirely uncharted academic territory. The existing literature about China, however, tends to focus on constitutional law²⁴⁸ or litigation,²⁴⁹ neglecting the use of legal narratives in social mobilization.²⁵⁰ In the Chinese case, legal mobilization and resistance have been built upon the basic requirement of legality, or consistency by the authoritarian regime's own logic, not upon constitutionality. Homeowners were not interested in constitutionally challenging COVID control policies as that would be viewed as a fundamental challenge to the authoritarian regime and would not be tolerated. The strength and resilience of homeowners' legal resistance is that they derive their basis from within the regime, which ties the regime's coercive hands. The result, however, is not as modest as the means look like. The result is the collapse of the entire COVID control system to which the party-state and its top leader had closely tied their legitimacy.²⁵¹

²⁴⁷ Certain scholars have posited that President Xi Jinping's emphasis on law-based governance in the past decade constitutes "China's turn toward law." While further exploration may be warranted regarding the contours of this argument and how "law" is defined therein, it is clear that this described phenomenon did not pass the test of the COVID crisis. See Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L. 3(2019). For an opposing view, see SHUCHENG WANG, LAW AS AN INSTRUMENT: SOURCES OF CHINESE LAW FOR AUTHORITARIAN LEGALITY (2022); Carl F. Minzner, *China's Turn 59 AGAINST LAW*, AM. J. COMPAR. L. 935 (2011); Yuhua Wang & Carl F. Minzner, *The Rise of the Security State*, 222 CHINA Q. 339 (2015).

²⁴⁸ Mark Jia, *China's Constitutional Entrepreneurs*, 64 AM. J. COMPAR. L. 619(2016).

²⁴⁹ KEVIN J. O'BRIEN & LIANJIANG LI, RIGHTFUL RESISTANCE IN RURAL CHINA (2006); Mary E. Gallagher, *Mobilizing the Law in China: "Informed Disenchantment" and the Development of Legal Consciousness*, 40 LAW & SOC'Y REV. 783(2006).

²⁵⁰ Beyond literature about China, there is a nascent literature about legal mobilization in authoritarian regimes. See e.g., Chua, *supra* note 201.; Lynette J. Chua, *Legal Mobilization and Authoritarianism*, 15 ANN REV. L. & SOC. SCI. 355 (2019).

²⁵¹ This contradicts the view that citizens simply play by the rules and serve the interest of the authoritarian regime. See Elizabeth J. Perry, *Chinese Conceptions of "Rights": From Mencius to*

B. CtR: A New Paradigm of State-Society Relationship

How is cooperation a way of resistance? Cooperation fosters interdependence between the state and society in China, embedding the society within the Chinese state's fabric. This interdependence and integration, as opposed to independence and separation, lend power, strength, and resilience to Chinese society within an authoritarian regime. At a fundamental level, it is not different from the fact that in the U.S. "school committees wield power not because they preside over their own empires, but because state legislatures depend on them to help run the education system,"²⁵² or that "states and local officials administering federal law can edit the law they lack the power to authorize precisely because they are inside the system, not outside of it."²⁵³ Integration brings the Chinese society into the Chinese state. According to Michael Walzer, outsiders are rarely successful when they criticize a system and an effective dissent must be "a little to the side, but not outside" of the system he challenges.²⁵⁴ Regular cooperation generate trust, prevents the authoritarian state from marginalizing the society, and give the civic groups such as HoAs the knowledge and connections they need to work the system. "People are represented by the decisions they make and the institutions they build, not by the politicians they elect."²⁵⁵ Chinese homeowners' power to resist and constrain the authoritarian state comes from their cooperation and participation in neighborhood governance.

CtR is much more active and progressive than James Scott's "weapon of the weak"²⁵⁶ and "everyday resistance"²⁵⁷ which are passive evasion of law and order as reflected in their typical forms such as foot dragging, dissimulation, desertion, false compliance, feigned ignorance, and sabotage.²⁵⁸ There might be some overlap here, such as the Shenzhen HoA board chairman's "hidden transcript" in the badly formatted second public letter, but there have been regular public and direct resistance and protests, too.²⁵⁹ Such resistance and protests are often based on law, looking for safety and power from law. Different from civic groups in liberal democracies such as the U.S., Chinese homeowners need to get inside the system through cooperation first to gain the power to dissent and disagree. Cooperation also makes CtR more than "rightful resistance," which Lianjiang Li and Kevin O'Brien have used to describe

Mao—and Now, PERSP. ON POL. 2008 No. 6 at 37.

²⁵² Qiao, *supra* note 245, at 1678; Heather K. Gerken, *Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 35–40 (2010).

²⁵³ Gerken, *id.*, at 38.

²⁵⁴ *Id.*, at 40.

²⁵⁵ *Id.*

²⁵⁶ JAMES C. SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE* (1985).

²⁵⁷ *Id.*

²⁵⁸ *Id.* at Preface, xvi.

²⁵⁹ *See supra* Section III.

Chinese peasants' resistance to state taxation in the late 1990s and early 2000s, which is based on the state's promise of rights to peasants, sometimes through law.²⁶⁰ Chinese peasants' rightful resistance are easier to dismiss as the regime does not depend upon them as much as it depends on homeowners.²⁶¹

Being an insider of the authoritarian regime sounds very much like being co-opted. A few political scientists have recently re-discovered the new continent, finding that, contradictory to what Acemoglu and Robinson write about China, the party-state does not govern by itself alone. Using the party-state's own words, the ability to unite and mobilize the people is a key to the success of both Chinese revolution and governance. President Xi Jinping has called the party to learn from the Fengqiao Experience(枫桥经验), in which police relied on neighborhood monitoring and reporting to find "counterrevolutionaries" in the 1950s.²⁶² Recently, Daniel Mattingly, a Yale political scientist, has argued that the party-state was able to use intermediaries such as village elders to exercise political control over the society.²⁶³ Lynette Ong, a Toronto political scientist, examines how the Chinese state engages nonstate actors to coerce and mobilize the masses for state pursuits.²⁶⁴ She calls this "outsourcing repression."²⁶⁵

Wasn't the Chinese state outsourcing repressing to HoAs in its fight against COVID? Weren't the HoAs being co-opted? Such a critique is right about the overlapping interest of the state and the society. In cooperation, the society is partly doing the state's bidding, but it neglects that the society is also doing its own bidding, being independent and autonomous, serving its own interests against the common enemy, i.e., the pandemic, and bending the state to its will ultimately. The state might think it is using the society, but exactly because of this, the society is able to resist the state encroachment through cooperation. All that being said, I need to prove that Chinese society has its own autonomy and independence; I will explain in detail below how property comes into play.

CtR does not sound as heroic as civil disobedience or nonviolent non-

²⁶⁰ O'BRIEN & LI, *supra* note 249.

²⁶¹ The abolishment of rural taxation tells that the party-state relies much less on peasants than on urban homeowners for revenue. Guohui Wang, *Principle-Guided Policy Experimentation in China: From Rural Tax and Fee Reform to Hu and Wen's Abolition of Agricultural Tax*, 237 CHINA Q. 38 (2019). Despite the ongoing real estate crisis, Chinese local governments still largely depend on land-related income to finance their operation. See section IVC for more details.

²⁶² *How Xi Jinping is Mobilising the Masses to Control Themselves*, ECONOMIST, Nov. 10, 2022, <https://www.economist.com/china/2022/11/10/how-xi-jinping-is-mobilising-the-masses-to-control-themselves>.

²⁶³ MATTINGLY, *supra* note 162.

²⁶⁴ LYNETTE H. ONG, *OUTSOURCING REPRESSION: EVERYDAY STATE POWER IN CONTEMPORARY CHINA* (2022).

²⁶⁵ *Id.*; see also Jessica C. Teets, *Let Many Civil Societies Bloom: The Rise of Consultative Authoritarianism in China*, 213 CHINA Q. 19 (2013).

cooperation. We all want to see the weak and the oppressed stand up to the strong and the oppressor. But we tend to forget that the success of civil disobedience and nonviolent non-cooperation rely as much on non-cooperation and disobedience as on the cooperation and obedience before such social movements. One reason for the success of India's non-cooperation movement was the participation of the middle class: when thousands of students left their government-controlled colleges and universities, teachers resigned from government schools, lawyers gave up their legal practices and left the government court to join the movement, and consumers boycotted the import of foreign cloth, the effects of their actions on the economy were huge and the colonial government eventually was forced to give in.²⁶⁶ The non-cooperation was effective because cooperation of the Indian middle class had been essential to the colonial rule and economy before the movement.

To qualify the CtR thesis, I do not argue that cooperation always leads to successful resistance but simply to call our attention to the link between cooperation and resistance and understand the mutual dependence and embeddedness of the state and the society in an authoritarian regime.

C. Property and Sovereignty

As Morris Cohen rightly pointed out in his classic essay, property is sovereignty.²⁶⁷ A major advancement for Chinese citizens over the past four decades of market reform has been the establishment of private property rights.²⁶⁸ Transitioning from an economy devoid of private housing prior to the 1980s, China now boasts one of the wildest and pricey urban real estate markets globally. Approximately one-third of China's economy is anchored to the real estate sector,²⁶⁹ and the country also enjoys one of the highest homeownership rates worldwide.²⁷⁰ This is the economic foundation for the mutual dependence

²⁶⁶ Rajat K. Ray, *Masses in Politics: The Non-Cooperation Movement in Bengal 1920-1922*, 11 INDIAN ECON. SOC. HIST. REV. 343 (1974).

²⁶⁷ Morris Cohen, *Property and Sovereignty*, 13 CORNELL L.Q. 9 (1927). For recent interpretations and rebuttals, see Thomas W. Merrill, *Property and Sovereignty, Information and Audience*, 18 THEORETICAL INQ. L. 417 (2017); Larissa Katz, *Governing Through Owners: How and Why Formal Private Property Rights Enhance State Power*, 160 U. PA. L. REV. 2029 (2011).

²⁶⁸ Shitong Qiao, *The Structure and Spirit of Chinese Property Law*, in THE ROUTLEDGE HANDBOOK OF PROPERTY, LAW AND SOCIETY (Nicole Graham et al. eds, 2023)

²⁶⁹ Zongyuan Zoe Liu & Daniel Stemp, *The PBoC Props Up China's Housing Market*, COUNCIL ON FOREIGN RELATIONS, Mar. 21, 2023, <https://www.cfr.org/blog/pboc-props-chinas-housing-market>. ("official statistics show that the real estate sector accounts for 6 to 7 percent of China's GDP, but the entire footprint of real estate activity is much larger. Kenneth Rogoff estimated that the real estate sector and associated activities accounted for 29 percent of China's GDP, comparable to both Ireland and Spain before the global financial crisis. A CaixiaBank report estimated that the real estate industry accounted for about 30 percent of China's GDP after considering the whole supply chain and its inputs.")

²⁷⁰ World's Highest Homeownership Rates (by Country) 2023, PROPERTY RESCUE, <https://www.propertyrescue.co.uk/useful-guides-articles/world-countries-highest-rates-homeownership/>

of the Chinese state and its homeowner-society.

Homeownership also distinguishes HoAs from other civic groups in China. Much scholarly attention has been devoted to non-government organizations (NGOs) in China, which are the usual subject of studies on civil society in China. However, these NGOs often lack independent resources, predominantly depend on foreign or government funding, with their agendas largely shaped by these funders.²⁷¹ Property rights, specifically, homeownership gives Chinese citizens both their own source of wealth and their own agenda, which is primarily about the preservation of their home value, an *apolitical* pursuit the party-state recognizes and respects. Property rights also motivates Chinese citizens to participate in local politics and to get associated, neither of which is easy in China. Society's power is based on citizens' ability to associate and to minimize the "collective action" problem. Homeownership is a cure to such a problem and people's concern has been mostly about homeowners' overzealous participation in (local) politics, not the lack of participation, as we can see from discussions about NIMBYism.²⁷² Empirical studies also demonstrate higher participation in local election and town hall meetings by homeowners than average citizens.²⁷³ As Tocqueville writes,

You draw a man out of himself with difficulty in order to interest him in the destiny of the entire State, because he poorly understands the influence that the destiny of the State can exercise on his fate. But if it is necessary to have a road pass by the end of his property, he will see at first glance that there is a connection between this small public affair and his greatest private affairs, and he will discover, without anyone showing him, the close bond that here unites particular interest to general interest.²⁷⁴

I'd also like to emphasize the right to associate. HoAs are a rare form through which Chinese citizens can get associated, and can have real elections recognized by law and respected by the government.²⁷⁵ This legal right to

²⁷¹ Weijun Lai & Anthony J. Spires, *Marketization and Its Discontents: Unveiling the Impacts of Foundation-Led Venture Philanthropy on Grassroots NGOs in China*, 245 CHINA Q. 72 (2021).

²⁷² LEE ANNE. FENNELL, THE UNBOUNDED HOME: PROPERTY VALUES BEYOND PROPERTY LINES (2009); Wendell Pritchett & Shitong Qiao, *Exclusionary Megacities*, 91 S. CAL. L. REV. 467 (2017).

²⁷³ An empirical study found that buying a home leads individuals to participate substantially more in local elections. Andrew B. Hall & Jesse Yoder, *Does Homeownership Influence Political Behavior? Evidence from Administrative Data* (Department of Political Science, Stanford University, working paper, 2019). In the context of developing countries, a recent study finds that in Congo citizens in neighborhoods where property was taxed were more likely to attend town hall meetings hosted by the government or submit evaluations of its performance than in neighborhoods where no such property tax existed. See Jonathan L. Weigel, *The Participation Dividend of Taxation: How Citizens in Congo Engage More with the State When It Tries to Tax Them*, 135 Q. J. ECON. 1849 (2020).

²⁷⁴ ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA (VOLUME II: Ch. IV) 891 (1831).

²⁷⁵ Qiao, *supra* note 22.

associate gives an organizational basis for Chinese homeowners to develop an autonomous civic space that is outside the governmental control. As Michael Mann writes, the masses do not revolt because they are organizationally outflanked.²⁷⁶ Chinese homeowners gain organizational strength through their legally-recognized right to associate in their neighborhoods. Homeownership enables Chinese citizens to govern themselves in their own neighborhoods. To an extent this is a direct competition with and challenge to the state sovereignty. But as the state needs homeowners' cooperation among themselves and with the state to better govern urban neighborhoods, it needs to live with this inconvenient reality in which it concedes some power to homeowners' associations, as it has occurred both before and during the COVID pandemic.

In sum, property rights, and more specifically, homeownership provides a safe space for Chinese citizens' resistance to government encroachment, and enables CtR as discussed in this article.

V. CODA

This article, anchored in fieldwork across multiple Chinese cities with Wuhan and Shanghai as the primary focus, offers a bottom-up perspective on China's COVID-19 lockdowns between 2020 and 2022. It shows that even when the party-state exerted utmost effort to implement unpopular lockdown policies—policies central to its perceived legitimacy—the efficacy of its measures was curtailed by various constraints.

The interplay between Chinese homeowners and the party-state manifests in a concept I've termed "cooperating to resist" (CtR), presenting a fresh paradigm of the state-society relationship. Initially, homeowners adeptly cooperated with the party-state to tackle the mutual challenge of the pandemic. Yet, they also skillfully resisted overbearing lockdowns, which culminated in their abrupt ending, contrary to the top leadership's original plans. This resilience exhibited by homeowners stems from their collaborative dynamic and interdependence with the party-state.

Breaking away from prevalent research, this article aspires to improve our understanding of the changing landscape of law, state, and society in China by introducing the CtR paradigm. Additionally, the article underscores how property rights can rival sovereignty, serving as a sanctuary for civic pushback against authoritarian oversteps.

APPENDIX: SUMMARY OF RESEARCH METHODS

I and my research assistants conducted both online and offline interviews with homeowners during and after the lockdowns. Most of these interviews took place offline between January and July 2023. My fieldwork on

²⁷⁶ MICHAEL MANN, *THE SOURCES OF SOCIAL POWER, VOLUME I: A HISTORY OF POWER FROM THE BEGINNING TO AD 1760* 7 (1986).

COVID-19 lockdowns primarily targeted Wuhan and Shanghai. These cities witnessed major citywide lockdowns at the beginning and end of China's COVID-19 prevention and control measures, respectively.

This project stems from my earlier work on neighborhood governance, which I began in 2018. Over the years, I've forged relationships with numerous homeowners (including activists and ordinary residents), grassroots community workers, government officials, and scholars in China who specialize in neighborhood governance. My established network prior to the COVID-19 outbreak greatly facilitated my fieldwork on China's lockdowns. Establishing rapport with individuals hinges on knowledge, connections, and personal trust. Through snowball sampling, I also expanded my pre-pandemic network, getting to know more neighborhoods and homeowners in this round.

Given my concerns about the representativeness of my sample, I employed various strategies to counteract potential sample bias. One primary method involved collecting and corroborating information from multiple sources with diverse backgrounds. For instance, triangulation is a routine method I employed: if homeowners, RC workers, and management company employees (who often hold opposing views in neighborhood disputes) concur on a disputed neighborhood issue, I deem that issue verified, even though their interpretations might differ. This rationale underscores my decision to interview not just homeowners and non-homeowner residents, but also RC workers and street-level government officials. The latter group's insights into the challenges they faced while implementing lockdown measures have proven invaluable.

Additionally, I was mindful of the geographic and socio-economic characteristics of the neighborhoods I studied. I aimed to encompass neighborhoods both proximate to city centers (which are typically upscale, inhabited by legal, financial, and other professionals, and affluent entrepreneurs) and those more distant and economically challenged. My goal wasn't to suggest that state-society relations in these neighborhoods are identical. Instead, I sought to identify shared traits; the primary being a tendency to "cooperate to resist", though the extent of cooperation and resistance fluctuates by neighborhood.

Lastly, while my research heavily focuses on Wuhan and Shanghai, its implications extend to China as a whole. Various other Chinese cities underwent lockdowns of differing durations and severity from 2020 to 2022. Constraints in time and resources meant I couldn't study all these cities in depth. However, I did ensure a diverse range in my interviews, covering both large and small, coastal and inland, and northern and southern cities. Beyond Wuhan and Shanghai, my study ranged from conducting 7 interviews in Zhengzhou (a major inland city with a population exceeding 12 million) to 2 in Beijing, where the local government, having observed Shanghai's errors, was better poised for a far more restrained lockdown. While these interviews are far from being representative, they reinforce my observation of the "cooperating to resist"

paradigm.

The table below presents details of my interview data.

Interviewee Identity City	Memb ers of HoA Board	Ordinary homeowners	RC workers	Grassroot s government officials	Empleye es of real estate management companies	No. of Interviews
Wuhan	16	11	6	3	2	38
Shanghai	11	19	2	0	0	32
Zhengzhou	6	0	0	1	2	7
Shenzhen	3	0	0	4	0	7
Yichang	2	0	0	1	0	3
Beijing	1	1	0	0	0	2
Hefei	2	0	0	0	0	2
Hangzhou	1	0	0	0	0	1
Xi'an	1	0	0	0	0	1
Yinchuan	1	0	0	0	0	1
Changsha	1	0	0	0	0	1
Foshan	0	0	0	1	0	1
No. of Interviewees	45	31	8	10	4	96 ²⁷⁷ 98

²⁷⁷The total number of interviews and that of interviewees are different because multiple interviewees were present in one interview in Zhengzhou.