

Introduction

As Morris Cohen rightly pointed out in his classic essay, property is sovereignty.¹ Could associations of property owners pose a competitive threat to the sovereign Chinese state? Using Cohen's vocabulary, homeowners' *dominium* over their property could potentially challenge the state's *imperium* over individual citizens. In particular, one might expect the authoritarian Chinese state to be especially suspicious of such competition for the people's loyalties. The conventional wisdom is that the *imperium* must be held in check for a robust property system of neighbors and sharers to operate.² In Tocqueville's words, local community autonomy ("town liberty," in his New England-centered account of "community") is rare and fragile because local institutions can "scarcely resist a strong and enterprising government."³

It is widely asserted that authoritarian regimes are hostile to the development of self-governed, autonomous civic organizations, and thus often pit neighbors and groups against one another.⁴ On the face of it, China is no exception in this regard, with civic organizations routinely suppressed, eliminated, marginalized, or assimilated.⁵ Their only chance for survival in China, if any, is said to be the fragmentation of the authoritarian state.⁶ This conventional wisdom, however, is challenged by the apparent durability and prevalence of homeowners' associations (HoAs) in China. Given that China has one of the highest homeownership rates in the world,⁷ its 400 million middle-class homeowners constitute the most numerous – and mainstream – group in the country. Homeowners' associations have participated in the national legislative process,⁸ litigated in the Supreme People's Court (SPC),⁹ and, most importantly, combated powerful government and real estate interests nationwide to take control of their own neighborhoods. This ongoing democratic revolution taking place in hundreds of thousands of neighborhoods across China is as yet incomplete. Nevertheless, it is fair to say that the development of HoAs has already fundamentally changed how Chinese neighborhoods and cities are governed.

Condominium ownership arose in Shenzhen, China, in the late 1980s and is the major legal form of urban housing ownership under China's Property Law and Civil Code, as well as the primary asset of the country's 400 million-strong middle class.¹⁰ It consists of the individual ownership of units and the joint

ownership of the common areas and facilities in condominium complexes,¹¹ creating hundreds of thousands of commons in urban China.¹²

How is the party-state to react to the emergence of such urban commons? Theoretically, it has three options: (1) direct administration: local governments can themselves provide public services to and govern urban neighborhoods¹³; (2) corporatist authoritarianism: local governments can grant real estate management companies the *de facto* power to manage them¹⁴; and (3) homeowner self-governance: local governments can grant homeowners the power to govern themselves.¹⁵ The first two options appear more consistent than the third with the party-state's tradition of monopolistic control, as both government agencies and real estate management companies have hierarchical structures that can be readily commanded and controlled by the state. However, direct administration has proved to be costly, and corporatist authoritarianism suffers from a principal-agent problem: management companies tend to abuse their power in the absence of effective supervision. In fact, the number of disputes between management companies and homeowners has exploded in the past three decades.¹⁶

HoAs emerged as a market practice to empower homeowners to resolve common problems and were quickly picked up by the government for the purposes of protecting housing consumers' rights, and relieving itself of the burden of neighborhood governance, such as the disciplining of developers and their management companies.¹⁷ From the 1990s until very recently, city governments across China rely on revenue they collect from selling land to developers who then build and sell apartments to hundreds of millions of housing consumers whose rights need to be honored to a certain degree to sustain the market.

Homeowner self-governance constitutes a form of basic democracy, which means collective self-government without committing to conventional liberal values,¹⁸ and poses a tricky dilemma for the party-state. On the one hand, it can relieve the party-state of the burden of trying to govern hundreds of thousands of complex neighborhoods that, if badly handled, could undermine the party's legitimacy simply through incompetence. On the other hand, independent civic organizations may threaten the party leadership both within and beyond residential neighborhoods. How is the party-state to empower homeowners while maintaining control?

The national authority has adopted two approaches. First, national law can control the cost of homeowner decision-making by regulating voting procedures such as adjusting voting quorum and majority requirements. Second, as it has happened since 2019, the party has tried to establish its organization and leadership in HoAs.¹⁹ The party-state's ideal for HoAs is to "have the cake and eat it too." The conundrum, however, is that too much control would deprive HoAs of the capacity to govern neighborhoods effectively.

At the local level, I have discovered divergent paths of neighborhood democratization. In Shanghai, 94 percent of condominium communities

have established HoAs,²⁰ compared with 41 percent in Shenzhen²¹ and only 12 percent in Beijing.²² What is the reason for the stark differences in HoA development across the three cities? National law grants local governments the power to “guide and assist” (指导和协助) the establishment of HoAs,²³ and yet local governments in Beijing, Shanghai, and Shenzhen have exercised that power very differently owing to the differing degrees of risk to social stability posed by homeowner self-governance and varying degrees of state capacity in urban governance. Correspondingly, what property rights homeowners claim and how they claim those rights are a function of the effectiveness, or lack thereof, of the local states and laws in supporting neighborhood self-governance.

The previously mentioned tale of the three cities also demonstrates that a highly capable local state that has the administrative capacity to discipline its frontline employees and the judicial capacity to adjudicate neighborhood disputes, facing an intermediate degree of risk, can make institutional reforms to accommodate grassroots democracy.

Whether a community can be allowed freedom and choice while the party-state retains its monopoly on power is “the key question in China’s central dilemma.”²⁴ It is posited in this book that even the party-state demands neighborhood democracy due to its own limits in informational, financial, and human resources in governing a society based on individual property rights and a market economy.²⁵ Chinese neighborhoods satisfy all of the three factors that David Stasavage attributes the emergence of early democracy in human history to²⁶: (1) such neighborhoods are small-scale settings that enable regular meetings of their members, though as I will discuss in this book, the cost of holding such meetings and the rules regulating the cost vary and contribute to the different HoA rates in different Chinese cities; (2) the party-state has inadequate information about residential neighborhoods as they are often gated communities and has not succeeded in establishing its own organizations in each HoA; and (3) homeowners can do without the party-state in their neighborhoods, whereas the party-state needs homeowners to contribute human and financial resources to deliver public services in such neighborhoods.

On the other hand, neighborhood democratization has indeed posed risks to the party-state’s monopoly of power. It seems that the party cannot achieve two goals simultaneously: improving its legitimacy through effective neighborhood self-governance and controlling such self-governance by imposing on it the party’s leadership and containing it to the boundaries of neighborhoods and the spheres of real estate management.

This book is divided into three parts. Part I includes two chapters laying out the theoretical arguments of this book. Chapter 1 defines the authoritarian commons. Chapter 2 defines neighborhood democratization, identifies its challenges, and argues that the success or failure of neighborhood democratization depends on how the party-state balances its demand for effective governance and the risk posed by homeowner mobilization and association.

Part II presents a tale of three cities, which represent three different paths of neighborhood democratization in urban China. Chapter 3 reveals the striking contrast across Beijing, Shanghai, and Shenzhen, introduces a framework of risk and capacity in understanding this contrast, and discusses the three styles of authoritarianism: repression in Beijing, fragmentation in Shenzhen, and coordination in Shanghai. Chapter 4 addresses one essential aspect of state capacity: the judicial capacity, and argues that local courts in Shanghai are more capable than national authorities (including the SPC), local courts in Beijing and Shenzhen, and other branches of the Shanghai municipal government in supporting neighborhood democracy. Chapter 5 examines the different dynamics of the homeowner movement in the three cities, focusing on the scope of homeowners' claims and the concomitant ways in which they claim those rights.

Part III presents further empirical evidence, both qualitative and quantitative, on the benefits and risks of HoAs to the party-state. Based on survey data, Chapter 6 reveals that democratized neighborhoods have better governing outcomes than do non-democratized ones, as evidenced by more effective homeowner control over neighborhood affairs, greater respect for democratic principles, and a higher degree of community identity. Owing to these positive outcomes, homeowner activists in democratized neighborhoods develop higher trust in their local government than do their counterparts in non-democratized neighborhoods. Most pointedly, this chapter suggests that an authoritarian regime may support neighborhood self-governance in the interest of building political trust. Chapter 7 examines the benefits of homeowner self-governance to the party-state in the context of China's COVID lockdowns, and, more importantly, the risk of the party-state's dependence on homeowners and the latter's capacity to shape key party-state policies in the same context. Chapter 8 investigates how homeowners nationwide have shelved the party-state's plan to institute party leadership in HoAs. Can the party-state "have the cake and eat it too" in neighborhood governance? It seems that the party cannot achieve two goals simultaneously: improving its legitimacy through effective neighborhood self-governance and controlling such self-governance by requiring the party's leadership. Chapter 9 discusses how homeowners' democratization efforts have gone beyond both the physical boundaries of condominiums and the virtual boundaries of property rights and real estate management, and the party-state's varied responses to such "trespasses."

The Conclusion of this book addresses the implications of this research on democracy in China and its limitations.

Part I

Theory

1

Defining the Authoritarian Commons

The extant literature on the liberal commons takes as granted secure property rights, freedom of association, and the rule of law, all of which have been the exception rather than the rule throughout human history¹ and therefore fails to explore the origin of the liberal commons (from an illiberal regime). Authoritarianism poses a fundamental challenge to, but also an opportunity to explore the origin of, the liberal commons. This chapter defines the authoritarian commons² by examining the tension between authoritarianism and the liberal commons – both theoretically and in the specific context of neighborhood governance in urban China.

1.1 From Liberal Commons to Authoritarian Commons

More than two decades ago, Hanoch Dagan and Michael Heller coined the term “liberal commons,” which they envisioned as comprising three spheres: the sphere of individual dominion, the sphere of democratic self-governance, and the sphere of cooperation-enhancing exit.³ In this liberal commons, the law “can help generate social expectations supportive of trust and cooperation” but only if it operates as a set of background norms and as a safety net.⁴ Condominium associations, as Dagan and Heller acknowledged, constitute a typical example of the liberal commons, encompassing condominium owners’ ownership of their individual units, that is, the sphere of individual dominion; their right to make decisions concerning matters beyond the walls of their own apartments but within the building and the surrounding neighborhood, over which they exercise common ownership, that is, the sphere of democratic self-governance; and, of course, their right to exit by selling their units, that is, the sphere of cooperation-enhancing exit.

Dagan and Heller did not investigate the origin of the liberal commons, probably because they assumed the freedom of association and right to vote typical of liberal democracies.⁵ Similarly, although several generations of property scholars have written about homeowners and their covenants and communities, they have taken such covenants and communities as given, paying no attention to their origin. The extant literature on homeowners’ associations

(HoAs) focuses on conflicts between homeowner autonomy and legal intervention.⁶ It is usually only when homeowner self-governance generates negative externalities that legal intervention is justified.⁷

We cannot, however, take the liberal commons as given. Authoritarianism describes a system in which “all decisions can potentially be made by a single decision-maker, whose decisions are both formally and practically unregulated by law.”⁸ In line with this definition, the challenge of authoritarianism is threefold. First, it poses a challenge to secure property rights. Authoritarian regimes are known for their exploitative and extractive nature,⁹ and the idea that they would protect property rights has been described as something of a cruel joke.¹⁰ Second, authoritarianism poses a challenge to the freedom of association, the decentralized nature of which seems to be inherently incompatible with the centralized, top-down nature of authoritarianism.¹¹ Third, the unconstrained nature of power under authoritarianism challenges the rule of law. The conventional view is that authoritarian states are lawless.¹² Although the burgeoning literature on authoritarian legality¹³ points in a different direction, it fails to explain why and when authoritarian states do or do not obey the law.

Considering the foregoing tripartite challenge, the term “authoritarian commons” sounds like an oxymoron: If the state’s authority prevails over and penetrates the commons, there is no commons to speak of; if democratic self-governance prevails in the commons, there is no authoritarianism. However, with respect to the aforementioned opportunity that authoritarianism presents for our purposes, we can better understand the origin of the liberal commons if we examine its emergence in an authoritarian regime.

There are two traditions in the economic analysis of property rights: one focuses on the choice of different property forms and the other on the political institutions that define property rights. We can call the former tradition “private property law” and the latter “public property law.” The pioneers of the economic analysis of property rights, as represented by Douglass North¹⁴ and Yoram Barzel,¹⁵ had their own theories of the state that paralleled their theories of property rights. In the past two decades, the economic analysis of property law has focused primarily on the choice of different forms of property rights,¹⁶ with insufficient attention paid to the politics of property rights or the development of various contemporary property arrangements.¹⁷ It is no wonder that Katrina Wyman has advocated for a supply-side theory of property rights¹⁸ and that Roderick Hills and David Schleicher have recently proposed an “institutional turn” in property theory.¹⁹ The theoretical ambition of the exploration of the authoritarian commons herein is to accelerate the institutional turn in property theory by returning the state to the economic analysis of property rights.

Study of the authoritarian commons also has profound implications for our understanding of development, to which both the provision of public goods and services and the establishment of a basic point of entry into the political system at the local level are essential.²⁰ Recent research by prominent scholars

indicates that authoritarian regimes are effective at managing critical junctures in their countries' development.²¹ Growth-favoring authoritarian regimes can be even better at promoting economic development than weak democracies.²² However, these scholars still hold quite a pessimistic view of democratic development in authoritarian regimes, China, in particular, with a number of prominent legal scholars²³ and economists²⁴ actually predicting the failure of that country's democratic transition. Like the seemingly oxymoronic nature of the term "authoritarian commons," the democratization of a successful authoritarian regime such as China's party-state is on the face of it a self-defeating mission.²⁵ Understanding the dynamics of the authoritarian commons and the interaction between state and society in such a setting might help us to understand the role of the authoritarian state in political transition.

1.2 Residential Neighborhoods as Commons

Condominium ownership in China consists of the individual ownership of units and the joint ownership of the common areas and facilities in condominium complexes,²⁶ creating hundreds of thousands of urban commons²⁷ in Chinese cities. To be clear, Chinese residential neighborhoods under the condominium ownership regime are not open-access commons, "in which anyone at all may use a resource and no one may be excluded,"²⁸ as described in Garrett Hardin's seminal paper "The Tragedy of the Commons."²⁹ It is clear in such neighborhoods who shares the power to decide and the right to benefit from the use of the resources therein. At the same time, however, similar to Elinor Ostrom's "common pool resources," the resource system is "sufficiently large ... to make it costly to exclude potential beneficiaries from obtaining benefits from use."³⁰ Using Carol Rose's terms, it is a commons to insiders and private property to outsiders.³¹ What happens to such urban commons? Despite the robust literature on the self-organized management of natural resources, scholars have paid insufficient attention to polycentric governance in the urban context.³²

Common property rights in China's condominium neighborhoods include not only the right to manage common space and facilities but also the right to govern the neighborhood, including owners' rights to establish their own associations, elect their own committees, and manage such common affairs as maintenance funding, changing management companies and fees, and regulating community members' behavior.

More specifically, there are three aspects of residential neighborhood governance. The first concerns control over the common space and facilities in the neighborhood, such as parking space and elevators. A single parking spot in the megacities under study can sell for up to half a million RMB (about US\$62,500).³³ Parking spaces are thus valuable assets and have been subject to contest both in and out of court, particularly in Shenzhen.³⁴ Local governments have a direct interest in maintaining control over the common space

in neighborhoods, some of it for use for municipal facilities and, in some instances, for the construction of a municipal road running through a neighborhood.³⁵ The second aspect of control is building regulations. In Chinese cities, most condominium buildings are towers that are pre-built before buyers move in. The major issue here is the so-called illegal construction, including enclosed balconies and rooftop (built by apartment owners on the top floor) or underground (built by apartment owners on the ground floor) structures.³⁶ The final aspect is behavior regulation, including the regulation of residents' activities within their own apartments and those in the neighborhood's common space. Examples of the former activities include making nonresidential use of residential apartments, ranging from running a children's play/study group for profit to establishing a corporate office to engaging in paid sexual transactions.³⁷ Examples of the latter are square dancing in common areas, a common cause of noise complaints, and unleashed dogs that can pose a threat to safety, particularly for children.³⁸

All three aspects concern not only homeowners' property rights and daily life but also the major functions of local governments and the state's spatial control. They concern how Chinese homeowners live with one another and with the authoritarian state. In this sense, HoAs pertain to both the social contract among homeowners and that between homeowners and the state. It is no wonder that Chinese people sometimes refer to HoAs as the "government in the neighborhood,"³⁹ and the covenants passed by homeowners as "neighborhood constitutions."⁴⁰ Chinese homeowners establish HoAs through majority resolutions, which also create a covenant, decision-making rules, and elect a homeowners' committee ("HoC").⁴¹ In general, each housing unit has one vote.⁴²

All legally established HoAs have gone through democratic election procedures, and the validity of such procedures is regularly contested in local courts.⁴³ Local governments can hinder and slow down such democratic processes,⁴⁴ and occasionally manipulate such processes,⁴⁵ but they are not able to force homeowners to vote if homeowners do not believe that the elections are genuine. An example of the government's inability to mobilize homeowners to vote and to participate without giving them authentic autonomy is residents' committees (居民委员会, RCs), which are supposed to be elected according to the Chinese Constitution. However, genuine elections and resident participation are rare.⁴⁶

It is this legally sanctioned right to vote and to form associations that makes HoAs the most exciting form of grassroots democracy in China.⁴⁷ As one leading homeowner in Beijing said to me, "'One person, one vote' is really implemented in only two situations [in China]: villagers' committees and homeowners' associations ..., in rural China, conventional authority and [clan-like] organizations ... are still powerful and might control villages. The best hope to develop a civil society is through homeowners' associations of the urban middle class."⁴⁸

Theorists from Tocqueville to Putnam generally agree that the daily practice of autonomous associations and democratic decision-making is important to developing and maintaining democracy at the national level.⁴⁹ Since the 1990s, scholars and policymakers have applauded village elections in rural China, which have actually turned out to be more complicated than originally, and rather rosily, imagined.⁵⁰ Needless to say, such grassroots elections are just the beginning of a long-winded process of democratization.⁵¹ Nevertheless, such election practices and self-governance are particularly valuable in an authoritarian regime to nurture the hearts and minds of citizens for a future democracy.⁵² As evidence of their value, my questionnaire survey reveals that homeowners who have actively participated in neighborhood self-governance have greater respect for democratic principles and are more likely to comply with a legally passed majority decision even if they were on the losing side of the voting process, than homeowners who have not.⁵³