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The Law of Information States: Evidence from China and the United States

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Government could not function—legally, administratively, or politically—without producing information about the population, the economy, crime, elections, public health, and more. This Article theorizes the informational incentives of political and administrative officials and the legal interventions that can control them. It then uses case studies in the United States and China to illustrate those informational dynamics in practice. Our account reveals a novel form of information regulation: government structure and, in particular, the vertical division of informational powers between levels of government, or "informational federalism." We describe the use of informational federalism and its distinctive functions as part of the portfolio of informational production law in regimes that are both strongly federalist like the United States and strongly centralized like China.

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I. INTRODUCTION

Information makes states and states make information.[1] The modern state could not function—legally, administratively, or politically—without producing information.[2] Nor could the private sector operate without the kind of authoritative information that in many cases only governments can credibly create: gross domestic product (GDP), unemployment figures, inflation measures, crime rates, election integrity assessments, estimates of government debt and spending, public health statistics, immigration data, military activity levels and casualty rates, to name only a few.[3] States "see" the world through the standardized information they devise to reflect it.[4] And to a great extent, so does the general population.[5]

It is intuitive to see government information as a product of politics, economic dynamics, or social change.[6] This Article argues that government information is also a product of law. Law helps create the institutional capacity to produce information and supplies the constraints that prevent information from being misused, manipulated, or misappropriated. In just the first few weeks of the second Trump administration, for example, the executive branch has asserted expansive legal authority to control government data and restructure government information products.[7]

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1. This is, of course, an adaptation of the famous political science maxim that "[w]ar made the state, and the state made war." *See* Charles Tilly, *Reflections on the History of European State-Making*, *in* THE FORMATION OF NATIONAL STATES IN WESTERN EUROPE 3, 42 (Charles Tilly ed., 1975).

2. *See generally* SANDRA BRAMAN, CHANGE OF STATE: INFORMATION, POLICY, AND POWER (2006); Henry Farrell, *Regulating Information Flows: States, Private Actors, and E-Commerce*, 9 ANN. REV. POL. SCI. 353 (2006) (summarizing relevant literature).

3. *See, e.g.*, Steven Kelman, *Why Should Government Gather Statistics, Anyway? Historical Justifications for Public Data Collection in the United States and Theories of the Role of Government*, 1 J. OFF. STATS. 361 (1985) (canvassing justifications for government production of information).

4. *See generally* JAMES C. SCOTT, SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED (1999).

5. *Id.*

6. *See, e.g.*, PHILIPP LEPENIES, THE POWER OF A SINGLE NUMBER: A POLITICAL HISTORY OF GDP (Jeremy Gaines trans., 2016); Jeremy L. Wallace, *Juking the Stats? Authoritarian Information Problems in China*, 46 BRIT. J. POL. SCI. 11 (2013); COSMO HOWARD, GOVERNMENT STATISTICAL AGENCIES AND THE POLITICS OF CREDIBILITY (2021) (discussing how politics affect government information production); Andre Briviba, Bruno Frey, Louis Moser & Sandro Bieri, *Governments Manipulate Official Statistics: Institutions Matter*, 82 EUR. J. POL. ECON. 1 (2024) (discussing how political, economic and social forces affect governmental information manipulation); Andrew M. Pettigrew, *Information Control as a Power Resource*, 6 SOCIO. 187 (1972); TEUN A. VAN DIJK, DISCOURSE AND POWER (2008).

7. *See, e.g.*, Ben Casselman & Colby Smith, *Commerce Secretary's Comments Raise Fears of Interference in Federal Data*, N.Y. TIMES (Mar. 4, 2025), https://www.nytimes.com/2025/03/04/business/economy/gdp-data-lutnick-commerce-secretary.html (describing comments by Commerce Secretary Howard Lutnick about altering the methodology used to compute GDP); Mike Stobbe & Jonel Aleccia, *Trump Administration Freezes Many Health Agency Reports and Online Posts*, ASSOCIATED PRESS, Jan. 22, 2025, https://apnews.com/article/trump-health-communications-cdc-hhs-fda-1eeca64c1ccc324b31b779a86d3999a4 (describing a directive by acting Secretary of the Department of Health and Human Services not to release reports or information without approval from a political appointee); Ethan Singer, *Thousands of U.S. Government Web Pages Have Been Taken Down Since Friday*, N.Y. TIMES (Feb. 3, 2025),

Our goal is to interrogate the legal dynamics of government information production. To do that, we first theorize the government's information-production incentives, then locate and evaluate the legal interventions that can be used to regulate them, and finally begin to develop an initial account of how those interventions operate in practice. To observe those on-the-ground dynamics, we use as source material two informational states—the United States and China—to notice common incentives operating in practice (if to different degrees and with different contextual features) and to identify ways that law shapes them.[8]

By systemizing the law of government information production, most significantly, we identify a category of legal tools that has been almost entirely overlooked but has the potential to play a profound role in information regulation: federalism. Informational federalism, we show, represents an under-scrutinized form of *structural* information regulation that serves practical functions and offers appealing theoretical benefits—and has been used in a variety of forms in both strongly federalist systems like the United States and strongly centralized systems like China.[9]

There are many potential ways to analyze the risks associated with government information production. Here we limit our analysis to the most basic: In producing and releasing information, governments should avoid creating or amplifying *mis*information. No regime—whether the world's preeminent democracy or the world's predominate autocracy—is, or should be, insulated from worries about government-produced misinformation. In an era of big data, sophisticated surveillance, mass communication, and powerful machine learning, government capability to create and communicate information has never been greater and neither has the risk of that information being incomplete, inaccurate, or misleading.

Misinformation, as we explore, can be deliberate or inadvertent, nefariously motivated or the product of benign intent. Just as governments can try but fail to create socially optimal tax regimes, command regulations,

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https://www.nytimes.com/2025/02/02/upshot/trump-government-websites-missing-pages.html (detailing more than 8,000 webpages that were temporarily inaccessible in apparent efforts to comply with executive orders); Jeremy B. Merrill, Azi Paybarah, & Eric Lau, *How Federal Agencies Have Already Changed Their Websites Under Trump*, WASH. POST (Jan. 31, 2025), https://www.washingtonpost.com/politics/2025/01/31/federal-agencies-websites-trump/; *see also* Steven Lee Myers & Stuart A. Thompson, *In His Second Term, Trump Fuels a 'Machinery' of Misinformation*, N.Y. TIMES (Mar. 24, 2025), https://www.nytimes.com/2025/03/24/business/trump-misinformation-false-claims.html.

8. We emphasize, however, that the objectives of these case studies are illustrative, not formally comparative. Both regimes qualitatively exhibit the high-level behavioral dynamics we theorize. And in both regimes, we notice similar categories of legal control. But those dynamics and legal controls operate within highly divergent political, cultural, and socioeconomic contexts. Our initial goal, therefore, is to provide illustrations of common forms of information production law in practice and to make observations that can suggest avenues for more targeted comparative analysis.

9. So too, of course, noticing the role federalism plays in regulating government information deepens our understanding of federalism itself and its capabilities.

or public benefits, so too they can try but fail to create socially optimal information—they can use, deploy, and produce information products that are flawed in design, objective, or execution. They can, deliberately or inadvertently, create and communicate misinformation. Controlling misinformation by the government, therefore, requires a portfolio of legal techniques adapted to the different dynamics that produce, and conditions that exacerbate, the risk of misinformation.

Although information production has received significant attention in political science, sociology, history, and statistics, it has not historically been a delineated object of legal scholarship. Legal scholarship about information production is instead distributed across many fields. In the United States, for example, a range of scholarly literatures engage how governments create, use, and communicate information: from administrative law,[10] to the First Amendment,[11] to scholarship about bedrock statutes like the Freedom of Information Act (FOIA)[12] and topical areas like national security and government secrecy,[13] to emerging work about the raw data that often fuels contemporary informational products.[14] But unified theory and analysis of the information production process and the legal tools that influence it is less common.[15] On the Chinese side, there are legal studies on topics like state surveillance, information petitioning, and the privacy implications of information disclosures,[16] but much less focus on synthetically understanding the information production system as a complete whole. In order to notice the different ways that law can shape information production—and to assess their functions, strengths, and weakness relative

10. The significant literature on how agencies conduct cost-benefit analysis is, in our view, about how governments produce information given the data production required to make cost and benefit estimations. *See generally* COST-BENEFIT ANALYSIS: LEGAL, ECONOMIC, AND PHILOSOPHICAL PERSPECTIVES (Matthew D. Adler & Eric Posner eds., 2001).

11. *See, e.g.*, Steven Shiffrin, *Government Speech*, 27 UCLA L. REV. 565 (1980); Mark G. Yudof, *When Governments Speak: Toward a Theory of Government Expression and the First Amendment*, 57 TEX. L. REV. 863 (1979); Cass R. Sunstein, *Government Control of Information*, 74 CAL. L. REV. 889 (1986) (arguing against the "equilibrium theory" of information disclosure).

12. *See, e.g.*, sources cited *infra* notes 201, 204, and 205.

13. *See, e.g.*, sources cited *infra* notes 38 and 224.

14. *See, e.g.*, Bridget A. Fahey, *Data Federalism*, 135 HARV. L. REV. 1007 (2022) (documenting the institutional dynamics that guide information flows between cities, states, and the federal governments).

15. Dave Pozen's portfolio of work on informational dynamics across many legal areas is a notable exception. *See, e.g.*, David E. Pozen, *Transparency's Ideological Drift*, 128 YALE L.J. 100 (2018); David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 U. PA. L. REV. 1097 (2017) [hereinafter Pozen, *Freedom of Information*]; David E. Pozen, *The Leaky Leviathan: Why the Government Condemns and Condones Unlawful Disclosures of Information*, 127 HARV. L. REV. 512 (2013).

16. *See* Mark Jia, *Authoritarian Privacy*, 91 U. CHI. L. REV. 733 733-809 (2024) (discussing the Chinese law of privacy); Xiao Qiang, *The Road to Digital Unfreedom: President Xi's Surveillance State*, 30 J. DEMOCRACY 53 (2019); Jamie P. Horsley, *Transparency, Accountability and Access to Information*, *in* HANDBOOK ON HUMAN RIGHTS IN CHINA 516 (Sarah Biddulph & Joshua Rosenzweig eds., 2019); Liu Wenjing, *Approaching Democracy Through Transparency: A Comparative Law Study on Chinese Open Government Information*, 26 AM. U. INT'L L. REV. 983 (2011).

to one another—this Article therefore aims to use a more systematic lens on information production.

Part II begins by theorizing government information production. First, we argue that because it is often difficult, and sometimes impossible, for private parties to credibly challenge government-produced information, the government's capacity to produce authoritative information is an enormous source of political power. We call this claim the *information as power principle*.

Second, because information production is power, we theorize that government information producers have strong incentives to maximize their relative capacity to exercise that power by generating information asymmetries between themselves and outside entities. We call this dynamic the *information asymmetry principle*. Some information asymmetry is necessary to protect justifiable policy interests like national security, privacy, effective internal deliberation, and trade secrets. But governments may also create asymmetries pretextually, by citing those interests even when they do not, in fact, justify withholding information from the public. So too governments can engineer information asymmetries by releasing information in such processed form that it cannot be plausibly challenged or falsified by outside entities. As we will argue, the inducement to create and sustain an information asymmetry between the government and the public can stem not only from explicitly political motivations, but also from more benign bureaucratic incentives.[17] Whatever its cause, when government information production becomes insulated from external checks, there is a risk of misinformation.

Third, to combat that risk of misinformation, governments require a portfolio of legal tools that can collectively mitigate the risk of misinformation while respecting the justifiable values that information asymmetry advances, like the need to keep some information confidential or classified to protect privacy, security, and deliberative interests. Existing literature has focused on two sets of techniques to prevent misinformation in government information production. The *regulatory solution* encompasses the broad body of statutes, guidance, and "soft law" (or norms) that administratively structure what information the government creates, what data inputs it collects to facilitate it, who will be involved and in what capacity, what methodologies they will use, and how they will vet, share, review, and communicate their information internally and to the public. Regulatory tools may prevent misinformation in a range of ways: by adopting rigorous and professionalized methods; by deterring administrators from shading, altering, or otherwise shaping information in

17. Information asymmetry, put differently, can be the result of political control over information producers, but can also be engineered by politically-insulated technocrats, contrary to the predictions of some political scientists, see, e.g., HOWARD, *supra* note 6, at 3–5, who sees insulation and professionalism as the central forces of regularity in information production.

contravention of those methods; by insulating information producers from certain forms of political influence; and more. Some regulatory approaches are enforced and reviewed by courts; others are not. And noncompliance can be difficult to detect.

The *rights solution*, to that end, invites the public to act as information overseer by vesting what is often styled as a "right to know" in individuals through statutes like the United States' FOIA[18] and China's *Government Information Disclosure Regulation*.[19] Those statutes (at least in some cases) permit requesters to force disclosure of information, subject to procedural hurdles and subject-matter exceptions. Rather than shaping how government produces information on the front end, the rights solution creates, in effect, a public audit of that information and its production process on the back end (and, of course, through the operation of ordinary incentives, that threat of *ex post* audit may, in turn, shape *ex ante* behavior).

We argue that neither the regulatory solution nor the rights solution is alone adequate to combat the misinformation risk associated with government information asymmetry. A third set of techniques, which we call the *structural solution*, encompasses various forms of power-sharing between levels of government in the information-production process. Information federalism allows the central government, states and provinces, and localities to serve as mutual auditors of one another's information. And it resists misinformation through mechanisms familiar to other federalism contexts: by forcing power-sharing, creating salutary redundancy, and facilitating a competitive marketplace of government information products.

This informational federalism has not, to our knowledge, received academic treatment—either in theory or in practice. But, it serves essential and distinctive functions in managing the dynamics of, and risks associated with, misinformation. We hypothesize, moreover, that its failure conditions are less correlated with the rights and regulatory solutions. In the United States, the conditions that may corrupt the norms that are essential to the regulatory solution, and the conditions that may deter the exercise or enforcement of the right to know in a publicly oriented way, are different than those that would stymie the competitive value of federalism. Our argument then is not that any set of techniques is better than the others, but that all have important and distinctive functions—as well as meaningful costs and tradeoffs—in the regulation of information.

18. Freedom of Information Act, 5 U.S.C. § 552 (1967); Pozen, *Freedom of Information*, *supra* note 15, at 1120.

19. Zhonghua Renmin Gongheguo Zhengfu Xinxi Gongkai Tiaoli (中华人民共和国政府信息公开条例) [Government Information Disclosure Regulations], (promulgated by the St. Council, Apr. 5, 2007, effective May 1, 2008, *rev'd* Apr. 2019) ST. COUNCIL GAZ., https://www.gov.cn/zwgk/2007-04/24/content_592937.htm (China).

Parts III and IV begin to consider how the information production dynamics we theorize in Part II operate in practice. To illustrate, we provide detailed accounts of the law of information production in China (Part III) and the United States (Part IV). These regimes sit at opposite ends of most modern political spectrums: one authoritarian and increasingly centralized, one liberal-democratic and heavily federalized.[20] Despite these profound political differences, we identify shared institutional incentives of government information producers, providing initial support for the hypothesis that the principles we identify in Part II reflect generalizable characteristics of informational bureaucracies. In both regimes, we document states committed to producing and maintaining informational asymmetry between the government and the public. In both, those information asymmetries have created conditions under which misinformation can be released, in some cases for political gain and in others because of simple technocratic failure.[21] And in both regimes, we observe an extensive body of regulatory and rights-based approaches to the problem of information asymmetry and the corresponding limitations in practice. Finally, we observe that, in both regimes, those forms of information regulation are supplemented (in different ways, with different contextual interactions, and to different effect), by forms of informational federalism.

In China, this informational federalism has been *internal*—an effort to restructure informational power-sharing between the central government and provinces to produce higher quality information for the consumption of the government itself by reducing the flow of misinformation *among* governmental actors. The Chinese approach, in short, appears to have recognized one of the insights we develop in Part II about the uses of structure as a technique of information regulation—that subjecting monopolies in the production of information reduces its quality and intergovernmental contestation improves its quality. But, the Chinese regime has also worked to keep those benefits internal and continues to release fabricated and manipulated data to the public.

In the United States, as FOIA's exceptions have expanded and FOIA requesters have increasingly tilted toward commercial interests, and as constitutional doctrine has increased opportunity for political control over the regulatory apparatuses of information production,[22] four models of

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20. Alvin Y. So, *The Rise of Authoritarianism in China in the Early 21st Century*, 45 INT'L REV. MOD. SOCIO. 49, 50, 52 (2019) (discussing the authoritarian features of Chinese political system); Alfred Stepan, *Federalism and Democracy: Beyond the U.S. Model*, 10 J. DEMOCRACY 19, 20 (1999).

21. We adopt a conception of informational federalism that is consistent with contemporary accounts of federalism in American legal literatures—focusing not just on formal or constitutional divisions and allocations of authority, but on functional and statutory forms of power-sharing as well. *See infra* Part II.C.3.

22. *See generally* PETER M. SHANE, MADISON'S NIGHTMARE: HOW EXECUTIVE POWER THREATENS AMERICAN DEMOCRACY (2009) (describing the executive branch practice of using

informational federalism—which we distill from high-profile areas including the Census, election integrity, public health, and national labor statistics—have played significant roles in resisting misinformation. This model of information federalism, in contrast to China's, has been *external*—it has played out in the public marketplace of ideas as the states and federal government publicly contest one another's informational products.

We conclude by offering some initial thoughts on what can be drawn from the similar legal techniques—and differently structured applications—of information law in the United States and China.

II. THEORIZING INFORMATION PRODUCTION

This Part theorizes the basic dynamics and incentives of government information production and how law can be used to regulate it. We advance three sets of theoretical claims. First, as political scientists have long shown: the production of authoritative information—about the government itself (as in election data), about the population (as in Census data), and about private sector activity (as in inflation and labor data)—is an essential and consequential tool of governance and political management. We call this widely recognized idea the *information power principle*.

Second, and less widely discussed: by functional necessity and institutional incentive, governments—whether democratic or authoritarian—have significant incentives to monopolize information and produce disparities in informational access between state and society. We call this the *information asymmetry principle*.

Third, the optimal mechanism for ensuring accuracy and credibility of government information is external verification through either auditing (the review and validation of the government's data inputs and methodologies) or counternarration (the creation of alternative accounts of the same phenomena using credible independent data and methodologies). We call this the *information accountability principle*.

A. The Information Power Principle

Information is power.[23] Governments rely on bureaucratically produced information about their own operations and policies, about the economy, about citizens and non-citizens, about culture, and about society. And because governments are often the exclusive or most credible conduit of

secrecy and executive privilege to withhold information that would otherwise be accessible under FOIA); HEIDI KITROSSER, RECLAIMING ACCOUNTABILITY: TRANSPARENCY, EXECUTIVE POWER AND THE U.S. CONSTITUTION (2015) (discussing the expansion of the executive power and its influence on accountability).

23. *See generally* SCOTT, *supra* note 4.

information about topics essential to the functioning of the private sector as well, individuals, firms, and civil society also rely on government-produced information.[24] Information production is, in short, a significant source of government power. This *information power principle* reflects well-established ideas in the social sciences but has been less comprehensively interrogated in legal scholarship.[25]

That gap in emphasis is meaningful because state-produced information is not a neutral good that can be simply discovered in the world. It is crafted by organizationally complex government institutions that are created, structured, and shaped by law.

Consider how GDP figures are produced in both the United States and China. National-level state agencies collect an assortment of raw data from both individuals and firms, pair this with surveys of broader trends, and then, using a disclosed model and methodology, produce the headline GDP figure.[26] Currently, no other entity in either country produces sociopolitically significant alternative measures, nor would it be legally plausible for them to do so. The production of GDP figures depends on widespread disclosures of private information from both domestic and foreign entities to which *only* government has comprehensive legal access.[27] In turn, although both countries disclose aggregate data inputs at some level of granularity—and the United States discloses it at many different levels of generality—they also each withhold much of their raw data for privacy, security, and proprietary reasons.

That withholding creates scarcity in information production. Without access to the government's raw data, or the legal apparatus necessary to induce private parties to disclose it, external accounts will inevitably be much less systemic. This legally created scarcity only concentrates the power government obtains from its information production capabilities. For example, despite substantial evidence that the Chinese government

24. For discussion of government information products, see *infra* Parts III.A & IV.A.

25. It is now unremarkable to observe that those who collect, produce, and aggregate information can use their control over its outward flows to advance their self-interest, as Andrew Pettigrew influentially modeled over fifty years ago. *See* Andrew M. Pettigrew, *Information Control as a Power Resource*, 6 SOCIO. 187, 203 (1972) (describing the "strategic advantages of control over information flow"). For a theory of how legal institutions interact with ideological indoctrination, see TAISU ZHANG, THE IDEOLOGICAL FOUNDATIONS OF QING TAXATION: BELIEF SYSTEMS, POLITICS, AND INSTITUTIONS (2023).

26. On production of U.S. GDP, see BUREAU OF ECON. ANALYSIS, U.S. DEP'T OF COM., THE MAKING OF GDP 1 (2020), https://www.bea.gov/system/files/2020-04/BEA-in-Brief-GDP-Final.pdf. On Chinese GDP, see GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], SHENME SHI GUONEI SHENGCHAN ZONGZHI (GDP) (什么是国内生产总值(GDP)) [WHAT IS GDP?], https://www.stats.gov.cn/zs/tjws/tjzb/202301/t20230101_1903699.html (China).

27. *See, e.g.*, *infra* notes 262–265 and accompanying text. *See also* Roberto Aragão & Lukas Linsi, *Many Shades of Wrong: What Governments Do When They Manipulate Statistics*, 29 REV. INT'L POL. ECON. 88, 88–89 (2022).

manipulates GDP figures, even foreign media outlets continue to cite those GDP figures as a primary indicator of the nation's economic health—in some cases, shortly after commenting on their unreliability.[28] The reason is of course not that foreign media is controlled or politically influenced by the Chinese government; it is, we think, more likely the simple absence of reliable alternatives.

B. *The Information Asymmetry Principle*

If information is essential, influential, and powerful, governments as entities and officials as individuals will naturally have an incentive to monopolize it. This subpart develops an account of the powerful incentives that governments have to produce information asymmetries. We call this the *information asymmetry principle*. An information asymmetry exists where a government entity or some collection of government entities has access to information that is not disclosed publicly and which cannot be obtained, audited, or reproduced by other actors, including private actors and other governmental actors. Informational asymmetries occur on spectrums and in gradations. They exist where government withholds information entirely and where government shares information externally that is less complete, more general, or more processed than the information it possesses internally.

1. *Behavioral Incentives*

Some officials, of course, will always be motivated by corrupt purpose. Officials willing to engage in unlawful behavior for personal or political advancement have strong incentive to create information asymmetry. When government has access to information that is not publicly disclosed or cannot be publicly audited (mechanisms of accountability that we discuss further in Subpart 2), they have greater flexibility to shape information products for illicit purpose. It is easy to imagine authoritarian officials fabricating data to burnish their public image in this way, but politicians in democratic regimes are not immune from those impulses.[29] This form of politically motivated information shaping has been the subject of significant academic scrutiny.[30]

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28. *See* Greg Ip, *Why You Shouldn't Trust China's Growth Data*, WALL ST. J. (Mar. 6, 2024, 9:25 AM), https://www.wsj.com/world/china/why-you-shouldnt-trust-chinese-growth-data-c65d1a8c; Singapore Editors, *China Consumption and Investment Slow Unexpectedly*, WALL ST. J. (May 17, 2024, 3:32 AM), https://www.wsj.com/world/china/china-consumption-investment-slows-unexpectedly-d397cec6.

29. *See* sources cited *supra* notes 10–15.

30. *See, e.g.*, sources cited *supra* notes 13, 20, 21; Andreas V Georgiou, *The Manipulation of Official Statistics as Corruption and Ways of Understanding It*, 37 STAT. J. INT'L ASS'N OFF. STATS. 85 (2021); Carsten A. Holz, *The Quality of China's GDP Statistics*, 30 CHINA ECON. REV. 309 (2014).

More importantly—and we think more consequentially—officials with more benign and even publicly interested motivation also have incentive to create and sustain information asymmetries between the state and the public. As Max Weber famously argued, a "preoccupation with secrecy is an inherent characteristic of administrative institutions." [31] As is well documented, government officials—whether democratic or authoritarian—are motivated by career advancement, political status, rent-seeking, or simply mental self-importance.[32] A rational, self-interested technocrat with those motivations, who has no intention of manipulating information for private pecuniary or political gain, will nonetheless benefit from monopolizing information production. Doing so makes their work more irreplaceable and therefore gives them greater power, prestige, and influence.[33] It also reduces the likelihood of embarrassment and punishment if and when honest technocratic errors or changes are made.[34]

Even publicly-minded public officials can have reasons to create information asymmetries. They might believe, with justification, that they cannot internally deliberate and air the best—or certainly controversial—ideas with outside actors looking over their shoulders, as the Federal Reserve has aggressively asserted against efforts to gain greater access to internal data and decisionmaking rationales.[35] And, they may wish to avoid being second-guessed by outsiders with less government experience and without access to important details.

There are, of course, also powerful instrumental reasons for rational government officials *not* to monopolize information. Some amount of accurate information sharing is necessary for modern societies to function. Governments that failed to supply such information would undermine the foundations of their own rule by triggering swift and highly visible socioeconomic dysfunction. Obvious examples of this include land registries, food and drug approval records, many forms of pharmaceutical and medical information, patents, disclosure documents for publicly traded companies, and the content of many laws and regulations.[36]

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31. Francis E. Rourke, *Secrecy in American Bureaucracy*, 72 POL. SCI. Q. 540, 540 (1957) (citing FROM MAX WEBER: ESSAYS IN SOCIOLOGY 196–244 (1946)).

32. Seung Ginny Choi & Virgil Henry Storr, *A Culture of Rent Seeking*, 181 PUB. CHOICE 101 (2019); Eyal Zamir & Raanan Sulitzeanu-Kenan, *Explaining Self-Interested Behavior of Public-Spirited Policy Makers*, 78 PUB. ADMIN. REV. 579, 579 (2018).

33. On the behavioral incentives of technocrats, see, e.g., Miguel Angel Centeno, *The New Leviathan: The Dynamics and Limits of Technocracy*, 22 THEORY & SOC'Y 307, 323 (1993) ("Control of information is another critical resource for technocrats.").

34. *Id.*

35. Marvin Goodfriend, *Monetary Mystique: Secrecy and Central Banking*, 17 J. MONETARY ECON. 63, 64–65 (1986).

36. These are all cases where, should the government fail to disclose information accurately, public detection of that failure is all but inevitable, and significant backlash may occur. For examples of such backlash, see Tania Branigan, *Chinese Figures Show Fivefold Rise in Babies Sick from Contaminated*

But beyond those subject-matter constraints lies a vast amount of information that the government produces and utilizes—information about, for example, taxes, employment, economic growth, migration and immigration, social attitudes, foreign affairs, and the internal workings of the state—that private socioeconomic activity does not depend on quite so powerfully. Real estate markets would collapse if governmental records were significantly and systemically inaccurate, but no such dire consequences would likely accompany, say, an inaccurate GDP assessment, jobs report, or immigration figure.[37]

2. Policy Justifications

Separately, there are a range of justifiable policy goals that *require* government to withhold information and thus necessarily produce information asymmetries. When government withholds national security information because disclosing information to the public also means disclosing that information to foreign adversaries, the government creates an information asymmetry.[38] When government discloses anonymized or structured statistical information to protect the privacy of individuals whose raw data those statistics reflect, the government creates an informational symmetry.[39] When government promises private firms confidentiality in exchange for sharing information or participating in one of the surveys that form the backbone of the Bureau of Economic Advisors' and Census Bureau's economic statistics, the government creates an information asymmetry.[40]

Many of those interests—particularly privacy and national security—are generally popular with voters.[41] As recent scholarship has documented, even the Chinese population responds positively to governmental attempts to safeguard private information.[42] States, in short, can often invoke these exceptions at little political cost. A similar political logic applies to national security exceptions. Even in peacetime, most populations have a fairly high

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Milk, GUARDIAN (Dec. 2, 2008, 5:44 AM), https://www.theguardian.com/world/2008/dec/02/china; *Compensation Lawsuits Filed Due to Incorrect Keeping of the Land Registry*, SOLMAZ LAW (June 7, 2022), https://www.solmazlaw.com/en/compensation-lawsuits-filed-due-to-incorrect-keeping-of-the-land-registry/.

37. Some have even argued that statistical manipulation can improve economic outcomes. *See* Aragão & Linsi, *supra* note 27.

38. *See* MICHAEL P. COLARESI, DEMOCRACY DECLASSIFIED: THE SECRECY DILEMMA IN NATIONAL SECURITY (2014).

39. *See infra* Part IV.B (describing the confidential requirements for public health data and census data).

40. *Id.*

41. On American privacy politics and FOIA exemptions, see Stephanie Alvarez-Jones, *"Too Big to FOIA": How Agencies Avoid Compliance with the Freedom of Information Act*, 39 CARDOZO L. REV. 1055 (2018).

42. *See* Jia, *supra* note 16.

tolerance for governmental confidentiality when significant national security interests hang in the balance.[43] As a result, governments tend to have significant political discretion to define the scope and content of national security interests.[44]

Protecting national security, respecting individual privacy, safeguarding trade secrets or other confidential corporate information, and facilitating robust internal discussions are all worthy and important policy goals that will, in many cases, justify information asymmetries. Our goal in this Article is not to suggest that these interests cannot justify information asymmetry but to call attention to the importance of having legal strategies that not only prevent unnecessary information asymmetries, but also help ensure informational regularity where they must, for justifiable policy reasons, occur. As we discuss next, scholars have focused too much on the justifications *for* this kind of information asymmetry, and too little on how to ensure informational regularity once they occur.

Moreover, these justifiable policy interests have important interactions with the bureaucratic incentives discussed above. As we document in Parts III and IV, in practice governments do not do robust cost-benefit (or other policy-justifying) analysis each time they are asked to disclose information that could implicate countervailing interests like privacy, security, or trade secrets. Rather, those categories of interests gain expression as broad-scale exceptions to otherwise applicable disclosure regimes. As many scholars have shown, however, once an exception exists that allows government to sustain an information asymmetry, those expansions tend to expand and expand.[45] Justifiable policy exceptions, in short, can come to be used as pretext to sustain broader, less justifiable information asymmetries.

3. The Costs of Information Asymmetry

At their most basic, information asymmetries insulate government information products from public engagement and accountability. This insulation comes with costs. First, it can lower information quality by cutting

43. *See* Kristen E. Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, 123 COLUM. L. REV. 549, 549–61 (2023); Christina Koningisor, *Secrecy Creep*, 169 U. PA. L. REV. 1751, 1779 (2020).

44. Koningisor*, supra* note 43. On security politics in China and their use to shield increasingly large amounts of government data, see Jingyuan Shi & Yuchen Lai, *Jianxi Shuju Anquan Fa Zhongdian Zhidu Neirong* (简析《数据安全法》重点制度内容) [*Analysis of the Key Institutional Provisions of the Data Security Law*], SIMMONS (June 18, 2021), https://www.simmons-simmons.com/en/publications/cktbijxdn1cpz0a51xodr9gqm/simmons-data-observation-3.

45. This dynamic has plagued FOIA. *See, e.g.*, Edward L. Wilkinson Jr., *Foiled FOIA: The Excessive Exemption*, 55 ST. MARY'S L.J. 819 (2024); Deepa Varadarajan, *Business Secrecy Expansion and FOIA*, 68 UCLA L. REV. 462 (2021); Khaldoun AbouAssi & Tina Nabatchi, *A Snapshot of FOIA Administration: Examining Recent Trends to Inform Future Research,* 49 AM. REV. PUB. ADMIN. 21 (2018). This has striking similarities to the Chinese government's recent attempts to revoke public access to large amounts of data through use of national security laws and regulations. *See* discussion *infra* Part III.C.2.

off pathways of public input that would improve government method or reasoning. Second, it can diminish public trust in government information (even information that is accurate) by foreclosing the kind of transparency that would advertise its regularity. Finally—as is our central focus here—information asymmetry can create opportunities for government to be an agent of misinformation.

Misinformation can have multiple variants. In some cases, as when a government discloses a count of civilian casualties from a combat operation that is lower than the true figure, there is a clear baseline against which to identify the government's information as discordant with fact. In other cases, such as unemployment figures, the informational claim is a construction—the product of a computational methodology and modeling strategy.[46] In such cases there is no pure fact of the matter, only social expectations and settled conventions about how an informational product is produced—something of an informational equilibrium.[47] In that context, misinformation is the government's deviation from those settled conventions or social expectations in the production of its informational product. We therefore understand misinformation to be information that does not accord with fact or information products that do not accord with reasonable social expectations or settled conventions for their production.

C. Legal Solutions for Information Asymmetries and the Problem of Misinformation

As noted above, law shapes information production in wide-ranging ways. Law creates the internal processes, and legal obligations of, administrators who produce information. It also facilitates external participation in, and validation of, the government's information products. The government, for example, can facilitate external audits of government information by comprehensively disclosing its inputs, assumptions, models, and methods. The resulting audits—formal or informal—can identify errors or distortions by opening up the bureaucratic black box of information production. Government can also invite external validation of information by facilitating the production of what we call counternarratives—or credible alternative information products based on independent data and methods. In what follows, we identify three sets of legal solutions that both internally and externally regulate information production.

We begin with the most conventional ways that law structures information production. First, law can directly regulate the process of

46. *See* Jeroen C.J.M. van den Bergh, *The GDP Paradox*, 30 J. ECON. PSYCH. 117, 118, 123 (2009).
47. *See* Robert Salais, *Quantification and Objectivity: From Statistical Conventions to Social Conventions*, 41 HIST. SOC. RSCH. 118, 125–26 (2016).

information production by designing informational production processes, codes of conduct, disclosures, record-keeping requirements, and the like. We call this the *regulatory solution.*

Second, law can give private actors a legal right to access governmental information, through which they can audit government information. We call this the *rights solution*.

But, we argue, there is also a third overlooked approach to regulating information production: the structural separation of information production powers—or informational federalism—which has not, to our knowledge, been comprehensively theorized or documented. We call this the *structural solution.* The structural solution, used in various ways in practice, serves important theoretical functions that the other two forms of legal regulation cannot.

1. *The Regulatory Solution*

The most obvious way that law can control information asymmetries, and their harms, is by directly regulating the governmental agencies that gather and produce information. We call this the regulatory solution. Governments use a range of administrative laws, regulations, and norms (or "soft law") to help ensure regularity in information production.

For example, laws and regulations can require any government agency that wields informational power to keep thorough records and make them available for inspection to the public or to other governmental institutions.[48] Such disclosure can cover raw data, algorithms, definitions, methodologies, deliberations, internal processes, and more. Law can also require information to be published according to a fixed schedule, through specific channels.[49] It can require government information collection techniques and methodologies to conform to industry best practices or follow the guidance of internal or external panels of experts. It can require peer review

48. For American recordkeeping requirements, see ADMIN. CONF. OF THE UNITED STATES, ADMINISTRATIVE RECORD IN INFORMAL RULEMAKING (July 10, 2013); Information Quality Act, Pub. L. No. 106-554, § 515, 114 Stat. 2763A-153 to 2763A-154, *reprinted in* 44 U.S.C. § 3516 (2012). For Chinese recordkeeping requirements, see Zhonghua Renmin Gongheguo Dangan Fa (中华人民共和国档案法) [Archive Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., June 20, 2020, effective Jan. 1, 2021), STANDING COMM. NAT'L PEOPLE'S CONG. GAZ., https://www.gov.cn/xinwen/2020-06/21/content_5520875.htm (China).

49. Both the United States and China have legal and administrative systems in place to evaluate whether statistical agencies release publications on schedule. *See BEA - Timeliness: On-time Release of Economic Statistics* U.S. DEP'T OF COM. (Mar. 29, 2024), https://performance.commerce.gov/KPI-BEA/BEA-Timeliness-On-time-release-of-economic-statist/ke6z-u9iv; *see also* Guojia Tongjiju Zhifa Jianduju (国家统计局执法监督局) [Law Enforcement Supervision Bureau of the National Bureau of Statistics], Zhonghua Renmin Gongheguo Tongjifa Shiyi Di Ershisan Tiao (《中华人民共和国统计法》释义第二十三条) [Explanation of Article 23 of the Statistics Law of the People's Republic of China] (Sept. 5, 2022), http://lwzb.stats.gov.cn/pub/lwzb/pfyd/202203/t20220331_6316.html (China).

of government information products, as did the influential U.S. Office of Management and Budget (OMB) Bulletin on Peer Review and Information Quality.[50] And it can facilitate external advisory committees.[51]

So too governments can cultivate soft law or norms of information production that help ensure information regularity, trust, and quality, while fortifying administrators against the incentives described above. For example, all thirteen of the principal statistical agencies in the United States have committed to following the *Principles and Practices for a Federal Statistical Agency* initially developed by the National Academies of Sciences, Engineering, and Medicine's Committee on National Statistics in 1972.[52] Indeed, professional norms have played a celebrated role in accounts of statistical regularity in the United States for many decades.[53] Many, to that end, advocate for political independence of statistical agencies to ensure that those norms, and not politics, guide information producers today.

Formal regulation of information producers and efforts to cultivate professional norms and self-regulation are essential legal tools to prevent unnecessary information asymmetries and to control the risks associated with necessary ones. But they also have important limitations. Even in the best case, when information producers are insulated from corrosive politics—and permitted to operate according to their proscribed processes and carefully calibrated professional norms—it can be difficult to externally detect incidents of non-compliance with internal agency rules and norms. But even the best case cannot be taken for granted; information producers will not always be insulated from politics. Indeed, the U.S. Supreme Court has over the last four decades interpreted the U.S. Constitution to require direct political control over ever more aspects of federal agencies, whatever their function.[54]

A healthy information ecosystem, therefore, needs not just internal legal structuring, but ways of facilitating external auditing and counternarratives for government information products. Indeed, this is the central insight of

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50. *Final Information Quality Bulletin for Peer Review*, 70 Fed. Reg. 2664 (Off. of Mgmt. & Budget, Jan 14, 2005)

51. *See, e.g.*, *Federal Economic Statistics Advisory Committee*, U.S. DEP'T COM., BUREAU ECON. ADVISORS https://apps.bea.gov/fesac/ (last visited Mar. 27, 2025). The Bureau of Labor Statistics' Technical Advisory Committee and the Federal Economic Statistics Advisory Committee were recently disbanded by President Trump. Matt Grossman & Paul Kiernan, *Trump Administration Disbands Two Expert Committees on Economic Statistics*, WALL ST. J. (Mar. 21, 2025), https://www.wsj.com/articles/trump-administration-disbands-two-expert-committees-on-economic-statistics-8c9bb277; *National Center for Health Statistics Board of Scientific Counselors*, CTR. FOR DISEASE CONTROL (Feb. 5, 2025), https://www.cdc.gov/faca/committees/bscnchs.html.

52. *See, e.g.*, *Principles and Practices for a Federal Statistical Agency*, U.S. DEP'T. JUST., BUREAU JUST. STATS., https://bjs.ojp.gov/about/principles-and-practices (July 22, 2022); *Commitment to Scientific Integrity by Principal Statistical Agencies*, U.S. DEP'T COM., BUREAU ECON. ANALYSIS, https://www.bea.gov/commitment-scientific-integrity-principal-statistical-agencies (Feb. 2, 2024).

53. *See* discussion *infra* notes 219–220 and related discussion.

54. *See infra* note 235 and related discussion.

FOIA—however robust the government's internal rules for information production are, the risks of political shaping, bureaucratic tinkering, and administrative self-interest are sufficiently real to require an additional level of protection. FOIA and its functional equivalents in other countries offer the conventional approach to providing that protection by empowering the general public to obtain government records and use them to audit government information products.[55]

2. The Rights Solution

FOIA operates by conferring a "right to know" on the public. We therefore call it and its comparable statutes—like China's "government information disclosure petition system"—the *rights solution*.[56] Public-information rights, in turn, allow private entities the possibility of auditing government information products or accessing enough information about government methods to construct competing counternarratives made credible by their diagnostic comparison to government information and methods. This is attractive not just because of its democratic undertones, but because it outsources some information production costs to private parties.[57]

Although information access rights play an important role in legally regulating government production of information, they have significant drawbacks. First, as FOIA scholars in the United States have identified, the objectives and motivations of FOIA requesters do not always align with the public interest. Although journalists and academics are significant FOIA users—and the prototypical FOIA requester imagined by many who see FOIA as a core tool of informational accountability—at many agencies, a significant share of FOIA requesters have commercial interests and seek to monetize government data, not audit it.[58]

Second, every informational right regime has some exceptions—to vindicate privacy, security, corporate confidentiality, internal deliberation,

55. We discuss FOIA at length *infra* Part IV.A.

56. On the Chinese information petitioning system, see Xiao Ming (肖明), *Zhengfu Xinxi Gongkai Zhidu Yunxing Zhuangtai Kaocha Jiyu 2008 Nian Zhi 2010 Nian 245 Fen Zhengfu Xinxi Gongkai Gongzuo Niandu Baogao* (政府信息公开制度运行状态考察—基于 2008 年至 2010 年 245 份政府信息公开工作年度报告) [*Government Information Disclosure System Operation Status Inspection - Based on 245 Annual Reports on Government Information Disclosure Work from 2008 to 2020*] 10 FAXUE (法学) [L. SCI.] 78, 78–85 (2011) (China). For a global survey, see Greg Michener, *FOI Laws Around the World*, 22 J. DEMOCRACY 145 (2011).

57. Public rights of informational access have other important objectives in addition to regulating the production of government information. They provide, for example, a mechanism through which individuals can obtain records about themselves for use in their administrative interactions with the government or for other individualized purposes. *See generally* Margaret B. Kwoka, *First-Person FOIA*, 127 YALE L.J. 2204 (2018)

58. *See* Margaret B. Kwoka, *FOIA, Inc.*, 65 DUKE L.J. 1361, 1365 (2016).

investigative integrity, and other interests, as we noted above. And any area excepted from disclosure under a freedom of information statute is also an area in which the rights solution cannot act as a tool of information regulation.[59]

A large sweep of politically salient information products, from macroeconomic data and labor statistics to trade and crime statistics, rely on individual or firm-level information that implicates privacy or commercial confidentiality interests.[60] National security, for its part, can be implicated in information related to spending, contracts, personnel records, environmental measurements, and more.[61] What matters for our purposes is that the broader the exceptions—justifiable or pretextual—the more limited the potential scope of informational rights, even perfectly implemented, as a tool for the regulation of government information production.

Next, we turn to a final—and undertheorized—set of legal techniques that can be used to regulate information production in ways that direct regulation and rights cannot.

3. *The Structural Solution*

Government structure offers a third set of techniques to regulate government information production by diffusing information production powers between governmental entities. We call this the *structural solution*. Structural division can occur both horizontally—between different government entities at the same political level—and vertically—between different levels of government. We focus here on the latter, which we call *informational federalism*. In what follows, we explain how this informational federalism can facilitate credible counternarratives to federal information products. We understand informational federalism to capture many different forms of federal-state power sharing in the information production process. We illustrate the various forms—arising through constitutional requirement, federal statute and regulations, and bottom-up intergovernmental agreements—that states can use to improve information production. And we discuss the advantages this kind of structural solution

59. *See* GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], Guojia Tongjiju Guanyu 2021 Nian Guonei Shengchan Zongzhi Zuizhong Heshi de Gonggao (国家统计局关于 2021 年国内生产总值最终核实的公告) [Announcement from the National Bureau of Statistics Regarding the Final Verification of Gross Domestic Product (GDP) for the Year 2021], Dec. 2022, https://www.stats.gov.cn/sj/zxfb/202302/t20230203_1901693.html (China).

60. *See, e.g.*, Mark Q. Connelly, *Secrets and Smokescreens: A Legal and Economic Analysis of Government Disclosures of Business Data,* WIS. L. REV. 207 (1981); Christopher J. Morten, *Publicizing Corporate Secrets*, 171 U. PA. L. REV. 1319 (2023).

61. *See, e.g.*, Susan Nevelow Mart & Tom Ginsburg, *[Dis-]Informing the People's Discretion: Judicial Deference Under the National Security Exemption of the Freedom of Information Act*, 66 ADMIN. L. REV. 725 (2014); Andrew Verstein, *The Corporate Governance of National Security*, 95 WASH. U. L. REV. 775 (2018).

has over the rights and regulatory solutions. Our argument is not that structure can or should displace those forms of information control, but that it deserves to be among the tools used (and scrutinized by scholars) to that end because it can serve functions that those more conventionally examined tools cannot and because it interacts with those tools to create complex information production dynamics.

First, at a general level, informational federalism is well-suited to the development of credible counternarratives to federal information products. State and local governments have the administrative apparatuses, political incentives, and stores of public trust in at least some areas to develop competing accounts of, or counternarratives to, many federal information products. Indeed, because states and localities are smaller in size, and closer to the populations they serve, their capacity to develop trustworthy information about local labor conditions, election fraud, crime data, security threats, and more may be superior to that of the federal government.[62] The federal government and states can, in short, engage in something of a "marketplace of ideas" of information production. Under some conditions, states and localities may likewise be positioned to audit federal data if they either supply that data or are formally given access to it.

Informational federalism can take many forms, as we develop in greater detail in Parts III and IV. As a basic matter, it has many sources of shaping legal authority. It can result from the constitutional division of information gathering powers between levels of government. It can result from federal statutes that envision a role for states in the information production process—a variation on what Abbe Gluck has called *intrastatutory federalism*.[63] It can result from functional power—as states and localities redeploy legal authority nominally granted for other purposes to develop counternarratives to federal informational products. And it can arise from federal-state agreements, through which multiple governments agree to jointly produce information. Because of those multiple sources of legal structuring—and the multiple forms of federalism they can produce—informational federalism can be highly formal or very informal, cooperative or uncooperative.[64] There are as many variations of informational federalism as there are of federalism itself.

As a legal technique to improve the state's information production, federalism can fill gaps left by both the regulatory and rights solutions

62. In Gallup's annual Governance survey, for example, American voters express higher trust in state local governments than in the federal government. Jeffrey M. Jones, *Americans Trust Local Government Most, Congress Least*, GALLUP (Oct. 13, 2023), https://news.gallup.com/poll/512651/americans-trust-local-government-congress-least.aspx.

63. *See* Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534 (2011).

64. *See* Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1258 (2009).

discussed above. Relative to rights solutions, federalism's advantage is its allowance for auditing and counternarratives without public disclosure. Consider a stylized example about labor statistics. Labor statistics are typically the product of a range of administrative data, including wage data, self-reported unemployment data, state benefit administration information, and surveys of individuals and businesses. A government could not publicly disclose that raw data without seriously breaching a range of privacy interests—nor would FOIA or any other freedom of information law of which we are aware require such a disclosure. Any disclosure to the public would, then, need to be highly processed. By contrast, states and localities can access that raw data to either audit or produce independent information products without incurring privacy risks. The salutary influence of an intergovernmental informational market is compatible, in short, with safeguarding the many confidentiality interests that might otherwise constrain rights solutions.[65] It provides a way of subjecting information that cannot be exposed publicly to a form of public contestation, nevertheless.

Relative to regulatory solutions, federalism's core advantage is its (at least partial) insulation from federal politics. In the United States, many information producing agencies have traditionally claimed political independence and neutrality.[66] But federal legal and political developments, which we explore further in Part IV, create a real risk of corrosion in the enforcement of information production laws and corruption to the integrity of information production norms. Because political control will always vary across federal, state, and local governments, informational federalism can help ensure that any politicization of information production at the federal level has credible resisters at the state and local levels.[67]

There are, of course, some limits on what federalism can or should accomplish. First, states and local governments must be able to shoulder the relevant administrative costs of auditing or counternarrative production.[68] Informational federalism and other forms of structural divisions are costly

65. In the United States, legal rules on intergovernmental information sharing are generally permissive. *See* Fahey, *Data Federalism*, *supra* note 14. In China, internal data-sharing within the government is likewise expansive. *See* Chen Faqiang (陈发强), Chen Yuehua (陈月华) & Yang Shaoliang (杨绍亮), *Zhengwu Xinxi Xitong Zhenghe Gongxiang Anquan Wenti Fenxi yu Duice* (政务信息系统整合共享安全问题分析与对策) [Analysis and Countermeasures for the Security Issues Related to the Integration and Sharing of Government Information Systems], BAOMI KEXUE JISHU (保密科学技术) [SEC. SCI. & TECH.] 13, 15–16 (2018) (China).

66. *See generally* Robert Maranto & B. Douglas Skelley, *Neutrality: An Enduring Principle of the Federal Service*, 22 AM. REV. PUB. ADMIN. 173 (1992) Lisa Schultz Bressman & Robert B. Thompson, *The Future of Agency Independence*, 63 VAND. L. REV. 599 (2010).

67. *See generally* Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077 (2014).

68. On cost-benefit tradeoffs in government auditing practices, see Yoshie Saito & Christopher S. McIntosh, *The Economic Value of Auditing and Its Effectiveness in Public School Operations*, 27 CONTEMP. ACCT. RSCH. 639 (2010).

in the sense that they necessarily create overlaps in function and authority between different governmental actors. There will be familiar trade-offs between cost and accountability, as there so often are across areas of governance.[69] Second, some forms of information—related to military or intelligence operations, for example—may be so "inherently federal" or "inherently central" that central governments are justified in restricting local access to the information needed to construct a counternarrative. In those same areas, moreover, we would expect local accounts to have less credibility. Finally, having more than one governmental entity produce the same sets of information is almost certain to increase total administrative costs. When the information under question is of relatively low importance or is difficult to distort, these additional costs may be wasteful.

III. THE CHINESE INFORMATIONAL STATE

This Part uses an overview of the Chinese Communist Party-state's information production apparatuses to illustrate the three theoretical arguments made in Part II. Section A summarizes the current institutional structure of Chinese information production. Sections B and C lay out its internal evolution from an earlier system of "local monopolization" (broadly summarized in Section B) to the current system of "centralized divisions" (described with more detail in Section C). The latter has imposed greater internal accountability on the central government by leveraging functional divisions between different governmental entities, but it has also aggravated state-society information asymmetries. Section D reconnects these institutional narratives to the theoretical arguments made in Part II.

A. The Basics: The Chinese Information Production System

By some measures, the amount of information the Chinese government produces for public consumption has grown between eleven and twenty-two times since fifteen to twenty years ago: in 2008, the National Bureau of Statistics (NBS) published 3,352 statistics indexes each year for a total of 1.2 million data points.[70] By 2023, those numbers had grown to 75,500 indexes

69. *See, e.g.*, Mathew D. McCubbins, Roger G. Noll & Barry R. Weingast, *Administrative Procedures as Instruments of Political Control*, 3 J.L. ECONS. & ORG. 243, 250–53 (1987).

70. *See* 2008 Nian Guojia Tongjiju Zhengfu Xinxi Gongkai Gongzuo Baogao (2008年国家统计局政府信息公开工作报告) [Report on Government Information Disclosure Work by the National Bureau of Statistics in 2008], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], https://www.stats.gov.cn/xxgk/gknb/tjj_gknb/202006/t20200612_1758480.html (last visited Mar. 20, 2025).

and thirteen million data points.[71] This is but the tip of the iceberg of an information apparatus that now permeates every level of government.

The enormity of government information collection activities in China is well documented in previous scholarship.[72] Over the past fifteen years, the Party-state has built a local bureaucracy that now administratively penetrates right down to the neighborhood level—as opposed to a circa-2005 bureaucracy that rarely went below the county or district level.[73] This bureaucracy conducts regularized surveillance and information gathering on its own, but it also partners with China's internet technology giants to collect personalized data on all cellphone users.[74] The vast reams of information generated through these channels then feed directly into every dimension of administrative governance, and specifically into the ever-larger amounts of information that the state produces for public consumption.

The general scope of information production is laid out in the *Government Information Disclosure Regulations* ("Zhengfu Xinxi Gongkai Tiaoli"), first published by the State Council in 2007 and last revised in 2019.[75] Article 20 of this document lays out fifteen categories of information that all levels of government are obliged to proactively publish, ranging from laws, regulations, and policies; to organizational, personnel, and contact information for all governmental offices; to information on government budgets and spending projects; to socioeconomic statistics; to information on the environment, public health, and food and drug safety.[76]

The actual production of quantitative information is governed by a different set of written rules, of which the National Statistics Law, first issued in 1983 by the National People's Congress and last revised in 2024, is the highest legal authority.[77] These rules provide, at present, for a two-track system of data collection and processing. Within the first, more traditional track, information production is a bottom-up process in which

71. *See* 2022 Nian Guojia Tongjiju Zhengfu Xinxi Gongkai Gongzuo Baogao (2022年国家统计局政府信息公开工作报告) [Report on Government Information Disclosure Work by the National Bureau of Statistics in 2022], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], https://www.stats.gov.cn/xxgk/gknb/tjj_gknb/202301/t20230128_1892453.html (last visited Mar. 20, 2025) (China).

72. *See, e.g.*, Xiao, *supra* note 16.

73. *See generally* Yutian An & Taisu Zhang, *Pandemic State-Building: Chinese Administrative Expansion Since 2012*, 42 YALE L. & POL'Y REV. 330 (2024).

74. *See, e.g.*, Brenda Goh, *Ant Group's Micro Loan Service Huabei Begins to Share Data with China's Central Bank*, REUTERS (Sept. 22, 2021), https://www.reuters.com/world/china/ant-groups-micro-loan-service-huabei-begins-share-data-with-chinas-central-bank-2021-09-22/.

75. Zhengfu Xinxi Gongkai Tiaoli, *supra* note 19.

76. *Id.* art. 20.

77. Zhonghua Renmin Gongheguo Tongjifa (中华人民共和国统计法) [Statistics Law of the People's Republic of China] [hereinafter National Statistics Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 8, 1983, effective Dec. 8, 1983, *rev'd* May 1996, June 2009 & Sept. 2024), STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (China).

private actors disclose individual and firm-level raw data to local government entities, which then send processed statistics and reports to higher-level governments.[78] In the second track, largely constructed after 2005, central level offices dispatch their own survey teams down to the local level to directly conduct data collection and verification.[79]

Within the former track, the structures of local bureaucratic organization introduce further functional divisions. At each level of sub-national government—provincial, city, county/district, and township/subdistrict—the Chinese state apparatus is separated into regional governments, which take general administrative and political responsibility for an entire geographic region, and specialized entities that focus on a limited set of activities within the region.[80] For example, the Baoding City Government belongs to the former category, whereas the Baoding City Intermediate People's Court belongs to the latter. The city government holds higher political rank than the court, but in actual operation the court is often more directly accountable to the Hebei Province High Court—which itself is accountable to the Supreme People's Court in Beijing.[81] This vertical chain of command gives the court some degree of functional and institutional independence from the city government, including in information production.

In other words, there are two different kinds of functional divisions within the Chinese information apparatus: vertical divisions between central authorities and local ones, and horizontal divisions between different governmental entities at the same geographical level. To be clear, these divisions are *internal*: they generally structure the flow of information *within* the Party-state, before it is published to the public.

78. These structures still dominate the current statistics system. *See* National Statistics Law, arts. 7, 14, 18, 22, 29, 38; Zhonghua Renmin Gongheguo Tongjifa Shishi Tiaoli (中华人民共和国统计法实施条例) [Regulation on the Implementation of the Statistics Law] (promulgated by State Council, Aug. 1, 2017) ST. COUNCIL GAZ., April 12, 2017, art. 18, 34 (China); *see also* Zhonghua Renmin Gongheguo Tongjifa Shishi Xize (中华人民共和国统计法实施细则) [Detailed Rules for the Implementation of Statistics Law] (promulgated by State Council, Feb.1, 2006) ST. COUNCIL GAZ., Dec. 16, 2005, art. 9, 25, 26 (China).

79. *See* Guowuyuan Bangongting Guanyu Yinfa Guojia Tongjiju Zhishu Diaochadui Guanli Tizhi Gaige Fangan de Tongzhi, Guobanfa [2005] 14 Hao (国务院办公厅关于印发国家统计局直属调查队管理体制改革方案的通知，国办发[2005]14 号) [Notice by the General Office of the State Council Regarding the Reform of the Management System of the National Bureau of Statistics' Directly Affiliated Survey Teams, General Office of the St. Council No. 14, 2005] (promulgated by Gen. Off. of St. Council, Mar. 16, 2005) ST. COUNCIL GAZ., April 16, 2005 (China).

80. *See* Zhou Zhenchao (周振超), Lü Xiaobo (闾小波), Yang Xuedong (杨雪冬), Guan Baoying (关保英), Wang Lixin (王立新) & Hao Yuqing (郝宇青), *Zouchu Tiaokuai Guanxi de Zhiluan Kunju* (走出条块关系的治乱困局) [*Getting Rid of the Periodic Dilemma in Horizontal and Vertical Relationships*], TANSUO YU ZHENGMING (探索与争鸣) [EXPL. & FREE VIEWS], vol. 1, no. 11, 2020, at 33, 33–54 (China).

81. Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L., 306, 330 (2019).

It was not always so. The current regime is the product of a decade-long reform process that sought to both shore up the internal reliability of local statistics *and* reduce the likelihood that central statistics could ever be challenged in the public's eye. The next two sections discuss these developments.

B. *The Local Monopolies Paradigm*

Prior to President Xi Jinping's ascension to Communist Party leader in 2012, China's information production regime was, for most practical purposes, a system of *local monopolies*. In that system, official information was usually produced through a localized process that eluded effective central oversight. From the 1980s to the early 2000s, central attempts to deter local information manipulation usually had to operate within stifling resource constraints, and therefore could only rely on relatively low-cost "regulatory" and "rights" solutions, as we defined them in Part II. These solutions were, as our theoretical framework would predict, largely ineffective. This Section illustrates these institutional dynamics in a chronological fashion.

1. *Struggling with Local Monopolization (1978–1993)*

The early history of the People's Republic of China is rife with major informational scandals, in which nearly all levels of government misrepresented facts both to society-at-large and to each other. The most disastrous of these came during the Great Leap Forward (1958–1961), during which local officials routinely inflated production figures to meet unrealistic quotas sent down by central planners.[82] The core problem with the entire Mao-era (1949–1976) statistics system was, as scholars have documented, that it was overly politicized, with everything from core methods down to everyday operations being forced into conformity with the often shifting political or ideological agendas of the Party leadership.[83]

Soon after Mao's death in 1976, the Party-state began to pursue an aggressive political and institutional reform agenda under Deng Xiaoping's leadership. The informational production system went through its own transitional phase between 1978, when Deng became China's *de facto* political leader, and the mid-1980s, with the passage of the National Statistics Law in 1983 being the most important legal milestone.[84] This phase saw a sharp

82. Hongwei Xu & Geng Tian, *Is Lying Contagious? Spatial Diffusion of High-Yield "Satellites" during China's Great Leap Forward*, 126 AM. J. SOCIO. 632, 636–40 (2020).

83. *See generally* ARUNABH GHOSH, MAKING IT COUNT: STATISTICS AND STATECRAFT IN THE EARLY PEOPLE'S REPUBLIC OF CHINA (2020).

84. *See* Zhong Shouyang (钟守洋) & Cheng Ming (程名), Ruhe Renshi Xin Zhongguo Zhengfu Tongji de Fazhan Licheng (如何认识新中国政府统计的发展历程) [How to Understand the Development Process of the Government Statistics in the People's Republic of China], GUOJIA

expansion of the government's data collection, processing, and publication capacities. Formalized statistics on the service industry, international commerce, capital investment, and GDP entered the production pipeline, while traditional statistics on agriculture and industry gained additional scope and detail.[85] There was a fresh emphasis on depoliticizing statistics, which meant placing greater emphasis on professional training, educational qualifications, and objective accuracy.[86]

Organizationally, however, there were no sharp breaks from the Mao-era status quo. The National Statistics Law and other regulations issued at around the same time demanded, for example, that data be collected and kept within offices dedicated to the task, and that these tasks be carried out by specifically designated personnel.[87] Beyond that, however, the structural relationships between various levels of statistical bureaucrats remained largely unchanged.

These relationships were both geographically decentralized and functionally concentrated within each geographical region. Central and provincial governments tended to simply accept and then aggregate lower-level reports, rather than do their own information production from raw materials.[88] Moreover, local governments—town, county, or city—tended to functionally dominate all other governmental branches within its geographical jurisdiction. By exercising budget and personnel control over these other branches, including all branches of law enforcement and financial management, regional governments could govern in a largely unified fashion, thereby creating a sort of *de facto* administrative federalism.[89] Within these administrative structures, regional governments also dominated information production: for example, in the 1983 National Statistics Law, they were granted expansive oversight and management powers over the statistical work product of any governmental office within their geographical jurisdiction.[90]

This combination of geographical decentralization and intra-regional concentration made it very difficult for the center to verify local factual claims. Lacking institutionalized accountability and yet occasionally facing serious pressures to meet certain quantitative quotas, local governments and

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TONGJI JU (国家统计局) [NAT'L BUREAU STATS.] (Jan. 1, 2023), https://www.stats.gov.cn/zs/tjws/tjzn/202301/t20230101_1903758.html (China).

85. *See* Du Xin (杜欣), *Shunying Shidai Chaoliu, Huiying Gongzhong Husheng* (顺应时代潮流，回应公众呼声) [*In Response to the Trend of the Times, To Address Public Demands*], 6 ZHONGGUO TONGJI (中国统计) [CHINA STAT.] 31, 31–33, (2022) (China).

86. *See* GHOSH, *supra* note 83.

87. These provisions still exist in the current National Statistics Law, arts. 13, 14, 15, 16.

88. *See* Zhong & Cheng, *supra* note 84.

89. *See, e.g.*, Gabriella Montinola, Yingyi Qian & Barry R. Weingast, *Federalism, Chinese Style: The Political Basis for Economic Success in China*, 48 WORLD POLS. 50 (1995).

90. National Statistics Law, art. 19.

state-owned enterprises unsurprisingly continued to manipulate statistics for their own interests.[91]

By the mid-1980s, central authorities began to take more serious measures against these problems. In 1985, the NBS conducted, for the first time, a nationwide inspection of local statistics production.[92] Over the next three years, the NBS worked with the State Council to issue a series of regulations, seeking to regularize inspections and oversight over local entities.[93] Armed with these new regulatory tools, it carried out a second round of nationwide inspections in 1989. The NBS lacked significant inspection or auditing capacities of its own at this early stage, so it had to rely on local statistics bureaus to inspect all other statistics-producing entities within their geographical jurisdiction.[94] Despite these measures, when the next major round of national inspections rolled around in 1994, the situation on the ground seemed just as bad as in 1989, with significantly more violations being discovered than in previous rounds.[95]

With the benefit of hindsight, the limitations of these 1980s and early 1990s measures are obvious: mandatory disclosure rules are rarely effective unless reinforced with external verification. The national inspections that began in 1985 could have, in theory, provided some external verification, but their reliance on cooperation with local statistics offices meant that the central government continued to lack meaningful counternarrative production capacity or auditing capacity of its own, and therefore had no way of truly imposing local accountability.[96]

In fact, the 1980s and early 1990s were dominated by fiscal and administrative trends in which the center became *weaker* relative to localities.

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91. *See* Zhao Yining (赵忆宁), *Fenshuizhi Juece Beijing Huifang* (分税制决策背景回放) [*Playback of the Background of Decision-making on Taxation Separation Reform*], 37 LIAOWANG (瞭望) [OUTLOOK] 22 (2003) (China).

92. *See Quanguo Tongji Fazhi Gongzuo Dashi Ji* (全国统计法治工作大事记 1983.12-2023.12) [*Chronicle of Major Events in National Statistical Rule of Law Work*], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], https://www.stats.gov.cn/xw/tjxw/tjdt/202312/t20231208_1945370.html (last visited Mar. 20, 2025) (China).

93. Tongji Jiancha Tepaiyuan Weipai Banfa (统计检查特派员委派办法) [Methods for the Appointment of Special Commissioners for Statistical Inspection] (promulgated by Nat'l Bureau of Stats., Nov. 24, 1988, effective Nov. 24, 1988), NAT'L BUREAU STATS. GAZ. (China); Tongji Weifa Anjian Tonggao Zhidu (统计违法案件通告制度) [System for Notification of Statistical Violations Cases] (promulgated by Nat'l Bureau of Stats., Nov. 24, 1988, effective Nov. 24, 1988), NAT'L BUREAU STATS. GAZ. (China).

94. There are very few published reports on the 1985 inspection, if any, but reports from 1994, 1997, and 2001 clearly indicate that local statistics offices did the real heavy lifting in those inspections. *See* Quanguo Tongji Fazhi Gongzuo Dashi Ji *supra* note 92. There is no reason to think that the 1985 or 1989 inspections were any different.

95. *See* Quanguo Tongji Fazhi Gongzuo Dashi Ji, *supra* note 92.

96. Zhang Mougui (张谋贵), *Cong Xujia Tongji Shuzi Tan Woguo Tongji Guanli Tizhi de Gaige* (从虚假统计数字谈我国统计管理体制的改革) [*Reforming China's Statistical Management System from False Statistical Figures*], TONGJI YU YUCE (统计与预测) [STAT. & PREDICTION] (2003) (China).

From 1984 to 1993, the portion of national fiscal revenue generated by local governments rose from 59.5% to 78%, and their share of total expenditures likewise increased from 47.5% to 71.7%.[97] Academic commentators looking back at this era describe it as one of "de facto federalism," in which most fiscal decisions and economic policies were drawn up at the provincial level or below.[98] In such an environment, central administrative penetration into regional governments, including in informational production, was naturally difficult to realize.

2. *Experimenting with Regulatory and Rights Solutions (1993–2012)*

From 1993 onwards, a series of major fiscal reforms concentrated over half of fiscal revenue generation in the hands of central officials, but local governments continued to account for the lion's share of expenditures.[99] One might imagine that control over local revenue allocation would also strengthen the center's informational control, but for most of the next decade, the implementation of these fiscal reforms actually made local information manipulation *worse*. Local governments' revenue allocations now depended on their economic production levels, population figures, and expenditures estimates, which created even stronger incentives to exaggerate these statistics.[100]

Regional officials' career promotion also benefited from reporting exaggerated figures to the center: for much of the 1990s and early 2000s, political advancement for regional officials depended, above all, on the GDP performance of their jurisdictions.[101] When these promotion mechanisms were paired with persistently weak central oversight of local administrative operations, exaggerated local GDP reporting was unsurprisingly widespread.[102]

Despite these problems, the central government was hesitant to significantly upend an administrative equilibrium that was helping produce some of the most explosive economic growth in human history. China's administrative federalism, which gave provinces both incentive and policy leeway to compete for business and investment, was a major driver of its

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97. *"Ratio of Local Government Revenue (%),"* NAT'L BUREAU STATS., https://data.stats.gov.cn/english/easyquery.htm?cn=C01 (last visited May 5, 2024).

98. *See generally* YONGNIAN ZHENG, DE FACTO FEDERALISM IN CHINA: REFORMS AND DYNAMICS OF CENTRAL-LOCAL RELATIONS (2007).

99. *Statistical Indicator*, *"Ratio of Local Governments Expenditure (%),"* NAT'L BUREAU STATS., https://data.stats.gov.cn/english/easyquery.htm?cn=C01 (last visited July 18, 2024).

100. Zhang, *supra* note 96.

101. *See, e.g.*, Eric Maskin, Yingyi Qian & Chenggang Xu, *Incentives, Scale Economies, and Organizational Form*, presented at the Davidson Institute Research Workshop on the Economics of Transition (June 1997), *available at* https://deepblue.lib.umich.edu/bitstream/handle/2027.42/39441/wp51.pdf?sequence=3.

102. *See* Zhang, *supra* note 96.

economic performance during this period.[103] Although it created serious corruption and capital waste, it also produced highly business-friendly institutional and financial environments. It was not until after 2010 that this model of decentralized regional competition began to show enough strain to call its political vitality into question.[104]

Correspondingly, central statistics authorities were rarely able to take significant measures against local entities during the reigns of Jiang Zemin (1989–2002) and Hu Jintao (2002–2012). National statistics inspections continued to rely on local cooperation,[105] and were therefore no more effective at deterring local manipulation than they had been in the 1980s. By the early 2000s, NBS officials were publicly complaining about their ineffectiveness,[106] and by 2003, the NBS had persuaded the State Council to reduce the frequency of inspections to once every five years.[107]

Beyond these inspections, administrative and fiscal constraints forced central authorities to rely primarily on low-cost accountability mechanisms of dubious efficacy, generally employing what we labeled as "regulatory solutions" or "rights solutions" in Part II. First, a series of legal changes were made to nominally outlaw any undue interference with statistical work. In 1996, the National Statistics Law underwent its first revision, which penalized any sort of statistical tampering with clearer prohibitions and harsher penalties, generally in the form of strengthened administrative sanctions, but potentially rising to the level of criminal punishment.[108] What it did *not* provide for, however, was new ways to *detect* tampering from the outside.

Second, information producers followed a broader trend of "open government information" reform ("zhengfu xinxi gongkai") (OGI) across the entire Chinese bureaucracy. Throughout the 1990s and early 2000s, government offices across the country proactively published larger amounts of operational information to the public, ultimately coalescing around, as discussed above, the fifteen categories of mandatory disclosure laid out in

103. *See, e.g.*, Montinola et al., *supra* note 89.

104. *See* An & Zhang, *supra* note 73, at 355–74.

105. *See, e.g.*, Liao Shanxiang (廖善祥), *Tantan Tongji Zhifa Dajiancha* (谈谈统计执法大检查) [*Talking about Statistical Large-Scale Inspection*], 12 JIANGSU TONGJI (江苏统计) [JIANGSU STAT.] 40, 41 (1997) (China); Shao Lang (少浪), *Guangdong Sheng Bushu Quansheng Tongji Zhifa Dajiancha* (广东省部署全省统计执法大检查) [*Guangdong Province Deploys Large-Scale Inspection of Statistical Law Enforcement throughout the Province*], 4 TONGJI YU YUCE (统计与预测) [STAT. & PREDICTION] 3, 3 (1997) (China).

106. *See* Wang Quanbao (王全宝), *Tongji Zaojia Beihou de Zhengji Chongdong: Shi Zuoyongzhe Shi Ganbu Kaohe Jizhi* (统计造假背后的政绩冲动：始作俑者是干部考核机制) [*The Performance-driven Impulse behind Statistical Fraud: the Instigator Is the Cadre Assessment Mechanism*], ZHONGGUO XINWEN ZHOUKAN (中国新闻周刊) [CHINA NEWSWEEK] (June 10, 2010) https://www.chinanews.com.cn/gn/news/2010/06-10/2334912.shtml (China).

107. *See Quanguo Tongji Fazhi Gongzuo Dashi Ji*, *supra* note 92.

108. National Statistics Law, *supra* note 77, art. 26.

the 2007 *Government Information Disclosure Regulations*.[109] More importantly, China also began to construct a system for information petitioning by private parties, functionally similar to American FOIA requests.

As early as 1992, the city government of Guangzhou had already begun to experiment with private information petitioning, which crystalized into published regulations in 2003.[110] The Guangzhou regulations then quickly became the blueprint for information petitioning systems in nine of China's major cities, including Shanghai, Shenzhen, and Chongqing.[111] By 2007, these measures had gained central level approval, and were formally enshrined in the *Government Information Disclosure Regulations*.[112]

If the idea was that combining harsher penalties with OGI measures could effectively deter local statistics manipulation, then it was manifestly unsuccessful. External academic assessments find a largely consistent pattern of probable manipulation from 2000 to 2010, regularly escalating in years of leadership turnover.[113] More socially salient was the inconvenient fact that, from 2003 onwards, the sum of reported provincial GDP figures significantly outpaced the NBS-issued national GDP figure in *every single fiscal year* until 2017.[114] When paired with several well-publicized incidents of senior central officials publicly accusing local officials of manipulating statistics for political advancement,[115] these discrepancies clearly signaled persistent internal distrust between central and local statisticians.[116] This sometimes led to major statistical scandals. Publicly confirmed and administratively sanctioned cases of large-scale local GDP manipulation

109. Zhengfu Xinxi Gongkai Tiaoli, *supra* note 19, arts. 9, 10.

110. Liu, *supra* note 16, at 986–87.

111. *Id.* at 989.

112. *See* HORSLEY, *supra* note 16, at 520.

113. *See* Wallace, *supra* note 6, at 20–21.

114. In a normal statistics system, central GDP figures are usually higher than the sum of provincial figures due to the addition of overseas economic activity. Even Chinese state media commentary saw the higher provincial figures in China as a systemic problem. *See Shengji GDP You Guojia Hesuan, "Shuju Dajia" Youwang Zhongjie* (省级 GDP 由国家核算，"数据打架"有望终结) [*Provincial GDP Will be Verified by the State, Data Clashes Are Expected to End*], *Xinhuashe* (新华社) [XINHUA NEWS AGENCY] (July 12, 2017) http://m.bjnews.com.cn/detail/155151958014938.html (China); Wang, *supra* note 106.

115. Wang, *supra* note 106.

116. *See Sanfangmian Yuanyin Daozhi Guojia he Difang GDP Jiazong Hesuanshu You Chaju* (三方面原因导致国家和地方 GDP 加总核算数有差距) [Three Reasons Leading to Discrepancies between the National and Local Aggregated GDP Accounting], CENTRAL PEOPLE'S GOV'T PEOPLE'S REPUBLIC CHINA (Jan. 25, 2007), https://www.gov.cn/zhibo51/content_507137.htm (China).

include Hubei in 2003–2004,[117] Liaoning from 2011–2014,[118] and Inner Mongolia and Tianjin for some years prior to 2016.[119]

The lack of measurable improvement in Chinese statistical accuracy during the Jiang and Hu eras is completely unsurprising when viewed in light of the theoretical arguments we developed in Part II. Here again, regulatory solutions have very little teeth unless backed up by some sort of external enforcement. Such enforcement could have taken the form of either private or public monitoring, but private monitoring—usually done through rights solutions—is only effective when private parties can actually access enough raw data to produce their own credible counternarratives. Despite the lofty rhetoric surrounding China's OGI reforms, they never provided that. From day one, its petitioning rules explicitly forbade the disclosure of any information that impeded upon "national secrets, commercial secrets, and personal privacy,"[120] which effectively made any firm or individual-level data unshareable.

This left other governmental entities, particularly those at the center, the only viable check on local distortions, but the central government was generally hesitant to commit the necessary administrative resources—with one major exception discussed below. Serious central administrative penetration would have been, as discussed above, both costly and disruptive, and the center was loathe to upend an administrative model that still seemed to be operating reasonably well.

By around 2010, however, this "de facto federalism" model had begun to show serious signs of stress, with economic growth slowing from ten percent annually in 2009 to less than five percent in official statistics by the early 2020s,[121] and with bureaucratic corruption becoming arguably China's greatest source of sociopolitical tension by the end of Hu's reign.[122] As Xi

117. *See* Wang, *supra* note 106.

118. *See* Zhang Ping (张平), *Liaoning Chengren GDP Zhushui, Yeyao Rang "Huyouzhe" Meiqiantu* (辽宁承认 GDP 注水，也要让"忽悠者"没前途) [*Liaoning Admits GDP Padding and also Aims to Ensure that Those Who Deceive Have no Future*], XINJING BAO (新京报) [BJNEWS.COM.CN] (Jan. 18, 2017), https://www.bjnews.com.cn/detail/155151356814187.html (China).

119. *See Sanshengshi Zibao GDP Zaojia de Yuanyin Shisha?* (三省市自曝 GDP 造假的原因是啥？) [*What Are the Reasons for the Self-Disclosure of GDP Falsification by Three Provinces and Cities?*], LIAOWANG (瞭望) [OUTLOOK] (Jan. 21, 2018) https://news.sina.cn/gn/2018-01-21/detail-ifyqquptv8300322.d.html (China).

120. Zhengfu Xinxi Gongkai Tiaoli, *supra* note 19.

121. *See* GUOJIA TONGJIJU (国家统计局) [NAT'L BUREAU STATS.], ZHONGHUA RENMIN GONGHEGUO GUOMIN JINGJI HE SHEHUI FAZHAN TONGJI GONGBAO (中华人民共和国国民经济和社会发展统计公报) [STATISTICAL BULLETIN OF THE NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT OF THE PEOPLE'S REPUBLIC OF CHINA], ZHONGGUO TONGJI CHUBANSHE (中国统计出版社) [CHINA STATS. PRESS] https://data.stats.gov.cn/publish.htm?sort=1 (last visited Mar. 20, 2025) (China).

122. *See* Yang Xingkun (杨兴坤), *Zhongguo Guanyuan Fubai de Xianzhuang Qushi yu Zhili* (1986–2014) (中国官员腐败的现状、趋势与治理 (1986–2014)) [*The Current Situation, Trends, and Governance*

Jinping rose to the position of Party Secretary in 2012, the information production system, along with the entire Chinese bureaucracy around it, entered into a major paradigm shift towards centralization.

One major exception to this general pattern of weak central oversight is worth mentioning here, if only as a harbinger of things to come: On March 16, 2005, the State Council approved the permanent creation of NBS survey teams at nearly every level of local government. This involved the creation and regular staffing of 31 provincial-level survey corps, 15 vice-provincial-level urban survey teams, 318 city-level survey teams, and 887 county-level survey teams. A total of 19,600 staff were initially allocated to these teams.[123] As discussed below, it took several additional years for the teams to make a real difference in statistics production, but their creation in 2005 nonetheless signaled growing unease at the center. Even at this early stage, the State Council already seemed to suspect that, eventually, informational accountability was only achievable if the NBS could break local governments' functional monopolies over information production.

C. The Centralized Divisions Paradigm

The new model that has emerged in China since 2011 is one of "centralized divisions," in that it seeks to enhance central oversight over local governments by creating overlapping divisions of power within the information bureaucracy. Both structural features—centralization and internal division—tend to reverse the core characteristics of the previous "localized monopolies" paradigm. Subsection 1 lays out the core mechanisms of internal accountability that have been introduced since 2012. Subsection 2 examines how the information asymmetry between state and society has worsened due to these same institutional trends.

1. Building Internal Accountability Through Structural Divisions

Since Xi ascended to power, China's central government has pursued internal informational accountability along two parallel tracks, both aimed at enhancing the production of statistical counternarratives within the bureaucracy. The first track sought to enhance central agencies' capacity to question local reports, mainly by giving them direct, systemic access to local raw data. The second track sought to create administrative separation between regional governments and other governmental entities within their geographical jurisdiction. These two tracks enhanced the likelihood that they

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of Corruption Among Chinese Officials], DONGFANG ZAOBAO (东方早报) [THE ORIENTAL MORNING POST] (July 18, 2014) https://theory.gmw.cn/2014-09/09/content_13121857.htm (China).

123. *See* Guowuyuan Bangongting Guanyu Yinfa Guojia Tongjiju Zhishu Diaochadui Guanli Tizhi Gaige de Tongzhi, Guobanfa [2005] 14 Hao, *supra* note 79.

could sometimes present factual accounts of local affairs that differed from those produced by regional governments.

The former track, as noted above, built upon a system of central inspection teams first created in 2005. Initially, however, the inspection teams lacked systemic access to firm or individual-level raw data[124] and therefore had very little observable impact on local informational accountability. It was not until 2011 that the NBS began to meaningfully secure such access.

The NBS progressed in four steps: first, it drew upon local records to construct a single authoritative list of all registered businesses in the country.[125] Second, the NBS issued a standard form for data disclosures by individuals and firms, unifying the concepts, measures, algorithms, and coding methods employed in each report.[126] Third, it standardized the computer software used to collect and process raw data nationwide.[127]

Once all these preparatory steps had been completed, the fourth and most important step could take place, often not until 2012–2013 or later.[128] Individuals and businesses would submit disclosure reports through an online direct reporting platform managed by the NBS, sidestepping local bureaucracies entirely.[129] An institutional change of such magnitude would, of course, take many years to complete. By 2023, reporting entities that used this centralized system still numbered in the millions, rather than tens of

124. *See, e.g.*, Lin Shanshan (林姗姗), Guojia Tongjiju Huai'an Diaochadui Chuizhi Guanli Yunxing Zhong de Wenti yu Duice Yanjiu (国家统计局淮安调查队垂直管理运行中的问题与对策研究), (2020) (Master's thesis, China University of Mining and Technology) (China).

125. *See* TONGJI SIDA GONGCHENG JIANJIE (统计四大工程简介) [BRIEF INTRODUCTIONS TO THE FOUR STATISTICAL PROJECTS], HEBEI PROVINCIAL STATISTICAL AGENCY, Sept. 19, 2012, http://tjj.hebei.gov.cn/hetj/ztbd/ztdt/session3/101374626654270.html (China)

126. *Id.*

127. *Id.*

128. *See* Shenme Shi Tongji "Sida Gongcheng" (什么是统计"四大工程") [*What Are the "Four Statistical Projects"?*], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.]., Jan. 1, 2023, .https://www.stats.gov.cn/zs/tjws/tjdc/202301/t20230101_1903765.html (China).

129. *See* TONGJI SIDA GONGCHENG JIANJIE, *supra* note 125.

millions.[130] Even so, by absolute volume, it was already one of the largest statistical databases in the country.[131]

This allowed the NBS to produce, for the first time, robust sampling estimates of its own.[132] More comprehensive calculations would still have to rely on local governments and local data, but any significant discrepancy between a locally reported statistic and a corresponding sampling estimate produced by a NBS work team could raise internal red flags, which could then trigger more serious and targeted investigations.[133] The goal was therefore not to replace local statistics with central ones, but to deter local misbehavior with the specter of credible internal counternarratives.[134]

These successes in strengthening the NBS' own counternarrative production capacity were paired, as noted above, with a second track of administrative restructuring, in which the center sought to break up the

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130. *See, e.g.*, Guojia Tongjiju Renkou he Jiuye Tongjisi Sizhang Wang Pingping Jiedu 2023 Nian Chengzhen Danwei Jiuye Renyuan Pingjun Gongzi Shuju (国家统计局人口和就业统计司司长王萍萍解读 2023 年城镇单位就业人员平均工资数据) [Wang Pingping, Director of the Population and Employment Statistics Department of the National Bureau of Statistics, Interprets the Average Wages of Urban Employed Personnel in 2023], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], May 17, 2024, https://www.stats.gov.cn/sj/sjjd/202405/t20240520_1950461.html (China); *see also* Guojia Tongjiju Renkou he Jiuye Tongjisi Sizhang Wang Pingping Jiedu 2022 Nian Chengzhen Danwei Jiuye Renyuan Pingjun Gongzi Shuju (国家统计局人口和就业统计司司长王萍萍解读 2022 年城镇单位就业人员平均工资数据) [Director Wang Pingping of the Population and Employment Statistics Department of the National Bureau of Statistics Interprets the Average Wage Data of Urban Employed Personnel in 2022], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], May 19, 2023, https://www.stats.gov.cn/sj/sjjd/202305/t20230509_1939288.html (China).

131. *See, e.g.*, 2024 Nian Guojia Tongjiju Zhengfu Xinxi Gongkai Gongzuo Niandu Baogao (2024 年国家统计局政府信息公开工作年度报告) [2024 National Bureau of Statistics Annual Report on Government Information Disclosure], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], https://www.stats.gov.cn/xxgk/gknb/tjj_gknb/202501/t20250126_1958450.html (last visited Mar. 20, 2025) (China).

132. *See* Shenme Shi Tongji "Sida Gongcheng," *supra* note 128.

133. *See, e.g.*, Guojia Tongjiju Guanyu 5 Qi Dianxing Tongji Weifa Anjian de Tongbao (国家统计局关于 5 起典型统计违法案件的通报) [The National Bureau of Statistics' Notice on Five Typical Statistical Violations Cases], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], Sept. 18, 2018, https://www.stats.gov.cn/fw/bgthyb/202302/t20230215_1904782.html (China); *see also*, Guojia Tongjiju Xinwen Fayanren Jiu Tongbao Zhongda Tongji Weifa Anjian Da Jizhe Wen (国家统计局新闻发言人就通报重大统计违法案件答记者问) [The Spokesperson of the National Bureau of Statistics Answered Questions from Reporters on the Notification of Major Statistical Violations], GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.], Sept. 18, 2018, https://www.stats.gov.cn/fw/bgthyb/202302/t20230215_1904783.html (China); *see also Guojia Tongjiju Youguan Fuzeren Jiu Diqu Shengchan Zongzhi Tongyi Hesuan Gaige Fangan Youguan Wenti Da Jizhe Wen* (国家统计局有关负责人就《地区生产总值统一核算改革方案》有关问题答记者问) [*The Head of the National Bureau of Statistics Answered Questions from Reporters on the "Reform Plan for the Unified Calculation of Regional GDP*], Oct. 30, 2017, GUOJIA TONGJI JU (国家统计局) [NAT'L BUREAU STATS.] https://www.gov.cn/xinwen/2017-10/30/content_5235375.htm (China).

134. *Guojia Tongjiju Youguan Fuzeren Jiu Diqu Shengchan Zongzhi Tongyi Hesuan Gaige Fangan Youguan Wenti Da Jizhe Wen*, *supra* note 133.

administrative dominance of regional governments.[135] As discussed above, an enduring feature of local Chinese governance is that most government entities performing a specific function technically answer to two masters: horizontally to the general-purpose regional government of the same level, and vertically to the corresponding functional entity at a higher level.[136] During the 1980s and 1990s, horizontal control was much more meaningful than vertical oversight.[137] But by the early 2000s, local corruption had become such a severe problem that there were numerous calls, even from Hu Jintao himself,[138] for the center to wrest authority away from regional governments, but little concrete action was taken.

The Xi regime made administrative centralization a much higher priority, and therefore sought to bring major parts of the Party-state under tighter vertical control.[139] For example, beginning soon after Xi's rise to power in 2012, his regime pushed sweeping centralization reforms in both the judiciary and the procuratorate.[140] These measures concentrated budgetary and personnel control over local courts and procuratorates at the provincial level, while also forcing provincial authorities to share this authority with the Supreme People's Court and the Supreme People's Procuratorate.[141] Following these reforms, many horizontal directives from regional governments were recast as illegal interference.[142]

Moves to enhance vertical control were also made in, for example, the environmental protection bureaus, state financial institutions, public health entities, culture and propaganda offices, and research institutions.[143] Often, these involved both sticks and carrots: on the one hand, central and

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135. *See* Yifa Pochu Xingzheng Xing Longduan (Lunfa), (依法破除行政性垄断(论法)) [Eliminating Administrative Monopoly in Accordance with the Law (On Law)], Renmin Ribao (人民日报) [PEOPLE'S DAILY ONLINE] (July 4, 2018) http://legal.people.com.cn/n1/2018/0704/c42510-30125035.html (China).

136. *See generally* Zhou et al., *supra* note 80.

137. *See* Zhao Shukai (赵树凯), *Chongxin Jieding Zhongyang Difang Quanli Guanxi* (重新界定中央地方权力关系) [*Redefining the Relationship between Central and Local Power*], 9 ZHONGGUO JINGJI BAOGAO (中国经济报告) [CHINESE ECON. REP.] 30, 31 (2013).

138. *See* Xinhuashe Pinglun Yuan (新华社评论员) [Xinhua News Agency Commentor], *Zengqiang Wenhua Tizhi Gaige de Zhenduixing Shixiaoxing* (增强文化体制改革的针对性实效性) [*Enhancing the Tailoring and Effectiveness of Cultural System Reform*], XINHUASHE (新华社) [XINHUA NEWS AGENCY] (Aug. 3, 2010) https://www.gov.cn/jrzg/2010-08/03/content_1670029.htm (China).

139. *See generally* Zhang & Ginsburg, *supra* note 81, at 309.

140. *Id.* The "procuratorate" is a part of the legal system and is responsible for legal prosecution and supervision.

141. *Id.*

142. *Id.*

143. *See, e.g.*, Genia Kostka & Jonas Nahm, *Central–Local Relations: Recentralization and Environmental Governance in China*, 231 CHINA Q. 567, 569 (2017); John James Kennedy, *Finance and Rural Governance: Centralization and Local Challenges*, 40 J. PEASANT STUDS. 1009, 1011–18 (2013); John N. Hawkins, *Centralization, Decentralization, Recentralization: Educational Reform in China*, 38 J. EDUC. ADMIN. 442, 449–50 (2000).

provincial entities demanded more diligent local compliance with strict punishment mechanisms, but on the other hand, they also offered fiscal support beyond what regional governments could provide.[144] A sweeping nationwide anti-corruption campaign after 2012 further enhanced the "sticks" side of the equation.[145] The cumulative effect was that the "localism" that dominated Chinese governance in the 1990s had significantly receded by 2020.[146]

Once horizontal control began to weaken, the likelihood that different local governmental entities might report divergent information to the center almost certainly increased, sometimes in externally observable ways. For example, in 2013, the Guangdong Provincial Department of Finance announced a total collection of 2.613 billion yuan (approximately 360.174 million USD) in social maintenance fees for the 2012 fiscal year.[147] This figure sharply contrasted with the 1.456 billion yuan (approximately 205.416 million USD) announced by the Provincial Sanitation and Planning Commission a few days earlier, which led to an internal investigation that revealed significant differences in accounting methods.[148]

The combination of these institutional measures allowed the central government to play a more direct role in the production of local statistics. On June 26, 2017, the Party Leadership approved a "Reform Plan for the Unified Accounting of Regional Gross Product."[149] In this new system, the calculation of provincial GDP would be jointly conducted by NBS work teams and provincial statisticians, under the leadership of the former.[150] By

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144. *See* Guowuyuan Bangongting Guanyu Xinxingshi Xia Jinyibu Jiaqiang Ducha Jili de Tongzhi (国务院办公厅关于新形势下进一步加强督查激励的通知 (国办发[2021]49 号)) [Notice by the General Office of the State Council of Further Strengthening Supervisory Inspection-Based Incentives Under New Circumstances (State Council General Office [2021] No. 49] (promulgated by St. Council, Dec. 13, 2021, effective Dec. 13, 2021), ST. COUNCIL GAZ. (China).

145. *See generally* Christopher Carothers, *Taking Authoritarian Anti-Corruption Reform Seriously*, 20 PERSPECTIVES ON POL. 69, 75–79 (2022).

146. *See* David J. Bulman & Kyle A. Jaros, *Localism in Retreat? Central-Provincial Relations in the Xi Jinping Era*, 30 J. CONTEMP. CHINA 697, 704 (2021); Sangkuk Lee, *An Institutional Analysis of Xi Jinping's Centralization of Power*, 26 J. CONTEMP. CHINA 325, 325–36 (2017).

147. *See* Xia Yang (夏杨) & Yue Weixin (粤卫信), *Guangdong Weiji Wei Huiying: Shehui Fuyangfei Chayi Yin Tongji Koujing Butong* (广东卫计委回应：社会抚养费差异因统计口径不同) [*Guangdong Health and Family Planning Commission Responded: The Difference in Social Maintenance Fees is Due to Different Statistical Calibers*], YANGCHENG WANBAO (羊城晚报) [YANGCHENG EVENING NEWS] (Dec. 27, 2013), http://finance.people.com.cn/n/2013/1227/c70846-23961322.html (China).

148. *See* Liu Hongbo (刘洪波), *Bie Rang Shuju Dajia Sunhai Zhengfu Gongxinli* (别让数据打架损害政府公信力) [*Don't Let Conflicting Data Damage the Government's Credibility*], NANFANG RIBAO (南方日报) [SOUTHCN.COM] (Dec. 27, 2013), http://politics.people.com.cn/n/2013/1227/c70731-23958664.html (China).

149. Diqu Shengchan Zongzhi Tongyi Hesuan Gaige Fangan (地区生产总值统一核算改革方案) [Reform Plan for the Unified Accounting of Gross Regional Product (GRP)] (promulgated by the National Bureau of Statistics, June 26, 2017, effective on June 26, 2017) NAT'L BUREAU STATS. GAZ. (China).

150. *Id.*

2019–2020, this system had further expanded to encompass city-level GDP figures.[151] No longer content with simply inspecting or falsifying local work products *ex post*, the NBS had now assumed direct control of some of the most socio-politically important statistics.[152]

These measures had an immediately visible impact on GDP reporting. Where, in the past, the sum of reported provincial GDP figures had been significantly greater than the final national figure released by the NBS, in 2017 the difference between the two shrank to less than 0.01 percent of the total.[153] From 2018 onwards, the sum of provincial reports became substantially *lower* than the NBS figure, which finally brought China in line with the GDP estimates of most other major economies in which the addition of overseas economic activity generally pushes the national total beyond the sum of regional estimates.[154] The only plausible explanation for this sudden yet persistent swing seems to be that, after 2017, local governments became much more conservative in the way they calculated and reported GDP, likely because they assumed that any significant exaggeration would be easily detected.[155]

All in all, the overall informational balance between local governments and the center has shifted significantly in favor of the latter over the past

151. *See Diqu Shengchan Zongzhi Tongyi Hesuan Ruhe Shishi* (地区生产总值统一核算如何实施) [*How to Implement the Unified Calculation of Regional Gross Domestic Product*], LINGDAO GANBU TONGJI ZHISHI WENDA (领导干部统计知识问答) [STATISTICAL KNOWLEDGE Q&A FOR LEADING CADRES], https://www.stats.gov.cn/zs/tjws/tjzn/202301/t20230101_1903408.html (China).

152. *See* Shenme Shi Tongji "Sida Gongcheng," *supra* note 128.

153. These data are publicly available on the NBS website. *See Guojia Shuju, Fensheng Niandu Shuju* (国家数据，分省年度数据) [National Data, Provincial Data by Year], NAT'L BUREAU STATS., https://data.stats.gov.cn/easyquery.htm?cn=E0103 (China) (last accessed July 19, 2024).

154. *See, e.g.*, *Gross Domestic Product by State and Person Income by State, 3rd Quarter 2024*, U.S. DEP'T COM., BUREAU ECON. ANALYSIS (Dec. 20, 2024), https://www.bea.gov/data/gdp/gdp-state. *See also* Shengji GDP Youwang You Guojia Hesuan, Gedi GDP Zhihe Chao Quanguo Jiang Shoukong (省级GDP有望由国家核算，各地GDP之和超全国怪象将受控) [Provincial GDP Is Expected to be Calculated by the State, and the Strange Phenomenon that the Sum of Local GDP Exceeds the National Level Will be Controlled], Zhongguo Jingji Zhoukan (中国经济周刊) [China Economic Weekly], http://jingji.cctv.com/2017/07/11/ARTISTKa3y8OjTXwC87zEQ50170711.shtml.

155. There are two possible alternative explanations, neither logically plausible. First, one might wonder if local authorities were somehow artificially depressing their GDP estimates after 2017, but this makes no political sense. The Xi regime has, since 2013, made a point of deemphasizing GDP growth as the primary measure of local government performance *see* Binlei Gong, Yuhui Shen & Shuai Chen, *Target-based GDP Manipulation: Evidence from China*, 244 J. PUB. ECON. 105349 (2025) but faster reported growth is still a major boon to the career prospects of any regional official. Second, provinces might continue to overreport GDP figures, but, after 2017, the central government needed to exaggerate them even further for its own political purposes. The NBS likely came under stronger pressure to inflate GDP figures after China's post-COVID economic slowdown in 2023, but there is no articulable reason for why the need to centrally inflate statistics was stronger from 2017 to 2022 than it was from 2010 to 2016. In other words, if the driving force were simply central political manipulation, then it would be very difficult to explain why a sharp breaking point occurred exactly in 2017, right as the NBS was centralizing the production of GDP figures. Even before 2017, the NBS could have easily inflated national figures if it wanted to.

decade. Local entities still produce, in aggregate, vastly greater amounts of information than do central ones, but regional governments now possess far fewer functional monopolies over information production than they did before 2011. The central government accomplished this not by directly assuming control of all information production, but rather by leveraging internal functional divisions, both between central and local statisticians, and between different information producers within the same regional jurisdiction.

When it comes to the Party-state's external informational accountability to the public, however, Chinese institutions have trended in the opposite direction—towards less accountability and more functional monopolization, this time by the center. Public doubts over centrally issued information usually arise only when obvious discrepancies inadvertently emerge between different kinds of central claims, or between central and local claims.[156] Both, but especially the latter, have probably become significantly less likely in recent years.

Center-center discrepancies can theoretically happen when there is some miscoordination within the Beijing bureaucracy, but the likelihood of that has receded as the Party leadership has imposed more unified control of Beijing's various governmental organs. As for center-local discrepancies, one major consequence of stronger central control over local statistics production has been to sharply reduce the frequency of their emergence. They still show up, from time to time, in less politically salient statistics,[157] but central takeover of major items like GDP has largely eliminated the possibility of local statistics substantially contradicting central claims. Frankly, if the center ever wanted to artificially inflate national GDP figures, it could easily ensure that provincial figures were inflated accordingly.

In such an environment, if the public desires greater informational accountability by the central government, it would need to perform its own counternarrative production. As the next subsection will argue, however, an array of government rules and legal interpretations have all but eliminated that possibility in the present day.

156. *See, e.g.*, Luan Shan (栾姗), 10 *Yue Zhengzhou Fangjia Zhishu Dajia Liangge Guanfang Shuju Yiping Yidie* (10 月郑州房价指数打架 两个官方数据一平一跌) [*Zhengzhou's October housing price index clashed as the two official data sources showed conflicting trends, with one staying flat and the other falling.*], HENAN RIBAO (河南日报) [HENAN DAILY] (Nov. 21, 2014), http://finance.people.com.cn/n/2014/1121/c364101-26067717.html (China).

157. *See, e.g.*, Wu Mengda (乌梦达), *Tongji Shuju Weihe Maodun? Jiekai Fangjia Shuju Dajia de Mimi* (统计数据为何矛盾？揭开房价数据打架的秘密) [*Why Are the Statistical Data Contradictory? Revealing the Secret Behind the Clash of Housing Price Data*], XINHUA SHE (新华社) [XINHUA NEWS AGENCY] (Dec. 19, 2013), https://www.gov.cn/jrzg/2013-12/19/content_2551211.htm (China).

2. *Information Asymmetry Between State and Society*

Despite considerable social skepticism over China's macroeconomic statistics, no domestic or foreign entity has ever managed to produce a truly credible counternarrative to government statistics—therefore forcing most forms of sociopolitical discourse, even abroad, to rely on them.[158] Producing such a counternarrative would presumably require private access to raw data on consumption, investment, government spending, and exports. The problem is that reliable raw data in all four categories have been almost completely taken out of the public eye.

The issuance of the *Government Information Disclosure Regulations* in 2007 seemed to offer some fleeting hope that private entities could access some of this raw data via OGI petitions to the government,[159] but recent legal developments, including the issuance of an updated version of the regulations in 2019, have all but eliminated that possibility.[160] Moreover, the government has also taken aggressive moves to seal off privately created raw data from public use.[161] The end result is a governmental monopoly over almost any kind of aggregate statistic that requires large-scale knowledge of individual and firm-level activity.

The idea that OGI petitions could be used to access economic raw data was, of course, always unrealistic,[162] but it has become increasingly so since 2012. First, there have been strong pushes across the law enforcement apparatus to shore up implementation of personal privacy and business secrets exceptions to information disclosure.[163] As Chinese sociopolitical discourse moved online in the 2010s, concerns that government disclosures were feeding into social media harassment became increasingly

158. *See, e.g.*, Keith Bradsher, *China's Economy Grew Last Year, but Strains Lurk Behind the Numbers*, N.Y. TIMES (Jan. 16, 2024), https://www.nytimes.com/2024/01/16/business/china-gdp-q4-2023.html.

159. Zhengfu Xinxi Gongkai Tiaoli, *supra* note 19, at art. 13.

160. *Id.* art. 16.

161. *See* Guowuyuan Bangongting Guanyu Yinfa Yaosu Shichanghua Peizhi Zonghe Gaige Shidian Zongti Fangan de Tongzhi (国务院办公厅关于印发要素市场化配置综合改革试点总体方案的通知) [Notice by the General Office of the State Council Regarding Issuing the Master Plan for the Pilot Program of the Comprehensive Reform of the Market-Oriented Allocation of Factors] (promulgated by the General Office of the St. Council Dec. 21, 2021, effective Dec. 21, 2021), ST. COUNCIL GAZ., https://www.gov.cn/zhengce/content/2022-01/06/content_5666681.htm (China).

162. *See* Guowuyuan Bangongting Guanyu Yinfa Guojia Tongjiju Zhishu Diaochadui Guanli Tizhi Gaige de Tongzhi, Guobanfa, *supra* note 79.

163. *See* Zhu Changjun (朱昌俊), *Xinxi Gongkai Heyi Zouxiangle Yinsi Xielou*, (信息公开何以走向了隐私泄露) [*How has the Information Disclosure Led to Privacy Breaches*], 12 ZHEJIANG RENDA (浙江人大) [CHINA YOUTH DAILY] 44, 44–5 (Nov. 5, 2017) (China); Zhao Shukun (赵树坤) & Deng Jin (邓晋), *Ruhe Lijie Yi Hefa Gongkai de Geren Xinxi Baohu Guize* (如何理解已合法公开的个人信息保护规则) [*How to Understand Rules for Protecting Legally Disclosed Personal Information*], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S CT. DAILY] (Oct. 12, 2023), https://www.chinacourt.org/article/detail/2023/10/id/7571816.shtml (China).

prominent.[164] In response, law enforcement entities have repeatedly vowed to enhance their protection of personal information and privacy interests, whether against disclosure by the state or against misuse by private companies.[165]

Second, the state secrets exception—or rather, the public security and national security interests that underlie it—has undergone a more explicit and aggressive expansion. Whereas the 2007 Regulations listed only "state secrets, commercial secrets, and personal privacy" as parallel justifications for refusing disclosure,[166] the 2019 Regulations elevated "state secrets" into a separate rule that possessed vastly greater scope.[167] This new rule would refuse disclosure if *any* of the following were implicated: "state secrets, information that laws and regulations forbid the government from sharing, and information that, once shared, could damage national security, public security, economic security, or social stability."[168] The 2019 Regulations also created several new categories of exempted information, which cover nearly the entire scope of internal administrative operations: "An administrative agency may withhold information on its internal matters, including personnel management, logistics management, and internal workflow."[169]

The combination of these various non-disclosure rules therefore rules out private access to most government-collected raw data used in macroeconomic, fiscal, public security, public health, or administrative statistics. In response, the NBS has repeatedly clarified in recent years that it would not, in fact, release any raw data used in its core economic statistics to the public.[170]

Even with the near total elimination of governmental raw data disclosure, credible counternarrative production might still be possible if

164. *See, e.g.*, Zhu, *supra* note 163.

165. *See* Wang Haonan (王昊男), Wang Yunna (王云娜), Ju Yunpeng (巨云鹏) & Dou Hanyang (窦瀚洋), *Fazhi Huhang Gongzhu Geren Xinxi "Anquan Di"* (法治护航 共筑个人信息"安全堤") [*Building the "Safety Barrier" for Personal Information*], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY ONLINE] (Aug. 26, 2022), http://cpc.people.com.cn/n1/2022/0826/c64387-32511867.html (China).

166. Zhengfu Xinxi Gongkai Tiaoli (2007), *supra* note 19, art. 14.

167. Zhengfu Xinxi Gongkai Tiaoli (2019), *supra* note 19, art. 14.

168. *Id.*

169. *Id.* art. 16.

170. *See* NAT'L BUREAU STATS., Haiyang Shengchan Zongzhi Hesuan Zhidu (海洋生产总值核算制度) [Marine Gross Domestic Product] (Aug. 22, 2023), https://www.stats.gov.cn/fw/bmdcxmsp/bmzd/202308/t20230822_1942198.html (China); *see also*, Zhonggong Zhongyang Guowuyuan Guanyu Goujian Shuju Jichu Zhidu Genghao Fahui Shuju Yaosu Zuoyong de Yijian (中共中央 国务院关于构建数据基础制度更好发挥数据要素作用的意见) [Opinions of the CPC Central Committee and the State Council on Establishing a Data Base System to Maximize a Better Role of Data Elements] (promulgated by Central Comm. of the Communist Party of China & St. Council Dec. 2, 2022, effective Dec. 2, 2022), ST. COUNCIL GAZ., https://www.gov.cn/gongbao/content/2023/content_5736707.htm (China) (In this document, the central government emphasizes a principle called "keeping raw data within the domain, and making data available but invisible (原始数据不出域，数据可用不可见)." This principle makes it difficult to release raw data.).

private parties could collect and analyze their own socioeconomic raw data at scale: large private databases might independently track individual and firm-level consumption and investment activity, which would then allow private analysts to provide high quality alternatives to at least some government statistics. Perhaps aware of the political headaches this might create, the Chinese government has recently taken robust steps to eliminate the possibility.

These steps fall under two separate legislative pushes, one to shore up personal privacy, which culminated in a 2021 law on "personal information protection,"[171] and another to shore up national security interests, which culminated in another 2021 law on "data security."[172] Despite their different normative rationales, both sets of laws, as numerous scholars have observed, seek to limit what private entities—firms, organizations, or individuals—can do with the socioeconomic data they collect during their regular business operations.

The former push seeks primarily to limit data use by private entities or information sharing between them.[173] Generally, this limits personal information handling and exchange to contexts where express individual consent has been given.[174] Moreover, no private entity can make consent to information use or transfer a condition of providing service, unless it is strictly necessary for the performance of the service itself.[175] The primary exceptions to these consent rules are, in common practice, only available to government actors or private actors acting under express government authorization. For example, the use of data in public health or safety emergencies, or, most generally, when requesting explicit consent would prevent state organs from fulfilling "their statutory duties and responsibilities."[176] In other words, private parties are usually quite strictly bound by consent—consent that, as the law stipulates, can be withdrawn *ex*

171. Zhonghua Renmin Gongheguo Geren Xinxi Baohu Fa (中华人民共和国个人信息保护法) [Personal Information Protection Law of People's Republic of China] (promulgated by the Standing Comm. of the Nat'l People's Cong. Aug. 20, 2021, effective Nov. 1, 2021), 2021 P.R.C. LAWS (China).

172. Zhonghua Renmin Gongheguo Shuju Anquan Fa (中华人民共和国数据安全法) [Data Security Law of the People's Republic of China], [hereinafter Data Security Law], (promulgated by the Standing Comm. of the Nat'l People's Cong., June 10, 2021, effective Sept. 1, 2021), 2021 P.R.C. LAWS (China).

173. *See, e.g.*, Zhonghua Renmin Gongheguo Geren Xinxi Baohu Fa, *supra* note 171, arts. 5–10.

174. *See id.* arts. 13–17. *See also* Guanyu Kaizhan App Weifa Weigui Shouji Shiyong Geren Xinxi Zhuanxiang Zhili de Gonggao (关于开展 App 违法违规收集使用个人信息专项治理的公告) [Carrying out Special Campaigns against Mobile Internet Application Programs Collecting and Using Personal Information in Violation of Laws and Regulation] (promulgated by Off. of the Cent. Cyberspace Aff. Comm'n, Ministry Indus. & Info. Tech., Ministry of Pub. Sec., & State Admin. for Market Reg., Jan. 23, 2020, effective Jan. 23, 2020) (describing the practices app operators must follow) (China).

175. Geren Xinxi Baohu Fa, *supra* note 171, art. 16.

176. *Id.* art. 35.

post at any time without penalty[177]—but government actors enjoy considerably greater leeway.

These rules make it legally difficult for private entities to collect personal data for most forms of large-scale, publicly consumable information production. Personal data can, in most cases, only be used for information production directly related to the entity's business activities and services.[178] For example, a real-estate financier might require customers to share income and wealth information while determining their creditworthiness for a mortgage. They would, however, face legal challenges if they used that information to publish an estimate of aggregate private income or wealth within some region. Research firms or organizations that specialize in the latter could, of course, collect personal data specifically for that purpose, but obviously they would have a much harder time obtaining consent. Any raw data transfer from the real-estate financier to the research organization would also encounter consent problems. Government data collectors, in contrast, are not subject to any of these constraints.

Whereas the Personal Information Protection Law focused on granting privacy rights over data to individuals and firms, the Data Security Law made enforcing those rights, alongside other public interests in data protection, a matter of bureaucratic administration.[179] The Data Security Law gave government administrators the formal power to comprehensively catalogue, evaluate and, in many cases, directly interfere with the operation of private databases.[180] In effect, it requires any private entity that has compiled a "risky" or "important" database—the government has broad discretion over the assignment of these labels—to disclose its operating procedures and security structures to government overseers, and moreover to submit to their directives.[181]

Government interference is authorized insofar as it furthers "the national security or public interest of the People's Republic of China, the legal rights of its citizens, or the protection of national sovereignty, security, or development"[182]—an extraordinarily broad array of interests that can presumably justify state monitoring of any large private database.[183] Full, aggressive enforcement of the Data Security Law would therefore lead to the semi-bureaucratization of all such databases, a possibility that is already fast becoming reality through the government's close data collaboration

177. *Id.* art. 25.
178. *Id.* art. 13.
179. Data Security Law, *supra* note 172, art. 21.
180. *Id.* arts. 21–25.
181. *Id.* arts. 29–30.
182. *Id.* art. 1.
183. *Id.* arts. 21–25, 29–30.

with China's largest IT companies.[184] As a result, the likelihood that these databases can be used to produce counternarratives to government informational products is vanishingly small.

If raw data collected by the government is largely inaccessible and raw data collected by private firms cannot be used, then, by and large, private entities cannot produce credible counternarratives against government claims. To be sure, there is still enough information flowing around social media and academia to produce often strong doubts about the accuracy or veracity of government information, but the leap from voicing doubts to generating a credible counternarrative of one's own is extremely difficult to make. As a result, the government now enjoys close to a functional monopoly over most information products that rely on either large amounts of individual and firm-level data, raw data on government operations, or both.

One might wonder whether such monopolization might trigger some kind of social backlash, but there is so far no evidence of it. This is, of course, partially because dissent is highly costly under China's current political environment, but it is also partially because some of the legal features that create government information monopolies are genuinely popular. For example, the employment of privacy rights to choke off private access to large amounts of individual information is, as scholars have argued, likely popular with the general population, so much so that the government can plausibly utilize it as a source of political legitimacy.[185] Similarly, the use of security concerns to justify keeping governmental operations and internal data out of the public eye also taps into powerful nationalist sentiments shared by much of society.[186] Under these conditions, the growing information asymmetry between the Chinese government and society-at-large is unlikely to become a political liability.

D. *Illustrating Theory*

China's multi-decade march towards its current informational state has operated along two parallel tracks: one of improving internal accountability, in which the accountability of local governments to the center has

184. *See* Gongye He Xinxihua Bu Wangluo Anquan Guanli Ju Zai Jing Zhaokai Zhongdian Hulianwang Qiye Guanche Luoshi Shuju Anquanfa Zuotanhui (工业和信息化部网络安全管理局在京召开重点互联网企业贯彻落实《数据安全法》座谈会) [Ministry of Industry and Information Technology Convened A Seminar in Beijing for Key Internet Enterprises to Implement the Data Security Law] Ministry of Industry and Information Technology (工业和信息化部), July 30, 2021, https://www.miit.gov.cn/gyhxxhb/jgsj/wlaqglj/zcjd/art/2021/art_0799d45b17f247efbd9b4cc711ddf896.html. (China).

185. *See* Jia, *supra* note 16, at 733–809.

186. *See, e.g.*, Jessica Chen Weiss, *How Hawkish is the Chinese Public? Another Look at "Rising Nationalism" and Chinese Foreign Policy*, 28 J. CONTEMP. CHINA 679 (2019).

substantially improved, and one of deteriorating external accountability, in which the accountability of the entire state apparatus to the public has likely worsened. The specific mechanisms employed to achieve this situation illustrate, with considerable force, all three of the major theoretical claims made in Part II.

First, the expansion of government information collection over the past several decades was both dramatic and fully public. Moreover, the Chinese government now produces and publishes many times the amount of information as it used to just a few decades ago, and to do so it has built a vastly larger surveillance, recording, and information processing bureaucracy. Both central and local governments have employed this information to visibly political ends, using it to shape politically advantageous narratives about national or local conditions. This conforms easily to the "information power principle" outlined in Part III.A.

Second, as predicted by "information asymmetry principle" discussed in Part III.B, both central and local governments, when given the chance, have attempted to reduce their external informational accountability, and therefore increase the asymmetrical advantages they enjoy. On the one hand, the central government has both reduced the ability of private entities to produce credible counternarratives *and* enhanced its direct control over the most salient information products coming out of local governments. On the other hand, for as long as central oversight remained relatively weak—which describes nearly all of the pre-2011 years—regional governments pursued their own version of information monopolization by concentrating power over information production within their geographical jurisdictions. In both cases, the goal was to reduce accountability: in the center's case, accountability to the public; in the local case, accountability to the center. The desire for uninhibited control over information production, to the extent possible, was a universal one.

Third, as predicted in Part III.C, structural solutions, especially a variation of informational federalism, have proven crucial to the central government's attempts to improve informational quality—though the resulting information remained *internal* and was not disclosed *externally*. The center's reluctance to break local informational monopolies prior to 2011 was, as discussed, largely a matter of cost—fiscal cost, administrative cost, and perhaps broader economic costs. Concentration of information production capacity reduces these costs even as it also reduced accountability. Even in the late 1990s and early 2000s, it still could only muster relatively cheap attempts to deter local distortion, such as threatening administrative and criminal sanctions against specific acts of manipulation or mismanagement—a regulatory solution—or granting the public petitioning rights over some governmental data—a rights solution. Neither proved effective.

What eventually did work after 2011 was the creation of real functional checks between central and local information producers—a structural solution. This required the center to invest substantially in its own information production capacities, which could not substitute for local production but could at least generate internally usable counternarratives, allowing for more reliable detection of local distortions. In other words, very much as our theoretical framework predicts, structural solutions worked where regulatory and rights solutions alone could not—but were also much more expensive.

An institutional designer living in a liberal democracy might be tempted to dismiss all of this as simply the idiosyncrasies of an authoritarian regime. Our next case study, focusing on the United States, shows that these behavioral and institutional mechanisms also qualitatively exist in the world's most important liberal democracy.

IV. THE AMERICAN INFORMATIONAL STATE

This Part first describes the legal apparatuses that shape America's information production system—its laws, regulations, incentives, and practices of compliance—and elaborates its consistency with the information need and information asymmetry principles theorized in Part II. It then evaluates the existing rights and regulatory solutions for mitigating the risks associated with information asymmetry and finds them wanting. It finally turns to the aspect of the American information system that has received almost no theoretical or documentary attention—the way that American federalism acts as a form of regulatory control for information asymmetries, what we call the *structural solution*.

Like the American system of federalism more broadly, American *information* federalism is fragmented, plural, and fluid. There is no single model of American federalism and there is likewise no single model of American information federalism. Patterns of federal-state interaction vary across policy and programmatic context. Using four salient information policy areas—population data, public health information, election data, and economic statistics—we identify four models of federal-state power sharing. Each reveals a distinct approach to controlling information asymmetries by differentially enabling state and local governments to audit federal information or develop credible counternarratives.

Placed in comparative perspective, state information production in both the United States and China shares basic behavioral features: efforts to create and expand information asymmetries and the elaborate reach, but flawed nature, of both regulatory and rights solutions to the problems those asymmetries cause. And perhaps most surprisingly, as we observed in the last Part, China, like the United States, uses some forms of informational federalism to improve the quality of information available to the central government, demonstrating the influence that legal rules about government structure can have on information production across regime types.

A. The Basics: America's Information Production System

Like its counterparts around the world, the United States has a large and growing surveillance, recording, data production, and information processing bureaucracy.[187] The Constitution's text only sparingly mentions data gathering and information processing. It requires a decennial Census to enumerate the number of persons in each State for purposes of apportioning the House of Representatives.[188] And it envisions that the President will "give to the Congress Information on the State of the Union."[189] But in its "negative spaces," as "necessary and proper" means to securing enumerated ends like taxation—and through judicial doctrine recognizing inherent data gathering powers in each branch of government— the federal government has claimed and indeed used broad constitutional authority to gather, structure, communicate, and deploy information.[190]

The Supreme Court has found many occasions, mostly in its First Amendment cases, to emphasize the wide latitude the government has to use its own speech as a form of public power and influence. Although the government generally cannot compel or regulate the content of individual speech to promote a preferred idea, or prohibit a disfavored one, the Court has emphasized that "when the government speaks it is entitled to promote a program, to espouse a policy, or to take a position."[191] For without the government's capacity to speak in its own voice, the Court has reasoned, "government would not work."[192] How, then, within these wide parameters does the government decide what it wishes to say? Within the federal government, the administrative state is responsible for producing, analyzing, and communicating most government information.[193] And it is, in turn,

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187. Thomas Brambor, Agustín Goenaga, Johannes Lindvall & Jan Teorell, *The Lay of the Land: Information Capacity and the Modern State*, 53 COMPAR. POL. STUDS. 175, 176 (2020) ("Among the resources states use when they 'make and enforce' rules, 'carry out' their policies, and 'control' persons . . . one of the most important is information" (quoting DOUG MCADAM, SIDNEY TARROW, & CHARLES TILLY, DYNAMICS OF CONTENTION 78 (2001)).

188. U.S. CONST. art. I, § 2, cl. 3 (amended 1868); *id.* amend. XIV, § 2.

189. *Id.* art. II, § 3.

190. *See* Bridget Fahey & Raul Castro Fernandez, *The Structural Law of Data*, 93 U. CHI. L. REV. (forthcoming 2026) (on file with the Virginia Journal of International Law Association).

191. Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 576 U.S. 200, 208 (2015).

192. *Id.* at 207.

193. Administrators are not, however, the government's only information producers: the White House, Congress and Courts also directly produce and communicate information. *See* Fahey & Castro Fernandez, *supra* note 190, at 39 (describing the information-gathering powers of the President and

statutes designed to regulate administrative process and behavior that both bless information asymmetry and seek to (at least partially) control it through the "rights" and "regulatory" mechanisms we theorize in Part II. But both the *rights solution*—anchored by the Freedom of Information Act, and the *regulatory solution*—a body of statutory and administrative practices primarily geared at U.S. statistical agencies, have notable limitations in their capacity to ensure accurate and transparent information production and communication.

1. *The Rights Solution*

Beginning with the rights solution, FOIA's right to know was conceptually part of the American lexicon long before it was formal law. In the Progressive Era, as David Pozen has detailed, there was a robust rhetoric of transparency and publicity; its object, however, was corporations, not the government.[194] The idea was to use "publicity" to "expose and curb corporate abuses" and constrain corporate power.[195] In the early part of the Twentieth Century, that rhetoric began a turn toward government.[196] And by midcentury, the Administrative Procedure Act of 1946 (APA) would elaborate (in four short paragraphs) a formal government policy on "Public Information."[197] The Act instructed agencies to publish their organizational charts, internal procedures, substantive rules, and guidance documents and to publish or "make available to public inspection" most adjudications.[198] It also instructed that all "matters of official record" shall be "made available to persons properly and directly concerned except information held confidential for good cause."[199]

Those instructions proved predictably inadequate to educate the public—and individuals—about the inner workings of federal agencies and the information they generated and used in their activities. Skeptics in Congress worried in particular that the APA's vague language and sweeping agency discretion had "failed to provide the desired access to information relied upon in Government decisionmaking" and conferred instead—

Congress); Aziz Z. Huq & Zachary D. Clopton, *The Necessary and Proper Stewardship of Judicial Data,* 76 STAN. L. REV. 893 (2024) (describing the significant data assets and data production capabilities of the Judicial Branch).

194. David E. Pozen, *Transparency's Ideological Drift*, 128 YALE L.J. 100, 110 (2018).

195. *See id.* (characterizing calls by then-New York Governor Theodore Roosevelt for increased publicity) (quoting Kevin Stoker & Brad L. Rawlins, *The "Light" of Publicity in the Progressive Era,* 30 JOURNALISM HIST. 177, 178 (2005)).

196. *Id.* at 112 (detailing Woodrow Wilson's plea for "'sunshine' in congressional deliberations, the selection of political party leaders, and public administration.").

197. Administrative Procedure Act, Pub. L. No. 404-79, § 3 (1946) (codified as amended at 5 U.S.C. § 552).

198. Administrative Procedure Act, § 3.

199. Administrative Procedure Act, § 3(a)–(c).

perversely—a "major statutory excuse for withholding Government records from public view."[200] After a series of high-profile hearings in Congress over the subsequent two decades, and over the widespread objections of federal agencies, Congress replaced the APA's "public information" provisions with a new, rights-based approach to accessing government information in the Freedom of Information Act of 1966.[201] It was celebrated as a basic building block of democracy that would "ensure an informed citizenry," "check . . . corruption" in government, and buttress the apparatuses of popular accountability.[202] It would, in short, ensure popular control over government information.

FOIA has, in subsequent decades, been amended and supplemented with additional transparency measures many times, but there is wide scholarly consensus that FOIA and its transparency portfolio continue to suffer significant flaws in both design and execution. Most basically, FOIA requires the government to disclose documents upon request, but has significant exemptions—each of which can be understood as *information asymmetry by design*. Each allows the government to maintain a monopoly over the exempted information and, in so doing, eliminates opportunities for public auditing.

FOIA exempts from disclosure documents that are classified and must remain confidential "in the interest of national defense or foreign policy," documents that contain confidential "trade secrets" or other "commercial or financial information," "inter-agency or intra-agency" materials that would be subject to withholding in litigation under the "deliberative process privilege," "personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy," and law enforcement "records or information" that "could reasonably be expected to constitute an unwarranted invasion of personal privacy," among others.[203] Many have contested the public interest served by those broad

200. U.S. Dep't. of Just. v. Tax Analysts, 492 U.S. 136, 157 (1989) (quoting H.R. Rep. No. 1497, at 3 (1966)).

201. Mark Fenster, *The Transparency Fix: Advocating Legal Rights and Their Alternatives in the Pursuit of a Visible State*, 73 U. PITT. L. REV. 443, 451 (2012) (describing the origins of FOIA in a public campaign to "'promote the 'freedom of information' and the public's 'right to know'"'); David E. Pozen, *Freedom of Information Beyond the Freedom of Information Act*, 165 U. PA. L. REV. 1097, 1103 (2017) ("Government transparency is . . . framed as an individual right held by the requester alone.").

202. N.L.R.B. v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) ("The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."); Kwoka, *supra* note 57, at 2211 ("The idea [behind FOIA] was simple: the public, Congress itself, and most notably the press would be able to obtain government records to find out what the government is doing.").

203. 5 U.S.C. § 552(b)(1), (4)–(7). In addition to FOIA's exemptions, significant statistical statutes—authorizing the production of economic, social, and political statistics—also permit or require agencies to withhold raw data that would expose individual privacy or confidential corporate information. *See, e.g.*, 13 U.S.C. § 9 (census); Confidential Information Protection and Statistical

exemptions, but even accepting that they could justify information asymmetry in at least some of their covered cases, scholars have also documented their dramatic broadening over time, as officials use them as pretext to maintain informational advantages over the public beyond what their basic text—and certainly beyond what their spirit—would allow.[204] As Seth Kreimer, one of FOIA's rare scholarly defenders, has explained, the "scope of exemptions gives wide range for administrative predictions of dire consequences from disclosure, and courts will often defer to these predictions."[205]

The patterns of application for FOIA's broad exemptions, moreover, have shifted widely across presidential administrations, suggesting that the information asymmetries they bless—to ostensibly protect privacy, national security, trade secrets and the like—can also be used to facilitate partisan projects.[206] For example, after Bill Clinton instructed federal agencies to adopt a "presumption of disclosure" under FOIA, his successor George W. Bush reversed that default, directing agencies not to disclose information that they had any discretion to withhold—out of his stated concern for "institutional, commercial, and personal-privacy interests."[207]

FOIA has also proven inadequate to counteract the more bureaucratic motivations for sustaining information asymmetries. Given the breadth of FOIA's exemptions, and the discretion they confer on agencies, compliance cannot be guaranteed by statutory text alone; agencies must have motivation, culture, and norms that encourage them to use their discretion to advance

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Efficiency Act of 2002, Pub. L. No. 107-347 (codified at 44 U.S.C. § 3501) (privacy rules for "Designated Statistical Agencies").

204. *See, e.g.*, Margaret B. Kwoka, *Deferring to Secrecy*, 54 B.C. L. REV. 185, 211 (2013) (documenting high rates of deference to agency exemption judgments); *see also* Deepa Varadarajan, *Business Secrecy Expansion and FOIA*, 68 UCLA L. REV. 462 (2021); Paulina Perlin, *Defense and Deference: Empirically Assessing Judicial Review of Freedom of Information Act's National Security Exemption*, 11 HARV. NAT'L SEC. J. 257, 261 (2020) ("FOIA's [national security exemption] . . . has proven nearly impenetrable."); Ryan W. Miller, *Ending Exemption 5 Expansion: Toward A Narrower Interpretation of FOIA's Exemption for Inter- and Intra-Agency Memorandums*, 92 FORDHAM L. REV. 1613 (2024).

205. Seth F. Kreimer, *The Freedom of Information Act and the Ecology of Transparency*, 10 U. PA. J. CONST. L. 1011, 1046 (2008).

206. David C. Vladeck, *Information Access—Surveying the Current Legal Landscape of Federal Right-to-Know Laws*, 86 TEX. L. REV. 1787, 1790 (2008) ("[A] perennial problem is that access-to-information statutes are subject to political manipulation by administrations that are intent on limiting public access to government-held information.").

207. *Id.* (citing Memorandum from John Ashcroft, Att'y Gen. of the U.S., to the Heads of All Fed. Dep'ts & Agencies (Oct. 12, 2001), https://www.justice.gov/archive/oip/011012.htm and Memorandum from Janet Reno, Att'y Gen. of the U.S., to Heads of Dep'ts & Agencies (Oct. 4, 1993), https://www.justice.gov/archives/oip/blog/foia-update-attorney-general-renos-foia-memorandum); *see also* Memorandum from John Ashcroft, Att'y Gen. of the U.S., to the Heads of All Fed. Dep'ts & Agencies (Oct. 12, 2001), https://www.justice.gov/archive/oip/011012.htm ("Any discretionary decision by your agency to disclose information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.").

FOIA's objectives.[208] But culture and norms are fragile. Christopher J. Morten and Amy Kapczynski, for example, have detected less-than-admirable customs of FOIA compliance in their study of the Food and Drug Administration.[209] They find, for example, that administrators enticed by a revolving door frequently withhold information that FOIA would permit—or encourage—them to disclose "out of deference to the pharmaceutical industry."[210] FOIA can also be burdensome on agency officials, creating incentives to simply delay responding to requests and hope that attrition minimizes their workload. Journalists, who are repeat FOIA players and one of the central conduits through which its high democratic accountability objectives may be realized, have long complained of the "serious delays and obstructionism that often make filing a FOIA request a futile exercise."[211]

Finally, FOIA, and rights solutions to the problem of information asymmetry more generally, suffer a more intractable limitation. FOIA rests, as David Pozen has emphasized, on a reactive "request-driven strategy"—it is the individuals who assert their informational rights that determine what information to request and, as a result, what information is subject to public audit.[212] And as Margaret Kwoka has empirically shown, "commercial requesters—private entities that seek information as part of their profit-making enterprise—dominate the landscape at some agencies."[213] Some records obtained under FOIA serve a public checking function; others, Kwoka's data show, serve private functions—the interests of "information-reselling businesses whose profit model depends on obtaining government records at low cost and reselling them, for a higher price, to interested parties."[214] FOIA's lofty objectives, in short, rest on the assumption that

208. Kreimer, *supra* note 205, at 1047 ("FOIA's efficacy depends on a law-abiding civil service. Many of the decisions regarding FOIA requests are made at a line level by career bureaucrats who have no political stake in disclosure or non-disclosure and who can do their jobs most easily by following regulations in good faith.").

209. Christopher J. Morten & Amy Kapczynski, *The Big Data Regulator, Rebooted: Why and How the FDA Can and Should Disclose Confidential Data on Prescription Drugs and Vaccines*, 109 CAL. L. REV. 493, 522 (2021).

210. *Id.* at 525 (explaining that "[b]oth drug companies and the FDA face many temptations to secrecy" and cataloging the policies and practices through which the FDA has succumb to those temptations); *see also id.* at 522 ("Although FOIA is a *permissive* statute that allows agencies to voluntarily release information, even if the information qualifies as a trade secret or as CCI, the FDA's own rules in fact *prohibit* the agency from disclosing such information.").

211. Kwoka, *supra* note 58, at 2213; Cezary Podkul, Justin Elliot, Paul Kiel, Charles Ornstein, Jesse Eisinger, Julia Angwin, Michael Grabell & Derek Willis, *Delayed, Denied, Dismissed: Failures on the FOIA Front*, PROPUBLICA (July 21, 2016), https://www.propublica.org/article/delayed-denied-dismissed-failures-on-the-foia-front ("[A]lmost every reporter on our staff can recite . . . tales of protracted jousting with the public records offices of government agencies.").

212. Pozen, *supra* note 201, at 1136; *id.* at 1103 ("Government transparency is . . . framed as an individual right held by the requester alone.").

213. Kwoka, *supra* note 58, at 1365.

214. *Id.*

individual requesters in aggregate will reflect the public interest, but FOIA's practiced reality suggests otherwise.

FOIA's compendium transparency statutes have had no clearer success at resolving the problem of information asymmetry. The Sunshine Act and Federal Advisory Committees Act establish a transparency regime for meetings of federal agencies and committees that advise them.[215] But both laws have been criticized as burdensome and easily circumvented, inducing agencies to deplete content and contestation from public meetings and conduct decisionmaking in behind-the-scenes deliberations that are not subject to formal disclosure requirements.[216] The Electronic Freedom of Information Act Amendments of 1996 resolved ambiguity about the application of FOIA to electronic records, and more importantly, instructed agencies to proactively disclose records that were repeatedly requested and create electronic points of access for those and other agency materials—orders, statements of policy, and the like—subject to affirmative disclosure.[217] But scholars have identified strikingly high non-compliance with those important affirmative disclosure requirements.[218]

So too has a recent effort at affirmative disclosure—the six-year-old OPEN Government Data Act—been halting in the best account.[219] The purpose of the act is to encourage the government to affirmatively disclose information that would otherwise be discoverable by FOIA—that is, information that does not meet one of the FOIA exemptions—and to conduct an inventory of government's "data assets."[220] Implementation has been slow, as the Government Accountability Office has several times lamented.[221] Indeed, the Office of Management and Budget is now nearly five years delinquent in complying with the Act's instruction to issue

215. Federal Advisory Committee Act, 5 U.S.C. §§ 1001–1014.

216. David E. Pozen, *Transparency's Ideological Drift*, 128 YALE L.J. 100, 129 (2018) (collecting literature).

217. Electronic Freedom of Information Act, 5 U.S.C. § 552 (requiring disclosure of records that have been requested "3 or more times").

218. A. Jay Wagner, *"Longstanding, Systemic Weaknesses": Hillary Clinton's Emails, FOIA's Defects and Affirmative Disclosure*, 29 U. FLA. J. L. & PUB. POL'Y 359, 398–99 (2019) ("It is hard to overstate the enthusiasm surrounding the EFOIA amendments" but "[d]espite the grand ambitions of the EFOIA, after more than twenty years of the alterations, little has changed in the prevailing FOIA routines . . . ."); Michael Herz, *Law Lags Behind: FOIA and Affirmative Disclosure of Information*, 7 CARDOZO PUB. L. POL'Y & ETHICS J. 577, 588 (2009) ("[I]n general agencies have placed only a fraction of the material that should be available in their reading rooms."); Vladeck, *supra* note 206, at 1789; ("[A]gencies have by-and-large failed to comply with EFOIA's affirmative disclosure mandate . . . .").

219. OPEN Government Data Act, Pub. L. No. 115-435 (2019).

220. *Id.*

221. U.S. GOV'T ACCOUNTABILITY OFF., GAO-22-104574, OPEN DATA: ADDITIONAL ACTION REQUIRED FOR FULL PUBLIC ACCESS (2021); U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-29, OPEN DATA: AGENCIES NEED GUIDANCE TO ESTABLISH COMPREHENSIVE DATA INVENTORIES; INFORMATION ON THEIR PROGRESS IS LIMITED (2020).

guidance that is necessary for agencies to implement the Act.[222] The latest, and perhaps most promising, recent enhancement is the FOIA Improvement Act of 2016, which formally narrowed agencies' discretion to withhold information.[223] The FOIA Improvement Act is only just filtering into judicial review of agency FOIA decisions, so it remains too early to evaluate its success at restructuring FOIA's compliance incentives.

What is clear is that the American portfolio of transparency statutes leaves significant information asymmetries ineffectively controlled. As Geoffrey Stone has summarized, the "government often has exclusive possession of information about its policies, programs, processes, and activities" but "insist[s] that such information must be kept secret, even from those to whom they are accountable" for reasons that "range from the truly compelling to the patently illegitimate."[224]

2. *The Regulatory Solution*

The regulatory solution likewise has meaningful limitations—in design and execution—as a tool to control the risks of government information asymmetry. As we elaborate in Part II, the federal government has a range of tools to formally regulate how statistical and other informational producers gather and communicate information. The United States has "a highly decentralized statistical system, spanning 125 agencies spread across the Government, all of which are engaged, to some degree, in collecting data and producing statistics."[225] Congress regulates those agencies by statute.[226] And the Office of Management and Budget and its Office of Information and Regulatory Affairs, along with the Interagency Council on Statistical

222. *See, e.g.*, Letter from Sen. Chuck Grassley to Shalanda Young, Dir., Off. of Mgmt. & Budget (Sept. 15, 2023) ("It is unacceptable that OMB is over four years late issuing implementation guidance and reporting on agencies' compliance with an Act meant to increase transparency.").

223. FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016); *see, e.g.*, The Freedom of Information Act, 5 U.S.C. 552(a)(8)(A) (instructing agencies to "withhold information under this section only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law").

224. Geoffrey R. Stone, *Secrecy and Governance*, 56 N.Y. L. SCH. L. REV. 81, 83 2011); *id.* at 2 (noting that sometimes, officials "are concerned that the revelation of secret information would betray the confidences of citizens" or "undermine the national security," but that other times, officials "keep information secret because disclosure would expose to public view their own incompetence or wrongdoing"); *see also* David E. Pozen, *Deep Secrecy*, 62 STAN. L. REV. 257, 277–79, 277 n.54 (2010) (collecting literature on state secrecy).

225. White House, *The Structure of the Federal Statistical System*, https://obamawhitehouse.archives.gov/omb/inforeg_statpolicy/bb-structure-federal-statistical-system (last visited Mar. 27, 2025).

226. *See, e.g.*, Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, 132 Stat. 5529 (codified in scattered sections of 5 U.S.C. and 44 U.S.C.) (requiring agencies, among other things, to conduct data inventories, make certain data available publicly, and facilitate intragovernmental information sharing for statistical purposes); Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501–3520 (empowering the OMB to oversee, coordinate, and implement guidance for statistical agencies and statistical information production).

Policy, among others, also devise and implement regulatory guidance for that sprawling statistical state.[227]

Those regulatory techniques are wide-ranging—from process and institutional design, to methodological transparency and public comment, to peer review and professionalized norming, to accounting and reporting.[228] And there is good reason to think that in the steady state, that portfolio of direct regulations of how information is produced has worked: the United States is generally understood to be a world leader in statistical practice and regularity. But there have nevertheless been routine concerns over the last century—since statistical practice was "professionalized"—about political pressure, underfunding, and bureaucratic incentives, the upshot of which is that our systems for producing statistics and information are not immune from the risk of misinformation.[229] Recent examples include widely publicized claims of White House efforts to propound COVID-19 misinformation during the pandemic, politicized efforts to shape data collection for the 2020 Census, false claims of election fraud in 2016 and 2020, and—in the early part of the second Trump Administration—overt orders to restrict, alter, and subject to political approval the information produced by expert agencies.[230]

227. 44 U.S.C. § 3504 (empowering OMB to produce guidance for statistical agencies); 44 U.S.C. § 3516 note (requiring, among other things, guidance to "seek and obtain correction of information maintained and disseminated by the agency"); Protect Democracy Project v. DOJ, 2023 WL 4471809, at *5 (D. Mass. July 11, 2023) (holding that that provision "neither confer[s] rights on private parties nor provides a right of action to private parties to enforce its requirements").

228. On process, see, e.g., Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators, 50 Fed. Reg. 38932 (Sept. 25, 1985) (process for timing and release of economic indicators); Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58782 (Oct. 30, 1997) (process for collecting information about race); on methodology, see, e.g., Standards and Guidelines for Statistical Surveys, 71 Fed. Reg. 55522 (Sept. 22, 2006); on peer review, see Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664 (Jan. 14, 2005); on professionalized norms, U.S. DEP'T COM., BUREAU ECON. ANALYSIS, *Commitment to Scientific Integrity by Principal Statistical Agencies* (Feb. 20, 2024), https://www.bea.gov/commitment-scientific-integrity-principal-statistical-agencies (describing the centrality to statistical agency practice, rules, and behavior of the National Research Council of the National Academies handbook, *Principles and Practices for a Federal Statistical Agency*); on reporting, see, e.g., KEVIN F. MCCUMBER, U.S. HOUSE OF REPRESENTATIVES, LEGIS. RES. CTR., REPORTS TO BE MADE TO CONGRESS, H.R. DOC. NO. 118-97 (2024), https://www.govinfo.gov/content/pkg/CDOC-118hdoc97/pdf/CDOC-118hdoc97.pdf (collecting mandatory reports to Congress).

229. *See, e.g.*, Jonathan Auerbach, *Safeguarding Facts in an Era of Disinformation: The Case for Independently Monitoring the U.S. Statistical System*, 5 HARV. DATA SCI. REV., no. 3, July 27, 2023, at 1 (collecting literature); *see also* Constance F. Citro, Jonathan Auerbach, Katherine Smith Evans, Erica L. Groshen, J. Steven Landefeld, Jeri Mulrow, Thomas Petska, Nancy Potok, Charles J. Rothwell, John Thompson, James L. Woodworth & Edward Wu, *What Protects the Autonomy of the Federal Statistical Agencies? An Assessment of the Procedures in Place to Protect the Independence and Objectivity of Official U.S. Statistics*, 10 STAT. & PUB. POL'Y 2188062 (2023) (collecting recent examples); David Zarefsky, Erwin Chemerinsky & Alan S. Loewinsohn, *Government Statistics: The Case for Independent Regulation—A New Legislative Proposal*, 59 TEX. L. REV. 1223, 1223–24 (1981) (describing episodes during the Nixon, Carter and Regan administrations).

230. *See* sources cited *supra* note 7 (describing examples from the second Trump administration).

Observers might see those episodes as harmless error—all complex systems have isolated failure points and the U.S. information production system, the argument would go, remains strong in substance and high in trust. Our claim is not that the intricate portfolio of legal tools that directly regulate and structure American information production have proven unsuccessful or inadequate in the everyday. Our argument is that they are more fragile than we think and becoming more vulnerable. The misinformation of the Trump era was an indicator of flaws inherent to any regulatory approach—however sophisticated, thoughtful, or calibrated to rigorous and accurate information production.[231]

Although it is commonplace to observe that independence from political forces is essential to statistical and informational regularity,[232] it cannot be taken for granted that information producers will be insulated from politics. As Chief Justice Roberts has explained, the "constitutional strategy is straightforward":

> [D]ivide power everywhere except for the Presidency, and render the President directly accountable to the people through regular elections. In that scheme, individual executive officials will still wield significant authority, but that authority remains subject to the ongoing supervision and control of the elected President. Through the President's oversight, *the chain of dependence* [*is*] *preserved*, so that the lowest officers, the middle grade, and the highest all depend, as they ought, on the President, and the President on the community.[233]

231. There is a significant literature on the importance, but fragility, of norms across legal contexts. For a small sampling, see, e.g., Daphna Renan, *Presidential Norms and Article II*, 131 HARV. L. REV. 2187, 2191 (2018); Gillian E. Metzger & Kevin M. Stack, *Internal Administrative Law*, 115 MICH. L. REV. 1239, 1301 (2017); Adrian Vermeule, *Conventions of Agency Independence*, 113 COLUM. L. REV. 1163 (2013); Josh Chafetz & David E. Pozen, *How Constitutional Norms Break Down*, 65 UCLA L. REV. 1430 (2018); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 392 (1997).

232. *See, e.g.*, NAT'L ACADEMIES OF SCIENCES, ENGINEERING, & MEDICINE, PRINCIPLES AND PRACTICES FOR A FEDERAL STATISTICAL AGENCY 3 (Brian A. Harris-Kojetin & Constance F. Citro eds., 7th ed. 2021) (describing "Principle 4: Independence from Political and Other Undue External Influence" and noting that "Federal statistical agencies must be independent from political and other undue external influence in developing, producing, and disseminating statistics"); Citro et al., *supra* note 229, at 2 ("[A] lack of professional autonomy . . . exposes the principle federal statistical agencies to efforts to undermine the objectivity of their products"); Zarefsky, Cherminsky, & Loewinsohn, *supra* note 229, at 1224 (describing the "ubiquitous pressures that emerge from the conflict between the statistician's professional and political roles."). Influential commentators have called on Congress to "enact legislation that accords all principal statistical agencies autonomy over data collection and analysis," AM. STAT. ASSOC., THE NATION'S DATA AT RISK: MEETING AMERICA'S INFORMATION NEEDS FOR THE 21ST CENTURY 9 (2024).

233. Seila Law v. Consumer Fin. Prot. Bureau, 591 U.S. 197, 224 (2020) (internal quotation marks omitted); *see also* Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, Future*, 2020 SUP. CT. REV. 83 (2020); Ashraf Ahmed, Lev Menand & Noah Rosenblum, *The Making of Presidential Administration*, 137 HARV. L. REV. 2131, 2186 (2024).

The insistence on direct presidential control in the current (and strengthening) body of Article II doctrine designed to buttress the unitary executive is in tension with the idea of statistical independence, self-regulation through professional norms, and decision-making insulated from politics—and that tension will only grow. If the beginning of the second Trump administration is an indicator of how information politics will unfold over the remainder of his term, the unitary executive may prove incompatible with the basic building blocks of informational regularity sooner rather than later.[234] As those tensions increase, FOIA—and the general public—cannot act as the sole auditor of government information.

B. *The Structural Solution: American Information Federalism*

In the American system, we observe another external auditor of government information and a third strategy for managing the risks associated with information asymmetries: federalism, or structural power sharing between the federal government and the states. How the federal government and states share power is a product of (i) constitutional entitlements, which are themselves often negotiated over time and glossed through ongoing practice and intergovernmental interaction;[235] (ii) federal and state statutes that structure some but not all cooperative federalism programs; [236] (iii) intergovernmental agreements, cross-governmental bureaucracies, and joint processes of governance that arise organically through bilateral negotiations between states and federal agencies;[237] and (iv) the norms and practices that compose a "soft law" of federal-state interaction.[238] These multiple and intersecting legal sources produce different forms of federal-state interaction in each policy—and even programmatic—context. Looking across information-rich areas, it is no surprise therefore to notice multiple different power-sharing models—and a corresponding multiplicity in ways that federalism can constitute or enhance the auditing and counternarration functions we theorize as tools to constrain the risk of misinformation.

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234. *See* sources cited *supra* note 7.

235. *See* Aziz Z. Huq, *The Negotiated Structural Constitution*, 114 COLUM. L. REV. 1595 (2014).

236. *See* Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534 (2011).

237. Bridget A. Fahey, *Coordinated Rulemaking and Cooperative Federalism's Administrative Law*, 132 YALE L.J. 1320 (2023); Fahey, *Data Federalism supra* note 14; Bridget A. Fahey, *Federalism by Contract*, 129 YALE L.J. 2326 (2020).

238. Fahey, *Coordinated Rulemaking and Cooperative Federalism's Administrative Law*, supra note 237, at 1367.

1. *Proceduralized Auditing and Counternarratives*

The first model of information federalism is both formal and proceduralized: it allows states to both audit and press counternarratives to federal information products through a structured administrative process. The Census Bureau is a consequential example.

States cannot formally contest the decennial Census, which must happen by Constitutional command every ten years in order to apportion seats in the House of Representatives.[239] But the decennial Census also serves as the foundation for subsequent annual population estimates for states and localities. Those numbers, in turn, are used for a variety of purposes, but of perhaps greatest significance: they direct more than $2.8 trillion in federal grants to those governments.[240] It is, therefore, enormously significant to state and local budgets that the Census Bureau correctly tally their populations in the decennial Census and in the annual population figures that grow from it.

For that reason, as political scientist Philip Rocco has shown, "[s]ubnational governments—while not formally responsible for implementing the census—have long been players in census politics."[241] Some forms of state participation are relatively unstructured and designed to be complementary to federal efforts. For example, during the decennial Census itself, localities participate in "Complete Count Committees"—groups of local officials and civil society leaders who design public awareness campaigns tailored to local needs designed to ensure high census participation—and otherwise expend state funds to encourage residents to participate.[242]

But after the Census, when population figures are applied to other governance projects, states also gain formal pathways to influence population figures. Of significant importance, the Population Estimates Challenge Program allows subfederal governments to audit and counternarrate federal data.[243] The Program commits to adjusting a city or

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239. U.S. CONST. art. I, § 2; *id.* amend. XIV, § 2.

240. Press Release, U.S. Census Bureau, Census Bureau Data Guide More Than $2.8 Trillion in Federal Funding in Fiscal Year 2021 (June 14, 2023), https://www.census.gov/newsroom/press-releases/2023/decennial-census-federal-funds-distribution.html.

241. Philip Rocco, *Counting Like a State: The Politics of Intergovernmental Partnerships in the 2020 Census*, POL. SCI. Q. 1, 2 (2023).

242. *2020 Census: Conducting and Motivating the Count: Complete Count Committees*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/count/complete_count.html (Jan. 26, 2022); Michael Wines & Jose A. Del Real, *In 2020 Census, Big Efforts in Some States. In Others, Not So Much*, N.Y. TIMES (Dec. 15, 2019), https://www.nytimes.com/2019/12/15/us/census-california-texas-undercount.html (describing California's $187 million expenditure to encourage Census participation).

243. *Population Estimates Challenge Program*, U.S. CENSUS BUREAU (May 16, 2024), https://www.census.gov/programs-surveys/popest/about/challenge-program.html [hereinafter *Population Estimates Challenge Program*].

state's population estimate if that government can demonstrate, in the vein of an audit, a "technical error in processing input data or producing the estimates" or can show, in the vein of a counternarrative using independent data, an "incorrect input data used in the process of generating estimates."[244] Many states have administrative agencies that annually produce population estimates, from which they can draw to vet federal population figures.[245]

The possibility of a state or city mounting a successful challenge and obtaining an adjustment is not hypothetical, as the 2020 Census illustrates. That Census was conducted during the pandemic when ordinary migration patterns were disrupted. That was particularly true for students, prisoners, and residents of nursing homes—or, in Census terminology, people who live in "group quarters."[246] Census's approach to counting residents of group quarters proved a significant site of state contestation over Census figures and produced several high-profile challenges.[247] Indeed, the "group quarters" count was so widely contested that the Census Bureau created an independent program to hear and resolve challenges to those inputs into total population tallies.[248]

2. *State Information Input as Check*

The second model of information federalism arises where states control data inputs into federal data systems and can therefore develop alternative accounts of the information those federal systems contain. This model is formal—the federal government and states negotiate a data system in which states supply the relevant data. But the production of counternarratives is informal—those narratives play out in the marketplace of ideas, rather than in a structured administrative process. The CDC's National Notifiable Diseases Surveillance System and the informational contestation it produced illustrates these dynamics.

National disease surveillance requires timely and accurate inputs and conscientious aggregation. Disease tracking experts like the Centers for Disease Control (CDC) in the United States, and the politicians who use

244. *Id.*

245. *See, e.g.*, *Minnesota State Demographic Center*, ST. MINN., https://mn.gov/admin/demography/ (last visited Mar. 20, 2025); *Colorado State Demography Office*, ST. COLO. https://demography.dola.colorado.gov/ (last visited Mar. 20, 2025).

246. *Census Bureau Launches Operation to Review Group Quarters Counts: A New Way for Governmental Units to Request Review of 2020 Census Group Quarters Counts Potentially Affected by Pandemic*, U.S. CENSUS BUREAU (May 31, 2022), https://www.census.gov/library/stories/2022/05/census-bureau-launches-program-to-review-group-quarters-counts.html.

247. *See, e.g.*, Press Release, State of Illinois, Gov. Pritzker Announces Increased Illinois Census Numbers Following State Request for Review (Jan. 3, 2024), https://www.illinois.gov/news/press-release.29476.html; Mike Schneider, *Phoenix Becomes Largest U.S. City to Successfully Challenge 2020 Census*, ASSOCIATED PRESS, May 30, 2023, https://apnews.com/article/phoenix-2020-census-cities-860d52666faf24a4c888256ec4621157.

248. *See Population Estimates Challenge Program*, *supra* note 243.

their information, can inadvertently or deliberately produce misinformation by obtaining inaccurate raw inputs or by errors and irregularities in normalizing, standardizing, or analyzing that data. The CDC's Diseases Surveillance System is highly decentralized, relying not on CDC staff on the ground, but on health officials of all fifty states and thousands localities to provide raw data inputs on infectious disease.[249] That system has been subject to a chorus of criticism for reflecting an "uneven patchwork of surveillance programs across the country" resulting from the CDC's need to "negotiate data sharing and other agreements separately with each state."[250]

But state and local control over the data inputs facilitates counternarratives in two significant ways, both illustrated by the COVID pandemic. First, it ensured the release of raw data to the public so that researchers and civil society could produce alternative accounts of the CDC (or White House's) interpretation of the same data. For example, in the early months of the pandemic, the White House developed the narrative that the increase in COVID cases was a product not of increased infections but of expansions in testing.[251] Using the data from state and local health departments, multiple researchers quickly refuted those claims as incorrect and overly simplistic.[252] Indeed, the decentralization of COVID data gathering created the informational conditions for an ecosystem of independent COVID case counts, models, and narratives about the state of the pandemic.[253]

Second, it allowed states themselves to produce alternative accounts of the course of the pandemic in their states. For instance, when President Trump asserted in a press conference that COVID-related deaths would be

249. Jeneen Interlandi, *COVID Proved the CDC is Broken. Can it be Fixed?*, N.Y. TIMES MAG. (June 16, 2021), https://www.nytimes.com/2021/06/16/magazine/cdc-covid-response.html; *see also* Fahey, *supra* note 14, at 1022 (describing the disease surveillance system).

250. Interlandi, *supra* note 249.

251. Sharon Begley, *Trump Said More Covid-19 Testing 'Creates More Cases.' We Did the Math*, STATNEWS (July 20, 2020), https://www.statnews.com/2020/07/20/trump-said-more-covid19-testing-creates-more-cases-we-did-the-math/.

252. *Id.* (summarizing study); Charles Ornstein & Ash Ngu, *No, President Trump, Testing Is Not Causing Case Counts to Rise. The Virus is Just Spreading Faster,* PROPUBLICA (June 25, 2020, 3:36 PM) https://www.propublica.org/article/state-coronavirus-data-doesnt-support-trumps-misleading-testing-claims (conducting a similar study using data from the COVID Tracking Project: *Data Sources*, COVID TRACKING PROJECT, https://covidtracking.com/about-data/sources (March 7, 2021) ("Almost all of the data we compile is taken directly from the websites of state/territory public health authorities . . . , official state social media accounts or from press conferences with governors or other state authorities.")).

253. Some of these private tracking tools, for example, also used publicly available data to produce needed statistics in ways and for places not covered at the CDC. For example, the Johns Hopkins Coronavirus Resource, one of the most respected COVID tracking organizations, combined data from states with the geographic boundaries of federally recognized Native American reservations to estimate case counts for those underserved governmental units. *See Coronavirus Resource Center*, JOHNS HOPKINS (Mar. 10, 2023), https://coronavirus.jhu.edu/.

"very low [if] you take the blue states out," those states (and news media) likewise relied on their decentralized data stores to assertively resist that account.[254]

3. State Information Input as Veto

A third, and related, model uses state control over data inputs to deny to the federal government the data *it* would need to espouse misinformation. As with disease surveillance data, states are also the primary collectors of data about federal elections. Election information is one of the few informational ecosystems that follows a federalism template by constitutional design. The Constitution's Elections Clause envisions both state and federal roles in federal elections by providing that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."[255] Because states—and their political subdivisions—pass regulations for federal elections in the first instance, they also act as front-line election administrators.[256] And elections, like so many other forms of governmental action—from taxation, to public benefits administration, to road operation—create points of citizen-government interaction that produce information. As the governments-on-the-ground for federal elections, states are the first producers, holders, analyzers, and narrators of election-related information. At a high level, this positions states to develop counternarratives to federal claims about election integrity—which often draw on anecdotal evidence or campaign observations. When the Trump administration after the 2016 election and the Trump campaign after the 2020 election pressed claims of widespread voter fraud, many states both blue and red drew on their independent election data to refute those claims.[257]

But the state origination of election data has also, at times, acted as a salutary informational veto: denying federal officials the raw data necessary to form narratives about elections using flawed methods disapproved by the states. For example, after the 2016 election, President Trump created the

254. *See, e.g.*, Jacob Knutson, *Trump Blames "Blue States" for High Coronavirus Cases in U.S.*, AXIOS (Sept. 16, 2020), https://www.axios.com/2020/09/17/trump-coronavirus-deaths-toll-blue-states. (describing exchange).

255. U.S. CONST. art. I, § 4, cl. 1.

256. For an excellent summary of the complex legal terrain that has evolved from the Elections Clause, *see generally* Michael Morse, *Democracy's Bureaucracy: The Complicated Case of Voter Registration Lists*, 103 B.U. L. REV. 2123, 2134–38 (2023).

257. *See, e.g.*, Michael Tackett & Michael Wines, *Trump Disbands Commission on Voter Fraud*, N.Y. TIMES (Jan. 3, 2018) ("[N]o state has uncovered significant evidence to support the president's claim [that there is "substantial evidence of voter fraud"] and election officials, including many Republicans, have strongly rejected it.").

Presidential Commission on Electoral Integrity, led by then-Vice President Mike Pence and former Kansas Secretary of State Kris Kobach, to investigate alleged voter fraud.[258] To develop "evidence" of fraud, the Commission—housed in the White House, not an executive agency—solicited voter data from all fifty states.[259] When all but two declined, the Commission was shuttered.[260] In declining to provide data to the Commission, several states indicated their view that the data would not be used for legitimate informational purposes, but would rather—in the words of then-California Secretary of State Alex Padilla, "only serve to legitimize the false and already debunked claims of massive voter fraud made by the President."[261]

4. *Cooperative Information Production*

Although states have significant formal constitutional authority[262]—and still more functional power[263]—to regulate their economies, nearly all

258. Exec. Order No. 13799, 82 Fed. Reg. 22389 (May 11, 2017); Statement from Kris Kobach, Kansas Secretary of State and Vice Chair of the Presidential Advisory Commission on Election Integrity (July 5, 2017), https://trumpwhitehouse.archives.gov/briefings-statements/statement-kris-kobach-kansas-secretary-state-vice-chair-presidential-advisory-commission-election-integrity/.

259. *See supra* notes 261.

260. Tackett & Wines, *supra* note 257, attributing the Commission's failure to the fact that, by then-President Trump's account, "many states have refused to provide" it "with basic information relevant to its inquiry.").

261. Liz Stark & Grace Hauck, *Forty-Four States and DC Have Refused to Give Certain Voter Information to Trump Commission*, CNN (July 5, 2017), https://www.cnn.com/2017/07/03/politics/kris-kobach-letter-voter-fraud-commission-information/index.html; *see also id.* ("The best thing I can do to instill confidence among DC residents in our elections is to protect their personal identifiable information from the Commission on Election Integrity.") (quoting Washington, D.C. Mayor Muriel Bowser); *Delaware Will Not Provide Voter Information to White House Commission*, DELAWARE.GOV (July 3, 2017) ("Releasing this information to the White House would not serve the mission of safeguarding the fairness and integrity of elections in Delaware and would not be in the best interests of Delaware voters . . . . Delaware will not be a party to this disingenuous and inappropriate campaign against one of the nation's foundational institutions."); Steven Simon, Minn. Sec. of State, Statement on Request from Presidential Advisory Commission on Election Integrity (June 30, 2017), https://www.sos.mn.gov/about-the-office/news-room/secretary-simon-statement-on-request-from-presidential-advisory-commission-on-election-integrity/ (declining to provide information and citing "President Trump's false and irresponsible claim that millions of ineligible votes were cast in the last election" and the appearance of a "strong interest in steering the commission toward their pre-determined conclusions and outcomes.").

262. *See, e.g.*, Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 552 (2012); United States v. Lopez, 514 U.S. 549 (1995); Printz v. United States, 521 U.S. 898 (1997); New York v. United States, 505 U.S. 144 (1992).

263. *See, e.g.*, Bridget A. Fahey, *Coordinated Rulemaking and Cooperative Federalism's Administrative Law*, 132 YALE L.J. 1320 (2023); Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534, 545–60 (2011); Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1258 (2009); Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 569 (2008); Herbert Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 COLUM. L. REV. 543, 545 (1954) (explaining that "Congress acts . . . against

economic statistical indicators are produced by federal statistical agencies.[264] Put differently, *state-level* economic indicators communicated on state websites, described in state press releases, and relied upon for state policymaking are generally *federally crafted*.[265] When California touted its rank as the fifth largest global economy this year, for example, it relied on federal Bureau of Economic Analysis figures to determine size of its economy and on International Monetary Fund data for the size of foreign economies.[266] In California's roll-up of those federal and international sources, three other U.S. states made the top-twenty list: Texas (ninth), New York (twelfth), and Florida (nineteenth).[267]

There is a notable exception to this federal monopoly on economic information production: since the early part of the twentieth century, the states and federal government have worked cooperatively to create employment statistics.[268] That joint effort is not what some would see as a conventional cooperative federalism program, dictated by a federal statute from above, but instead follows some of the newly recognized forms of federal-state interaction that reflect more organic federal-state cooperation from below. Principally here, individually negotiated bilateral agreements between states and the federal government.[269] The federal Bureau of Labor Statistics (BLS) entered into its first such "agreement" with the state of New York to "share payroll employment information for several manufacturing

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the background of the total *corpus juris* of the states," including the basic legal and economic building blocks of common law property, contract, and tort law).

264. *See, e.g.*, Erica L. Groshen, *Importance of the U.S. Bureau of Labor Statistics and Critical Issues it Faces*, 53 BUS. ECON. 86, 87 (2018) ("State and local governments use Employment Projections, Occupational Employment Statistics (OES), and the Occupational Outlook Handbook (OOH) to make occupational projections, identify skill gaps, and market geographic areas to prospective employers. Ten states use CPI data to adjust minimum wage levels. Many states use geographically detailed QCEW and CES data to analyze the impact of disasters.").

265. *See, e.g.*, STATE ILL., DEP'T COM. & ECON. OPP., *A Plan to Revitalize the Illinois Economy and Build the Workforce of the Future* 19 (Oct. 2019) (relying on federally produced GDP figures for productivity estimates).

266. *California Remains the World's 5th Largest Economy*, GOVERNOR GAVIN NEWSOM (Apr. 16, 2024), https://www.gov.ca.gov/2024/04/16/california-remains-the-worlds-5th-largest-economy/.

267. *Id.*; STATE TEX., OFFICE OF THE TEXAS GOVERNOR, *Texas Economic Snapshot*, https://gov.texas.gov/business/page/texas-economic-snapshot (last visited Mar. 27, 2025) (touting Texas' placement as the "eighth largest economy"); FISCAL RESEARCH DIVISION, NORTH CAROLINA GENERAL ASSEMBLY, GROSS STATE PRODUCT, at 3 n.4 (Feb. 2024), https://sites.ncleg.gov/frd/wp-content/uploads/sites/7/2024/03/2024-Gross_State_Product_2pager-2.pdf ("GSP [Gross State Product] data is from the U.S. Bureau of Economic Analysis"); LEGISLATIVE SERVS. AGENCY OF IOWA, *Iowa's Gross State Product* 1 (Sept. 5, 2024) (citing the U.S. Department of Commerce's Bureau of Economic Analysis as the source of gross state product information).

268. Joseph W. Hines & Gunnar Engen, *BLS Regional Offices: 50 Years of Federal-State Cooperation*, BUREAU OF LABOR STATISTICS: MONTHLY LABOR REVIEW 37 (Dec. 1992).

269. *See* Fahey, *Federalism by Contract*, *supra* note 237, at 2398–2400 (describing federal-state agreement-making as a form of bilateral lawmaking for cooperative programs); Fahey, *Data Federalism*, *supra* note 14, at 1031–44 (arguing that data sharing between governments generally exists in a field of federal "statutory minimalism" and follows instead from "contractual lawmaking").

and mining industries" in 1916.[270] By 1939, seventeen states had agreements to cooperate with BLS.[271] Meanwhile, one of the early New Deal federalism initiatives was the jointly run Unemployment Insurance program,[272] which gave states the central role in administering benefits to the unemployed and positioned states to further expand their collection of information about employers, employees, and unemployed people.[273]

By 1945, the BLS had created a network of regional field offices with the "responsibility of working with the cooperating State agencies" and making use, in particular, of rich state data produced incident to their unemployment insurance programs.[274] And within the next four years, the remaining states had entered into "cooperative arrangements" with BLS.[275] In the subsequent decades, the cooperative labor statistics program would expand to cover (or experiment with) related labor market information, including wage data, occupational projections, and occupational safety and health statistics.[276] And its cooperative nature would be formally protected in federal statute.[277] So too, the distribution of tens of billions of dollars in federal grants came to rely on cooperatively produced employment statistics.[278] Historical path dependence, in short, means that today states have an unusually significant role in employment-related statistical products.

270. Hines & Engen, *supra* note 268, at 36.

271. *Id.* ("When States began to identify a need for State- and area-level employment statistics, concern about duplication of reporting and the associated burden on respondents provided an impetus for developing cooperative Federal-State arrangements").

272. Social Security Act, tit. III, 49 Stat. 620 (1935).

273. This is consistent with the growth in state administrative capacity precipitated by the broader portfolio of New Deal "cooperative" programs. *See* KAREN TANI, STATES OF DEPENDENCY: WELFARE, RIGHTS, AND AMERICAN GOVERNANCE, 1935–72 (2016).

274. Hines & Engen, *supra* note 268, at 36.

275. *Id.* at 37.

276. *Id.* at 38–39. Today, the BLS manages three employment data programs. One—the Current Employment Statistics survey—is administered by BLS, and two—the Local Area Unemployment Statistics program and the Quarterly Census of Employment and Wages—are cooperative. *See How the Government Measures Unemployment*, U.S. DEP'T. LAB., BUREAU LAB. STATS., https://www.bls.gov/cps/cps_htgm.htm#laus (last visited Mar. 20, 2025).("BLS is responsible for the concepts, definitions, technical procedures, validation, and publication of the estimates that state government agencies prepare [for the LAUS program] under agreement with BLS."); *Quarterly Census of Employment and Wages*, U.S. DEP'T. LAB., BUREAU LAB. STATS., https://www.bls.gov/cew/ (last visited Mar. 20, 2025); *Current Employment Statistics,* U.S. DEP'T. LAB., BUREAU LAB. STATS., https://www.bls.gov/web/empsit/cesprog.htm (last visited Mar. 20, 2025)

277. Workforce Investment Act of 1998, Pub. L. No. 105-220, § 15(b)(1) ("The employment statistics system . . . shall be planned, administered, overseen, and evaluated through a cooperative governance structure involving the Federal Government and States"). That language was amended in 2014, instructing the Secretary of Labor to "in collaboration with States, develop and maintain" the information system envisioned by the Act. 29 U.S.C. § 49*l*-2(b)(2)(D); *see also* Workforce Innovation and Opportunity Act of 2014, Pub. L. No. 113-128, § 308(c)(2).

278. Hines & Engen, *supra* note 268, at 38–39; Groshen, *supra* note 264, at 95 ("LAUS [Local Area Unemployment Statistics] estimates were used in the allocation of nearly $90 billion in federal funds in 2013 for the operation of a wide range of assistance programs, including the Department of Labor's employment and training programs, the Emergency Food and Shelter Program (EFSP), the

That role creates several distinct mechanisms for states to both audit and establish counternarratives for employment statistics. First, they can use the lever of what Heather Gerken and Jessica Bulman-Pozen have called "uncooperative federalism"—the ability to challenge, contest, and shape federal-state work products from within cooperative programs.[279] In cooperative statistical contexts, we might see that as something akin to an audit-from-within function. Second, it creates a kind of salutary redundancy, in which states can offer credible counternarratives to federal data products. This spring, for example, Colorado indicated that it had significantly higher job growth than a separate, less elaborate federally administered employment survey had suggested.[280] Finally, it creates informational capacity, expertise, and systems in the states, which in turn enables them to pursue other related projects of counternarration when they see federal data as lacking or flawed. As one researcher has explained, "[s]tates themselves often provide further information about state and local labor markets" beyond what federal figures contain, like the "characteristics of new job applications" or information about the "characteristics of the unemployed."[281]

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This account of American informational federalism raises more avenues for future research than it resolves. Future work could explore the relative merits of different models of informational federalism to both control government misinformation and achieve other informational values and informational federalism's role in America's broader and multifaceted federalist system. Our modest goal here has been to show that any account of an American information production apparatus that omits federalism is incomplete. Federalism—and its different expressions across policy area and program—interacts with, and performs different functions than, regulatory and rights solutions in managing the problem of informational symmetry.

Public Works Program (PWP), the Temporary Emergency Food Assistance Program (TEFAP), Temporary Assistance to Needy Families (TANF) Program, and the SNAP.").

279. Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1271 (2009).

280. Tamara Chuang, *Why Colorado Had Higher Unemployment Rates But More Job Growth in 2023 Than the Feds Reported*, COLO. SUN (Mar. 12, 2024), https://coloradosun.com/2024/03/12/colorado-unemployment-rate-job-growth-2023/ (quoting state statisticians and academic observers who asserted that the "(federal) sample has been underestimating Colorado employment now for over a year" and indicating that "it's a real service the state does by telling us that because on paper, it looked like Colorado's economy was slowing down way faster than the national economy.").

281. Sonya Ravindranath Waddell, *State Labor Markets: What Can Data Tell (or Not Tell) Us?*, FED. RES. BANK RICHMOND, ECON FOCUS: FIRST QUARTER, 36, 39 (2015).

V. CONCLUSION

Our goal in this Article has been to make and illustrate a set of general theoretical claims about how law structures information production and to show how these claims help identify on-the-ground dynamics in the United States and China. Both case studies, to that end, demonstrate the qualitative applicability of the theoretical arguments we made in Part III. The information power and information asymmetry principles are plainly visible in both regimes, despite their otherwise enormous political differences: both regimes have treated information production as a source of political power. Moreover, both regimes have sought to boost the information asymmetries between themselves and the general public. In a striking pattern across governments, both have at times used the same mechanism to do so—notably, by expanding exceptions for privacy, security, internal deliberation, and the like to public "right to know" laws like FOIA.

Both regimes have used legal techniques that fall into each of the three categories of legal solutions we identify in Part III.C: regulatory solutions, rights solutions, and structural solutions.

In the Chinese case, central attempts to shore up local informational accountability largely fell short, despite both regulatory and rights regimes, until around 2011, when the central government began to seriously invest in its own internal informational federalism. In the American case, too, informational federalism appears in significant cases to add accountability to the government information production.

These qualitative similarities occur alongside several major differences between China and the United States that have emerged in our case studies: China's use of informational federalism has been entirely internal, employed only to bolster the central government's access to reliable local information. The central government's ability to make authoritative factual claims to the *public* is not currently checked by any local entity. The central government's grip on public information disclosure remains strong. In contrast, American informational federalism operates both internally and externally: federal-state informational contestation plays out largely in the public eye, making any narratives and counternarratives between them visible to observers. Another significant difference between the two regimes is, of course, that American government information, despite its own historical controversies, has not suffered from anything like the public scandal that has plagued official Chinese statistics for some decades now. There are, as noted in the Introduction, many possible reasons for this: the United States and China have divergent press freedoms; individual speech rights; academic liberties; economic structures; and political institutions.

Future legal work on information production and information federalism could deepen our understanding of the mechanisms through which regulatory rules, rights, and structures interact to shape government information. And more structured comparative work could interrogate the causes of similarities and differences in the American and Chinese cases. Finally, informational federalism could be placed into conversation with broader federalism theories.

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