The "People's Total War on COVID-19": Urban Pandemic Management Through (Non-)Law in Wuhan, China

Philipp Renninger
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Abstract: Although COVID-19 was first detected in the People’s Republic of China, the pandemic now appears contained there. Western and Chinese media attribute this apparent success to the central level of the Chinese state and the Communist Party. However, this article reveals that local entities provided critical contributions to China’s COVID-19 management, particularly in the pandemic’s first epicenter: Wuhan city in Hubei province. Chinese cities like Wuhan can fight public health emergencies through legal and nonlegal instruments. Although Wuhan had prepared for possible pandemics, its existing plans, institutions, and warning systems initially failed against COVID-19. The city did not contain the viral outbreak beginning in November 2019. As a result, Wuhan officials were forced to use strict measures to manage the COVID-19 pandemic. From January 23, 2020, a lockdown cordoned off the city, and from February 10, a closed management of neighborhoods introduced a curfew-like shutdown.

These two cordons sanitaires and other so-called normative documents were imposed by Wuhan’s own COVID-19 Headquarters, a municipal mixed party–state organ. Still, the central level must approve—or even directly command—all fundamental decisions of local COVID-19 management. The center controls local entities like Wuhan not through channels of the state but through the vertical and horizontal conduits of the Communist Party, treating “the whole country as a chess game.” China’s “COVID-19 chess” has proven itself an effective method of pandemic containment. However, this central–local “chess game” yielded detrimental effects for many individuals within and outside Wuhan. The reason is that China’s central level, aiming at eliminating COVID-19 instead of merely flattening the curve, neither requires Wuhan to contain COVID-19 proportionately and balanced, nor allows individuals to challenge these containment measures in court. Therefore, without being held accountable, Wuhan could encroach on myriad rights and freedoms for millions of individuals for several months. And despite subsequent easing, China’s “people’s total war” against COVID-19 continues—but its focus has shifted. The strictest containment measures now apply to foreign nationals and Chinese citizens returning from abroad, as China has drawn a third cordon sanitaire around its national borders.

Cite as: Philipp Renninger, The “People’s Total War on COVID-19”: Urban Pandemic Management Through (Non-)Law in Wuhan, China, 30 WASH. INT’L L.J. 63 (2020).

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INTRODUCTION

What began in the urban and local realm now affects the whole globe: the coronavirus disease 2019 (COVID-19), first detected in the city of Wuhan in the People’s Republic of China (P.R.C.).1 The World Health Organization (WHO) determined COVID-19 was a “public health emergency of international concern” on January 30, 2020,2 and a pandemic on March 11, 2020.3 COVID-19 rapidly developed into a crisis affecting almost every country in the world. This crisis is holistic—and so must be its answers. On the one hand, the COVID-19 pandemic hits all areas of governance, not only the health sector but also a state’s economy, culture, politics, and legal systems. Hence, COVID-19 management must encompass preparation and response, prevention, and control, in all these areas of governance. On the other hand, the COVID-19 pandemic poses challenges to all governmental organs and entities. Thus, COVID-19 management must be undertaken horizontally by all branches and vertically by all levels of government, from national and international down to subnational, local entities. Therefore, the urban and local realm, where COVID-19 first started, can also contribute to solving the global crisis caused by COVID-19. This contribution of cities is particularly important because mankind has entered the “urban age” with more than half of the world’s population living in cities.4

In China, central authorities have emphasized the importance of cities and other local entities for local, national, and international COVID-19 management.5 This particularly holds true for the first epicenter of the

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5 Xi Jinping (习近平), Zai Hubeisheng Kaocha Xinguan Feiyuan Yiqian Fangkong Gongzuoshi de Jianghua (在湖北省考察新冠肺炎疫情防控工作时的讲话) [Speech When Inspecting the COVID-
outbreak: Wuhan city in Hubei province. Wuhan’s “defense war,” “people’s war,” and “total war,”6 on the coronavirus has been eulogized by the WHO as “the most ambitious, agile and aggressive disease containment effort in history.”7 Indeed, this urban containment effort appears highly effective, as COVID-19 cases in Wuhan, Hubei, and China officially stagnated.8 As of December 2020, there are no signs of a second COVID-19 wave in China.9 But how did this success come about? What powers do Chinese cities like Wuhan possess to contain—that is, prepare for and respond to—emergencies, diseases, and pandemics in general? And what special instruments and institutions has Wuhan created to manage the COVID-19 outbreak? Are these tools legal or nonlegal in nature, state or party origin, central or local design—and what difference does this make? How do these tools enable urban pandemic management to realize its aims of prevention and control in containing public health emergencies? And do they render Wuhan’s COVID-19 containment lawful under national and international law, as well as proportionate in relation to its encroachment on myriad rights and freedoms of millions of individuals for several months?

Answers to these questions determine whether Wuhan serves as a role model—or as a cautionary tale that “great cities” are “pestilential” both to “the health and the liberties of man,” as Thomas Jefferson opined.10 This article illustrates the central–local, party–state, and law–nonlaw relations in the P.R.C., which are crucial for understanding the Chinese system, both in general and during the COVID-19 pandemic. Consequently, this article

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also sheds light on the “new normal” under Xi Jinping and how it relates to the supposed “Chinese characteristics” of the P.R.C.’s system. Finally, this article reveals what cities and local entities worldwide can learn from Wuhan’s COVID-19 experience.

I. FOUNDATION: CENTRAL–LOCAL, PARTY–STATE, AND POLITICAL–LEGAL SYSTEM

Western media reports on Chinese COVID-19 containment often attribute the pandemic measures to the central level in Beijing. These reports are inaccurate. First, measures can extend from legal to nonlegal, state to party, abstract to concrete, and general to individual instruments. Second, measures are predominantly local in nature because they have been issued by local entities, like Wuhan, and vary heavily between these local entities.

A. Central and Local, Party and State

Such local diversity in COVID-19 management prima vista hardly seems surprising. The P.R.C. is the world’s most populous country forming a complex central–local system. This system features one central, national level and four local levels in the following hierarchy: (1) provinces (second level), (2) prefectures and cities (third level), (3) counties and city districts (fourth level), and (4) townships and streets (fifth level). Below the local levels lies the “basic” or “grassroots level”: villages, residential communities, and neighborhoods.

Nevertheless, local regulatory diversity in China is anything but self-evident because China’s central–local and party–state system is pronouncedly centralist. The P.R.C. is the world’s largest unitary state and rejects federalism as one of five political “taboos.”14 Therefore, according to its constitution and the Organization Law, only the central, national level

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has statehood. But, local entities are structured similarly to the central level. All entities comprise a “quasi-legislative” assembly like Wuhan’s Municipal People’s Congress (MPC) and its Standing Committee, and a “quasi-executive” government like Wuhan’s Municipal People’s Government. These state organs merely represent “quasi-branches” because the P.R.C. does not recognize a separation of powers, but only their “division of labor.” According to the “democratic centralism” principle, local congresses and governments are accountable and bound to all higher state-level commands—and ultimately to the central level. The state center thus exercises “unified leadership” over the whole state administration.

This central leadership is combined with a second, even more, important type of leadership: the all-embracing leadership of the party over the state. Chinese Communist Party (CCP) leadership is enshrined in both party norms and state norms. The CCP Statute summarizes: “[t]he party leads on everything,” on “government, army, society, and education” in “east, west, south, and north”—that is, on all horizontal quasi-branches and all vertical levels of government. Therefore, state organs are subordinate to CCP organs.

Party leadership over the state is exerted via two means. First, through separate party organs. The most important party organs are the CCP Central Committee, Politburo, and its Standing Committee on the

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16 See XIANFA art. 96, §§ 1, 2; Organization Law arts. 4, 40.

17 See XIANFA art. 96, art. 105; Organization Law art. 4, art. 54.

18 ZHONGGUO FALY GAILUN (中国法律概论) [INTRODUCTION TO CHINESE LAW] 19 (Zhang Guangjie (张光杰) ed., 2009).

19 XIANFA art. 3, § 1; see XIAODAN ZHANG, STUFEORDNUNG UND VERFAHREN DER SETZUNG VON RECHTSNORMEN IN DER VOLKSPROEPUBLIK CHINA [HIERARCHY AND ENACTMENT PROCEDURE OF LEGAL NORMS IN THE PEOPLE’S REPUBLIC OF CHINA] 122, 153 (2017).

20 XIANFA art. 3, § 4, art. 110, § 2.2; Organization Law art. 55, § 2.

21 XIANFA art. 1, § 2.2; Zhonghua Renmin Gongheguo Lifafa (中华人民共和国立法法) [P.R.C. Legislation Law] (Mar. 15, 2000, amended Mar. 15, 2015), CLI.1.245693, art. 3 [hereinafter Legislation Law].


national level,24 followed by local party committees on every subnational level.25 Vertically, local party committees are subordinate to central party organs because the “democratic centralism” principle applies within the CCP too.26 Horizontally, the same person typically leads both the central party organs and central state organs. For example, Xi Jinping has served, inter alia, as the General Secretary of the CCP Central Committee since 2012 and the President of the P.R.C. since 2013.27 In contrast, local-level party committee leaders are not identical to local state leaders. Rather, they are superior to them. This external party–state hierarchy results from the internal party hierarchy.28 In Wuhan, Mayor Zhou Xianwang, head of Wuhan’s Municipal People’s Government, is subordinate to Party Secretary Wang Zhonglin, head of Wuhan’s CCP Committee, because Zhou merely serves as Wuhan’s Deputy Party Secretary.29 Moreover, most other members of Wuhan’s municipal state organs, including courts, are CCP members or even party cadres.30

Second, CPP leadership is exerted through party groups. These groups exist inside every state organ and many other “non-party organizations.”31 They both “ensure that party norms are implemented” and “make major decisions within this state organ.”32 The organ-internal party group leader generally holds the chief title for their respective state organ as well. In Wuhan, for example, Mayor Zhou also serves as the Secretary of the CCP Party Group of Wuhan’s Municipal People’s Government.33 These party groups are the “leadership core” of any Chinese state organ.34

B. Cities and Centralist Governance

In China’s central–local and party–state system, neither the P.R.C. Constitution nor the CCP Statute provides for the third, prefectural level.
But both state and party law mention the main entity this prefectural level consists of—“cities with districts” like Wuhan. However, these prefectural-level cities do not enjoy broad self-government authority or “home rule” like in some European countries and United States’ states. Such local autonomy is merely granted to grassroots-level neighborhoods, residential communities, and villages inside Wuhan. Moreover, prefectural-level cities were never conceptualized as municipalities or “communes,” but as “political-administrative units” dispatched by the center to control the surrounding countryside. For example, in terms of territory, Wuhan encompasses extensive rural areas and thus covers an administrative area (8,500 km²) much larger than its urbanized core (800 km²). In terms of population, Wuhan accommodates 11.2 million de facto inhabitants, over nine million of them in the urbanized core. Amongst urban dwellers, nine million possess a Wuhan hukou, more than doubling the prefectural level’s average of four million de jure inhabitants.

Despite their enormous size, Chinese cities have been governed for decades through central stipulations that “cut with one knife,” that is, with a standardized approach for every city in the entire country. In times of crisis, most China scholarship finds that the decision-making process becomes increasingly centralized. However, during the coronavirus crisis, the center refused to apply the same rules and policies to all local entities.

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35 See XIANFA art. 97, § 1, art. 100, § 2; Organization Law art. 5, § 1, art. 7, § 2; CCP Statute art. 25, § 1, art. 27, § 1.  
36 For self-government in Germany, see MAHENDRA P. SINGH, GERMAN ADMINISTRATIVE LAW 27 (1985); For home-rule in the U.S., see BJÖRN HOPPENSTEDT, KOMMUNALE SELBSTVERWALTUNG IN DEN USA [MUNICIPAL SELF-GOVERNMENT IN THE U.S.] 57–83 (2007); see CHINA’S POLITICAL SYSTEM 84 (Sebastian Heilmann ed., 2016).  
38 For Gemeinden in German-speaking countries, see SINGH, supra note 36, at 14.  
41 Wuhanshi Tongjiu, supra note 40.  
42 The Hukou (户口) or Huiji (户籍) system describes the de jure household registration of Chinese citizens in local entities, which is still restricted; see UNDESA, supra note 4, at 61.  
43 Manion, supra note 30, at 314.  
44 CHUNG, supra note 13, at 58 (“Yi Dao Qie” (“一刀切”)).  
45 CHINA’S POLITICAL SYSTEM, supra note 36, at 147, 150.  
Instead of it, it treated “the whole country as a chess game.” This “COVID-19 chess” requires pandemic management to be locally differentiated, but still coordinated by the center. Wuhan’s COVID-19 response, therefore, has to adapt to the city’s “actual circumstances”—but at the same time “firmly obey the command of the center,” especially the CCP Central Committee. Wuhan’s local officials thus walk a tightrope. They may deviate from national COVID-19 stipulations—but never too far, because “disobeying” the center’s “uniform leadership, command, and coordination in emergency response” can be punished by administrative repercussions and other sanctions.

This central–local “chess game” corresponds to Sino-Marxism, the official leading thought of the P.R.C. and CCP, and to its most recent variety, “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era.” Sino-Marxists like Xi promote recentralization by “top-down governance” and “top-level design” from the party and state center. But they have also allowed legislative decentralization, particularly in the “reform and opening-up era” since 1978. Under Xi Jinping—contrary to widespread predictions—this development cumulated in the largest decentralization in Chinese history through the Legislation Law revision in 2015 and the constitutional reform in 2018.


48 Xi, supra note 46.


50 CCP Statute gen. progr., § 8, art. 3, § 1, etc.; XIANFA pmbl., § 7:4; see Philipp Renninger, Chinese (Anti-)Constitutionalism: Sino-Marxism, Xi Jinping Thought, and Hong Kong, VERFASSUNGSBLOG (Nov. 28, 2019), https://verfassungsblog.de/chinese-anti-constitutionalism/.


53 E.g., CHUNG, supra note 13, at 51, 67.

54 Philipp Renninger, Local Legislation Despite the (Supposed) Risks of Decentralization: Theory of Central-local Relations in the PRC, in RECHT UND RISIKO [LAW AND RISK] 105, 108 (Dario Haux et al. eds., 2019); ZHANG, supra note 19, at 150; FENG, supra note 52, at 89.
C. Law, Nonlaw, and Politics

Following these reforms, if Chinese cities now want to act in a general and abstract manner, they can choose between the form of legal or nonlegal norms, and between the channels of the state or party.

Since 2015, almost all territorial entities on the prefectural level have been granted the authority to enact formal law.55 There are now 288 out of 289 prefectural-level cities with districts and four out of five cities without districts that are allowed to legislate.56 Yet, Wuhan as a provincial capital is one of 49 larger cities that were empowered to enact law as early as 1982.57 For Wuhan, the 2015 and 2018 reforms limited rather than increased legislative powers.58 Like any other prefectural city, Wuhan’s legislation is now limited to three areas: environmental protection, cultural heritage, and urban management.59 Despite the Legislation Law’s clear wording, this list is considered limited,60 although, most authors interpret each legislative area’s breadth expansively.61 For example, urban management comprises of crisis management and sanitation management.62 Wuhan and other cities can employ two types of formal legal instruments: (1) quasi-legislative local regulations enacted by the

55 Yan Ran (闫然) & Mao Yu (毛雨), Shequ de Shi Difang Lifa San Zhou Nian Dashuju Fenxi Baogao (设区的市地方立法三周年大数据分析报告) [Big Data Analysis on the Third Anniversary of the Legislation of Cities with Districts], 2018 DIFANG LIFA YANJU (地方立法研究) [LOCAL LEGIS. J.], no. 3, at 26, 28.

56 Wu Zeng (武增), 2015 Nian <Lifafa> Xiugai Biye he Zhuyao Neirong Jiedu (2015 年《立法法》修改背景和主要内容解读) [Background of the 2015 Legislation Law Revision and Explanation of its Main Content], 2015 ZHONGGUO FALY PINGGLUN (中国法律评论) [CHINA L. REV.], no. 1, at 210, 212.


58 Wu, supra note 56, at 211; FENG, supra note 52, at 94.

59 Legislation Law art. 72, § 2:1, art. 73, § 2, art. 82, § 3. However, local entities can be exceptionally empowered to enact local regulations as “delegated legislation,” art. 72, § 2:1. Moreover, local regulations and rules enacted by larger cities before the 2015 reform continue to be effective. Legislation Law art. 72, § 6, art. 82, § 3:2.

60 See Li Shishi (李适时), former NPC Standing Committee Legislative Affairs Commission’s Chairman. Quannian Guanche Shishi Xiugaihou de Lifafa—Zai Di Ershiye Ci Quanguo Difang Lifa Zhanlaku shang de Xiaojie (Zhailiao) (全面贯彻实施修改后的立法法—在第十二次全国地方立法研讨会上的小结(摘要)) [Comprehensively Implement the Revised Legislation Law: Summary at the 21st National Conference on Local Legislation (Excerpt)], FAZHI RBIAO (法制日报) [LEGAL DAILY] (Sept. 17, 2015), http://www.npc.gov.cn/npc/c221/201509/dd94851ccde4ea49be0c386f37d496b.shtml.

61 See Zheng Yi (郑毅), Dui Lifafa Xiugaihou Quoanshi yu Huiying (对我国《立法法》修改后若干疑难问题的诠释与回应) [Interpretation and Response to Some Difficult Questions after the Amendment of China’s Legislation Law], 2016 ZHENGZHI YU FALY (政治与法律) [POLIT. SCI. L.], no. 1, at 48, 53.

Municipal People’s Congress and its MPC Standing Committee and (2) quasi-executive local governmental rules employed by the Municipal People’s Government. The quasi-legislative organs and their regulations are superior to the quasi-executive organs and their rules.

Before 1982, Wuhan could only employ nonlegal documents, that is, so-called “(other) normative documents.” Even today, normative documents account for more than 90% of urban rules because for local-state officials like Wuhan’s Municipal Government, they are easier to pass. First, these normative documents do not need to fulfill the same formal and procedural requirements as legal instruments. They even need not be published, although many of them are available on (non-)law databases. Second, normative documents can contain virtually the same content as formal law. Third, they even yield similar effects to formal legal local regulations and local rules. According to China’s Supreme People’s Court (“SPC”), normative documents have binding (i.e., not merely persuasive) and normative (i.e., not merely factual) force. Therefore, normative documents of the state can be defined as follows: all regulatory instruments employed by state organs that are general (i.e., person or entity-specific) and abstract (i.e., apply to many cases and thus are “repeatable”) but are not enumerated as law in the Legislation Law.

Besides local state norms, cities like Wuhan can enact local party norms as either intra-party laws or intra-party normative documents.

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63 See XIANFA arts. 82, 100; Legislation Law arts. 72, 82; Organization Law arts. 7, 43, 60.
64 XIANFA art. 101, § 1 (referring to institutions); Legislation Law art. 89, § 1 (referring to norms).
65 Yuanshi Bu, Normenkollisionen und Normenkontrolle in China [Norm Collisions and Norm Control in China], 61 RECHT DER INTERNATIONALEN WIRTSCHAFT 781, 784 (2015).
66 Cui & Wan, supra note 28, at 8 (big data analysis).
67 INTRODUCTION TO CHINESE LAW, supra note 18, at 38; FENG, supra note 52, at 7–8.
68 Cui & Wan, supra note 28, at apps. 1, 3.
69 E.g., Laws and Regulations, Beida Fabao (北大法宝) [PKU Law], http://www.pkulaw.cn/.
70 Bu, supra note 65, at 784; FENG, supra note 52, at 7.
71 FENG, supra note 52, at 7.
72 Guanyu Shiyong <Zhonghua Renmin Gongheguo Xingzheng Susongfa> de Jieshi (关于适用《中华人民共和国行政诉讼法》的解释) [Interpretation on the Application of the “P.R.C. Administrative Litigation Law”] (Feb. 6, 2018), CLI.3.309904, art. 2, § 2 [hereinafter Litigation Interpretation]. Contra, INTRODUCTION TO CHINESE LAW, supra note 18, at 38 (grants them merely “persuasive power”).
73 See Yuan Yong (袁勇), Xingzheng Guifanxing Wenjian de Jianbian Biiaochun—Yi Bei’an Shencha Wei Zhongxin (行政规范性文件的鉴别标准—以备案审查为中心) [Standards for Identifying Administrative Normative Documents: Focus on Filing and Reviewing], 2010 ZHENGZHUI YU FA LV, no. 8, at 59, 60.
These party norms are enacted through the local CCP committees instead of local state organs.75

According to the “non-contradiction” principle, Wuhan’s local state norms—i.e., regulations, local governmental rules, 76 and normative documents—77 must not contravene higher-ranking state law.78 They must also align with party norms—be these party norms enacted by the party center or by Wuhan’s own CCP committee.79 Consequently, central and local party norms impact not only CCP members (90 million persons in the entire country) but also China’s civil servants and ordinary citizens.

II. PREPARATION: PANDEMIC MANAGEMENT SYSTEM

The intermingling of party and state, with the former’s superiority over the latter, is the essence of “socialism with Chinese Characteristics for a new era.” 80 Therefore, pandemic containment must also reflect a “socialist emergency management system with Chinese Characteristics for a new era.”81 Public health emergencies (PHEs) in China are managed by the party and the state, on both the central and local levels.82 The pandemic management system follows two overall principles: prevention and control.83 That system is implemented with four means: (non-)law, plans,
A. Central Stipulations on Pandemics in General

In the disaster cycle’s first phase—preparation for possible pandemics—the central level enacted various (non-)laws and plans, and created organs to prevent and control future pandemics. These instruments and institutions guarantee pandemic management on the central level and guide pandemic management on the local levels.

1. Legislation and Planning. — First, the quasi-legislative National People’s Congress (NPC), through its Standing Committee, enacted several laws relevant to pandemics. The Emergencies Law regulates emergencies, including PHEs; the Diseases Law regulates viral outbreaks; and the Frontier Health and Quarantine Law regulates pandemic measures affecting people’s movement within China and returning to it from abroad. The quasi-executive State Council’s concretized these laws through its PHE Regulation.

These national stipulations require both central and local entities to draw up “preparatory plans for the response to (public) emergencies.” The central level enacted the Overall Emergency Response Plan and several specialized plans—for example, in pandemic outbreak scenarios,

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86 Wang et al., supra note 84, at 3–5.

87 Emergencies Law art. 1, art. 3, § 1.

88 See Diseases Law art. 1, art. 3.


91 Emergencies Law art. 17, §§ 2, 3; PHE Regulation art. 10, § 1, art. 11–12; see IHR app. 2, art. III, China, § 3:2; see Diseases Law art. 20.

the National PHE Response Plan. Such health-related contingency plans are required by the International Health Regulations (IHR), international law enacted by the WHO’s World Health Assembly. The IHR are binding for WHO member states and the P.R.C. has committed itself to apply them within its entire territory.

2. Institutions. — On the national level, the quasi-executive State Council is in charge of applying these IHR and managing PHEs. Through the State Council’s 2018 institutional reform, thirteen of its departments have been merged into one: the Ministry of Emergency Management. Although considered a “turning point in China’s disaster preparedness,” this “super ministry” has no specific authority for pandemic and PHE management. Instead, this task is vested in the State Council’s health administration, reassembled in 2018 as the National Health Commission (NHC). For infectious diseases like COVID-19, the NHC relies on the expertise of its specialized agency, the Chinese Center for Disease Control and Prevention (CCDC). The NHC houses the office of the National Patriotic Sanitary Campaign Committee (NPSCC), a standing advisory and coordinating institution between 32 State Council departments.

The CCP, in contrast, has not created separate party organs responsible for public health. Rather, it has created party groups inside the NHC and CCDC.

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94 IHR annex 1, art. A, § 6(g), art. B, § 2(a); see WHO, Guidance for Contingency Planning, at 5.
95 See IHR app. 2, art. III, China, § 1.
96 Emergencies Law art. 9; see Diseases Law art. 6; PHE Regulation art. 3.
98 Zhonghua Renmin Gongheguo Yingji Guanlibu (中华人民共和国应急管理部), established Apr. 16, 2018.
100 See Diseases Law art. 6; see IHR app. 2, art. III, China, § 2:1.
102 Zhongguo Jibing Yufang Kongzhi Zhongxin (中国疾病预防控制中心), established Dec. 23, 1983.
103 Quanguo Aiguo Weisheng Yundong Weiyuanhui (全国爱国卫生运动委员会), first established 1952; see Xuan Zhao et al., Governance Function Analysis of the Patriotic Health Movement in China, 4 GLOB. HEALTH RES. POLICY, article no. 34, 2 (2019).
104 Guojia Weisheng Jiankang Weiyuanhui Dangzu (国家卫生健康委员会党组); Guojia Jibing Yufang Kongzhi Zhongxin Dangwei (中国疾病预防控制中心党委).
B. Wuhan’s Pandemic Preparation through Prevention

The local levels must also prepare for possible pandemics. Beginning in the preparation phase, the prevention principle requires local entities to both establish institutions and create plans for preventing and controlling future pandemics.105

1. Institutions: Health Administration and Headquarters. — Parallel to the central level, the authority for PHE preparation and management on the local levels is granted to the quasi-executive, like the people’s governments of Wuhan and its districts like Wuchang. Again, this task is not vested in the recently created Emergency Management Departments of Wuhan or its districts,106 but in the recently redesigned local health administration.107 This health administration consists of Wuhan’s Health Commission (WHC) and its specialized agency, Wuhan’s Center for Disease Control and Prevention (WCDC),108 as well as the District Health Departments.109 Moreover, both Wuhan and its districts established Patriotic Sanitary Campaign Committees as standing institutions that advise and coordinate health-related work.110 All local state departments are equipped with party groups, which are presided over by their department heads. For example, WHC director Zhang Hongxing also serves as the Secretary of the WHC’s party group,111 as does WCDC director Li Gang for the WCDC’s party group.112

Besides the health administration, there are also quasi-executive “headquarters for emergency response.”113 According to national law, only

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105 Wang et al., supra note 84, at 3–5.
106 For a complete list of Wuhan’s existing reform plans, see Wuhanshi Jigou Gaige Fang’an (武汉市机构改革方案) [Wuhan Institutional Reform Plan] (Jan. 10, 2019), Wuhan Institutional Reform Plan Announced, URBAN MANAGEMENT AND LAW ENFORCEMENT COMMITTEE http://cgw.wuhan.gov.cn/JDHY_13520/cgw_cgxw/202004/t20200416_1010073.html; Wuhanshi Yingji Guanliju (武汉市应急管理局), established Jan. 29, 2019; e.g., Wuchangqu Yingji Guanliju (武昌区应急管理局), established Mar. 27, 2019.
107 See Diseases Law art. 5; art. 6; PHE Regulation art. 4, § 2; see IHR app. 2, art. III, China, § 2.2.
109 E.g., Wuchangqu Weisheng Jiankangju (武昌区卫生健康局), established Mar. 27, 2019.
110 E.g., Wuhanshi Aiguo Weisheng Yundong Weiyuanhui (武汉市爱国卫生运动委员会); Wuchangqu Aiguo Weisheng Yundong Weiyuanhui (武昌区爱国卫生运动委员会); Wuhanshi Aiguo Weisheng Cujin Tiaoli (武汉市爱国卫生促进条例) [Wuhan Patriotic Sanitation Promotion Regulation] art. 5 (May 24, 2017), https://law.cnki.net/tyfgzt/tlfg/地方法规/湖北/武汉市爱国卫生促进条例.pdf.
112 Wuhanshi Jibing Yufang Kongzhi Zhongxin Dangwei (武汉市疾病预防控制中心党委); see https://www.whcdc.org/show/4.html.
113 See PHE Regulation art. 3, art. 4, § 1.
the central and provincial levels establish such headquarters. Nevertheless, prefectural-level Wuhan created one overall headquarters—Wuhan’s Emergency Response Commission—as well as specialized headquarters for almost every emergency imaginable. There are municipal headquarters for inundations, earthquakes, and terrorist attacks but also for “tourism emergencies,” “low-temperature rain,” and “snow freezing disasters.” Until lately, several headquarters existed for different health-related emergencies—for the case of pandemics and infectious diseases, the Wuhan’s Headquarters for PHE Response. However, in a consolidation attempt, Wuhan’s Emergency Response Commission merged Wuhan’s Headquarters for PHE Response and other health-related headquarters into the Wuhan’s Comprehensive Health Emergency Response Commission (Headquarters). According to national law, all these headquarters must consist of government members only. However, Wuhan also staffed them with “leading comrades,” that is, local party cadres.

2. Planning: Emergency Plans. Besides institutions, the local quasi-executive must establish preparatory plans—first, a comprehensive “preparatory plan for public emergency response.” Both Wuhan and its districts enacted overall preparatory plans and drafted templates for lower-level entities like streets and residential communities. Additionally,

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114 PHE Regulation art. 3, art. 4, § 1.
115 See Wuhan Shi Tufa Shijian Yingji Weiyuanhui (武汉市突发事件应急委员会), established 2013.
120 PHE Regulation art. 4, § 1.
121 Wuhan Emergency Plan art. 2, § 2.2; Wuhan PHE Plan art. 2, § 1.1.
122 Emergencies Law art. 17, § 3.
123 Wuhan Emergency Plan, supra note 125; e.g., Wuchangqu Tufa Gonggong Shijian Zongti Yingji Yu’an (武昌区突发公共事件总体应急预案) [Wuchang District Overall Preparatory Plan for
governments at and above the county level, including municipal and district governments, must formulate special plans—in the case of pandemics, “preparatory plans for infectious disease prevention and control.” Preparatory plans for PHE response,” in contrast, shall only be enacted by the central and provincial levels. Nevertheless, prefectoral-level Wuhan and its county-level districts have drawn up the latter PHE plans instead of the former disease plans.

The obligation to formulate health-related preparatory plans has been extended in the wake of the coronavirus crisis. Even grassroots-level entities must now elaborate pandemic-related plans: one “overall plan for pandemic prevention and control work” and one “plan for emergency pandemic response work.”

C. Central–Local Pandemic Preparation through Control: Mechanisms

These preventive instruments and institutions must be effectively controlled from the very beginning. Starting in the preparation phase, the control principle demands that central and local entities monitor their pandemic-related plans and organs through various mechanisms.

Particularly important is the Early Warning System for Infectious Diseases (EWS), which the P.R.C. has already devoted 730 million RMB (115 million USD) toward. Local governments must report infections and (potential) outbreaks immediately to “the health administration at higher levels and to the health administration under the State Council,” which then warn all lower-level entities. All medical

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Diseases Law art. 20.

PHE Regulation art. 10, § 2.


Id. art. 21, § 2:1.

Diseases Law art. 19, § 1; Emergencies Law art. 42, § 1.


See Diseases Law arts. 33, § 1, 20, § 3.
institutions too, and even “every entity and individual” who “notice an infectious disease patient or suspect” are obligated to report. This warning mechanism is designed to prevent deficient reporting by local and other entities. Deficient reporting was a grave problem in former PHEs like the 2002–03 SARS epidemic.

In addition to the EWS, criminal, civil, and administrative punitive mechanisms guarantee pandemic preparedness. These mechanisms punish any official, citizen, or entity found out of compliance with the EWS or any other aspect of pandemic prevention or control. Citizens and private entities are held criminally, civilly, or administratively liable if they offend provisions of the Emergencies Law or the Diseases Law. On top of personal liability, officials found liable are subject to disciplinary measures like demotion, removal, and dismissal if they fail to contain emergencies in general or pandemics in particular.

III. RESPONSE: COVID-19 MANAGEMENT SYSTEM

Punitive mechanisms also extend to failures in the disaster cycle’s second phase: response to pandemics like COVID-19. Initially, the prevention principle requires all central and local entities to “detect, report, isolate, diagnose, and treat” infectious diseases as early as possible, in order to stop a disease from developing into a pandemic. However, if a significant outbreak occurs, the control principle then demands central and local entities to “cut off transmission routes,” in order to ultimately “stop the disease.”

A. Central Stipulations on COVID-19 in Particular

During the current COVID-19 pandemic outbreak, both the party and state center established special standards and institutions guiding the P.R.C.’s pandemic response.

1. State (Non-)Legislation and Institutions. — The state center contributes to COVID-19 management primarily through the quasi-

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133 LAN XUE & GUANG ZENG, A COMPREHENSIVE EVALUATION ON EMERGENCY RESPONSE IN CHINA: THE CASE OF PANDEMIC INFLUENZA (H1N1) 2009 77 (2019).
134 Guo Rui, supra note 130.
136 Emergencies Law art. 65–68; Zhonghua Renmin Gongheguo Xingfa (中华人民共和国刑法) [P.R.C. Criminal Law] (July 1, 1979, last amended Nov. 4, 2017), CLI.1.2.56346, art. 330–332 [hereinafter Criminal Law]; see Diseases Law art. 73–77; PHE Regulation art. 51–52.
137 See Emergencies Law art. 63–64 (generally); Diseases Law art. 65–72 (particularly); see also PHE Regulation art. 45–50 (particularly).
138 PHE Regulation art. 42; Emergencies Law art. 1.
139 PHE Regulation art. 42; Emergencies Law art. 1.
executive State Council. Its newly established Ministry of Emergency Management lacks authority for public health issues and thus plays a minor role in coronavirus crisis response.\textsuperscript{140} As of December 2020, the Ministry had issued only one relevant notice demanding precautionary measures against COVID-19 in workplaces.\textsuperscript{141} Rather, the central-level health administration took the first national steps in fighting the coronavirus.\textsuperscript{142} On January 20,\textsuperscript{143} the NHC qualified COVID-19 as a Class B infectious disease,\textsuperscript{144} but implemented the highest Class A prevention and control measures.\textsuperscript{145} Subsequently, the NHC enacted several normative documents like the continuously updated national COVID-19 Preparation and Control Plan, currently in its seventh version.\textsuperscript{146} The NHC’s specialized agency, the CCDC, issued urgent medical recommendations, for example on quarantine issues.\textsuperscript{147}

Yet, the chief state institution for COVID-19 containment is a coordination of 32 State Council departments: the State Council Joint Mechanism for COVID-19 Prevention and Control Work.\textsuperscript{148} This ad hoc institution was created in response to COVID-19, differing from the NPSCC as the standing institution for the coordination of health-related State Council work. The Joint Mechanism enacted several guidelines, for

\textsuperscript{140} Jianjue Daying Yiqing Fangkong Zajijian he Fangfan Huajie Zhongda Fengxian Gongjianzhan (坚决打赢疫情防控阻击战和防范化解重大风险攻坚战) [Resolutely Win the Blockade of Pandemic Prevention and Control and the Assault War of Major Risk Precaution and Solution], 2020 ZHONGGUO YINGJI GUANLI, no. 2, 4.


\textsuperscript{142} See Diseases Law art. 3, § 4; PHE Regulation art. 30.


\textsuperscript{144} See Diseases Law art. 3, § 2.

\textsuperscript{145} See Diseases Law art. 4, § 1.


example, on the prevention and control techniques for different spaces, sectors, and persons, and on the resumption of work and production.

2. Party (Non-)Legislation and Institutions. — All these state organs cooperate with another ad hoc institution established by the CCP Central Committee: the Central Leading Group for COVID-19 Work. This Leading Group issued important party normative documents, such as a guiding opinion on the resumption of work and production. The Leading Group is presided by Premier and second-ranking CCP member Li Keqiang, who became the center’s main face in the initial period of COVID-19 response.

Besides Xi Jinping and Li Keqiang, Sun Chunlan (孙春兰), second Vice Premier and CCP Politburo member, plays a leading role in fighting COVID-19. Concerning the central level and the channels of the state, she presides over the standing NPSCC and chaired some Joint Mechanism meetings. And regarding the local levels and the channels of the party,
Sun led the CCP Leading Group when dispatched to Wuhan, in order to “lead the local frontline prevention and control.”

B. Wuhan’s COVID-19 Response and the Missing Benefits of Pandemic Preparation

Responsible for this local frontline work in Wuhan fell on the prefectural-level city itself rather than its county-level districts because more than two districts were affected by the coronavirus. Unfortunately, Wuhan’s pandemic preparation failed, which affected its response to COVID-19. The errors in its pandemic preparation eroded the city’s ability to prevent COVID-19 from spreading, which ultimately led Wuhan to control COVID-19 with the strictest measures available.

1. Failed COVID-19 Prevention and Failed Preparation through Control. — Several pneumonia cases of an unknown origin appeared in Wuhan starting November 17, 2019, and possibly earlier. These cases were soon connected, and their common trigger identified as the novel coronavirus SARS-CoV-2 (and not the “old” 2002–03 coronavirus SARS-CoV-1). The prefectural-level WHC was aware of these details on December 27, 2019, at the latest. It then passed on important information to the national-level NHC. However, both the local and central health administrations covered up the new virus’s existence, extent, and severity by silencing doctors and destroying samples. Had Wuhan started containing COVID-19 one, two, or three weeks earlier in January 2020, the number of infections in the city could have been reduced by 66%, 86%, or 95%, respectively. Nor would COVID-19 have evolved into a global pandemic.

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156 Emergency Law art. 7.
157 See Xi, supra note 5 (giving praise but also indirect criticism).
159 Id.
160 Id.
pandemic as rapidly if the P.R.C. had restricted its citizens’ international travel before late January.\footnote{Steffen Richter, “Das Politbüro hat beschlossen, dass die Epidemie vorbei ist” [“The Politburo Has Decided That the Epidemic Is Over”], ZEIT (Mar. 28, 2020), https://www.zeit.de/politik/ausland/2020-03/china-coronavirus-propaganda-epidemie-wirtschaft-usa.}

These central and local flaws of COVID-19 response through prevention are related to the failure of general pandemic preparation through control. China’s most important control mechanism, the EWS, did not function well despite its previously optimistic evaluation by Chinese scholars,\footnote{Lan & Guang, supra note 133, at 228, 239; Sun et al., supra note 89, at 4.} and its considerable maintenance costs.\footnote{Guo Rui, supra note 130.} The simple reason was that central, local, and other institutions like hospitals refrained from feeding the EWS information necessary to activate the warning mechanism.\footnote{Id.}

As a reaction, in late January, the center activated its punitive mechanisms by disciplining state officials and party cadres from six provinces for neglecting pandemic prevention and control duties.\footnote{See Diseases Law art. 65; Sha Xueliang (沙雪良), Cong Futing Dao Cunguan, Liu Sheng Shi Duoming Ganbu Fangsi Shizhi Beiwenze (从副厅到村官，六省市多名干部防疫失职问责) [From Vice Departments to Village Officials, Several Cadres From Six Provinces and Cities Are Held Accountable for Neglecting Duties of Pandemic Prevention], XINJINGBAO (新京报) [BEIJING NEWS] (Jan. 29, 2020), http://www.bjnews.com.cn/news/2020/01/29/681201.html; Ryan Ho Kilpatrick, Report Raises Questions About Chinese Leader’s Coronavirus Timeline, DPA INTERNATIONAL (Feb. 16, 2020), https://www.dpa-international.com/topic/report-raises-questions-chinese-leader-coronavirus-timeline-urn%3Anewsml%3AAdpa.com%3A20090101%3A200216-99-936654.} But fewer officials were punished for neglecting pandemic management at the beginning of COVID-19 than citizens were for “obstructing” pandemic management later on.\footnote{Ye, supra note 135.} Moreover, only local-level officials were disciplined while central-level health administrators were spared, although they had also failed.\footnote{Sha, supra note 167; Kilpatrick, supra note 167.} In a familiar pattern,\footnote{See Zhenhua Su et al., Constructed Hierarchical Government Trust in China: Formation Mechanism and Political Effects, 89 PAC. AFF. 771, 783 (2016); Chung, supra note 13, at 70.} China’s central level takes the credit when all is well but refuses to take the blame when things go badly.\footnote{Brown & Wang, supra note 170, at 252.} However, the center’s blaming of local levels for failure in COVID-19 containment contains more than a kernel of truth. Local entities like Wuhan and Hubei indeed acted with undue delay. For example, on January 19, in midst of the COVID-19 outbreak, Wuhan’s municipal administration permitted a huge potluck banquet.\footnote{Su Zimu (苏子牧), Wuhan Shequ Haizai Juban Wanjiayan, Shizhang Huiying (武汉社区还在举办万家宴 市长回应) [Wuhan’s Residential Community Still Hosts the Myriad Families Banquet:}
Banquet” was so large (40,000 families participating and 13,000 dishes shared) that it was intended to break a Guinness World Record.\textsuperscript{173} For pandemic containment failure of this scope, national law demands to demote, remove, dismiss, or even criminally punish the “key leaders of the local governments.”\textsuperscript{174} Despite these stipulations, as of December 2020, the center has not held Wuhan’s Mayor and Hubei’s Governor accountable for this failure.\textsuperscript{175}

2. Successful COVID-19 Control but Failed Preparation through Prevention. — Four days after the Myriad Families Banquet, Wuhan finally responded to COVID-19—through control measures, as the opportunity to prevent the outbreak had long since passed. Yet, the city’s COVID-19 response through control illuminated the ineffectiveness of Wuhan’s general pandemic preparation through prevention as well. The city activated neither its existing preparatory plans nor preparatory headquarters.\textsuperscript{176}

Nevertheless, Wuhan’s COVID-19 control appears successful. Bearing in mind unreported cases and restricted information,\textsuperscript{177} COVID-19 numbers in the city and the entire country have remained stagnant for months.\textsuperscript{178} In Wuhan, 50,353 cases (whole Mainland China: 86,464) have been confirmed, including convalesced, suffering, and deceased patients.\textsuperscript{179} Death tolls in Wuhan (3,869 cases, whole Mainland China: 4,634),\textsuperscript{180} however, have been corrected upwards by 50% in April,\textsuperscript{181} and

\begin{footnotesize}
\begin{enumerate}
\item Kilpatrick, supra note 167.
\item PHE Regulation art. 45, § 1–3, arts. 46–47.
\item Ye, supra note 135.
\item Lv Yiming (吕一鸣), Xinguan Yiyan Yiqing “Hubei Baoweizhan” Hubei Dakaozhong Zhanshi Jingmai Qiezhen yu Kaifang Liaozhi (新冠疫炎疫情“湖北保卫战”湖北大考中战时经脉切诊与开方疗) [In the Final Exam of COVID-19 “Hubei Defense War” During Wartime, Make a Pulse Diagnosis and Prescription Treatment], CAOGEN (草根) [GRASSROOTS] (Mar. 4, 2020), http://www.caogen.com/blog/Infor_detail/109893.html.
\item WHC, supra note 8; NHC, supra note 8.
\end{enumerate}
\end{footnotesize}
are estimated ten times higher by alternative sources. Nevertheless, China’s COVID-19 prevalence is far lower than in many other countries. The WHO attributes this supposed success to “the most ambitious, agile, and aggressive disease containment effort in history.” In Wuhan, this effort is based on notices, as well as other normative documents communicated to the public through social media like WeChat and Weibo.

C. Wuhan’s COVID-19 Control, Phase One: Lockdown Toward the Outside

Most importantly, Wuhan’s COVID-19 related normative documents stipulated several cordons sanitaires, restricting movement in and out of specific territories. The first cordon Wuhan drew was large—it surrounded the whole city (8,500 km²) and resulted in a lockdown for millions of people.

1. Blockade Through Non-Legislation. — On January 23, 2020, Wuhan’s first notice forbade all persons within the city from leaving, except for special reasons. Train stations and airports closed and long-distance transport was suspended. This lockdown is compatible with international WHO law. The IHR allow countries to “refuse entry of unaffected persons to affected areas” as well as “implement exit screening and/or restrictions on persons from affected areas.” Under national law, a “blockade of infectious disease areas” of large cities and main traffic lines like Wuhan must be decided by the national-level State Council.


184 WHO, supra note 7, at 16.

185 These Wuhanshi Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Fangkong Zhihuibu Tonggao (武汉市新型冠状病毒感染的肺炎疫情防控指挥部通告) [Notices of Wuhan’s COVID-19 Headquarters] will hereinafter be abbreviated as “Wuhan Notice” with their serial number (hao (号)) and date in the footnotes. Their full title will only be provided in the footnotes in case the notice lacks a serial number.


189 Id.

190 See IHR art. 18, § 1.

191 Id.

192 See Diseases Law art. 43, § 2; PHE Regulation art. 33, § 2.
Therefore, the blockade notice was beyond prefectural-level Wuhan’s authority.

However, the national-level Ministry of Transport substantially tightened the lockdown on the same day Wuhan announced it.\textsuperscript{193} The ministry forbade all persons outside the city from entering it, which Wuhan officials never mentioned or expressed an intention to do.\textsuperscript{194} Originally, the city had only announced “soft measures” like canceling mass events and promoting handwashing on January 21.\textsuperscript{195} But immediately after those announcements, on January 22, central-level representative Sun Chunlan undertook an “inspection tour” of Wuhan. She ordered local “party and government cadres” to first and foremost “prevent the spread of the epidemic to other regions.”\textsuperscript{196} The next day, Wuhan abruptly announced its blockade toward the outside.\textsuperscript{197}

Inside the blockaded city, personal movement was merely limited rather than forbidden. Public transportation was suspended,\textsuperscript{198} taxi traffic was limited,\textsuperscript{199} and the Yangtze River Tunnel was closed.\textsuperscript{200} Shortly thereafter, individual traffic was restricted except for goods’ transporters, public authorities, and vehicles authorized to transport residents in urgent cases.\textsuperscript{201} All operating cars were regularly disinfected, and drivers’ temperatures were regularly measured.\textsuperscript{202} For residents in need, both urgent transport and the delivery of comestibles and medicine were offered


\textsuperscript{194} Id. art. 1.


\textsuperscript{197} Wuhan Notice 1 (Jan. 23, 2020).

\textsuperscript{198} Id.


\textsuperscript{202} Traffic Notice (Jan. 23) art. 3, § 1.
without charge. In order to further reduce personal movement and contact, Wuhan fostered online shopping and the contactless delivery of goods.

Another important element of phase one’s pandemic control was tracking individual patients. In accordance with international WHO law and guidelines, affected persons suffering from COVID-19 were isolated and suspected persons with fever symptoms quarantined, either in hospitals or in temporary quarantine centers. Wuhan exceeded the WHO restrictions, however, by requiring individuals with fevers who confirmedly did not suffer from COVID-19 to quarantine at home. On February 2, the city’s quarantine regime became more “aggressive and systematic.” Close contacts of the infected and suspected were tracked down and subjected to medical inspection. Additionally, most close contacts—reminded that public security personnel would use force in case of noncooperation—underwent other preventive measures like quarantining. Hotels, schools, and public buildings were converted into quarantine centers or temporary hospitals. Additionally, Wuhan erected two new hospitals in a record ten days, going viral over social media.

2. COVID-19 Headquarters and Basic Non-legislation. — Wuhan also published the “Wuhan’s Provisional Methods of COVID-19 Prevention and Control,” providing several fundamental rules underlying particular COVID-19 notices. Wuhan’s Headquarters for COVID-19 Prevention and Control enacted both the notices and Provisional

207 Wuhan Notice 7 (Jan. 24) art. 2.
208 Wuhan Notice 7 (Jan. 24) art. 2.
211 Wuhan Notice 10 (Feb. 2).
212 Wuhan Notice 10 (Feb. 2); PHE Regulation art. 44.
213 See Diseases Law art. 39, § 1:3.
214 Page, supra note 210.
215 Id.
Methods. As an ad hoc institution created in response to COVID-19, Wuhan’s COVID-19 Headquarters differed from the city’s standing headquarters: Wuhan’s Comprehensive Health Emergency Response Commission and Wuhan’s Patriotic Sanitary Campaign Committee. Yet, such ad hoc headquarters during pandemics should only be established on the national and provincial levels—like Hubei’s Headquarters for COVID-19 Prevention and Control. On the prefectural level and below, in contrast, national law leaves the local governments in charge of pandemic response. Only the National PHE Response Plan, constituting lex inferior and lex prior, recommends establishing ad hoc headquarters at every local level. One might argue that these national stipulations preclude Wuhan’s prefectural-level People’s Government from creating and delegating its state authority to a quasi-executive headquarters. However, this was not the case in Wuhan for the following four reasons.

First, Wuhan’s COVID-19 Headquarters was established not by the Municipal Government, but rather by “the city.” Therefore, its creation was communicated not through an official governmental notice but through a newspaper report (and later reiterated by the COVID-19 Headquarters itself). Second, Wuhan’s COVID-19 Headquarters is not a quasi-executive “local joint mechanism for COVID-19 prevention and control” of the Municipal Government, and thus a state institution. Rather, it constitutes a mixed party–state organ, presided over by both Party Secretary Wang Zhonglin and Mayor Zhou Xianwang, and staffed with members of both Wuhan’s CCP Committee and Wuhan’s Municipal Government. This violates national law, which stipulates that headquarters shall only consist of local government officials. The institutional intermingling of party and state also results in their instrumental intermingling. Consequently, the Headquarters’ notices are

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217 See Liao & Li, supra note 195; Wuhanshi Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Fangkong Zhihuibu (武汉市新型冠状病毒感染的肺炎疫情防控指挥部) [hereinafter Wuhan’s COVID-19 Headquarters].

218 PHE Regulation art. 3, art. 4, § 1, art. 28.


220 See Diseases Law art. 5, § 1:2; PHE Regulation art. 4, § 2; Nat’l Emergency Plan art. 2, § 4.

221 Nat’l PHE Plan art. 2, § 1:2–3.

222 Liao & Li, supra note 195.

223 Id.; Provisional Methods art. 4, § 1.

224 See Technical Guidelines, supra note 127; LAN & GUANG, supra note 133, at 92.

225 Provisional Methods art. 4, § 1; see Liao & Li, supra note 195.

226 PHE Regulation art. 4, § 1. However, Wuhan does not abide by this national stipulation for its standing emergency headquarters either; see Wuhan Emergency Plan art. 2, § 2:2; Wuhan PHE Plan art. 2, § 1:1.
mixed party-state normative documents that have the superior authority of the party over local state law. Third, Wuhan’s COVID-19 Headquarters was not explicitly granted powers for enacting such normative documents. Rather, the Headquarters itself assumed “comprehensive authority for pandemic prevention and control of the whole city.”

Fourth, both the existence and authority of Wuhan’s COVID-19 Headquarters were approved after the fact. However, the approving organ was Hubei’s Provincial Government and not Wuhan’s Municipal Government that would have had the legal authority for this approval. The Provincial Government endorsed establishing “leading institutions” on the prefectural and county levels, resulting in the creation of COVID-19 headquarters in Wuhan’s districts. Hubei’s Government also confirmed that local headquarters should exert “unified leadership and command” over Wuhan’s COVID-19 management.

D. Wuhan’s COVID-19 Control, Phase Two: Shutdown Inside

Some argue that Wuhan’s omnicompetent COVID-19 Headquarters had already turned the tide toward success in pandemic containment on February 2, when it tightened the city’s quarantine regime for individual COVID-19 sufferers and suspects. However, neither national leaders nor local decision-makers shared this opinion. During phase one’s lockdown, most individuals were prohibited from leaving Wuhan, but—depending on their neighborhood’s COVID-19 management—they could still leave their residence and move within the city. Thus, the coronavirus was largely unable to spread outside Wuhan, but it could still spread inside the blockaded city. Therefore, the city entered a critical phase where hospitals began exceeding capacity. In response, Wuhan initiated phase two of COVID-19 control: a curfew-like shutdown of public life.

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227 Provisional Methods art. 4, § 2:1; see Liao & Li, supra note 195.
228 Nat’l PHE Plan art. 2, § 1:2–3.
230 E.g., Wuchangqu Xinsheng Guanzhuang Bingdu Ganran Feiyuan Yiqing Fangkong Zhihuiibu (武昌区新型冠状病毒感染肺炎疫情防控指挥部) (established Jan. 2020).
231 Hubei Gov’t Notice (Jan. 22) art. 1.
233 Wuhan Notice 10 (Feb. 2).
235 Residential Communities Across China Vary in Grassroots Coronavirus Prevention and Control, GLOBAL TIMES (Feb. 18, 2020), https://www.globaltimes.cn/content/1180015.shtml.
236 See Wuhan Notice 11 (Feb. 10).
1. Curfew through Non-legislation. — On February 10, all
neighborhoods within the city were obligated to adopt a “closed
management.” Individuals hindering this management were threatened
with the use of force by public security officials. Through this brief,
ambiguous notice, Wuhan drew a second, much tighter cordon sanitaire:
around neighborhoods, like residential compounds or even single
buildings. This second cordon resulted in a mass quarantine—which,
under international WHO law, is only permissible as an “additional health
measure.” Whether such mass quarantines are permitted during the
coronavirus crisis, however, appears questionable. The IHR only permits
quarantining specific individuals who are suspected to suffer from an
infectious disease. Nevertheless, the WHO praised Wuhan’s second
cordon and its extension of quarantine measures against the entire
population in February. Yet in March, the WHO’s COVID-19 official
“Quarantine Considerations” again clarified that quarantines must address
concretely suspected individuals only.

In contrast to WHO law, Chinese national law explicitly allows the
“quarantine of [all] persons inside infectious disease areas.” Such mass
quarantines can be decided and implemented at the prefectural and county
levels by cities and districts themselves. However, as Wuhan’s mass
quarantine constituted a considerable change of direction in COVID-19
control, it again emanated not from the city but from the center, and not
from the state but from the CCP. On February 13, the party center removed
and replaced the Party Secretaries of Wuhan and Hubei for not sufficiently
containing COVID-19. The newly installed Party Secretaries of Wuhan
(Wang Zhonglin) and Hubei (Ying Yong) immediately implemented the
party center’s requests for aggressive COVID-19 control. On February 14,
Wuhan’s COVID-19 Headquarters tightened the closed management to a

02/11/content_5477104.htm.
238 Id.
239 Philipp Renninger, China and COVID-19: A Central-Local ‘Chess Game’, THE DIPLOMAT
240 See Bogdandy & Villareal, supra note 187, at 20
241 IHR art. 43, § 1:1.
242 IHR art. 1, § 1; art. 18, § 1; see Bogdandy & Villareal, supra note 187, at 20.
243 WHO, supra note 8, at 10; Bogdandy & Villareal, supra note 187, at 20.
244 WHO, supra note 8.
245 See Diseases Law art. 41, § 1; PHE Regulation art. 33.
246 See Diseases Law art. 41, § 1; PHE Regulation art. 33.
247 Hubei Shengwei Zhuyao Zeren Tongzhi Zhiwu Tiaozheng, Ying Yong Ren Hubei Shengwei Shuji
(湖北省委主要负责同志职务调整 应勇任湖北省委书) [Positions of the Major Responsible
Comrades of Hubei’s CCP Committee Have Been Adjusted: Ying Yong Serves as the Secretary of Hubei’s
CCP Committee], XINHUAWANG (Feb. 13, 2020), http://xinhuanet.com/renshi/2020-
02/13/c_1125568253.htm.
real curfew for the vast majority of individuals, including those in Wuhan’s rural areas.\(^{248}\) Non-gated neighborhoods were fenced and all neighborhoods were forced to operate one entry-exit checkpoint.\(^{249}\) Nobody could exit their residence except for two classes of people: (1) COVID-19 sufferers or suspects required to visit hospitals or quarantine centers, and (2) staff working in “pandemic prevention or sectors guaranteeing the operation [of the city],” like hospitals, pharmacies, public security, other crucial infrastructures, or the transport of goods.\(^{250}\) Similarly, nobody could enter another neighborhood except for special reasons similar to those for exiting.\(^{251}\) Nevertheless, Wuhan’s curfew-like shutdown was not handled uniformly because different districts, streets, and neighborhoods could choose the methods of entry-exit control according to their specific conditions.\(^{252}\)

On February 16, Hubei’s Provincial Government followed Wuhan’s COVID-19 Headquarters by applying the closed management curfew to most parts of the province.\(^{253}\) Additionally, Hubei extended this curfew to “public spaces”—which Wuhan subsequently implemented.\(^{254}\) This extension meant that non-essential cultural, economic, and religious spaces had to close.\(^{255}\) Essential businesses like shops, pharmacies, and accommodations could stay open, so long as they followed strict COVID-19 regulations like measuring people’s temperature for fever and enforcing face mask compliance.\(^{256}\) Moreover, anyone buying or ordering antipyretics or antitussives had to show their Resident Identity Card number, personal data, contact details, and emergency contacts.\(^{257}\) Wuhan’s COVID-19 Headquarters also instructed all individuals quarantined at home to measure their temperature twice a day,\(^{258}\) later

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\(^{249}\) Id. art. 1.

\(^{250}\) Wuhan Notice (Feb. 14) art. 2, § 1:2.

\(^{251}\) Wuhan Notice (Feb. 14) art. 2, § 1:4.

\(^{252}\) Wuhan Notice (Feb. 14) art. 2, § 1:1.


\(^{255}\) Wuhan Notice 13 (Feb. 16) art. 1; see Wuhan Gov’t Notice (Feb. 16) art. 4, § 2.

\(^{256}\) Wuhan Notice 13 (Feb. 16) art. 2; see Wuhan Gov’t Notice (Feb. 16) art. 4, § 3, art. 12, § 3.

\(^{257}\) Wuhan Notice 13 (Feb. 16) art. 3; see Wuhan Gov’t Notice (Feb. 16) art. 4, § 4.

recommended nationwide by the Joint Mechanism. Individuals with temperatures exceeding 37.3 °C (99.1 °F) were required to immediately and honestly report to their residential community or village. The fever of individuals allowed (or obliged) to leave their residences was also measured at the entry-exit checkpoints of residential communities, villages, and neighborhoods.

2. Basic Legislation. — In addition to these normative documents, Wuhan resorted to formal legislation. On February 17, the city announced its “Decision on Winning the Wuhan Defense War of COVID-19 Prevention and Control According to the Law and with Full Strength.” Behind this martial title lies a local regulation enacted by Wuhan’s quasi-legislative MPC Standing Committee. Other cities and provinces’ standing committees, including Hubei’s, enacted similar COVID-19 regulations. It is unsurprising that standing committees were the only quasi-legislative organs acting during the COVID-19 pandemic. Compared to local congresses themselves, they are smaller (in Wuhan: 51 versus 540 delegates) and meet more often (in Wuhan: six versus one regular session per year). Yet, it is remarkable that standing committees formally legislated on COVID-19 at all. National law does not require local entities to enact formal legislation when responding to pandemic outbreaks. Nor do local entities depend on such formal local legislation to effectively manage a pandemic such as COVID-19. Instead, they can—and usually do—resort to nonlegal local normative documents as their enforcement measures.

259 See Technical Guidelines, supra note 127, art. 1, § 1:2.
260 See Diseases Law art. 12; Wuhan Notice 15 (Feb. 20) art. 3.
261 Wuhan Notice 15 (Feb. 20) art. 2.
265 See Organization Law art. 41, § 4:2.
266 See Organization Law art. 45, § 1.
267 See Litigation Law arts. 53, 145.
But if local regulations are not necessary for an effective pandemic response, then why did standing committees enact them? In Wuhan’s case, the MPC Standing Committee’s decision helped the quasi-legislative organs emphasize their existence during the coronavirus crisis. This aim became obvious later on, in Wuhan’s MPC Standing Committee’s “Opinion on Further Developing the Role of Deputies of People’s Congresses at All Levels of the Whole City in Fighting COVID-19.”

The Standing Committee instructed all deputies of people’s congresses in Wuhan to “serve the masses” and fight “at the front” of COVID-19 prevention and control. This front work should strengthen the deputies’ reputation and trust amongst residents and convince the population of “the people’s congress system’s advantages.” Nevertheless, Wuhan’s MPC Standing Committee accepted the leadership from both the CCP and the quasi-executive organs. The Standing Committee openly commanded the deputies of all the people’s congresses to implement the decisions of both the party committees and the people’s governments on their respective local levels. This stipulation reversed the state-internal hierarchy of institutions and norms, which favor the quasi-legislative organs and their local regulations over the quasi-executive organs and their regulatory instruments. But it respects the quasi-executive’s overarching authority and their normative documents’ importance in pandemic management.

3. Enforcement. — The quasi-executive pandemic powers also encompass the authority to enforce legal and nonlegal COVID-19 related norms. These quasi-executive enforcement measures can be individual (applying to one or a few specific addressees) or concrete (applying to one or a few specific cases). Wuhan’s prefectural-level organs delegated large parts of enforcement authority to the grassroots level. The center standardized this grassroots-level COVID-19 work as late as three months after the pandemic outbreak.

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269 Id. art. 1.

270 Id. art. 4.

271 XIANFA art. 101, § 1 (referring to institutions); Legislation Law art. 89, § 1 (referring to norms).

272 See Diseases Law art. 5, § 1; art. 6, § 1:2; PHE Regulation art. 4, § 2; see IHR app. 2, art. III, § 2:2.

communities, villages, and neighborhoods mostly performed analog surveillance because the “alert eyes” of residents’ committees were able to best monitor the closed management.\(^{275}\)

In contrast, digital surveillance remains more centralized. Chinese smartphone apps publicly display the domicile of COVID-19 infected individuals.\(^{276}\) They also report users’ health status to authorities and generate a personal “QR Health Code” in traffic light colors through Alipay or the WeChat embed “Wuhan Fights the Pandemic.”\(^{277}\) A green QR code demonstrates that the user is healthy, a red QR code confirms that the person has—or is suspected of having—COVID-19, while a yellow QR code applies to people displaying “irregular conditions” like coughing, or who visited areas with COVID-19 cases.\(^{278}\) Additionally, COVID-19 contact tracing is conducted through countless surveillance cameras, face recognition technology, and location data.\(^{279}\) Individual behavior like wearing face masks during phase one and two was monitored by drones,\(^{280}\) which were also used to spray disinfectants, transport medical samples, and deliver consumer goods.\(^{281}\)

### IV. EVALUATION: CRACKS IN THE SYSTEM?

COVID-19 management in Wuhan demonstrates that local Chinese entities enacted concrete pandemic control measures while the underlying fundamental decisions emanated from the party and state center. However, individuals affected by COVID-19 restrictions cannot challenge the center’s fundamental COVID-19 decisions nor Wuhan’s implementation thereof. Consequently, Chinese party and state organs can unrestrictedly decide which COVID-19 measures to adopt without being held accountable to the impacted individuals.


\(^{276}\) Id.


\(^{278}\) Mozur et al., supra note 277.

\(^{279}\) Satra, supra note 275.


A. Central–Local, Party–State Evaluation

During the coronavirus crisis and beyond, Wuhan and other local entities must follow the central level’s command, which defines the “overall interest of the whole country.” But vice versa, Wuhan can also rely on the support of the center, and thus of the whole country.

1. Wuhan as an Agent, COVID-19 as a Chess Game. — Both central–local command and support are realized through the horizontal and vertical channels of the party rather than the state. Put differently, central state organs do not lead local state organs directly but through a conduit: the CCP. This is possible because, on the central level, party leaders like Xi Jinping are personally identical to state leaders—and on the local levels, party secretaries are even superior to the leaders of state organs. As explained above, in Wuhan, Mayor Zhou Xianwang is subordinate to Party Secretary Wang Zhonglin because Zhou merely serves as Wuhan’s Deputy Party Secretary. This central–local and party–state setup allows the center to treat “the whole country as a chess game” in containing COVID-19, as Xi Jinping explicitly demanded. When playing “COVID-19 chess,” China’s central-level leaders use these party–state chess pieces to perform three types of chess moves on the central–local chessboard.

First, central leadership regularly makes a triple move: horizontal–vertical–horizontal. Central-level state leaders act as central-level party leaders (horizontal) in order to control the local party branch of Wuhan (vertical). This local party branch, consisting of Wuhan’s CCP Committee and various party groups, then influence the local state organs of Wuhan, like the WHC and WCDC (horizontal). This party conduit is regulated through institutional, personnel, and disciplinary valves. During the coronavirus crisis, such a triple move introduced Wuhan’s shutdown in phase two. Central-level leaders, in their roles as party leaders, decided to replace Wuhan’s and Hubei’s Party Secretaries. The newly installed Party Secretaries then pressured Wuhan’s local pandemic containment organs to tighten and enforce the closed management.

282 Legislation Law art. 4; see EXPLANATION OF THE P.R.C. LEGISLATION LAW, supra note 62, at 26.
283 Xi, supra note 46; Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match, supra note 47.
284 Renninger, supra note 239.
285 Renninger, supra note 54, at 123.
286 ZHANG, supra note 19, at 164.
287 CHUNG, supra note 13, at 76–86.
288 Positions of the Major Responsible Comrades of Hubei’s CCP Committee Have Been Adjusted: Ying Yong Serves as the Secretary of Hubei’s CCP Committee, supra note 247. See Renninger, supra note 239.
289 Wuhan Notice (Feb. 14); Hubei Gov’t Notice (Feb. 16). See Wuhan Notice 13 (Feb. 16); Renninger, supra note 239.
Second, and usually in a time of crisis, this chain of command is reduced to a double move: horizontal—vertical. Central-level state leaders again act as central-level party leaders (horizontal), but now they directly command Wuhan’s local organs responsible for pandemic management (vertical). During the coronavirus crisis, the party center often issued orders to Wuhan’s COVID-19 Headquarters, which is bound to party commands because it constitutes a mixed party–state organ. Such a double move initiated Wuhan’s lockdown in phase one. Central-level representative Sun Chunlan commanded Wuhan’s COVID-19 Headquarters to cordon off the city from the outside, which the Headquarters implemented the very next day. Besides, the party center even assumes direct command over Wuhan’s local state organs, which are bound to party commands because of the non-contradiction principle. During the coronavirus crisis, Wuhan’s MPC Standing Committee has openly embraced calls to assume command of not only Wuhan’s CCP Committee but also the CCP Central Committee.

Third, and exceptionally, the central level can immediately act on its own in local affairs. This is possible because the center possesses omnicompetence for every (non-)legislative matter in the P.R.C. This direct approach causes a single, vertical move because the center’s micromanagement must still be enforced by local party and state organs. During the coronavirus crisis, this single move heralded phase three of COVID-19 containment, analyzed below. Since Wuhan had originally enacted COVID-19 restrictions, it would have had the authority to repeal them as an actus contrarius. However, it was not the city but the central level that announced the easing of COVID-19 measures in Wuhan.

Thus, when fighting COVID-19 through its local party and state organs, Wuhan acts as a mere agent of the central level. But even as an agent following central-level decisions, Wuhan must “combine” these

290 Renninger, supra note 54, at 123; see CHINA’S POLITICAL SYSTEM, supra note 36, at 150.
291 Renninger, supra note 54, at 123.
292 See Provisional Methods art. 4, § 1; Liao & Li, supra note 195.
293 Sun, supra note 196. See Renninger, supra note 239.
294 Wuhan Notice 1 (Jan. 23).
295 See Legislation Law art. 3; ZHANG, supra note 19, at 73, 163.
296 MPC Standing Comm. Decision pmbl., § 1, § 2:2.
297 Renninger, supra note 239.
298 Contra, Legislation Law art. 8.
299 See Renninger, supra note 239.
300 Id.
301 See CHUNG, supra note 13, at 55; Renninger, supra note 54, at 112.
decisions “with the city’s actual situation.” Being an agent only means that the city is banned from acting as a principal pursuing its own interests, or as a representative defending its residents’ interests from excessive central-level commands. This type of agency explains why the formal decentralization of (non-)legal instruments is not contradictory to the substantial recentralization of political leadership under Xi Jinping. Paradoxically, decentralized (non-)legislation by local entities can even turn into a chess tactic of top-down governance, top-level design, and centralized ideological control.

2. Cooperation and Conflicts. — As a central-level agent, Wuhan bears responsibility for the entire P.R.C. “If Wuhan wins, Hubei wins; if Hubei wins, the whole country wins;” failure is unacceptable. However, Wuhan did not struggle alone, but it received support from other P.R.C. entities. First, the center and other local entities supported Wuhan’s medical fight against COVID-19. From January 24 on—and thus immediately after the lockdown—other provinces and the People’s Liberation Army sent medical staff and supplies to Wuhan (having a seldom “special reasons” to enter the city). According to official figures, 35,000 medical workers from all over the country volunteered in Wuhan. Second, Hubei province is establishing an internal “prevention and control network of the province, cities, counties (districts), townships (streets), and villages (residential communities).” Third, the sub-local residential communities, villages, and neighborhoods enforced Wuhan’s COVID-19 related decisions on the ground. These grassroots-level entities’ importance was acknowledged by the highest levels of party and state, including Xi Jinping.

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302 Legislation Law art. 72, § 2:1, art. 73, § 1:1; PHE Regulation art. 10, § 2, art. 31, § 1 (for the central level) and So, the local levels in MPC Standing Comm. Decision pmbl.; Provisional Methods issuing notice (for the local levels).
303 CHUNG, supra note 13, at 57, 59; Renninger, supra note 54, at 112.
305 Id. at 666–67, 670.
308 If Wuhan Wins, Hubei Wins. If Hubei Wins, the Whole Country Wins, supra note 306.
309 Hubei People’s Cong. Standing Comm. Decision art. 2.
310 See Xi, supra note 5.
However, in containing COVID-19, the autonomy of grassroots-level entities had detrimental outcomes for affected individuals. With regards to COVID-19 prevention, Wuhan’s municipal administration permitted a banquet with record-breaking attendance amidst the viral outbreak, arguing that it constituted an important element of residential communities’ self-government. 311 And concerning COVID-19 control, residential communities and neighborhoods handled the closed management disparately and often with more restrictive measures than advertised by the city. 312 From the perspective of Wuhan’s prefectural level, the grassroots level’s autonomy thus created problems for the top-down implementation of the city’s COVID-19 stipulations.

In turn, from the central level’s perspective, the city’s own freedom to operate created economic and financial problems as a consequence of the coronavirus crisis. 313 Although the central level warned local entities not to overspend during the coronavirus crisis, provinces and cities planned on incurring debts. 314 Local entities considered these debts necessary to finance crisis-related expenses, compensate tax losses, and stimulate the local economy, with value-added industrial production down 13.5% and fixed-asset investment down 24.5% in the first two months of 2020. 315

B. Political–Legal Evaluation

While local entities can dispute economic policy questions in public, they cannot openly disagree with the center’s superior aim and overall direction of COVID-19 management. 316 These taboos prevented Wuhan from finding balanced solutions for the coronavirus crisis, and restricted citizens from challenging Wuhan’s COVID-19 response.

1. Absolute Aim: Eliminating COVID-19. — The central level’s aim for COVID-19 management was similar to several other countries, like

311 Zhenhua et. al., supra note 170.
315 China’s Economy Will Suffer a Double Whammy as Its Export Partners are Overrun by the Coronavirus, supra note 313.
316 See Grünberg & Drinhausen, supra note 22, at 5–6.
Australia, New Zealand, and South Korea: stopping and eliminating the disease by suppressing new cases. In a nearly opposite approach, countries like—at least initially—the United Kingdom, the Netherlands, and Sweden, aimed at stopping COVID-19 through herd immunity, thereby letting the coronavirus rapidly infect large parts of the population. But such laissez-faire strategies can easily overwhelm each state’s health care system and result in tragically high death tolls. These results also hold true if deliberate exposure is combined with mitigation, that is, cocooning risk groups from COVID-19 by limiting their social interaction. In contrast, most states aim not at stopping COVID-19 at all costs nor letting the disease roam freely—but at flattening the curve. These states accept a certain number of new infections while trying to significantly decelerate the disease’s spread amongst their populations. The idea is that flattening the curve will prevent exponential growth in COVID-19 infections and thus preserve a health care system’s capacity to adequately address the crisis.

Most countries base their flattening approach on the assumption that eliminating COVID-19 by preventing any new infections is scientifically impossible. In this light, China’s approach (like Australia’s, New Zealand’s, and South Korea’s) to eliminate COVID-19 within their countries would be criticized for being unscientific and irrational. Yet, one should not quickly dismiss these states’ approach as illogical. Rather, their aim to suppress any new COVID-19 cases proves logical in any one

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320 See PHE Regulation art. 42; see Diseases Law art. 1.


323 Sibony, supra note 321, at 351–52.

324 Ethikrat, supra note 322, at 2.


327 See id.
of the following scenarios: First, if a vaccine, medication, or treatment for COVID-19 is distributed so soon that preventing any new infections until then appears both possible and worth the harsh restrictions of public and private life. Second, if the novel coronavirus mutates so significantly that the immunity of previously infected individuals wanes and the other countries’ strategy of immunity through infection fails. Or third, if COVID-19’s infection rate becomes so high that allowing the virus to infect large swaths of people, even within the health care systems’ capacity, would result in millions of deaths. Should any of these scenarios unfold, then China’s approach (like Australia’s, New Zealand’s, and South Korea’s) becomes a “rational,” “scientific,” and legitimate governmental aim.

2. Proportionality and Balancing of COVID-19 Control? — Defining the legitimate governmental aim as completely eliminating COVID-19 yields grave human rights consequences: the reference point for the proportionality test of COVID-19 measures shifts. The reason being that the proportionality of government measures—encompassing their (1) suitability, (2) necessity, and (3) proportionality stricto sensu (appropriateness/balancing)—is measured in relation to that legitimate aim. International WHO law specifies this proportionality test for PHEs, infectious diseases, and pandemics. According to the IHR, public health “measures shall not be more restrictive of international traffic and not more invasive or intrusive to persons than reasonably available alternatives” that would also achieve an “appropriate level of health protection.” Also, these health-related measures must “full[y] respect” and appropriately balance “the dignity, human rights, and fundamental freedoms of persons” (i.e., proportionality stricto sensu).

For countries like China that aim to eliminate COVID-19, much stricter measures appear suitable, necessary, and proportionate stricto sensu, than for countries that merely aim at flattening the curve. First, the complete lockdown and shutdown of the pandemic’s epicenter, combined with strict surveillance and contact tracing, reduced new COVID-19 cases

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328 See Ethikrat, supra note 322, at 2.
330 See Legislation Law art. 6.
331 See Baker, supra note 318; Kang, supra note 319; Kumm, supra note 329.
333 IHR art. 43, § 1:2 (directly applicable only to “additional health measures” not enumerated in the IHR), definitions at art. 1, § 1.
334 IHR art. 3, § 1.
in Wuhan to virtually zero. Therefore, Wuhan’s measures were suitable for reaching the aim of stopping the pandemic. Second, hardly any alternatives existed that would have been less restrictive, but equally suitable for eliminating the city’s massive and exponentially growing COVID-19 clusters. Thus, in relation to their aim of absolutely eliminating the pandemic, Wuhan’s measures could be considered necessary. However, third, Wuhan’s measures failed to be proportionate stricto sensu, that is, to appropriately balance pandemic containment and individual rights and freedoms. Certainly, strict COVID-19 measures protect society’s and individuals’ rights to life, health, and “safety.” Yet, the Chinese Constitution does not guarantee these rights. Rather, it is the other way round. The Chinese Constitution enshrines myriad human rights that Wuhan’s COVID-19 control actually encroached on: the freedom of the person and movement, the freedom of demonstration and assembly, religious freedom, the right (and duty) to work and education, the inviolability of home and correspondence, as well as the rights of Overseas Chinese. These COVID-19 measures affected millions for several months without any realistic possibility of an exception. Consequently, Wuhan’s COVID-19 control came at an excessive price and fails the proportionality test. Neither did it “full[y] respect” nor appropriately balance the “human rights and fundamental freedoms” of urban dwellers or other affected individuals.

This disproportionality, however, will hardly distress Wuhan’s party and state leaders. First, in most countries, proportionality has been accepted as a “general principle of law” and “common [constitutional] grammar” by lawmakers and courts. In the United States, the “balancing doctrine” fulfils a similar function. Chinese law, in contrast, rejects a

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335 See WHC, supra note 8; Cohen & Kupferschmidt, supra note 326.
336 See Cohen & Kupferschmidt, supra note 326.
337 See id.; Kumm, supra note 329.
338 See IHR art. 3, § 1; see Bogdandy & Villareal, supra note 187, at 20. For U.S. law, see Cohen-Eliya & Porat, supra note 332, at 265.
339 Xi, supra note 5; Hu & Wang, supra note 264; see Wuhan Notice 12 (Feb. 10).
340 XIANFA art. 37.
341 Id. art. 35.
342 Id. art. 36.
343 Id. art. 42, 46.
344 Id. art. 39, 40.
345 Id. art. 50.
346 See IHR art. 3, § 1; Bogdandy & Villareal, supra note 187, at 20.
348 See BENEDIKT PIRKER, PROPORTIONALITY ANALYSIS AND MODELS OF JUDICIAL REVIEW 91, 137 (2013).
general principle of proportionality or balancing, despite long-standing efforts by legal scholars to establish this principle. Rather, local and central law and nonlaw must only be “scientific” and “rational.” It is surprising then, that in emergency situations like pandemics, Chinese law requires both central and local entities to act more carefully than in “normal” times. All entities must choose measures that are “suitable for the nature, degree, and extent of the (social) damage caused by the emergency” (i.e., suitability) and “conducive to the maximum protection of rights and interests of citizens, in case there are multiple options available for choice” (i.e., necessity). However, Wuhan’s party and state organs could always argue that less restrictive options for achieving the government’s aim of absolutely eliminating COVID-19 were unavailable. Moreover, whether during emergencies or regular times, neither Wuhan’s (non-)law nor its enforcement measures need to be proportionate stricto sensu. Chinese law allows—and sometimes demands—cities like Wuhan to violate individuals’ rights and interests in fighting PHEs.

3. Legal Remedies Against COVID-19 Control? — As a second pitfall to Wuhan’s COVID-19 response, individuals affected by Wuhan’s measures can only initiate legal actions concerning the individual and concrete enforcement measures, like administrative acts, compulsory measures, or sanctions. There are, in contrast, no legal remedies against Wuhan’s general and abstract (non-)law that the enforcement is based on. Wuhan’s only formal legal norm regulating its COVID-19 response, the MPC Standing Committee’s Decision, is outside the scope of judicial review because it constitutes a local regulation. And Wuhan’s numerous nonlegal COVID-19 normative documents can be reviewed by the courts only incidentally. The courts can rule on normative documents’ legality indirectly, but only in the frame of legal actions concerning the individual and concrete enforcement measures that they are based on. Should this incidental control find one of Wuhan’s normative documents unlawful,

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350 Emergencies Law art. 11; Pils, supra note 312 (critically).
351 Emergencies Law art. 11.
352 Pils, supra note 312.
353 See Ahl, supra note 349, at 423.
354 See Ahl, supra note 349, at 423.
355 Emergencies Law art. 11; Pils, supra note 312 (critically).
357 See Litigation Law art. 2; art. 12; see Diseases Law art. 12, § 2.
358 FENG, supra note 52, at 88.
359 See Ahl, supra note 349, 425–26; Litigation Law art. 64; Litigation Interpretation art. 145.
360 See Litigation Law art. 64; Litigation Interpretation art. 145.
then the particular court must not apply the respective document as a valid basis in the concrete lawsuit. But the court cannot strike down the normative document’s validity and authority generally. As of December 2020, several such COVID-19 lawsuits are pending against Wuhan’s Municipal Government and Hubei’s Provincial Government. However, plaintiffs have not based their claims on the disproportionality of Wuhan’s COVID-19 control. Rather, they criticize the absence or inadequacy of Wuhan’s COVID-19 prevention. And where plaintiffs challenge Wuhan’s COVID-19 control, they do not base their claims on the defects of the city’s normative documents, which have therefore not been incidentally examined. Instead, these lawsuits criticize the defective application of those normative documents by individual officials.

As a third problem, administrative litigation is only seldom successful in China. Plaintiffs win approximately 20% of administrative cases and often face (increased) harassment from the local government after filing suit. In the PHE and pandemic context, litigation is actively discouraged by Chinese law. The Diseases Law requires all individuals and all entities to “accept the prevention and control measures” by pandemic containment organs. And all people suffering or suspected to suffer from an infectious disease, as well as their close contacts, must “cooperate” with the health administration—or their compliance will be enforced by public security organs. If individuals dare “refuse to carry out the prevention and control measures” or “disobey the decisions or orders” issued by pandemic containment organs, they expose themselves to criminal punishment, administrative sanctions, and civil liability. As a result, almost 2,000 citizens have already been criminally charged for “obstructing” COVID-19 containment. Nationally, COVID-19 related “misbehavior” resulted in 3,600 individuals being criminally detained,

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361 See Litigation Law art. 64; Litigation Interpretation art. 149, § 1.
362 Litigation Interpretation art. 149, § 1.
364 Id.
365 Id.
367 See Diseases Law art. 12, § 1.
368 PHE Regulation art. 44.
369 Criminal Law art. 330, § 1:4, § 2; see Emergencies Law art. 68; PHE Regulation art. 51, § 3.
370 See Diseases Law art. 77; Emergencies Law art. 66–67; PHE Regulation art. 51, § 1–2.
371 Ye, supra note 135.
25,000 individuals administratively detained, and 46,000 individuals “criticized and educated” by February 2020 alone.\footnote{Xiong Jian (熊建), Quanguo Yiliao Jizhi Zhixu Zongti Pingwen Youxu (全国医疗救治秩序总体平稳有序) [The Whole Country’s Medical Treatment Order Is Generally Stable and Orderly], \textit{RENMIN RIBAO} (Feb. 22, 2020), http://paper.people.com.cn/rmbhwb/html/2020-02/22/content_1972481.htm; see Pils, supra note 312.}

As a fourth and last caveat, individuals cannot assert their human rights claims in court, regardless of whether they sue the state or if the state sues them. Myriad human rights (and duties) are enshrined in the Chinese Constitution.\footnote{XIANFA art. 33–56.} However, these rights are neither enforceable nor justiciable, not even through incidental control by the courts.\footnote{Bu, supra note 65, at 788.} Moreover, the Chinese Constitution demands that “in exercising their freedoms and rights,” citizens “must not infringe upon the interests of the state, the society, or the collective.”\footnote{XIANFA art. 51.} Therefore, the public interest—in this case containing COVID-19—prevails over individual rights and freedoms.\footnote{Pils, supra note 312.}

Again, Chinese law permits—and sometimes demands—local entities like Wuhan to violate individuals’ rights and interests in fighting PHEs.\footnote{With the MPC Standing Committee’s Decision, Wuhan can violate human rights because the Decision constitutes a local regulation; see Legislation Law art. 82. With Wuhan’s COVID-19 normative documents, the city can infringe upon individual rights and freedoms as long as national law authorizes it; see Litigation Law art. 64; Litigation Interpretation art. 148, § 2:2–3. \textit{See} Xi, supra note 5; Hubei Gov’t Notice (Jan. 22) art. 1. \textit{See} Renninger, supra note 239.}

\textit{C. Wuhan’s COVID-19 Control, Phase Three: Easing and Extension}

China’s legal setup explains why Wuhan could fight a “total war” on COVID-19, as required by the party and state center.\footnote{Hu, supra note 6.} This “field service” in Wuhan for the higher levels of the party and the state was most notably performed by Wuhan’s COVID-19 Headquarters.\footnote{\textit{See} Xi, supra note 5; Hubei Gov’t Notice (Jan. 22) art. 1. \textit{See} Renninger, supra note 239.} The center and province burdened Wuhan’s Headquarters with conveying the “bad news” of restrictions, like the lockdown and shutdown in phases one and two, and with enforcing these measures on the ground.\footnote{This is style of news was often given through the \textit{Hubeisheng Xinxing Guanzhuang Bingdu Ganran Feiyuan Yiqing Fangkong Zhihuibu Tonggao} (湖北省新型冠状病毒感染肺炎疫情防控指挥部通告) [Notices of Hubei’s COVID-19 Headquarters]. Hereinafter, these notices will be abbreviated in the footnotes as “Hubei Notice” with their respective date instead of providing this full title again.} In contrast, the center and province reserved for themselves the privilege of proclaiming the “good news,” such as easing Wuhan’s strict COVID-19 measures.\footnote{\textit{See} Xi, supra note 5; Hubei Gov’t Notice (Jan. 22) art. 1. \textit{See} Renninger, supra note 239.}

This easing initiated a new phase of COVID-19 containment in Wuhan, yet the alleviation granted was still limited. Therefore, Wuhan’s
COVID-19 measures continued to restrict public and private life inside the city for several months. Meanwhile, the focus of China’s COVID-19 containment shifted toward its borders, restricting the return of foreign nationals and Chinese citizens from abroad.

1. Successive Easing. — Easing Phase two’s shutdown began in mid-March when Wuhan cautiously “resumed work, production, city (life), and teaching.” First, shops and factories reopened. Companies “necessary to guarantee pandemic prevention and control work … the operation of public utilities … and people’s daily necessities” were allowed to reopen on March 11, whereas non-essential businesses reopened ten days later. Second, public transportation started operating again on several lines by March 25, reviving city life. As a prerequisite to using public transportation, passengers were required to register on a smartphone app, and scan the QR code of every vehicle they were traveling on. Third, Wuhan’s schools and universities, home to more than 2.5 million students, resumed teaching on different dates beginning in early May.

Phase one’s lockdown was eased beginning at the end of March. The central level decided, and the provincial level reiterated, that

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382 See Shi Lingdao Diaoda Quanshi Fuqong Fuchan Fushi Gongzuo (市领导调度全市复工复产复市工作) [Municipal Leaders Schedule the Whole City to Resume Work, Production, and City [Life]]. ZHONGGONG WUHAN SHIWEI TONGYI ZHANXIAN GONGZUOGUOBU (中共武汉市委统一战线工作部) [UNITED FRONT WORKING DEP’T OF WUHAN PARTY COMM.] (Mar. 23, 2020), http://whzrb.org/home/info/17555.html.


384 Hubei Notice (Mar. 11, 2020), art. 1, § 1.


386 Id.

387 Wuhanshi Tongjiu, supra note 40.


entering and exiting Hubei province was allowed again on March 25.\footnote{Hubei Notice (Mar. 24, 2020), CLT.12.1579398, art. 1 http://yjt.hubei.gov.cn/bjdy/tyw/tz/202003/t20200324_2189538.shtml.} Wuhan, however, was excluded until later. Inbound transport by train restarted on March 28,\footnote{Zhongguo Tielu Wuhanju Jituan Youxian Gongsi Tonggao (中国铁路武汉局集团有限公司通告) [Notice of China Railway Wuhan Group] art. 2 (Mar. 24, 2020), http://www.hubei.gov.cn/ztzl/2020/xgfyyqfkzszq/hygq/202003/t20200324_2189903.shtml, [hereinafter Railway Notice].} and other transportation means, like private road traffic, reopened on April 8.\footnote{Traffic Notice (Mar. 24) art. 4, § 2, art. 6, § 2; Hubei Notice (Mar. 24), art. 2, § 1.} Outbound transportation too started up again that same day, as did the airport in a limited capacity.\footnote{Traffic Notice (Mar. 24) art. 4, § 2, art. 6, § 2; Hubei Notice (Mar. 24) art. 2, § 3; Railway Notice art. 3.} In total, Wuhan’s lockdown had remained in force for more than two months. During this time, millions of people were stranded either inside or outside the city. For example, transient travelers, who unfortunately passed through Wuhan on January 23, were then locked inside the city without their own accommodations.\footnote{See He Huifeng, Coronavirus: Hubei’s Migrant Workers ‘Living in Fear’ as Debts Mount Under Lockdown, S. CHINA MORI. POST (Mar. 18, 2020), https://www.scmp.com/economy/china-economy/article/3075732/coronavirus-hubeis-migrant-workers-living-fear-debts-mount.} And migrant workers in or from Wuhan, who had returned to their homes for Chinese New Year’s public holidays, were unable to travel back to their jobs.\footnote{Id.} As a remedy, Wuhan’s COVID-19 departments decided that individuals could enter or exit the city “for reasons of pandemic prevention and control, city functioning, production, and living” as “early” as February 24.\footnote{Wuhan Notice 18 (Feb. 24, 2020), https://zh.wikisource.org/zh-hans/关于加强进出武汉市车辆和人员管理的通告.} However, Wuhan was forced to revoke that permission the same day because it had been issued “without the consent of leading comrades” at the central level.\footnote{Traffic Notice (Mar. 24), art. 1.} Instead, the central level itself announced the dates and conditions for transient travelers and migrant workers entering and exiting Wuhan a month later.\footnote{Traffic Notice (Mar. 24) art. 3, § 2; Hubei Notice (Mar. 24) art. 2, § 2.} The center proclaimed that the “preferential” entry-exit rules for Wuhan applied only to migrant workers.\footnote{Traffic Notice (Mar. 24) art. 3, § 2; Hubei Notice (Mar. 24) art. 2, § 2.} Additionally, the center changed the date for migrant workers entering and exiting the city from February 24 to March 25.\footnote{Traffic Notice (Mar. 24) art. 3, § 2, art. 2, § 2–3; Hubei Notice (Mar. 24) art. 2, § 2.} The center also required migrant workers entering and exiting Wuhan to travel by chartered bus and to produce a negative COVID-19 nucleic acid test before traveling.\footnote{Traffic Notice (Mar. 24) art. 3, § 2; Hubei Notice (Mar. 24) art. 2, § 2.”}
2. Limited Easing. — Easing Wuhan’s COVID-19 measures has been subject to high requirements not only for migrant workers, but also for everyone else. Concerning phase one’s lockdown, traveling in and out of Wuhan was initially restricted by other local entities like Beijing, and later by the central-level State Council’s Joint Mechanism. Individuals leaving Wuhan had to prove at their destination that they are COVID-19 free. If they could not provide a negative COVID-19 nucleic acid test, then they must spend fourteen days in quarantine.

Regarding phase two’s shutdown, Wuhan’s COVID-19 Headquarters ordered all local and grassroots levels within the city to “strictly continue” the closed management, but in a modified form. In order to exit and enter the city and any residential community, village, or neighborhood, every individual had to show their green QR health code.

All neighborhoods implemented the “four musts” on people entering or exiting their respective area: (1) show their Resident Identity Card, (2) specify personal information and contact details, (3) measure their temperature, and (4) wear a face mask. Citizens were still called on to not leave their house except in “absolutely necessary” scenarios. If new active COVID-19 cases appear, affected neighborhoods must implement stricter policies, similar to an absolutely closed management.

These limitations indicate that easing COVID-19 measures in Wuhan was not due to human rights and proportionality considerations, but rather to the center’s evaluation that the pandemic was sufficiently under control. Therefore, Xi Jinping allowed the CCP Leading Group dispatched...
to Wuhan under Sun Chunlan to return to Beijing in late April.\(^{411}\) But, Xi emphasized that maintaining COVID-19 containment is the “first priority.”\(^{412}\) Hence, easing restrictions in Wuhan does not mean a return to the status quo pre-COVID-19, but a transition to phase three of COVID-19 management.

3. Continuing Restrictions and the New Normal. — Phase three of COVID-19 management—ongoing as of December 2020—is characterized by Wuhan’s aim to establish an “optimized multi-level leadership system” for COVID-19 prevention and control.\(^{413}\) However, in this optimized system, several restrictive COVID-19 measures remain.\(^{414}\) The digital surveillance tools that were introduced, like the QR health codes, will likely continue well beyond the coronavirus crisis.\(^{415}\) Even as the pandemic abates, Xi Jinping has ordered “continuous screening” for COVID-19 cases.\(^{416}\) Moreover, Xi has announced that fighting COVID-19 offers a welcome opportunity to “really ‘clean up’ the residential communities and the society as a whole.”\(^{417}\)

Following suit, Wuhan’s COVID-19 Headquarters has committed itself to regularly conduct “accurate and in-depth inspection tours” of entities within the city.\(^{418}\) The Headquarters has also obliged Wuhan’s districts to “establish working mechanisms for supervision and inspection and strictly enforce the disciplinary requirements and responsibility for neglecting duties.”\(^{419}\)

These continuing restrictions demonstrate that inside China, a certain “new normal” still prevails. This is unsurprising, given the ongoing coronavirus crisis is temporarily altering the ways people live in almost every country of the world.\(^{420}\) It remains to be seen, in contrast, whether

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\(^{411}\) Han Jie (韩洁), Zhongyang Zhidaozu Li’e Fanjing (中央指导组离鄂返京) [Central Leading Group Leaves Hubei [and] Returns to Beijing], XINHUAWANG (Apr. 27, 2020), www.xinhuanet.com/politics/2020-04/27/c_1125911889.htm.


\(^{413}\) Wuhan Notice (Apr. 2) art. 1; Wang & Li, supra note 412.


\(^{415}\) Digital surveillance was enhanced during other major events like the 2008 Beijing Olympics or the 2010 Shanghai Expo and has endured well beyond those events. See Kuo, supra note 414.

\(^{416}\) Xi, supra note 5.

\(^{417}\) Id.

\(^{418}\) Wuhan Notice (Apr. 2) art. 5.

\(^{419}\) Id. art. 7.

the coronavirus crisis will create a new normal in economics,\textsuperscript{421} work,\textsuperscript{422} politics, social life,\textsuperscript{423} and health care in the post-pandemic future too.\textsuperscript{424} In China, claims for a new normal have been an official mantra of Xi Jinping since 2014, long before the COVID-19 pandemic.\textsuperscript{425} This slogan, originally related to China’s slower and more sustainable economic development,\textsuperscript{426} has expanded to various areas of Chinese governance, including the political–legal system.\textsuperscript{427} However, Xi’s new normal does not merely redefine but rather reverses normality in two regards.

First, normality for Xi means crisis, as he turns the crisis mode into the normal mode of governance.\textsuperscript{428} This development has been facilitated by the coronavirus crisis. Both the center and local entities like Wuhan intend to “uphold the combination of emergency and normality” in COVID-19 containment for the near future.\textsuperscript{429} Moreover, Wuhan is establishing a “normalized long-term prevention and control mechanism,” converting all urban governance into crisis containment for the indefinite future.\textsuperscript{430}

Second, normality for Xi means exception, as he promotes a permanent state of exception and emergency.\textsuperscript{431} This has been openly embraced by parts of Chinese academia, like the neoconservative strand of Political Constitutionalism explicitly referring to Carl Schmitt.\textsuperscript{432} Yet, liberal democracies are also increasingly using the state of emergency as a normal government technique too.\textsuperscript{433} Giorgio Agamben alleges that this

\textsuperscript{422} See #DEMOCRATIZINGWORK, https://democratizingwork.org.
\textsuperscript{423} See Ethikrat, \textit{supra} note 322, at 2.
\textsuperscript{428} See CHINA’S POLITICAL SYSTEM, \textit{supra} note 36, at 159.
\textsuperscript{429} CCP Resumption Opinion art. 2, § 1; Wuhan Notice (Apr. 2) art. 1; Hu, cited by Wang & Li, \textit{supra} note 409.
\textsuperscript{430} Wuhan Notice (Apr. 2) preamble.
\textsuperscript{431} See generally ERNST FRAENKEL, THE DUAL STATE 11, 57 (Edward Albert Shils trans., Oxford Univ. Press, 1st ed. 1941) (for permanent and sometimes fancied states of exception).
development has been fomented by the coronavirus crisis because many liberal democracies proclaim national emergencies and resort to emergency powers.\footnote{Giorgio Agamben, Lo stato d’eccezione provocato da un’emergenza immotivata [The State of Exception Provoked by an Unmotivated Emergency], IL MANIFESTO (Feb. 26, 2020), https://ilmanifesto.it/lo-stato-decezione-provocato-da-unemergenza-immotivata/.
} It could therefore seem surprising that the P.R.C. has only proclaimed provincial-level public health emergencies,\footnote{Quanguo 31 Shengfen Jun Yi Qidong Zhongda Tufa Gonggong Weisheng Shijian Yiji Xiangying (全国 31 省份均已启动重大突发公共卫生事件一级响应) [31 Provinces Across the Country Have Already Initiated a First-Level Response to a Major Public Health Emergency], XINLANG YIYAO XINWEN ( 新浪 医 药 新 闻 ) [SINA MEDICAL NEWS] (Jan. 30, 2020), https://med.sina.cn/article_detail_103_1_77160.html.} but no nation-wide state of emergency that would have allowed authorities to employ exceptional measures.\footnote{See Emergencies Law art. 3, § 2; art. 1, § 3; Nat’l Emergency Plan art. 1, § 3:3; Pils, supra note 312.} Yet, the reason simply is that Chinese authorities do not need to use formally available emergency powers for containing COVID-19. They can immediately rely “on the full force of the everyday coercive apparatus” within China—which has normalized the exceptional for decades.\footnote{Guanyu Zanshi Tingzhi Chi Youxiao Zhongguo Qianzheng, Juliu Xuke de Waiguoren Rujing de Gonggao (关于暂时停止持有效中国签证、居留许可的外国人入境的公告) [Announcement of the Temporary Suspension of Entry of Foreigners Holding a Valid Chinese Visa or Residence Permit] (Mar. 26, 2020), CLI.4.340850, http://www.gov.cn/xinwen/2020-03/27/content_5496131.htm [hereinafter MFA Announcement (Mar. 26)]; Guanyu Yunxu Chi San Lei Youxiao Juliu Xuke Waiguoren Rujing de Gonggao (关于允许持三类有效居留许可外国人入境的公告) [Announcement of the Permission of Entry by Foreigners Holding Valid Chinese Residence Permits of Three Categories] (Sept. 23, 2020), https://www.fmprc.gov.cn/web/wjbxw_673019/t1817369.shtml [hereinafter MFA Announcement (Sept. 23)].} 434

4. Shifting Restrictions and the New Cordon Sanitaire. — Meanwhile, the main focus of China’s and Wuhan’s COVID-19 restrictions has shifted externally. Chinese authorities now see their greatest epidemiological threat originating from abroad: reimportation of COVID-19 from other countries.\footnote{MFA Announcement (Mar. 26); see MFA Announcement (Sept. 23).} In response, China developed a strategy of isolating itself from foreign countries.

First, the Ministry of Foreign Affairs (MFA) and the National Immigration Administration began banning most foreigners from entering China in late March.\footnote{WHO, supra note 218, at 1; Second COVID-19 Wave in China ’Inevitable’: Top Experts, supra note 9; MERICS, supra note 192 (critically).} Until late September, even those foreigners holding a residence permit were locked out.\footnote{IHR art. 43, § 1:1.} Under international WHO law, this travel ban and the return ban could only be enacted as “additional health measures.”\footnote{See WHO, supra note 218, at 1; Second COVID-19 Wave in China ’Inevitable’: Top Experts, supra note 9; MERICS, supra note 192 (critically).} Whether such measures are permissible is highly
questionable because the WHO explicitly discouraged states from adopting travel and return bans during the COVID-19 pandemic.\textsuperscript{442}

From the beginning, there were exceptions to the return ban. For example, selected “foreign employees essential for business operations” from selected countries could return to China.\textsuperscript{443} But from March 28 onward, these individuals had to apply for new visas—although they already held valid Chinese resident permits.\textsuperscript{444} Return was also conditioned on the foreigners’ ranking according to their relevance for China’s economy.\textsuperscript{445} Moreover, these individuals could only enter the country through charter flights arranged by their national government and approved by Chinese authorities.\textsuperscript{446} Beginning September 28, these restrictions had eased. Foreign nationals holding valid residence permits in three categories (work, personal matters, and reunion) are allowed to enter China without applying for new visas.\textsuperscript{447} These entry rules vary to a certain degree between local entities within China because additional regulations from provinces and cities like Shanghai can exist.\textsuperscript{448}

Second, many provinces and cities imposed additional restrictions on Chinese nationals returning from abroad.\textsuperscript{449} Wuhan forced a blanket fourteen-day quarantine on Chinese citizens entering the city from abroad.\textsuperscript{450} International WHO law, in contrast, only provides for quarantines of returning individuals who are suspected of constituting an “imminent public health risk.”\textsuperscript{451} Blanket return quarantines for Chinese nationals could thus, again, only be enacted as “additional health measures.”\textsuperscript{452} Wuhan’s quarantine rules, however, cannot be justified as additional measures, because they violated several IHR stipulations. Wuhan required returning nationals to spend their quarantine alone and not

\textsuperscript{442} See Bogdandy & Villarreal, supra note 187, at 8, 10.
\textsuperscript{444} MFA Announcement (Mar. 26); see MFA Announcement (Sept. 23).
\textsuperscript{445} Zhang, supra note 443; European Chamber, supra note 443.
\textsuperscript{446} Zhang, supra note 443; European Chamber, supra note 443.
\textsuperscript{447} MFA Announcement (Sept. 23).
\textsuperscript{448} Zhang, supra note 443; European Chamber, supra note 443.
\textsuperscript{451} IHR art. 31, § 2.2(c).
\textsuperscript{452} IHR art. 43, § 1:1.
with their relatives, irrespective of whether they traveled together.\footnote{Wuhan Notice 20 (Mar. 17).} \footnote{Joint Mechanism Notice (July 23) art. 2.} \footnote{NHC et al., Rujing Renyuan Xinli Shudaof he Shehui Gongzu Rujing China, CLI.4.341595, art. 1, § 1 http://www.gov.cn/zhengce/zhengceku/2020-04/02/content_550667.htm.} 


Wuhan’s strict return quarantine had been nationwide endorsed by the central-level CCDC.\footnote{Xu, supra note 164.} 

Beginning in late July, the State Council’s Joint Mechanism took over regulating quarantine measures for incoming passengers nationally.\footnote{Joint Mechanism Notice (July 23) art. 1–2.} In exceptional cases, individuals may quarantine at home, and for seven days only. \footnote{Joint Mechanism Notice (July 23) art. 1–2.} Nevertheless, they must provide several negative COVID-19 nucleic acid tests.\footnote{Joint Mechanism Notice (July 23) art. 1–2.} The state center has also provided a psychological plan for “reducing negative emotions” of individuals in return quarantines.\footnote{NHC et al., Rujing Renyuan Xinli Shudaof he Shehui Gongzu Rujing China, CLI.4.341595, art. 1, § 1 http://www.gov.cn/zhengce/zhengceku/2020-04/02/content_550667.htm.} Altogether, China’s central and local authorities’ measures have created a new and expansive cordon sanitaire: around all of mainland China.

**CONCLUSION**

both China’s and Wuhan’s COVID-19 prevention and control.463 Without unbiased legal research ad fontes, one can neither scrutinize China’s “total war” on the coronavirus,464 nor draw positive and negative lessons from it.465

This article questions the common assumption that during crises, the P.R.C. simply centralizes decision-making.466 Rather, in fighting COVID-19, the center explicitly favors a territorially differentiated approach that does not “cut with one knife,” i.e., that does not aim at a “one-size-fits-all” solution.467 This style of decentralization—treating “the whole country as a chess game” arranged and commanded by the center—468 failed to prevent the COVID-19 outbreak in the beginning. However, through this “COVID-19 chess,” China’s central and local organs managed to control the pandemic afterward. This apparent success has led many to conclude that China’s COVID-19 management proved “superior” 469 to the “regulatory patchwork” in federal states,470 let alone in supranational systems like the European Union.471 Consequently, several countries have emulated China’s strict pandemic measures “in a domino-like fashion.”472 Even more, the WHO has praised China and Wuhan as “setting a new standard for outbreak response.”473 However, the WHO’s appraisal is questionable in four regards.

First, China’s coronavirus crisis management— as well as PHEs and other crises management—must be scrutinized in a holistic manner.474 In doing so, this article reveals that China’s “people’s total war” on COVID-19 has produced detrimental effects for many individuals impacted by the

464 Hu, supra note 6.
465 See Renninger, supra note 54.
466 Richter, supra note 163; CHINA’S POLITICAL SYSTEM, supra note 36, at 147, 150.
467 Xi, supra note 46.
468 Xi, supra note 46; Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match, supra note 47.
472 Bogdandy & Villareal, supra note 187, at 19.
473 Ghebreyesus, supra note 2.
474 See Pilis, supra note 312.
COVID-19 management in Wuhan encroached on myriad rights and freedoms of millions of individuals for several months. Even in relation to China’s aim of absolutely eliminating COVID-19, these encroachments stretched beyond the justified scope because they forget to balance pandemic containment with individual rights.

Second, one important reason for this imbalance is China’s “chess-style” decentralization. Chinese cities like Wuhan have the ability to severely restrict people’s rights without being held accountable. Neither can citizens directly challenge general and abstract municipal COVID-19 (non-)law in court. Nor can citizens directly elect their municipal people’s congress nor government and thus change their city’s future. Rather, they are subjected to the commands of the party and state at the provincial and central levels in a “democratic centralist” manner.

Third, federal systems are not necessarily inferior to unitary systems like China’s when fighting pandemics, and emergency situations in general. As the examples of the United States, Germany, and Australia, demonstrate, a federations’ success in responding to COVID-19 varies heavily. Australia has even managed to reach zero new COVID-19—not despite of, but partially because of its “cooperative federalism” system.

Lastly, the WHO’s appraisal of China’s COVID-19 containment as “setting a new standard” mistakes the intentions of Chinese party and state leaders. For now, China’s leadership does not aim to provide globally applicable public health standards. Rather, they see China as a “paragon”

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475 Hu, supra note 6.
476 ZHANG, supra note 19, at 17.
477 Wuhan’s Municipal People’s Government is appointed by Wuhan’s MPC. See XIANFA art. 101, § 1; Organization Law art. 8, § 5, art. 10, § 1. The MPC is not elected directly by the citizens but by the people’s congresses of Wuhan’s districts. See XIANFA art. 97, § 1; Organization Law art. 5, § 1.
478 XIANFA art. 3, § 1; CCP Statute gen. progr., § 24:4, art. 10; see ZHANG, supra note 19, 122, 153.
483 See GO8, supra note 317, at 10–12, 26–55.
484 See Murphy, supra note 479; Tulich et al., supra note 482.
485 Ghebreyesus, supra note 2.
with “outstanding capabilities that cannot be achieved by other countries.” Chinese party and state leaders claim—and both domestic and foreign scholars repeat—that these “outstanding capabilities” result from the “Chinese characteristics” of China’s current governmental system, be it in public health and emergency management, governance and legislation, cities and their central–local relations, (de)centralization and federalism. Unfortunately, this “sino-speak” often turns out to be Sinocentric and Chinese exceptionalism that frustrates the aim of unbiased analysis.

Therefore, instead of labeling Wuhan’s pandemic management as COVID-19 containment “with Chinese characteristics,” Chinese and foreign scholars and policymakers should recall a simple universal wisdom: One cannot “cut with one knife,” because there exists no “one-size-fits-all” solution. This holds true not only inside China and any other country but even more so between different states and territories, especially those with dissimilar systems. What has worked and failed in China and Wuhan “might not be directly transferable” to other countries and cities—and vice versa. Policymakers and scholars cannot simply “transplant” pandemic containment solutions into their own country or local entity without sufficiently considering their specific central–local, party–state, and political–legal system and context. However, what foreign policymakers and scholars can and should do is to take an unbiased look into China’s and Wuhan’s COVID-19 management to learn from that experience—both in the positive and in the negative.

486 Xi, supra note 46.
487 See Zhongguo Yingji Guanli, supra note 84, at 12; Gao, supra note 88.
488 See Li Lin (李林), GaiGe Kaifang 30 Nian Zhongguo Lifa de Zhuyao Jingyan (改革开放30年中国立法的主要经验) [Major Experiences of Chinese Legislation in 30 Years of Reform and Opening-Up], in Gaige Kaifang Yu Zhongguo Tese Shehui Zhuyi (改革开放与中国特色社会主义) [REFORM AND OPENING-UP AND SOCIALISM WITH CHINESE CHARACTERISTICS], ch. 16, 4 (Wang Weiguang (王伟光) ed., 2009).
489 See Hasenpflug, supra note 39, at 141, 155; Li, supra note 52, at 179; Chung, supra note 13, at 148.
492 Galea, supra note 12.