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Philipp Renninger

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# THE “PEOPLE’S TOTAL WAR ON COVID-19”: URBAN PANDEMIC MANAGEMENT THROUGH (NON-)LAW IN WUHAN, CHINA

Philipp Renninger<sup>†</sup>

*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.

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<sup>†</sup> Academic assistant and PhD candidate (*cotutelle de thèse*), University of Lucerne School of Law (Switzerland) and University of Freiburg School of Law (Germany). For valuable feedback and advice, I am particularly grateful to Prof. Dr. Sebastian Heselhaus (Lucerne), Dr. Odile Ammann (Zurich), Lucas Brang (Cologne), and Christian Renninger (Stuttgart), as well as the whole *Washington International Law Journal* editorial team.

## 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.).<sup>1</sup> The World Health Organization (WHO) determined COVID-19 was a “public health emergency of international concern” on January 30, 2020,<sup>2</sup> and a pandemic on March 11, 2020.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>1</sup> See Kristian G. Andersen et al., *The proximal origin of SARS-CoV-2*, 26 NATURE MED. 450, 450 (2020), <https://doi.org/10.1038/s41591-020-0820-9>; Huihui Wang et al., *The Genetic Sequence, Origin, and Diagnosis of SARS-CoV-2*, 39 EUR. J. CLIN. MICROBIOL. INFECT. DIS. 1629, 1629–30 (2020), <https://doi.org/10.1007/s10096-020-03899-4>.

<sup>2</sup> Tedros Adhanom Ghebreyesus, WHO Director-General, *Statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)* (Jan. 30, 2020), [https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov)). This declaration was based on WHO, International Health Regulations (July 25, 1969, last rev'd May 23, 2005), <https://apps.who.int/iris/handle/10665/246107>, art. 12, § 1 [hereinafter IHR].

<sup>3</sup> Tedros Adhanom Ghebreyesus, *Opening remarks at the media briefing on COVID-19* (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>. This declaration was based on WHO, Pandemic Influenza Risk Management: A WHO guide to inform & harmonize national & international pandemic preparedness and response, at 25–26, U.N. Doc. WHO/WHE/IHM/GIP/2017.1 (May 2017), <https://apps.who.int/iris/handle/10665/259893>.

<sup>4</sup> U.N. DEP'T OF ECON. & SOC. AFF., POPULATION DIV. (UNDESA), WORLD URBANIZATION PROSPECTS: THE 2018 REVISION, at xix, U.N. Doc. ST/ESA/SER.A/420 (2019), <https://population.un.org/wup/Publications/Files/WUP2018-Report.pdf>.

<sup>5</sup> Xi Jinping (习近平), *Zai Hubeisheng Kaocha Xinguan Feiyan Yiqing 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,"<sup>6</sup> on the coronavirus has been eulogized by the WHO as "the most ambitious, agile and aggressive disease containment effort in history."<sup>7</sup> Indeed, this urban containment effort appears highly effective, as COVID-19 cases in Wuhan, Hubei, and China officially stagnated.<sup>8</sup> As of December 2020, there are no signs of a second COVID-19 wave in China.<sup>9</sup> 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.<sup>10</sup> 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

*19 Prevention and Control Work in Hubei Province*], 2020 QIUSHI (求是), no. 7 (Mar. 10, 2020) [http://qstheory.cn/dukan/qs/2020-03/31/c\\_1125791549.htm](http://qstheory.cn/dukan/qs/2020-03/31/c_1125791549.htm).

<sup>6</sup> Hu Min (胡敏), *Yi Geng Jia Jianding de Xinxin Daying Yiqing Fangkong Zujizhan* (以更坚定的信心打赢疫情防控阻击战) [*Win the Blockade War of Pandemic Prevention and Control With Firmer Confidence*], RENMIN RIBAO (人民日报) [PEOPLE'S DAILY] (Feb. 20, 2020), [https://paper.people.com.cn/rmrb/html/2020-02/20/nw.D110000renmrb\\_20200220\\_4-09.htm](https://paper.people.com.cn/rmrb/html/2020-02/20/nw.D110000renmrb_20200220_4-09.htm) (quoting Xi Jinping alluding to the "(Defense) Battle of Wuhan" of the Second Sino-Japanese War in 1938).

<sup>7</sup> WHO, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, at 16 (Feb. 28, 2020), [https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19---final-report-1100hr-28feb2020-11mar-update.pdf?sfvrsn=1a13fda0\\_2&download=true](https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19---final-report-1100hr-28feb2020-11mar-update.pdf?sfvrsn=1a13fda0_2&download=true).

<sup>8</sup> Wuhan Mun. Health Comm'n (WHC), *Wuhanshi Xinguan Feiyan Yiqing Dongtai* (2020 Nian 11 Yue 23 Ri) (武汉市新冠肺炎疫情动态 (2020年11月23日)) [COVID-19 Developments in Wuhan City (Nov. 23, 2020)] (Nov. 24, 2020), [http://wjw.wuhan.gov.cn/ztl\\_28/fk/tzgg/202011/t20201124\\_1517905.shtml](http://wjw.wuhan.gov.cn/ztl_28/fk/tzgg/202011/t20201124_1517905.shtml); Nat'l Health Comm'n (NHC), *Jiezhi 11 Yue 23 Ri 24 Shi Xinxing Guanzhuang Bingdu Feiyan Yiqing Zuixin Qingkuang* (截至11月23日24时新型冠状病毒肺炎疫情最新情况) [Latest COVID-19 Situation as of 24:00 on Nov. 23] (Nov. 23, 2020), <http://www.nhc.gov.cn/xcs/yqtb/202011/084d24bd86ac4a33953c46a23e078304.shtml>.

<sup>9</sup> Contrary to the predictions of Zhang Wenhong, Shanghai Medical Treatment Expert Group Leader. See *Second COVID-19 Wave in China 'Inevitable': Top Experts*, GLOBAL TIMES (Sept. 21, 2020), <https://www.globaltimes.cn/content/1201572.shtml>.

<sup>10</sup> Letter from Thomas Jefferson to Benjamin Rush (Sept. 23, 1800) in 32 THE PAPERS OF THOMAS JEFFERSON 166 (Barbara B. Oberg ed., Princeton U. Press 2005).

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.<sup>11</sup> 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.<sup>12</sup>

### 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.<sup>13</sup> 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.”<sup>14</sup> Therefore, according to its constitution and the Organization Law, only the central, national level

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<sup>11</sup> E.g., Walter R. Mead, *China Is the Real Sick Man of Asia*, WALL ST. J. (Feb. 3, 2020), <https://www.wsj.com/articles/china-is-the-real-sick-man-of-asia-11580773677>.

<sup>12</sup> Interview with Gauden Galea, WHO Representative to China, *China Shows COVID-19 Responses Must be Tailored to the Local Context*, WHO/EUROPE (Apr. 3, 2020), <https://www.euro.who.int/en/health-topics/health-emergencies/pages/news/news/2020/04/china-shows-covid-19-responses-must-be-tailored-to-the-local-context>.

<sup>13</sup> See JAE HO CHUNG, CENTRIFUGAL EMPIRE: CENTRAL-LOCAL RELATIONS IN CHINA 34 (2016).

<sup>14</sup> The other four taboos are “multi-party rotation government,” a “pluralization of leading thoughts,” a bicameral system, and privatization. See Wu Bangguo, former NPC Standing Comm. Chairman, *Women Bugao Duodang Lunliu Zhizheng, Bugao Lianbangzhi, Bugao Siyouhua* (我们不搞多党轮流执政 不搞联邦制 不搞私有化) [*We Must Not Engage in Multi-Party Rotation Government, Federalism, and Privatization*], ZHONGGUO RENDAWANG (中国人大网) [NPC ONLINE] (Mar. 11, 2011), [http://www.npc.gov.cn/zgrdw/npc/dbdhhy/11\\_4/2011-03/10/content\\_1640332.htm](http://www.npc.gov.cn/zgrdw/npc/dbdhhy/11_4/2011-03/10/content_1640332.htm).

has statehood.<sup>15</sup> 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,<sup>16</sup> and a “quasi-executive” government like Wuhan’s Municipal People’s Government.<sup>17</sup> 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.”<sup>18</sup> 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.<sup>19</sup> The state center thus exercises “unified leadership” over the whole state administration.<sup>20</sup>

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.<sup>21</sup> 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.<sup>22</sup> Therefore, state organs are subordinate to CCP organs.<sup>23</sup>

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

<sup>15</sup> XIANFA art. 3, § 4 (2018) (China); *Zhonghua Renmin Gongheguo Difang Geji Renmin Daibiao Dahui he Difang Geji Renmin Zhengfu Zuzhifa* (中华人民共和国地方各级人民代表大会和地方各级人民政府组织法) [P.R.C. Organization Law of Local People’s Congresses and Governments at All Levels] (July 1, 1979, last amended Aug. 29, 2015), CLI.1.55744, art. 1 [hereinafter Organization Law].

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

<sup>17</sup> See XIANFA art. 96, art. 105; Organization Law art. 4, art. 54.

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

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

<sup>20</sup> XIANFA art. 3, § 4, art. 110, § 2:2; Organization Law art. 55, § 2.

<sup>21</sup> 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].

<sup>22</sup> *Zhongguo Gongchandang Zhangcheng* (中国共产党章程) [Statute of the Chinese Communist Party] (Sept. 6, 1982, last rev’d Oct. 24, 2017), CLI.16.303854, gen. progr., § 25:2 [hereinafter CCP Statute]; see Nis Grünberg & Katja Drinhausen, *The Party Leads on Everything: China’s Changing Governance in Xi Jinping’s New Era*, CHINA MONITOR (Sept. 24, 2019), [https://merics.org/sites/default/files/2020-05/The%20Party%20leads%20on%20everything\\_0.pdf](https://merics.org/sites/default/files/2020-05/The%20Party%20leads%20on%20everything_0.pdf).

<sup>23</sup> See Xin He, *The Party’s Leadership as a Living Constitution in China*, 42 HONG KONG L.J. 73, 75–76 (2012); XI JINPING (习近平), XI JINPING XINSHIDAI ZHONGGUO TESE SHEHUI ZHUYI SIXIANG SANSHI JIANG (习近平新时代中国特色社会主义思想三十讲) [THIRTY TALKS ON XI JINPING THOUGHT ON SOCIALISM WITH CHINESE CHARACTERISTICS FOR A NEW ERA] 74 (Zhonggong Zhongyang Xuanchuanbu (中共中央宣传部) [CCP Publicity Dep’t] ed., 2018).

national level,<sup>24</sup> followed by local party committees on every subnational level.<sup>25</sup> Vertically, local party committees are subordinate to central party organs because the “democratic centralism” principle applies within the CCP too.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> Moreover, most other members of Wuhan’s municipal state organs, including courts, are CCP members or even party cadres.<sup>30</sup>

Second, CPP leadership is exerted through party groups. These groups exist inside every state organ and many other “non-party organizations.”<sup>31</sup> They both “ensure that party norms are implemented” and “make major decisions within this state organ.”<sup>32</sup> 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.<sup>33</sup> These party groups are the “leadership core” of any Chinese state organ.<sup>34</sup>

### *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.

<sup>24</sup> CCP Statute art. 22–23.

<sup>25</sup> CCP Statute art. 25.

<sup>26</sup> CCP Statute gen. progr., § 24:4, art. 10; see ZHANG, *supra* note 19, 122, 153.

<sup>27</sup> *Xi Jinping Tongzhi Jianli* (习近平同志简历) [*Comrade Xi Jinping’s CV*], XINHUAWANG (新华网) [XINHUANET] (Oct. 25, 2017), [http://www.xinhuanet.com/politics/leaders/2017-10/25/c\\_1121856289.htm](http://www.xinhuanet.com/politics/leaders/2017-10/25/c_1121856289.htm).

<sup>28</sup> See Wei Cui & Jiang Wan, *When Do Chinese Subnational Governments Make Law?* 6 (Working Paper on file with the Allard Research Commons, Nov. 18, 2019), [https://commons.allard.ubc.ca/fac\\_pubs/513/](https://commons.allard.ubc.ca/fac_pubs/513/).

<sup>29</sup> See CCP Statute art. 25.

<sup>30</sup> See Melanie Manion, *Authoritarian Parochialism: Local Congressional Representation in China*, 218 CHINA Q. 311, 312 (2014).

<sup>31</sup> CCP Statute art. 48, § 1.

<sup>32</sup> *Id.* art. 48, § 3.

<sup>33</sup> See *id.* art. 48.

<sup>34</sup> *Id.* art. 48, § 2.

But both state and party law mention the main entity this prefectural level consists of—“cities with districts” like Wuhan.<sup>35</sup> However, these prefectural-level cities do not enjoy broad self-government authority or “home rule” like in some European countries and United States’ states.<sup>36</sup> Such local autonomy is merely granted to grassroots-level neighborhoods, residential communities, and villages inside Wuhan.<sup>37</sup> Moreover, prefectural-level cities were never conceptualized as municipalities or “communes,”<sup>38</sup> but as “political-administrative units” dispatched by the center to control the surrounding countryside.<sup>39</sup> For example, in terms of territory, Wuhan encompasses extensive rural areas and thus covers an administrative area (8,500 km<sup>2</sup>) much larger than its urbanized core (800 km<sup>2</sup>).<sup>40</sup> In terms of population, Wuhan accommodates 11.2 million *de facto* inhabitants, over nine million of them in the urbanized core.<sup>41</sup> Amongst urban dwellers, nine million possess a Wuhan *hukou*,<sup>42</sup> more than doubling the prefectural level’s average of four million *de jure* inhabitants.<sup>43</sup>

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.<sup>44</sup> In times of crisis, most China scholarship finds that the decision-making process becomes increasingly centralized.<sup>45</sup> However, during the coronavirus crisis, the center refused to apply the same rules and policies to all local entities.<sup>46</sup>

<sup>35</sup> See XIANFA art. 97, § 1, art. 100, § 2; Organization Law art. 5, § 1, art. 7, § 2; CCP Statute art. 25, § 1, art. 27, § 1.

<sup>36</sup> 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).

<sup>37</sup> XIANFA art. 111; see BJÖRN ALPERMANN, DER STAAT IM DORF [THE STATE IN THE VILLAGE] 43 (2001).

<sup>38</sup> For *Gemeinden* in German-speaking countries, see SINGH, *supra* note 36, at 14.

<sup>39</sup> DIETER HASSENPFUG, THE URBAN CODE OF CHINA 145 (Mark Kammerbauer trans., Birkhäuser 2010).

<sup>40</sup> Wuhanshi Tongjiju (武汉市统计局) [Wuhan Statistical Bureau], 2019 Nian Wuhanshi Guomin Jingji he Shehui Fazhan Tongji Gongbao (2019 年武汉市国民经济和社会发展统计公报) [Wuhan National Economy and Social Development Statistical Bulletin for 2019], [http://tjj.wuhan.gov.cn/tjfw/tjgb/202004/t20200429\\_1191417.shtml](http://tjj.wuhan.gov.cn/tjfw/tjgb/202004/t20200429_1191417.shtml) (Mar. 29, 2020); see UNDESA, *supra* note 4, at 61.

<sup>41</sup> Wuhanshi Tongjiju, *supra* note 40.

<sup>42</sup> The *Hukou* (户口) or *Huji* (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.

<sup>43</sup> Manion, *supra* note 30, at 314.

<sup>44</sup> CHUNG, *supra* note 13, at 58 (“Yi Dao Qie” (“一刀切”).

<sup>45</sup> CHINA’S POLITICAL SYSTEM, *supra* note 36, at 147, 150.

<sup>46</sup> Xi Jinping (习近平), *Zai Tongchou Tuijin Xinguan Feiyan Yiqing Fangkong he Jingji Shehui Fazhan Gongzuo Bushu Huiyi shang de Jianghua* (在统筹推进新冠肺炎疫情防控和经济社会发展工作部署会议上的讲话) [Speech at the Conference for Overall Planning and Promoting the Deployment of COVID-19 Prevention and Control and Economic and Social Development Work], [http://www.gov.cn/xinwen/2020-02/24/content\\_5482502.htm](http://www.gov.cn/xinwen/2020-02/24/content_5482502.htm) (Feb. 23, 2020).



Instead, it treated “the whole country as a chess game.”<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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.”<sup>50</sup> Sino-Marxists like Xi promote recentralization by “top-down governance” and “top-level design” from the party and state center.<sup>51</sup> But they have also allowed legislative decentralization, particularly in the “reform and opening-up era” since 1978.<sup>52</sup> Under Xi Jinping—contrary to widespread predictions<sup>53</sup>—this development cumulated in the largest decentralization in Chinese history through the Legislation Law revision in 2015 and the constitutional reform in 2018.<sup>54</sup>

<sup>47</sup> *Id.* (“Quanguo Yi Pan Qi” (“全国一盘棋”)); *Yiqing Fangkong Yao Jianchi Quanguo Yi Pan Qi* (疫情防控要坚持全国一盘棋) [*Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match*], ZHONGGUO GUANJIANCI (中国关键词) [CHINA KEYWORDS] (Mar. 13, 2020), [http://keywords.china.org.cn/2020-03/13/content\\_75810523.htm](http://keywords.china.org.cn/2020-03/13/content_75810523.htm).

<sup>48</sup> Xi, *supra* note 46.

<sup>49</sup> *Zhonghua Renmin Gongheguo Tufa Shijian Yingduifa* (中华人民共和国突发事件应对法) [P.R.C. Emergency Response Law] (Aug. 30, 2007), CLI.1.96791, art. 63, § 5 [hereinafter *Emergencies Law*].

<sup>50</sup> 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/>.

<sup>51</sup> XI, *supra* note 23, at 76; see Matthias Stepan et al., *What Does Xi Jinping’s Top-Down Leadership Mean for Innovation in China?*, CHINAFILE (Oct. 27, 2016), <https://www.chinafile.com/conversation/what-does-xi-jinpings-top-down-leadership-mean-innovation-china>; Qianfan Zhang, *Legalising Central-local Relations in China*, in *CENTRAL-LOCAL RELATIONS IN ASIAN CONSTITUTIONAL SYSTEMS* 17, 32 (Andrew Harding & Mark Sidel eds., 2015); Grünberg & Drinhausen, *supra* note 22, at 3, 5.

<sup>52</sup> See ZHANG, *supra* note 19, at 79; Linda Chelan Li, *Central-Local Relations in the People’s Republic of China: Trends, Processes and Impacts for Policy Implementation*, 30 PUBL. ADMIN. DEV. 177, 178 (2010), <https://doi.org/10.1002/pad.573>; CHUNG, *supra* note 13, at 16; YANG FENG, *LEGISLATIVE DECENTRALIZATION IN CHINA IN THE REFORM ERA* 17 (2019), <https://repub.eur.nl/pub/94595>.

<sup>53</sup> *E.g.*, CHUNG, *supra* note 13, at 51, 67.

<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> Yet, Wuhan as a provincial capital is one of 49 larger cities that were empowered to enact law as early as 1982.<sup>57</sup> For Wuhan, the 2015 and 2018 reforms limited rather than increased legislative powers.<sup>58</sup> Like any other prefectural city, Wuhan's legislation is now limited to three areas: environmental protection, cultural heritage, and urban management.<sup>59</sup> Despite the Legislation Law's clear wording, this list is considered limited,<sup>60</sup> although, most authors interpret each legislative area's breadth expansively.<sup>61</sup> For example, urban management comprises of crisis management and sanitation management.<sup>62</sup> Wuhan and other cities can employ two types of formal legal instruments: (1) quasi-legislative local regulations enacted by the

<sup>55</sup> 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 YANJIU (地方立法研究) [LOCAL LEGIS. J.], no. 3, at 26, 28.

<sup>56</sup> Wu Zeng (武增), *2015 Nian <Lifafa> Xiugai Beijing 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 FALV PINGLUN (中国法律评论) [CHINA L. REV.], no. 1, at 210, 212.

<sup>57</sup> Organization Law (1982 and 1986 Amend.) art. 27, § 2, art. 35, § 1.

<sup>58</sup> Wu, *supra* note 56, at 211; FENG, *supra* note 52, at 94.

<sup>59</sup> 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.

<sup>60</sup> See Li Shishi (李适时), former NPC Standing Committee Legislative Affairs Commission's Chairman, *Quanmian Guanche Shishi Xiugaihou de Lifafa—Zai Di Ershiyi Ci Quanguo Difang Lifa Yantaohui shang de Xiaojie* (Zhaiyao) (全面贯彻实施修改后的立法法—在第二十一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 RIBAO (法制日报) [LEGAL DAILY] (Sept. 17, 2015), <http://www.npc.gov.cn/npc/c221/201509/dd94851ccde4ea49be0c386f37d496b.shtml>.

<sup>61</sup> See Zheng Yi (郑毅), *Dui Woguo <Lifafa> Xiugaihou Ruogan Yinan Wenti de Quanshi 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 FALV (政治与法律) [POLIT. SCI. L.], no. 1, at 48, 53.

<sup>62</sup> See generally CHINA'S CRISIS MANAGEMENT (Jae Ho Chung ed., 2012) (regarding crisis management); ZHONGHUA RENMIN GONGHEGUO LIFAFU SHIYI (中华人民共和国立法法释义) [EXPLANATION OF THE P.R.C. LEGISLATION LAW] 244 (Quanguo Renda Changweihui Fazhi Gongzuo Weiyuanhui Guojiafashi (全国人大常委会法制工作委员会国家法室) [NPC Standing Comm. Legis. Aff. Comm., State L. Off.] ed., 2015).

Municipal People's Congress and its MPC Standing Committee and (2) quasi-executive local governmental rules employed by the Municipal People's Government.<sup>63</sup> The quasi-legislative organs and their regulations are superior to the quasi-executive organs and their rules.<sup>64</sup>

Before 1982, Wuhan could only employ nonlegal documents, that is, so-called "(other) normative documents."<sup>65</sup> 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.<sup>66</sup> First, these normative documents do not need to fulfill the same formal and procedural requirements as legal instruments.<sup>67</sup> They even need not be published,<sup>68</sup> although many of them are available on (non-)law databases.<sup>69</sup> Second, normative documents can contain virtually the same content as formal law.<sup>70</sup> Third, they even yield similar effects to formal legal local regulations and local rules.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>

Besides local state norms, cities like Wuhan can enact local party norms as either intra-party laws or intra-party normative documents.<sup>74</sup>

<sup>63</sup> See XIANFA arts. 82, 100; Legislation Law arts. 72, 82; Organization Law arts. 7, 43, 60.

<sup>64</sup> XIANFA art. 101, § 1 (referring to institutions); Legislation Law art. 89, § 1 (referring to norms).

<sup>65</sup> Yuanshi Bu, *Normenkollisionen und Normenkontrolle in China [Norm Collisions and Norm Control in China]*, 61 RECHT DER INTERNATIONALEN WIRTSCHAFT 781, 784 (2015).

<sup>66</sup> Cui & Wan, *supra* note 28, at 8 (big data analysis).

<sup>67</sup> INTRODUCTION TO CHINESE LAW, *supra* note 18, at 38; FENG, *supra* note 52, at 7–8.

<sup>68</sup> Cui & Wan, *supra* note 28, at apps. 1, 3.

<sup>69</sup> E.g., *Laws and Regulations*, Beida Fabao (北大法宝) [PKU Law], <http://www.pkulaw.cn/>.

<sup>70</sup> Bu, *supra* note 65, at 784; FENG, *supra* note 52, at 7.

<sup>71</sup> FENG, *supra* note 52, at 7.

<sup>72</sup> 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").

<sup>73</sup> See Yuan Yong (袁勇), *Xingzheng Guifanxing Wenjian de Jianbie Biaozhun—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 ZHENGZHI YU FALV, no. 8, at 59, 60.

<sup>74</sup> See HARRO VON SENGER, *PARTEI, IDEOLOGIE UND GESETZ IN DER VOLKSREPUBLIK CHINA [PARTY, IDEOLOGY, AND LAW IN THE P.R.C.]* (1982).

These party norms are enacted through the local CCP committees instead of local state organs.<sup>75</sup>

According to the “non-contradiction” principle, Wuhan’s local state norms—i.e., regulations, local governmental rules,<sup>76</sup> and normative documents—<sup>77</sup> must not contravene higher-ranking state law.<sup>78</sup> They must also align with party norms—be these party norms enacted by the party center or by Wuhan’s own CCP committee.<sup>79</sup> 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.”<sup>80</sup> Therefore, pandemic containment must also reflect a “socialist emergency management system with Chinese Characteristics for a new era.”<sup>81</sup> Public health emergencies (PHEs) in China are managed by the party and the state, on both the central and local levels.<sup>82</sup> The pandemic management system follows two overall principles: prevention and control.<sup>83</sup> That system is implemented with four means: (non-)law, plans,

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<sup>75</sup> See CCP Statute at. 46, § 1–2.

<sup>76</sup> Legislation Law art. 4, art. 72, § 2:1, art. 73, § 2:2, art. 87; MADELEINE MARTINEK, *EXPERIMENTAL LEGISLATION IN CHINA BETWEEN EFFICIENCY AND LEGALITY* 44 (2018).

<sup>77</sup> *Zhonghua Renmin Gongheguo Xingzheng Susongfa* (中华人民共和国行政诉讼法) [P.R.C. Administrative Litigation Law] (Apr. 4, 1989, last amended June 27, 2017), CLI.1.297380, art. 53 [hereinafter Litigation Law]; see Litigation Interpretation art. 148, § 2.

<sup>78</sup> See ZHANG, *supra* note 19, at 160.

<sup>79</sup> See Legislation Law art. 3; ZHANG, *supra* note 19, at 73, 163.

<sup>80</sup> CCP Statute gen. progr., § 8, art. 3, § 1; XIANFA pmbl., § 7:4.

<sup>81</sup> *Quanmian Tuijin Xinshidai Zhongguo Tese Yingji Guanli Tixi Jianshe* (全面推进新时代中国特色应急管理体系建设) [*Comprehensively Promote the Construction of an Emergency Management System With Chinese Characteristics for a New Era*], 2019 ZHONGGUO YINGJI GUANLI (中国应急管理) [CHINESE EMERG. MANAG.], no. 11, at 12.

<sup>82</sup> Emergencies Law art. 4.

<sup>83</sup> *Id.* art. 1; *Zhonghua Renmin Gongheguo Chuanranbing Fangzhifa* (中华人民共和国传染病防治法) [P.R.C. Law of the Prevention and Treatment of Infectious Diseases] (Feb. 21, 1989, last amended June 29, 2013), CLI.1.206064, art. 1 [hereinafter Diseases Law]; see Hongyi Lai, *Managing Pandemic/Epidemic Crises: Institutional Setup and Overhaul*, in *CHINA’S CRISIS MANAGEMENT*, *supra* note 62, 87.

institutions, and mechanisms,<sup>84</sup> during the disaster cycle's two main phases: preparation and response.<sup>85</sup>

### 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.<sup>86</sup> 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;<sup>87</sup> the Diseases Law regulates viral outbreaks;<sup>88</sup> and the Frontier Health and Quarantine Law regulates pandemic measures affecting people's movement within China and returning to it from abroad.<sup>89</sup> The quasi-executive State Council's concretized these laws through its PHE Regulation.<sup>90</sup>

These national stipulations require both central and local entities to draw up “preparatory plans for the response to (public) emergencies.”<sup>91</sup> The central level enacted the Overall Emergency Response Plan<sup>92</sup> and several specialized plans—for example, in pandemic outbreak scenarios,

<sup>84</sup> Gao Xiaoping (高小平), *Jianshe Zhongguo Tese de Yingji Guanli Tixi* (建设中国特色的应急管理体系) [*Construct an Emergency Management System with Chinese Characteristics*], 2009 ZHONGGUO YINGJI GUANLI, no. 4, at 11, 13 (2009); Wang Zhe et al., *The Disaster and Emergency Management System in China*, at 3 (CCOUC Policy Brief, May 2016), <https://www.preventionweb.net/publications/view/57243>.

<sup>85</sup> Shan Chunchang (闪淳昌) et al., *Dui Woguo Yingji Guanli Jizhi Jianshe de Zongti Sikao* (对我国应急管理机制建设的总体思考) [*Overall Thoughts on the Construction of China's Emergency Management Mechanism*], 2011 GUOJIA XINGZHENG XUEYUAN XUEBAO (国家行政学院学报) [J. CHIN. ACAD. GOVERN.], no. 1, at 8, 9 (2011); Mei Sun et al., *The Public Health Emergency Management System in China: Trends from 2002 to 2012*, 18 BMC PUBLIC HEALTH, article no. 474, 3 (2018), <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-018-5284-1>; Wang et al., *supra* note 88, at 5.

<sup>86</sup> Wang et al., *supra* note 84, at 3–5.

<sup>87</sup> Emergencies Law art. 1, art. 3, § 1.

<sup>88</sup> See Diseases Law art. 1, art. 3.

<sup>89</sup> *Zhonghua Renmin Gongheguo Guojing Weisheng Jianyifa* (中华人民共和国国境卫生检疫法) (Dec. 2, 1986; last amended Apr. 27, 2018), CLI.1.313969 [hereinafter Frontier Law].

<sup>90</sup> *Tufa Gonggong Weisheng Shijian Yingji Tiaoli* (突发公共卫生事件应急条例) [Public Health Emergency Response Regulation] (May 9, 2003, rev'd Jan. 8, 2011), CLI.2.174915 [hereinafter PHE Regulation].

<sup>91</sup> 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.

<sup>92</sup> *Guojia Tufa Gonggong Shijian Zongti Yingji Yu'an* (国家突发公共事件总体应急预案) [National Overall Preparatory Plan for Public Emergency Response] (Jan. 8, 2006), CLI.2.72930, [http://www.gov.cn/yjgl/2005-08/07/content\\_21048.htm](http://www.gov.cn/yjgl/2005-08/07/content_21048.htm) [hereinafter Nat'l Emergency Plan].

the National PHE Response Plan.<sup>93</sup> Such health-related contingency plans are required by the International Health Regulations (IHR), international law enacted by the WHO's World Health Assembly.<sup>94</sup> The IHR are binding for WHO member states and the P.R.C. has committed itself to apply them within its entire territory.<sup>95</sup>

2. *Institutions.* — On the national level, the quasi-executive State Council is in charge of applying these IHR and managing PHEs.<sup>96</sup> Through the State Council's 2018 institutional reform,<sup>97</sup> thirteen of its departments have been merged into one: the Ministry of Emergency Management.<sup>98</sup> Although considered a “turning point in China's disaster preparedness,” this “super ministry” has no specific authority for pandemic and PHE management.<sup>99</sup> Instead, this task is vested in the State Council's health administration,<sup>100</sup> reassembled in 2018 as the National Health Commission (NHC).<sup>101</sup> 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).<sup>102</sup> The NHC houses the office of the National Patriotic Sanitary Campaign Committee (NPSCC), a standing advisory and coordinating institution between 32 State Council departments.<sup>103</sup>

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.<sup>104</sup>

<sup>93</sup> Guojia Tufa Gonggong Weisheng Shijian Yingji Yu'an (国家突发公共卫生事件应急预案) [National Preparatory Plan for Public Health Emergency Response] (Feb. 26, 2006), CLI.2.75052, [http://www.gov.cn/yjgl/2006-02/26/content\\_211654.htm](http://www.gov.cn/yjgl/2006-02/26/content_211654.htm) [hereinafter Nat'l PHE Plan].

<sup>94</sup> IHR annex 1, art. A, § 6(g), art. B, § 2(a); see WHO, *Guidance for Contingency Planning*, at 5, WHO/WHE/CPI/2018.13 (2018), <https://apps.who.int/iris/handle/10665/260554>.

<sup>95</sup> See IHR app. 2, art. III, China, § 1.

<sup>96</sup> Emergencies Law art. 9; see Diseases Law art. 6; PHE Regulation art. 3.

<sup>97</sup> Guowuyuan Jigou Gaige Fang'an (国务院机构改革方案) [State Council Institutional Reform Plan] (Mar. 17, 2017), decided through CLI.1.311597, art. 1, § 7:1.

<sup>98</sup> Zhonghua Renmin Gongheguo Yingji Guanlibu (中华人民共和国应急管理部), established Apr. 16, 2018.

<sup>99</sup> Cao Yue, *A Turning Point in China's Disaster Preparedness?*, ZHONGWAI DUIHUA (中外对话) [CHINADIALOGUE] (Aug. 6, 2018), <https://www.chinadialogue.net/article/show/single/en/10768-A-turning-point-in-China-s-disaster-preparedness>.

<sup>100</sup> See Diseases Law art. 6; see IHR app. 2, art. III, China, § 2:1.

<sup>101</sup> State Council Institutional Reform Plan art. 7, § 5:1; Zhonghua Renmin Gongheguo Guojia Weisheng Jiankang Weiyuanhui (中华人民共和国国家卫生健康委员会), established Mar. 27, 2018.

<sup>102</sup> Zhongguo Jibing Yufang Kongzhi Zhongxin (中国疾病预防控制中心), established Dec. 23, 1983.

<sup>103</sup> 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).

<sup>104</sup> 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.<sup>105</sup>

*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,<sup>106</sup> but in the recently redesigned local health administration.<sup>107</sup> This health administration consists of Wuhan's Health Commission (WHC) and its specialized agency, Wuhan's Center for Disease Control and Prevention (WCDC),<sup>108</sup> as well as the District Health Departments.<sup>109</sup> Moreover, both Wuhan and its districts established Patriotic Sanitary Campaign Committees as standing institutions that advise and coordinate health-related work.<sup>110</sup> 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,<sup>111</sup> as does WCDC director Li Gang for the WCDC's party group.<sup>112</sup>

Besides the health administration, there are also quasi-executive "headquarters for emergency response."<sup>113</sup> According to national law, only

<sup>105</sup> Wang et al., *supra* note 84, at 3–5.

<sup>106</sup> For a complete list of Wuhan's existing reform plans, see Wuhan's 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\\_cgwx/202004/t20200416\\_1010073.html](http://cgw.wuhan.gov.cn/JDHY_13520/cgw_cgwx/202004/t20200416_1010073.html); Wuhan's 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.

<sup>107</sup> See Diseases Law art. 5; art. 6; PHE Regulation art. 4, § 2; *see* IHR app. 2, art. III, China, § 2:2.

<sup>108</sup> See Diseases Law art. 7; Wuhan's Weisheng Jiankang Weiyuanhui (武汉市卫生健康委员会), established Jan. 25, 2019; Wuhan's Jibing Yufang Kongzhi Zhongxin (武汉市疾病预防控制中心), established Dec. 3, 2002.

<sup>109</sup> *E.g.*, Wuchangqu Weisheng Jiankangju (武昌区卫生健康局), established Mar. 27, 2019.

<sup>110</sup> *E.g.*, Wuhan's 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); Wuhan's 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/fyfgzt/flfg/地方法规/湖北/武汉市爱国卫生促进条例.pdf>.

<sup>111</sup> Zhonggong Wuhan's Weisheng Jiankang Weiyuanhui Weiyuanhui (中共武汉市卫生健康委员会委员会), established Jan. 9, 2019; *see* <http://www.whzg.gov.cn/gbrm/45741.jhtml>.

<sup>112</sup> Wuhan's 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>.

<sup>113</sup> See PHE Regulation art. 3, art. 4, § 1.

the central and provincial levels establish such headquarters.<sup>114</sup> Nevertheless, prefectural-level Wuhan created one overall headquarter—Wuhan's Emergency Response Commission—<sup>115</sup>as well as specialized headquarters for almost every emergency imaginable.<sup>116</sup> There are municipal headquarters for inundations, earthquakes, and terrorist attacks but also for “tourism emergencies,” “low-temperature rain,” and “snow freezing disasters.”<sup>117</sup> 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.<sup>118</sup> 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).<sup>119</sup> According to national law, all these headquarters must consist of government members only.<sup>120</sup> However, Wuhan also staffed them with “leading comrades,” that is, local party cadres.<sup>121</sup>

2. *Planning: Emergency Plans.* — Besides institutions, the local quasi-executive must establish preparatory plans—first, a comprehensive “preparatory plan for public emergency response.”<sup>122</sup> Both Wuhan and its districts enacted overall preparatory plans and drafted templates for lower-level entities like streets and residential communities.<sup>123</sup> Additionally,

<sup>114</sup> PHE Regulation art. 3, art. 4, § 1.

<sup>115</sup> Wuhanshi Tufa Shijian Yingji Weiyuanhui (武汉市突发事件应急委员会), established 2013.

<sup>116</sup> See Wuhanshi Tufa Shijian Zongti Yingji Yu'an (武汉市突发事件总体应急预案) [Wuhan Overall Preparatory Plan for Emergency Response] (Mar. 19, 2013), CLI.14.723002, [http://www.wuhan.gov.cn/zwgk/xxgk/zfwj/szfwj/202003/t20200316\\_973732.shtml](http://www.wuhan.gov.cn/zwgk/xxgk/zfwj/szfwj/202003/t20200316_973732.shtml), art. 2, § 1–2 [hereinafter Wuhan Emergency Plan].

<sup>117</sup> Wuhan Emergency Plan art. 2, § 2.

<sup>118</sup> Wuhanshi Tufa Gonggong Weisheng Shijian Yingji Zhihuibu (武汉市突发公共卫生事件应急指挥部), established Nov. 24, 2014. See Wuhanshi Tufa Gonggong Weisheng Shijian Yingji Yu'an (武汉市突发公共卫生事件应急预案) [Wuhan Preparatory Plan for Public Health Emergency Response] (Nov. 24, 2014), [http://www.wuhan.gov.cn/zwgk/xxgk/zfwj/bgtwj/202003/t20200316\\_974442.shtml](http://www.wuhan.gov.cn/zwgk/xxgk/zfwj/bgtwj/202003/t20200316_974442.shtml), art. 2, § 1 [hereinafter Wuhan PHE Plan].

<sup>119</sup> See Guanyu Tiaozheng Shi Tufa Shijian Yingji Weiyuanhui he Zhuanxiang Yingji Weiyuanhui (Zhihuibu) Zucheng Renyuan de Tongzhi (关于调整市突发事件应急委员会和专项应急委员会(指挥部)组成人员的通知) [Notice on Adjusting Members of the Municipal Emergency Response Committee and Special Emergency Response Committees (Headquarters)], art. 2, § 4:1 (Sept. 30, 2019), <http://zt.cjn.cn/zt2019/whyj/yjy/201912/t3518203.htm>; Wuhanshi Zonghe Weisheng Shijian Zhuanti Yingji Weiyuanhui (Zhihuibu) (武汉市综合卫生事件专项应急委员会(指挥部)), established Oct. 12, 2019.

<sup>120</sup> PHE Regulation art. 4, § 1.

<sup>121</sup> Wuhan Emergency Plan art. 2, § 2.2; Wuhan PHE Plan art. 2, § 1.1.

<sup>122</sup> Emergencies Law art. 17, § 3.

<sup>123</sup> 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.”<sup>124</sup> “Preparatory plans for PHE response,” in contrast, shall only be enacted by the central and provincial levels.<sup>125</sup> Nevertheless, prefectural-level Wuhan and its county-level districts have drawn up the latter PHE plans instead of the former disease plans.<sup>126</sup>

The obligation to formulate health-related preparatory plans has been extended in the wake of the coronavirus crisis.<sup>127</sup> 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.”<sup>128</sup>

### *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),<sup>129</sup> which the P.R.C. has already devoted 730 million RMB (115 million USD) toward.<sup>130</sup> 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.<sup>131</sup> All medical

Public Emergency Response] (Aug. 18, 2014), [http://www.wuchang.gov.cn/zwgk\\_37/zc/qtzdgkwj/qzf\\_wj/202005/t20200501\\_1213938.html](http://www.wuchang.gov.cn/zwgk_37/zc/qtzdgkwj/qzf_wj/202005/t20200501_1213938.html); Wuchangqu \*\*\*Jiedao Banshichu Tufa Gonggong Shijian Yingji Yu'an (武昌区\*\*\*街道办事处突发公共事件应急预案) [Wuchang District XY Street Preparatory Plan for Public Emergency Response] (May 19, 2008), [http://www.360doc.com/content/19/1104/08/21644671\\_870969293.shtml](http://www.360doc.com/content/19/1104/08/21644671_870969293.shtml); Wuchangqu \*\*\*Jiedao Banshichu \*\*\*Shequ Tufa Gonggong Shijian Yingji Yu'an (武昌区\*\*\*街道办事处\*\*\*社区突发公共事件应急预案) [Wuchang District XY Street XY Residential Community Preparatory Plan for Public Emergency Response] (May 19, 2008), index no. 000042021/2010-02221.

<sup>124</sup> Diseases Law art. 20.

<sup>125</sup> PHE Regulation art. 10, § 2.

<sup>126</sup> Wuhan PHE Plan; e.g., Wuchangqu Xuexiao Tufa Gonggong Weisheng Shijian Yingji Yu'an (武昌区学校突发公共卫生事件应急预案) [Wuchang District Preparatory Plan for Schools' Public Health Emergency Response] (May 21, 2008), copy at <http://www.chinazhaokao.com/wendang/cehua/957839.html>.

<sup>127</sup> Gelei Fangkong Jishu Zhinan (各类防控技术指南) [Technical Guidelines on Prevention and Control of All Types] (Apr. 8, 2020), CLI.4.343288, art. 21, § 2:1 [http://www.gov.cn/xinwen/2020-04/09/content\\_5500689.htm](http://www.gov.cn/xinwen/2020-04/09/content_5500689.htm), [hereinafter Technical Guidelines].

<sup>128</sup> *Id.* art. 21, § 2:1.

<sup>129</sup> Diseases Law art. 19, § 1; Emergencies Law art. 42, § 1.

<sup>130</sup> Guo Rui, *Coronavirus: Why did China's Multimillion-Dollar Early Warning System Fail?*, S. CHINA MORN. POST (Mar. 13, 2020), <https://www.scmp.com/news/china/society/article/3075027/coronavirus-why-did-chinas-multimillion-dollar-early-warning>.

<sup>131</sup> 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.<sup>132</sup> This warning mechanism is designed to prevent deficient reporting by local and other entities.<sup>133</sup> Deficient reporting was a grave problem in former PHEs like the 2002–03 SARS epidemic.<sup>134</sup>

In addition to the EWS, criminal, civil, and administrative punitive mechanisms guarantee pandemic preparedness.<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup>

### 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.<sup>138</sup> 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.”<sup>139</sup>

#### 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-

<sup>132</sup> See Diseases Law arts. 30–31.

<sup>133</sup> LAN XUE & GUANG ZENG, A COMPREHENSIVE EVALUATION ON EMERGENCY RESPONSE IN CHINA: THE CASE OF PANDEMIC INFLUENZA (H1N1) 2009 77 (2019).

<sup>134</sup> Guo Rui, *supra* note 130.

<sup>135</sup> Ruiping Ye, *Kill the Chickens to Scare the Monkeys*, VERFASSUNGSBLOG (May 13, 2020), <https://verfassungsblog.de/kill-the-chickens-to-scare-the-monkeys/>.

<sup>136</sup> 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.1.256346, art. 330–332 [hereinafter Criminal Law]; see Diseases Law art. 73–77; PHE Regulation art. 51–52.

<sup>137</sup> See Emergencies Law art. 63–64 (generally); Diseases Law art. 65–72 (particularly); see also PHE Regulation art. 45–50 (particularly).

<sup>138</sup> PHE Regulation art. 42; Emergencies Law art. 1.

<sup>139</sup> 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.<sup>140</sup> As of December 2020, the Ministry had issued only one relevant notice demanding precautionary measures against COVID-19 in workplaces.<sup>141</sup> Rather, the central-level health administration took the first national steps in fighting the coronavirus.<sup>142</sup> On January 20,<sup>143</sup> the NHC qualified COVID-19 as a Class B infectious disease,<sup>144</sup> but implemented the highest Class A prevention and control measures.<sup>145</sup> Subsequently, the NHC enacted several normative documents like the continuously updated national COVID-19 Preparation and Control Plan, currently in its seventh version.<sup>146</sup> The NHC's specialized agency, the CCDC, issued urgent medical recommendations, for example on quarantine issues.<sup>147</sup>

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.<sup>148</sup> 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

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<sup>140</sup> *Jianjue Daying Yiqing Fangkong Zujizhan 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 War of Pandemic Prevention and Control and the Assault War of Major Risk Precaution and Solution*], 2020 ZHONGGUO YINGJI GUANLI, no. 2, 4.

<sup>141</sup> Guanyu Zuohao Dangqian Anquan Fangfan Gongzuo de Tongzhi (关于做好当前安全防范工作的通知) [Notice on Doing the Current Safety and Precaution Work Well] (Jan. 28, 2020), CLI.4.340980, <http://www.cww.net.cn/article?id=464668>.

<sup>142</sup> See Diseases Law art. 3, § 4; PHE Regulation art. 30.

<sup>143</sup> Gonggao 2020 Nian Di Yi Hao (公告 2020 年第 1 号) [Announcement 1] (Jan. 20, 2020), CLI.4.338898, [http://www.gov.cn/zhengce/zhengceku/2020-01/21/content\\_5471164.htm](http://www.gov.cn/zhengce/zhengceku/2020-01/21/content_5471164.htm), art. 1.

<sup>144</sup> See Diseases Law art. 3, § 2.

<sup>145</sup> See Diseases Law art. 4, § 1.

<sup>146</sup> Xinxing Guanzhuang Bingdu Feiyan Fangkong Fang'an (Di Qi Ban) (新型冠状病毒肺炎防控方案(第七版)) (Jan. 22, 2020, last rev'd Sept. 11, 2020), CLI.4.346884, [http://www.gov.cn/xinwen/2020-09/15/content\\_5543680.htm](http://www.gov.cn/xinwen/2020-09/15/content_5543680.htm).

<sup>147</sup> See Xu Xinyi (许心怡), *Weihe Dui Rujing Renyuan Jizhong Geli Guancha? Zhongguo Jikong Zhongxin Huiying* (为何对入境人员集中隔离观察? 中国疾控中心回应) [*Why Centrally Quarantine Persons Entering the Country? CCDC Responds*], PEOPLE'S HEALTH NET, Apr. 2, 2020, <http://health.people.com.cn/n1/2020/0402/c14739-31659464.html>.

<sup>148</sup> See Bai Jianfeng (白剑峰), *32 Ge Bumen Jianli Lianfang Liankong Jizhi* (32 个部门建立联防联控机制) [*32 Departments Establish Joint Prevention and Control Mechanism*], RENMIN RIBAO, Jan. 22, 2020, at 10, [http://paper.people.com.cn/rmrb/html/2020-01/22/nw.D110000renmrb\\_20200122\\_2-10.htm](http://paper.people.com.cn/rmrb/html/2020-01/22/nw.D110000renmrb_20200122_2-10.htm); Guowuyuan Yingdui Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Lianfang Liankong Gongzuo Jizhi (国务院应对新型冠状病毒感染的肺炎疫情联防联控工作机制), established Jan. 21, 2020.

example, on the prevention and control techniques for different spaces, sectors, and persons,<sup>149</sup> and on the resumption of work and production.<sup>150</sup>

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.<sup>151</sup> This Leading Group issued important party normative documents, such as a guiding opinion on the resumption of work and production.<sup>152</sup> 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.<sup>153</sup>

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.<sup>154</sup> And regarding the local levels and the channels of the party,

<sup>149</sup> Technical Guidelines, *supra* note 127.

<sup>150</sup> Quanguo Butong Fengxian Diqu Qiye Danwei Fugong Fuchan Yiqing Fangkong Cuoshi Zhinan (全国不同风险地区企事业单位复工复产疫情防控措施指南) [Guidelines on Prevention and Control Measures of Enterprises and Units in Territories of Different Risk in the Whole Country at the Resumption of Work and Production] (Apr. 7, 2020), CLI.2.341265, [http://www.gov.cn/zhengce/content/2020-04/09/content\\_5500685.htm](http://www.gov.cn/zhengce/content/2020-04/09/content_5500685.htm) [hereinafter Resumption Guidelines].

<sup>151</sup> Zhongyang Yingdui Xinxing Guanzhuang Bingdu Ganran Feiyan Yiqing Gongzuo Lingdao Xiaozu (中央应对新型冠状病毒感染肺炎疫情工作领导小组), established Jan. 2020 [hereinafter CCP Leading Group].

<sup>152</sup> Guanyu Zai Youxiao Fangkong Yiqing de Tongshi Jiji Youxu Tuijin Fugong Fuchan de Zhidao Yijian (关于在有效防控疫情的同时积极有序推进复工复产的指导意见) [Guiding Opinion on, Whilst Effectively Preventing and Controlling the Pandemic, Proactively and Orderly Promoting the Resumption of Work and Production] (Apr. 7, 2020), CLI.16.341266, [http://www.gov.cn/zhengce/content/2020-04/09/content\\_5500698.htm](http://www.gov.cn/zhengce/content/2020-04/09/content_5500698.htm) [hereinafter CCP Resumption Opinion]. This Opinion was coordinated with the Joint Mechanism's Resumption Guidelines, *supra* note 150, on the same topic from the same day.

<sup>153</sup> Li Keqiang Zhuchi Zhaokai Zhongyang Yingdui Xinxing Guanzhuang Bingdu Ganran Feiyan Yiqing Gongzuo Lingdao Xiaozu (李克强主持召开中央应对新型冠状病毒感染肺炎疫情工作领导小组会议) [Li Keqiang Chairs and Convenes Meeting of the CCP Leading Group], XINHUA WANG (Jan. 26, 2020), [http://www.xinhuanet.com/politics/2020-01/26/c\\_1125504004.htm](http://www.xinhuanet.com/politics/2020-01/26/c_1125504004.htm); see Kerry Brown & Ruby Congjiang Wang, *Politics and Science: The Case of China and the Coronavirus*, 51 ASIAN AFF. 247, 252 (2020), <https://doi.org/10.1080/03068374.2020.1752567>.

<sup>154</sup> Zhuchi Zhaokai Guowuyuan Yingdui Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Lianfang Liankong Gongzuo Jizhi Huiyishi Qiangdiao: Qieshi Luoshi Zeren, Yange Fangkong Cuoshi, Jianjue Daying Yiqing Fangkong Gonjianzhan (孙春兰主持召开国务院应对新型冠状病毒感染的肺炎疫情联防联控工作机制会议时强调 切实落实责任 严格防控措施 坚决打赢疫情防控攻坚战) [Sun Chunlan, When Chairing and Convening Meeting of the Joint Mechanism, Emphasizes: Earnestly Implement Responsibilities, Strictly [Take] Prevent and Control Measures, and Resolutely Win the Assault War of Prevention and Control], XINHUA WANG (Jan. 24, 2020), [http://www.xinhuanet.com/politics/2020-01/24/c\\_1125500230.htm](http://www.xinhuanet.com/politics/2020-01/24/c_1125500230.htm).

Sun led the CCP Leading Group when dispatched to Wuhan, in order to “lead the local frontline prevention and control.”<sup>155</sup>

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

Responsibility 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.<sup>156</sup> 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.<sup>157</sup>

*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.<sup>158</sup> 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.<sup>159</sup> It then passed on important information to the national-level NHC.<sup>160</sup> However, both the local and central health administrations covered up the new virus’s existence, extent, and severity by silencing doctors and destroying samples.<sup>161</sup> 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.<sup>162</sup> Nor would COVID-19 have evolved into a global

<sup>155</sup> Zhongyang Zhidaozu Zai Hubei Kaizhan Yiqing Fangkong Zhidao Gongzuo (中央指导组在湖北开展疫情防控指导工作) [*Central Leading Group Launches the Leading Work of Pandemic Prevention and Control in Hubei*], XINHUA WANG (Jan. 28, 2020), [http://www.xinhuanet.com/politics/2020-01/28/c\\_1125508653.htm](http://www.xinhuanet.com/politics/2020-01/28/c_1125508653.htm); WHO, *supra* note 7, at 14.

<sup>156</sup> Emergencies Law art. 7.

<sup>157</sup> See Xi, *supra* note 5 (giving praise but also indirect criticism).

<sup>158</sup> Josephine Ma, *Coronavirus: China’s First Confirmed Covid-19 Case Traced Back to November 17*, S. CHINA MORN. POST (Mar. 13, 2020), <https://www.scmp.com/news/china/society/article/3074991/coronavirus-chinas-first-confirmed-covid-19-case-traced-back>.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> Bethany Allen-Ebrahimian, *Timeline: The Early Days of China’s Coronavirus Outbreak and Cover-up*, AXIOS (Mar. 18, 2020), <https://www.axios.com/timeline-the-early-days-of-chinas-coronavirus-outbreak-and-cover-up-ee65211a-afb6-4641-97b8-353718a5faab.html>; Gao Yu et al., *How Early Signs of the Coronavirus were Spotted, Spread and Throttled in China*, STRAITS TIMES (Feb. 28, 2020), <https://www.straitstimes.com/asia/east-asia/how-early-signs-of-the-coronavirus-were-spotted-spread-and-throttled-in-china>.

<sup>162</sup> Shengjie Lai et al., *Effect of Non-Pharmaceutical Interventions to Contain COVID-19 in China*, 585 NATURE 410, 410–413 (2020), <https://doi.org/10.1038/s41586-020-2293-x>.

pandemic as rapidly if the P.R.C. had restricted its citizens' international travel before late January.<sup>163</sup>

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,<sup>164</sup> and its considerable maintenance costs.<sup>165</sup> The simple reason was that central, local, and other institutions like hospitals refrained from feeding the EWS information necessary to activate the warning mechanism.<sup>166</sup>

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.<sup>167</sup> But fewer officials were punished for neglecting pandemic management at the beginning of COVID-19 than citizens were for "obstructing" pandemic management later on.<sup>168</sup> Moreover, only local-level officials were disciplined while central-level health administrators were spared, although they had also failed.<sup>169</sup> In a familiar pattern,<sup>170</sup> China's central level takes the credit when all is well but refuses to take the blame when things go badly.<sup>171</sup> 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.<sup>172</sup> This "Myriad Families

<sup>163</sup> 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>.

<sup>164</sup> LAN & GUANG, *supra* note 133, at 228, 239; Sun et al., *supra* note 89, at 4.

<sup>165</sup> Guo Rui, *supra* note 130.

<sup>166</sup> *Id.*

<sup>167</sup> See Diseases Law art. 65; Sha Xueliang (沙雪良), *Cong Futing Dao Cungan, Liu Sheng Shi Duoming Ganbu Fangyi Shizhi Beiwenze* (从副厅到村官, 六省市多名干部防疫失职被问责) [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%3Anewsm1%3Adpa.com%3A20090101%3A200216-99-936654>.

<sup>168</sup> Ye, *supra* note 135.

<sup>169</sup> Sha, *supra* note 167; Kilpatrick, *supra* note 167.

<sup>170</sup> 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.

<sup>171</sup> Brown & Wang, *supra* note 170, at 252.

<sup>172</sup> 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.<sup>173</sup> 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.”<sup>174</sup> Despite these stipulations, as of December 2020, the center has not held Wuhan’s Mayor and Hubei’s Governor accountable for this failure.<sup>175</sup>

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.<sup>176</sup>

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

*Mayor Responds*], DUOWEI XINWEN (多维新闻) [DUOWEI NEWS] (Jan. 22, 2020), <https://www.dwnews.com/中国/60165812/武汉肺炎疫情武汉社区还在举办万家宴市长回应>; Kilpatrick, *supra* note 167.

<sup>173</sup> Kilpatrick, *supra* note 167.

<sup>174</sup> PHE Regulation art. 45, § 1–3, arts. 46–47.

<sup>175</sup> Ye, *supra* note 135.

<sup>176</sup> Lv Yiming (吕一鸣), *Xinguan Yiyuan Yiqing “Hubei Baoweizhan” Hubei Dakaozhong Zhanshi Jingmai Qiezhen yu Kaifang Liaozhi* (新冠肺炎疫情“湖北保卫战”湖北大考中战时经脉切诊与开方治疗) [*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](http://www.caogen.com/blog/Infor_detail/109893.html).

<sup>177</sup> See *The Consequences of Corona in China: The End of the Crisis is the Beginning of the Next One*, MERICS (Mar. 25, 2020), <https://www.merics.org/en/newsletter/china-update-62020>; Richter, *supra* note 163.

<sup>178</sup> *Second COVID-19 Wave in China ‘Inevitable’: Top Experts*, *supra* note 9.

<sup>179</sup> WHC, *supra* note 8; NHC, *supra* note 8.

<sup>180</sup> WHC, *supra* note 8; NHC, *supra* note 8.

<sup>181</sup> Wuhan’s COVID-19 Headquarters, Guanyu Wuhanshi Xinguan Feiyuan Quezhen Binglishu Quezhen Bingli Siwangshu Dingzheng Qingkuang de Tongbao (关于武汉市新冠肺炎确诊病例数确诊病例死亡数订正情况的通报) [Notification of the Correction Situation of the Numbers of Confirmed COVID-19 Cases and Deaths in Wuhan] (Apr. 17, 2020), [http://www.gov.cn/xinwen/2020-04/17/content\\_5503568.htm](http://www.gov.cn/xinwen/2020-04/17/content_5503568.htm).

are estimated ten times higher by alternative sources.<sup>182</sup> Nevertheless, China's COVID-19 prevalence is far lower than in many other countries.<sup>183</sup> The WHO attributes this supposed success to “the most ambitious, agile, and aggressive disease containment effort in history.”<sup>184</sup> In Wuhan, this effort is based on notices,<sup>185</sup> as well as other normative documents communicated to the public through social media like WeChat and Weibo.<sup>186</sup>

### *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.<sup>187</sup> The first cordon Wuhan drew was large—it surrounded the whole city (8,500 km<sup>2</sup>) 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.<sup>188</sup> Train stations and airports closed and long-distance transport was suspended.<sup>189</sup> This lockdown is compatible with international WHO law.<sup>190</sup> 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.”<sup>191</sup> 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.<sup>192</sup>

<sup>182</sup> *Estimates Show Wuhan Death Toll Far Higher Than Official Figure*, RADIO FREE ASIA (Luisetta Mudie ed., trans., Mar. 27, 2020), <https://www.rfa.org/english/news/china/wuhan-deaths-03272020182846.html>.

<sup>183</sup> See *Second COVID-19 Wave in China 'Inevitable': Top Experts*, *supra* note 9.

<sup>184</sup> WHO, *supra* note 7, at 16.

<sup>185</sup> These Wuhan's Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Fangkong Zhihui bu 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.

<sup>186</sup> Wuhan Fabu (武汉发布) [Wuhan Publishes], <https://wemp.app/accounts/ed5d5acd-3f54-41da-85e3-de32f161ffc3> and [https://www.weibo.com/u/2759348142?nick=武汉发布&is\\_hot=1](https://www.weibo.com/u/2759348142?nick=武汉发布&is_hot=1).

<sup>187</sup> See Armin von Bogdandy & Pedro A. Villarreal, *International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis* 18 (MPIL Research Paper No. 2020-07, March 26, 2020), <http://dx.doi.org/10.2139/ssrn.3561650>.

<sup>188</sup> Wuhan Notice 1 (Jan. 23, 2020), CLI.12.1563952, [http://www.gov.cn/xinwen/2020-01/23/content\\_5471751.htm](http://www.gov.cn/xinwen/2020-01/23/content_5471751.htm).

<sup>189</sup> *Id.*

<sup>190</sup> See IHR art. 18, § 1.

<sup>191</sup> *Id.*

<sup>192</sup> 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.<sup>193</sup> The ministry forbade all persons outside the city from entering it, which Wuhan officials never mentioned or expressed an intention to do.<sup>194</sup> Originally, the city had only announced “soft measures” like canceling mass events and promoting handwashing on January 21.<sup>195</sup> 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.”<sup>196</sup> The next day, Wuhan abruptly announced its blockade toward the outside.<sup>197</sup>

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

<sup>193</sup> Guanyu Zuohao Jinchu Wuhan Jiaotong Yunshu Gongju Guankong Quanli Zuohao Yiqing Fangkong Gongzuo de Jinji Tongzhi (关于做好进出武汉交通运输工具管控全力做好疫情防控工作的紧急通知) [Urgent Notice on Doing the Control of Traffic and Transportation Means Leaving and Entering Wuhan Well [and on] With Full Force Doing the Pandemic Prevention and Control Work Well] (Jan. 23, 2020), CLI.4.338894, [http://www.gov.cn/zhengce/zhengceku/2020-01/23/content\\_5471864.htm](http://www.gov.cn/zhengce/zhengceku/2020-01/23/content_5471864.htm) [hereinafter Traffic Notice (Jan. 23)].

<sup>194</sup> *Id.* art. 1.

<sup>195</sup> Liao Jun (廖君) & Li Changzheng (黎昌政), *Wuhan Chengli Xinxing Guanzhuang Bingdu Ganran Feiyan Yiqing Fangkong Zhihuibu* (武汉成立新型冠状病毒感染肺炎疫情防控指挥部) [*Wuhan Establishes COVID-19 Headquarters*], XINHUAWANG (Jan. 21, 2020), [http://www.xinhuanet.com/politics/2020-01/21/c\\_1125487978.htm](http://www.xinhuanet.com/politics/2020-01/21/c_1125487978.htm).

<sup>196</sup> Sun Chunlan, *Zai Wuhan Kaocha Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Fangkong Gongzuoshi Qiangdiao: Yashi Zeren, Yange Luoshi, Jianding Ezhi Yiqing Kuosan Manyan* (孙春兰在武汉考察新型冠状病毒感染的肺炎疫情防控工作时强调 压实责任 严格落实 坚决遏制疫情扩散蔓延) [*When Investigating the COVID-19 Prevention and Control Work in Wuhan, Emphasizes: Compact Responsibility, Strictly Implement, Firmly Contain the Spread of the Pandemic*], XINHUAWANG (Jan. 22, 2020), [http://www.xinhuanet.com/politics/2020-01/22/c\\_1125495519.htm](http://www.xinhuanet.com/politics/2020-01/22/c_1125495519.htm).

<sup>197</sup> Wuhan Notice 1 (Jan. 23, 2020).

<sup>198</sup> *Id.*

<sup>199</sup> Wuhan Notice 5 (Jan. 23, 2020), [http://www.gov.cn/xinwen/2020-01/24/content\\_5471944.htm](http://www.gov.cn/xinwen/2020-01/24/content_5471944.htm).

<sup>200</sup> Wuhan Notice 6 (Jan. 24, 2020), [http://www.gov.cn/xinwen/2020-01/24/content\\_5472010.htm](http://www.gov.cn/xinwen/2020-01/24/content_5472010.htm).

<sup>201</sup> Wuhan Notice 9 (Jan. 25, 2020), [http://www.gov.cn/xinwen/2020-01/25/content\\_5472165.htm](http://www.gov.cn/xinwen/2020-01/25/content_5472165.htm).

<sup>202</sup> Traffic Notice (Jan. 23) art. 3, § 1.

without charge.<sup>203</sup> In order to further reduce personal movement and contact, Wuhan fostered online shopping and the contactless delivery of goods.<sup>204</sup>

Another important element of phase one's pandemic control was tracking individual patients.<sup>205</sup> In accordance with international WHO law and guidelines, affected persons suffering from COVID-19 were isolated and suspected persons with fever symptoms quarantined,<sup>206</sup> either in hospitals or in temporary quarantine centers.<sup>207</sup> Wuhan exceeded the WHO restrictions, however, by requiring individuals with fevers who confirmedly did not suffer from COVID-19 to quarantine at home.<sup>208</sup> On February 2,<sup>209</sup> the city's quarantine regime became more "aggressive and systematic."<sup>210</sup> Close contacts of the infected and suspected were tracked down and subjected to medical inspection.<sup>211</sup> Additionally, most close contacts—reminded that public security personnel would use force in case of noncooperation—<sup>212</sup> underwent other preventive measures like quarantining.<sup>213</sup> Hotels, schools, and public buildings were converted into quarantine centers or temporary hospitals.<sup>214</sup> Additionally, Wuhan erected two new hospitals in a record ten days, going viral over social media.<sup>215</sup>

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.<sup>216</sup> Wuhan's Headquarters for COVID-19 Prevention and Control enacted both the notices and Provisional

<sup>203</sup> Wuhan Notice 8 (Jan. 24, 2020), [http://www.gov.cn/xinwen/2020-01/24/content\\_5472045.htm](http://www.gov.cn/xinwen/2020-01/24/content_5472045.htm).

<sup>204</sup> Wuhan Notice 14 (Feb. 17, 2020), CLI.12.1567332, [http://wjw.wuhan.gov.cn/ztl\\_28/fk/tzgg/202004/t20200430\\_1197160.shtml](http://wjw.wuhan.gov.cn/ztl_28/fk/tzgg/202004/t20200430_1197160.shtml).

<sup>205</sup> Wuhan Notice 7 (Jan. 24, 2020), [http://www.gov.cn/xinwen/2020-01/24/content\\_5472017.htm](http://www.gov.cn/xinwen/2020-01/24/content_5472017.htm).

<sup>206</sup> See Diseases Law art. 39, §§ 1:1, 1:2; IHR art. 18, § 1; WHO, *Considerations for Quarantine of Individuals in the Context of Containment for Coronavirus Disease (COVID-19)*, WHO (Mar. 19, 2020), <https://apps.who.int/iris/handle/10665/331497>.

<sup>207</sup> Wuhan Notice 7 (Jan. 24) art. 2.

<sup>208</sup> Wuhan Notice 7 (Jan. 24) art. 2.

<sup>209</sup> Wuhan Notice 10 (Feb. 2, 2020), [http://www.gov.cn/xinwen/2020-02/02/content\\_5473924.htm](http://www.gov.cn/xinwen/2020-02/02/content_5473924.htm).

<sup>210</sup> Jeremy Page, *China's Progress Against Coronavirus Used Draconian Tactics Not Deployed in the West*, WALL ST. J. (Mar. 24, 2020), <https://www.wsj.com/articles/the-west-is-misinterpreting-wuhans-coronavirus-progressand-drawing-the-wrong-lessons-11585074966>.

<sup>211</sup> Wuhan Notice 10 (Feb. 2).

<sup>212</sup> Wuhan Notice 10 (Feb. 2); PHE Regulation art. 44.

<sup>213</sup> See Diseases Law art. 39, § 1:3.

<sup>214</sup> Page, *supra* note 210.

<sup>215</sup> *Id.*

<sup>216</sup> Wuhanshi Xinxing Guanzhuang Bingdu Ganran de Feiyan Yiqing Fangkong Zhanxing Banfa (武汉市新型冠状病毒感染的肺炎疫情防控暂行办法) [Interim Measures for the Prevention and Control of the Pneumonia Outbreak of Novel Coronavirus Infection in Wuhan] (Jan. 29, 2020), CLI.12.1563231, [http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316\\_972483.shtml](http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316_972483.shtml) [hereinafter Provisional Methods].

Methods.<sup>217</sup> 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—<sup>218</sup> like Hubei's Headquarters for COVID-19 Prevention and Control.<sup>219</sup> On the prefectural level and below, in contrast, national law leaves the local governments in charge of pandemic response.<sup>220</sup> Only the National PHE Response Plan, constituting *lex inferior* and *lex prior*, recommends establishing ad hoc headquarters at every local level.<sup>221</sup> 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.”<sup>222</sup> 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).<sup>223</sup> 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.<sup>224</sup> 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.<sup>225</sup> This violates national law, which stipulates that headquarters shall only consist of local government officials.<sup>226</sup> The institutional intermingling of party and state also results in their instrumental intermingling. Consequently, the Headquarters' notices are

<sup>217</sup> 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].

<sup>218</sup> PHE Regulation art. 3, art. 4, § 1, art. 28.

<sup>219</sup> Hubeisheng Xinxing Guanzhuang Bingdu Ganran Feiyan Yiqing Fangkong Zhihuibu (湖北省新型冠状病毒感染的肺炎疫情防控指挥部), established Jan. 22, 2020 [hereinafter Hubei's COVID-19 Headquarters].

<sup>220</sup> See Diseases Law art. 5, § 1:2; PHE Regulation art. 4, § 2; Nat'l Emergency Plan art. 2, § 4.

<sup>221</sup> Nat'l PHE Plan art. 2, § 1:2–3.

<sup>222</sup> Liao & Li, *supra* note 195.

<sup>223</sup> *Id.*; Provisional Methods art. 4, § 1.

<sup>224</sup> See Technical Guidelines, *supra* note 127; LAN & GUANG, *supra* note 133, at 92.

<sup>225</sup> Provisional Methods art. 4, § 1; see Liao & Li, *supra* note 195.

<sup>226</sup> 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."<sup>227</sup>

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.<sup>228</sup> The Provincial Government endorsed establishing "leading institutions" on the prefectural and county levels,<sup>229</sup> resulting in the creation of COVID-19 headquarters in Wuhan's districts.<sup>230</sup> Hubei's Government also confirmed that local headquarters should exert "unified leadership and command" over Wuhan's COVID-19 management.<sup>231</sup>

#### *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,<sup>232</sup> when it tightened the city's quarantine regime for individual COVID-19 sufferers and suspects.<sup>233</sup> However, neither national leaders nor local decision-makers shared this opinion.<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup> In response, Wuhan initiated phase two of COVID-19 control: a curfew-like shutdown of public life.

<sup>227</sup> Provisional Methods art. 4, § 2:1; see Liao & Li, *supra* note 195.

<sup>228</sup> Nat'l PHE Plan art. 2, § 1:2–3.

<sup>229</sup> Guanyu Jiaqiang Xinxing Guanzhuang Bingdu Ganran de Feiyan Fangkong Gongzuo de Tongzhi (关于加强新型冠状病毒感染的肺炎防控工作的通告) [Notice on Strengthening COVID-19 Prevention and Control Work] (Jan. 22, 2020), CLI.12.1563626, [https://www.hubei.gov.cn/xxgk/gsgg/202001/t20200122\\_2013895.shtml](https://www.hubei.gov.cn/xxgk/gsgg/202001/t20200122_2013895.shtml), art. 1 [hereinafter Hubei Gov't Notice (Jan. 22)].

<sup>230</sup> *E.g.*, Wuchangqu Xinxing Guanzhuang Bingdu Ganran Feiyan Yiqing Fangkong Zhihuiibu (武昌区新型冠状病毒感染的肺炎疫情防控指挥部), established Jan. 2020.

<sup>231</sup> Hubei Gov't Notice (Jan. 22) art. 1.

<sup>232</sup> Page, *supra* note 210.

<sup>233</sup> Wuhan Notice 10 (Feb. 2).

<sup>234</sup> See Wuhan Notice 11 (Feb. 10, 2020), CLI.12.1565245, [http://wjw.wuhan.gov.cn/ztl\\_28/fk/tzgg/202004/t20200430\\_1197237.shtml](http://wjw.wuhan.gov.cn/ztl_28/fk/tzgg/202004/t20200430_1197237.shtml), art. 2.

<sup>235</sup> *Residential Communities Across China Vary in Grassroots Coronavirus Prevention and Control*, GLOBAL TIMES (Feb. 18, 2020), <https://www.globaltimes.cn/content/1180015.shtml>.

<sup>236</sup> 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.”<sup>237</sup> Individuals hindering this management were threatened with the use of force by public security officials.<sup>238</sup> Through this brief, ambiguous notice, Wuhan drew a second, much tighter *cordon sanitaire*: around neighborhoods, like residential compounds or even single buildings.<sup>239</sup> This second cordon resulted in a mass quarantine—<sup>240</sup>which, under international WHO law, is only permissible as an “additional health measure.”<sup>241</sup> 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.<sup>242</sup> Nevertheless, the WHO praised Wuhan’s second cordon and its extension of quarantine measures against the entire population in February.<sup>243</sup> Yet in March, the WHO’s COVID-19 official “Quarantine Considerations” again clarified that quarantines must address concretely suspected individuals only.<sup>244</sup>

In contrast to WHO law, Chinese national law explicitly allows the “quarantine of [all] persons inside infectious disease areas.”<sup>245</sup> Such mass quarantines can be decided and implemented at the prefectural and county levels by cities and districts themselves.<sup>246</sup> 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.<sup>247</sup> 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

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<sup>237</sup> Wuhan Notice 12 (Feb. 10, 2020), CLI.12.1565246, copy at [http://www.gov.cn/xinwen/2020-02/11/content\\_5477104.htm](http://www.gov.cn/xinwen/2020-02/11/content_5477104.htm).

<sup>238</sup> *Id.*

<sup>239</sup> Philipp Renninger, *China and COVID-19: A Central-Local ‘Chess Game’*, THE DIPLOMAT (June 20, 2020), <https://thediplomat.com/2020/06/china-and-covid-19-a-central-local-chess-game/>.

<sup>240</sup> See Bogdandy & Villareal, *supra* note 187, at 20

<sup>241</sup> IHR art. 43, § 1:1.

<sup>242</sup> IHR art. 1, § 1; art. 18, § 1; see Bogdandy & Villareal, *supra* note 187, at 20.

<sup>243</sup> WHO, *supra* note 8, at 10; Bogdandy & Villareal, *supra* note 187, at 20.

<sup>244</sup> WHO, *supra* note 8.

<sup>245</sup> See Diseases Law art. 41, § 1; PHE Regulation art. 33.

<sup>246</sup> See Diseases Law art. 41, § 1; PHE Regulation art. 33.

<sup>247</sup> *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 应勇任湖北省委书记) [*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*], XINHUA WANG (Feb. 13, 2020), [http://xinhuawang.com/renshi/2020-02/13/c\\_1125568253.htm](http://xinhuawang.com/renshi/2020-02/13/c_1125568253.htm).

real curfew for the vast majority of individuals, including those in Wuhan's rural areas.<sup>248</sup> Non-gated neighborhoods were fenced and all neighborhoods were forced to operate one entry-exit checkpoint.<sup>249</sup> 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.<sup>250</sup> Similarly, nobody could enter another neighborhood except for special reasons similar to those for exiting.<sup>251</sup> 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.<sup>252</sup>

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.<sup>253</sup> Additionally, Hubei extended this curfew to "public spaces"—which Wuhan subsequently implemented.<sup>254</sup> This extension meant that non-essential cultural, economic, and religious spaces had to close.<sup>255</sup> 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.<sup>256</sup> Moreover, anyone buying or ordering antipyretics or antitussives had to show their Resident Identity Card number, personal data, contact details, and emergency contacts.<sup>257</sup> Wuhan's COVID-19 Headquarters also instructed all individuals quarantined at home to measure their temperature twice a day,<sup>258</sup> later

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<sup>248</sup> Guanyu Mingque Zhuzhai Xiaoqu Fengbi Guanli Zhuyao Cuoshi de Tongzhi (关于明确住宅小区封闭管理主要措施的通知) [Notice on Clarifying Major Measures for the Closed Management of Residential Neighborhoods] (Feb. 14, 2020), <http://kuaibao.qq.com/s/20200218A0P12J00?refer=spider> [hereinafter Wuhan Notice (Feb. 14)].

<sup>249</sup> *Id.* art. 1.

<sup>250</sup> Wuhan Notice (Feb. 14) art. 2, § 1:2.

<sup>251</sup> Wuhan Notice (Feb. 14) art. 2, § 1:4.

<sup>252</sup> Wuhan Notice (Feb. 14) art. 2, § 1:1.

<sup>253</sup> Guanyu Jinyibu Qianghua Xinguan Feiyan Yiqing Fangkong de Tonggao (关于进一步强化新冠肺炎疫情防控的通告) [Notice on Further Strengthening COVID-19 Prevention and Control] (Feb. 16, 2020), [http://jtt.hubei.gov.cn/xxzx/zhxx/hyxx/202007/t20200709\\_2573866.shtml](http://jtt.hubei.gov.cn/xxzx/zhxx/hyxx/202007/t20200709_2573866.shtml), art. 2 [hereinafter Hubei Gov't Notice (Feb. 16)].

<sup>254</sup> Wuhan Notice 13 (Feb. 16, 2020), CLI.12.1567329, <http://www.nhc.gov.cn/xcs/fkdt/202002/36437525a0d54cf99d386972b83c0731.shtml>.

<sup>255</sup> Wuhan Notice 13 (Feb. 16) art. 1; see Hubei Gov't Notice (Feb. 16) art. 4, § 2.

<sup>256</sup> Wuhan Notice 13 (Feb. 16) art. 2; see Hubei Gov't Notice (Feb. 16) art. 4, § 3, art. 12, § 3.

<sup>257</sup> Wuhan Notice 13 (Feb. 16) art. 3; see Hubei Gov't Notice (Feb. 16) art. 4, § 4.

<sup>258</sup> Wuhan Notice 15 (Feb. 20, 2020), CLI.12.1568838, [http://wjw.wuhan.gov.cn/ztl\\_28/fk/tzgg/202004/t20200430\\_1197090.shtml](http://wjw.wuhan.gov.cn/ztl_28/fk/tzgg/202004/t20200430_1197090.shtml), art. 1.

recommended nationwide by the Joint Mechanism.<sup>259</sup> Individuals with temperatures exceeding 37.3 °C (99.1 °F) were required to immediately and honestly report to their residential community or village.<sup>260</sup> 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.<sup>261</sup>

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.”<sup>262</sup> 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,<sup>263</sup> enacted similar COVID-19 regulations.<sup>264</sup> 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)<sup>265</sup> and meet more often (in Wuhan: six versus one regular session per year).<sup>266</sup> 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.<sup>267</sup>

<sup>259</sup> See Technical Guidelines, *supra* note 127, art. 1, § 1:2.

<sup>260</sup> See Diseases Law art. 12; Wuhan Notice 15 (Feb. 20) art. 3.

<sup>261</sup> Wuhan Notice 15 (Feb. 20) art. 2.

<sup>262</sup> Guanyu Yifa Quanli Daying Xinguan Feiyan Yiqing Fangkong Wuhan Baoweizhan de Jueding (关于依法全力打赢新冠肺炎疫情防控武汉保卫战的决定) (Feb. 17, 2020), CLI.12.1567050, [http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316\\_972587.shtml](http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316_972587.shtml) [hereinafter MPC Standing Comm. Decision].

<sup>263</sup> Guanyu Wei Daying Xinxing Guanzhuang Bingdu Feiyan Yiqing Fangkong Zujizhan Tigong Youli Fazhi Baozhang de Jueding (关于为打赢新型冠状病毒肺炎疫情防控阻击战提供有力法治保障的决定) [Decision on Providing Powerful Rule of Law Guarantees for the Blockade War of COVID-19 Prevention and Control] (Feb. 11, 2020) CLI.10.1565552, [https://www.hubei.gov.cn/xxgk/gsgg/202002/t20200212\\_2024665.shtml](https://www.hubei.gov.cn/xxgk/gsgg/202002/t20200212_2024665.shtml) [hereinafter Hubei People’s Cong. Standing Comm. Decision].

<sup>264</sup> Hu Jian (胡健) & Wang Ying (王颖), *Duodi Renda Changweihui Chutai Jueding Wei Yiqing Fangkong Tigong Fazhi Baozhang* (多地人大常委会出台决定为疫情防控提供法治保障) [*Standing Committees of Many People’s Congresses Issue Decisions Providing Rule of Law Guarantees for Pandemic Prevention and Control*], ZHONGGUO RENDAWANG (Feb. 12, 2020), <http://www.npc.gov.cn/npc/c30834/202002/30ce4a31db2e48cd895c3f34076d6950.shtml>.

<sup>265</sup> See Organization Law art. 41, § 4:2.

<sup>266</sup> See Organization Law art. 45, § 1.

<sup>267</sup> 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."<sup>268</sup> 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.<sup>269</sup> This front work should strengthen the deputies' reputation and trust amongst residents and convince the population of "the people's congress system's advantages."<sup>270</sup> 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.<sup>271</sup> 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.<sup>272</sup> 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.<sup>273</sup> 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.<sup>274</sup> In Wuhan, grassroots-level residential

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<sup>268</sup> Guanyu Jinyibu Fahui Quanshi Geji Renda Daibiao Zai Kangji Xinguan Feiyan Yiqing zhong Zuoyong de Yijian (关于进一步发挥全市各级人大代表在抗击新冠肺炎疫情中作用的意见) (Mar. 3, 2020), CLI.12.1572671, [http://pkulaw.cn/fulltext\\_form.aspx?Gid=18349887&Db=lar](http://pkulaw.cn/fulltext_form.aspx?Gid=18349887&Db=lar) [hereinafter MPC Standing Comm. Opinion].

<sup>269</sup> MPC Standing Comm. Opinion art. 3.

<sup>270</sup> *Id.* art. 1.

<sup>271</sup> *Id.* art. 4.

<sup>272</sup> XIANFA art. 101, § 1 (referring to institutions); Legislation Law art. 89, § 1 (referring to norms).

<sup>273</sup> See Diseases Law art. 5, § 1; art. 6, § 1;2; PHE Regulation art. 4, § 2; see IHR app. 2, art. III, § 2:2.

<sup>274</sup> NHC et al, Xinguan Feiyan Yiqing Shequ Fangkong yu Fuwu Gongzuo Jingzhunhua Jingxihua Zhidao Fang'an (新冠肺炎疫情社区防控与服务工作精准化精细化指导方案) [Guiding Plan for Specifying and Refining Residential Communities' COVID-19 Prevention, Control, and Service Work] (Apr. 14, 2020), notified through CLI.4.341456, [http://www.gov.cn/zhengce/zhengceku/2020-04/16/content\\_5503261.htm](http://www.gov.cn/zhengce/zhengceku/2020-04/16/content_5503261.htm).



communities, villages, and neighborhoods mostly performed analog surveillance because the “alert eyes” of residents’ committees were able to best monitor the closed management.<sup>275</sup>

In contrast, digital surveillance remains more centralized. Chinese smartphone apps publicly display the domicile of COVID-19 infected individuals.<sup>276</sup> 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.”<sup>277</sup> 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.<sup>278</sup> Additionally, COVID-19 contact tracing is conducted through countless surveillance cameras, face recognition technology, and location data.<sup>279</sup> Individual behavior like wearing face masks during phase one and two was monitored by drones,<sup>280</sup> which were also used to spray disinfectants, transport medical samples, and deliver consumer goods.<sup>281</sup>

#### 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.

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<sup>275</sup> Daniel Satra, *Überwachung digital und analog* [Digital and Analog Surveillance], TAGESSCHAU (Feb. 25, 2020), <https://www.tagesschau.de/ausland/coronavirus-apps-101.html>.

<sup>276</sup> *Id.*

<sup>277</sup> Paul Mozur et al., *In Coronavirus Fight, China Gives Citizens a Color Code, With Red Flags*, N.Y. TIMES (Mar. 1, 2020), <https://www.nytimes.com/2020/03/01/business/china-coronavirus-surveillance.html>; Zhifubao Jiankangma (支付宝健康码) [Alipay Health Code] and Wuhan Jiankangma (武汉健康码) [Wuhan Health Code], respectively. See Wuhan’s COVID-19 Headquarters, *Woshi Shangxian “Wuhan Jiankangma” 我市上线“武汉健康码”* [My City Puts the “Wuhan Health Code” Online] (Feb. 22, 2020), [http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316\\_972616.shtml](http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316_972616.shtml).

<sup>278</sup> Mozur et al., *supra* note 277.

<sup>279</sup> Satra, *supra* note 275.

<sup>280</sup> Zak Doffman, *This New Coronavirus Spy Drone Will Make Sure You Stay Home*, FORBES (Mar. 5, 2020), <https://www.forbes.com/sites/zakdoffman/2020/03/05/meet-the-coronavirus-spy-drones-that-make-sure-you-stay-home/#44346d021669>.

<sup>281</sup> Junwei Yang & Timothy Reuter, *3 ways China is using drones to fight coronavirus*, WORLD ECONOMIC FORUM (Mar. 16, 2020), <https://www.weforum.org/agenda/2020/03/three-ways-china-is-using-drones-to-fight-coronavirus/>.

### 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.”<sup>282</sup> 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.<sup>283</sup> 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.<sup>284</sup>

First, central leadership regularly makes a triple move: horizontal–vertical–horizontal.<sup>285</sup> Central-level state leaders act as central-level party leaders (horizontal) in order to control the local party branch of Wuhan (vertical).<sup>286</sup> 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 WDC (horizontal). This party conduit is regulated through institutional, personnel, and disciplinary valves.<sup>287</sup> 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.<sup>288</sup> The newly installed Party Secretaries then pressured Wuhan's local pandemic containment organs to tighten and enforce the closed management.<sup>289</sup>

<sup>282</sup> Legislation Law art. 4; *see* EXPLANATION OF THE P.R.C. LEGISLATION LAW, *supra* note 62, at 26.

<sup>283</sup> Xi, *supra* note 46; *Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match*, *supra* note 47.

<sup>284</sup> Renninger, *supra* note 239.

<sup>285</sup> Renninger, *supra* note 54, at 123.

<sup>286</sup> ZHANG, *supra* note 19, at 164.

<sup>287</sup> CHUNG, *supra* note 13, at 76–86.

<sup>288</sup> *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.

<sup>289</sup> 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.<sup>290</sup> 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).<sup>291</sup> 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.<sup>292</sup> 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,<sup>293</sup> which the Headquarters implemented the very next day.<sup>294</sup> 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.<sup>295</sup> 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.<sup>296</sup>

Third, and exceptionally, the central level can immediately act on its own in local affairs.<sup>297</sup> This is possible because the center possesses omnicompetence for every (non-)legislative matter in the P.R.C.<sup>298</sup> 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.<sup>299</sup> 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.<sup>300</sup>

Thus, when fighting COVID-19 through its local party and state organs, Wuhan acts as a mere agent of the central level.<sup>301</sup> But even as an agent following central-level decisions, Wuhan must “combine” these

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<sup>290</sup> Renninger, *supra* note 54, at 123; see CHINA’S POLITICAL SYSTEM, *supra* note 36, at 150.

<sup>291</sup> Renninger, *supra* note 54, at 123.

<sup>292</sup> See Provisional Methods art. 4, § 1; Liao & Li, *supra* note 195.

<sup>293</sup> Sun, *supra* note 196. See Renninger, *supra* note 239.

<sup>294</sup> Wuhan Notice 1 (Jan. 23).

<sup>295</sup> See Legislation Law art. 3; ZHANG, *supra* note 19, at 73, 163.

<sup>296</sup> MPC Standing Comm. Decision pmb., § 1, § 2:2.

<sup>297</sup> Renninger, *supra* note 239.

<sup>298</sup> *Contra*, Legislation Law art. 8.

<sup>299</sup> See Renninger, *supra* note 239.

<sup>300</sup> *Id.*

<sup>301</sup> See CHUNG, *supra* note 13, at 55; Renninger, *supra* note 54, at 112.

decisions “with the city’s actual situation.”<sup>302</sup> 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.<sup>303</sup> 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.<sup>304</sup> 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.<sup>305</sup>

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.<sup>306</sup> 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).<sup>307</sup> According to official figures, 35,000 medical workers from all over the country volunteered in Wuhan.<sup>308</sup> Second, Hubei province is establishing an internal “prevention and control network of the province, cities, counties (districts), townships (streets), and villages (residential communities).”<sup>309</sup> 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.<sup>310</sup>

<sup>302</sup> 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 pmb.; Provisional Methods issuing notice (for the local levels).

<sup>303</sup> CHUNG, *supra* note 13, at 57, 59; Renninger, *supra* note 54, at 112.

<sup>304</sup> See Wei Cui & Jiang Wan, *Decentralising Legislation in China’s Law on Legislation Amendment*, 49 HONG KONG L.J. 665, 666–68 (2019).

<sup>305</sup> *Id.* at 666–67, 670.

<sup>306</sup> Xi, *supra* note 46; MPC Standing Comm. Opinion pmb., § 2:1; *If Wuhan Wins, Hubei Wins. If Hubei Wins, the Whole Country Wins*, ZHONGGUO GUANJIANCI (Mar. 13, 2020), [http://www.china.org.cn/english/china\\_key\\_words/2020-03/13/content\\_75810664.htm](http://www.china.org.cn/english/china_key_words/2020-03/13/content_75810664.htm).

<sup>307</sup> See Fang Ning et al., *Xinhua Headlines: China Mobilizes Medical Teams to Fight New Coronavirus*, XINHUANET (Jan. 24, 2020), [http://xinhuanet.com/english/2020-01/24/c\\_138731835.htm](http://xinhuanet.com/english/2020-01/24/c_138731835.htm); William Zheng & Laurie Chen, *China Sends in Military Doctors to Help Wuhan Hospitals Fight Coronavirus Outbreak*, S. CHINA MORN. POST (Jan. 24, 2020), <https://www.scmp.com/news/china/politics/article/3047595/china-sends-military-medics-help-wuhan-hospitals-fight>; Traffic Notice (Jan. 23); Wuhan Notice 1 (Jan. 23).

<sup>308</sup> *If Wuhan Wins, Hubei Wins. If Hubei Wins, the Whole Country Wins*, *supra* note 306.

<sup>309</sup> Hubei People’s Cong. Standing Comm. Decision art. 2.

<sup>310</sup> 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.<sup>311</sup> 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.<sup>312</sup> 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.<sup>313</sup> Although the central level warned local entities not to overspend during the coronavirus crisis, provinces and cities planned on incurring debts.<sup>314</sup> 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.<sup>315</sup>

### *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.<sup>316</sup> 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

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<sup>311</sup> Zhenhua et. al., *supra* note 170.

<sup>312</sup> *Residential Communities Across China Vary in Grassroots Coronavirus Prevention and Control*, *supra* note 235; see Eva Pils, *China's Response to the Coronavirus Pandemic: Fighting Two Enemies*, VERFASSUNGSBLOG (May 25, 2020), <https://verfassungsblog.de/chinas-response-to-the-coronavirus-pandemic-fighting-two-enemies/>.

<sup>313</sup> *China's Economy Will Suffer a Double Whammy as Its Export Partners are Overrun by the Coronavirus*, MARKETWATCH (Mar. 27, 2020), <https://www.marketwatch.com/story/chinas-economy-will-suffer-a-double-whammy-as-its-export-partners-are-overrun-by-the-coronavirus-2020-03-27>.

<sup>314</sup> *Id.*; For more information on China's debt concerns, see Kenneth Rapoza, *Why China's Coronavirus Debt Crisis Is A Problem*, FORBES (June 19, 2020), <https://www.forbes.com/sites/kenrapoza/2020/06/19/why-chinas-coronavirus-debt-crisis-is-a-problem/?sh=7cd4d5579b7e>.

<sup>315</sup> *China's Economy Will Suffer a Double Whammy as its Export Partners are Overrun by the Coronavirus*, *supra* note 313.

<sup>316</sup> See Grünberg & Drinhausen, *supra* note 22, at 5–6.

Australia,<sup>317</sup> New Zealand,<sup>318</sup> and South Korea:<sup>319</sup> stopping and eliminating the disease by suppressing new cases.<sup>320</sup> 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.<sup>321</sup> But such *laissez-faire* strategies can easily overwhelm each state's health care system and result in tragically high death tolls.<sup>322</sup> 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.<sup>323</sup> 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.<sup>324</sup> 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.<sup>325</sup>

Most countries base their flattening approach on the assumption that eliminating COVID-19 by preventing any new infections is scientifically impossible.<sup>326</sup> 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.<sup>327</sup> 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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<sup>317</sup> See Group of Eight Australia (Go8), *COVID-19 Roadmap to Recovery: A Report for the Nation*, at 10–12, 26–55 (Apr. 2020), <https://go8.edu.au/wp-content/uploads/2020/05/Go8-Road-to-Recovery.pdf> (discussing the benefits and disadvantages of an elimination strategy).

<sup>318</sup> Michael G. Baker et al., *New Zealand's Elimination Strategy for the COVID-19 Pandemic and What is Required to Make it Work*, 133 N.Z. MED. J., no. 1512, at 10 (2020), <https://www.nzma.org.nz/journal-articles/new-zealands-elimination-strategy-for-the-covid-19-pandemic-and-what-is-required-to-make-it-work>.

<sup>319</sup> JaHyun Kang et al., *South Korea's Responses to Stop the COVID-19 Pandemic*, 48 AM. J. INFECT. CONTROL 1080 (2020), <https://doi.org/10.1016/j.ajic.2020.06.003>.

<sup>320</sup> See PHE Regulation art. 42; see Diseases Law art. 1.

<sup>321</sup> Anne-Lise Sibony, *The UK COVID-19 Response: A Behavioural Irony?*, 11 EUR. J. RISK REG. 350, 351 (2020), <https://doi.org/10.1017/err.2020.22>.

<sup>322</sup> See Deutscher Ethikrat [German Ethics Council], *Solidarity and Responsibility During the Coronavirus Crisis*, at 2 (Mar. 27, 2020), <https://www.ethikrat.org/fileadmin/Publikationen/Ad-hoc-Empfehlungen/englisch/recommendation-coronavirus-crisis.pdf>.

<sup>323</sup> Sibony, *supra* note 321, at 351–52.

<sup>324</sup> Ethikrat, *supra* note 322, at 2.

<sup>325</sup> Oliver Lepsius, *Vom Niedergang grundrechtlicher Denkkategorien in der Corona-Pandemie [On the Decline of Human Rights Thinking Categories in the COVID-19 Pandemic]*, VERFASSUNGSBLOG (Apr. 6, 2020), <https://verfassungsblog.de/vom-niedergang-grundrechtlicher-denkkategorien-in-der-corona-pandemie/>.

<sup>326</sup> See Jon Cohen & Kai Kupferschmidt, *Countries Test Tactics in 'War' Against COVID-19*, 367 SCIENCE 1287 (2020), <https://doi.org/10.1126/science.367.6484.1287>.

<sup>327</sup> 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.<sup>328</sup> 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.<sup>329</sup> Should any of these scenarios unfold, then China's approach (like Australia's, New Zealand's, and South Korea's) becomes a "rational," "scientific,"<sup>330</sup> and legitimate governmental aim.<sup>331</sup>

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.<sup>332</sup> 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."<sup>333</sup> 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*).<sup>334</sup>

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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<sup>328</sup> See Ethikrat, *supra* note 322, at 2.

<sup>329</sup> Mathias Kumm, *Gegen obrigkeitsstaatliche Tendenzen in der Krise [Against Authoritarian Tendencies in the Crisis]*, VERFASSUNGSBLOG (Apr. 20, 2020), <https://verfassungsblog.de/gegen-obrigkeitsstaatliche-tendenzen-in-der-krise/>.

<sup>330</sup> See Legislation Law art. 6.

<sup>331</sup> See Baker, *supra* note 318; Kang, *supra* note 319; Kumm, *supra* note 329.

<sup>332</sup> See Moshe Cohen-Eliya & Iddo Porat, *American Balancing and German Proportionality: The Historical Origins*, 8 INT'L J. CONST. L. 263, 267 (2010), <https://doi.org/10.1093/icon/moq004>.

<sup>333</sup> IHR art. 43, § 1:2 (directly applicable only to "additional health measures" not enumerated in the IHR), definitions at art. 1, § 1.

<sup>334</sup> IHR art. 3, § 1.

in Wuhan to virtually zero.<sup>335</sup> Therefore, Wuhan's measures were suitable for reaching the aim of stopping the pandemic.<sup>336</sup> 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.<sup>337</sup> However, third, Wuhan's measures failed to be proportionate *stricto sensu*, that is, to appropriately balance pandemic containment and individual rights and freedoms.<sup>338</sup> Certainly, strict COVID-19 measures protect society's and individuals' rights to life, health, and "safety."<sup>339</sup> 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,<sup>340</sup> the freedom of demonstration and assembly,<sup>341</sup> religious freedom,<sup>342</sup> the right (and duty) to work and education,<sup>343</sup> the inviolability of home and correspondence,<sup>344</sup> as well as the rights of Overseas Chinese.<sup>345</sup> 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.<sup>346</sup>

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.<sup>347</sup> In the United States, the "balancing doctrine" fulfils a similar function.<sup>348</sup> Chinese law, in contrast, rejects a

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<sup>335</sup> See WHC, *supra* note 8; Cohen & Kupferschmidt, *supra* note 326.

<sup>336</sup> See Cohen & Kupferschmidt, *supra* note 326.

<sup>337</sup> See *id.*; Kumm, *supra* note 329.

<sup>338</sup> 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.

<sup>339</sup> Xi, *supra* note 5; Hu & Wang, *supra* note 264; see Wuhan Notice 12 (Feb. 10).

<sup>340</sup> XIANFA art. 37.

<sup>341</sup> *Id.* art. 35.

<sup>342</sup> *Id.* art. 36.

<sup>343</sup> *Id.* art. 42, 46.

<sup>344</sup> *Id.* art. 39, 40.

<sup>345</sup> *Id.* art. 50.

<sup>346</sup> See IHR art. 3, § 1; Bogdandy & Villareal, *supra* note 187, at 20.

<sup>347</sup> Vicki C. Jackson, *Constitutional Law in an Age of Proportionality*, 124 YALE L.J. 3094, 3094 (2015), <https://www.yalelawjournal.org/feature/constitutional-law-in-an-age-of-proportionality>; Cohen-Eliya & Porat, *supra* note 332, at 263, 265.

<sup>348</sup> 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.<sup>349</sup> Rather, local and central law and nonlaw must only be “scientific” and “rational.”<sup>350</sup> 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.<sup>351</sup> 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).<sup>352</sup> 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.<sup>353</sup> Moreover, whether during emergencies or regular times, neither Wuhan’s (non-)law nor its enforcement measures need to be proportionate *stricto sensu*.<sup>354</sup> Chinese law allows—and sometimes demands—cities like Wuhan to violate individuals’ rights and interests in fighting PHEs.<sup>355</sup>

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.<sup>356</sup> There are, in contrast, no legal remedies against Wuhan’s general and abstract (non-)law that the enforcement is based on.<sup>357</sup> 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.<sup>358</sup> And Wuhan’s numerous nonlegal COVID-19 normative documents can be reviewed by the courts only incidentally.<sup>359</sup> 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.<sup>360</sup> Should this incidental control find one of Wuhan’s normative documents unlawful,

<sup>349</sup> See Björn Ahl, *Staatliche Eingriffe in den chinesischen Immobilienmarkt – Fragen der Rechtmäßigkeit und des Rechtsschutzes* [State Interference in the Chinese Real Estate Market—Issues of Legality and Legal Remedies], 45 VERFASSUNG IN RECHT UND ÜBERSEE [VRÜ] 412, 423 (2012).

<sup>350</sup> Legislation Law art. 6; see also, IHR art. 43, § 2.

<sup>351</sup> Emergencies Law art. 11; Pils, *supra* note 312 (critically).

<sup>352</sup> Emergencies Law art. 11.

<sup>353</sup> Pils, *supra* note 312.

<sup>354</sup> See Ahl, *supra* note 349, at 423.

<sup>355</sup> Emergencies Law art. 11; Pils, *supra* note 312 (critically).

<sup>356</sup> See Ahl, *supra* note 349, 425–26.

<sup>357</sup> See Litigation Law art. 2; art. 12; see Diseases Law art. 12, § 2.

<sup>358</sup> FENG, *supra* note 52, at 88.

<sup>359</sup> See Ahl, *supra* note 349, 425–26; Litigation Law art. 64; Litigation Interpretation art. 145.

<sup>360</sup> 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.<sup>361</sup> But the court cannot strike down the normative document's validity and authority generally.<sup>362</sup> As of December 2020, several such COVID-19 lawsuits are pending against Wuhan's Municipal Government and Hubei's Provincial Government.<sup>363</sup> 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.<sup>364</sup> 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.<sup>365</sup>

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.<sup>366</sup> 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.<sup>367</sup> 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.<sup>368</sup> 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,<sup>369</sup> administrative sanctions, and civil liability.<sup>370</sup> As a result, almost 2,000 citizens have already been criminally charged for "obstructing" COVID-19 containment.<sup>371</sup> Nationally, COVID-19 related "misbehavior" resulted in 3,600 individuals being criminally detained,

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<sup>361</sup> See Litigation Law art. 64; Litigation Interpretation art. 149, § 1.

<sup>362</sup> Litigation Interpretation art. 149, § 1.

<sup>363</sup> See Lily Kuo, 'People Have Been Awakened': Seeking Covid-19 Answers in Wuhan, *GUARDIAN* (Apr. 20, 2020), <https://www.theguardian.com/world/2020/apr/20/people-have-been-awakened-seeking-covid-19-answers-in-wuhan>.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> Wei Cui & Zhiyuan Wang, *The Selection of Litigation against Government Agencies: Evidence from China*, 13 *REV. LAW ECON.*, article no. 20160054, 16–17 (2017).

<sup>367</sup> See Diseases Law art. 12, § 1.

<sup>368</sup> PHE Regulation art. 44.

<sup>369</sup> Criminal Law art. 330, § 1:4, § 2; see Emergencies Law art. 68; PHE Regulation art. 51, § 3.

<sup>370</sup> See Diseases Law art. 77; Emergencies Law art. 66–67; PHE Regulation art. 51, § 1–2.

<sup>371</sup> Ye, *supra* note 135.

25,000 individuals administratively detained, and 46,000 individuals “criticized and educated” by February 2020 alone.<sup>372</sup>

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.<sup>373</sup> However, these rights are neither enforceable nor justiciable, not even through incidental control by the courts.<sup>374</sup> 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.”<sup>375</sup> Therefore, the public interest—in this case containing COVID-19—prevails over individual rights and freedoms.<sup>376</sup> Again, Chinese law permits—and sometimes demands—local entities like Wuhan to violate individuals’ rights and interests in fighting PHEs.<sup>377</sup>

### *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.<sup>378</sup> 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.<sup>379</sup> 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.<sup>380</sup> 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.<sup>381</sup>

This easing initiated a new phase of COVID-19 containment in Wuhan, yet the alleviation granted was still limited. Therefore, Wuhan’s

<sup>372</sup> Xiong Jian (熊建), *Quanguo Yiliao Jiuzhi 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*], RENMIN RIBAO (Feb. 22, 2020), [http://paper.people.com.cn/rmrbhwb/html/2020-02/22/content\\_1972481.htm](http://paper.people.com.cn/rmrbhwb/html/2020-02/22/content_1972481.htm); see Pils, *supra* note 312.

<sup>373</sup> XIANFA art. 33–56.

<sup>374</sup> Bu, *supra* note 65, at 788.

<sup>375</sup> XIANFA art. 51.

<sup>376</sup> Pils, *supra* note 312.

<sup>377</sup> 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.

<sup>378</sup> Hu, *supra* note 6.

<sup>379</sup> See Xi, *supra* note 5; Hubei Gov’t Notice (Jan. 22) art. 1.

<sup>380</sup> See Renninger, *supra* note 239.

<sup>381</sup> This is style of news was often given through the *Hubeisheng Xinxing Guanzhuang Bingdu Ganran Feiyan 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.

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.”<sup>382</sup> First, shops and factories reopened.<sup>383</sup> 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.<sup>384</sup> Second, public transportation started operating again on several lines by March 25, reviving city life.<sup>385</sup> 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.<sup>386</sup> Third, Wuhan's schools and universities, home to more than 2.5 million students,<sup>387</sup> resumed teaching on different dates beginning in early May.<sup>388</sup>

Phase one's lockdown was eased beginning at the end of March.<sup>389</sup> The central level decided,<sup>390</sup> and the provincial level reiterated, that

<sup>382</sup> See *Shi Lingdao Diaodu Quanshi Fugong 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 GONGZUOBU (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://whtzb.org/home/info/17555.html>.

<sup>383</sup> Hubei Notice (Mar. 11, 2020), CLI.12.1575971, art. 1, § 1 [http://yjt.hubei.gov.cn/yjgl/ztzl/xxgzbd/fk/yqdt/202003/t20200311\\_2179176.shtml](http://yjt.hubei.gov.cn/yjgl/ztzl/xxgzbd/fk/yqdt/202003/t20200311_2179176.shtml).

<sup>384</sup> Hubei Notice (Mar. 11) art. 1, § 1.

<sup>385</sup> Wang Gang (王刚), *Wei Chengzuo Gongjiao Xu Shiming Dengji, Saoma Gongzuo Renyuan Youquan Jujue Qi Shangche* (未乘坐公交须实名登记 扫码工作人员有权拒绝其上车) [*Those Who Have Not Used Public Transportation Yet Must Real-Name Register; Code-Scanning Staff Can Refuse Boarding*], CHANGJIANG RIBAO (Mar. 27, 2020) [YANGTZE DAILY], [http://www.wuhan.gov.cn/sy/whyw/202004/t20200414\\_998925.shtml](http://www.wuhan.gov.cn/sy/whyw/202004/t20200414_998925.shtml).

<sup>386</sup> *Id.*

<sup>387</sup> Wuhan Shi Tongjiju, *supra* note 40.

<sup>388</sup> Hubei Notice (Apr. 20, 2020), CLI.12.1587893, [http://www.legaldaily.com.cn/index/content/2020-04/20/content\\_8173950.htm](http://www.legaldaily.com.cn/index/content/2020-04/20/content_8173950.htm), art. 2.

<sup>389</sup> NHC et al., *Guanyu Zuohao Youguan Renyuan Jinchu Hubeisheng Jiaotong Yunshu Baozhang Gongzuo de Tongzhi* (关于做好有关人员进出湖北省交通运输保障工作的通知) [Notice on Doing the Traffic and Transport Safeguarding Work of Relevant Persons Entering and Leaving Hubei Province Well] (Mar. 24, 2020), CLI.4.340778, art. 4, § 2, art. 6, § 2, [http://www.gov.cn/zhengce/zhengceku/2020-03/25/content\\_5495238.htm](http://www.gov.cn/zhengce/zhengceku/2020-03/25/content_5495238.htm), [hereinafter Traffic Notice (Mar. 24)].

<sup>390</sup> NHC et al., *Guanyu Zuohao Youguan Renyuan Jinchu Hubeisheng Jiaotong Yunshu Baozhang Gongzuo de Tongzhi* (关于做好有关人员进出湖北省交通运输保障工作的通知) [Notice on Doing the Traffic and Transport Safeguarding Work of Relevant Persons Entering and Leaving Hubei Province Well] (Mar. 24, 2020), CLI.4.340778, [http://www.gov.cn/zhengce/zhengceku/2020-03/25/content\\_5495238.htm](http://www.gov.cn/zhengce/zhengceku/2020-03/25/content_5495238.htm), art. 4, § 2, art. 6, § 2 [hereinafter Traffic Notice (Mar. 24)].

entering and exiting Hubei province was allowed again on March 25.<sup>391</sup> Wuhan, however, was excluded until later. Inbound transport by train restarted on March 28,<sup>392</sup> and other transportation means, like private road traffic, reopened on April 8.<sup>393</sup> Outbound transportation too started up again that same day, as did the airport in a limited capacity.<sup>394</sup> 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.<sup>395</sup> 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.<sup>396</sup> 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.<sup>397</sup> 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.<sup>398</sup> Instead, the central level itself announced the dates and conditions for transient travelers and migrant workers entering and exiting Wuhan a month later.<sup>399</sup> The center proclaimed that the "preferential" entry-exit rules for Wuhan applied only to migrant workers.<sup>400</sup> Additionally, the center changed the date for migrant workers entering and exiting the city from February 24 to March 25.<sup>401</sup> 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.<sup>402</sup>

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<sup>391</sup> Hubei Notice (Mar. 24, 2020), CLI.12.1579398, art. 1

[http://yjt.hubei.gov.cn/fbjd/dtyw/tt/202003/t20200324\\_2189538.shtml](http://yjt.hubei.gov.cn/fbjd/dtyw/tt/202003/t20200324_2189538.shtml).

<sup>392</sup> 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/zhuanti/2020/xgfyqfzkzsq/hygq/202003/t20200324\\_2189903.shtml](http://www.hubei.gov.cn/zhuanti/2020/xgfyqfzkzsq/hygq/202003/t20200324_2189903.shtml), [hereinafter Railway Notice].

<sup>393</sup> Traffic Notice (Mar. 24) art. 4, § 2, art. 6, § 2; Hubei Notice (Mar. 24), art. 2, § 1.

<sup>394</sup> Traffic Notice (Mar. 24) art. 4, § 2, art. 6, § 2; Hubei Notice (Mar. 24) art. 2, § 3; Railway Notice art. 3.

<sup>395</sup> See He Huifeng, *Coronavirus: Hubei's Migrant Workers 'Living in Fear' as Debts Mount Under Lockdown*, S. CHINA MORN. POST (Mar. 18, 2020), <https://www.scmp.com/economy/china-economy/article/3075732/coronavirus-hubeis-migrant-workers-living-fear-debts-mount>.

<sup>396</sup> *Id.*

<sup>397</sup> Wuhan Notice 17, art. 3, § 1 (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>.

<sup>398</sup> Wuhan Notice 18 (Feb. 24, 2020), <http://www.cjrbapp.cjn.cn/p/163325.html>.

<sup>399</sup> Traffic Notice (Mar. 24) art. 3–4; reiterated by Hubei Notice (Mar. 24) art. 1–3.

<sup>400</sup> Traffic Notice (Mar. 24) art. 3, § 2; Hubei Notice (Mar. 24) art. 2, § 2.

<sup>401</sup> Traffic Notice (Mar. 24) art. 3, § 3; Hubei Notice (Mar. 24) art. 2, § 2, art. 3.

<sup>402</sup> Traffic Notice (Mar. 24) art. 3, § 2, art. 2, § 2–3; 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,<sup>403</sup> and later by the central-level State Council's Joint Mechanism.<sup>404</sup> 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.<sup>405</sup>

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.<sup>406</sup> 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.<sup>407</sup> 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.<sup>408</sup> Citizens were still called on to not leave their house except in "absolutely necessary" scenarios.<sup>409</sup> If new active COVID-19 cases appear, affected neighborhoods must implement stricter policies, similar to an absolutely closed management.<sup>410</sup>

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

<sup>403</sup> Zuohao Lihan Fanjing Renyuan Hesuan Jiance Gongzuo (做好离汉返京人员核酸检测工作) [Doing the Nucleic Acid Test Work of Persons Leaving Wuhan and Returning to Beijing Well] (April 8, 2020), [http://wjw.beijing.gov.cn/xwzx\\_20031/wnxw/202004/t20200408\\_1797997.html](http://wjw.beijing.gov.cn/xwzx_20031/wnxw/202004/t20200408_1797997.html).

<sup>404</sup> Guanyu Zuhao Lihan Renyuan Xinguan Feiyan Jiance he Jiankang Guanli Fuwu Gongzuo de Tongzhi (关于做好离汉人员新冠肺炎检测和健康管理服务工作的通知) [Notice on Doing the COVID-19 Testing of People Leaving Wuhan and Health Management Service Work Well] (Apr. 17, 2020), CLI.4.341493, [http://www.gov.cn/xinwen/2020-04/18/content\\_5503879.htm](http://www.gov.cn/xinwen/2020-04/18/content_5503879.htm) [hereinafter Joint Mechanism Notice (Apr. 17)].

<sup>405</sup> Joint Mechanism Notice (Apr. 17) art. 3–5.

<sup>406</sup> Guanyu Jianli Yiqing Fangkong Changxiao Jizhi Chixu Zuohao Xiaoqu Fengkong Guanli Gongzuo de Tongzhi (关于建立疫情防控长效机制持续做好小区封控管理工作的通知) [Notice on Establishing a Long-Term Mechanism for Pandemic Prevention and Control [and on] Continuing to Do the Closed Management Work of Neighborhoods Well] art. 3–4 (Apr. 2, 2020), <https://baijiahao.baidu.com/s?id=1662973705793662636&wfr=spider&for=pc>, [hereinafter Wuhan Notice (Apr. 2)].

<sup>407</sup> Traffic Notice (Mar. 24) art. 3, § 2, art. 4, § 2, art. 6, § 2; Hubei Notice (Mar. 24) art. 2, § 3, art. 3, § 1.

<sup>408</sup> Wuhan Notice (Apr. 2) art. 4.

<sup>409</sup> Wuhan Notice (Apr. 2) art. 4.

<sup>410</sup> See Technical Guidelines, *supra* note 127, art. 21, § 11.

to Wuhan under Sun Chunlan to return to Beijing in late April.<sup>411</sup> But, Xi emphasized that maintaining COVID-19 containment is the “first priority.”<sup>412</sup> 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.<sup>413</sup> However, in this optimized system, several restrictive COVID-19 measures remain.<sup>414</sup> The digital surveillance tools that were introduced, like the QR health codes, will likely continue well beyond the coronavirus crisis.<sup>415</sup> Even as the pandemic abates, Xi Jinping has ordered “continuous screening” for COVID-19 cases.<sup>416</sup> 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.”<sup>417</sup> Following suit, Wuhan’s COVID-19 Headquarters has committed itself to regularly conduct “accurate and in-depth inspection tours” of entities within the city.<sup>418</sup> 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.”<sup>419</sup>

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.<sup>420</sup> It remains to be seen, in contrast, whether

<sup>411</sup> 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](http://www.xinhuanet.com/politics/2020-04/27/c_1125911889.htm).

<sup>412</sup> Xi, *supra* note 5; Wang Zuokui (王作葵) & Li Wei (李伟), “Jiefeng” Tongdao Budengyu Jiechu Fangyi (“解封”通道不等于解除防疫) [*Wuhan: “Unblocking” Passageways Does Not Mean to Remove Pandemic Prevention*], XINHUAWANG (Apr. 7, 2020), [http://www.xinhuanet.com/2020-04/07/c\\_1125824454.htm](http://www.xinhuanet.com/2020-04/07/c_1125824454.htm).

<sup>413</sup> Wuhan Notice (Apr. 2) art. 1; Wang & Li, *supra* note 412.

<sup>414</sup> Mozur et al., *supra* note 277; Satra, *supra* note 275; Lily Kuo, ‘The New Normal’: China’s Excessive Coronavirus Public Monitoring Could be Here to Stay, THE GUARDIAN (Mar. 9, 2020), <https://www.theguardian.com/world/2020/mar/09/the-new-normal-chinas-excessive-coronavirus-public-monitoring-could-be-here-to-stay>.

<sup>415</sup> 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.

<sup>416</sup> Xi, *supra* note 5.

<sup>417</sup> *Id.*

<sup>418</sup> Wuhan Notice (Apr. 2) art. 5.

<sup>419</sup> *Id.* art. 7.

<sup>420</sup> See Jess Berentson-Shaw, *Covid-19: Understanding the New Normal*, RADIO N.Z. (Apr. 14, 2020), <https://www.rnz.co.nz/news/on-the-inside/414216/covid-19-understanding-the-new-normal>.

the coronavirus crisis will create a new normal in economics,<sup>421</sup> work,<sup>422</sup> politics, social life,<sup>423</sup> and health care in the post-pandemic future too.<sup>424</sup> In China, claims for a new normal have been an official mantra of Xi Jinping since 2014, long before the COVID-19 pandemic.<sup>425</sup> This slogan, originally related to China's slower and more sustainable economic development,<sup>426</sup> has expanded to various areas of Chinese governance, including the political–legal system.<sup>427</sup> 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.<sup>428</sup> 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.<sup>429</sup> Moreover, Wuhan is establishing a “normalized long-term prevention and control mechanism,” converting all urban governance into crisis containment for the indefinite future.<sup>430</sup>

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

<sup>421</sup> See Hans Thalbauer, *COVID-19: What is the New Normal?*, FORBES (Apr. 6, 2020) <https://www.forbes.com/sites/sap/2020/04/06/covid-19-what-is-the-new-normal/#1be7cca67fb4>.

<sup>422</sup> See #DEMOCRATIZINGWORK, <https://democratizingwork.org>.

<sup>423</sup> See Ethikrat, *supra* note 322, at 2.

<sup>424</sup> See Thomas H. Lee, *Creating the New Normal: The Clinician Response to Covid-19*, NEJM CATALYST (Mar. 17, 2020), <https://catalyst.nejm.org/doi/full/10.1056/CAT.20.0076>.

<sup>425</sup> Gu Qianjiang (顾钱江) et al., *Xi Jinping Shouci Xitong Chanshu “Xinchangtai”* (习近平首次系统阐述“新常态”) [*Xi Jinping for the First Time Systematically Elaborates on the “New Normal”*], XINHUAWANG (Nov. 9, 2014), [http://www.xinhuanet.com/world/2014-11/09/c\\_1113175964.htm](http://www.xinhuanet.com/world/2014-11/09/c_1113175964.htm).

<sup>426</sup> See Jing Zhang & Jian Chen, *Introduction to China's New Normal Economy*, 15 J. CHIN. ECON. & BUS. STUD. 1 (2017), <https://www.tandfonline.com/doi/full/10.1080/14765284.2017.1289454>.

<sup>427</sup> See Xiaodan Zhang, *Die Änderung des Gesetzgebungsgesetzes der VRCh und die “neue Normalität” der Gesetzgebung in China* [*The Revision of the P.R.C. Legislation Law and the “New Normality” of Chinese Legislation*], 48 VERFASSUNG UND RECHT IN ÜBERSEE [VRÜ] 443, 452 (2015).

<sup>428</sup> See CHINA'S POLITICAL SYSTEM, *supra* note 36, at 159.

<sup>429</sup> CCP Resumption Opinion art. 2, § 1; Wuhan Notice (Apr. 2) art. 1; Hu, cited by Wang & Li, *supra* note 409.

<sup>430</sup> Wuhan Notice (Apr. 2) preamble.

<sup>431</sup> 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).

<sup>432</sup> See Lucas Brang, *Carl Schmitt and the Evolution of Chinese Constitutional Theory*, 9 GLOB. CON. 117 (2020).

<sup>433</sup> See GÜNTER FRANKENBERG, *POLITICAL TECHNOLOGY AND THE EROSION OF THE RULE OF LAW* (2015); Matthias Lemke, *What Does State of Exception Mean? A Definitional and Analytical Approach*, 28 ZEITSCHRIFT FÜR POLITIKWISSENSCHAFT [ZPOL] 373, 374 (2018).



development has been fomented by the coronavirus crisis because many liberal democracies proclaim national emergencies and resort to emergency powers.<sup>434</sup> It could therefore seem surprising that the P.R.C. has only proclaimed provincial-level public health emergencies,<sup>435</sup> but no nation-wide state of emergency that would have allowed authorities to employ exceptional measures.<sup>436</sup> 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.<sup>437</sup>

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.<sup>438</sup> 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.<sup>439</sup> Until late September, even those foreigners holding a residence permit were locked out.<sup>440</sup> Under international WHO law, this travel ban and the return ban could only be enacted as “additional health measures.”<sup>441</sup> Whether such measures are permissible is highly

<sup>434</sup> 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-deccezione-provocato-da-unemergenza-immotivata/>.

<sup>435</sup> *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](https://med.sina.cn/article_detail_103_1_77160.html).

<sup>436</sup> See Emergencies Law art. 3, § 2; art. 1, § 3; Nat’l Emergency Plan art. 1, § 3:3; Pils, *supra* note 312.

<sup>437</sup> Pils, *supra* note 312.

<sup>438</sup> See WHO, *supra* note 218, at 1; *Second COVID-19 Wave in China ‘Inevitable’: Top Experts*, *supra* note 9; MERICS, *supra* note 192 (critically).

<sup>439</sup> Guanyu Zanshi Tingzhi Chi Youxiao Zhongguo Qianzheng, Juliu Xuke de Waiguoren Rujing de Gonggao (关于暂时停止持有有效中国签证、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](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](https://www.fmprc.gov.cn/web/wjbxw_673019/t1817369.shtml) [hereinafter MFA Announcement (Sept. 23)].

<sup>440</sup> MFA Announcement (Mar. 26); see MFA Announcement (Sept. 23).

<sup>441</sup> IHR art. 43, § 1:1.

questionable because the WHO explicitly discouraged states from adopting travel and return bans during the COVID-19 pandemic.<sup>442</sup>

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.<sup>443</sup> But from March 28 onward, these individuals had to apply for new visas—although they already held valid Chinese resident permits.<sup>444</sup> Return was also conditioned on the foreigners’ ranking according to their relevance for China’s economy.<sup>445</sup> Moreover, these individuals could only enter the country through charter flights arranged by their national government and approved by Chinese authorities.<sup>446</sup> 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.<sup>447</sup> These entry rules vary to a certain degree between local entities within China because additional regulations from provinces and cities like Shanghai can exist.<sup>448</sup>

Second, many provinces and cities imposed additional restrictions on Chinese nationals returning from abroad.<sup>449</sup> Wuhan forced a blanket fourteen-day quarantine on Chinese citizens entering the city from abroad.<sup>450</sup> International WHO law, in contrast, only provides for quarantines of returning individuals who are suspected of constituting an “imminent public health risk.”<sup>451</sup> Blanket return quarantines for Chinese nationals could thus, again, only be enacted as “additional health measures.”<sup>452</sup> 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

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<sup>442</sup> See Bogdandy & Villarreal, *supra* note 187, at 8, 10.

<sup>443</sup> Zoey Zhang, *China’s Travel Restrictions Due to COVID-19: An Explainer*, CHINA BRIEFING (June 4, 2020), <https://www.china-briefing.com/news/chinas-travel-restrictions-due-to-covid-19-an-explainer/>; European Union Chamber of Commerce in China (European Chamber), *Clarification of Entry Measures for Foreign Employees into Shanghai During the Travel Ban (Normal and Fast Track Channels)* (May 23, 2020), <https://www.europeanchamber.com.cn/en/national-news/3224>.

<sup>444</sup> MFA Announcement (Mar. 26); *see* MFA Announcement (Sept. 23).

<sup>445</sup> Zhang, *supra* note 443; European Chamber, *supra* note 443.

<sup>446</sup> Zhang, *supra* note 443; European Chamber, *supra* note 443.

<sup>447</sup> MFA Announcement (Sept. 23).

<sup>448</sup> Zhang, *supra* note 443; European Chamber, *supra* note 443.

<sup>449</sup> *Yiqing Qijian Haiwai Tongbao Huiguo: Qing Guanzhu Zhexie Fancheng Yaodian* (疫情期间海外同胞回国 请关注这些返程要点) [*Compatriots Returning to China During the Pandemic: Please Pay Attention to These Main Points Concerning [Your] Return Journey*], RENMIN JIANKANGWANG (Apr. 1, 2020), <http://health.people.com.cn/n1/2020/0401/c14739-31656577.html>.

<sup>450</sup> Wuhan Notice 20 (Mar. 17, 2020), <https://baijiahao.baidu.com/s?id=1661431615264193232&wfr=spider&for=pc>.

<sup>451</sup> IHR art. 31, § 2:2(c).

<sup>452</sup> IHR art. 43, § 1:1.

with their relatives, irrespective of whether they traveled together.<sup>453</sup> Wuhan also forced citizens to quarantine in hotels or quarantine centers rather than at home and required citizens to bear the costs of this involuntary accommodation,<sup>454</sup> against WHO law.<sup>455</sup> Returning nationals had to bear the costs of COVID-19 medical treatment too if they lacked Chinese national insurance.<sup>456</sup> Wuhan's strict return quarantine had been nationwide endorsed by the central-level CCDC.<sup>457</sup> Beginning in late July, the State Council's Joint Mechanism took over regulating quarantine measures for incoming passengers nationally.<sup>458</sup> In exceptional cases, individuals may quarantine at home, and for seven days only.<sup>459</sup> Nevertheless, they must provide several negative COVID-19 nucleic acid tests.<sup>460</sup> The state center has also provided a psychological plan for "reducing negative emotions" of individuals in return quarantines.<sup>461</sup>

Altogether, China's central and local authorities' measures have created a new and expansive *cordon sanitaire*: around all of mainland China.

#### CONCLUSION

How should other countries react to China's and Wuhan's three public health cordons? By drawing a fourth, ideological *cordon sanitaire* around the P.R.C.?<sup>462</sup> The answer is no. Further isolation can frustrate any serious analysis of Chinese crisis management and law in general. Rather, what the world needs is both transparency and earnest engagement with

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<sup>453</sup> Wuhan Notice 20 (Mar. 17).

<sup>454</sup> Wuhan Notice 20 (Mar. 17).

<sup>455</sup> IHR art. 40, § 1:(c).

<sup>456</sup> Wuhan Notice 20 (Mar. 17).

<sup>457</sup> Xu, *supra* note 164.

<sup>458</sup> Guanyu Jinyibu Zuhao Rujing Renyuan Jizhong Geli Yixue GuanCha he Hesuan Jiance Youguan Gongzuo de Tongzhi (关于进一步做好入境人员集中隔离医学观察和核酸检测有关工作的通知) [Notice on Further Doing the Medical Observation of Centrally Quarantining and Nucleic Acid Testing Work of Persons Entering the Country Well] (July 23, 2020), CLI.4.344415 [http://www.gov.cn/fuwu/2020-07/23/content\\_5529594.htm](http://www.gov.cn/fuwu/2020-07/23/content_5529594.htm) [hereinafter Joint Mechanism Notice (July 23)].

<sup>459</sup> Joint Mechanism Notice (July 23) art. 2.

<sup>460</sup> Joint Mechanism Notice (July 23) art. 1–2.

<sup>461</sup> NHC et al., Rujing Renyuan Xinli Shudao he Shehui Gongzuo Fuwu Fang'an (入境人员心理疏导和社会工作服务方案) [Plan for the Psychological Counseling and Social Work Service for People Entering China], CLI.4.341595, art. 1, § 1 [http://www.gov.cn/zhengce/zhengceku/2020-04/22/content\\_5505036.htm](http://www.gov.cn/zhengce/zhengceku/2020-04/22/content_5505036.htm).

<sup>462</sup> See *Exclusive: Internal Chinese Report Warns Beijing Faces Tiananmen-like Global Backlash over Virus*, REUTERS (May 4, 2020), <https://www.reuters.com/article/us-health-coronavirus-china-sentiment-ex/exclusive-internal-chinese-report-warns-beijing-faces-tiananmen-like-global-backlash-over-virus-idUSKBN22G19C>.

both China's and Wuhan's COVID-19 prevention and control.<sup>463</sup> Without unbiased legal research *ad fontes*, one can neither scrutinize China's "total war" on the coronavirus,<sup>464</sup> nor draw positive and negative lessons from it.<sup>465</sup>

This article questions the common assumption that during crises, the P.R.C. simply centralizes decision-making.<sup>466</sup> 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.<sup>467</sup> This style of decentralization—treating "the whole country as a chess game" arranged and commanded by the center—<sup>468</sup> 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"<sup>469</sup> to the "regulatory patchwork" in federal states,<sup>470</sup> let alone in supranational systems like the European Union.<sup>471</sup> Consequently, several countries have emulated China's strict pandemic measures "in a domino-like fashion."<sup>472</sup> Even more, the WHO has praised China and Wuhan as "setting a new standard for outbreak response."<sup>473</sup> 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.<sup>474</sup> 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

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<sup>463</sup> Damien Cave & Isabella Kwai, *China Is Defensive. The U.S. Is Absent. Can the Rest of the World Fill the Void?*, N.Y. TIMES (May 11, 2020, last updated Nov. 7, 2020), <https://www.nytimes.com/2020/05/11/world/australia/coronavirus-china-inquiry.html>.

<sup>464</sup> Hu, *supra* note 6.

<sup>465</sup> See Renninger, *supra* note 54.

<sup>466</sup> Richter, *supra* note 163; CHINA'S POLITICAL SYSTEM, *supra* note 36, at 147, 150.

<sup>467</sup> Xi, *supra* note 46.

<sup>468</sup> Xi, *supra* note 46; *Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match*, *supra* note 47.

<sup>469</sup> Dong Yuzhen, *CPC Most Important Source of Confidence for Chinese People*, PEOPLE'S DAILY ONLINE (Mar. 4, 2020), <http://en.people.cn/n3/2020/0304/c98649-9664589.html>; *Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match*, *supra* note 47.

<sup>470</sup> Francesco Palermo, *Is There a Space for Federalism in Times of Emergency?*, VERFASSUNGSBLOG (May 13, 2020), <https://verfassungsblog.de/is-there-a-space-for-federalism-in-times-of-emergency/>.

<sup>471</sup> See European Commission, Joint European Roadmap towards lifting COVID-19 containment measures (Apr. 17, 2020), 2020 O.J. (C 126) 1, <https://op.europa.eu/en/publication-detail/-/publication/14188cd6-809f-11ea-bf12-01aa75ed71a1/language-e>.

<sup>472</sup> Bogdandy & Villareal, *supra* note 187, at 19.

<sup>473</sup> Ghebreyesus, *supra* note 2.

<sup>474</sup> See Pils, *supra* note 312.

regulations.<sup>475</sup> 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.<sup>476</sup> 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 cities' future.<sup>477</sup> Rather, they are subjected to the commands of the party and state at the provincial and central levels in a "democratic centralist" manner.<sup>478</sup>

Third, federal systems are not necessarily inferior to unitary systems like China's when fighting pandemics, and emergency situations in general.<sup>479</sup> As the examples of the United States,<sup>480</sup> Germany,<sup>481</sup> and Australia, demonstrate, a federations' success in responding to COVID-19 varies heavily.<sup>482</sup> Australia has even managed to reach zero new COVID-19—<sup>483</sup> not despite of, but partially because of its "cooperative federalism" system.<sup>484</sup>

Lastly, the WHO's appraisal of China's COVID-19 containment as "setting a new standard"<sup>485</sup> 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"

<sup>475</sup> Hu, *supra* note 6.

<sup>476</sup> ZHANG, *supra* note 19, at 17.

<sup>477</sup> 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.

<sup>478</sup> XIANFA art. 3, § 1; CCP Statute gen. progr., § 24:4, art. 10; *see* ZHANG, *supra* note 19, 122, 153.

<sup>479</sup> Palermo, *supra* note 470; Julian R. Murphy, *Divided We Fall? – Division and Coordination in Federal Systems During a Time of Crisis*, BRIT. ASS. COMP. L. BLOG (May 25, 2020), <https://british-association-comparative-law.org/2020/05/25/divided-we-fall-division-and-coordination-in-federal-systems-during-a-time-of-crisis/>.

<sup>480</sup> Ellen Barry, *'It's Totally Ad Hoc': Why America's Virus Response Looks Like a Patchwork*, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/us/united-states-coronavirus-response.html>.

<sup>481</sup> Lars P. Feld & Thomas König, *Der Föderalismus wirkt [Federalism Works]*, ZEIT (May 11, 2020), <https://www.zeit.de/politik/deutschland/2020-05/corona-krise-deutschland-foederalismus-lokale-schutzmassnahmen-lockerungen>.

<sup>482</sup> Murphy, *supra* note 479; Tamara Tulich et al., *Cooperative Federalism, Soft Governance and Hard Laws in Australia's State of Emergency*, VERFASSUNGSBLOG (Apr. 10, 2020), <https://verfassungsblog.de/fighting-covid-19-legal-powers-and-risks-australia/>.

<sup>483</sup> *See* Go8, *supra* note 317, at 10–12, 26–55.

<sup>484</sup> *See* Murphy, *supra* note 479; Tulich et al., *supra* note 482.

<sup>485</sup> Ghebreyesus, *supra* note 2.

with “outstanding capabilities that cannot be achieved by other countries.”<sup>486</sup> 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,<sup>487</sup> governance and legislation,<sup>488</sup> cities and their central–local relations,<sup>489</sup> (de)centralization and federalism.<sup>490</sup> Unfortunately, this “sino-speak” often turns out to be Sinocentric and Chinese exceptionalism that frustrates the aim of unbiased analysis.<sup>491</sup>

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*.<sup>492</sup> 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.<sup>493</sup> 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.

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<sup>486</sup> Xi, *supra* note 46.

<sup>487</sup> See ZHONGGUO YINGJI GUANLI, *supra* note 84, at 12; Gao, *supra* note 88.

<sup>488</sup> 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 SHEHUIZHUYI (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).

<sup>489</sup> See HASSENPLUG, *supra* note 39, at 141, 155; Li, *supra* note 52, at 179; CHUNG, *supra* note 13, at 148.

<sup>490</sup> See FENG, *supra* note 52, at 11; Wei Cui, *The Legal Maladies of “Federalism, Chinese Style,”* in THE BEIJING CONSENSUS? 97, 111 (Weitseng Chen ed., 2017).

<sup>491</sup> Cf. William A. Callahan, *Sino-Speak: Chinese Exceptionalism and the Politics of History*, 71 J. ASIAN STUD. 33 (2012).

<sup>492</sup> Galea, *supra* note 12.

<sup>493</sup> See generally, Pierre Legrand, *The Impossibility of ‘Legal Transplants’*, 4 MAASTRICHT J. EUR. & COMP. L. 111, 116–23 (1997) (criticizing the concept of “legal transplants”).