China's Response to COVID-19

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ESSAYS

CHINA’S RESPONSE TO COVID-19

JACQUES DE LISLE* & SHEN KUI**

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I. A NOVEL VIRUS CHALLENGES A REFORMED REGULATORY SYSTEM

Near the end of 2019, a novel coronavirus began to sicken residents of Wuhan,¹ a city of more than eleven million and the capital of China’s

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Hubei province. The disease caused by the virus, which would soon be known as COVID-19, spread within China and abroad, prompting the World Health Organization (WHO) to declare an international public health emergency on January 30, and a global pandemic on March 11, 2020. We do not yet have an authoritative account of actions and omissions at various levels and in multiple units of the Chinese system. Nonetheless, it is apparent that the handling of the outbreak reflects characteristic weaknesses and strengths of the Chinese administrative state. These features are shared, to some extent and to varying degrees, by other states, but China’s versions are distinctive, and they appear to have affected the handling of COVID-19.

COVID-19 tested a system that China had reformed to improve upon the handling of Severe Acute Respiratory Syndrome (SARS) in 2003, and that sought to: avoid concealment of early indications of an outbreak by government officials and others; ensure prompt reporting of potentially serious developments to higher levels of government, including within the public health bureaucracy; provide timely and accurate warnings to the public; facilitate mobilization of state and societal resources to address a public health emergency; and prevent fragmented, even balkanizing, responses by local officials that impeded coherent and coordinated responses.

2. WHO Director-General, Statement on IHR Emergency Committee on Novel Coronavirus (Jan. 30, 2020).
3. WHO Director-General, Opening Remarks at the Media Briefing on COVID-19 (Mar. 11, 2020).
5. The analysis in this Article focuses primarily on laws and government institutions. It does not explicitly address the role of the Chinese Communist Party (CCP). The party’s rule is reflected throughout the discussion, in that the party has a major role in shaping laws and directing the actions of state institutions. Party leaders and organizations also played significant, more direct roles in the reaction and response to COVID-19. Due to space limitations and the focus here on China’s administrative state and governance, we do not address these aspects of the party’s role.
The framework in place before COVID-19 included numerous legal and regulatory measures. Core elements included the Law on the Prevention and Treatment of Infectious Diseases [*Chuanranbing Fangzhi Fa*] (“Infectious Disease Law,” adopted in 1989, revised in 2004 and again in 2013), the Emergency Response Law [*Tufa Shijian Yingdui Fa*] (adopted in 2007, and greatly influenced by the SARS experience a few years earlier), and an infectious disease outbreak Direct Reporting System [*Zhibao Xitong*] to the China Center for Disease Control (created in 2004). Although these and other law-centered mechanisms are, of course, only part of what structured the response to COVID-19, they are important in understanding what happened and why. The laws and rules relevant to public health emergencies, and interaction among them, reflect and instantiate features of Chinese governance that significantly influenced successes and failures in responding to COVID-19.

I. SYSTEMIC WEAKNESSES AND A DELAYED RESPONSE

The Chinese state’s reaction to COVID-19 was much quicker than to SARS, but the initial response to the novel coronavirus still proved dangerously slow. Reasons for serious concern preceded the late January 2020 decision to lock down Wuhan by weeks. The first cases of patients

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with atypical pneumonia occurred by the beginning of December 2019, with the first reports reaching Wuhan disease control and prevention authorities before the end of the month. By the end of 2019, Dr. Li Wenliang’s WeChat messages—including ones relaying information from Ai Fen, the head of the emergency department of a major Wuhan hospital—reported cases of a possibly contagious, SARS-like illness, and were sufficiently widely shared that they had drawn the attention of local public security authorities, who moved to stop their circulation. On December 31, 2019, the National Health Commission (NHC) and the Chinese Center for Disease Control and Prevention (CDC) dispatched a team of experts to Wuhan, with two additional teams following in January. Also on December 31, China informed the WHO’s country office about a cluster of pneumonia cases of unknown origin, and the Wuhan branch of the NHC began issuing public warnings about an unexplained pneumonia outbreak. On New Year’s Day, authorities closed Wuhan’s Huanan Seafood Wholesale Market, a suspected source of COVID-19’s crossover into the human population.

coronavirus.html (Feb. 7, 2020) (reporting that local physicians raised warnings weeks before official action but were silenced by authorities); see also Chaolin Huang et al., Clinical Features of Patients Infected with 2019 Novel Coronavirus in Wuhan, China, 395 LANCET 497, 498 (2020) (reporting suspected cases linked to the market were already identified by December 31, 2019).


14. Qin Li et al., Early Transmission Dynamics in Wuhan, China, of Novel Coronavirus-Infected Pneumonia, 382 NEW ENG. J. MED. 1199, 1200–01 (2020).


Before the middle of January (and perhaps as early as late December), there appears to have been ample evidence of transmission between people and a potential pandemic. Serious concern about the outbreak, now identified as caused by a novel coronavirus, had taken hold among national-level authorities by the middle of the month. On January 14, NHC chief Ma Xiaowei held a confidential teleconference—followed by detailed internal instructions—and reportedly directed provincial officials to prepare to respond to an epidemic. The CCDC created working groups to dispatch resources and gather information to affected areas.

It was not until January 20 that Zhong Nanshan—an 84-year-old expert in respiratory diseases, renowned for his role in the SARS crisis, and leader of the third group sent to Wuhan—stated publicly that the illness could be spread among people. President Xi Jinping made a public announcement the same day, declaring that Chinese Communist Party committees and governments at all levels should take effective measures to address the virus. Central authorities declared the new virus would be correlated with human contact and travel in a manner that strongly suggests human-to-human transmission chains.


24. Zhou Chuqing (周楚卿), Xi Jinping dui Xinxing Guanzhuang Bingdu Bianli Guanzhu Gaoju de Fenxi (习近平对新型冠状病毒肺炎疫情作出重要指示 强调要把人民群众生命安全和身体健康放在第一位 坚决遏制)
subject to the mandatory reporting regime for “Class B” diseases and directed the application of the strict disease control and prevention measures for a “Class A” pathogen under the Infectious Disease Law.25 During the six days preceding these announcements, Wuhan had seen thousands of new cases, and the busy Lunar New Year travel season was beginning.26 On January 23, the authorities issued a directive to lockdown Wuhan, and extraordinary severe restrictions followed.27 Travel to and from the city was prohibited. Businesses were closed. Residents were largely confined to their apartments, with daily necessities brought in by small cohorts. Similar measures were soon in place in other emerging hotspots, and within days provincial authorities across China had declared Level 1 (the highest level) emergencies.28


26. See China Didn’t Warn Public of Likely Pandemic for 6 Key Days, supra note 22 (reporting that 3,000 cases were reported and millions began travelling for holiday celebrations before the public was informed).


Attributes of Chinese governance contributed to problems in handling COVID-19. One set of issues was what analysts call tiao-tiao / kuai-kuai and the resulting pattern of “dual rule.” 29 Officials at a subnational level responsible for a field of regulation answer to two masters: “vertically” to superiors in a functionally defined, hierarchical bureaucratic structure that reaches up to a ministry (or similar central entity) in Beijing (for which the metaphor is tiao—a long, narrow piece); and “horizontally” to the general-purpose government at the official’s own level—provincial, municipal, or still-lower (for which the analogy is kuai—a “lump” or “block”).

Sensible rationales support both approaches to governance generally and in the specific context of addressing outbreaks of contagious diseases. Key promises of tiao measures include giving experts—in public health, medicine, and relevant fields of science—early access to information and greater authority to shape responses when a serious contagious disease outbreak threatens. Such rules rely on national public health and medical experts to make informed and authoritative judgments, policy decisions, and announcements promptly. Especially when the danger is, or threatens to become, national or international in scope, rules requiring rapid reporting through specialized channels to top levels can expedite and inform the requisite making of central-level policy determinations—including the nation’s top leadership in serious cases—and adoption of geographically widespread measures, as well as engagement with foreign counterparts and relevant international bodies (such as the WHO).

Rules that rely more on kuai recognize that effective responses—and, often, effective detection—in cases of potential epidemics must rely on local officials to monitor developments in their regions, guide the work of local branches of the public health and infectious disease agencies, coordinate...
across frontline government units, exercise authority over lower-level officials and medical service providers under their jurisdiction, and mobilize state and social resources. Such rules also assign early-stage responsibility to officials who, in practice and often in principle, will be held principally accountable for bad outcomes.

Either tiao or kuai structures can help avoid some of the problems associated with China’s multilayered bureaucracy. Clear imposition of responsibility at a particular level of government can limit opportunities for “passing the buck upward.” And strong requirements for rapid reporting to the central authorities within a specialized bureaucracy can bypass the delays of comprehensive, multi-level approvals.

Key elements of the Emergency Response Law focus on “kuai.” The law assigns leading and leadership roles and primary responsibility for planning and preparing for, detecting, declaring (at four levels of severity), informing about, and responding to public health incidents (and other emergencies) to the most local-level government (starting at the county level) with jurisdiction over an affected area. Roles and powers include coordinating across local branches of specialized government departments (including those focused on public health and diseases control and prevention), ordering restrictions on social and economic activities, taking other preventative measures, and mobilizing public and private resources. This system is tiered, with obligations to report expeditiously to higher-level governments (ordinarily, the next-higher-level government) when an emergency occurs.30

The Infectious Disease Law includes kindred provisions on epidemics of serious contagious diseases. It assigns to the people’s governments at various levels responsibility for directing the work for prevention of infectious diseases, issuing timely early warnings of outbreaks and potential epidemics, receiving reports from hospitals and other relevant units under the “principle of local management” [shudi guanli] and from the same-level “Health Commission,” such as the Wuhan Health Commission (WHC) or the Hubei Health Commission (HHC), as well as the same-level branches of the CCDC. The law also gives people’s governments at various levels authority to address infectious disease outbreaks in their jurisdictions by imposing isolation or quarantine measures, ordering shutdowns of economic and social activities and other emergency measures, suspending transportation, and declaring an

30. Emergency Response Law, art. 7–9, 12, 17, 20, 25–26, 29, 31–32, 37–39, 42–45, 48–49, 52–53; see also Tufa Gonggong Weisheng Shijian Yingji Tiaoli (突发公共卫生事件应急条例) [Regulation on Responses to Public Health Emergencies] [promulgated by the St. Council, May 9, 2003, effective May 9, 2003; rev’d by the St. Council, Jan. 8, 2011], art. 4 (providing that people’s government at relevant level establishes ad hoc headquarters /command bodies and is the principal director of response to emergency).
“epidemic area”—thereby authorizing an area-wide imposition of the above-described restrictions (with, for some of these measures, required reports to, or approvals from, the next higher-level government). The law also gives governments at various levels the power to mobilize people and resources to address an epidemic, and to oversee the specialized disease control and prevention institutions at the same level.\(^3^1\)

Other elements in the regulatory structure emphasize “tiao.” The Emergency Response Law includes such elements as: tasking departments under the State Council, including the NHC, with developing emergency response plans and structures and establishing criteria for each of four levels of public health emergencies; directing that when a specific law or regulation provides that a national-level department under the State Council (such as the NHC) is responsible for responding to an emergency, the specific law or regulation governs; and authorizing relevant departments under the State Council (or the State Council itself) to take necessary measures when an emergency seriously affects the national economy.\(^3^2\) Under related regulations on public health emergencies, the NHC system has the roles of dispatching experts to assess possible public health emergencies, determining the category of an emergency within three categories (Classes A, B, and C) of infectious diseases, and informing lower-level public health authorities of the existence of a public health emergency.\(^3^3\)

The Infectious Disease Law, and related regulations and rules, similarly provide that the NHC, along with local-level health commissions, is in charge of the work of prevention, treatment, supervision, and control of infectious diseases.\(^3^4\) The NHC has mandates to monitor and investigate potential infectious disease epidemics and public health emergencies; to establish the means and terms for hospitals and other units to report potential epidemics and emergencies; to receive such reports from local CCDCs; to issue timely warnings about epidemics and emergencies to peer institutions and lower level health commissions and disease control and prevention organs; and to receive reports on epidemics from lower-level health commissions.\(^3^5\) The law also gives the NHC and subordinate provincial and local health commissions the power and obligation to issue early warnings and prompt notifications.

\(^{31}\) Infectious Disease Law, art. 5, 19–20, 30, 33, 41–45.  
\(^{32}\) Emergency Response Law, art. 7, 17–18, 42, 51.  
\(^{33}\) Tufa Gonggong Weisheng Shijian Yingji Tiaoli (突发公共卫生事件应急条例) [Emergency Regulations for Public Health Emergencies] (promulgated by Order No. 376 of the State Council of the People’s Republic of China, May 9, 2003, effective immediately), art. 23–30.  
\(^{34}\) Infectious Disease Law, art. 3–4, 6.  
\(^{35}\) Infectious Disease Law, art. 17–19.
concerning epidemics (with the exercise of some of these powers requiring NHC approval).  

These same laws give the CCDC and its provincial and lower-level branches related powers and functions in addressing potential outbreaks of infectious diseases, epidemics, and public health emergencies: monitoring, receiving reports (including from frontline medical units concerning cases of infectious diseases of uncertain origin), undertaking analyses, forecasting trends, providing information platforms, reporting to higher levels, and proposing responsive measures. As the foregoing suggests, the structure contemplated by these provisions is hierarchical and top-down, with the NHC directing and overseeing provincial and more local health commissions and the CCDC system—with its local organs—following a similar pattern.

The Direct Reporting System sought to strengthen the “tiao” side. As described by the NHC Director to the National People’s Congress Standing Committee in 2013, the Direct Reporting System had “realized real-time direct online reporting of infectious diseases prescribed by law” in well over 90% of medical institutions at all levels, with average reporting time to each higher level falling from five days to four hours—an achievement that approached performance standards set forth in relevant regulations.

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38. See Infectious Disease Law, art. 6, 34–35, 53–58; Emergency Regulations for Public Health Emergencies, art. 4.
Yet, characteristic problems of tiao, kuai, and their uneasy coexistence, impeded the initial response to COVID-19.

A. Kuai and Cover-Ups

Actions by Wuhan officials that slowed the response to COVID-19 reflected features endemic to the “kuai” side of governance. Local officials face a “double or nothing bet” when encountering a problem of uncertain seriousness (including a novel, possibly communicable illness). The official can report the emerging issue to superiors, as is sometimes mandated (such as under the Direct Reporting System or the Infectious Disease Law). Doing so may have little upside for the official. It often will not be clear whether the counterfactual was a deadly pandemic or merely a fleeting problem, the avoidance of which higher authorities would not regard as a significant accomplishment and the reporting of which higher authorities might see as an attempt to shirk responsibility by passing an issue up the chain.

The outcome for an official who reports can be much worse. If the feared bad case scenario that seemed to compel reporting does not materialize (or if measures responding to a genuine threat are so successful that the magnitude of the prospective danger never becomes evident), the official’s superiors may conclude that the official has “cried wolf.” A local official’s disclosure to the local public (or reporting to superiors, which can trigger public disclosure) can cause panic in society or lead to state-imposed containment measures that harm economic or other important activity. The official may suffer career-damaging criticism for overreacting.

On the other side of the bet, an official can try to keep quiet information about a problem that is not (yet) serious, hoping to resolve the matter without higher-level authorities or the public learning about it. But, if the issue proves unmanageable and becomes known to higher-ups, the official may face grave consequences (ones weightier than if he had taken the other side of the bet). An unreported problem may become more serious than it would have been if there had been prompt reporting or the official’s superiors may perceive that to have been the case. The risk of adverse consequences for the local official is correspondingly larger. In some cases, the official will have violated policy and legal requirements to report promptly to higher-level


40. Both the Infectious Disease Law and Direct Reporting System outline specific instances that trigger mandatory reporting requirements. See Infectious Disease Law, art. 30–38; Measures for Information Reporting, art. 7, 16, 19–20.

41. See infra notes 57–58 and accompanying text (discussing the punishment of Wuhan officials who were slow to raise concerns about the virus).
authority. This creates an additional basis for career-damaging sanctions or worse.

Much in the initial reaction to the novel coronavirus is consistent with the logic of this “fess up or cover up” choice for local officials. Public security authorities in Wuhan squelched early reporting when they ordered Li Wenliang and other doctors to stop “spreading rumors” about the mystery illness. Ai’s superiors at her hospital warned her to stop communicating about the new virus. Reports from frontline hospital personnel, such as Li and Ai, could reach higher state authorities through proper channels only with the approval of higher-ups at their hospitals who did not trigger the Direct Reporting System when the first cluster of unexplained pneumonia cases arrived. Wuhan hospital chiefs answered to the WHC. According to one report, doctors at Wuhan hospitals were told that the WHC had issued a directive not to disclose information about the virus and the disease. In early to mid-January, local and provincial health authorities reportedly narrowed the diagnostic standards for reporting cases and required official—ultimately HHC—consent for reporting. When results indicated a novel, SARS-like coronavirus, the WHC issued two emergency notices to local medical institutions concerning prevention and treatment of the new disease, but did not disclose the notices publicly. According to some accounts, the

42. See, e.g., Infectious Disease Law, art. 30 (triggering reporting requirements when certain infectious diseases are discovered).  
44. Kuo, supra note 15; Gong Jingqi, Fa Shaozi de Ren (发哨子的人) [The Person Who Handed Out the Whistle], Renwu (人物) [PEOPLE] (Mar. 10, 2020), https://tinyurl.com/sggfhq8.  
46. Id.  
48. See Wei, supra note 47 (examining why the public reporting systems were not used during the early emergence of the virus). The two documents issues by the WHC were the “Emergency Notice on Reporting the Treatment of Pneumonia of Unexplained Cause” and the “Emergency
CCDC learned of the outbreak at the end of December only from online leaked versions of the WHC’s emergency notices.49

When the NHC expert teams reached Wuhan, local actors limited their access to vital information. WHC officials and hospital administrators steered their visits. They appear to have ordered medical staff to withhold information indicating human-to-human transmission, and blocked access to reports on the discovery of the disease and results of local investigations.50 One member of the second team later complained, “[t]hey did not tell us the truth . . . [T]hey were lying . . . They [didn’t] cooperate [with us] at all.”51 He credited the third group’s success in determining that the disease was contagious to its leader’s (Zhong’s) expertise and to information from other localities that had become available.52 Even after the NHC and HHC issued a treatment plan for the novel illness, the WHC nominally complied but reportedly set—and communicated to hospitals—strict diagnostic criteria that led to continued serious underestimation of cases.53


50. Yang, supra note 49; see also Simiao Chen et al., COVID-19 Control in China During Mass Population Movements at New Year, 395 LANCET 764, 764 (2020).


52. See id. (explaining that additional information about transmission outside of Wuhan helped establish person-to-person transmission).

53. Yu Qin & Li Shiyun (俞琴 & 李诗韵), Zhanfang Weijianweipai Wuhan Di Er Pi Zhuanjia: Weihe Mei Faxian Ren Chuanren? (专访卫健委派武汉第二批专家:为何没发现人传人?) [Interview of Experts Sent by NHC to Wuhan: Why Wasn’t Inter-Personal Transmission Discovered?],
The familiar “double or nothing bet” or “fess up or cover up” dilemma was especially sharp for Wuhan officials due to circumstances beyond their control. They made decisions that impeded the flow of information to central authorities and the public in the context of two important events. The annual sessions of the Wuhan Municipal and subsequent Hubei Provincial people’s congresses and people’s political consultative conferences (the legislature-like organs and the united front organs that convene in preparation for the March plenary meetings of the correlative national bodies in Beijing) were scheduled to convene in Wuhan on January 6–10 and January 12–17. The lunar New Year holiday would begin January 24 and would bring travel by millions of people returning home to Wuhan from wherever they lived and worked in China, or leaving Wuhan to visit family elsewhere, or going abroad.54 For Wuhan officials, taking steps that would mean the postponement or cancellation of the politically high-profile “two meetings” or the disruption of travel plans for so many citizens would have been a very big, controversial, and possibly panic-triggering move. On the other hand, not making the outbreak known and not taking aggressive steps to contain it were especially risky moves. Failure to act could seed a much more serious and widespread epidemic and cause far greater damage to the economy and public opinion of local government, far greater than what would have accompanied suspending the political meetings and holiday trips.

The choices did not end well in the case of COVID-19. Outside reports blamed local authorities’ fears about sharing bad news with Beijing—and thus running the risk of being held responsible for the failure of what was supposed to be an automatic system of direct reporting to central public health authorities.55 By early February 2020, President Jinping, in a speech to the Politburo Standing Committee, pointed to shortcomings by local party, government, and public health officials in the initial handling of the
outbreak in Wuhan. The aftermath of the delayed initial response included dismissal of Wuhan and Hubei party chiefs, and hundreds of lower-level officials in Wuhan and other COVID-hit areas.

B. Tiao and Fragmented / Ambiguous Governance

Although high-level figures in the public health bureaucracy were not ousted after the first months of COVID-19, the sacking of officials at the subnational level deemed responsible for a flawed response extended to the more functionally differentiated, central level unit-led side of governance. Some of the tiao-side problems were the correlates of kua-side issues discussed above, but they also involved more distinctively tiao phenomena. They manifest features of what is often called China’s “fragmented authoritarianism”;


building blocks of governance, both “tiao” and “kuai,” often function as discrete actors with independent interests and conflicting agendas, which interact in a largely political process to shape policies and priorities. Coexisting governmental institutions that are rivalrous and “silied” are near-universal problems, but the challenges are distinctive and highly salient in China. Several characteristic features of Chinese-style fragmentation were evident in the early reaction to the novel coronavirus outbreak.

First, members—and especially leaders—of governmental organs tend to identify with their own institutions (ministries and similar organs at the central level, or provincial and lower-level governments), and to view counterparts in other units as outsiders. This identification with the unit, or danwei, is often robust, notwithstanding the pull of “dual rule” on subnational-level officials in branches of ministry-headed bureaucracies that also are parts of local governments. Very often, kuai dominates tiao in the behavior and orientation of such officials, all the more so when legal and policy mandates do not clearly give one priority over the other. As noted earlier, relevant law assigns many key roles in monitoring, reporting, and responding to disease outbreaks to provincial and local-level health commissions and disease control and prevention institutions, thereby encouraging (or at least not discouraging) the tendency for such organs to align more with same-level governments over higher-level bureaucratic superiors.

These dynamics appear to have been at work in the initial response to COVID-19 in Wuhan and Hubei. Relevant laws assign overlapping roles in addressing potential epidemics to the tiao-side public health and disease control and prevention bureaucracies and to the kuai-side local governments, often as supervisors of local health commissions and CCDC branches. The laws thus encourage, or at least do not discourage, the tendency for local health commissions and CCDC branches to align with same-level governments more bureaucratic superiors. These features are consistent with the early reaction to COVID-19: the failure by key actors in the public health system in Wuhan to follow the Direct Reporting System and the requirements to report immediately to central public health authorities, and some of the same actors’ obstruction of the investigative teams dispatched to Wuhan by higher-level authorities in the NHC and CCDC-led system.

Second, the relative strength and status of government units matter in China’s fragmented system, with the public health and infectious disease system being relatively weak. In the official hierarchy of Chinese governance, the CCDC is a ting—a sub-ministry-level entity under the NHC, and the NHC is the equivalent of a ministry, with its director having the rank of buzhang—minister, thus formally a peer of the heads of twenty-five other ministries and commissions of the central government and broadly on par with a provincial governor (such as the governor of Hubei). Formal status is
only part of the story in the politics of governance in China. The public health bureaucracy has been a troubled system, undergoing multiple recent restructurings, from a Ministry of Health (much criticized for its handling of SARS),\textsuperscript{60} to the National Health and Family Planning Commission in 2013, to the National Health Commission in 2018, less than two years before the outbreak of the novel coronavirus. The public health bureaucracy has not been led by officials with the political prominence or formally superministerial rank held by those in charge of entities that govern high-priority issue areas, such as the economy or national security.

Senior public health experts and officials long have complained that public health policy was generally not a high priority for policy makers, that its importance was not understood by leaders or the public, and that the CCDC's powers were extremely limited. Some also were distressed by moves at local levels in China that reportedly merged CCDC branches into other government units, thereby undermining upward reporting and accountability to the national-level CCDC and further strengthening the tendency for \textit{kuaixian} to overshadow \textit{tiaoxing}.\textsuperscript{61} The low capacity and clout of government public health institutions, which had been blamed for shortcomings in handling SARS, had spurred reforms to strengthen and centralize the public health bureaucratic apparatus.\textsuperscript{62} But such reforms did
not transform the landscape of power and resources. CCDC leaders complained that the post-reform CCDC was still short on resources, low in morale, and lacking authority to issue early warnings about disease outbreaks to local hospitals and the public, to make policy, or to enforce epidemic-related laws, including by imposing administrative sanctions.63

The problem of a weak public health bureaucracy is hardly unique to China. But it is more pronounced in a system that so strongly emphasizes economic performance. Under exceptional circumstances, that priority could be set aside; during the height of the COVID-19 crisis it was. As was the case with COVID-19, such circumstances tend to arise or become evident only after it is too late to address the shortcomings.

The early days of COVID-19 reflected the continued relative lack of stature and power of public health and disease-response institutions. Leaked documents lament the Hubei provincial center for disease control and prevention’s lack of funding, capacity, and staff morale on the eve of COVID-19, and criticize local branches for not having played a leading, rather than merely passive, role in the early phases of the epidemic.64 Despite a reformed legal and regulatory framework that envisaged greater reliance on central public health and infectious disease experts, the 2004 revisions to
the Infectious Disease Law and other laws did not raise the then-new Direct Reporting System to the status of law, nor did they set clear thresholds for direct reporting. Because the reporting system was geared to already-identified diseases and COVID-19 was a new disease, the law gave local actors more latitude in not reporting the outbreak immediately. By not adequately directing medical staff to bypass superiors, the process was left vulnerable to the local obstructionism that occurred in Wuhan. Resort to the Direct Reporting System was further undermined by medical personnel’s poor understanding of reporting procedures, the costs to them (in terms of time and distraction from treating seriously ill patients) of filling out reports, and doubts about whether cases fit the criteria for reporting in an environment where the importance of the Direct Reporting System had not been emphasized. These features gave local officials in Wuhan responsible for public health more room and reason to opt for eschewing the Direct Reporting System and not cooperating with the expert teams sent out under the auspices of the NHC.

Some of the most striking testimony about relative institutional weakness comes from the frustrated agents of public health units whom higher-level authorities dispatched to the viral epicenter in Wuhan, where they


66. See Wang Xixin (王锡锌), Chuanranbing Yiqing Xinxi Gongkai de Zhang'ai ji Kefu (传染病疫情信息公开的障碍及克服) [The Obstacles for Information Disclosure in Infectious Disease Pandemics and the Ways to Overcome the Obstacles], Faxue (Mar. 28, 2020), https://mp.weixin.qq.com/s/8raqYvNJmKz2UCHTEQgZg.

67. See Infectious Disease Law, art. 31–33 (giving specific chains of authority for reporting); Tufa Gonggong Weisheng Shijian yu Chuanranbing Yiqing Jiance Xinxi Baogao Guanli Banfa (突发公共卫生事件与传染病疫情监测信息报告管理办法) [Measures for the Administration of Information Reporting on Monitoring Public Health Emergencies and Epidemics of Infectious Diseases] [promulgated by the Ministry of Health of the People’s Republic of China, Nov. 3, 2003, effective immediately] [hereinafter Information Reporting], § 3; National Implementation Plan §§ 3–4, 6 (directing medical personnel to make reports through their hospitals or through most local-level disease control and prevention institutions—which are the local branch of the CCDC and, thus, the notably weak central institutions have been greatly subordinated to, or even absorbed into other, local-level government organs).

68. See Kui Shen, Lan Tufa Chuanranbing Xiuxi Fabu de Falü Shezhi (论突发传染病信息发布的法律设置) [On the Legal Settings of the Information Release of Emergent Infectious Diseases], Dangdai Faxue (当代法学) [CONTEMP. L. REV.], no. 4, 2020, at 32.

69. See Yang Hai, supra note 49.
encountered potent resistance from those associated with the units of local governance. As Dr. Zhong—leader of the third, crucial investigative delegation—put it, what happened in Wuhan exposed the “shortcomings” of a system in which the “[C]CDC’s status is too low” as a mere “technical department” that could “only report upwards” and “level by level”—an arrangement that meant more influence for geographically based government units (kaiz) relative to the NHC-CCDC (tiao) structure.70 He elaborated, “[e]xcept for reporting to upper levels of authorities, the [C]CDC has no power to make any decision for the next move.”71 According to an expert in the second NHC delegation, they “were not allowed to step in” because “territorial management” was mandated, and the expert group’s role was “only” to “offer some help.”72

This is not to say that the tiao side was entirely marginalized during the early weeks of the crisis. According to an official timeline and other sources, some information about the outbreak had reached the NHC (in part through the leaked WHC emergency documents) and prompted some measures in January, such as directing health organizations not to make public reports; establishing a COVID-focused leading group within the NHC; issuing guidelines on early detection, diagnosis, quarantine, prevention, and control; and dispatching the three successive expert delegations to Wuhan and more than a half dozen investigative teams to other locations.74 Still, the modest or delayed moves reflect those institutions’ limited roles and powers. Notably, the turn to a more effective response to the crisis followed intervention by central authorities above the level of the NHC and CCDC, including Xi Jinping, Premier Li Keqiang, the State Council, and an ad hoc top-level party group established to focus on the COVID pandemic.75

70. See Wei, supra note 47; Yang Hai, supra note 49.
71. Wu & Cheng, supra note 63.
74. See State Council Info. Off. of China, Fighting COVID-19: China in Action, XINHUANET § I(2)–(4) (June 7, 2020, 10:00 AM), http://www.xinhuanet.com/english/2020-06/07/c_139120424.htm (providing a timeline of the government’s immediate actions to respond to the situation in Wuhan).
75. See discussion infra notes 81–94 and accompanying text.
Third, the institutional fragmentation of Chinese governance means officials often operate in an environment of ambiguity born of legal and policy mandates, from multiple sources, that do not clearly assign functions and responsibilities. This phenomenon may help explain a notorious incident from the initial response to COVID-19. Facing criticism for not informing the public, Wuhan Mayor Zhou Xianwang explained that he delayed releasing information about the pandemic because “[a]s a local government, I can only disclose information after I obtain information and authorize it.”76 If sincere, the mayor’s position adopts a questionable but perhaps plausible construction of relevant law. The Infectious Disease Law gives the NHC responsibility for issuing warnings and releasing information to the public about outbreaks or epidemics. The NHC has authorized provincial health commissions to release information about epidemics to the public.77 These arrangements would not authorize—much less require—Zhou, as a sub-provincial leader, to make public announcements about the emerging epidemic. Yet, the Emergency Response Law authorizes local governments—such as the one in Wuhan headed by Zhou—to issue timely public warnings and provide the public information and guidance if a public health emergency is imminent, so long as such an action is consistent with relevant statutes and regulations. If the mayor’s statement is disingenuous, it shows the potential for an official to exploit regulatory ambiguity and adopt self-serving readings of laws in order to shirk responsibility and shift blame. This can be a tempting, and sometimes effective, option for an official who is losing the “double or nothing bet” because the official can contain a problem without attracting game-changing attention from higher levels.

76. Lang (郎朗) et al., Wuhan Shizhang Chengren Qianqi Xinxi Pilu Bujishi (武汉市长承认前期信息披露不及时) [The Mayor of Wuhan Admits That Early Information Disclosure Was Not Timely], Zhongguo Xinwenwang (中国新闻网) [CHINA NEWS NETWORK] [Jan. 27, 2020, 3:49 PM], https://news.sina.cn/gn/2020-01-27/detail-ihhnzhha4917463.d.html; see also Zhao Hong (赵宏), Fazhi de Xijian; “Weijing Shouqu an Bude Pilu” Beihou de Xinxi Gongkai Zhidu yu Wenti (法制的细节；“未经授权不得披露”背后的信息公开制度与问题) [The Details of the Rule of Law | The Information Disclosure System and the Problems Behind “No Disclosure Without Authorization”], Pengpai Xinwen (澎湃新闻) [PAPER] [Jan. 31, 2020, 2:27 PM], https://www.thepaper.cn/newsDetail_forward_5700131 (indicating that local governments do not have the authority to disclose information without authorization); Zhang Yuting (张雨亭), Wuhan Shizhang Cheng Wuquan Gongbu Yiqing? Zhuanjia: Yiqing Shifou Jishi Shangbao Shi Zhuiwen Jiaodian (武汉市长称无权公布疫情? 专家: 疫情是否及时上报是追问焦点) [The Mayor of Wuhan Says He Has No Right to Announce the Epidemic? Expert: Whether the Epidemic is Reported in Time is the Focus of Further Inquiry], Nanfang Dushibao (南方都市报) [S. METROPOLIS DAILY] [Jan. 30, 2020, 9:36 PM], https://www.sohu.com/a/369630319_161795.

77. Infectious Disease Law, art. 19, 38; Measures for the Administration of Information Reporting on Monitoring Public Health Emergencies and Epidemics of Infectious Diseases, art. 32.
Fourth, fragmentation of authority means coordination among siloed institutions is necessary for effective government action, but it is difficult to achieve, especially in contexts like the COVID-19 outbreak. Responsibility for public health issues remains splayed across many central and local government organs. In Wuhan during the initial novel coronavirus outbreak, a monitoring system premised on active engagement and cooperation among hospital administrators, local public health authorities, other units of local governance, and central public health authorities failed “monumentally”—in the words of one expert observer. A full response to an emerging—or raging—epidemic requires coordination with still-more-numerous state entities. Here again, the problem is compounded by China’s version of a common problem of governance: the relatively low priority of public health policy and preparedness. Unless or until a disease outbreak has become a major crisis (or is clearly on track to do so), concerns that are within the ambit of public health and disease control institutions are overshadowed by other worries, such as the economy or social order, which are within the purview of other functionally defined systems headed by more powerful central government entities and which are higher priorities for local officials in ordinary times. Tellingly, concerns about triggering public panic or economic losses—thus putting at risk high-priority goals of order and growth—reportedly motivated Wuhan officials’ initial failure in fulfilling reporting duties and taking steps that would have risked public disclosure of the serious threat posed by the novel coronavirus.

78. Dali L. Yang, China’s Early Warning System Didn’t Work on Covid-19. Here’s the Story., WASH. POST (Feb. 24, 2020, 5:13 AM), https://www.washingtonpost.com/politics/2020/02/24/china-s-early-warning-system-didnt-work-covid-19-heres-story (“The infectious diseases sentinel system only works if the hospitals and local health administrations actively engage with it and contribute to the information. In Wuhan, the system failed, monumentally.”); see also Myers & Buckley, supra note 7 (explaining the failure of the reporting system due to local authorities' fear of being the messengers of bad news to central authorities).

79. See, e.g., Cai (Vera) Zuo, Promoting City Leaders: The Structure of Political Incentives in China, 224 CHINA Q. 955, 976–78 (2015) (explaining that personal connections, economic performance, and maintaining party stability are often the best indicators for promotion for municipal officials, and that CCP typically awards achievements in social welfare areas selectively); Yongshun Cai & Lin Zhu, Disciplining Local Officials in China: The Case of Conflict Management, 70 CHINA J. 98, 109 (2013) (noting that local officials are expected to maintain social stability and incidents that result in social unrest or upheaval are punished).

II. STRENGTHS OF THE SYSTEM: MOBILIZING TO CONTAIN THE EPIDEMIC

Once centrally mandated efforts to contain COVID-19 began, they were formidable and effective—as well as draconian. Successes were achieved through the regime’s extraordinary ability to mobilize people and resources on a massive scale.\(^\text{81}\) Tens of thousands of medical personnel and large stores of equipment were dispatched to Wuhan, and rudimentary, temporary hospitals were constructed within two weeks after lockdown.\(^\text{82}\) Teams composed or under the direction of government staff were dispatched within neighborhoods and apartment blocks to conduct health checks, provide daily necessities, impose isolation and quarantine, erect barriers, and perform contact tracing. Special “shelter” (fangcang) hospitals\(^\text{83}\) were established to isolate non-critically ill patients from the general population.\(^\text{84}\) Similar methods were employed in other hotspots.\(^\text{85}\)

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atmosphere and censored calls for ousting local leaders after epidemic belatedly disclosed; Seeking Truth, supra note 56 (emphasizing the importance of maintaining social stability in responding to COVID-19 and as a key element of successful epidemic response).

81. See generally State Council Info. Off. of China, supra note 74, §1 (providing a summarized timeline of the government’s response to the coronavirus pandemic).

82. Chai Minyi (柴敏懿), Renmin Ribao (人民日报) [People’s Daily] Quanguo Gong Pai 4.2 Wan Tihejunduan Zhiyuan Wuhan, Qizhong Hushi 2.86 Wan Ming (全国共派 4.2 万医护人员支援武汉，其中护士 2.86 万名) [42,000 Medical Personnel Sent To Support Wuhan, Including 28,600 Nurses], Pengpai Xinwen (澎湃新闻) [PAPER] (Feb. 29, 2020, 3:37 PM), https://www.thepaper.cn/newsDetail_forward_6236796 (indicating that the 28,600 nurses account for 68% of the medical personnel dispatched to care for patients in Wuhan); Fang Ning, et al., Xinhua Headlines: China Mobilizes Medical Teams to Fight New Coronavirus, XINHUANET [Jan. 24, 2020, 10:28 PM], http://www.xinhuanet.com/english/2020-01/24/c_138731835.htm (indicating that two local hospitals were constructed in about ten days); Wen Jicong & Deng Hao (温济聪 & 邓浩), Pingfan Yingxiong, Wuxian Rongguang (平凡英雄，无限荣光) [Ordinary Heroes, Infinite Glory], Xinhuawang (新华网) [XINHUANET] (Apr. 6, 2020, 12:16:42 PM), http://www.xinhuanet.com/politics/2020-04/06/c_1125818508.htm (describing rapid hospital construction).


84. He & Xiao supra note 28; Chen et al., supra note 83, at 1305.

By early March, Chinese authorities declared the outbreak in Wuhan and Hubei “curbed,” and an easing of travel bans and other restrictions soon followed. By the start of 2021, the reported death toll was under 5,000 and the official number of cases was under 100,000, with consistently low new case rates after early March and overall infection and death rates far below world averages. These and other statistics have been greeted with some skepticism abroad. Undercounting infections and fatalities has been a problem in many countries. Critics have argued that China seriously understated the early impact in Wuhan and elsewhere (a view partly borne out by China’s upward revision of early counts) and have challenged the accuracy of China’s reported statistics more generally. As illustrated by the early June 2020 outbreak centered on a Beijing wholesale food market, cases in Qingdao a few months later (prompting a massive, city-wide testing initiative), and the resurgence of case counts experienced in many places around the world where the virus had seemed under control, success can be precarious. Still, China’s initial

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containment efforts clearly were relatively successful, and severe recurrences have been avoided into the early part of 2021.92

The ability to steer massive resources to pursue the regime’s high-priority goals—dramatically demonstrated in Wuhan and elsewhere during COVID-19—reflects several strengths of Chinese governance and China’s administrative state.93 Although too often evaded or less than zealously followed in the initial phases of the pandemic, the laws and rules that called for energetic monitoring, reporting, and investigating still were part of the story behind the taking of the necessary first steps toward—and in the subsequent unfolding of—the large-scale, center-driven response. Many of the dramatic moves undertaken in Wuhan and elsewhere in the early months of 2020 tracked provisions in laws authorizing the imposition of isolation and quarantine, suspension of travel, addressing and eliminating animal sources of human disease outbreaks, provision of medical and other support and assistance, and so on. China has, in the terminology of comparative politics, a highly capable state, especially in terms of capacity to implement high-priority policies.94 This capacity derives in part from a system of one-party

92. See Gavin Yamey & Dean T. Jamison, U.S. Response to COVID-19 is Worse than China’s. 100 Times Worse, TIME [June 10, 2020, 7:00 AM], https://time.com/5850680/u-s-response-covid-19-worse-than-chinas/ (reporting that the death rate in the United States is 100 times greater than in China); see also Coronavirus Disease (COVID-19) Weekly Epidemiological Update, supra note 88 (comparing the number of cases and deaths between China and the United States).

93. See Yanzhong Huang, China’s Public Health Response to the COVID-19 Outbreak, CHINA LEADERSHIP MONITOR [June 1, 2020], https://www.prlleader.org/huang (examining the success of the central government to direct infrastructural resources to respond to the pandemic); see also Graham-Harrison & Kuo, supra note 28 (noting that the enormous scale of China’s unprecedented quarantine strategy appears to have succeeded). But cf: Yasheng Huang, No, Autocracies Aren’t Better for Public Health, Bos. Rev. [Apr. 14, 2020], http://bostonreview.net/politics-global-justice/yasheng-huang-no-autocracies-arent-better-public-health (noting that the effectiveness of China’s response reflects the lack of guaranteed personal rights and freedoms).

authoritarian rule, a preeminent leader, an in-principle unitary state structure, and mutually reinforcing party and state structures of top-down hierarchical authority and discipline.

Success in responding (albeit belatedly) to the pandemic depended on overcoming challenges of institutional fragmentation and implementation on a vast scale. Moves to suppress COVID-19, and measures to prevent its further spread and recurrence, necessarily relied on coordinated actions by numerous organs of the Chinese state, including: the NHC and CCDC; health commissions and disease control and prevention institutions at various levels, and other public health-related government departments; public security forces; the Ministry of Transportation and local public transport organs; public works crews (to build physical barriers); the Ministry of Industry and Information Technology (for big data and artificial intelligence (AI) tracking measures); the military (to help build temporary hospitals and to provide supplementary medical staff); the Ministry of Education (to extend school closures and institute screening and prevention measures in school); local government-linked residents’ committees at the neighborhood-level; and others.

From formal laws to more ad hoc measures, Chinese authorities’ creation and use of mobilizational capacity is notable and pervasive in COVID-19-related contexts. Although its most extraordinary provisions (declaring a “state of emergency”) were not formally invoked amid COVID-19, the Emergency Response Law, along with the Infectious Disease Law,

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contemplates a whole-of-government and whole-of-society mobilizational response to public health emergencies—especially where, as occurred in the COVID-19 context, the highest level of emergency below the constitutional “state of emergency” (Level 1) and the most serious level of infectious disease-fighting measures (Class A restrictions) are invoked. These acknowledgements of the importance of coordination across often fragmented units of governance are made more explicitly in legal provisions setting forth the authority of the State Council and provincial and local governments—as coordinating organs—to require, and the duties of government units across many functional systems, ordinary citizens, enterprises, and state-linked residents’ committees to cooperate in the mobilization of state and social resources and other government-led responses to infectious disease outbreaks or public health emergencies.

Top-level coordination efforts, sometimes specifically invoking legal authority, figured prominently in the response to COVID-19. As the centrally mandated response began in earnest around January 20 under the direction of Premier Keqiang and the State Council, the NHC declared that the novel coronavirus was a Class B disease but would trigger the stricter controls that the law provided for Class A diseases. This move appears to have been consistent with Infectious Disease Law provisions that contemplated applying Class A measures to specified Class B diseases (such as SARS, to which COVID-19 was related) and other infectious disease outbreaks of unknown cause.

101. See Emergency Response Law, art. 69 (granting National People’s Congress Standing Committee and State Council authority to declare a “state of emergency” as contemplated in the Constitution); see also, deLisle, supra note 9, at 352–53.

102. See Infectious Disease Law, art. 6, 9, 39, 45, 49 (delineating obligations of different levels of government departments and their local branches, residents’ and villagers’ committees, and hospitals to participate in disease control and prevention work; and State Council, provincial, and local government authority to mobilize, requisition, and deploy resources); Provisions on the Establishment of the Disease Control and Prevention System, art. 3–4 (emphasizing principles of “integrated resources” [zhenghe ziyuan] and “clear allocation of [coordinated] responsibilities” [mingque zhize], and noting roles of multiple relevant agencies [youguan bumen] in addressing infectious disease challenges); see also Emergency Response Law, art. 6, 8, 12, 14, 32, 48–49, 52, 55, 57 (specifying how different units and levels of the government are to coordinate emergency responses and acquire and mobilize resources for emergent response, as well as the obligations of villagers’ and residents’ committees and citizens to cooperate); Emergency Regulations for Public Health Emergencies, art. 3, 32–34, 38, 40 (setting up “emergency response headquarters” at various levels of the government and granting them specific authorities to address any public health emergencies).

103. Sun Meng, Jiefeng Zaiji, Li Lanjuan Shoci Pilu Wuhan Fengcheng Xijie (解封在即，李兰娟首次披露武汉封城细节) [Unblocking Soon, Li Lanjuan Disclosed Details of Wuhan’s Lockdown for the
The Chinese leadership also employed elements from a long-standing repertoire of organizational fixes. By late January, new bodies were established with responsibilities for overseeing, coordinating, and steering the response. One major example was the State Council’s Joint Control and Prevention Mechanism, which coordinated across thirty-two identified sectors. Broadly similar measures were adopted at the local levels—for example, a novel coronavirus epidemic prevention and control headquarters was set up in Wuhan and other localities. Such arrangements were consistent with legal mandates for establishing task-specific “headquarters” to address public health emergencies.

During and after the initial containment response, Chinese authorities turned to old-style, labor-intensive means and new-fangled, high-tech methods for monitoring and constraining citizens’ behavior. Many of these had underpinnings in the laws that give state authorities and other entities expansive authority—and imposed extensive duties of cooperation on medical institutions, enterprises, and citizens—in responding to infectious disease epidemics and public health emergencies. The ubiquitous guards at entrances to apartment blocks enforced prohibitions on entry and exit, and bounties were offered for reporting on neighbors’ violation of COVID-19 containment rules.

First Time], Zhongguo Weishengzazhi (中国卫生杂志) [CHINESE HEALTH J.] (Mar. 27, 2020, 10:17 PM), http://med.china.com.cn/content/pid/167168/tid/1023; Infectious Disease Law, art. 3–4, 39; Xinxing Guanzhuang Bingduganran de Feiyan Naru Fading Chuanranbing Guanli (新型冠状病毒感染的肺炎纳入法定传染病管理) [Announcement on Incorporating COVID-19 into the Administration of Statutory Infectious Diseases], Weisheng Jiankang Weiyuanhui (卫生健康委员会) [Natl. Health Com'n] [Jan. 21, 2020, 8:51 AM], http://www.gov.cn/xinwen/2020-01/21/content_5471153.htm. Reports attributed the announcement to the State Council itself, whereas the Infectious Disease Law contemplates announcement by the NHC after approval by the State Council of a recommendation from the NHC. The formal announcement was issued by the NHC, as contemplated under the law.


106. Emergency Response Law, art. 8.

Residents’ committees—an extra-governmental body under party-state leadership established during China’s early efforts to establish control at very local levels in the cities—were tasked to enforce quarantine and isolation orders, secure necessary supplies for people under lockdown, and intensively monitor residents’ behavior and health status. Containment efforts also relied on a “grid” system of local social management (implemented nationally after 2012) that, in the case of Wuhan, divided the city into 10,000 units, with ordinarily thin staffing reinforced amid the outbreak by the redeployment of more than 40,000 government staff to conduct monitoring, transmit directives and information, and provide resources to citizens.

Especially in cities that were not fully locked down, and as shutdown areas reopened, authorities deployed formidable resources for testing, tracing, and containing COVID-19 cases. China’s highly digitized and online urban society (where people rely on mobile phone-based apps for a vast range of activities and transactions), pervasive networks of cameras and sensors, and extensive use of facial recognition technology and AI, combined to provide potent means for combatting the virus’s spread. Big data analyses identified n-citizens (noting reports of bounty rewards ranging from $72 to $290); Jeremy Page, China’s Progress Against Coronavirus Used Draconian Tactics Not Deployed in the West; General Lockdowns Aren’t Enough, Experts Say, Without Systematic Testing and Quarantining of Carriers, WALL ST. J. (Mar. 24, 2020, 2:36 PM), https://www.wsj.com/articles/the-west-is-misinterpreting-wuhans-coronavirus-impediments-draw-the-wrong-lessons-11585074966; Brenda Goh & Thomas Suen, In China, Walled Up Wuhan Awaits Life Beyond the Barricades, REUTERS, https://www.reuters.com/article/us-health-coronavirus-wuhan-barricades/in-china-walled-up-wuhan-awaits-life-beyond-the-barricades-idUSKBN21G0I9 (Mar. 29, 2020, 8:31 AM);


probabilities of outbreaks and mobility patterns to guide decisions to impose or lift restrictions.\textsuperscript{111} Tools included taking temperatures of people entering buildings,\textsuperscript{112} scanning QR codes to check the “green, yellow, or red” health status of people seeking to use public transportation,\textsuperscript{113} tracking down travelers who had been on trains and planes with infected fellow passengers,\textsuperscript{114} and extensive contact tracing.\textsuperscript{115}

Finally, in combatting the epidemic, Chinese authorities also benefited from the weakness of factors that have been impediments to state responses in some other countries. Although the initial reaction in Wuhan underscored the challenges of de facto local autonomy, when the central leadership moved to implement lockdowns, travel bans, pervasive surveillance, and other measures, it was not constrained—nor was its ultimate responsibility muddled—by quasi-federalist notions about subnational authority or ambiguous allocations of duties between center and localities.\textsuperscript{116} China’s efforts to monitor, trace, and

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\textsuperscript{114} Yuan, supra note 98.

\textsuperscript{115} Id.

contain COVID-19 also did not face major constraints from laws or norms protecting privacy interests. Proper balance between public interests (including public health) and privacy rights (including data privacy and omnipresent electronic surveillance) has become a significant concern in legal and policy-relevant discussions in China. Especially among urban, educated, and younger-generation Chinese, “privacy” has become more of an issue in recent decades. To the reported frustration of some public health experts trying to implement tracking and tracing to manage COVID-19, some Chinese internet companies resisted providing user information, citing data privacy concerns. But overall, the regime faced only weak constraints on these fronts. Legal protections for data privacy, privacy rights more broadly, and civil liberties still more broadly, did not significantly limit state-mandated measures to fight COVID-19. Although there was ample popular discontent with methods the authorities adopted, there was no prospect that centrally-mandated, high-priority measures to combat the coronavirus would be compromised by lawsuits challenging mask mandates or quarantine orders, mass refusals to install tracking applications or cooperate with contact-tracers, or large-scale defiance by the public or subnational officials of state-mandated, science-based public health directives. Indeed, many of the measures


120. Emily Feng, China Calls It a ‘Wartime Mode’ COVID-19 Lockdown. And Residents Are Protesting, NPR (Aug. 26, 2020, 1:14 PM), https://www.npr.org/sections/goatsandsoda/2020/08/26/900206008/china-calls-it-a-wartime-mode-covid-19-lockdown-and-residents-are-protesting; see also Anna Fifield, As Coronavirus Goes Global, China’s Xi Asserts Victory on First Trip to Wuhan
adopted by the state to counter the pandemic appear to have been accepted as legitimate by much of the general public.121

IV. CONCLUSION: COVID-19 AS A CASE STUDY OF CHINA’S GOVERNANCE

China’s response to the challenges of COVID-19 offers a case study of law, the regulatory state, and governance in China. Some relatively successful elements within the initial, troubled response to the outbreak reflected the partial success of legal and regulatory reforms adopted in recent years (in part to improve upon the response to SARS in 2003). Yet, the damaging delays in reporting and responding to COVID-19 reflected not only shortcomings in those reforms but also, and more importantly, distinctive and enduring features of the system, including the coexistence of, and tensions between, kuaii-based approaches that give power and responsibility to local-level officials, and tiao-based approaches that assign key roles to centralized, functionally specialized bureaucracies. Further observed are the perverse incentives local-level officials face when trying to cover up potentially serious emerging problems, which ultimately can make the consequences far worse; the fragmentation of institutions that stems from officials’ strong identification with their particular units and the relative weakness of some vital systems (such as the national public health bureaucracy), and that results in collectively ambiguous rules emanating from multiple sources and daunting challenges of coordinating siloed entities to achieve coherent government action (especially where the necessary measures could imperil traditionally higher priority policy goals).

After these initial shortcomings, China’s largely successful, centrally mandated efforts to contain the pandemic and prevent its recurrence also

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reflected defining and durable features of the Chinese systems of law, regulation, and governance. It showed a highly capable, centralized, and authoritarian party-state that could, in part, by relying on law, mobilize vast governmental and societal resources; overcome challenges of steering fragmented and sprawling institutions; deploy a repertoire that included high-profile directions from top-level leaders, new ad hoc coordinating bodies, and a formidable array of low-tech and high-tech mechanisms for monitoring and controlling citizens’ actions; and operate free from much constraint by quasi-federalist powers of local governments, autonomy or privacy rights of individuals, or popular resistance and public protest.

This is not a static picture, or the end of the story. More reforms are likely in the aftermath of the COVID-19 crisis. And, for good and for ill, the tools of regulation and the roles of law in China often have proved susceptible to significant and sometimes relatively sudden change.