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Jacques deLisle

University of Pennsylvania Carey Law School

Shen Kui

Author ORCID Identifier:

 Jaques deLisle 0000-0002-6951-1728

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ESSAYS

CHINA'S RESPONSE TO COVID-19

JACQUES DELISLE* & 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

* Jacques deLisle is the Stephen A. Cozen Professor of Law, Professor of Political Science, Director of the Center for the Study of Contemporary China, and Co-Director of the Center for Asian Law at the University of Pennsylvania, and Director of the Asia Program at the Foreign Policy Research Institute. The authors thank Ryan McEvoy and Iris Yuqing Zheng for their invaluable research assistance. An earlier version of this article appears as part of a longer article, *Lessons from China's Response to COVID-19: Shortcomings, Successes, and Prospects for Reform in China's Regulatory State*, 16 U. PA. ASIAN L. REV. 66 (2020).

** Shen Kui, Ph.D., is a Professor at the Peking University Law School in China, Director of Research at the Center for Human Rights and Humanitarian Law, and President of the Society of Soft Law in China.

1. Derrick Bryson Taylor, *A Timeline of Coronavirus Pandemic*, N.Y. TIMES (Jan. 10, 2021), <https://www.nytimes.com/article/coronavirus-timeline.html>; see also *Archived: WHO Timeline-COVID-19*, WHO (Apr. 27, 2020), <https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>.

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 30,² and a global pandemic on March 11, 2020.³ We do not yet have an authoritative account of actions and omissions at various levels and in multiple units of the Chinese system.⁴ Nonetheless, it is apparent that the handling of the outbreak reflects characteristic weaknesses and strengths of the Chinese administrative state.⁵ 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.⁶

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).

4. A WHO team had been dispatched to China to investigate the origins of COVID-19, but there was considerable doubt in many quarters about whether the team would get prompt and unfettered access to relevant information and evidence. *See Covid: WHO Team Investigating Virus Origins Denied Entry to China*, BBC (Jan. 6, 2020), <https://www.bbc.com/news/world-asia-china-55555466>; David Stanway, *China Doubles Down on COVID Narrative as WHO Investigation Looms*, REUTERS (Jan. 5, 2021, 1:53 AM), <https://www.reuters.com/article/health-coronavirus-china-who/china-doubles-down-on-covid-narrative-as-who-investigation-looms-idUSL2N2JGOOB>.

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.

6. *See* Jacques deLisle, *SARS, Greater China, and the Pathologies of Globalization and Transition*, 47 *ORBIS* 587, 595–96, 598–99, 603–04 (2003) (detailing actions taken to address early failures of the Severe Acute Respiratory Syndrome (SARS) response); Yanzhong Huang, *The SARS Epidemic and Its Aftermath in China: A Political Perspective*, in *LEARNING FROM SARS* 116, 124–25 (Stacey Knobler et al. eds., 2004).

The framework in place before COVID-19 included numerous legal and regulatory measures.⁷ 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*]⁸ (adopted in 2007, and greatly influenced by the SARS experience a few years earlier),⁹ and an infectious disease outbreak Direct Reporting System [*Zhibao Xitong*] to the China Center for Disease Control (created in 2004).¹⁰ 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,¹¹ 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.¹² The first cases of patients

7. See Shen Kui, Opinion, *The Delayed Response in Wuhan Reveals Legal Holes*, REGUL. REV. (Apr. 20, 2020), <https://www.theregreview.org/2020/04/20/delayed-response-wuhan-reveals-legal-holes> (providing an overview of the legal mechanisms in China to contain outbreaks of infectious diseases, and their shortcomings during the initial outbreak); see also Steven Lee Myers & Chris Buckley, *China Created a Fail-Safe System to Track Contagions. It Failed.*, N.Y. TIMES, <https://www.nytimes.com/2020/03/29/world/asia/coronavirus-china.html> (Dec. 22, 2020) (explaining how reporting system put in place by the Chinese government after the SARS epidemic failed to alert central authorities to the initial outbreak in Wuhan).

8. Zhonghua Renmin Gongheguo Tufa Shijian Yingdui fa (中华人民共和国突发事件应对法) [Emergency Response Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Aug. 30, 2007, effective Nov. 1, 2007) [hereinafter Emergency Response Law].

9. Jacques deLisle, *States of Exception in an Exceptional State: Emergency Powers Law in China*, in EMERGENCY POWERS IN ASIA 342, 352–53 (Victor V. Ramraj & Arun K. Thiruvengadam eds., 2010).

10. *Public Health Surveillance and Information Services*, CHINESE CTR. FOR DISEASE CONTROL & PREVENTION, http://www.chinacdc.cn/en/aboutus/orc_9349/ (last visited Mar. 3, 2021).

11. Gail Dutton, *Compare Update: 2003 SARS Pandemic Versus 2020 COVID-19 Pandemic*, BIOSPACE (Sept. 7, 2020), <https://www.biospace.com/article/comparison-2003-sars-pandemic-vs-2020-covid-19-pandemic/> (comparing China's slow response to SARS with its slightly quicker response to COVID-19).

12. See Chris Buckley & Steven Lee Myers, *As New Coronavirus Spread, China's Old Habits Delayed Fight*, N.Y. TIMES, <https://www.nytimes.com/2020/02/01/world/asia/china->

with atypical pneumonia occurred by the beginning of December 2019, with the first reports¹³ reaching Wuhan disease control and prevention authorities before the end of the month.¹⁴ 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.¹⁵ On December 31, 2019, the National Health Commission (NHC) and the Chinese Center for Disease Control and Prevention (CCDC) dispatched a team of experts to Wuhan,¹⁶ 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,¹⁷ and the Wuhan branch of the NHC began issuing public warnings about an unexplained pneumonia outbreak.¹⁸ 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.¹⁹

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).

13. *Fighting Covid-19: China in Action*, STATE COUNCIL INFO. OFF. P.R.C. (June 2020), § I (providing detailed official chronology of COVID-19 in China); *see also* *Coronavirus: What Did China Do About Early Outbreak?*, BBC (June 9, 2020), <https://www.bbc.com/news/world-52573137> (providing chronology of events and responses from December 2019 to January 2020); Josephine Ma, *Coronavirus: China's First Confirmed Covid-19 Case Traced Back to November 17*, S. CHINA MORNING POST (Mar. 23, 2020, 9:00 AM), <https://www.scmp.com/news/china/society/article/3074991/coronavirus-chinas-first-confirmed-covid-19-case-traced-back>.

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

15. *See Coronavirus: What Did China Do About Early Outbreak?*, *supra* note 13; *see also* Lily Kuo, *Coronavirus: Wuhan Doctor Speaks Out Against Authorities*, GUARDIAN (Mar. 11, 2020, 4:50 AM), <https://www.theguardian.com/world/2020/mar/11/coronavirus-wuhan-doctor-ai-fen-speaks-out-against-authorities> (explaining that Li spread Ai's warnings about the disease).

16. *NHC Take Positive Actions to Fight New Coronavirus*, NAT'L HEALTH COMM'N OF CHINA, http://en.nhc.gov.cn/2020-01/20/c_76000.htm (Jan. 20, 2020).

17. Novel Coronavirus (2019-nCoV): Situation Report-1, WHO 1 (2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4.

18. *Pneumonia of Unknown Cause—China*, WHO (Jan. 5, 2020), <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en/>.

19. Dina Fine Maron, *'Wet Markets' Likely Launched the Coronavirus. Here's What You Need to Know*, NAT'L GEOGRAPHIC (Apr. 15, 2020), <https://www.nationalgeographic.com/animals/20>

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.²⁰ 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.²¹ The CCDC created working groups to dispatch resources and gather information to affected areas.²²

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 Wuhan²³—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.²⁴ Central authorities declared the new virus would be

20/04/coronavirus-linked-to-chinese-wet-markets; see also Carolyn Kormann, *From Bats to Human Lungs, the Evolution of a Coronavirus*, NEW YORKER (Mar. 27, 2020), <https://www.newyorker.com/science/elements/from-bats-to-human-lungs-the-evolution-of-a-coronavirus> (noting that epidemiologists suspect the virus may have jumped to humans from bats often sold at the market). But see *Wuhan Seafood Market May Not Be Only Source of Novel Coronavirus: Expert*, XINHUANET (Jan. 29, 2020, 12:49 PM), http://www.xinhuanet.com/english/2020-01/29/c_138741063.htm (noting that some early patients had no exposure to the market in Wuhan).

20. See *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, WHO 9–10 (2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (laying out evidence as to how the spread of infections correlated with human contact and travel in a manner that strongly suggests human-to-human transmission chains).

21. *Takeaways from Internal Documents on China's Virus Response*, ASSOCIATED PRESS (Apr. 16, 2020), <https://apnews.com/article/a75e4e452f5a2d0ecaa241ca2045599e>.

22. See *China Didn't Warn Public of Likely Pandemic for 6 Key Days*, ASSOCIATED PRESS (Apr. 15, 2020), <https://apnews.com/68a9e1b91de4ffc166acd6012d82c2f9>; *China Publishes Timeline on COVID-19 Information Sharing, Int'l Cooperation*, XINHUANET (Apr. 6, 2020, 8:01 PM), http://www.xinhuanet.com/english/2020-04/06/c_138951662.htm.

23. Emily Feng, *Meet Dr. Zhong Nanshan, the Public Face of the COVID-19 Fight in China*, NPR (Apr. 15, 2020, 4:18 PM), <https://www.npr.org/2020/04/15/835308147/meet-dr-zhong-nanshan-the-public-face-of-the-covid-19-fight-in-china>. See generally *Journal Editor-in-Chief, J. THORACIC DISEASE*, <http://jtd.amegroups.com/about/editorInChief> (last visited Mar. 3, 2021) (explaining Dr. Nanshan Zhong's credentials).

24. Zhou Chuqing (周楚卿), *Xi Jinping dui Xinxing Guan Zhuang Bingdu Ganran de Feiyan Yiqing Zuochu Zhongyao Zhishi Qiangdiao Yaoba Renmin Qunzhong Shengming Anquan he Shenti Jiankang Fangzai Diyixuei Jianjue Ezhi Yiqing Manyan Shitou Li Keqiang Zuochu Pishi* (习近平对新型冠状病毒感染的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 extraordinarily 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

疫情蔓延势头 李克强作出批示” [Xi Jinping Made Important Instructions on the Pneumonia Epidemic Caused by the New Coronavirus, Emphasizing that the Safety and Health of the People Should Be Put First, Resolutely Curbing the Spread of the Epidemic, Li Keqiang Issued Instructions], Xinhuanet (新华网) [XINHUANET] (Jan. 20, 2020, 7:27 PM), http://www.xinhuanet.com/politics/leaders/2020-01/20/c_1125486561.htm (“Party committees, governments and relevant departments at all levels must put people’s life safety and health first, formulate thorough plans, organize all forces to carry out prevention and control, and take practical and effective measures to resolutely curb the spread of the epidemic.”).

25. *Zhonghua Renmin Gongheguo Guojia Weisheng Jiankang Weiyuanhui Gonggao* (中华人民共和国国家卫生健康委员会公告, 2020 年第 1 号) [Announcement of the National Health Commission of the People’s Republic of China, 2020 No. 1], NAT’L HEALTH COMM’N CHINA (Jan. 20, 2020), <http://www.nhc.gov.cn/jkj/s7916/202001/44a3b8245e8049d2837a4f27529cd386.shtml>.

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).

27. Lily Kuo, *Coronavirus: Panic and Anger in Wuhan as China Orders City into Lockdown*, GUARDIAN (Jan. 23, 2020, 6:30 AM), <https://www.theguardian.com/world/2020/jan/23/coronavirus-panic-and-anger-in-wuhan-as-china-orders-city-into-lockdown#maincontent> (reporting on the cessation of all transport in and out of Wuhan, with police actively patrolling the streets to enforce the lockdown).

28. See Peter Hessler, *Life on Lockdown in China*, NEW YORKER (Mar. 23, 2020), <https://www.newyorker.com/magazine/2020/03/30/life-on-lockdown-in-china> (detailing the daily life of a resident under lockdown conditions in Chengdu); see also Emma Graham-Harrison & Lily Kuo, *China’s Coronavirus Lockdown Strategy: Brutal but Effective*, GUARDIAN (Mar. 19, 2020, 1:07 PM), <https://www.theguardian.com/world/2020/mar/19/chinas-coronavirus-lockdown-strategy-brutal-but-effective> (describing lockdown measures implemented in Beijing). See generally He Miao & Xiao Jinbo (何淼 & 孝金波), *Wuhan Quanshi Xiaoqu Fengbi Guanli Jizhe Tanfang Shequ Ruhe Yankong “Liuliang”* (武汉全市小区封闭管理 记者探访社区如何严控“流量”) [Wuhan’s Entire Communities Closed for Management; Reporters Visit Communities To Learn How to Strictly Control “Traffic”], Changjian Ribao, (长江日报) CHANGJIANG DAILY (Feb. 12, 2020, 10:51 AM), <http://society.people.com.cn/n1/2020/0212/c431577-31583540.html> (describing the spread

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

of travel restrictions and lockdown measures throughout China); Sun Hongyang (孙宏阳), *Beijing Daolu Shengjikeyun 1 Yue 26 Ri Qi Quanbu Tingyun* (北京道路省际客运 1 月 26 日起全部停运) [Inter-Provincial Passenger Transportation on Beijing Roads will be Suspended from January 26], Caixinwang (财新网) [CAIXIN] (Jan. 25, 2020, 8:17 PM), <https://china.caixin.com/2020-01-25/101508364.html>; Li Ning (李宁), *Quanguo Duoge Shengshi Xuanbu Zanting Shengjikeyun Banxian* (全国多个省市宣布暂停省际客运班线) [Provinces and Cities Across the Country Announce Suspension of Inter-Provincial Passenger Lines], Lu'an Guangbo dianshiwang (六安广播电视网) [CHINA LA TV], (Jan. 27, 2020), http://www.mot.gov.cn/zhuanti/2020chunyun_ZT/gedidongtai/202001/t20200127_3418635.html; *Updates on Coronavirus Outbreak (January 22–March 9)*, GLOB. TIMES (Mar. 10, 2020), <https://www.globaltimes.cn/content/1181093.shtml> (reporting that thirty of thirty-one provincial-level entities had declared Level 1 emergencies by January 25, 2020); Emergency Response Law, art. 42 (concerning the four levels of emergency).

29. See KENNETH LIEBERTHAL & MICHEL OKSENBERG, POLICY MAKING IN CHINA 141 (1988) (explaining the concept of *tiao-tiao* / *kuai-kuai* as the interplay between vertical central government and horizontal territorial government).

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.³¹

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.³² 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.³³

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.³⁴ 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.³⁵ 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).³⁶

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.³⁷ 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.³⁸

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.³⁹

36. Infectious Disease Law, art. 17–19, 34–35, 38.

37. Infectious Disease Law, art. 17–18, 30, 33, 40; Emergency Regulations for Public Health Emergencies, art. 12–15; Tufa Gonggong Weisheng Shijian yu Chuanranbing Yiqing Jiance Xinxu 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. 7, 2003, effective Nov. 7, 2003) [hereinafter Measures for Information Reporting] art. 8, 24, 29, CLI.4.50780(EN) (Lawinfochina) [hereinafter Measures for the Administration of Information Reporting on Monitoring Public Health Emergencies and Epidemics of Infectious Diseases].

38. See Infectious Disease Law, art. 6, 34–35, 53–58; Emergency Regulations for Public Health Emergencies, art. 4.

39. Li Bin (李斌), Guowuyuan Duiyu Chuanranbing Fangzhi Gongzuo he Chuanranbing Fangzhifa Shishi Qingkuang de Baogao (国务院关于传染病防治工作和传染病防治法实施情况的报告) [Report of the State Council on Work on Prevention and Control of Infectious Diseases and Implementation of the Law on Prevention and Control of Infectious Diseases], Zhongguo Rendawang (中国人大网) [CHINA NAT’L PEOPLE’S CONG. NETWORK], § 1(3) (Aug. 28, 2013, 4:04:45 PM), http://www.npc.gov.cn/zgrdw/npc/xinwen/2013-08/28/content_1804522.htm; Measures for the Administration of Information Reporting on Monitoring Public Health Emergencies and Epidemics of Infectious Diseases, art. 20; Emergency Regulations for Public Health Emergencies, art. 19. See generally Quanguo Buming Yuanyin Feiyan Bingli Jiance Shishi Fangan (全国不明原因肺炎病例监测实施方案(试行)) [National Implementation Plan for Surveillance of Pneumonia Cases of Unknown Etiology (for trial implementation)] (promulgated by the Ministry of Health of

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).⁴⁰ 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.⁴¹ In some cases, the official will have violated policy and legal requirements to report promptly to higher-level

the People’s Republic of China, Aug. 4, 2004, effective Aug. 4, 2004) [hereinafter, National Implementation Plan].

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).

authorities.⁴² 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.⁴³ Ai’s superiors at her hospital warned her to stop communicating about the new virus.⁴⁴ 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.⁴⁵ 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.⁴⁶ 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.⁴⁷ 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.⁴⁸ According to some accounts, the

42. See, e.g., Infectious Disease Law, art. 30 (triggering reporting requirements when certain infectious diseases are discovered).

43. Amy Cheng, *Chinese Authorities Admit Improper Response to Coronavirus Whistleblower*, NPR (Mar. 19, 2020, 11:34 AM), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/19/818295972/chinese-authorities-admit-improper-response-to-coronavirus-whistleblower>.

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>.

45. See, e.g., Kristin Huang, *Coronavirus: Wuhan Doctor Says Officials Muzzled Her for Sharing Report on WeChat*, S. CHINA MORNING POST (Mar. 11, 2020, 2:38 PM), <https://www.scmp.com/news/china/society/article/3074622/coronavirus-wuhan-doctor-says-officials-muzzled-her-sharing> (explaining that the WHC directed Wuhan doctors to not disclose any information about the virus).

46. *Id.*

47. Wei Furong (魏芙蓉) et al., *Wuhan Yiqing Chuqi, Wangluo Zhibao Xitong Weihe Shiling?* (武汉疫情初期, 网络直报系统为何失灵?) [*Why Did the Direct Network Reporting System Fail at the Beginning of the Wuhan Epidemic?*], PHOENIX NEW MEDIA (Mar. 14, 2020, 9:37 PM), <http://news.ifeng.com/c/7uqH6A5PWt7>; Myers & Buckley, *supra* note 7; Nick Paton Walsh, *The Wuhan Files*, CNN, https://www.cnn.com/2020/11/30/asia/wuhan-china-covid-intl/index.html?utm_medium=social&utm_source=twCNN&utm_content=2020-11-30T22:15:04 (Dec. 1, 2020, 3:39 AM).

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 issued 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 [They 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 understatement of cases.⁵³

Notice on Doing a Good Job in the Treatment of Pneumonia of Unexplained Cause.” See *Meiguo Guanyu Xinguan Feiyan Yiqing de Shehua Huangyan yu Shishi Zhenxiang* (美国关于新冠肺炎疫情的涉华谎言与事实真相) [Fact and Fiction About U.S. Lies Concerning China and the Novel Coronavirus Epidemic], PEOPLE'S DAILY (May 10, 2020), http://paper.people.com.cn/rmrb/html/2020-05/10/nw.D110000renmrb_20200510_1-03.htm.

49. Michael D. Swaine, *Chinese Crisis Decision Making—Managing the COVID-19 Pandemic, Part One: The Domestic Component*, CHINA LEADERSHIP MONITOR (June 1, 2020), <https://www.prcleader.org/swaine>; Yang Hai (杨海), *Wuhan Zaoqi Yiqing Shangbao Weihe Yidu Zhongduan* (武汉早期疫情上报为何一度中断) [Why the Early Report of the Epidemic Situation in Wuhan Was Interrupted], ZHONGGUO QINGNIAN BAO (中国青年报) [CHINA YOUTH DAILY] (Mar. 5, 2020), https://mp.weixin.qq.com/s/69pdSijNH_4qN3RrQ-Yk0Q; Dali L. Yang, *Wuhan Officials Tried to Cover Up Covid-19—And Sent It Careening Outward*, WASH. POST (Mar. 10, 2020, 6:43 AM), <https://www.washingtonpost.com/politics/2020/03/10/wuhan-officials-tried-cover-up-covid-19-sent-it-careening-outward/>.

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).

51. Yu Qin & Li Shiyun (俞琴 & 黎诗韵), *Zhuanfang Weijianweipai Wuhan Dierpi Zhuanjia: Weihe Mei Faxian Renchuanren?* (专访卫健委派武汉第二批专家:为何没发现人传人?) [Interview with the Second Batch of Experts Appointed by the National Health Commission in Wuhan: Why is There No Human-to-Human Transmission?], *Caijing Zazhi* (财经杂志) [CAIJING MAG.] (Feb. 26, 2020, 6:28 PM), <https://news.sina.cn/gn/2020-02-26/detail-iimxxstf4577244.d.html?from=wap>.

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 & 黎诗韵), *Zhuanfang Weijianwei Pai Wuhan Di Er Pi Zhuanjia: Weihe Mei Faxian Ren Chuan Ren?* (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

SINA (Feb. 26, 2020, 6:28 PM), <https://news.sina.cn/gn/2020-02-26/detail-iimxxstf4577244.d.html?from=wap>; Yang, *supra* note 49; Yang Hai, *supra* note 49.

54. See Chen et al., *supra* note 50 (noting that an estimated three billion trips are made over the holiday period); see also Josephine Ma & Zhang Pinghui, *5 Million Left Wuhan Before Lockdown, 1,000 New Coronavirus Cases Expected in City*, S. CHINA MORNING POST (Jan. 26, 2020, 10:23 PM), <https://www.scmp.com/news/china/society/article/3047720/chinese-premier-li-keqiang-head-coronavirus-crisis-team-outbreak> (reporting that five million people had already left Wuhan for the holiday by the time the lockdown was announced).

55. See, e.g., Myers & Buckley, *supra* note 7 (noting that Wuhan local health authorities kept “Beijing in the dark” out of fear of “sharing bad news”); Edward Wong et al., *Local Officials in China Hid Coronavirus Danger from Beijing, U.S. Agencies Find*, N.Y. TIMES, <https://www.nytimes.com/2020/08/19/world/asia/china-coronavirus-beijing-trump.html> (Sept. 17, 2020).

outbreak in Wuhan.⁵⁶ 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.⁵⁷

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.⁵⁸ Some of the *tiao*-side problems were the correlates of *kuai*-side issues discussed above, but they also involved more distinctively *tiao* phenomena. They manifest features of what is often called China's "fragmented authoritarianism";⁵⁹ the institutional

56. Xi Jinping (习近平), President, P.R.C., Zai Zhongyangzhengzhiju Changweihui Huidui Yanjiusuo Yingdui Xinxing Guanzhuangbingdu Feiyan Yiqing Gongzuo Shi de Jianghua (在中央政治局常委会会议研究应对新型冠状病毒肺炎疫情工作时的讲话) [Xi's Speech in the Politburo Standing Committee's Meeting on COVID-19 Responses], (Feb. 16, 2020) (transcript available at <http://cpc.people.com.cn/n1/2020/0216/c64094-31589177.html>).

57. Xu Tian (徐天), *Guanchang "Yiqing Wenzhe" Guancha Mianzhi shi Shenmeyang de Wenzhe Shouduan?* (官场“疫情问责”观察 免职是什么样的问责手段?) [Official “Pandemic Accountability” Observation: What Kind of Accountability is Dismissal?], *Zhongguo Xinwen Zhoukan* (中国新闻周刊) [CHINA NEWS WKLY.] (Mar. 5, 2020, 8:44 AM), <http://www.chinanews.com/gn/2020/03-05/9114184.shtml> (showing the dismissals of numerous government officials); Steven Lee Myers, *China Ousts 2 Party Officials Amid Outrage About Coronavirus Response*, N.Y. TIMES (Feb. 13, 2020), <https://www.nytimes.com/2020/02/13/world/asia/china-coronavirus-xi-jinping.html> (discussing ouster of Wuhan and Hubei Party Secretaries); Qiang Lijing et al., *China Penalizes Derelict Officials in Coronavirus Fight*, XINHUANET (Feb. 5, 2020, 12:40 AM), http://www.xinhuanet.com/english/2020-02/05/c_138755872.htm; William Zheng, *Coronavirus: Beijing Purges Communist Party Heads in Hubei Over ‘Botched’ Outbreak Response in Provincial Capital of Wuhan*, S. CHINA MORNING POST (Feb. 13, 2020, 11:31 AM), <https://www.scmp.com/news/china/politics/article/3050372/coronavirus-beijings-purge-over-virus-takes-down-top-communist>. The Emergency Response Law and Infectious Disease Law, and other laws, provide for administrative or criminal sanctions for malfeasance or nonperformance of reporting obligations.

58. Erin Mendell, *China Fires Highest-Level Officials Yet Over Coronavirus Outbreak*, WALL ST. J. (Feb. 11, 2020), <https://www.wsj.com/articles/china-fires-highest-level-officials-yet-over-coronavirus-outbreak-11581447269> (noting the firing of Party Secretary and Director of HHC).

59. See Kenneth G. Lieberthal, *Introduction: The “Fragmented Authoritarianism” Model and Its Limitations*, in BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA 1, 2 (Kenneth G. Lieberthal & David M. Lampton ed., 1992); David M. Lampton, *A Plum for a Peach: Bargaining, Interest, and Bureaucratic Politics in China*, in BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA, *supra*, at 39; Yanzhong Huang, *The State of China's State Apparatus*, 28 ASIAN PERSP. 31, 56 (2004).

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 “siloed” 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),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 super-ministerial 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 *kuai* to overshadow *tiao*.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.⁶² But such reforms did

60. *China Under Fire for Virus Spread*, BBC, <http://news.bbc.co.uk/2/hi/health/2922993.stm> (Apr. 6, 2003, 6:50 PM).

61. See Ye Shuisong (叶水送), *Guojia Jikongzhongxin Qianzhuren Li Liming: Yihou Guonei Gonggongweisheng Tixi Ruhe Gaige?* (国家疾控中心前主任李立明: 疫后国内公共卫生体系如何改革?) [Li Liming, *Former Director of the National Center for Disease Control and Prevention: How to Reform the Domestic Public Health System After the Epidemic? Scientific Responsibility*], ZHISHIFENZI (知识分子) [INTELLECTUALS] (May 19, 2020), <http://www.zhishifenzi.com/depth/depth/9051.html> (discussing Chinese Center for Disease Control and Prevention (CCDC) Director's concerns regarding the low priority given of public health, in contrast with United States' Centers for Disease Control and Prevention (CDC)); Zhang Ranran (张冉燃), *Gonggongweisheng Shouxian Yao Xing Gong* (公共卫生首先要姓公) [Zeng Guang, *Chief Scientist of Epidemiology, Chinese Center for Disease Control and Prevention*], Xinhua (新华网) XINHUANET (May 11, 2020, 9:40 AM), http://www.xinhuanet.com/local/2020-05/11/c_1125967825.htm (discussing the elimination of CCDC branches in some localities); Cheng Jinqian (程锦泉), *Woguo Jibing Yufangkongzhi Tixi Xiandaihua Jianshe de Sikao ji Duice Jianyi* (我国疾病预防控制体系现代化建设的思考及对策建议) [Thoughts and Countermeasures on the Modernization of My Country's Disease Prevention and Control System], *Zhonghua Yufang Yixue Zazhi* (中华预防医学杂志) CHINESE J. PREVENTIVE MED. (May 6, 2020), <http://rs.yiigle.com/CN112150202005/1194071.htm> (concerning "extremely limited" powers of CCDC).

62. See discussion *supra* notes 1–10 and accompanying text (discussing principal laws and regulations adopted or revised significantly after SARS); David Hipgrave, *Communicable Disease Control in China: From Mao to Now*, 1 J. GLOB. HEALTH 224, 232–33 (2011) (praising centralization

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

within and greater attention to CCDC and improvements to laws governing infectious diseases after SARS); Chengyue Li et al., *The Centers for Disease Control and Prevention System in China: Trends from 2002–2012*, 106 AM. J. PUB. HEALTH 2093, 2094, 2096, 2101 (2016) (“China’s CDC System has shown remarkable improvements in resource allocation and service delivery.”).

63. See Cheng, *supra* note 61 (advocating for reforms that would permit the CCDC to take binding authoritative actions); Li Liming et al. (李立明), *Yiqing Zaoqi, Jibing Yufangkongzhi Tixi Shisheng Yuanyin Hezai?* (疫情早期, 疾病预防控制体系失声原因何在?) [What Was the Reason for the Loss of the Disease Prevention and Control System in the Early Stage of the Epidemic?] Zhishifenzi (知识分子) [INTELLECTUALS] (Mar. 3, 2020), <http://zhishifenzi.com/depth/depth/8392.html> (showing how the CCDC Director described the CCDC as a technical institution without supervisory or law enforcement powers or adequate resources); Lilian Wu & Evelyn Cheng, *Virus Disclosure in China Was Delayed Because Disease Control Group Lacks Authority*, *Top Scientist Says*, CNBC, <https://www.cnbc.com/2020/02/28/chinas-cdc-lacks-authority-to-alert-public-on-virus-scientist-says.html> (Feb. 28, 2020, 7:38 AM) (reporting on “budget cuts and talent losses” at the CCDC); Sidney Leng, *China’s Coronavirus Response Slowed by Bureaucracy, Unstable Funding as Government Never Empowered Lower Level Officials*, S. CHINA MORNING POST (Mar. 9, 2020, 7:00 AM), <https://www.scmp.com/economy/china-economy/article/3073960/chinas-coronavirus-response-slowed-bureaucracy-unstable> (noting CCDC lacked authority to issue an early warning to hospitals); see also Fan Jiang et al., *Towards Evidence-Based Public Health Policy in China*, 381 LANCET 1962, 1963 (2013) (“By contrast with evidence-based medicine, which is mainly practised at the grassroots level, mindset change from opinion-based to evidence-based decision making can start from the top. Administrative officials could exert their influence downward to accelerate the transition.”).

64. Paton Walsh, *supra* note 47.

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.⁶⁵ 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.⁶⁶ By not adequately directing medical staff to bypass superiors, the process was left vulnerable to the local obstructionism that occurred in Wuhan.⁶⁷ 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.⁶⁸ 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.⁶⁹

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

65. See Zhonghua Renmin Gongheguo Chuanranbing Fangzhi Fa (中华人民共和国传染病防治法) [Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases] [promulgated by the Standing Comm. Nat'l People's Cong., Aug. 28, 2004, effective Dec. 1, 2004], art. 30–38, http://www.gov.cn/banshi/2005-08/01/content_19023.htm (outlining reporting responsibilities of various government bodies, but not mentioning the direct reporting system or clearly delineated thresholds to trigger reporting).

66. See Wang Xixin (王锡铨), *Chuanranbing Yiqing Xixi 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/raqY4vNjMkz2UCHTEQgpZg>.

67. See Infectious Disease Law, art. 31–33 (establishing specific chains of authority for reporting); Tufa Gonggong Weisheng Shijian yu Chuanranbing Yiqing Jiance Xixi 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, *Lun Tufa Chuanranbing Xixi 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*], Dandang 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 (*kuai*) 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 reports⁷³ and to adopt narrow diagnostic criteria; 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.

72. Yu & Li, *supra* note 53; see also Edward Gu & Lantian Li, *Crippled Community Governance and Suppressed Scientific/Professional Communities: A Critical Assessment of Failed Early Warning for the COVID-19 Outbreak in China*, 5 J. CHINESE GOVERNANCE 160, 170–71 (2020) (discussing the CCDC’s internal identification of the risks of COVID-19, and questioning whether the lack of information to the public is because the CCDC follows National Health Commission (NHC) orders).

73. Gao Yu et al., *In Depth: How Early Signs of a SARS-Like Virus Were Spotted, Spread, and Throttled*, CAIXIN GLOB. (Feb. 29, 2020, 9:19 PM), <https://www.caixinglobal.com/2020-02-29/in-depth-how-early-signs-of-a-sars-like-virus-were-spotted-spread-and-throttled-101521745.html>.

74. See State Council Info. Off. of China, *Fighting COVID-19: China in Action*, XINHUANET § I(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-iihnzhha4917463.d.html>; see also Zhao Hong (赵宏), *Fazhi de Xijian: “Weijing Shouquan 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.⁷⁸ 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.⁷⁹ 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.⁸⁰

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).

80. Jun Mai, *Politics May Have Stalled Information in Wuhan Coronavirus Crisis, Scientist says*, S. CHINA MORNING POST (Jan. 30, 2020, 8:45 PM), <https://www.scmp.com/news/china/society/article/3048283/politics-may-have-stalled-information-wuhan-coronavirus-crisis>; Tom Hancock, *Coronavirus Makes for Dismal Lunar New Year for Wuhan Residents*, FIN. TIMES (Jan. 26, 2020), <https://www.ft.com/content/975d8fbc-3fed-11ea-bdb5-169ba7be433d> (reporting “tense”

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.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.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*) hospitals⁸³ were established to isolate non-critically ill patients from the general population.⁸⁴ Similar methods were employed in other hotspots.⁸⁵

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, § I (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 Yihuren Yuan 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], Xinhuaawang (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).

83. Simiao Chen et al., *Fangcang Shelter Hospitals: A Novel Concept for Responding to Public Health Emergencies*, 395 LANCET 1305, 1305–306 (2020).

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

85. See, e.g., Gerry Shih, *Locked Down in Beijing, I Watched China Beat Back the Coronavirus*, WASH. POST (Mar 16, 2020, 9:00 AM), https://www.washingtonpost.com/world/asia_pacific/locked-down-in-beijing-i-watched-china-beat-back-the-coronavirus/2020/03/16/f839d686-6727-11e9-a-b199-3a9799c54512_story.html; Shi Jingtao, *Beijing and Shanghai Impose New Controls on Residents as China Battles to Contain Coronavirus*, S. CHINA MORNING POST (Feb. 10, 2020, 11:34 PM), <https://www.scmp.com/news/china/society/article/3049891/beijing-and-shanghai-impose-new-controls-residents-china-battles>.

By early March, Chinese authorities declared the outbreak in Wuhan and Hubei “curbed,” and an easing of travel bans and other restrictions soon followed.⁸⁶ 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.⁸⁷ These and other statistics have been greeted with some skepticism abroad. Undercounting infections and fatalities has been a problem in many countries.⁸⁸ 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.⁸⁹ 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),⁹⁰ and the resurgence of case counts experienced in many places around the world where the virus had seemed under control, success can be precarious.⁹¹ Still, China’s initial

86. Stephen McDonnell, *Coronavirus: China Says Disease ‘Curbed’ in Wuhan and Hubei*, BBC (Mar. 10, 2020), <https://www.bbc.com/news/world-asia-china-51813876> (describing comments by President Xi Jinping that the virus was “‘basically curbed’ in Hubei province and Wuhan”); State Council Info. Off. of China, *supra* note 74, § I(4); *China Publishes Timeline on COVID-19*, *supra* note 22.

87. *Coronavirus Disease (COVID-19) Weekly Epidemiological Update*, WHO (Sept. 13, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200914-weekly-epi-update-5.pdf?sfvrsn=cf929d04_2; *China*, WHO, <https://www.who.int/countries/chn/> (last visited Mar. 3, 2021); *China: COVID-19 Overview*, JOHN HOPKINS UNIV. & MED, <https://coronavirus.jhu.edu/region/china> (last visited Mar. 3, 2021); *COVID World Map: Tracking the Global Outbreak*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (Feb. 3, 2020, 2:20 PM).

88. Daniel Michaels, *Extent of Covid-19 Deaths Failed to be Captured by Most Countries*, WALL ST. J., <https://www.wsj.com/articles/most-countries-fail-to-capture-extent-of-covid-19-deaths-11590658200> (May 28, 2020, 6:16 PM).

89. See Amy Qin, *China Raises Coronavirus Death Toll by 50% in Wuhan*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/2020/04/17/world/asia/china-wuhan-coronavirus-death-toll.html> (noting that subsequent government revisions of reported infection statistics appear to be a response to skepticism towards the official numbers as originally reported); Charlie Campbell & Amy Gunia, *China Says It’s Beating Coronavirus. But Can We Believe Its Numbers?*, TIME (Apr. 1, 2020, 8:54 AM), <https://time.com/5813628/china-coronavirus-statistics-wuhan/>.

90. *China’s Capital Locks Down Part of District in Coronavirus Fight*, REUTERS, <https://www.reuters.com/article/us-health-coronavirus-china-beijing/chinas-capital-locks-down-part-of-district-in-coronavirus-fight-idUSKBN2930TL> (Dec. 29, 2020, 5:21 AM).

91. Anna Fifield & Lyric Li, *Beijing Goes into ‘Wartime Mode’ as Virus Emerges at Market*, WASH. POST (June 13, 2020, 7:08 AM), https://www.washingtonpost.com/world/beijing-goes-into-wartime-mode-as-virus-emerges-at-market-in-chinese-capital/2020/06/13/65c5aac8-ad40-11ea-868b-93d63cd833b2_story.html; Zhang Xudong et al., *China’s Qingdao Tests 11 Million After*

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

Local COVID-19 Cases Emerge, XINHUANET (Oct. 15, 2020 8:40 PM), http://www.xinhuanet.com/english/2020-10/15/c_139442983.htm; Andrew Witty & Ngozi Okonjo-Iweala, *Resurgence of Covid-19 in Many Countries Underscores How Vulnerable Billions of People Are*, TEL. (Oct. 3, 2020, 7:00 PM), <https://www.telegraph.co.uk/news/2020/10/03/resurgence-covid-19-many-countries-underscores-vulnerable-billions/>.

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.prcleader.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).

94. See, e.g., DALI L. YANG, REMAKING THE CHINESE LEVIATHAN 1–2, 7–8, 13–21, 290–91, 297, 303–06, 311–12, 314 (2004) (analyzing the success of government institutional reforms as a means for sustaining growth, achieving political stability, and addressing corruption); *World Governance Indicators*, WORLD BANK GRP., <https://databank.worldbank.org/reports.aspx?source=worldwide-governance-indicators> (last visited Mar. 3, 2021) (ranking China at +0.51, compared to global average of -0.2 and substantially above average for countries with similar per capita income on “government effectiveness”).

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;⁹⁵ the Ministry of Transportation and local public transport organs;⁹⁶ public works crews (to build physical barriers);⁹⁷ the Ministry of Industry and Information Technology (for big data and artificial intelligence (AI) tracking measures);⁹⁸ the military (to help build temporary hospitals and to provide supplementary medical staff);⁹⁹ 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;¹⁰⁰ 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,

95. James Griffiths & Nectar Gan, *China's Massive Security State Is Being Used to Crack Down on the Wuhan Virus*, CNN, <https://www.cnn.com/2020/02/10/asia/china-security-police-wuhan-virus-intl-hnk/index.html> (Feb. 11, 2020, 8:16 AM).

96. *Coronavirus: Wuhan Shuts Down Public Transport Over Outbreak*, BBC (Jan. 23, 2020), <https://www.bbc.com/news/world-asia-china-51215348>.

97. Cao Li, *A 'Blue Great Wall' Divides a City as It Battles the Coronavirus*, N.Y. TIMES (Mar. 4, 2020), <https://www.nytimes.com/2020/03/04/business/coronavirus-china-tianjin-response.html>.

98. Pratik Jakhar, *Coronavirus: China's Tech Fights Back*, BBC (Mar. 3, 2020), <https://www.bbc.com/news/technology-51717164>; Shawn Yuan, *How China is Using AI and Big Data to Fight the Coronavirus*, AL JAZEERA (Mar. 1, 2020), <https://www.aljazeera.com/news/2020/3/1/how-china-is-using-ai-and-big-data-to-fight-the-coronavirus>.

99. *Wuhan Virus: Chinese Army to Oversee New Hospital Built in Days to Treat Patients in Wuhan*, STRAITS TIMES (Feb. 2, 2020, 6:39 PM), <https://www.straitstimes.com/asia/east-asia/wuhan-virus-chinese-army-to-oversee-new-hospital-built-in-days-to-treat-patients-in>; Yuliya Talmazan, *China's Coronavirus Hospital Built in 10 Days Opens Its Doors, State Media Says*, NBC, <https://www.nbcnews.com/news/world/china-s-coronavirus-hospital-built-10-days-opens-its-doors-n1128531> (Feb. 3, 2020, 7:57 AM).

100. Wang Wenwen, *Opinion, Neighborhood Committees are in the Vanguard of Virus Control*, GLOBAL TIMES (Mar. 31, 2020, 9:43 PM), <https://www.globaltimes.cn/content/1184356.shtml>.

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.¹⁰¹ 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.¹⁰²

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.¹⁰³

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 [*yoguan 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 Pulu Wuhan Fengcheng Xijie (解封在即, 李兰娟首次披露武汉封城细节) [*Unlocking 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.¹⁰⁴ 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.¹⁰⁵ Such arrangements were consistent with legal mandates for establishing task-specific “headquarters” to address public health emergencies.¹⁰⁶

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.¹⁰⁷

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 Bingduguanran 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) [NAT'L HEALTH COMM'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.

104. Yan Ning et al., *China's Model to Combat the COVID-19 Epidemic: A Public Health Emergency Governance Approach*, 5 *GLOB. HEALTH RCSH. & POL'Y* 1 (July 14, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7358318/>; see also State Council Info. Off. of China, *supra* note 74, § II(1) (crediting the work of the Joint Prevention and Control Mechanism for a return to normalcy in everyday life).

105. State Council Info. Off. of China, *supra* note 74, § I(II)(8); Ning et al., *supra* note 104; Anna Fifield & Lena H. Sun, *Travel Ban Goes into Effect in Chinese City of Wuhan as Authorities Try to Stop Coronavirus Spread*, *WASH. POST* (Jan. 22, 2020, 11:32 PM), https://www.washingtonpost.com/world/asia_pacific/nine-dead-as-chinese-coronavirus-spreads-despite-efforts-to-contain-it/2020/01/22/1eaade72-3c6d-11ea-afe2-090eb37b60b1_story.html.

106. Emergency Response Law, art. 8.

107. See Emily Feng & Amy Cheng, *Restrictions and Rewards: How China Is Locking Down Half a Billion Citizens*, *NPR* (Feb. 21, 2020, 11:00 AM), <https://www.npr.org/sections/goatsandsoda/2020/02/21/806958341/restrictions-and-rewards-how-china-is-locking-down-half-a-billio>

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.¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰ 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-progressand-drawing-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).

108. Toby Lincoln, *The Urban History That Makes China's Coronavirus Lockdown Possible*, CONVERSATION (Mar. 3, 2020, 7:44 AM), <https://theconversation.com/the-urban-history-that-makes-chinas-coronavirus-lockdown-possible-132616>; Wenwen, *supra* note 100; *How Does China Combat Coronavirus: 7,148 Residential Communities in Wuhan Are on Lockdown*, XINHUA (Mar. 11, 2020, 7:49 PM), http://www.xinhuanet.com/english/2020-03/11/c_138867074.htm; Raymond Zhong & Paul Mozur, *To Tame Coronavirus, Mao-Style Social Control Blankets China*, N.Y. TIMES, <https://www.nytimes.com/2020/02/15/business/china-coronavirus-lockdown.html> (Feb. 20, 2020).

109. *Community Grid System Helps China Fight Virus*, GLOB. TIMES (Feb 5, 2020, 12:33 AM), <https://www.globaltimes.cn/content/1178528.shtml>; William Zheng & Kristin Huang, *Street by Street, Home by Home: How China Used Social Controls to Tame an Epidemic*, S. CHINA MORNING POST (Apr. 22, 2020, 1:00 PM), <https://www.scmp.com/news/china/society/article/3080912/wuhans-elderly-reminded-life-under-mao-during-coronavirus>; William Zheng, *Grass-Roots Officials Take Lead Role on the Front Line of Wuhan's Grid-by-Grid Battle Against Coronavirus*, S. CHINA MORNING POST (Mar. 17, 2020, 9:00 AM), <https://www.scmp.com/news/china/society/article/3075453/grass-roots-officials-take-lead-role-front-line-wuhans-grid-grid>.

110. *See To Curb Covid-19, China is Using its High-Tech Surveillance Tools*, ECONOMIST (Feb. 29, 2020), <https://www.economist.com/china/2020/02/29/to-curb-covid-19-china-is-using-its-hi>

probabilities of outbreaks and mobility patterns to guide decisions to impose or lift restrictions.¹¹¹ Tools included taking temperatures of people entering buildings,¹¹² scanning QR codes to check the “green, yellow, or red” health status of people seeking to use public transportation,¹¹³ tracking down travelers who had been on trains and planes with infected fellow passengers,¹¹⁴ and extensive contact tracing.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.¹¹⁶ China’s efforts to monitor, trace, and

gh-tech-surveillance-tools (examining use of surveillance tools for contact tracing); *see also* Yingzhi Yang & Julie Zhu, *Coronavirus Brings China’s Surveillance State out of the Shadows*, REUTERS, <https://www.reuters.com/article/us-china-health-surveillance/coronavirus-brings-chinas-surveillance-state-out-of-the-shadows-idUSKBN2011HO> (Feb. 7, 2020, 7:20 AM) (reporting on use of surveillance to enforce quarantines and check for low-grade fevers); Amy Gadsden, *The Post-COVID-19 Future of Surveillance in China*, PERRY WORLD HOUSE (May 20, 2020), <https://global.upenn.edu/perryworldhouse/news/post-covid-19-future-surveillance-china> (examining how Chinese tech firms are producing high-tech solutions to enforce symptom reporting, contact tracing, and self-quarantine periods); Nicholas Wright, *Coronavirus and the Future of Surveillance*, FOREIGN AFFS. (Apr. 6, 2020), <https://www.foreignaffairs.com/articles/2020-04-06/coronavirus-and-future-surveillance> (examining how mass surveillance is being employed to track individuals’ movements and compliance with various containment measures, including mask wearing); Yuan, *supra* note 98 (combining the use of thermal scanners, facial recognition technology, and artificial intelligence to track those potentially exposed to infection).

111. Yuan, *supra* note 98.

112. Coco Feng, *Coronavirus: AI Firms Deploy Fever Detection Systems in Beijing to Fight Outbreak*, S. CHINA MORNING POST (Feb. 6, 2020, 6:30 AM), <https://www.scmp.com/tech/policy/article/3049215/ai-firms-deploy-fever-detection-systems-beijing-help-fight-coronavirus>.

113. Paul Mozur et al., *In Coronavirus Fight, China Gives Citizens a Color Code, with Red Flags*, N.Y. TIMES, <https://www.nytimes.com/2020/03/01/business/china-coronavirus-surveillance.html> (Jan. 28, 2021).

114. Yuan, *supra* note 98.

115. *Id.*

116. *Compare* Connor Boyd, *Chinese People are Happiest with Their Government’s Handling of the COVID-19 Pandemic—While the US Has Only Fared Slightly Better than Britain, Poll Claims*, DAILY MAIL, <https://www.dailymail.co.uk/news/article-8806987/China-responded-best-Covid-19-pandemic-study-claims.html> (Oct. 6, 2020, 3:45 AM) (finding that Chinese citizens were largely happy with their government’s quick and efficient response to coronavirus), *with* Greg Allen, *Florida’s Governor: Officials Can Require Face Masks, but Can’t Enforce it*, NPR (Oct. 7, 2020 2:28 PM),

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.¹¹⁷ Especially among urban, educated, and younger-generation Chinese, “privacy” has become more of an issue in recent decades.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ Indeed, many of the measures

<https://www.npr.org/sections/coronavirus-live-updates/2020/10/07/921216724/floridas-governor-officials-can-require-face-masks-but-can-t-enforce-it> (noting that U.S. states have failed to enforce even minor measures, like mask wearing), and Emily Jacobs, *Biden Walks Back National Mask Mandate Over ‘Constitutional Issue’*, N.Y. POST, <https://nypost.com/2020/09/08/joe-biden-walks-back-national-mask-mandate/> (Sept. 8, 2020, 9:24 AM) (citing federalism and constitutional concerns regarding the prospect of a mask mandate in the United States).

117. See Shen Kui, *The Stumbling Balance Between Public Health and Privacy Amid the Pandemic in China*, CHINESE J. COMPAR. L., Feb. 2021, at 1–4 (describing increasing concerns in China regarding the impact of new surveillance technologies on privacy interests).

118. See, e.g., William Yang, *How Much Do Chinese People Care About Privacy?*, DEUTSCHE WELLE (Apr. 12, 2018), <https://www.dw.com/en/how-much-do-chinese-people-care-about-privacy/a-43358120> (finding more than 70% of respondents in China were concerned about breaches of privacy); Marc Oliver Rieger et al., *What Do Young Chinese Think about Social Credit? It’s Complicated*, MERCATOR INST. FOR CHINA STUD. (Mar. 26, 2020), <https://merics.org/en/report/what-do-young-chinese-think-about-social-credit-its-complicated> (citing survey results showing concern over government abuse of surveillance).

119. See, e.g., Peter Hessler, *How China Controlled the Coronavirus*, NEW YORKER (Aug. 10, 2020), <https://www.newyorker.com/magazine/2020/08/17/how-china-controlled-the-coronavirus> (describing an instance where a Chinese company opposed sharing user data for a contact tracing application).

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/2020/08/26/906206090/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, *kuai*-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

Since Outbreak, WASH. POST (Mar. 10, 2020, 11:57 AM), https://www.washingtonpost.com/world/asia_pacific/chinas-xi-attempts-a-coronavirus-victory-lap-with-visit-to-wuhan/2020/03/10/ca585ddc-6281-11ea-8a8e-5c5336b32760_story.html.

121. See She Jingwei, *China Gets Top Marks as Citizens Rank their Governments' Response to the COVID-19 Pandemic: Blackbox Research*, CGTN (May 8, 2020, 3:03 PM), <https://news.cgtn.com/news/2020-05-08/Survey-shows-China-s-response-to-COVID-19-gets-top-mark-among-public-Qk5KbpG78k/index.html> (indicating that China received the highest score in a recent survey of citizen satisfaction on government performance in responding to the COVID-19 pandemic); Dan Chen, *China's Coronavirus Response Could Build Public Support For Its Government*, WASH. POST (Mar. 27, 2020, 7:00 AM), <https://www.washingtonpost.com/politics/2020/03/27/chinas-coronavirus-response-could-build-public-support-its-government/> (describing local residents' satisfaction with restrictive measures that were seen as beneficial); Cary Wu, *How Chinese Citizens View Their Government's Coronavirus Response*, CONVERSATION (June 4, 2020, 11:34 PM), <https://theconversation.com/how-chinese-citizens-view-their-governments-coronavirus-response-139176> (noting that 75% of citizens were satisfied with the government's pandemic response).

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.