

**“Federalism, Chinese Style”? or:
How to Contain COVID-19 Through a Central-Local Chess Game**

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ABSTRACT

China's central-local relations are often characterized as "federalism, Chinese style." However, the People's Republic legally and politically rejects federalism. Instead, central-level leaders have constructed a unitary and democratic centralist system – and yet at the same time demand public policy not to "cut with one knife" but to treat "the whole country as a chess game."

Such chess-game tactics also prevail during the current COVID-19 pandemic. This particularly holds true for coronavirus crisis management in the pandemic's first epicentre, Wuhan city. On China's central-local "chess board," there are "chess pieces" of the state and the Communist Party. They have been supplemented by newly created mixed party-state organs like Wuhan's Headquarters for COVID-19 Prevention and Control. With these chess pieces, central-level leaders perform three different vertical-horizontal "chess moves."

These chess moves control local units not through the channels of the state but through the conduits of the Communist Party. In contrast, local units are not held accountable toward the population. Therefore, Wuhan has been allowed (and even required) to encroach on myriad human rights of millions of individuals during several months. Hence, the WHO's appraisal of China's anti-federal COVID-19 management as a "model" for public policy in these challenging times appears questionable.

Les relations centre-régions en Chine sont souvent qualifiées de « fédéralisme à la chinoise ». Cependant, la République populaire rejette juridiquement et politiquement le fédéralisme. Les responsables centraux ont plutôt construit un système centralisé unitaire et démocratique. L'on exige toutefois que les politiques publiques ne 'découpent pas tout avec le même couteau, mais qu'elles 'traitent tout le pays comme un jeu d'échecs'.

De telles tactiques d'échecs s'imposent également durant la pandémie actuelle de COVID-19. Ceci est particulièrement vrai pour la gestion de la crise du coronavirus à l'endroit du premier épicode de la pandémie, la ville de Wuhan. Sur « l'échiquier » centre-régions chinois se trouvent des « pièces » de l'État et du Parti communiste. Elles ont été rejointes par des organes mixtes Parti-État nouvellement créés comme le Quartier général de Wuhan pour la prévention et le contrôle de la COVID-19. Avec ces pièces d'échecs, les responsables centraux effectuent trois différents « coups » verticaux-horizontaux.

Ces coups contrôlent les unités locales non pas via les canaux de l'État, mais par l'intermédiaire du Parti communiste. À l'inverse, les unités locales ne sont pas tenues responsables envers la population. Ainsi, Wuhan a été autorisée (et même obligée) à empiéter sur une myriade de droits humains de millions d'individus pendant plusieurs mois. Conséquemment, l'évaluation par l'OMS de la gestion de la COVID anti-fédérale de la Chine comme un « modèle » de politique publique en période de turbulence paraît douteuse.

TABLE OF CONTENTS

INTRODUCTION: “FEDERALISM, CHINESE STYLE”?	- 4 -
I. CENTRAL-LOCAL CHESS RULES	- 6 -
A. <i>Normal Chess Rules</i>	- 7 -
B. <i>COVID-19 Chess Rules</i>	- 9 -
II. CENTRAL-LOCAL CHESS BOARD	- 10 -
A. <i>Normal Chess Pieces</i>	- 10 -
B. <i>Pandemic Chess Pieces</i>	- 11 -
C. <i>COVID-19 Chess Pieces</i>	- 14 -
III. CENTRAL-LOCAL CHESS MOVES	- 16 -
A. <i>Triple Move: Wuhan’s Shutdown</i>	- 17 -
B. <i>Double Move: Wuhan’s Lockdown</i>	- 18 -
C. <i>Single Move: Easing</i>	- 19 -
D. <i>Wuhan as a Pawn Sacrifice and an Agent</i>	- 21 -
CONCLUSION: “DECENTRALIZATION, CHESS-GAME STYLE”	- 22 -

INTRODUCTION: “FEDERALISM, CHINESE STYLE”?

What began in the local realm now affects the whole globe: the coronavirus disease 2019 (COVID-19), which took its decisive course from the city of Wuhan in the People’s Republic of China (P.R.C.).¹ COVID-19 was qualified by the World Health Organization (WHO) as a public health emergency of international concern on January 30, 2020,² and as a pandemic on March 11.³ Rapidly, COVID-19 has developed into a veritable coronavirus crisis affecting almost every country in the world. The threat posed by this crisis is holistic because it challenges all levels, branches, and areas of government. Therefore, the answer to the coronavirus crisis too must be holistic, that is, undertaken by all levels of government, from the international and national down to the local or even sub-local levels.

In these challenging times, China’s central-local public policy appears to have contained both the COVID-19 pandemic and the coronavirus crisis. Although the 2019 novel coronavirus SARS-CoV-2 was first detected in the P.R.C., the country’s COVID-19 prevalence is now far lower than in other countries. Bearing in mind unreported cases and restricted information,⁴ COVID-19 numbers have remained largely stagnant for months. As of April 2021, Mainland

¹ See Kristian Andersen et al., *The proximal origin of SARS-CoV-2*, 26 NATURE MED. 450, 452 (2020); Huihui Wang et al., *The genetic sequence, origin, and diagnosis of SARS-CoV-2*, 39 EUR. J. CLIN. MICROBIOL. INFECT. DIS. 1629 (2020).

² Tedros Adhanom Ghebreyesus’ *WHO Director-General’s statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)*, WHO (Jan. 30, 2020), [https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ih-er-emergency-committee-on-novel-coronavirus-\(2019-ncov\)](https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ih-er-emergency-committee-on-novel-coronavirus-(2019-ncov)).

³ *WHO Director-General’s opening remarks at the media briefing on COVID-19*, WHO (Mar. 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

⁴ See MERICS, *China-Update 6/2020* (Mar. 13–25, 2020), <https://www.merics.org/en/newsletter/china-update-62020>.

China has confirmed 90,447 cases⁵ (Wuhan: 50,359 cases⁶) in total, including suffering, convalesced, and deceased (4,636, Wuhan: 3,869⁷) patients.

This apparent success has been attributed to a supposed “federalism, Chinese style,”⁸ featuring (de-)centralization⁹ and central-local relations “with Chinese characteristics.”¹⁰ However, China is federal only in an economic and *de facto* sense.¹¹ Such a fiscal federalism understands federalism simply as decentralization, or even as central-local relations themselves.¹² In a legal and political sense, in contrast, it takes much more to establish federalism.¹³ First, powers must be vertically separated between the national level and local units.¹⁴ Secondly, and arguably, local units must be granted statehood, not merely decentralized competences.¹⁵ Thirdly, local units must be able to participate in the decision-making on the

⁵ NHC, 截至 4 月 13 日 24 时新型冠状病毒肺炎疫情最新情况 [Latest COVID-19 Situation as of 24:00 on Apr. 13] (Apr. 14, 2021), http://www.gov.cn/xinwen/2021-04/14/content_5599498.htm.

⁶ WHC, 武汉市新冠肺炎疫情动态(2021 年 4 月 13 日) [COVID-19 Developments in Wuhan City (Apr. 13, 2021)] (Apr. 14, 2021), http://wjw.wuhan.gov.cn/ztl_28/fk/tzgg/202104/t20210414_1668273.shtml.

⁷ Death tolls in Wuhan, however, have been corrected upwards by 50 % by 关于武汉市新冠肺炎确诊病例数确诊病例死亡数订正情况的通报 [Notification of the Correction Situation of the Numbers of Confirmed COVID-19 Cases and Deaths in Wuhan] (Apr. 17, 2020), https://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202004/t20200417_2233454.shtml.

⁸ See generally, Gabriella Montinola, Yingyi Qian & Barry R. Weingast, *Federalism, Chinese Style: The Political Basis for Economic Success*, 48 WORLD POLIT. 50, 52 (1996); Evan A. Feigenbaum & Damien Ma, *Federalism, Chinese Style*, FOREIGN AFF. (May 6, 2014), <https://www.foreignaffairs.com/articles/china/2014-05-06/federalism-chinese-style>. Critically, Wei Cui, *The Legal Maladies of “Federalism, Chinese Style”*, in THE BEIJING CONSENSUS? 97, 111, 117 (Weitseng Chen ed., 2017)

⁹ So, YANG FENG, LEGISLATIVE DECENTRALIZATION IN CHINA IN THE REFORM ERA 17 (2019).

¹⁰ So, JAE HO CHUNG, CENTRIFUGAL EMPIRE 148 (2016); Li Lin (李林), 改革开放 30 年中国立法的主要经验 [Major Experiences of Chinese Legislation in 30 Years of Reform and Opening-Up], in 改革开放与中国特色社会主义 [REFORM AND OPENING-UP AND SOCIALISM WITH CHINESE CHARACTERISTICS] chapter 16, 4 (Wang Weiguang (王伟光) ed., 2009).

¹¹ So, Montinola, Qian & Weingast, *supra* note 8.

¹² So, Wallace E. Oates, *An Essay on Fiscal Federalism*, 37 J. ECON. LIT. 1120, 1120–1121 (1999), who admits that “[i]n retrospect, [...] the choice of the term ‘fiscal federalism’ was probably an unfortunate one.”

¹³ This is overlooked by Feigenbaum & Ma, *supra* note 8.

¹⁴ Erin Ryan, *Negotiating Federalism and the Structural Constitution: Navigating the Separation of Powers Both Vertically and Horizontally*, 115 COLUM. L. REV. SIDEBAR 4 (2015); Anna Gamper, A “Global Theory of Federalism”: The Nature and Challenges of a Federal State, 6 GERMAN L. J. 1297, 1307 (2005).

¹⁵ Critically, Gamper, *supra* note 14, at 1301.

central level.¹⁶ In this *de jure* sense, China is not federal but rather the world's largest unitary state.¹⁷ Public law grants statehood only to the central, national level, where local units cannot participate in the legislative process.¹⁸ And political doctrine rejects federalism as one of five taboos,¹⁹ meaning that the P.R.C. is explicitly anti-federal.

However, China's anti-federalism does not prevent local units from acting on the local level because neither is "federal" synonymous to "decentralized" nor "unitary" to "centralized." This important differentiation has been demonstrated throughout the coronavirus crisis: In unitary China, COVID-19 measures are decentralized in nature. Not only are they mostly issued by local units, but also do they vary heavily between those units.²⁰ The harshest COVID-19 measures (as of April 2021) have applied in the pandemic's first epicentre, Wuhan city, which thus serves as the litmus test of China's COVID-19 management in this essay.

I. CENTRAL-LOCAL CHESS RULES

Prima vista, such local regulatory diversity and decentralization in COVID-19 management seem hardly surprising: Empirically, the P.R.C. is the world's most populous country with a huge territory, where the pandemic prevalence of COVID-19 differs significantly. Legally, China forms a complex central-local system featuring one national (first

¹⁶ Gamper, *supra* note 14, at 1305, 1314.

¹⁷ See Cui, *supra* note 8, at 111.

¹⁸ CHUNG, *supra* note 10, at 2.

¹⁹ So, the former NPC Standing Committee's Chairman Wu Bangguo (吴邦国), 我们不搞多党轮流执政 不搞联邦制 不搞私有化 [We Must Not Engage in Multi-Party Rotation Government, Federalism, and Privatization], 新华网 [XINHUANET] (Mar. 11, 2011), http://www.npc.gov.cn/zgrdw/npc/dbdhhy/11_4/2011-03/10/content_1640332.htm.

²⁰ WHO Representative to China Gauden Galea, Interview, *China shows COVID-19 responses must be tailored to the local context*, WHO/EUROPE (Apr. 3, 2020) <http://www.euro.who.int/en/health-topics/health-emergencies/pages/news/news/2020/04/china-shows-covid-19-responses-must-be-tailored-to-the-local-context>.

level) and four local levels:²¹ provinces (second), prefectures and cities (third), counties and city districts (fourth), and townships and streets (fifth level). Below them lies the basic or grassroots level: villages, residential communities, and neighbourhoods within. Nevertheless, local diversity in China's COVID-19 management is anything but self-evident: The P.R.C.'s central-local system is pronouncedly centralist in normal times [A.]. And in crises like emergencies and pandemics, decision-making abruptly centralizes even more [B.].²²

A. *Normal Chess Rules*

Therefore, all local state organs are held accountable toward the state centre through the principle of democratic centralism.²³ Democratic centralism applies inside the Communist Party (CCP) too,²⁴ meaning that local party branches are subordinate to the party centre. Even more important is a second “chess rule”: the all-embracing leadership of the party over the state. Party leadership is enshrined both in party norms and state norms, both on the central²⁵ and on the local²⁶ levels. As the CCP Statute²⁷ summarizes: The CCP “leads on everything,” on

²¹ 中华人民共和国地方各级人民代表大会和地方各级人民政府组织法 [P.R.C. Organization Law of Local People's Congresses and Governments at All Levels] (July 1, 1979, last amended Aug. 29, 2015), CLI.1.55744 [hereinafter Organization Law]; see CHUNG, *supra* note 10, at 34.

²² CHINA'S POLITICAL SYSTEM 158 (Sebastian Heilmann ed., 2016).

²³ 中华人民共和国宪法 [P.R.C. Constitution] (Dec. 4, 1982, last amended Mar. 11, 2018), CLI.1.311950, art. 3, § 1; 中国共产党章程 [CCP Statute] (Sept. 6, 1982, last rev'd Oct. 24, 2017), CLI.16.303854, gen. progr., § 24:4. See XIAODAN ZHANG, STUFENORDNUNG UND VERFAHREN DER SETZUNG VON RECHTSNORMEN IN DER VR CHINA [HIERARCHY AND ENACTMENT PROCEDURE OF LEGAL NORMS IN THE P.R.C.] 122, 153 (2017).

²⁴ CCP Statute art. 10.

²⁵ Constitution art. 1, § 2:2; 中华人民共和国立法法 [P.R.C. Legislation Law] (Mar. 15, 2000, amended Mar. 15, 2015), CLI.1.245693, art. 3.

²⁶ 武汉市人民代表大会常务委员会关于依法全力打赢新冠肺炎疫情防控武汉保卫战的决定 [Wuhan's MPC Standing Comm. Decision on Winning the Wuhan Defence War of COVID-19 Prevention and Control According to the Law and With Full Strength.] (Feb. 17, 2020), CLI.12.1567050, http://www.wuhan.gov.cn/zwgk/tzgg/202003/t20200316_972587.shtml [hereinafter MPCSC Decision] art. 1.

²⁷ CCP Statute gen. progr., § 25:2.

“government, army, society, and education” in “east, west, south, and north”– that is, on all horizontal quasi-branches²⁸ and all vertical levels of the state.²⁹

As a result, local units must thus follow the “unified leadership, command, and coordination” by the party and state centre – be it in normal times,³⁰ in emergency response,³¹ or in the current COVID-19 pandemic.³² Consequently, Chinese cities like Wuhan do not enjoy self-government³³ or home rule as in some European countries³⁴ and U.S. states.³⁵ Moreover, cities are not conceptualized as municipalities or communes³⁶ but as political-administrative units dispatched by the centre to control the surrounding countryside.³⁷ This means that in terms of territory, Wuhan encompasses extensive rural areas and covers an administrative area (8,500 km²) much larger than its urbanized core (800 km²). And in terms of population, Wuhan accommodates 11.2 million *de facto* inhabitants, over 9 million of them in the urbanized core.³⁸

²⁸ “Quasi-legislative” and “quasi-executive” organs represent “quasi-branches” because the P.R.C. does not recognize a separation of powers but only their division of labour.

²⁹ See XI JINPING (习近平), 习近平新时代中国特色社会主义思想三十讲 [THIRTY TALKS ON XI JINPING THOUGHT ON SOCIALISM WITH CHINESE CHARACTERISTICS FOR A NEW ERA] 74 (2018); Xin He, *The Party’s Leadership as a Living Constitution in China*, 42 HONG KONG L.J. 73, 75 (2012).

³⁰ Constitution art. 3, § 4, art. 110, § 2:2; Organization Law art. 55, § 2.

³¹ 中华人民共和国突发事件应对法 [P.R.C. Emergency Response Law] (Aug. 30, 2007), CLI.1.96791 [hereinafter Emergencies Law] art. 63, § 5.

³² 湖北省人民政府关于加强新型冠状病毒感染的肺炎防控工作的通告 [Hubei Government Notice on COVID-19 Prevention and Control Work] (Jan. 22, 2020), CLI.12.1563626, https://www.hubei.gov.cn/xxgk/gsgg/202001/t20200122_2013895.shtml [hereinafter Hubei Gov’t Notice] art. 1.

³³ See Heilmann ed., *supra* note 22, at 99.

³⁴ See MAHENDRA P. SINGH, GERMAN ADMINISTRATIVE LAW 27 (1st ed. 1985).

³⁵ See BJÖRN HOPPENSTEDT, KOMMUNALE SELBSTVERWALTUNG IN DEN USA [MUNICIPAL SELF-GOVERNMENT IN THE U.S.] (2007).

³⁶ See SINGH, *supra* note 34, at 14.

³⁷ DIETER HASSENPFUG, THE URBAN CODE OF CHINA 145 (Mark Kammerbauer trans., Birkhäuser 2010).

³⁸ Wuhan Statistical Bureau (武汉市统计局), 2019年武汉市国民经济和社会发展统计公报 [Wuhan’s 2019 National Economy and Social Development Statistical Bulletin] (Mar. 29, 2020), http://tjj.wuhan.gov.cn/tjfw/tjgb/202004/t20200429_1191417.shtml.

B. COVID-19 Chess Rules

In view of this enormous size, Sino-Marxism – which is the official leading thought of the state³⁹ and the CCP⁴⁰ – requires both the central-level regulations on cities and the local regulations by cities themselves to “adapt to the local conditions” (因地制宜).⁴¹ Nevertheless, Chinese cities had been ruled for decades through central stipulations that “cut with one knife” (一刀切).⁴² In the coronavirus crisis, however, the centre explicitly rejects such a one size fits all approach.⁴³ Instead, it commands to treat “the whole country as a chess game” (全国一盘棋).⁴⁴

Such “COVID-19 chess” requires local differentiation – but arranged and commanded by the centre. This corresponds to the most recent variety of Sino-Marxism, “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era.”⁴⁵ On the one hand, Xi promotes (re-)centralization⁴⁶ as well as top-down governance and top-level design⁴⁷ by the party and state centre. On the other hand, Xi has neither stopped nor reversed but rather expanded the overall legislative decentralization to local units, characteristic of the reform and opening-up

³⁹ Constitution pmb., § 7:4.

⁴⁰ CCP Statute gen. progr., § 8, art. 3, § 1, etc.

⁴¹ HARRO VON SENGER, *PARTEI, IDEOLOGIE UND GESETZ IN DER VOLKSREPUBLIK CHINA* [PARTY, IDEOLOGY, AND LAW IN THE P.R.C.] 217 (1982).

⁴² See CHUNG, *supra* note 10, at 58.

⁴³ Citation from Xi Jinping (习近平), 在统筹推进新冠肺炎疫情防控和经济社会发展工作部署会议上的讲话 [Speech at the Conference for Overall Planning and Promoting the Deployment of COVID-19 Prevention and Control and Economic and Social Development Work] (Feb. 23, 2020), http://www.gov.cn/xinwen/2020-02/24/content_5482502.htm.

⁴⁴ Citation from Xi, *supra* note 43; 疫情防控要坚持全国一盘棋 [Pandemic Prevention and Control Must Uphold [Treating] the Whole Country as a Chess Match], 中国关键词 [CHINA KEYWORDS] (Mar. 13. 2020), http://keywords.china.org.cn/2020-03/13/content_75810523.htm.

⁴⁵ See generally, XI, *supra* note 29; CCP Statute gen. progr., § 8, art. 3, § 1, etc.; Constitution pmb., § 7:4.

⁴⁶ XI, *supra* note 29, at 76; see Matthias Stepan et al., *What Does Xi Jinping’s Top-Down Leadership Mean for Innovation in China?*, CHINAFILE (Oct. 27, 2016), <https://www.chinafile.com/conversation/what-does-xi-jinpings-top-down-leadership-mean-innovation-china>; Qianfan Zhang, *Legalising Central-local Relations in China*, in *CENTRAL-LOCAL RELATIONS IN ASIAN CONSTITUTIONAL SYSTEMS* 17, 32 (Andrew Harding & Mark Sidel eds., 2015).

⁴⁷ Stepan et al., *supra* note 46.

era since 1978.⁴⁸ In 2015 and 2018,⁴⁹ this cumulated in the largest decentralization in Chinese history, empowering almost all cities on the prefectural level to enact formal law.⁵⁰

II. CENTRAL-LOCAL CHESS BOARD

This combination of (re-)centralization and decentralization is due to the functionalist character of China's "decentralization, chess-game style." The central level only allows and promotes actions and institutions on the local level if and where they enhance the country's overall governance.⁵¹ This functionalism prevails not only in normal times [A.] but also during crises [B.] like the COVID-19 pandemic [C.].

A. *Normal Chess Pieces*

In order to perform an adequate range of functions, local levels are endowed with organs both of the state and the CCP, both of the quasi-legislative and the quasi-executive. But these local organs must unite and intermingle in order to realize the ultimate function of Chinese central-local relations: preventing the "centrifugal empire" China from breaking apart.⁵²

⁴⁸ Detailed descriptions by ZHANG, *supra* note 23, at 79; Linda Chelan Li, *Central-Local Relations in the People's Republic of China: Trends, Processes and Impacts for Policy Implementation*, 30 PUBL. ADMIN. DEV. 177, 178 (2010); CHUNG, *supra* note 10, at 15; YANG FENG, LEGISLATIVE DECENTRALIZATION IN CHINA IN THE REFORM ERA 17 (2019).

⁴⁹ Constitution art. 100, § 2; Legislation Law art. 72–79, art. 82–87; Organization Law art. 7, § 2, art. 43, § 2, art. 60, § 2.

⁵⁰ Philipp Renninger, *Local Legislation Despite the (Supposed) Risks of Decentralization*, in RECHT UND RISIKO [LAW AND RISK] 105, 108 (Dario Haux et al. eds., 2019); ZHANG, *supra* note 23, at 150; FENG, *supra* note 48, at 89.

⁵¹ See YANG HUIQI (杨惠琪), 市级立法的权能、实践与优化 [THE POWER, PRACTICE, AND OPTIMIZATION OF CITIES' LEGISLATION] (2017) (Ph.D. dissertation, 西南政法大学 [Southwest University of Political Science & Law])

⁵² Li, *supra* note 48, at 183; CHUNG, *supra* note 10, at 2.

In terms of state organs, cities like Wuhan comprise a quasi-legislative Municipal People's Congress (MPC)⁵³ and its Standing Committee⁵⁴ as well as a quasi-executive Municipal People's Government.⁵⁵ Besides, there are separate party organs (committees) on every local level.⁵⁶ The leaders of local party committees are not identical to the leaders of local state organs – but even superior to them. This is due to the internal party hierarchy: Municipal Party Secretary Wang Zhonglin, head of Wuhan's CCP Committee,⁵⁷ is superordinate to Mayor Zhou Xianwang, head of Wuhan's government, because Zhou merely serves as the Deputy Municipal Party Secretary. Secondly, party leadership is realized through party groups established inside state organs and other so-called non-party organizations.⁵⁸ The head of the state-organ-internal party group is regularly identical to the head of the respective state organ. In Wuhan, Mayor Zhou at also serves as the Secretary of the CCP Party Group of Wuhan's Municipal People's Government.⁵⁹ Such party groups are the “leadership core” of any state organ, “making major decisions within” them.⁶⁰

B. Pandemic Chess Pieces

Amongst state organs, primarily in charge of pandemic prevention and control is the quasi-executive branch. On the central level, the State Council as the national government takes the lead.⁶¹ In 2018,⁶² 13 of its departments have been merged to one Ministry of Emergency

⁵³ 武汉市人民代表大会, see Constitution art. 96, § 1; Organization Law art. 4.

⁵⁴ 武汉市人民代表大会常务委员会; see Constitution art. 96, § 2; Organization Law art. 40.

⁵⁵ 武汉市人民政府, see Constitution art. 105; Organization Law art. 54.

⁵⁶ CCP Statute art. 25.

⁵⁷ 中国共产党武汉市委员会.

⁵⁸ CCP Statute art. 48, § 1, with citation.

⁵⁹ 中共武汉市人民政府党组.

⁶⁰ CCP Statute art. 48, § 2.

⁶¹ Emergencies Law art. 9; see 中华人民共和国传染病防治法 [P.R.C. Law of the Prevention and Treatment of Infectious Diseases] (Feb. 21, 1989, last amended June 29, 2013), CLI.1.206064 [hereinafter Diseases Law] art. 6, § 1:1; 突发公共卫生事件应急条例 [PHE Response Regulation] (May 9, 2003, rev'd Jan. 8, 2011), CLI.2.174915 [hereinafter PHE Regulation] art. 3.

⁶² 国务院机构改革方案 [State Council Institutional Reform Plan] (Mar. 17, 2017), CLI.1.311597, art. 1, § 7:1.

Management.⁶³ However, this “super ministry” for emergencies has no specific competences for public health emergencies (PHE). Instead, this task is vested in the State Council’s health administration,⁶⁴ redesigned also in 2018:⁶⁵ the National Health Commission (NHC).⁶⁶ For infectious diseases like COVID-19, the NHC relies on the expertise of its specialized agency, the Chinese Centre for Disease Control and Prevention (CCDC).⁶⁷ Besides, the NHC houses the office of the National Patriotic Sanitary Campaign Committee (NPSCC), a standing advisory and coordinating organ between 32 State Council departments.⁶⁸ There are party groups inside the NHC⁶⁹ and CCDC.⁷⁰

On the local level, the competence for PHE response is granted to local people’s governments, in casu of Wuhan and its districts like Wuchang. Again, this task is vested not in the recently created⁷¹ Emergency Management Departments of Wuhan⁷² or its districts⁷³ but the recently redesigned local health administration.⁷⁴ This health administration consists of Wuhan’s Health Commission (WHC)⁷⁵ and its specialized agency, Wuhan’s Centre for Disease Control and Prevention (WCDC),⁷⁶ as well as the District Health Departments.⁷⁷ Moreover,

⁶³ 中华人民共和国应急管理部, established Apr. 16, 2018.

⁶⁴ Diseases Law art. 6, § 1:1; *see* WHO International Health Regulations (July 25, 1969, last rev’d May 23, 2005, effective June 15, 2007), <https://apps.who.int/iris/handle/10665/246107> [hereinafter IHR] app. 2, art. III, China, § 2:1.

⁶⁵ State Council Institutional Reform Plan art. 7, § 5:1.

⁶⁶ 中华人民共和国国家卫生健康委员会, established Mar. 27, 2018.

⁶⁷ 中国疾病预防控制中心, established Dec. 23, 1983.

⁶⁸ 全国爱国卫生运动委员会, first established 1952; *see* Xuan Zhao et al., *Governance function analysis of the Patriotic Health Movement in China*, 4 GLOB. HEALTH RES. POLICY article 34, 2 (2019)

⁶⁹ 国家卫生健康委员会党组.

⁷⁰ 中国疾病预防控制中心党委.

⁷¹ 武汉市机构改革方案 [Wuhan Institutional Reform Plan] (Jan. 9, 2019), http://www.wuhan.gov.cn/2018wh/whyw/201901/t20190110_248722.html.

⁷² 武汉市应急管理局, established Jan. 29, 2019.

⁷³ E.g. Wuchang’s 武昌区应急管理局, established Mar. 27, 2019.

⁷⁴ Diseases Law art. 5, § 1, art. 6, § 1:2; PHE Regulation art. 4, § 2; *see* IHR app. 2, art. III, China, § 2:2.

⁷⁵ 武汉市卫生健康委员会, established Jan. 25, 2019;

⁷⁶ 武汉市疾病预防控制中心, established Dec. 3, 2002; *see* Diseases Law art. 7.

⁷⁷ E.g., Wuchang’s 武昌区卫生健康局, established Mar. 27, 2019.

both Wuhan⁷⁸ and its districts⁷⁹ have established Patriotic Sanitary Campaign Committees as standing institutions which advise and coordinate health-related work.⁸⁰ All local state departments are equipped with party groups, which are presided by the head of the respective department. For example, WHC director Zhang Hongxing also serves as the Secretary of the WHC's CCP Committee,⁸¹ as does WCDC director Li Gang for the WCDC's Party Committee.⁸²

Detached from these regular organs are the headquarters for emergency response. According to national law, only the central and provincial levels shall establish headquarters.⁸³ Nevertheless, prefectural-level Wuhan has created one overall Emergency Response Commission⁸⁴ as well as specialized headquarters for almost every imaginable emergency.⁸⁵ Until lately, there existed several headquarters for different types of health-related emergencies. In charge of infectious diseases and pandemics was the Wuhan's Headquarters for PHE Response.⁸⁶ However, all health-related headquarters were merged⁸⁷ to a Comprehensive Health Emergency Response Commission.⁸⁸ According to national law, such headquarters

⁷⁸ 武汉市爱国卫生运动委员会.

⁷⁹ E.g., Wuchang's 武昌区爱国卫生运动委员会.

⁸⁰ 武汉市爱国卫生促进条例 [Wuhan Patriotic Sanitation Promotion Regulation] (May 24, 2017), CLI.10.1418085, http://wjw.wuhan.gov.cn/xwzx_28/gsgg/202001/t20200114_801865.shtml, art. 5.

⁸¹ 中共武汉市卫生健康委员会委员会, established Jan. 9, 2019.

⁸² 武汉市疾病预防控制中心党委.

⁸³ PHE Regulation art. 3, art. 4, § 1.

⁸⁴ 武汉市突发事件应急委员会, established 2013.

⁸⁵ 武汉市突发事件总体应急预案 [Wuhan Overall Preparatory Plan for Emergency Response] (Mar. 19, 2013), CLI.14.723002, <http://www.wuchang.gov.cn/wcqzffz/zwgk1/jbxxgk/yjgl57/yjya/2130617/index.html>, art. 2, § 1–2.

⁸⁶ 武汉市突发公共卫生事件应急指挥部, established Nov. 24, 2014; *see* 武汉市突发公共卫生事件应急预案 [Wuhan Preparatory Plan for PHE Response] (Nov. 24, 2014), 2015 武汉市人民政府公报 [WUHAN PEOPLE'S GOV'T BULL.], no. 3, at 8, art. 2, § 1.

⁸⁷ 关于调整市突发事件应急委员会和专项应急委员会(指挥部)组成人员的通知 [Notice on Adjusting Members of the Municipal Emergency Response Committee and Special Emergency Response Committees (Headquarters)] (Sept. 30, 2019), <http://zt.cjn.cn/zt2019/whyj/yjyy/201912/t3518203.htm>, art. 2, § 4:1.

⁸⁸ 武汉市综合卫生事件专项应急委员会(指挥部), established Oct. 12, 2019.

must consist of government members only.⁸⁹ However, Wuhan has staffed them also with “leading comrades,” that is, local party cadres.⁹⁰

C. COVID-19 Chess Pieces

In the coronavirus crisis, new pieces were added to the chess board. On the central level, a decisive role in COVID-19 containment plays the State Council Joint Mechanism for COVID-19 Prevention and Control Work.⁹¹ This ad hoc institution of the state coordinates the work of 32 State Council departments.⁹² It closely cooperates with the ad hoc institution of the party: the Central Leading Group for COVID-19 Work.⁹³ Established by the CCP Central Committee, this Leading Group is presided by Premier and second-ranking CCP member Li Keqiang,⁹⁴ becoming the centre’s main face in initial COVID-19 response.⁹⁵ Besides Li Keqiang and Xi Jinping, a leading role plays Sun Chunlan (孙春兰), second Vice Premier and CCP Politburo member. On the central level, she presides the standing NPPSC and chairs meetings of the state’s ad hoc Joint Mechanism.⁹⁶ Toward the local levels, Sun headed the

⁸⁹ E.g., PHE Regulation art. 4, § 1.

⁹⁰ Wuhan Overall Emergency Plan, art. 2, § 2:2; Wuhan PHE Plan, art. 2, § 1:1.

⁹¹ 国务院应对新型冠状病毒感染的肺炎疫情联防联控工作机制, established Jan. 21, 2020.

⁹² Bai Jianfeng (白剑峰), 32 个部门建立联防联控机制 [32 *Departments Establish Joint Prevention and Control Mechanism*], 人民日报 [PEOPLE’S DAILY] (Jan. 22, 2020), at 10, http://paper.people.com.cn/rmrb/html/2020-01/22/nw.D110000renmrb_20200122_2-10.htm.

⁹³ 中央应对新型冠状病毒感染肺炎疫情工作领导小组, established Jan. 2020.

⁹⁴ 李克强主持召开中央应对新型冠状病毒感染肺炎疫情工作领导小组会议 [Li Keqiang Chairs and Convenes Meeting of CCP Leading Group], XINHUANET (Jan. 26, 2020), http://www.xinhuanet.com/politics/2020-01/26/c_1125504004.htm.

⁹⁵ Kerry Brown & Ruby Congjiang Wang, *Politics and Science: The Case of China and the Coronavirus*, 51 ASIAN AFF. 247, 252 (2020).

⁹⁶ 孙春兰主持召开国务院应对新型冠状病毒感染的肺炎疫情联防联控工作机制会议时强调 切实落实责任 严格防控措施 坚决打赢疫情防控攻坚战 [Sun Chunlan, When Chairing and Convening Meeting of Joint Mechanism, Emphasizes: Earnestly Implement Responsibilities, Strictly [Take] Prevent and Control Measures, and Resolutely Win the Assault War of Prevention and Control], XINHUANET (Jan. 24, 2020), http://www.xinhuanet.com/politics/2020-01/24/c_1125500230.htm.

party's ad hoc Leading Group when dispatched to Wuhan⁹⁷ in order to lead local "frontline prevention and control."⁹⁸

This local frontline work is mainly performed by Wuhan's Headquarters for COVID-19 Prevention and Control.⁹⁹ Similar COVID-19 headquarters have been created in every district of Wuhan.¹⁰⁰ However, ad hoc headquarters during pandemics shall only be established on the national and provincial levels¹⁰¹ – like in casu, Hubei's Headquarters for COVID-19 Prevention and Control.¹⁰² On the lower levels, in contrast, national law leaves the local governments themselves in charge of pandemic response.¹⁰³ One might argue that this did not preclude Wuhan's People's Government from creating a quasi-executive headquarters and from delegating its competences to it. However, Wuhan's COVID-19 Headquarters, first, was not granted powers by the Municipal Government but rather assumed by itself¹⁰⁴ "comprehensive competences for pandemic prevention and control of the whole city."¹⁰⁵ Secondly, it was established not by the Municipal Government but rather by the city as such. Its establishment was not communicated through an official governmental notice but a

⁹⁷ 中央指导组在湖北开展疫情防控指导工作 [*Central Leading Group Launches Leading Work of Pandemic Prevention and Control in Hubei*], XINHUANET (Jan. 28, 2020), http://www.xinhuanet.com/politics/2020-01/28/c_1125508653.htm.

⁹⁸ Citation from WHO, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* 14 (Feb. 16–24, 2020), [https://www.who.int/publications-detail/report-of-the-who-china-joint-mission-on-coronavirus-disease-2019-\(covid-19\)](https://www.who.int/publications-detail/report-of-the-who-china-joint-mission-on-coronavirus-disease-2019-(covid-19)).

⁹⁹ 武汉市新型冠状病毒感染的肺炎疫情防控指挥部, established Jan. 21, 2020.

¹⁰⁰ E.g., Wuchang's 武昌区新型冠状病毒感染的肺炎疫情防控指挥部, established Jan. 2020.

¹⁰¹ PHE Regulation art. 3, art. 4, § 1, art. 28.

¹⁰² 湖北省新型冠状病毒感染的肺炎疫情防控指挥部, established Jan. 22, 2020.

¹⁰³ Diseases Law art. 5, § 1:2; PHE Regulation art. 4, § 2.

¹⁰⁴ So, Liao Jun (廖君) & Li Changzheng (黎昌政), 武汉成立新型冠状病毒感染的肺炎疫情防控指挥部 [Wuhan Establishes COVID-19 Headquarters], XINHUANET (Jan. 21, 2020), http://www.xinhuanet.com/politics/2020-01/21/c_1125487978.htm.

¹⁰⁵ 新型冠状病毒感染的肺炎疫情防控暂行办法 [Provisional Methods of COVID-19 Prevention and Control] (Jan. 29, 2020), CLI.12.1563231, http://www.wuhan.gov.cn/zwgg/tzgg/202003/t20200316_972483.shtml [hereinafter Provisional Methods] art. 4, § 1.

newspaper report¹⁰⁶ – and later reiterated by the Headquarters itself.¹⁰⁷ The reason is that thirdly, Wuhan’s COVID-19 Headquarters is not a quasi-executive local joint mechanism for COVID-19 prevention and control¹⁰⁸ of the Municipal Government and thus a state institution. Rather, it constitutes a mixed party-state organ, presided by both Party Secretary Wang Zhonglin and Mayor Zhou Xianwang and staffed with members of both Wuhan’s CCP Committee and Wuhan’s Municipal Government.¹⁰⁹ This institutional intermingling of party and state institutions violates national law stipulating that headquarters shall exclusively consist of local governmental officials.¹¹⁰ And fourthly, it makes Wuhan’s most important instrument during the coronavirus crisis – the so-called notices¹¹¹ issued by its COVID-19 Headquarters – hybrid, mixed party-state documents.

III. CENTRAL-LOCAL CHESS MOVES

This institutional and instrumental intermingling of party and state results in China’s central state organs leading and controlling local organs in an indirect and informal manner. They do not use the official control channels of the state and its law, but rather the horizontal and vertical conduits of the CCP. This is possible because on the central level, state leaders are personally identical to central party leaders – and on the local levels, leaders of state organs are even subordinate to the local party secretaries [*cf. supra* II.A.]. During the COVID-19 chess

¹⁰⁶ Liao & Li, *supra* note 104.

¹⁰⁷ Provisional Methods art. 4, § 2:1.

¹⁰⁸ See LAN XUE & GUANG ZENG, A COMPREHENSIVE EVALUATION ON EMERGENCY RESPONSE IN CHINA: THE CASE OF PANDEMIC INFLUENZA (H1N1) 2009 92 (2019).

¹⁰⁹ Provisional Methods art. 4, § 1.

¹¹⁰ PHE Regulation art. 4, § 1.

¹¹¹ 武汉市新型冠状病毒感染的肺炎疫情防控指挥部通告 [Notices of Wuhan’s COVID-19 Headquarters]; overview at <https://www.whu.edu.cn/info/1118/13914.htm> [hereinafter Wuhan Notices].

game, China's central-level "grandmasters" use these party-state chess pieces to perform three horizontal-vertical chess moves [A.–C.] on the central-local chess board [D.].¹¹²

A. *Triple Move: Wuhan's Shutdown*

First and regularly, central-level leadership makes a triple move: horizontal–vertical–horizontal.¹¹³ Central state leaders act as CCP leaders (horizontally) in order to control the local party branch of Wuhan (vertically).¹¹⁴ This local CCP branch, consisting of Wuhan's Party Committee and various party groups, then decisively influences the local state organs of Wuhan, in casu, the WHC and WCDC (horizontally). Such a triple move introduced the "middlegame" (phase 2) of COVID-19 chess: the shutdown of Wuhan.

On February 10, Wuhan's COVID-19 Headquarters obliged all neighbourhoods within the city to adopt a so-called closed management (Notice 12).¹¹⁵ This drew a tight *cordon sanitaire*¹¹⁶ around residential compounds or even single buildings. According to Chinese law, such "mass quarantines" can be stipulated by the province, city, and districts themselves.¹¹⁷ However, when Wuhan was shut down on February 10, the party centre had already decided to remove and replace the Party Secretaries of Wuhan and Hubei for not sufficiently containing COVID-19. This was announced and executed on February 13.¹¹⁸ The newly installed Party Secretaries of Wuhan (Wang Zhonglin) and Hubei (Ying Yong) ordered local organs to

¹¹² Philipp Renninger, *China and COVID-19: A Central-Local 'Chess Game'*, THE DIPLOMAT (June 20, 2020), <https://thediplomat.com/2020/06/china-and-covid-19-a-central-local-chess-game>.

¹¹³ Renninger, *supra* note 112; generally, Philipp Renninger, *supra* note 50, at 123.

¹¹⁴ ZHANG, *supra* note 23, at 164; CHUNG, *supra* note 10, at 98.

¹¹⁵ Wuhan Notice 12 (Feb. 10, 2020), http://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202002/t20200211_2023512.shtml.

¹¹⁶ See generally, Armin von Bogdandy & Pedro A. Villarreal, *International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis* 18 (MPIL Research Paper No. 2020-07, Mar. 26, 2020), <https://ssrn.com/abstract=3561650>.

¹¹⁷ Diseases Law art. 41, § 1; PHE Regulation art. 33.

¹¹⁸ 湖北省委主要负责同志职务调整 应勇任湖北省委书记 [*Positions of Major Responsible Comrades of Hubei's CCP Committee Adjusted: Ying Yong Serves as Secretary of Hubei's CCP Committee*], XINHUANET (Feb. 13, 2020), http://xinhuanet.com/renshi/2020-02/13/c_1125568253.htm.

immediately implement the party centre's strict line on COVID-19. Only one day later, on February 14, Wuhan's COVID-19 Headquarters tightened the closed management to a curfew for the vast majority of individuals.¹¹⁹ Nobody could exit their residence except for two groups of persons: COVID-19 suspects obliged to go to hospitals or quarantine centres, and staff working in "pandemic prevention or sectors guaranteeing the operation [of the city]" like hospitals, pharmacies, public security, other crucial infrastructures, or the transport of goods.¹²⁰ Similarly, nobody could enter another neighbourhood except for "special reasons."¹²¹

B. Double Move: Wuhan's Lockdown

Secondly, and commonly in crises, this chain of command is reduced to a double move: horizontal-vertical.¹²² Central state leaders again act as CCP leaders (horizontally) but now directly command Wuhan's local organs responsible for pandemic management (vertically). The party centre can directly command the local state organs of Wuhan, bound to party orders because of the principle of party leadership. Therefore, Wuhan's MPC Standing Committee has openly stated to act by "call and command" of the CCP Central Committee in the coronavirus crisis.¹²³ Yet in this crisis, the party centre mostly issues orders to Wuhan's COVID-19 Headquarters, bound to party commands because it constitutes a mixed party-state organ. Such a double move led to the "opening" (phase 1) of the COVID-19 chess game: the lockdown of Wuhan.

Originally, the city had only planned soft measures like cancelling mass events and promoting hand washing on January 21.¹²⁴ But immediately afterward, on January 22, central-

¹¹⁹ Wuhan Notice (Feb. 14, 2020), copy at <http://kuaibao.qq.com/s/20200218A0P12J00?refer=spider>.

¹²⁰ Wuhan Notice (Feb. 14) art. 2, § 1:2.

¹²¹ Wuhan Notice (Feb. 14) art. 2, § 1:3.

¹²² Renninger, *supra* note 112; generally, Heilmann ed., *supra* note 22, at 158; Renninger, *supra* note 50, at 123.

¹²³ MPCSC Decision pmb., § 1, § 2:2.

¹²⁴ Liao & Li, *supra* note 104.

level party and state representative Sun Chunlan undertook an inspection tour to Wuhan, ordering “both party and government cadres” of Wuhan to first and foremost “prevent the spread of the epidemic to other(!) regions.”¹²⁵ Only one day later, on January 23, Wuhan’s COVID-19 Headquarters abruptly proclaimed the city’s lockdown toward the outside. This first *cordon sanitaire* was loose, as it surrounded the whole city (8,500 km²). It forbade all persons inside the city to leave Wuhan except for “special reasons.” Trains, flights, and long-distance buses were suspended (Notice 1¹²⁶).¹²⁷ Inside the city, in contrast, personal movement was not forbidden but merely limited (Notice 5;¹²⁸ Notice 9¹²⁹).

C. Single Move: Easing

Thirdly and exceptionally, the state centre can immediately act itself in local affairs.¹³⁰ This is possible because the central level possesses omnicompetence for every (non-)legislative matter in the P.R.C.¹³¹ This direct approach causes a single move (vertically) because the centre’s micromanagement must still be enforced by local organs. Such a single move characterizes the preliminary “endgame” (phase 3) of COVID-19 chess: the stepwise and cautious easing of COVID-19 measures in Wuhan.

For example, Wuhan’s lockdown has been gradually eased from the end of March. As Wuhan itself had enacted this phase 1 lockdown, the city could also repeal it through an *actus*

¹²⁵ 孙春兰在武汉考察新型冠状病毒感染的肺炎疫情防控工作时强调 压实责任 严格落实 坚决遏制疫情扩散蔓延 [Sun Chunlan, *When Investigating COVID-19 Prevention and Control Work in Wuhan, Emphasizes: Compact Responsibility, Strictly Implement, Firmly Contain Spread of the Pandemic*], XINHUANET (Jan. 22, 2020), http://www.xinhuanet.com/politics/2020-01/22/c_1125495519.htm.

¹²⁶ Wuhan Notice 1 (Jan. 23, 2020), CLI.12.1563952, http://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202001/t20200123_2014402.shtml.

¹²⁷ Bogdandy & Villarreal, *supra* note 116, at 18.

¹²⁸ Wuhan Notice 5 (Jan. 23, 2020), https://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202001/t20200124_2014608.shtml.

¹²⁹ Wuhan Notice 9 (Jan. 25, 2020), https://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202001/t20200125_2014946.shtml.

¹³⁰ Renninger, *supra* note 112.

¹³¹ *E contrario*, Legislation Law art. 8.

contrarius. Thus, Wuhan’s COVID-19 Headquarters permitted individuals to enter or exit the city “for reasons of pandemic prevention and control, city functioning, production, and living” as early as February 24 (Notice 17¹³²). However, Wuhan was forced to revoke this permission on the very same day because of the lacking “consent of leading comrades” on the higher levels (Notice 18¹³³). Instead, the state centre, particularly the NHC,¹³⁴ and the province¹³⁵ themselves announced the concrete dates and conditions for entering and exiting Wuhan. First, they allowed only migrant workers to enter and exit the city – and as late as March 25.¹³⁶ Moreover, migrant workers had to travel by chartered buses¹³⁷ and provide a negative COVID-19 nucleic acid test.¹³⁸ The centre and province then allowed other individuals to enter Wuhan from March 28 on – but only by train.¹³⁹ These individuals could eventually enter Wuhan by other means, such as private and road traffic, as well as exit Wuhan from April 8.¹⁴⁰ This illustrates that the centre and province reserve for themselves the privilege of proclaiming the good news of easing Wuhan’s lockdown and shutdown. In contrast, they burden cities like Wuhan with conveying the bad news of strict COVID-19 measures and with enforcing them down on the “chess board.”

¹³² Wuhan Notice 17 (Feb. 24, 2020), copy at <https://zh.wikisource.org/zh-hans/关于加强进出武汉市车辆和人员管理的通告>, art. 3, § 1.

¹³³ Wuhan Notice 18 (Feb. 24, 2020), https://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202002/t20200224_2146540.shtml.

¹³⁴ 关于做好有关人员进出湖北省交通运输保障工作的通知 [Notice on Doing the Traffic and Transport Safeguarding Work of Relevant Persons Entering and Leaving Hubei Province Well] (Mar. 24, 2020), CLI.4.340778, http://www.gov.cn/zhengce/zhengceku/2020-03/25/content_5495238.htm [hereinafter Traffic Notice].

¹³⁵ 湖北省新型冠状病毒感染肺炎疫情防控指挥部通告 [Notice of Hubei’s COVID-19 Headquarters] (Mar. 24, 2020), CLI.12.1579398, https://www.hubei.gov.cn/zhuanti/2020/gzxxgzbd/zxtb/202003/t20200324_2189256.shtml [hereinafter Hubei Notice].

¹³⁶ Traffic Notice art. 3, § 2; Hubei Notice art. 2, § 2, art. 3.

¹³⁷ Traffic Notice art. 3, § 2.

¹³⁸ Hubei Notice art. 2, § 2.

¹³⁹ 中国铁路武汉局集团有限公司通告 [Notice of China Railway Wuhan Group] (Mar. 24, 2020), http://www.hubei.gov.cn/zhuanti/2020/xgfyqfkszsq/hygg/202003/t20200324_2189903.shtml, art. 2.

¹⁴⁰ Traffic Notice art. 4, § 2, art. 6, § 2; Hubei Notice art. 2, § 1.

D. Wuhan as a Pawn Sacrifice and an Agent

On the one hand, this regular pattern of China's chess-game decentralization demonstrated that local units like Wuhan serve a "pawn sacrifice." Fomented by institutional design and propaganda,¹⁴¹ central-level leaders take the credit when all is well but refuse to take the blame when things go badly.¹⁴² Instead, they blame local officials for virtually all the failures in coronavirus crisis management. For example, only local-level officials have been disciplined for failures in COVID-19 prevention but no central-level health administrators.¹⁴³ This scapegoating further deteriorates Chinese citizens' and scholars' confidence in the local levels. In contrast to many federal states, popular and academic trust in local units is much lower than in central-level authorities. Moreover, it decreases vertically: The more local a unit, the less appreciated it is.¹⁴⁴

On the other hand, COVID-19 chess shows that local units like Wuhan act as an agent of the central level.¹⁴⁵ As such an agent, Wuhan bears huge responsibility for the COVID-19 management of the entire P.R.C.: "If Wuhan wins, Hubei wins; if Hubei wins, the whole country wins";¹⁴⁶ failure is unacceptable. For this purpose, Wuhan's COVID-19 response has to adapt to the city's "actual circumstances" – but at the same time "firmly obey the command of the centre."¹⁴⁷ Wuhan's officials thus walk a tightrope: They must deviate from the centre's COVID-19 stipulations – but never too far because "disobeying" the centre's "leadership in

¹⁴¹ Generally, Zhenhua Su et al., *Constructed Hierarchical Government Trust in China: Formation Mechanism and Political Effects*, 89 PAC. AFF. 771, 783 (2016); CHUNG, *supra* note 10, at 70.

¹⁴² Citations from Brown & Wang, *supra* note 95, at 252.

¹⁴³ Sha Xueliang (沙雪良), 从副厅到村官, 六省市多名干部防疫失职被问责 [From Vice Departments to Village Officials, Several Cadres From Six Provinces and Cities Are Held Accountable for Neglecting Duties of Pandemic Prevention], 新京报 [BEIJING NEWS] (Jan. 29, 2020), <http://www.bjnews.com.cn/news/2020/01/29/681201.html>.

¹⁴⁴ Su et al., *supra* note 141.

¹⁴⁵ Generally, CHUNG, *supra* note 10, at 55; Renninger, *supra* note 50, at 112.

¹⁴⁶ Xi, *supra* note 43; CHINA KEYWORDS, *supra* note 44.

¹⁴⁷ So, the central level in Legislation Law art. 72, § 2:1, art. 73, § 1:1; PHE Regulation art. 10, § 2, art. 31, § 1. So, the local levels in MPCSC Decision pmbli.; Provisional Methods issuing notice.

emergency response” will be punished.¹⁴⁸ Being an agent thus means that the city is banned from acting as a principal pursuing its self-defined own interests, or as a representative defending its residents’ interests against the intrusive central level.¹⁴⁹ This chess-game style of agency explains why the formal decentralization of (non-)legal instruments is not contradictory at all to the substantial recentralization of political leadership under Xi Jinping. Paradoxically, decentralized (non-)legislation by provinces, cities, or below can even turn into a tool of top-down governance, top-level design, and centralized ideological control.

CONCLUSION: “DECENTRALIZATION, CHESS-GAME STYLE”

Therefore, China’s central-local chess game demonstrates that neither federalism nor local self-government are *conditiones sine qua non* for local differentiation and (non-)legislative decentralization [A.]. But it also shows that in order to render this differentiation and decentralization not only effective and efficient but also justified and legitimate, it is indispensable to hold the chess players accountable toward the population [B].

Many claim that China’s apparent success in containing COVID-19 proves the Chinese system to be superior:¹⁵⁰ the party-state, politico-legal, and central-local system as well as the emergency, crisis, and pandemic management system. Therefore, several countries have emulated China’s strict COVID-19 measures in a domino-like fashion.¹⁵¹ Even more, the WHO has praised China and Wuhan as “setting a new standard for outbreak response.”¹⁵² And the Chinese party-state considers itself a paragon for public policy in these challenging times.¹⁵³

¹⁴⁸ Emergencies Law art. 63, § 5.

¹⁴⁹ CHUNG, *supra* note 11, at 57, 59; Renninger, *supra* note 50, at 112.

¹⁵⁰ E.g., CHINA KEYWORDS, *supra* note 44.

¹⁵¹ Citation from Bogdandy & Villareal, *supra* note 116, at 19.

¹⁵² So, Director-General Tedros, cited by WHO, *supra* note 10.

¹⁵³ So, Xi, *supra* note 43.

They all assume that China's chess game works more effectively and efficiently than the vertical regulatory patchwork in federal states,¹⁵⁴ let alone supranational unions.¹⁵⁵

Firstly, this assumption ignores that COVID-19 containment is crisis management – of the holistic coronavirus crisis. Hence, central-local COVID-19 management itself must be scrutinized holistically. Scholars should not merely consider the effectiveness and efficiency of local pandemic containment – which adapts prevention and control measures to the local degree of pandemic prevalence –¹⁵⁶ but also its broader legal and political effects. Legally and politically, the greatest advantage of locally adapted pandemic measures is that they minimize the interference with individual rights and freedoms in regions less affected by COVID-19.¹⁵⁷ But this does not *vice versa* give authorities a *carte blanche* in hard-hit regions – as happened in Wuhan. Waging a “total war on COVID-19,”¹⁵⁸ Wuhan encroached upon myriad human rights enshrined in the P.R.C. Constitution: the freedom of the person and movement,¹⁵⁹ religion,¹⁶⁰ demonstration, and assembly,¹⁶¹ the right to work and education¹⁶² as well as the inviolability of home and correspondence.¹⁶³ Moreover, this “total war” affected millions of people during several months in a neither balanced nor proportionate manner.¹⁶⁴

¹⁵⁴ Defended by Francesco Palermo, *Is there a space for federalism in times of emergency?*, VERFASSUNGSBLOG (May 13, 2020), <https://verfassungsblog.de/is-there-a-space-for-federalism-in-times-of-emergency/>.

¹⁵⁵ Like the European Union, which is now trying to synchronize the uncoordinated measures of its member states, particularly through the European Commission, Joint European Roadmap towards lifting COVID-19 containment measures, 2020 O.J. (C 126) 1, <https://op.europa.eu/en/publication-detail/-/publication/14188cd6-809f-11ea-bf12-01aa75ed71a1/language-en>.

¹⁵⁶ For a cost-benefit analysis concerning H1N1 response, see LAN & GUANG, *supra* note 108, at 159.

¹⁵⁷ For Germany, see Bundesverfassungsgericht (BVerfG) [Federal Constitutional Court], Apr. 10, 2020, 1 BvQ 28/20, recital 14, http://www.bverfg.de/e/qk20200410_1bvq002820.html.

¹⁵⁸ So, Wuhan Notice 12; MPCSC Decision preamb.

¹⁵⁹ Constitution art. 37

¹⁶⁰ Constitution art. 36.

¹⁶¹ Constitution art. 35.

¹⁶² Constitution art. 42, 46.

¹⁶³ Constitution art. 39, 40.

¹⁶⁴ Philipp Renninger, *Corona und kommunales Krisenmanagement in China* [Corona and Municipal Crisis Management in China], 135 DEUTSCHES VERWALTUNGSBLATT 739, 744 (2020); see Lily Kuo, ‘People have been awakened’: seeking Covid-19 answers in Wuhan, GUARDIAN (Apr. 20, 2020),

Secondly, the praises of China's central-local management overlook that COVID-19 containment not necessarily malfunctions in federal states. Some federations like Brazil¹⁶⁵ and initially the United States¹⁶⁶ may have largely failed to contain the virus and the crisis. But other federal countries like Australia¹⁶⁷ and initially Germany¹⁶⁸ have done fairly well in managing COVID-19 – precisely through their federal system. This leads some authors to conclude that the ability of federal or unitary systems to respond to pandemics is determined by the attitude of the actors within the respective system alone, not by the design of this system.¹⁶⁹ However, this conclusion overlooks that the effectivity and efficiency as well the pitfalls of China's "decentralization, chess-game style" are directly linked to the democratic centralist design of its party-state, politico-legal, and central-local system.

For example, China's COVID-19 chess yielded harsh effects on Wuhan's population because democratic centralism allows local units to severely restrict the rights and freedoms of individuals without being held accountable toward them.¹⁷⁰ Neither can Wuhan's own citizens change the city's future COVID-19 management because there are no free and direct¹⁷¹ elections on the municipal level. Nor can Wuhaners and other affected individuals challenge

<https://www.theguardian.com/world/2020/apr/20/people-have-been-awakened-seeking-covid-19-answers-in-wuhan>.

¹⁶⁵ Fernando Luiz Abrucio et al., *Combating COVID-19 under Bolsonaro's federalism: a case of intergovernmental incoordination*, 54 REVISTA DE ADMINISTRAÇÃO PÚBLICA 663 (2020).

¹⁶⁶ Ellen Barry, 'It's Totally Ad Hoc': Why America's Virus Response Looks Like a Patchwork, N.Y. TIMES (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/us/united-states-coronavirus-response.html>.

¹⁶⁷ Julian R. Murphy, *Divided We Fall? – Division and Coordination in Federal Systems During a Time of Crisis*, BAFL (May 25, 2020), <https://british-association-comparative-law.org/2020/05/25/divided-we-fall-division-and-coordination-in-federal-systems-during-a-time-of-crisis/>.

¹⁶⁸ Lars P. Feld & Thomas König, *Der Föderalismus wirkt [Federalism Works]*, ZEIT (May 11, 2020), <https://www.zeit.de/politik/deutschland/2020-05/corona-krise-deutschland-foederalismus-lokale-schutzmassnahmen-lockerungen>.

¹⁶⁹ Murphy, *supra* note 167.

¹⁷⁰ Zhang, *supra* note 46, at 17.

¹⁷¹ By now, Wuhan's Municipal People's Government is appointed by Wuhan's MPC (Constitution art. 101, § 1; Organization Law art. 8, § 5, art. 10, § 1), which again is not elected directly by the population but by the people's congresses of Wuhan's districts (Constitution art. 97, § 1; Organization Law art. 5, § 1).

the city's current COVID-19 management because they lack effective legal remedies.¹⁷² Local units with competences but without accountability have caused undesired outcomes in Chinese history.¹⁷³ Such outcomes may only be avoided for the future by alleviating the democratic pitfalls and empowering individuals. Therefore, the national level should make local organs accountable toward their citizens and other affected individuals: First, through free and direct municipal elections. Secondly, through plebiscites and participation in decision-making. Thirdly, through the ability of individuals to pursue legal remedies against general and abstract local law and nonlaw affecting them.¹⁷⁴

These reforms would serve the interests of local units themselves by avoiding governance mistakes due to the ignorance of their residents' actual needs. They would also foster the interests of the central level by increasing the overall confidence in the Chinese state and the Communist Party. And most of all, these reforms would benefit the population by reducing excessive COVID-19 measures by local units. Only then can the "People's" Republic keep its promise: the people being the "master of the country"¹⁷⁵ – and the true "grandmaster" of the central-local chess board.

¹⁷² Renninger, *supra* note 164, at 745; *see* Kuo, *supra* note 164.

¹⁷³ Zhang, *supra* note 46, at 17.

¹⁷⁴ Renninger, *supra* note 50, at 126.

¹⁷⁵ Constitution pmb., § 5:2; *see* Xi, *supra* note 29, at 85, 159.