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ON THE EXPERIENCE, PROBLEMS, AND IMPROVEMENT OF THE LEGAL SYSTEM OF EPIDEMIC PREVENTION AND CONTROL IN CHINA

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ABSTRACT

General Secretary Xi Jinping pointed out in his speech at the third meeting of the Central Committee for the Comprehensive Rule of Law on February 5, 2020, that “A systematic and complete, scientific and standardized, and effective legal system for epidemic prevention and control should be built”. The construction of a legal system for epidemic prevention and control should start from summarizing the advantages and shortcomings shown in the course of the epidemic, integrating the advantages into the legal system, and considering how to overcome the shortcomings through a scientific and complete legal system. Systematic thinking should be used to promote the integration of the legal system for epidemic prevention and we should promote the integration of the legal system of epidemic prevention and control and the structural improvement of the legal system; we should improve the legal system of local epidemic prevention and control based on the whole process of epidemic prevention and control in a multi-dimensional scientific way; we should uphold the concept of the community of human destiny and improve the international law system of epidemic prevention and control.

KEYWORDS: Epidemic prevention and control; legal system; social governance; systemic thinking

INTRODUCTION

The outbreak of Newcastle pneumonia in early 2020 spread rapidly around the world, seriously threatening the lives and health of all people and becoming a public health event of great global concern. In the face of this outbreak, China, under the centralized and unified leadership of the Communist Party of China (CPC), has been united nationwide, insisting on the prevention and control of the epidemic with one hand while resuming work and production with the other, and has achieved significant strategic results in coordinating the prevention and control of the Newcastle pneumonia epidemic and economic and social development. Although China has achieved a stage victory in the prevention and control of the epidemic, the epidemic is still rampant in countries around the world, and various mutated strains are evolving, especially the new Delta strain that emerged in 2021, which is characterized by strong transmission ability, fast transmission speed, and increased viral load, etc. Local outbreaks associated with foreign countries have also occurred in China, giving China's “external prevention of importation and internal prevention of rebound”. This has brought continuous pressure and challenges to the prevention and control of the epidemic, which is external prevention of importation and internal prevention of rebound. Therefore, it is necessary to summarize the experience accumulated in this epidemic interdiction, reflect on the shortcomings and deficiencies of our

governance system and capabilities revealed by this epidemic, and consider how to build a good legal system for epidemic prevention and control, so as to provide comprehensive and advanced institutional protection for the next normal epidemic prevention and control work as well as future biosecurity issues that may arise.

1. Where our experience in the prevention and control of the epidemic is demonstrated

After the outbreak of the new crown pneumonia, our government responded quickly to carry out. The outbreak was prevented and controlled in a short period of time, and the spread of the epidemic was contained, achieving significant strategic results. In a meeting with President Xi Jinping, World Health Organization Director-General Tan Desai noted, "The speed and scale of China's action is unprecedented in the world, demonstrating the speed and scale of China." (Wang, 2020) Therefore, it is necessary to summarize the advantages demonstrated on this occasion and incorporate them into the construction of the legal system for the epidemic. We believe that central leadership and coordination, mobilization of the public and social participation, and technology application and digital anti-epidemic are the keys to the significant strategic results of this epidemic prevention and control.

1.1 Central leadership and coordination

Coordination is not only reflected in the Party's unified leadership and centralized decision-making, but also in the government's joint prevention and control, and integrated deployment. With the unified leadership of the Party Central Committee in the deployment of nationwide epidemic prevention and control work, the prevention and control situation was quickly stabilized, and the institutional advantage of "concentrating efforts on major issues" was once again highlighted. For example, after the large-scale outbreak in Wuhan in early 2020, the central government quickly pooled the nation's efforts to assist Wuhan, controlling the further spread of the epidemic in a short period of time and saving the lives of many residents by providing emergency treatment to those infected. Therefore, centralized and systematic thinking plays an important role in the modernization of the national governance system, especially in emergency situations, where centralized decision-making is often more efficient and coordinated. In contrast, developed Western countries such as the United States, which has the most advanced public health governance system in the world, have disappointed the world with their performance in fighting the epidemic.

As of August 2021, the number of deaths due to NCCP in the United States has exceeded 640,000, and the trend of new deaths is still relatively obvious. One of the major reasons for the poor performance of the U.S. in this epidemic is the fragmented, partisan mindset of a two-party system that prioritizes partisan interests and the failure of federal and local governments to coordinate, resulting in a good health governance system in the U.S. that is not being used well. Therefore, unified leadership plays a key role in epidemic prevention and control and should be integrated into the construction of the legal system for epidemic prevention and control.

1.2 Mobilizing the public and community participation

The participation of society as a whole is also an important support for the phased victory of the epidemic prevention and control. In the wake of the outbreak, the warm story of the nation's people working together to fight the epidemic was frequently staged in the land, including the nation's people consciously cooperating with the epidemic prevention under the government's call, and people from all over the world joining in the epidemic fighting activities despite the hardships: medical workers worked day and night, public security police, disease control staff and community workers held their posts, and the majority of volunteers sincerely dedicated themselves to create one The "Chinese miracle". Communitarian and collectivist thinking showed a different power in this epidemic, especially during the more serious period of the epidemic, when people of all ethnic groups across the country formed a whole and took into account not only their own interests but also the public interest of society in fighting the epidemic. In contrast, Western countries such as the United Kingdom, the United States, and Italy have experienced difficulties in the prevention and control of the epidemic, with people refusing to cooperate and constantly being exposed to the news of refusing to stay at home or wear masks. This has become a major problem in the prevention and control of the epidemic in the UK and the US, while China has not experienced any of these problems.

1.3 Technology application and digital epidemic prevention

Information technology has also played an important role in the epidemic prevention and control process. As of June 2020, the number of cell phone Internet users in China reached 932 million, and the proportion of Internet users using cell phones to access the Internet reached 99.2%. For example, the cell phone "health code" in the process of epidemic prevention in 2020 can quickly identify and judge the infected population through real-time monitoring of people's movement trajectories by cell phone mobile applications, which is convenient for government agencies to carry out epidemic monitoring and analysis, virus tracing, prevention and control, and rescue treatment, and use big data statistics to The "health code" provides a great convenience for the prevention and control of the epidemic, as it identifies the dangerous areas around the people's movement trajectory and provides guidelines for the people to choose safe activity areas. Since Hangzhou started to launch the "health code" in February 2020, all major cities have followed the trend and launched their own "health codes", and then the national government service platform converged and supported the sharing of "health codes" in various places. Later, the national government service platform converged and supported the sharing of "health codes" among different regions, and the construction of a unified "health prevention information code" continued to play a role in the regular prevention and control of epidemics. Digital services also provided protection for people's lives during the epidemic. People's lives were restricted by the epidemic, and many of their needs were met by the Internet to reduce exposure.

2. The problems in the prevention and control of epidemics in China

In his book *The Plague and Man*, American historian McNeil famously asserted that infectious diseases were an important factor in determining the course of human history, and that the "Black Death" in Europe in the 14th century caused a great disaster, but pushed mankind to reflect on itself and promoted

the European Renaissance, the Reformation and the Enlightenment. (Guo, 2020) The test of the epidemic has brought China's governance capacity to a new level, and China's good performance in the face of the epidemic has won international recognition, but the epidemic has also reminded China to step up the construction of a legal system for epidemic prevention and control to ensure that there is still a law to follow and scientific governance in the event of an unexpected risk. As General Secretary Xi Jinping mentioned at the third meeting of the Central Committee for the Comprehensive Rule of Law, "To prevent and control by law, we should improve the legislation related to epidemic prevention and control, strengthen the construction of supporting systems, and build a systematic and complete, scientific and standardized, and effective legal system for epidemic prevention and control." (Xin, 2020) Therefore, it is necessary to reflect on the shortcomings of the epidemic and give suggestions for improvement at the legal level, so as to provide institutional guarantees for the regular prevention and control of the epidemic and the re-upgrading of the national governance capacity.

2.1 The laws on epidemic prevention and control are too fragmented and not systematic enough

As mentioned above, coordination is a key advantage in epidemic prevention and control, and the integration of laws to form a legal "chessboard" for epidemic prevention and control will provide a strong impetus for the prevention and control of epidemics in China on the track of rule of law. In general, after experiencing SARS, avian influenza, Middle East respiratory syndrome and other infectious diseases, the legal framework for epidemic prevention and control in China has been basically established after continuous reflection and efforts, but the laws are fragmented, compartmentalized and sectoralized, and not systematic. The construction of a legal system for epidemic prevention and control is a common issue discussed in the academic community after the epidemic (Tang & Wu, 2020; Wang, 2020; Shi, 2020) , and the reason for this is that China

For example, Article 45 of the Prevention and Control of Infectious Diseases Law and Article 12 of the Emergency Response Law have inconsistent provisions on the subjects of expropriation and the scope of expropriation. For example, Article 45 of the Infectious Disease Prevention and Control Law and Article 12 of the Emergency Response Law have inconsistent provisions on the subject and scope of requisition. Due to the lack of integrated research on epidemic prevention and control laws and the lack of systematic consideration and evaluation of the gaps and deficiencies in the collection of laws related to epidemic prevention and control before the epidemic occurred, it was difficult for the government as well as the academia to find some of these problems exposed in the epidemic. For example, there is a lack of explicit legal provisions to protect social assistance after the epidemic, and problems such as the affected people cannot obtain social assistance according to the law, and the lack of legal provisions by the government in social assistance may result in substantial inequality in relief. Based on this, the government has drafted the Law of the People's Republic of China on Social Assistance (Draft for Public Comments) to guarantee the rights of affected people to receive social assistance after the emergence of epidemics. Due to the lack of systematic sorting, the top-level structure of the epidemic prevention and control laws is not perfect, and the purpose of epidemic prevention and control, the arrangement of values and concepts, the general principles, and the

relationship between various laws lack refined design. The lack of systematization also makes the programmatic ideas and value arrangements for epidemic prevention and control not sufficiently discussed, making the purposes, concepts, and principles of epidemic prevention and control laws incoherent or even conflicting, for example, the Prevention and Control of Infectious Diseases Law emphasizes the protection of human health and public health, and the Emergency Regulations for Public Health Emergencies emphasize the prevention, control, and elimination of the hazards of public health emergencies and the protection of public health. For example, the Prevention and Control of Infectious Diseases Law emphasizes the protection of human health and public health, and the Emergency Regulations on Public Health Emergencies emphasize the prevention, control and elimination of public health emergencies to protect public health and life safety. (Guo, 2020) Local governments also encounter difficulties in refining and localizing relevant prevention and control rules. Insufficient system systematization can make refinement unknown to coordinate conflicts between higher laws, and there are no relevant specific programs to help local governments to sort out scientific management aspects of epidemic prevention and control, making local governments appear to make ad hoc legislation in case of epidemics. As some scholars have stated.

“The only local regulations governing the prevention and control of infectious diseases are the Measures for the Implementation of the Law of the People's Republic of China on the Prevention and Control of Infectious Diseases in Jiangsu Province. In contrast, there are 213 local laws and regulations governing novel coronavirus pneumonia infections, 184 of which were enacted in February 2020, almost all of which were enacted in an emergency after the outbreak of novel coronavirus pneumonia infections.” (Ji & Ren, 2020)

2.2 Local governance capacity in accordance with the law is slightly inadequate

In terms of the performance of the epidemic, the governance capacity at the central government level is commendable, but there is still much room for improvement in the governance capacity of local governments. On the whole, the good achievements in the prevention and control of the epidemic are mainly due to the coordination at the central level, but there are more problems when it comes to the prevention and control of governance at the local level. Local governments' awareness of the rule of law still needs to be improved. During the epidemic, there were problems of government brutality in epidemic prevention and control and illegal prevention and control in various places, such as setting up private barriers at intersections leading to villages and banning all vehicles and people from entering and leaving, and the illegal expropriation of anti-pneumonia supplies in Chongqing by Dali in the middle of the epidemic, etc. All these news show that local governments lack thinking about the rule of law when dealing with epidemic prevention and control, although such actions may be aimed. The initial intent may be for local epidemic prevention and control, but the manner in which they are conducted is against the law.

In contrast to the overly rigid local governance, China's legal system level is to some extent given to local government autonomy, such as the "Emergency Regulations" there are provisions: “The people's

governments of provinces, autonomous regions and municipalities directly under the Central Government according to the national emergency response plan, combined with the actual local situation, the development of the administrative region of the emergency response plan.” However, the development of local government emergency plans is hardly satisfactory, and the number of local normative documents for emergency plans is very small, and the content about the prevention and control of infectious diseases is relatively coarse and sparse. (Zhao & Fu, 1999) Local governments are overly dependent on “orders from above” in prevention and control management, and lack of autonomy and initiative, which may delay the progress of epidemic prevention and control in case of emergencies. It is noteworthy that after the epidemic, local governments have improved their governance capacity in epidemic prevention and control, but they are still too rigid in the face of superior decisions, especially the grassroots organizations, which still fully implement the orders and instructions issued during the serious epidemic in the post-epidemic period.

3. Suggestions for improving the legal system of epidemic prevention and control in China

3.1 Promoting the integration of the legal system of epidemic prevention and control with systemic thinking

First of all, the overall purpose of building the legal system for epidemic prevention and control should be clarified, and the values in the process of epidemic prevention and control should be arranged and designed under the guidance of the purpose, and the relationship among the laws under the system should be clarified according to the value ranking to enhance the synergy among the laws. The overall purpose of the legal system of epidemic prevention and control in China is to protect people's life and health. In this epidemic, China has adopted such a concept, and has taken a prudent and strict approach to prevention and control to reduce the probability of virus transmission, even in times of regular epidemics, raising the risk level of the area immediately after the emergence of a few cases, and promptly testing and controlling the area to prevent the epidemic from further endangering the lives of more people. We never give up the life and health of any person, regardless of gender, age, wealth, or lack thereof, and do our best to treat them. In terms of value arrangements, the state may, to a certain extent, restrict the personal freedom of citizens in times of emergency to ensure public safety, at which time the value of order should take precedence over the value of freedom. After the epidemic prevention and control has achieved a stage of victory, most areas in China are generally in a safe state, and in this case, the epidemic prevention and control should consider the protection of personal freedom and human rights, and the collection of personal information, health code inspection, and requisition of materials during the serious period of the epidemic should be carried out strictly in accordance with the law and reasonably.

Second, based on the top-level design of the legal system, the structure of the legal system for epidemic prevention and control should be considered. The legal system is usually an organically linked unified whole formed by the classification and combination of all existing legal norms of a country into different legal departments. In general, the legal system consists of constitutional law, civil and commercial law, administrative law, economic law, social law, criminal law, litigation and non-

litigation procedural law, etc. The legal system of epidemic prevention and control is no exception. What should be the main laws of the legal system of epidemic prevention and control? In the author's opinion, epidemic prevention and control can be divided into two parts: prevention and control, but of course, there is an inherent cross-connection between the two. "Prevention" refers to prevention and control, and the laws that focus on prevention and control include the Infectious Disease Control Law, the Wildlife Protection Law, the Biosafety Law, and the Animal Epidemic Prevention Law.

Control refers to the control and control of epidemics, including the control and control laws in emergency situations, such as the Law on Emergency Response and the Law on Basic Medical Sanitation and Health Promotion.

Finally, the legal system of epidemic prevention and control should also include the laws on social security for the affected people, mainly the Law on Social Assistance. The legal system of epidemic prevention and control should be constructed with the above laws as the backbone, which requires: First, the above laws should directly or indirectly reflect the purpose of epidemic prevention and control, for example, the first article of the Biosafety Law states: "In order to maintain national security, prevent and respond to biosafety risks, and protect people's lives and health ... enact this law. " The purpose of the legislation to protect people's lives and health is clear. For example, Article 20 of the Basic Medical Care and Health Promotion Law includes joint prevention and control as the principle of infectious disease prevention and control, and the Standing Committee of the National People's Congress explicitly states that it should "amend the Law on Scientific and Technological Progress, focusing on strengthening the application of new technologies in the field of public health. The Standing Committee of the National People's Congress (NPC) has clearly pointed out that the Law on Scientific and Technological Progress should be amended to focus on strengthening the application of new technologies in the field of public health to promote the standardized use of digital technology for epidemic prevention and control. Thirdly, the Constitution should be used as the guiding principle and the main law should be used as the basis for legislative work on prevention and control, and the provisions that are inconsistent with the main law should be revised in a timely manner, and the relevant provisions should be designed and interpreted according to the provisions of the Constitution and the main law.

3.2 Improving the legal system of local epidemic prevention and control based on the whole process of epidemic prevention and control in a multi-dimensional and scientific manner

First of all, local self-government should be fully empowered. Given that local governments can more easily and quickly understand the epidemic situation and are often at the front line of epidemic prevention and control, they should be fully empowered with local autonomy when designing the higher law. For example, Article 4 of the Prevention and Control of Infectious Diseases Law provides that "the people's governments of provinces, autonomous regions and municipalities directly under the Central Government may decide to manage other endemic infectious diseases that are common and frequent in their administrative regions in accordance with the situation and announce them in

accordance with category B or C infectious diseases, and report them to the health administrative department of the State Council for the record.” It is not conducive to timely local control of infectious diseases with high risk. Then, the "Prevention and Control of Infectious Diseases Law" in Article 42 and Article 43 of the regional blockade measures, the lack of local governments in the occurrence of public health emergencies directly after the prevention and control decisions, the above norms should be amended accordingly to protect the local government in the case of an emergency sufficient autonomy.

Secondly, parallel rewards and punishments should be provided to enhance the responsibility of local government authorities. How to strengthen and implement the responsibility of local governments in epidemic prevention and control is an urgent issue to be considered in building a legal system for epidemic prevention and control. China's laws such as the Prevention and Control of Infectious Diseases Law, the Emergency Response Law, the Basic Medical Sanitation and Health Promotion Law, and other laws on epidemic prevention and control basically have provisions on government responsibility, but most of them are too much in the form of “punishment according to law”, and some laws also have constitute a crime. Some laws also have criminal liability in accordance with the law, which is still not specific enough. In addition to the implementation of responsibilities, it is also possible to consider a reward and recognition mechanism to urge government agencies to improve themselves, such as establishing the best government in epidemic prevention and governance through scoring, and commending the outstanding agency personnel in the process of epidemic prevention, which can not only motivate local governments (individuals) to prevent epidemics, but also summarize the excellent experience in epidemic prevention for other regions to learn from.

Again, a standardized local government epidemic prevention and control framework should be determined so that local governments can systematically and standardly refine the relevant rules. As mentioned above, local governments should be given full autonomy in the face of epidemics, and after being given autonomy, local governments should be promoted to develop their own regulatory framework for epidemic prevention and control to ensure that local governments have laws to follow.

3.3 Upholding the concept of community of human destiny and improving the international law system of epidemic prevention and control

In today's globalized world, the movement of people and goods is inevitable, and no country is immune to epidemics in this situation. As General Secretary Xi Jinping said, "All countries are interconnected and share the same fate. We must transcend national, ethnic, cultural, and ideological boundaries, stand at the height of all humanity, promote the building of a community of human destiny, and work together to build a better global home on which we depend." After the domestic epidemic stabilized, China, with the thinking of a community of human destiny, did not forget to assist other countries and contribute to the prevention and control of the global epidemic, a move that also won the praise of the international community. After the outbreak, "China has provided assistance to more than 150 countries and 9 international organizations to combat the epidemic.

After the outbreak, “China has provided anti-epidemic assistance to more than 150 countries and 9 international organizations, and sent 36 medical teams to 34 countries in need.

36 teams of medical experts to 34 countries in need, providing a constant impetus for global epidemic prevention and control.” (Pei, et al., 2020)

Therefore, the legal system of epidemic prevention and control should include the relevant contents of international epidemic prevention and control and reflect and integrate the idea of human destiny community. On the one hand, from the international level, the International Health Regulations (2005) and related basic principles of international law (such as the principles of international cooperation and human rights protection) are currently the main international laws on epidemic prevention and control, and China should effectively fulfill its obligations under the treaties, actively uphold and respond to the instructions and calls of the World Health Organization on the prevention and control of epidemics, and translate their contents into the legal system of epidemic prevention and control. The country should implement its obligations under the treaty and actively uphold and respond to the WHO's instructions and calls for the prevention and control of epidemics. At the same time, in order to effectively promote international cooperation in the prevention and control of epidemics and to prevent misconduct in the prevention and control of epidemics abroad, we should actively promote the improvement of international epidemic prevention and control mechanisms. On the other hand, at the domestic level, we should make use of the

The role of the Law on Sanitary and Quarantine of the State Border and its implementing regulations to provide protection against the export and import of infectious diseases. In addition, consideration should be given to promoting countries to jointly establish multilateral treaties to safeguard the movement of people, international logistics, and industrial chains in the post-epidemic era, so as to provide safeguards for world interactions in the post-epidemic period. For example, a multilateral treaty on medical treatment for infected persons imported from abroad could be considered to reflect China's humanistic concern for those imported from abroad and to ensure that Chinese citizens in other countries can receive timely treatment.

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