

Can China's 'standard of care' for COVID-19 be replicated in Europe?

Vera Lucia Raposo  ^{1,2}

¹Faculty of Law, University of Macau, Taipa, Macao
²Faculty of Law, Universidade de Coimbra, Coimbra, Portugal

Correspondence to

Associate Professor Vera Lucia Raposo, Faculty of Law, University of Macau, Taipa, Macao; vraposo@um.edu.mo

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ABSTRACT

The Director-General of the WHO has suggested that China's approach to the COVID-19 crisis could be the standard of care for global epidemics. However, as remarkable as the Chinese strategy might be, it cannot be replicated in other countries and certainly not in Europe. In Europe, there is a distribution of power between the European Union and its member states. In contrast, China's political power is concentrated in the central government. This enables it to take immediate measures that affect the entire country, such as massive quarantines or closing borders. Moreover, the Chinese legal framework includes restrictions on privacy and other human rights that are unknown in Europe. In addition, China has the technological power to easily impose such restrictions. In most European countries, that would be science fiction. These conditions have enabled China to combat epidemics like no other country can. However, the WHO might have been overoptimistic. The Chinese standard of care for treating COVID-19 also raises problematic issues for human rights, and the real consequences of these actions remain to be seen.

INTRODUCTION

On 30 January 2020, the WHO Director-General, Dr Tedros Adhanom Ghebreyesus, praised China with the following words:

The speed with which China detected the outbreak, isolated the virus, sequenced the genome and shared it with WHO and the world are very impressive, and beyond words. So is China's commitment to transparency and to supporting other countries. In many ways, China is actually setting a new standard for outbreak response.¹

This praise was subsequently repeated by the WHO.

The purpose of this paper is to analyse China's standard of care for managing epidemics, together with its requisites and consequences, and whether it can (or should) be replicated by other countries, specifically the European Union (EU) member states.

The Chinese standard of care for managing epidemics such as COVID-19 are not new to China. The existing regulations were profoundly shaped by the trauma of the SARS crisis in 2002 and 2003. In 2004, the Constitution of the People's Republic of China was amended to facilitate the declaration of martial law during such emergencies.

China's first reaction to COVID-19 was very slow, which is surprising considering the level of social monitoring in the country. The government knew what was happening. However, in China,

there are many limits on the timing and content of information that can be publicly disclosed. Having said that, when the government finally decided to act, its reaction was strong.

Once China realised how serious the threat was, it initiated open and continuous communication with the international community, shared its most recent data on the virus¹ and worked in close collaboration with the WHO.

Within China, however, concerns have subsequently arisen over the measures implemented to protect Chinese citizens. Entire cities and provinces have been locked down, with hi-tech mechanisms put into place to track people's movements and identify the infected (or those at risk of becoming infected). Massive quarantines, the continuous monitoring of free speech and privacy intrusions have certainly reduced the number of infected people and slowed the dispersion of the virus from China to the outside world but are tremendously controversial from a human rights perspective.

All things considered, it is difficult to say if we should praise or condemn China. The country was facing a public health challenge, and some of the measures put in place (such as the massive quarantine) were probably unavoidable. However, the severe repression (on movements and on freedom of speech) was excessive and above all counterproductive.

The impossibility of replicating the Chinese standard of care in the EU

Even though some of measures adopted by China during the COVID-19 crisis could be mimicked in other jurisdictions, China's 'standard of care' (the entire set of measures that compose it) cannot be replicated elsewhere and certainly not in the EU.

The key measures of the Chinese intervention have been stringent and massive quarantines and strict control over population movement. The EU has political, legal and technological limitations that prevent the implementation of similar measures. Such limitations do not exist in China.

Limitations based on the distribution of powers

Among the measures implemented by the Chinese central government, the widespread quarantines have been the most puzzling. In Wuhan, 11 million residents (uninfected, but eventually also infected) have been totally isolated from the rest of the world. This has never been tried before.

¹Nonetheless, it has been reported that China withheld the COVID-19's genome sequence for 14 days²⁵.



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In contrast, the distribution of power between the EU and its member states precludes the implementation of a uniform mandatory quarantine for all of Europe. Health, including public health, depends on the competence of the member states. The role of the EU is complementary and subsidiary (Articles 6/a and 168 Treaty on the Functioning of the European Union (TFEU)). It is basically restricted to a coordination role. The EU has no power to impose quarantines. This is the prerogative of the member states, and they are unlikely to agree on an 'all European' quarantine.

In a recent editorial of the BMJ, Kickbusch and Leung² challenged to '[i]magine shutting down the European Union'. What seemed like pure fiction has become reality. At the time of writing, many European countries are under quarantine in an effort to contain the increasing numbers of infections in this part of the world.³ However, despite the intense caution (and some panic), there are no quarantine measures covering the entire European territory. European member states have the freedom to follow different strategies, and some of them (The Netherlands and Sweden) have opted for moderate social distancing.

There is a similar difficulty regarding the decision to close borders. In China, the central government has the full power to close all of the country's borders, but this is impossible within the territory of the EU.

The free circulation of individuals across countries is a key feature of the EU. However, COVID-19 has initiated a new era: the external borders of the Schengen Area are closed, and controls are now in place at the internal borders of almost every Schengen country.

The measures in place in both domains—lockdowns and border closures—are mostly unilateral. The closure of the Schengen Area was a common measure, following the proposal of the EU Commission, but in most cases, the Member States have the power to take matters into their own hands. The European legal framework does not allow for the imposition of uniform measures able to accommodate all different regional strategies in a unique master plan. The EU simply lacks that kind of centralised and absolute power.

Limitations based on lack of technological power

China's investment in high technology is generating returns in the fight against epidemics. In several hospitals, robots deliver food and medicine to inpatients. Algorithms are used to make clinical diagnoses in 20s with 96% accuracy and to identify possible therapeutic alternatives to combat viruses.⁴

However, technology is also being used for more controversial purposes. In the last couple of years, China has implemented an extensive system of surveillance, with millions of cameras installed in major cities. These provide facial recognition that aids in controlling people during quarantine.⁴⁻⁶ People who do not wear masks can be identified so they can be sanctioned. In the current crisis, a so-called coronavirus app informs users if they have been in the proximity of infected people. This is possible because many services in China (for instance, booking a seat on a train) require service users to input their national identification number, making it easy to track them. 'Smart helmets' are being used by some officers to detect individuals with fevers nearby. Determining whether to quarantine individuals is being decided by machines using big data. Apps such as Alipay and WeChat issue QR codes to citizens, identifying people by a colour code that determines whether they should be quarantined. It is expected that the personal colour code will become 'visible' to others in their respective phones. The risk of creating social outcasts is thus a concern.

Disregarding for now the complex legal problem raised by hi-tech surveillance, the truth is that few European countries have the technological power (and the underlying economic power) necessary to emulate what China has done.

Limitations based on human rights

By their very nature, quarantines and their connected control measures might ultimately restrain the liberties that are the keystone of the EU's legal order. These liberties include the free circulation of people (Article 45 ff. of the TFEU), which is the base of the single market, and human rights in general, many of which are expressed in the Charter of Fundamental Rights of the European Union. From a human rights perspective, isolating people and restricting their freedom of movement may be problematic, even if the objective is to safeguard important values. Thus, despite its laudable objectives, there are sacrifices to be considered, and human rights cannot be undervalued.

A possible argumentation is that because the state has a duty to protect public health,⁷ national security⁷ and economic stability,^{7,8} the State may impose coercive quarantines when these conditions are threatened.⁷ However, as Giubilini *et al* also recognise, this can only be so when the individuals under quarantine 'have a moral duty to submit to those measures', which happens when 'individuals fall under a duty of easy rescue, that is, a moral obligation to benefit others, or to prevent harm to others, when doing so entails a small cost to them' (p. 183).⁷

Quarantines and their connected restrictions are exceptional measures that should only be implemented when other less drastic actions are ineffective. As they potentially restrict human rights, they must be necessary and proportional in light of the threat and the goal to be achieved. Necessity is the benchmark in quarantines. Experts are still divided in what regards the necessity of such a massive quarantine, but in my perspective, it saved the world from a (even) greater calamity.

There have also been concerns over the real efficiency of quarantines. Mandatory quarantines, imposed by police force, may have a counterproductive effect. It is only natural that some inhabitants manage to escape, especially in large cities, allowing potentially infected people to move around. If they become ill, they may be afraid to approach a hospital for fear of reprisal. They may also be unwilling to disclose their place of origin, out of fear of being reported or ostracised. Evidence has shown that the excessively restrictive measures implemented during the West African Ebola crisis contributed to gross human rights violations and were inefficient and failed to impede the dissemination of the disease.⁹ The same might be happening right now in China.¹⁰

There is a general, but not absolute, agreement that quarantines are necessary to slow the progression of the pandemic. However, even with such agreement, their legitimacy depends on the specific conditions under which they take place and the measures imposed to guarantee compliance. The quarantine in Wuhan imposed a great cost on people^{10,11} and was thus totally different from the quarantines imposed in European countries.

Placing an entire city under quarantine affects both healthy and unhealthy people, dramatically increasing the chances that healthy people will become infected. Those under quarantine may become isolated from the outside world, deprived of proper medical care and supplies, and even goods of first necessity, unless a continuous flow of goods and services is guaranteed.¹² There are reports of people in Wuhan struggling to get basic medical care because hospitals are crowded and all healthcare professionals are allocated to fight the epidemics and because all vehicle traffic (with very limited exceptions) and public transportation has been suspended, making it

difficult to reach the hospitals.¹⁰ People in especially debilitating situations (HIV patients, patients with cancer and pregnant women) can barely have access to the medicines they so desperately need.¹⁰

Additionally, there is the question of compliance.¹³ To be effective, quarantines require at least 90% compliance.¹² This percentage is difficult to achieve when more people are included and its duration is extended, as it has been the case in China. It is virtually impossible to place millions of people under quarantine for a long time without strong coercion. China achieved this using unorthodox measures: security guards prevented people from leaving their apartments, volunteers went door to door to check body temperatures and those found to have a fever were sent to 'quarantine centres' and separated from their families. People who needed assistance were left on their own, and even minors were separated from their parents: for instance, a teenager with cerebral palsy died because his family was taken away to quarantine.¹⁴ There are reports of people being arrested because they left home or because they were not wearing face masks.¹⁵ Anyone not complying with the severe rules in place risked 3 years in prison, but the penalty could increase to 7 years in the most serious cases. Even if there are legal grounds for imposing a quarantine, the use of severe coercion and gross intrusions of privacy are not justified.

Restrictions on free speech and the repression of those whose opinions the government has deemed detrimental (eg, the infamous case of Dr Li Wenliang¹⁶) have led to slow responses and have allowed the virus to freely spread (for instance, by the time Hubei province was placed under quarantine, many of its inhabitants had already left for the Chinese New Year celebrations). Opinions expressed in private chat conversations were repressed under the accusation of spreading false rumours.¹⁶ Ever since, the Government has been shutting WeChat groups (an extremely popular app in China) under the accusation of spreading rumours.¹⁶ The Cyberspace Administration of China, announced that it had punished websites, mobile applications and social media accounts for disclosing what they considered 'illicit content' about the outbreak.¹⁷ The government's continuous filtering of information and lack of transparency have received strong criticism.¹⁸ During catastrophes, public trust is essential¹⁹ but that can only be achieved by transparency and open communication.

Concerns over the protection of the right to privacy and the protection of personal data may also emerge. People residing in Wuhan but staying in a different part of the country (for instance, students affiliated to Wuhan universities) saw their personal information (ID number, phone number and address) being publicly disclosed without consent, leading to social harassment.¹⁰ Moreover, China relies on technology to control people's movements and to track infected individuals (as described in the previous chapter), with intrusions into personal privacy that would not be allowed under the existing European regulations. The tracking of personal contacts is a measure being accessed in Europe to identify potentially infected people—those who have been in contact with a confirmed infected person—so that they can be tested and eventually self-isolate. We might conclude that the challenges of the pandemic force us to limit our right to privacy for the greater good. However, the mechanism must be built to ensure compliance with the General Data Protection Regulation (Regulation (EU) 2016/679), our set of basic norms on privacy rights. Several requirements have been suggested to guarantee compliance, such as the creation of a specific legal

basis, limitations on the scope of data collection and strict definitions of which data will be stored, where, for how long and who can access them.²⁰ Tracking systems seem to be the best tool for tracking the spread of the virus, but their implementation will surely face legal barriers that do not exist in China (China's private data laws are much looser than the European laws²¹). Thus, their features will be different: for instance, individuals will have to provide their consent and data will need to be anonymised.

Such a strict quarantine, and the type of monitoring required to enforce it, could not be carried out within the EU without raising huge questions (and several court proceedings) about human rights violations.

The impossibility to replicate the Chinese standard of care

Through drastic measures (and the experiences acquired from past epidemics), China has managed to reduce the national and (above all) the international outbreak of COVID-19.

Assessing China's new standard of care for epidemics is a matter of balance. When public health and human rights are in conflict, which one prevails? Can the interests of an entire population (in the case of pandemics, this may be the entire human population) impose (severe) restrictions on the human rights of a restricted (or in the Chinese case, not so restricted) group of people?²² Can 'the future of some people and nations [be] built at the expense of others'?²³ (p. 367). More than a decade ago, Matthew Wynia²⁴ concluded and wrote that public health is not in contradiction with the protection of individual rights and I tend to agree with him; but in the COVID-19 case, the dissemination of the infection was impeded by the sacrifice of millions of Chinese people.

The Chinese government is strongly committed to fighting the virus, even at the expense of the country's economic growth. Thousands of companies have been closed so workers can stay at home, a measure that will have a dramatic effect on the Chinese economy. Even more importantly, the measures China has taken to manage the virus may be at the expense of its own people.

What has happened in China is remarkable, in both positive and negative ways. It has been deeply beneficial for the rest of the world. If not for the dramatic Chinese response, the virus would have spread much faster, putting the entire human population at an even higher risk of infection. However, this amazing result has been achieved through the great sacrifice of the Chinese population.

The EU could never emulate the Chinese standard of care. It lacks the legal, the political, the economic and the technological base to do so. However, that may not be a weakness.

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ORCID iD

Vera Lucia Raposo <http://orcid.org/0000-0001-7895-2181>

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