

## *Civilization on Pause*

Introduction to special issue  
“China’s Global Capital and the Coronavirus:  
Views from Comparative Law and Regulation”

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### Abstract

Pandemics have a history of interrupting civilizations. From the Greeks and Romans to the British Empire, pandemics have eroded political authority and caused economic instability. The twenty-first century has been hailed as the “Asian century,” with China’s ascent as central to a reconfiguration of global capital and power. The COVID-19 pandemic, that began in 2019 and still rages as of this writing, started in China and was exacerbated by initial repression by the local government authorities before the central government could implement appropriate disaster response. Since then, COVID-19 has been one of the most devastating pandemics in the history of globalization. This special issue explores the impact the COVID-19 pandemic has had on Chinese overseas direct investment and the concomitant forms of capital (symbolic, social, and political). It features collaborative research and writing by early career experts from throughout the world, as part of the “China, Law and Development” project, based at the University of Oxford. It examines how China, its trade partners, and transnational orders have responded to the pandemic through law and regulation across an array of fields: dispute resolution, legal services, vaccine approval processes, immigration law and policy, digital surveillance, global health governance, and democratic fragility.

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Pandemics have a history of interrupting civilizations. In 430 BC, the plague of Athens crippled the city-state such that it lost the Peloponnesian War to Sparta.<sup>1</sup> Rome was weakened by falciparum, a particularly deadly strain of malaria, over the thousand-year life of the republic and empire before being brought to its knees by the Black Death in 542 CE.<sup>2</sup> In the modern era, the 1918 influenza pandemic decimated populations in many underdeveloped countries like India, which lost 18 million people, fuelling waves of anti-colonial sentiment against the British Empire.<sup>3</sup>

One hundred years later, much as been made of the “Asian century” and, especially, China’s “rise.”<sup>4</sup> In particular, China’s “Belt and Road Initiative” (BRI), a decades-long effort to link China’s economy with those throughout much of the developing world through infrastructure, technology, and financialization, can be seen as a kind of civilizing process.<sup>5</sup> Then came the COVID-19 pandemic, a world-wide health disaster of an unprecedented speed and scale precisely because it subsists from the very links that make the modern economy what it is – economic globalization. The juggernaut of Chinese outbound capital, an intrinsic part of economic globalization,<sup>6</sup> is colliding with the immovable object of states’ regulatory responses to the virus—mandatory quarantines, immigration blockades, travel restrictions, and exit bans. Following the Greeks, Romans, and British, has China’s would-be transnational civilization been undermined by pandemic before it has even been able to flourish?

This special issue considers how China, its trade and investment partners, and transnational orders have responded to the pandemic through law and regulation across a wide domain of legal fields and inquiries. These include dispute resolution, legal services, vaccine approval processes, immigration law and policy, digital surveillance, global health governance, and democratic fragility. This special issue is the first to examine the specific question of whether the pandemic has altered the terrain of China’s efforts to shape global development. Whereas there is an already abundant literature examining how different regime types have responded to the COVID-19 pandemic,<sup>7</sup> to our knowledge, this issue is the

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<sup>1</sup> Thucydides, *The History of the Plague of Athens* (transl. Charles Collier) (David Nutt 1857).

<sup>2</sup> Charles Kenny, *The Plague Cycle: The Unending War Between Humanity and Infectious Disease* (Scribner 2021) 36-7.

<sup>3</sup> David Arnold, ‘Death and the Modern Empire: The 1918-19 Influenza Epidemic in India’ (2019) 29 *Transactions of the Royal Historical Society* 181-200.

<sup>4</sup> On the Asian century, see Asian Development Bank, *Asia 2050: Realizing the Asian Century* (2011); Jonathan Woetzel and Joengmin Seong, ‘We’ve Entered the Asian Century and There is No Turning Back’ (*World Economic Forum* (11 October 2019) <https://www.weforum.org/agenda/2019/10/has-world-entered-asian-century-what-does-it-mean/>); McKinsey & Company, ‘The Asian Century, Two Years On: A Look Back’ <https://www.mckinsey.com/featured-insights/future-of-asia/the-asian-century-two-years-on-a-look-back> accessed 9 March 2022. On China’s rise, see Gregory Shaffer, *Emerging Powers and the World Trading System: The Past and Future of International Economic Law* (Cambridge University Press 2021); Heng Wang, ‘Selective Reshaping: China’s Paradigm Shift in International Economic Governance’ (2020) 23 *Journal of International Economic Law* 583-606; Julien Chaisse, *China’s International Investment Strategy - Bilateral, Regional, and Global Law and Policy* (Oxford University Press 2018); Nadège Rolland, *China’s Eurasian Century? Political and Strategic Implications of the Belt and Road Initiative* (The National Bureau of Asian Research 2017).

<sup>5</sup> Elias Norbert, *The Civilizing Process* (Blackwell 2000) 43.

<sup>6</sup> Matthew S. Erie, ‘Chinese Law and Development’ (2021) 62 *Harvard International Law Journal* 70-71; Anthea Roberts and Nicolas Lamp, *Six Faces of Globalization: Who Wins, Who Loses, and Why It Matters* (Harvard 2021) 125.

<sup>7</sup> See, eg, Ilan Alon, Matthew Farrell, and Shaomin Li, (2020) 9 ‘Regime Type and COVID-19 Response’, *FIIB Business Review* 152-60; Susuma Annaka ‘Political Regime, Data Transparency, and COVID-19 Death Cases’

first to focus on how the pandemic, with all of its economic, political, socio-cultural, and psychological weight, has shaped what global China means and does, and how it is interpreted by both host states and transnational regulators across the Asian region and the world. While the world population has suffered two plus years of the COVID-19 pandemic and events are still evolving, we believe it is an opportune time to reflect on the changes and continuities that the health crisis has effected in regards to China's position as a capital and norm exporter.<sup>8</sup> In particular, as the world learns to live with the COVID-19 virus, we believe that these reflections can help inform academic and policy questions pertaining to the central role China will play in shaping the post-pandemic order.

These questions arise from the "China, Law and Development" (CLD) project, based at the University of Oxford. A five-year project funded by the European Research Council, the international and multidisciplinary CLD project aims to understand how China is shaping transnational law and the legal and regulatory orders of host states that receive Chinese capital. This special issue follows on three previous ones which each address different questions under the CLD umbrella.<sup>9</sup> Like the others, this special issue provides a set of data points as a cross-section of key issues in the ever-changing relationship between China and transnational orders.

This special issue does so by honing in on how the pandemic has either abridged, rerouted, or facilitated Chinese outbound capital flows and the concomitant forms of capital (symbolic, social, and political) that follow from China's form of economic globalization. Collectively, the contributions show that the pandemic has had a variegated impact on Chinese global capital flows and their reception in host states, an impact that has, for the most part, accelerated or exacerbated existing trends, potentials, and shortcomings.

The contributions raise three broad questions. First, how are we to understand the relationship between foreign (in this case, Chinese) investors and their respective states in terms of their political consequences in host states, or, to put it another way, *what is the relationship between capital and power?* Second, will expansive regulatory measures implemented to combat COVID-19 become the norm, or, *is the "right to regulate" the new "state of exception"?* Third, in recognition of the importance of host state agency, how has the pandemic shifted (or not) how host state regulators, professionals, and publics view

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(2021) 15 SSM - Population Health 1-7; Gabriel Cepaluni, Michael T. Dorsch and Réka Branyiczki, 'Political Regimes and Deaths in the Early Stages of the COVID-19 Pandemic' (2021) 20 Journal of Public Finance and Public Choice 1-27; Carl Benedikt Frey, Chinchih Chen, and Giorgio Presidente, *Democracy, Culture, and Contagion: Political Regimes and Countries Responsiveness to COVID-19* (Oxford Martin School, Oxford University 2020); Rachel Kleinfeld, 'Do Authoritarian or Democratic Countries Handle Pandemics Better?' *Carnegie Endowment for International Peace* (31 March 2020) <<https://carnegieendowment.org/2020/03/31/do-authoritarian-or-democratic-countries-handle-pandemics-better-pub-81404>> accessed 11 March 2022.

<sup>8</sup> Henry Gao, 'China's Ascent in Global Trade Governance: From Rule Taker to Rule Shaker, and Maybe Ruler Maker?' in Carolyn Deere-Birkbeck (ed), *Making Global Trade Governance Work for Development: Perspectives and Priorities for Developing Countries* (Cambridge University Press 2011) 153-80.

<sup>9</sup> Matthew S. Erie, 'Introduction to the Symposium on Legal Dimensions of Chinese Globalization: China and Global Health Governance' (2020) 8 The Chinese Journal of Comparative Law 281-303; Anthea Roberts, 'Introduction to the Symposium on Global Labs of International Commercial Dispute Resolution' (2021) 115 American Journal of International Law Unbound 1-4; 'Introduction to the "China and International Legal Order" Joint Symposium Issues' (2021) Yale Journal of International Law <https://www.yjil.yale.edu/online-essays/china-symposium/> and Harvard International Law Journal <https://harvardilj.org/2021/07/symposium-china-and-the-international-legal-order/>.

Chinese capital and influence; in other words, *has the pandemic impaired or improved China's image and capacities abroad?*

The remainder of this introduction does the following: it first provides a brief overview of how the pandemic has affected Chinese capital outflows and projects particularly in developing states in Asia and elsewhere. It then uses the articles to address the three questions, with an emphasis on those areas where there is continuity or change over the course of the pandemic (to date) and also where contributors agree or disagree about what we can learn from the study of the relationship between the pandemic and Chinese global capital.

## I. CONTAINING COVID, CREATING CAPITAL

### A. *Learning to Regulate COVID-19*

Whereas at first blush, a global pandemic that—as far as is known—originated in China<sup>10</sup> would most likely have negative effects on Chinese cross-border business, the actual impact of the pandemic has varied depending on industries and investment destinations, and the pandemic's effects may only make sense in light of other external and domestic factors, including the US-China trade war and China's trend toward hyper-nationalism, respectively. In assessing the impact of COVID-19, first and foremost, there can be no second-guessing that the costs of the COVID-19 pandemic in terms of lives lost has been staggering. As of the time of this writing, 6,019,085 people have died as a result of the COVID-19 virus, and there are 450,229,635 confirmed cases in total.<sup>11</sup> These figures place the virus as one of the deadliest pandemics in history.<sup>12</sup> It is worth briefly revisiting how the disaster unfolded.

Like the severe acute respiratory syndrome (SARS) crisis of 2003, COVID-19 was first detected in China. In December 2019, patients in Wuhan, a city in Hubei Province, began showing symptoms suggestive of viral pneumonia. Despite the warnings of medical specialists, local officials initially sought to cover up the outbreak and in fact disciplined those experts and would-be whistle-blowers, a response which may have worsened its early spread.<sup>13</sup> Nonetheless, on December 31, 2019, Chinese authorities informed the World Health Organization (WHO) of the outbreak. Soon thereafter, the cause was determined to be severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) which manifests as the coronavirus diseases 2019 (COVID-19).<sup>14</sup> At that point, the Chinese government, in the words of the WHO, “rolled out perhaps the most ambitious, agile and aggressive disease containment effort in history.”<sup>15</sup> This containment strategy included locking down Wuhan on January 23, 2020, and further, closing airports, mandating stay-at-home orders and temperature

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<sup>10</sup> Michal Worobey et al, ‘The Huanan market was the epicenter of SARS-CoV-2 emergence’ *Zenodo* (2022) [https://zenodo.org/record/6299116#.Yhzu\\_OjP02x](https://zenodo.org/record/6299116#.Yhzu_OjP02x); Jonathan E. Pekar, ‘SARS-CoV-2 emergence very likely resulted from at least two zoonotic events’ *Zenedo* (2022) <https://zenodo.org/record/6291628#.YhzuHejP02x>

<sup>11</sup> WHO Coronavirus (COVID-19) Dashboard, <https://covid19.who.int/> accessed 11 March 2022. But for estimates that include unreported cases, see David Adam, ‘The pandemic’s true death toll: millions more than official counts’ *Nature News* (18 January 2022) <https://www.nature.com/articles/d41586-022-00104-8>.

<sup>12</sup> Kelsey Piper, ‘Here’s how Covid-19 ranks among the worst plagues in history’ *Vox* (11 January 2021) <https://www.vox.com/future-perfect/21539483/covid-19-black-death-plagues-in-history>.

<sup>13</sup> Jacques deLisle and Shen Kui, ‘Lessons from China’s Response to COVID-19: Shortcomings, Successes, and Prospects for Reform in China’s Regulatory State’ (2020) 16 *University of Pennsylvania Asian Law Review* 71.

<sup>14</sup> WHO, ‘Genomic Sequencing of SARS-CoV-2: A Guide to Implementation for Maximum Impact on Public Health’ (8 January 2021) <file:///C:/Users/CDL-User1/Downloads/9789240018440-eng.pdf>.

<sup>15</sup> <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>

monitoring as well as face-masking and handwashing.<sup>16</sup> The Chinese medical authorities focused on quick detection, isolation of cases, and early treatment. Their strategy was aided by the prevalent use of mobile technologies by Chinese citizens which were used for tracking and surveillance, a deployment of technology particularly common to authoritarian states.<sup>17</sup>

The outbreak occurred at perhaps the most inopportune time in the Chinese calendar given that the Spring Festival in early February marks “the largest human migration,” an annual migration of several hundred millions of people, and in particular the migrant workers who work in urban centers.<sup>18</sup> It was during the holidays when, in early February, the Chinese government effectively shut down the railways, closed Chinese and Western stores and factories, and even suspended activities in small villages in the countryside.<sup>19</sup> By mid-February, the major economic centers like Shanghai and Guangzhou had become frozen by extended school closures and continued limitations on the movement of migrant workers.<sup>20</sup> Of the 290 to 300 million migrant workers who normally would be returning to work from the holidays, only 80 million made it back.<sup>21</sup> As a result of the lockdown, industrial production, services production, retails sales and fixed assets investment declined by 13.5%, 13%, 20.5%, and 24.5% year-on-year, respectively.<sup>22</sup> Consequently, during the first half of 2020, China suffered its first major setback in its path to economic growth since the early 1980s.<sup>23</sup> By the end of February, cautious measures were implemented to permit a slow and partial reopening of the economy.<sup>24</sup>

Nonetheless, since the national strategy was put in place, China has been effectively shuttered off from the rest of the world in terms of international travel. Chinese nationals residing within the PRC reported that authorities stopped issuing new passports and exit visas, allowing only “essential” travel.<sup>25</sup> International travel to China was banned as of March 2020, with limited travel permitted roughly a year later for specific purposes. Under China’s “zero-COVID” policy, non-Chinese citizens seeking to travel to China face a number of hurdles including a moratorium on Chinese embassies’ issuing of visas in certain countries, prohibition of flights from certain countries to China, various health checks, a two-week quarantine upon arrival, and according to some reports, a preference for inoculation with a Chinese vaccine.<sup>26</sup>

At the same time, states outside of China, including some of its closet trading partners, adopted their own COVID mitigation measures that further strained international travel and commerce. Taiwan, Hong Kong, Singapore, South Korea, and Vietnam promptly

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<sup>16</sup> Guobin Yang, *The Wuhan Lockdown* (Columbia University Press, 2020) 5-6.

<sup>17</sup> Victor V. Ramraj and Matthew Little, 'A Short History and Thematic Overview' in Victor V. Ramraj (ed), *Covid-19 in Asia: Law and Policy Contexts* (Oxford University Press 2021) 8.

<sup>18</sup> Yvette Tan, 'Chinese New Year: Clamping down on going home for the holidays' *BBC News* (28 January 2021) <https://www.bbc.co.uk/news/world-asia-china-55791858>.

<sup>19</sup> Adam Tooze, *Shutdown: How Covid Shook the World Economy* (Penguin, 2021), p. 53-54.

<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.*, 58.

<sup>22</sup> National Bureau of Statistics of China, 'National Economy Withstood the Impact of COVID-19 in the First Two Months' (16 March 2020) [http://www.stats.gov.cn/english/PressRelease/202003/t20200316\\_1732244.html](http://www.stats.gov.cn/english/PressRelease/202003/t20200316_1732244.html).

<sup>23</sup> *ibid.*

<sup>24</sup> See Tooze (n 19) 61-62.

<sup>25</sup> Qiao Long and Emily Chan, 'China Stops Issuing New Passports, Slaps Entry, Exit Curbs on Citizens' *Radio Free Asia* (6 August 2021) <https://www.rfa.org/english/news/china/curbs-08062021095546.html>.

<sup>26</sup> UK Government, 'Foreign Travel Advice: China' <https://www.gov.uk/foreign-travel-advice/china/entry-requirements> last accessed 11 March 2022; US Department of State, 'China Travel Advisory' <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html> last accessed 11 March 2022.

implemented strict screening of incoming travellers, rapid testing, and contact tracing.<sup>27</sup> Other Asian states, including Indonesia, Philippines, and Myanmar had less well-coordinated responses.<sup>28</sup> In addition to China, India and Thailand enforced perhaps the most aggressive forms of contact tracing by using public surveillance and various forms of lockdown.<sup>29</sup> Another category, including Japan, Malaysia, Sri Lanka, and Cambodia, elected for a middle way that emphasized public education and partial lockdowns over draconian quarantines.<sup>30</sup> Variables shaping state's regulatory response include official memories of past pandemics like SARS, H1N1 ("swine flu") of 2009, and Middle East Respiratory Syndrome (MERS) of 2012 as well as state capacity. One variable which has attracted considerable attention, ranging from public health specialists to scholars of comparative politics, is whether the type of government (e.g., multi-party democracy, authoritarian, kleptocracy, anocracy, etc.) influenced the forms of containment or mitigation measures taken and the relative success of those measures. Causal inferences vary across findings, just as new strains of COVID-19 continue to test existing firewalls. Both the virus and the varied human responses are evolving, in turn.

Generally, scholars have identified both strengths and weaknesses in how the Chinese government regulated the pandemic, an approach that was much more resolute than those of the US or UK governments.<sup>31</sup> The relative merits of the Chinese approach hinge on a number of factors including its recourse to formal law versus informal norms, the administrative structure of the integrated Chinese government and Chinese Communist Party (CCP), the degree of transparency versus opacity, and the use of pre-existing digital infrastructures, among others.<sup>32</sup> China's unique system of governance coupled with the extensive stake the Party-State has in digital surveillance distinguish it from other Asian states, with noticeable results. So, for example, China has, to date, suffered 8,358 deaths, a fraction of the death toll in India, totalling 515,459 deaths.<sup>33</sup> The severity of China's measures, while successful in preventing a high death toll, would nonetheless seem to have negative economic externalities.

## B. Chinese Overseas Direct Investment in COVID Times

When the WHO announced COVID-19 as a pandemic on March 12, 2020, the sound of plummeting stock markets was audible.<sup>34</sup> By June 2020, the prognosis for the world economy under the strains of the pandemic was dire. The World Bank for instance predicted that the global economy would shrink by 5.2% in 2020, making it "the deepest recession since the

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<sup>27</sup> See Ramraj and Little (n 17) 14.

<sup>28</sup> *ibid.*

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.*

<sup>31</sup> See deLisle and Kui (n 13) 70-118; Shen Kui, 'The Delayed Response in Wuhan Reveals Legal Holes', *The Regulatory Review* (20 April 2020) <<https://www.theregreview.org/2020/04/20/delayed-response-wuhan-reveals-legal-holes/>>; Phillipp Renninger, 'The "People's Total War on COVID-19": Urban Pandemic Management through (Non-)Law in Wuhan, China' (2020) 30 *Washington International Law Journal* 82-85.

<sup>32</sup> See deLisle and Kui (n 13) 70-118.

<sup>33</sup> Compare WHO Coronavirus (COVID-19) Dashboard: China <https://covid19.who.int/region/wpro/country/cn> with WHO Coronavirus (COVID-19) Dashboard: India <https://covid19.who.int/region/searo/country/in> (statistics as of 9 March 2022).

<sup>34</sup> 'WHO announces COVID-19 outbreak a pandemic' *WHO* (12 March 2020) <https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/news/news/2020/3/who-announces-covid-19-outbreak-a-pandemic#:~:text=The%20meeting%20follows%20the%20announcement,a%20growing%20number%20of%20countries.>

Second World War.”<sup>35</sup> Historian Adam Tooze echoes this concern in writing, “In the historic record of modern capitalism, there has never been a moment in which close to 95 percent of the world’s economies suffered a simultaneous contraction in per capita GDP, as they did in the first half of 2020.”<sup>36</sup> To be sure, the economic shock of the pandemic has been far-reaching; it has particularly and disproportionately debilitated low-income and middle-income countries whose economies were already vulnerable before COVID-19.<sup>37</sup> Despite these cascading effects, as of the time of this writing, the *global* impact of the pandemic does not seem to be as deleterious as was initially predicted. Although growth remains sluggish, and there are a number of intersecting strains if not crises that may shape recovery—including ongoing trade frictions, environmental degradation, and wars—overall, the post-pandemic outlook may not be the worst-case scenario.

How has Chinese overseas direct investment (ODI) fared during the pandemic? Given the measures implemented by China as a global manufacturing hub and key link in worldwide supply chains as well as other states across the world, the pandemic has had immediate and long-term negative effects on global production, trade, and labor in regards to China. Domestic measures, whether transportation shut-downs or factory closures had negative knock-on effects outside of China. More specifically, frozen global supply chains and foreign markets, labor shortages, and, in some regions, exacerbated Sinophobia all conspired to initially curtail Chinese cross-border business.

First, the closure of factories caused a shortfall in exports which froze global supply chains. These effects were amplified on the demand side, as well, as foreign markets dependent on Chinese goods were equally chilled. In Vietnam, for instance, manufacturers, heavily reliant on Chinese imports for materials failed to secure sufficient materials for production.<sup>38</sup> At the same time, they lost orders from overseas buyers in markets such as South Korea.<sup>39</sup> The ensuring decrease in production created ripples through the Vietnamese economy and beyond.<sup>40</sup> China’s on-going “zero-COVID” policy continues to disrupt just-in-time global supply chains, enough so that the International Monetary Fund (IMF) has called for the Chinese government to recalibrate its policies.<sup>41</sup>

Second, as many of China’s overseas projects involve construction and thus labor-intensive, the export of Chinese labor has been a major dimension of Chinese outbound capital flows, particularly since the start of the BRI. By 2018, a year before the COVID-19

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<sup>35</sup> World Bank Group, *June 2020 Global Economic Prospects* (2020), xv. See also United Nations Conference on Trade and Development, *Impact of COVID-19 Pandemic on Trade and Development: Transitioning to a New Normal* (2020) 8.

<sup>36</sup> See Tooze (n 19) 5.

<sup>37</sup> For projected slower global growth rates, see IMF, ‘World Economic Outlook Update: Rising Caseloads, a Disrupted Recovery, and Higher Inflation’ (January 2022) 3–4. For an assessment of Southeast Asian countries’ recovery as “mostly not promising,” see Roland Rajah, ‘Southeast Asia’s Post-Pandemic Recovery Outlook’ *Brookings* (15 March 2021) <https://www.brookings.edu/blog/order-from-chaos/2021/03/15/southeast-asias-post-pandemic-recovery-outlook/>. For an in-depth analysis of African economies’ prospects, see UNDP Regional Bureau for Africa, ‘Analyzing Long-Term Socio-Economic Impacts of COVID-19 Across Diverse African Contexts’ (2021).

<sup>38</sup> Matthew S. Erie, ‘BRI v. COVID-19, China, Law and Development Research Brief, No. 5/2020’ (24 March 2020) 3 <file:///C:/Users/CDL-User1/Downloads/FINAL%20Erie2.pdf>.

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

<sup>41</sup> Sumathi Bala, ‘Disruptions in China can lead to ‘ripple-effects’ across global supply chain, says HSBC’ *CNBC* (31 January 2022) <https://www.cnn.com/2022/01/31/china-covid-zero-disrupts-supply-chains-impacts-global-recovery-hsbc.html>; Lauren Lewis, ‘China ‘is worsening global supply chain issues and inflation rises with its zero-Covid policy’ *MailOnline* (9 February 2022) <https://www.dailymail.co.uk/news/article-10494295/China-worsening-global-supply-chain-issues-inflation-rises-zero-Covid-policy.html>

outbreak, the number of overseas Chinese laborers had reached nearly 100,000.<sup>42</sup> As many of the workers and managers who had returned to China for the Spring Festival in early 2000 were either prohibited from subsequently leaving China or from entering the country where they had been working, following a number of states' bans on cross-border movement, the labor shortfall froze construction of highways, railways, dams, and energy projects.<sup>43</sup> One example is Pakistan, home of the China Pakistan Economic Corridor (CPEC), valued at a total of \$62 billion in investments and loans from Chinese enterprises and development banks. Whereas Chinese workers were delayed in returning to Pakistan to resume work on CPEC projects in early 2020, the two governments eventually agreed to allow most workers, with the exception of those from Hubei Province (where Wuhan is located) to return after a quarantine.<sup>44</sup> At a more global level, a report by the International Labor Organization identified that in 2020, almost a tenth of world-wide working hours were lost relative to the fourth quarter of 2019, equivalent to 255 million full-time jobs.<sup>45</sup> Further, there was unprecedented global employment losses in 2020 of 114 million jobs relative to the prior year.<sup>46</sup> In short, China's push to "go global" occurred during one of the worst labor markets in modern history.

Third, the COVID-19 virus heightened Sinophobia, already prevalent in a number of regions in the world, which has further rendered business environments inhospitable to Chinese parties. Specifically, Chinese workers were deemed to be carriers of the deadly virus who contaminated non-Chinese. Racialized fears resulted in discrimination, harassment, and in some cases outright violence against Chinese citizens and ethnic Chinese.<sup>47</sup> Incidents did not only occur in the so-called BRI countries but also in Western states. In one well-documented example, the UK saw more than 260 cases of hate crimes against Chinese persons between January and March 2020, nearly three times that of the previous two years.<sup>48</sup> U.S. President Donald Trump infamously stoked anti-Asian sentiment during the early days of the pandemic by calling COVID-19 the "China virus" and "Wuhan virus." Hence, both top-down and bottom-up Sinophobia operated alongside the regulatory barriers of enhanced investment screening that combined to create barriers to Chinese outbound investment.<sup>49</sup>

As a result of the foregoing factors, the freezing of global supply chains and foreign markets, the labor shortage, and anti-Chinese sentiment in would-be host states, the pandemic contributed to a decline in Chinese ODI in 2019. Whereas Chinese ODI peaked in 2016, and subsequently, the Chinese government sought greater control over outbound investments to curb speculative investing, by 2019, Chinese ODI was \$136.91 billion, a decrease from the

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<sup>42</sup> Zhongguo maoyi waijing tongji nianjian (中国贸易外经统计年鉴, 2019) [*China Trade and Economic Statistics Statistical Yearbook, 2019*] (China Statistics Publishers 2020) 659.

<sup>43</sup> See Erie (n 38) 3-4.

<sup>44</sup> *ibid.*

<sup>45</sup> Katherine Jones, Sanushka Mudaliar, and Nicola Piper, *Locked Down and in Limbo: The Global Impact of COVID-19 on Migrant Worker Rights and Recruitment* (International Labor Organization 2021) 6.

<sup>46</sup> *ibid.*

<sup>47</sup> 'Coronavirus: Ukraine protesters attack buses carrying China evacuees' BBC (21 February 2020) <https://www.bbc.co.uk/news/world-europe-51581805>

<sup>48</sup> Xiaoyuan Li, Alexander S. English, Steve J. Kulich, Anger Among Chinese Migrants Amid COVID-19 Discrimination: The Role of Host News Coverage, Cultural Distance, and National Identity' (2021) 16 *PLoS ONE* 2.

<sup>49</sup> Guido Alberto Casanova, 'Weaponizing Commerce: Trump, China, and CFIUS' *The Diplomat* (29 March 2018) <https://thediplomat.com/2018/03/weaponizing-commerce-trump-china-and-cfius/>; Harry G. Broadman, 'Trump's TikTok Tactics Provoke China's Countering CFIUS As New Data Portend Decoupling' *Forbes* (31 August 2020) <https://www.forbes.com/sites/harrybroadman/2020/08/31/trumps-tiktok-tactics-provoke-chinas-countering-cfius-as-new-data-portend-decoupling/?sh=5b9dbf9667d8>.



previous year of 4.3%.<sup>50</sup> However, already by 2020, Chinese ODI rose to \$153.71 billion, an increase from the previous year of 12.3%, making China the largest capital exporting country in the world, by measure of investment flows, for the first time.<sup>51</sup> Chinese investment into BRI states in particular followed accordingly: in 2019, Chinese enterprises invested \$15.04 billion in non-financial ODI in 56 countries along the BRI, a decrease from the previous year of 13.6% and in 2020, investment in non-financial ODI was \$17.70 billion, an increase of 18.3% from the previous year.<sup>52</sup> 2021 in fact saw a further increase in Chinese non-financial ODI to BRI states, a total of \$20.3 billion, a year-on-year increase of 14.1%.<sup>53</sup> In summary, despite the early shock of the pandemic, Chinese ODI into BRI states as been sustained and actually increased.

In recent years, the percentage of Chinese ODI to BRI states of total Chinese ODI has remained constant and even seen a small uptick. After the high-tide of Chinese ODI in 2016, the percentage of Chinese ODI to BRI states was 12.7% of total investment flows.<sup>54</sup> In 2019 and 2020, that percentage had increased to 13.7% and 14.7%, respectively.<sup>55</sup> Overall, there has been an increasing trend for more Chinese ODI to flow to developing as opposed to developed countries. In 2017, 85.8% of Chinese ODI went to developing countries and 89.1% in 2020.<sup>56</sup> By point of contrast, during this time, despite the US-China trade war and intensified screening of Chinese investments under the Trump Administration which could foreseeably restrict Chinese ODI to the country, actually, Chinese ODI to the US has remained more or less constant.<sup>57</sup>

Hence, there seems less a redirecting of Chinese ODI and its allies to BRI states and rather a doubling down on Chinese enterprises' commitment to the BRI over the course of the

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<sup>50</sup> Zhonghua renmin gongheguo shangwu bu (中华人民共和国商务部) [Ministry of Commerce of the PRC], Guojia tongjiju (国家统计局) [National Bureau of Statistics], Guojia waihui guanliju (国家外汇管理局) [State Administration of Foreign Exchange], 2019 niandu Zhongguo duiwai zhijie touzi tongji gongbao (2019 年度中国对外直接投资统计公报) [2019 Statistical Bulletin of China's Outward Foreign Direct Investment] (2020) 3.

<sup>51</sup> Zhonghua renmin gongheguo shangwu bu (中华人民共和国商务部) [Ministry of Commerce of the PRC], Guojia tongjiju (国家统计局) [National Bureau of Statistics], Guojia waihui guanliju (国家外汇管理局) [State Administration of Foreign Exchange], 2020 niandu Zhongguo duiwai zhijie touzi tongji gongbao (2020 年度中国对外直接投资统计公报) [2020 Statistical Bulletin of China's Outward Foreign Direct Investment] (2021) 3, 6.

<sup>52</sup> Zhonghua renmin gongheguo shangwu bu (中华人民共和国商务部) [Ministry of Commerce of the PRC], 2019nian wo dui "yidaiyilu" yanxian guojia touzi hezuo qingkuang (2019 年我对“一带一路”沿线国家投资合作情况) [China's Investment and Cooperation with Countries Along the "Belt and Road" in 2019] (21 January 2020) <http://www.mofcom.gov.cn/article/tongjiziliao/dgz/202001/20200102932445.shtml>; Zhonghua renmin gongheguo shangwu bu (中华人民共和国商务部) [Ministry of Commerce of the PRC], 2020nian wo dui "yidaiyilu" yanxian guojia touzi hezuo qingkuang (2020 年我对“一带一路”沿线国家投资合作情况) [China's Investment and Cooperation with Countries Along the "Belt and Road" in 2019] (21 January 2021) <http://hzs.mofcom.gov.cn/article/date/202101/20210103033292.shtml>.

<sup>53</sup> Zhonghua renmin gongheguo shangwu bu (中华人民共和国商务部) [Ministry of Commerce of the PRC], 2021nian wo dui "yidaiyilu" yanxian guojia touzi hezuo qingkuang (2021 年我对“一带一路”沿线国家投资合作情况) [China's Investment and Cooperation with Countries Along the "Belt and Road" in 2021] (24 January 2022), <http://www.mofcom.gov.cn/article/tongjiziliao/dgz/202201/20220103239000.shtml>.

<sup>54</sup> Zhonghua renmin gongheguo shangwu bu (中华人民共和国商务部) [Ministry of Commerce of the PRC], Guojia tongjiju (国家统计局) [National Bureau of Statistics], Guojia waihui guanliju (国家外汇管理局) [State Administration of Foreign Exchange], 2017 niandu Zhongguo duiwai zhijie touzi tongji gongbao (2017 年度中国对外直接投资统计公报) [2017 Statistical Bulletin of China's Outward Foreign Direct Investment] (2018) 15.

<sup>55</sup> Ministry of Commerce of the PRC (n 50) 17 and Ministry of Commerce of the PRC (n 51) 17.

<sup>56</sup> Compare Ministry of Commerce of the PRC (n 54) 104 with Ministry of Commerce of the PRC (n 51) 111.

<sup>57</sup> Compare Ministry of Commerce of the PRC (n 54) 98 with Ministry of Commerce of the PRC (n 51) 105.

pandemic, despite its logistical challenges. It seems in many instances, Chinese embassies and consulates worked with host state governments to alleviate problems caused by regulatory barriers, including travel bans and other restrictions. It is not implausible to conclude the BRI projects received some degree of priority if not preference in host states' efforts to re-open their domestic economies to foreign-invested projects. The Chinese government's vaccine diplomacy in many of these states seems to have further enhanced the perception of Chinese actors in such economies, and addressed Sinophobia in certain quarters.<sup>58</sup> For example, in a major survey of African perceptions of the Chinese presence in their countries conducted during the pandemic, 63% of respondents said that Chinese economic and political influence was "somewhat positive" or "very positive" with only 14% responding that such influence was negative – the numbers were roughly similar to views of the US's influence.<sup>59</sup>

While the early crisis period of the pandemic may not have been as harmful to Chinese ODI as initially thought, and although a full assessment is only possible with ample time, the Chinese government's current policies may be causing ongoing damage to its global economic footprint. Serious questions remain as to whether China's "zero-COVID" policy is sustainable. It has already constrained global supply chains, requiring the IMF to call for China to recalibrate its policies.<sup>60</sup> In short, the immovable object of China's regulatory measures is still exerting force on the juggernaut of Chinese ODI.

## II. THE CIVILIZING PROCESS INTERRUPTED

### A. Chinese ODI as Co-Adaptation

Although Chinese ODI in developing countries is diversified and directed to a number of sectors, overwhelmingly, such investment has been directed at infrastructural and energy projects, projects which may have normative effects in their respective communities and host states. While there has been much written about a "China model," this concept melts into the air upon sustained inquiry. However, the Chinese government and Chinese enterprises have taken certain approaches to modernity—namely, infrastructure, urbanization, and connectivity—that have been successful in building contemporary China to jurisdictions outside of the PRC. As the anthropology of infrastructure has demonstrated, highways, railways, coal plants, hydro-electric dams, and the like, including digital infrastructural equivalents (e.g., fibre-optic cables, satellites, antennas, and even whole "smart cities") orient people towards certain commercial, political, and social relationships to the state and even, given infrastructure's cross-border capability, transnational communities.<sup>61</sup>

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<sup>58</sup> Ralph Jennings, 'China's COVID-19 Vaccine Diplomacy Reaches 100-Plus Countries' *Voice of America* (18 September 2021) <https://www.voanews.com/a/china-s-covid-19-vaccine-diplomacy-reaches-100-plus-countries/6233766.html>.

<sup>59</sup> Josephine Appiah-Nyamekye Sanny and Edem Selormey, 'Africans Welcome China's Influence But Maintain Democratic Aspirations' *Afrobarometer* (15 November 2021) 2 [https://afrobarometer.org/sites/default/files/publications/Dispatches/ad489-pap3-africans\\_welcome\\_chinas\\_influence\\_maintain\\_democratic\\_aspirations-afrobarometer\\_dispatch-15nov21.pdf](https://afrobarometer.org/sites/default/files/publications/Dispatches/ad489-pap3-africans_welcome_chinas_influence_maintain_democratic_aspirations-afrobarometer_dispatch-15nov21.pdf).

<sup>60</sup> AFP, 'IMF's Gopinath Says Time to 'Recalibrate' Covid Restrictions' *France24* (26 January 2022) <https://www.france24.com/en/live-news/20220125-imf-s-gopinath-says-time-to-recalibrate-covid-restrictions>.

<sup>61</sup> Brian Larkin, 'The Politics and Poetics of Infrastructure' (2013) 4 *Annual Review of Anthropology* 327-343; Nikhil Anand, *Hydraulic City: Water and the Infrastructure of Citizenship in Mumbai* (Duke 2017); Nikhil Anand, Akhil Gupta, and Hannah Appel (eds), *The Promise of Infrastructure* (Duke 2018); Dimitris Dalakoglou and Penny Harvey, *Roads and Anthropology: Ethnography, Infrastructures, (Im)mobility* (Routledge 2015); Alessandro Ripa, *Borderland Infrastructures: Trade, Development, and Control in Western China* (Amsterdam 2020); Manu Karuka, *Empire's Tracks: Indigenous Nations, Chinese Workers, and the Transcontinental*

Such orientations may or may not foster ingrained dispositions, modalities, and ways of thinking and being in the world. Studying the changes in the built and digital environment helps then shed light on the goal Norbert Elias directed us to: the “structure of people’s behaviour and psychological habitus.”<sup>62</sup> Applying these insights to the case of hand, it is plausible that Chinese-financed, -built, and -maintained projects throughout developing countries are shaping individual “habitus” as much as national economies. For example, the prevalence of a certain type of e-commerce platform, originated in China and popularized in a given host state, may naturalize a certain way of not just doing online commerce but also of handling data (its storage, sharing, and transfer) and even use of (digital) currency. The use of such platforms may further feature the integration of Chinese tech companies into local contexts, social and regulatory, companies that operate in a certain relationship with the Chinese authorities.<sup>63</sup>

Yet it would be a mistake to assume such dispositions amount to Sinicization or even to assume intentionality on part of the Chinese government and Chinese enterprises in creating such effects. Chinese projects feature an assortment of actors, including policy banks, state-owned enterprises, private tech companies, contractors, lawyers and consultants, Chinese and local labor, and, of course, regulators on both the Chinese and host state side. These actors do not operate in a clear “principal-agent” relationship with the Chinese government and the CCP and in fact may work at cross purposes. There are thus myriad goals held by diverse parties in such projects, with Chinese enterprises often reacting (not always successfully) to the realities of conducting business in challenging host state environments.<sup>64</sup> Instead of a unilinear normative imposition, the increasing Chinese presence in host states demonstrates multi-directional effects, some of which are unintentional.<sup>65</sup>

Hard or digital infrastructures are undergirded by various forms of more explicitly behaviour-shaping norms, namely, legal infrastructures.<sup>66</sup> Chinese ODI operates through contracts; beyond their function to create rights and obligations for the named parties, contracts contain clauses for governing law and dispute resolution preferences. There may also be international investment agreements, free trade agreements, or memoranda of understanding which create frameworks for commercial relationships between Chinese investors and host states. Given the bargaining power of Chinese parties that supply capital through credit or debt instruments, they may push for Chinese law and Chinese arbitration in their contracts; or, the Chinese government may seek to update international investment agreements with terms that are more preferable to Chinese investors. Such efforts would seem to give more credence to a Chinese “push” for its norms into host states.

While this normative push may be happening through Chinese-led legal globalization,<sup>67</sup> it does not operate in a normative vacuum in host states. Instead, Chinese enterprises, like any foreign-investors, must comply with local laws and regulations. In other

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*Railroad* (University of California Press 2019); Matthew S. Erie and Thomas Streinz, ‘The Beijing Effect: China’s Digital Silk Road as Transnational Data Governance’ (2021) 54 *New York University Journal of International Law and Politics* 1-92.

<sup>62</sup> Elias (n 5) xiii.

<sup>63</sup> See Erie and Streinz (n 61) 53-59.

<sup>64</sup> See Erie (n 6) 56.

<sup>65</sup> *ibid.*

<sup>66</sup> On legal infrastructures, see Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press 2019) 17, 134; Gillian Hadfield, *Rules for a Flat World: Why Humans Invented Law and how to Reinvent it for a Complex Global Economy* (Oxford University Press 2016) 3-4, 7, 9; Jeffrey S. Kahn, *Islands of Sovereignty: Haitian Migration and the Borders of Empire* (University of Chicago Press 2019) 10, 17.

<sup>67</sup> See Matthew S. Erie ‘China’s Dream of Legal Cosmopolitanism’ forthcoming.

words, they must to some degree localize. This requirement applies across the gamut of legal fields: corporate law, tax, public procurement, employment, environment, anti-corruption, and so on. As a result, China's transnational civilizing process also entails the possibility of versions of reverse civilizing as Chinese enterprises, lawyers, and laborers adapt to local circumstances, protocols, and cultures.

All of these processes of mutual adaptation and learning, however, have been interrupted by the COVID-19 pandemic, with complicated effects. In essence, the regulatory authority of both China as home state and the host states became prohibitive at the start of the pandemic and has since functioned to constrain the operations of Chinese investors abroad, even if aggregate flows have increased. This interruption and its aftermath raises a number of questions which this special issue addresses. Before previewing those issues, it is helpful to summarize the process that created this special issue, that is, how the articles were written and assembled as a coherent whole.

### B. *Collaboration as Response to an Academic Interregnum*

The pandemic has not only affected cross-border investment and trade, but also academic knowledge production. Scholars, especially in the traditions of law and social sciences, have mostly been unable to gather data through fieldwork, interviews, or other qualitative methodologies that require in-person travel. Anthropologists and sociologists of law and comparativists who employ ethnographic traditions have perhaps been most impaired by lockdowns and travel bans. As John Borneman and Abdellah Hammoudi once wrote, the essence of ethnography is "being there,"<sup>68</sup> and yet under COVID-19 conditions, one cannot go there. What, then, is a research project, focused on collecting qualitative data about China's engagement with legal and regulatory orders throughout Asia and the rest of the world, to do?

One response to the unprecedented obstacles thrown up by COVID-19 and specifically states' regulation of the pandemic is to collaborate. Collaboration means sharing resources, knowledge, methods and data, across space which may otherwise be fragmented and disconnected pursuant to COVID-19 measures.<sup>69</sup> Specifically, the articles for this special issue are collaborations by Research Associates (RAs) for the "China, Law and Development" (CLD) project. The RAs are mostly early-career scholars, practitioners, and activists whose work focuses on some dimension of the legal and regulatory bases of Chinese economic globalization. They are in eclectic and diverse group of professionals whose work cuts across fields (academia, public service, private practice, advocacy) and jurisdictions (South Africa, Cambodia, China, Serbia, Poland, Sri Lanka, Georgia, Kyrgyzstan, Malaysia, Brazil, and elsewhere). Crucial to the CLD project, they offer perspectives from many of the host states themselves, perspectives that diversify the tendency to view globalizing China either from the viewpoints of China or the US. At present, the RAs are categorized into six

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<sup>68</sup> John Borneman and Abdellah Hammoudi, *Being There: The Fieldwork Encounter and the Making of Truth* (University of California Press 2009).

<sup>69</sup> On collaborative research and writing in the social sciences, see eg, Douglas Holmes and George E. Marcus, 'Collaboration Today and the Re-Imagination of the Classic Scene of Fieldwork Encounter' (2008) 1 *Collaborative Anthropologies*, 81-101; Timothy K. Choy et al, 'A New Form of Collaboration in Cultural Anthropology: Matsutake Worlds' (2009) 36 *American Ethnologist* 380-403; Tara Schwegler and Michael G. Powell, 'Unruly Experts: Methods and Forms of Collaboration in the Anthropology of Public Policy' (2008) 1 *Anthropology in Action* 1-9; James W. Endersby, 'Collaborative Research in the Social Sciences: Multiple Authorship and Publication Credit' (1996) 77 *Social Science Quarterly* 375-392.

research clusters: compliance, labor and migration, dispute resolution, legal services, law and technology, and international economic law.

In the spring of 2021, research cluster leaders met online through video-conferencing to discuss their ongoing research in light of the special issue. Specifically, they identified core themes for the articles, reflecting their research cluster, and discussed writing strategies. The writers for each research cluster met, then, virtually over the rest of 2021. They shared drafts with me, the Principal Investigator of the CLD project, and with each other. I provided feedback to the authors and also both looked for points of overlap between the articles and ensured that each article responded to the common question that prompted the special issue—that is, the nature of the relationship between the COVID-19 pandemic and global China. With an understanding of who the authors are and how the articles were written, it is possible to turn to the main questions and findings of the articles.

### C. *On Capital and Power*

One of the most debated issues in the growing field of Global China is the extent to which Chinese ODI supports the Chinese government’s political and geostrategic aims abroad. On the one hand, some scholars have pointed to the various links between Chinese enterprises, and SOEs, in particular, and the Party-State to suggest that overseas projects are guided, at least, in part by geo-economic considerations.<sup>70</sup> In a much more extreme form, certain scholars have identified the BRI as a pathway to the Chinese “grand strategy” of becoming a global hegemon.<sup>71</sup> On the other hand, other scholars have suggested that the perceptions of Chinese activities overseas are filtered through various forms of Sinophobia which distort activities on the ground, and which may be more commercial than political in nature.<sup>72</sup> This latter view dovetails with an emerging consensus that analysis of the relationship between China and host states may elide the agency of the latter.<sup>73</sup> While it is important to note that often different interpretations of the nature of Chinese projects overseas is shaped by one’s ideological lens, disciplinary perspective, and geographic focus, this special issue gives

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<sup>70</sup> See eg, William J Norris, *Chinese Economic Statecraft: Commercial Actors, Grand Strategy, and State Control* (Cornell University Press 2016); Xiaohan Gong and Anatole Boute, 'For Profit or Strategic Purpose? Chinese Outbound Energy Investments and the International Economic Regime', (2021) 14 *Journal of World Energy Law and Business* 345-62; Guillermo Garcia Sanchez, 'The Footprint of the Chinese Petro-Dragon: The Future of Investment Law in Transboundary Resources' (2020) 94 *Tulane Law Review*; Li-Wen Lin and Curtis J Milhaupt, 'We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China', (2013) 65 *Stanford Law Review* 697; Curtis J. Milhaupt and Wentong Zheng, 'Beyond Ownership: State Capitalism and the Chinese Firm' (2015) 103 *The Georgetown Law Journal* 665-722.

<sup>71</sup> See eg, Rush Doshi, 'The Long Game: China’s Grand Strategy to Displace American Order' *Brookings* (2 August 2021) 5.

<sup>72</sup> See eg, Ching Kwan Lee, *The Spectre of Global China: Politics, Labor, and Foreign Investment in Africa* (University of Chicago Press 2018); Barry Sautman and Hairong Yan, 'The Chinese are the Worst?: Human Rights and Labor Practices in Zambian Mining' (2012) 3 *Maryland Series in Contemporary Asian Studies* 1-100; Timothy Webster, 'China's Human Rights Footprint in Africa' (2012) 51 *Columbia Journal of Asian Law* 626.

<sup>73</sup> Benjamin Barton, 'Agency and Autonomy in the Maritime Silk Road Initiative: An Examination of Djibouti’s Doraleh Container Terminal Disputes' (2021) *The Chinese Journal of International Politics*; Lucy Corkin, *Uncovering African Agency : Angola's Management of China's Credit Lines* (Routledge, 2013); David M. Lampton, Selina Ho, and Cheng-Chwee Kuik, *Rivers of Iron: Railroads and Chinese Power in Southeast Asia* (University of California Press 2020); Giles Mohan and Ben Lampert, 'Negotiating China: Reinserting African Agency into China-Africa Relations' (2012) 112 *African Affairs* 92-110; Miriam Driessen, *Tales of Hope, Tastes of Bitterness: Chinese Road Builders in Ethiopia* (Hong Kong University 2019); Folashadé Soulé, '“Africa+1” Summit Diplomacy and the ‘New Scramble’ Narrative: Recentring African Agency' (2020) 119 *African Affairs* 633-646.

credence to the idea that there are in fact a range of potential relationships between such projects and Chinese authorities. That is to say, the relationship between the commercial and political varies, with some cases showing the possibility of correlation if not causality and others giving evidence for the opposite claim – that the presence of political (specifically, geopolitical) drives is quite muted in the overseas projects.

One area that highlights different views and possibly how different jurisdictions show varying interpretations on the relationship between Chinese commercial entities and their overseas projects and political authority is digital infrastructures.<sup>74</sup> In their study, “Digital Surveillance Trends and Chinese Influence in Light of the COVID-19 Pandemic,” Germanò et al., find that the Chinese government did not use the COVID-19 pandemic as cover to increase its digital repression in host states. Based on publicly available documents in multiple languages from three case studies, namely, Brazil, South Africa, and Vietnam, the authors conclude that the pandemic did not allow the Chinese Party-State to export its values or governance overseas. The digital infrastructure projects financed, constructed, and managed by Chinese enterprises were much more responsive to local conditions, including regulatory frameworks of host states, rather than imposing Chinese versions.

This finding is contrasted, to some extent, by Chen and Chen in their “Chinese Investment in Malaysia: COVID-19, Democracy, and Beyond.” Chen and Chen argue that Chinese investments into Malaysia, including in digital technology, have caused the curtailment of civil liberties and democratic backslide. Drawing on journalistic sources, human rights reports, and scholarly literature, they argue that vulnerable democracies such as Malaysia have institutions and cultures of compliance that can lock them into suboptimal commercial agreements, such as that of 1Malaysia Development Berhad, a Malaysian SOE that Prime Minister Najib Razak used to embezzle money, including from China, in return for infrastructure deals.

It is possible to reconcile the different views put forward by the authors of the two articles. Both sides agree that local circumstances may facilitate the political effects of Chinese investment, including exacerbating existing trends such as creeping authoritarianism. It may not be that Chinese capital inherently leads to such outcomes, but it may be one factor amongst many that, when coupled with pre-existing dedemocratization, may worsen the political climate. In this sense, the pandemic itself may be inconsequential to this concern. Rather than a pretext for a increasing its influence (pursuant to Germanò et al.’s hypothetical), the fundamental question may be what Chinese digital infrastructures mean for data privacy, freedom of speech, and other civil liberties in the long term, since such infrastructures, by their nature, are the foundation for other subsequent layers of technologies that comprise the built environment.

Given the nature of the inquiry—the relationship between Chinese investors and political authorities—more empirical work, namely, case studies, would help flesh out specifically under what conditions does the relationship lead to such effects, why and how. The comparative question is also applicable: can non-Chinese foreign investment lead to similar outcomes? Whereas the relationship between tech companies and governments in multi-party democratic states differs from that in China and, further, such tech companies may operate in compliance with legal frameworks of their home state, nonetheless, the Snowden affair showed how private tech companies from the US have participated in state-

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<sup>74</sup> See Erie and Streinz (n 61).

directed intelligence gathering in violation of civil liberties and local host state law.<sup>75</sup> At the same time, it may be a mistake to conclude that “big tech” is everywhere the same in terms of its corrosive effects on democracy as states, companies, and transnational data networks are not commensurate and exist in different types of interrelationships.<sup>76</sup>

#### D. *The “Right to Regulate” as the New “State of Exception”*

An area where the COVID-19 pandemic gains more immediacy is in the question of whether regulatory measures enacted in the course of the pandemic, some of which have been legitimized by the principle of the “right to regulate,” ultimately become a new kind of “state of exception.” By way of background, Zhou et al. trace in their “China’s New Global Health Governance,” the “right to regulate” to the United Nations Draft Convention on the Right to Development that requires states to adopt regulatory measures to achieve the convention’s aim. China has championed this convention and the right to regulate therein, especially in the domain of global health. The right to regulate dovetails with a long-standing Chinese position that states have a right to development, based on their own historical, social, political and economic circumstances and in conformity with the exercise of their own sovereignty.<sup>77</sup> Zhou et al. analyse the presence (explicit or otherwise) of the right to regulate in multilateral, plurilateral and bilateral agreements that China has supported or ratified to ask whether China is shaping an emerging consensus through this principle as the world confronts the health crisis of COVID-19. In addition to health, the principle of the right to regulate permeates a number of legal areas, from counterterrorism and national security to population control and ethnic autonomy.

The right to regulate may, however, create conflicts with commitments under international law. Some of these conflicts may be addressed through exemptions. So, for example, Zhou et al. explain that the China-Singapore Free Trade Agreement (FTA) authorizes both governments to suspend the operation of the FTA for the protection of health. Other conflicts between COVID-19 regulations and existing international law may result in starker conflicts. Looking beyond health, Ying et al., in their “All Roads Lead to Beijing? The COVID-19 Pandemic and Shifts in Chinese Immigration Law and Policy,” study how China’s migration governance has changed over the course of the pandemic. Ying et al. include a broad range of sources to examine, on the side of the inbound flow of non-PRC nationals, highly-skilled labor migrants into China, immigrant traders from Africa, and labor migration from border regions as well as, on the side of the outbound flow of Chinese nationals, labor and investment emigration to Serbia.

Importantly, Ying et al. analyse how the entry bans imposed by the PRC government in 2020 comply with existing obligations under the International Covenant on Civil and Political Rights (ICCPR) to which the PRC is a signatory and hence must refrain from actions that violate its purpose. The ICCPR provides for the right to enter one’s own country, a right which applies to not only nationals but also long-term residents. This right then conflicts with

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<sup>75</sup> Félix Tréguer, *US Technology Companies and State Surveillance in the Post-Snowden Context: Between Cooperation and Resistance* (CERI 2018 ffhalshs-01865140f) <https://halshs.archives-ouvertes.fr/halshs-01865140/document>.

<sup>76</sup> Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (Profile Books 2019) 383; Henry Farrell and Abraham L. Newman, ‘Weaponized Interdependence: How Global Economic Networks Shape State Coercion’ (2019) 44 *International Security* 42, 46.

<sup>77</sup> State Council Information Office of the PRC, ‘China’s International Development Cooperation in the new Era’ (10 January 2021) [http://english.scio.gov.cn/whitepapers/2021-01/10/content\\_77099782.htm](http://english.scio.gov.cn/whitepapers/2021-01/10/content_77099782.htm) last accessed 11 March 2022.

the exit bans which were imposed on people categorized as “permanent residents.” There was ambiguity in practice by the PRC government on this issue which demonstrates some of the difficulty in reconciling exceptional measures such as entry bans with existing duties under international treaties.

The right to regulate, broadly construed, may lead to additional regulatory issues which have been explored by the literature on the “state of exception.” Philosopher Giorgio Agamben famously analysed the measures enacted by the Bush administration during the “Global War on Terror;” specifically, President Bush’s military order that authorized “indefinite detention” and trial by means of “military commissions” as well as the US Patriot Act, which meant that Taliban captured by US forces did not enjoy the status of prisoners of war under the Geneva Conventions and also did not enjoy due process rights under US law.<sup>78</sup> In short, the executive measures and subsequent legislation enacted in the wake of the 9/11 terrorist attacks excepted those affected by military procedures that deprived them of liberty from rights under international and US law.

By way of analogy, the exceptional measures implemented by governments in the wake of the COVID-19 pandemic may also limit people’s enjoyment of rights protected under domestic and international law, including the rights to movement, assembly, work, and others. The question, then, is whether some of these measures may survive past the end of the pandemic and become normalized, effectively permanently abridging citizens’ rights. To return to Chen and Chen’s article, one example of this problem is the Emergency (Essential Powers) (No. 2) Ordinance 2021 in Malaysia which criminalized the spreading of “fake news” about the pandemic. Along with other legislation that muffled dissent, the concern is that the declaration of emergency is simply a device by the existing administration to retain power in the face of opposition.

In summary, the pandemic may be used as a pretext for anti-democratic power consolidation. Such power consolidation may possibly be enabled or facilitated by Chinese investment even under conditions where there is no direct political influence. Concerns about the state of exception remain inside China, given the zero-COVID policy and broad use by the government of digital surveillance which is strengthened within the context of an overall trend toward repression in the course of Xi Jinping’s consolidation of authority in the country. Likewise, these concerns are felt outside of China, in jurisdictions that may feature increasing authoritarian leanings in the wake of the pandemic and its economic and social precarity.

#### E. *The COVID-19 Pandemic and China’s Status Abroad*

One question which is particularly salient in the study of Chinese global capital and the COVID-19 pandemic is the extent to which the pandemic has affected—for better or worse—China’s image abroad as well as its capacity to exert its economic governance abroad. Given its extensive investments overseas, China has assets, property, and personnel based in countries throughout the world. The ability to conduct projects depends on not just the consent of the host government but also ongoing good will in the relevant community or population at large. The COVID-19 pandemic, on the one hand, seems to have damaged China’s pretension to creating an image of a responsible stakeholder given that early repressive measures by the local government may have increased the spread. On the other hand, China has worked tirelessly to present itself as a responsible member of the global community through its involvement in health measures, including providing COVID-19

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<sup>78</sup> Giorgio Agamben, *State of Exception* (University of Chicago Press 2005) 3.



vaccines for many developing countries. A number of articles in this special issue examine the question of how the pandemic has affected China's image and work abroad either directly or implicitly, including through China's involvement in the international health field and also in adjunct fields, such as legal services and dispute resolution.

There is little doubt that China has emerged as a strong promoter of health governance during the pandemic, yet China's role in the health field has met with mixed results. As mentioned, Zhou et al. show how China has engaged in a multi-prong effort to improve health governance internationally. This effort includes working with established multilateral institutions such as the WHO and Gavi, the vaccine alliance, as well as via its bilateral ties with host states in Africa and elsewhere. The authors conclude that while China's total donations to COVID-19 initiatives like Gavi, for instance, are much lower than the US or other states, nonetheless, China has considerably stepped up its involvement, and many host states in Africa have acknowledged China's growing beneficial role.

The notion that states that are beneficiaries of China's vaccine diplomacy have responded positively to China's efforts is tested by Liu et al. in their "Regulatory Science and Institutions in a Global Pandemic: An Examination of Non-Chinese Regulatory Responses to Chinese COVID Vaccines." In their article, the authors examine how a number of jurisdictions have responded to the Chinese vaccines, namely, Sinopharm and Sinovac, through their own domestic regulatory procedures, that is, whether they have approved them for domestic use or not, and how that approval occurred. As part of the special issue's interest in linking domestic and international or transnational regulatory procedures, the authors further identify how the WHO's approval of the Chinese vaccines affected states' domestic approvals. Drawing mainly on publicly-available sources as well as theories of organization reputation and regulatory science, Liu et al. find, not unlike other contributions (e.g., Germanò et al.) that local politics significantly affected the regulatory approval process in their case studies. For example, whereas the United Arab Emirates (UAE) followed a process that was led by its regulators and scientists and was transparent, resulting in the general population's receptiveness to the Chinese vaccines, countries like Hungary demonstrated the opposite—opaque procedures that elicited popular distrust of the Chinese vaccines. Cambodia's process was more like Hungary's than the UAE's but also showed how the WHO's approval could shift popular perception of Chinese vaccines, demonstrating how international regulation can affect local outcomes. In short, Liu et al.'s case study approach complements Zhou et al.'s institutional approach by providing a local vantage on China's engagement in the health field.

Whether the COVID-19 pandemic has affected China's image and capacity abroad is a question relevant beyond the field of health, as two articles show. Both Huang et al. in their "COVID-19 and Dispute Resolution in China: Trends in Arbitration, Litigation, and Contractual Defenses" and Monsenepwo et al. in their "Foreign and Domestic Legal Services in China: A Study of Shifting Market Entry Strategies, Practice Areas and Operations during COVID-19" examine issues relating to legal services—transactional and dispute resolution—for Chinese parties or China-invested deals. The authors find that, generally, the pandemic has increased pre-existing trends, rather than curtail them or mark a radical shift in the legal industry. Such consistency in spite of the pandemic may explain, in part, how it is that Chinese ODI was able to not only maintain but actually increase its outflow over the course of the pandemic.

The pandemic has in certain respects fomented the growth of China's legal industry and, modestly perhaps, enhanced its footprint overseas. Huang et al. show how the pandemic has accelerated the Chinese dispute resolution industry's digital turn. For example, courts had

prior to the pandemic begun holding virtual hearings and receiving online evidence. These practices continued into the pandemic and were mostly expanded. As international commercial arbitration has become increasingly popular as a means for dispute resolution for cross-border deals and arbitration commissions have become prominent gap-fillers in the regulatory landscape,<sup>79</sup> the pandemic has shown the commissions issuing rules to deal with issues pertaining to data security for online hearings. Such activity would seem to only enhance the reputation of such forums inside and outside of China.

Similarly, Monsenepwo et al. argue that the pandemic largely did not disrupt the services law firms provide to Chinese and foreign clients engaged in cross-border business, and, instead, some law firms experienced net gains during the pandemic. These gains can be explained in part by the shift to online infrastructures and human resource policies that enabled Chinese and other Asian law firms to post strong performance in the second half of 2020. While the presence of Chinese law firms in BRI states remains small, overall, the years of the pandemic saw the gradual internationalization of Chinese law firms overseas. Substantively, a number of practice areas grew in response to the pandemic and contemporaneous trends, including dispute resolution, anti-trust law, data protection and cyberlaw, intellectual property, and employment. Likewise, for the most part, foreign law firms in China have been able to weather the pandemic without significant losses. Juxtaposed with Huang et al., Monsenepwo et al.'s study suggests that legal services were one factor that helps explain how it is that Chinese enterprises were able to continue their overseas projects during the pandemic years.

### III. CONCLUDING REMARKS

It is certain that the COVID-19 pandemic has changed whole industries and tested governance models. As such, the pandemic has wrought regulatory adaptation from health and development to data and employment. Yet, for the most part, the pandemic has not (yet) significantly abridged Chinese ODI and overseas projects. Despite the negative spill-over of China's early authoritarian response to the outbreak, for the most part, the transnational civilizing process that China is part of, coupled with a possible recentering of the global economy to Asia, continues. In some respects, this special issue shows that the pandemic and China's regulatory response to the health disaster may have actually improved its standing abroad, in certain countries, although this effect is likely most salient in those jurisdictions that had pre-existing strong ties with China.

There are outstanding issues, however, including whether China's own regulatory enclosure in the form of its zero-COVID policy will continue to destabilize global supply chains. China's zero-COVID policy appears linked to ongoing governance patterns that focus heavily on domestic stability at all costs, patterns that may inhibit reglobalization after the worst effects of the pandemic have subsided. Likewise, exogenous pressures and shocks remain in the form of war in Europe, ongoing trade tensions between China and the US and the European Union, and the uninterrupted environmental crisis. Despite or because of these significant challenges, the Chinese government and Chinese enterprises continue to learn and adapt to both the international state of affairs and domestic environments, ensuring that China will likely continue to shape global development in the post-pandemic period.

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<sup>79</sup> Weixia Gu, *Dispute Resolution in China: Litigation, Arbitration, Mediation, and their Interactions* (Routledge 2021) 94.