

One Party, Two Systems: Corruption in the People's Republic of China and Attempts to Control It

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I. INTRODUCTION

The ancients built Valdrada on the shores of a lake, with houses all verandas one above the other, and high streets whose railed parapets look out over the water. Thus, the traveler, arriving, sees two cities: one erect above the lake, and the other reflected, upside-down.

Nothing exists or happens in the one Valdrada that the other does not repeat, because the city was so constructed that its every point would be reflected in its mirror, and the Valdrada down in the water contains not only all the flutings and juttings of the facades that rise above the lake, but also the rooms' interiors with ceilings and floors, the perspective of the halls, the mirrors of the wardrobes.

At times the mirror increases a thing's value, at times it denies it. Not everything that seems valuable above the mirror maintains its force when mirrored. The twin cities are not equal, because nothing that exists or happens in Valdrada is symmetrical: every face and gesture is answered, from the mirror, by a face and gesture inverted, point by point. The two Valdradas live for each other, their eyes interlocked; but there is no love between them.

Italo Calvino,
Invisible Cities

In a corrupt society dualism in the activity of the state institutions is the most pronounced. In every instance there is the official and the unofficial procedure.

S. H. Alatas,
The Sociology of Corruption

In 1989, 70 years after the May Fourth Movement and 40 years after the founding of the People's Republic of China (PRC), students took to the streets of urban China as they did in 1919 to protest the state of the nation. A major grievance of the students and their supporters was corruption. According to an early 1989 survey by the Chinese Academy of Social Sciences and the State Statistical Bureau, many Chinese regarded corrupt behavior of public officials as one of the major threats to social order.¹ Tragically, the public outcry against corruption and for greater democracy that was centered around Tian'anmen Square was itself branded by the Chinese Com-

1. See *Still Mired in Muck*, FAR E. ECON. REV., Mar. 2, 1989, at 62.

munist Party (Party) as the true threat to social order. The tanks and guns of June 4, 1989 (June 4th) were the Party's response.

One of the major pledges the Party made to the Chinese people when it came to power in 1949 was to end the corruption that had plagued the country during the predecessor Nationalist regime. In the ensuing 40 years, the Party has launched numerous campaigns to purify its own ranks as well as those of the government it controls, yet now the Party itself stands condemned, even by its own admission. Some have said that the violent measures of June 4th exemplify the Party's tactic of "killing the chickens to frighten the monkeys" to ensure a docile population. In the aftermath of June 4th, however, the Party is also running scared.

The PRC leadership has been unsuccessful in meaningfully curbing corruption. This article begins with a general consideration of corruption as a predicament for all countries, but especially for the developing world. It then looks at factors in the PRC, both cultural and institutional, that encourage corrupt behavior. The final sections introduce PRC responses to the problem, legislative and otherwise, and offer some comments on the likelihood of their success.

II. CORRUPTION AS A PHENOMENON

Corruption, like those who practice it, is difficult to apprehend. It is a universal phenomenon and comes in many guises—bribery, extortion, embezzlement, to name a few. Not surprisingly, there is no single, commonly-accepted definition of corruption.² In its broadest sense, corruption refers to moral degeneracy, of which anyone can be guilty. In its narrower, legal sense, it refers to specific acts, such as the misuse of office for private gain.³ The moral aspect obviously informs the legal. Notions of what constitutes corrupt behavior vary among cultures, in part because such behavior can stem from positive social norms, such as reciprocity⁴ or personal loyalty,⁵ as well as from greed or selfishness. Regardless of the definitional problems, corrup-

2. D. GOULD & J. AMARO-REYES, *THE EFFECTS OF CORRUPTION ON ADMINISTRATIVE PERFORMANCE: ILLUSTRATIONS FROM DEVELOPING COUNTRIES 2* (World Bank Staff Working Papers No. 580, 1983) [hereinafter *EFFECTS OF CORRUPTION*]. Even the Ethics Committee of the United States Senate has not escaped this definitional problem. For a description of the problems the Committee is facing in defining when political influence exerted by a Senator to help a political contributor is considered "undue" under the Senate's rules, see *The Confusing Case of the Keating 5*, N.Y. Times, Oct. 28, 1990, at D5, col. 1.

3. BLACK'S LAW DICTIONARY 311 (5th ed. 1979).

4. J. NOONAN, *Bribes* 3-4 (1984).

5. Lande, *The Dyadic Basis of Clientelism*, in *FRIENDS, FOLLOWERS, AND FACTIONS: A READER IN POLITICAL CLIENTELISM*, at xvi-xvii (S. Schmidt, J. Scott, C. Lande & L. Guasti eds. 1977) [hereinafter *POLITICAL CLIENTELISM*].

tion is and has been recognized as a problem in all societies.⁶ Corruption is seen to violate norms of duty and responsibility within a civic order.⁷

In addition to the difficulties of defining corruption, there is also little consensus on the causes of corruption.⁸ Social, cultural, behavioral, political, economic and institutional factors all play a role.⁹ Corruption becomes most noticeable, however, where scarcity exists along with inequalities of wealth and power. Limited access to something essential—be it potatoes or position, oil or opportunity, ready money or a residence—encourages a strategy of self-advancement. Officials seek to obtain and preserve benefits for themselves, their families and friends, to reward others only on the basis of reciprocity, and to convert others into exploitable dependents.¹⁰

In his book *Controlling Corruption*, Robert Klitgaard notes that corruption most easily occurs when officials have monopoly power over goods or services, discretion in their allocation, and little accountability for their actions.¹¹ Without control mechanisms, either internalized moral ones or external legal, institutional or social ones, officials may act corruptly when the benefits from doing so exceed potential costs.¹² Similarly, private individuals seeking goods or services may attempt to corrupt officials if they believe the net benefits from doing so will outweigh the costs.¹³

Corruption is by no means the sole province of developing countries.¹⁴ *New York Times* headlines of recent years remind us of the savings and loan debacle,¹⁵ the Pentagon procurement scandal,¹⁶ and the influence-peddling activities of Prime Minister Noboru Takeshita's government.¹⁷ Corruption is a disease afflicting all coun-

6. See S. ALATAS, *THE PROBLEM OF CORRUPTION: THE NATURE, FUNCTION, CAUSES AND PREVENTION OF CORRUPTION* 61, 76-78 (1987); See J. NOONAN, *supra* note 4, at 88, 157, 317; *EFFECTS OF CORRUPTION*, *supra* note 2, at 1.

7. S. ALATAS, *supra* note 6, at 11.

8. *EFFECTS OF CORRUPTION*, *supra* note 2, at 3.

9. *Id.* at 1; S. ALATAS, *supra* note 6, at 6.

10. Lande, *Networks and Groups in Southeast Asia: Some Observations on the Group Theory of Politics*, in *POLITICAL CLIENTELISM*, *supra* note 5, at 89.

11. R. KLITGAARD, *CONTROLLING CORRUPTION* 75 (1988).

12. *Id.* at 22.

13. *Id.* at 24.

14. *EFFECTS OF CORRUPTION*, *supra* note 2, at 1.

15. See, e.g., *3 Senators Made Extreme Efforts for S. & L. Figurz*, N.Y. Times, Oct. 18, 1990, at A1, col. 6.

16. See, e.g., *Two at Teledyne Are Found Guilty in Pentagon Trial*, N.Y. Times, Apr. 14, 1989, at A1, col. 1.

17. See, e.g., *New Payment to Takeshita Reported in Japan Press*, N.Y. Times, Apr. 8, 1989, at A3, col. 5; *Takeshita Undone by System That He for So Long Lived By*, N.Y. Times, Apr. 26, 1989, at A1, col. 1.

tries regardless of their level of economic development.

Some social scientists argue that corruption may help rather than hinder development in poor countries.¹⁸ They argue that economically, corruption encourages a more efficient allocation of goods and services when market forces are not working properly; politically, corruption fosters more equal political participation and influence among social groups; and administratively, corruption allows circumvention of restrictive and arbitrary bureaucratic rules.¹⁹

Despite the attraction of such arguments, the consensus is that corruption does more harm than good.²⁰ Klitgaard points out that corruption can be economically, politically and organizationally useful only when it bypasses prevailing "distortions" within the system.²¹ He recognizes corruption as one of the three or four most harmful problems facing Third World governments today.²² A World Bank study on corruption concludes that "[c]orruption has a deleterious, often devastating, effect on administrative performance and economic and political development, for example, corroding public confidence, perverting institutions' processes and even goals, favoring the privileged and powerful few, and stimulating illegal capital export or use of nonrational criteria in public decisions."²³

The mass support the students commanded in the spring of 1989 made evident to PRC officials that the public's tolerance of corruption is growing thin. Although the use of brute force against the students has dampened the public display of discontent, such discontent will persist to the degree that one of its underlying causes—corruption among officials—persists. Thus, the PRC leadership cannot ignore this problem. In the wake of June 4th and in the face of the tremendous changes in the Soviet Union and Eastern Europe it must find the means to address the problem of corruption or risk its own demise.

III. CORRUPTION WITH CHINESE CHARACTERISTICS

[T]he Chinese character for the term "official" (官) consisted of a hat (a symbol for power and prestige) under which there were two mouths.²⁴

18. S. ALATAS, *supra* note 6, at 12-13; R. KLITGAARD, *supra* note 11, at 28; EFFECTS OF CORRUPTION, *supra* note 2, at 3.

19. R. KLITGAARD, *supra* note 11, at 31-32.

20. *Id.* at 36; See S. ALATAS, *supra* note 6, at 14; EFFECTS OF CORRUPTION, *supra* note 2, at 28.

21. R. KLITGAARD, *supra* note 11, at 35.

22. *Id.* at 6.

23. EFFECTS OF CORRUPTION, *supra* note 2, Abstract.

24. R. Lee, *Incongruence of Legal Codes and Folk Norms*, in CORRUPTION AND ITS

To understand and evaluate the effectiveness of measures employed by the PRC leadership to control corruption, it is first important to understand the causes of corruption in the PRC. As noted above, corruption results from the interplay of many factors. No one factor causes corruption; instead, each is dependent upon and reinforces the others. The following sections examine a number of the diverse factors, cultural and psychological as well as institutional and economic, that contribute to corruption in the PRC. The method of presentation should not obscure, however, the considerable overlap among these factors.

A common thread among the many causes of corruption in the PRC is the fact that all cultural, political, and economic activities are to be conducted "under the leadership of the Party." This oft-repeated phrase sets the Party above and apart from all other institutions, and the resulting duality encourages corrupt political and economic activities. Although corruption in a society as complex as that of the PRC cannot be blamed solely on the Party, the fact that most government officials are also members of the Party goes far in explaining the reasons for corrupt behavior set forth below.

A. Cultural and Psychological Causes of Corruption

1. Privilege

As the governing elite, PRC officials often use their positions to obtain privileges not available to the general public.²⁵ They frequently have access to better housing, better food, better medical care, and better education for their children. At least until quite recently, all of this was sanctioned and funded by the state. Cash, even had it been available to private citizens, could not have purchased these "perks." Konstantin Simis, in his writing about official privilege in the Soviet Union, has called this "legalized corruption."²⁶

Mao Zedong expressed concern about the effect of privilege on the bureaucracy. The Cultural Revolution was, in part, an effort to replace officials who had become "bourgeois" and complacent with those more austere and revolutionary. Nonetheless, even during his days in the caves of Yan'an, the Chairman and his inner circle undoubtedly benefitted from special privileges.

CONTROL IN HONG KONG [hereinafter CORRUPTION IN HONG KONG], 75, 82 (R. Lee ed. 1981). Lee explains this as descriptive of the popular perception that an official speaks out of both sides of his mouth. The author offers one alternative explanation: official greed is tantamount to consuming enough for two.

25. See, e.g., Young, *Control and Style: Discipline Inspection Commissions Since the 11th Congress*, 97 CHINA Q. 34-37, (Mar. 1984).

26. K. SIMIS, USSR: THE CORRUPT SOCIETY 38-47 (1982).

Today, although foodstuffs and consumer items are more readily available, official salaries have not risen noticeably. Perquisites once reserved for officials are now available to the masses. Accustomed to privilege and to being taken care of at state expense, officials may find it easier to slip from "legalized" to illegal corruption in order to maintain a privileged lifestyle.

2. Rising Expectations and Red Eye Disease

Related to the phenomenon of declining official privilege is the problem of "red eye disease," or jealousy. As successful entrepreneurs have begun to make money under the economic reforms, resentment of them has grown among those not sharing in the new wealth. Jealous neighbors of a profitable factory in Jiangyin, for example, smashed its windows and cut its power supply. Some even sued the factory head, demanding that he share his profits.²⁷ With relatively low salaries, officials are not immune to this "illness." The fact that private individuals are becoming rich while officials are expected to sacrifice for the state cannot help but arouse their envy and encourage corruption.

3. Morality, Ideology and Cynicism

Official PRC explanations of corruption emphasize the breakdown of public morality, the lack of civic consciousness, and widespread cynicism among the population and Party members.²⁸ Especially since June 4th, conservatives within the Party have attempted to blame growing immorality and cynicism on foreign "bourgeois liberal" thinking that entered the PRC through the open door of reform.²⁹ The Party, however, cannot sidestep its own responsibility. Thomas Gold has noted "[t]he demoralization caused by more than two decades of incessant campaigns, failure to achieve economic and social goals, wanton destruction of careers and individ-

27. *Second Thoughts: Laissez Faire or Plain Unfair?*, N.Y. Times, Apr. 6, 1989, at A4, col. 2. In his April 10, 1989 Nieman Fellow lecture at Harvard University, Liu Binyan said that he believes egalitarian attitudes may pose one of the most dangerous threats to the current reforms. Notes taken at the lecture are on file with the author. This same "culture of envy" is problematic for attempts at reform in the Soviet Union. See Smith, *The Russian Character*, N.Y. Times, Oct. 28, 1990, § 6 (Magazine), at 31, 62.

28. Heilongjiang deputies to the Second Session of the Seventh National People's Congress were quoted as saying: "Currently, ideo-political work is weak, people are confused ideologically, and social ethics standards have declined; all this severely hampers the development of material civilization." *Deputies Stress Spiritual Civilization*, Foreign Broadcast Information Service—Daily Report, China [FBIS—China], Mar. 31, 1989, at 28.

29. See, e.g., *Article on Liberalization, Corruption Published*, FBIS—China, Aug. 16, 1990, at 10.

uals and the loss of original high ideals held out for the new society."³⁰ The Cultural Revolution was undoubtedly a major culprit in this respect. According to the Chinese scholar Wang Ruoshui, it was the "greatest alienation."³¹ The brutal June 4th crackdown on pleas for clean government has only caused further alienation of the people. Not surprisingly, officials have also come to mistrust others and have lost faith in Party ideology. Increasingly, their main priority is to look out for themselves, their families, and friends.

The betrayal of people's hopes during the Cultural Revolution and more recently by June 4th has renewed a dependence on family and friends for emotional and material support. Uncle Lei Feng, the Party's exemplar of zealous self-sacrifice, has certainly perished despite post-June 4th attempts to resuscitate him.³² Because their loyalty and self-sacrifice have been abused, many now feel they owe little to the Party and state. Indeed, some believe the Party and state should compensate them for the suffering they have endured.³³ Radical government policy shifts and the current ideological split among the top leadership over the pace and scope of the reforms have also inspired some officials to seek profits while they are able—out of fear that all could change tomorrow. In the end, loss of faith and cynicism lead to corruption, and the perception that corruption is widespread increases cynicism.³⁴ A vicious circle is thus created.

4. Legal Inadequacy and Illiteracy

The formal education system was severely damaged during the Cultural Revolution. Even earlier, during the anti-Rightist campaign of the late 1950s, the legal system was for all practical purposes dismantled. As a result, the Party has relied heavily on ideological indoctrination in "socialist morality" to keep people honest. Yet, as discussed above, faith in the Party and its ideological approach has broken down. In addition, the economic reforms have promoted a number of activities that a little over ten years ago would have been considered "capitalist," therefore bad, and probably illegal. Individual initiative and competition have been encouraged in recent years,

30. Gold, *After Comradeship: Personal Relations in China Since the Cultural Revolution*, 104 CHINA Q. 657, 665 (1985).

31. *Scholar Discusses Alienation, Humanism Issue*, FBIS—China, Mar. 30, 1989, at 31.

32. Lei Feng was a soldier who died on duty and was hailed as a model for the youth of the PRC. The Lei Feng Movement began in 1963. W. CHI, CHINESE-ENGLISH DICTIONARY OF CONTEMPORARY USAGE 216 (1977). There have been periodic campaigns to "learn from Lei Feng" ever since. See, e.g., *Commentary Urges Cadres to Learn from Lei Feng*, FBIS—China, Sept. 18, 1990, at 44.

33. See, e.g., Young, *supra* note 25, at 24, 34 n. 35.

34. R. KLITGAARD, *supra* note 11, at 45.

enterprises have become more responsible for their profits and losses, and decentralization has led to more freedom in economic transactions. Since June 4th, the conservative hardliners have tried to reverse this trend by equating the reforms with incorrect thinking. In general, however, economic reform is still being encouraged.

The effect of these conflicting forces has caused at least some confusion about what actually constitutes corrupt behavior. Some officials may not be aware, for example, that giving or receiving a "sales commission" can be considered a form of bribery. If an action facilitates production or enhances efficiency, it may be perceived as furthering reform policies. The government and the media often condemn corruption, but regulations clearly delineating what is acceptable and what is forbidden are, at best, fairly recent.

This legal inadequacy, coupled with a traditional awe or fear of officialdom, may also lead ordinary citizens, especially those with little education, to attempt to bribe an official. Abueva notes in his study of the Philippines that "instead of expecting services as a matter of right, most citizens feel that they are asking a personal favor when they approach government officials for services or benefits."³⁵ The same attitude is prevalent in the PRC, particularly outside larger cities. Some officials do little to disabuse people of such thinking and may even believe that they *are* granting a personal favor.³⁶ Similarly, ordinary citizens may be too ignorant of the law to blow the whistle on corrupt behavior when it occurs.

5. Attitudes Toward Property

According to the 1982 PRC Constitution, the socialist economic system is based on public ownership of the means of production, with the state economy under ownership of the whole people.³⁷ This is tantamount to ownership by the state. People are dependent on the state for many of their needs, from work and wages to housing and health care. They "eat from the collective rice pot." This system erodes people's sense of property, so that taking from the state may not be perceived as theft.³⁸ People joke that if the socialist system means ownership by the whole people, taking a little extra from the

35. J. SCOTT, *COMPARATIVE POLITICAL CORRUPTION* 15 (1972) (citing Abueva, *Conditions of Administrative Development: Exploring Administrative Culture and Behavior in the Philippines* (1966) (unpublished manuscript)).

36. *Id.* at 15.

37. THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA [PRC CONST.], arts. 6 & 7 (1982).

38. Alan Liu also points to this problem of the blurring of the distinction between private and public property as a factor contributing to corruption. Liu, *The Politics of Corruption in the People's Republic of China*, 77 AM. POL. SCI. REV. 602, 616 (1983).

state here and there is nothing more than taking what is theirs in the first place.³⁹

6. Kinship, Guanxi and Gift-Giving

The Confucian classics stress the five relationships: son to father, subject to ruler, wife to husband, younger brother to elder brother, and friend to friend.⁴⁰ Three of these relationships involve kinship, and only one involves a direct relationship to the state. Four of the relationships are vertical and hierarchical in nature, and only one is horizontal, between potential equals. In this way, traditional Chinese thought emphasized strong familial and particularistic ties over loyalty to the state. This, in turn, created an environment conducive to corrupt behavior.⁴¹

The histories of imperial China's ruling houses tell of a continual battle waged against corrupt behavior. The oft-repeated dynastic cycle inevitably came to a close when corruption flourished.⁴² Common people frequently equated corruption with state office while holding in high esteem or even venerating (no doubt because they were relatively rare) models of upright officialdom.⁴³

In his essay, "Incongruence of Legal Codes and Folk Norms," Rance P.L. Lee examines the extent to which Chinese cultural traditions have influenced attitudes toward corruption among Hong Kong Chinese.⁴⁴ He notes that commonly-held Confucian values, such as filial piety, affection, generosity, reciprocity, fidelity, and loyalty, are

39. This same attitude is prevalent in the Soviet Union. See Smith, *supra* note 27, at 60.

40. See, e.g., CONFUCIUS, THE ANALECTS 59-60, 65-66 (D. Lau trans. 1979); Mencius III A:4, in MENCIUS 102 (D. Lau trans. 1970).

41. This was acknowledged in imperial times, for example, through the rule of avoidance, which prohibited an official from taking an appointment in his native village. See, e.g., C. Lau & R. Lee, *Bureaucratic Corruption and Political Instability in Nineteenth-Century China*, in CORRUPTION IN HONG KONG, *supra* note 24, at 105, 112. Interestingly, this same policy is being used today to remove cadres from the "shackles of personal relations." See *Article Describes Cadre Rotation System*, FBIS-China, Sept. 4, 1990, at 30; *Transfer Policy Set for Leading Officials*, China Daily, July 25, 1990, at 1.

42. See generally J. FAIRBANK, THE UNITED STATES AND CHINA 100-05 (4th ed. 1983).

43. A detailed look at instances of corruption in imperial China and how custom and traditional attitudes toward corrupt behavior may have shaped current attitudes is, unfortunately, beyond the scope of this article. For interested readers, however, the following works may provide a starting point. B. MCKNIGHT, VILLAGE AND BUREAUCRACY IN SOUTHERN SUNG CHINA (1971); A. LUI, CHINESE CENSORS AND THE ALIEN EMPEROR 1644-1660 (1978); M. ZELIN, THE MAGISTRATE'S TAEI: RATIONALIZING FISCAL REFORM IN EIGHTEENTH-CENTURY CH'ING CHINA (1984); C. Lau & R. Lee, *supra* note 41. For information on corruption in the pre-1949 period, see P. COBLE, THE SHANGHAI CAPITALISTS AND THE NATIONALIST GOVERNMENT 1927-1937 (1980).

44. R. Lee, *supra* note 24, at 76. On a light note in this regard, the author has heard that the Independent Commission Against Corruption [ICAC], established in Hong Kong, is referred to by some as Interfering with Chinese Ancient Custom.

particularistic in their orientation.⁴⁵ Personal relations tend to take precedence; a distinction exists between "insiders" and "outsiders."⁴⁶ According to Lee, particularism is, in this sense, morally approved.⁴⁷ Particularistic relationships can be realized for their own sake, but can also be manipulated for less altruistic purposes.⁴⁸

Since 1949, the Party has attempted to instill allegiance to itself and the state and break down traditional loyalties to family and friends. Serving the masses is seen as far more glorious than serving oneself. Today, however, the "comradely" relationships urged by the Party are weakening, and traditional patterns of personal relations are reemerging.⁴⁹ In the post-Mao period, the PRC "has re-established and is reinforcing the material basis and private ethic for relations based on instrumentalism, the cash nexus and particularistic commitment to family, friends and fellow Party members."⁵⁰

Personal relations are based on the principle of *guanxi*, a notion of connectedness or particularistic ties.⁵¹ *Guanxi* has been characterized as an "informal, unofficial relationship utilized to get things done, from simple tasks to major life choices."⁵² Although sometimes imbued with human feelings (*renqing*) or affection (*ganqing*), it is ultimately "a power relationship as one's control over a valued good or access to it gives power over others."⁵³ Some strive to expand these connections into a network and often do so by exchanging gifts and favors.⁵⁴

Andrew Walder suggests that Communist institutions themselves shape patterns of association in the PRC.⁵⁵ Chinese workers are economically dependent on their work units, politically dependent on the Party and management, and personally dependent on their supervi-

45. *Id.* at 79.

46. *Id.*

47. *Id.* at 80.

48. *Id.*

49. Gold, *supra* note 30. Since June 4th, the PRC leadership has been attempting to reverse this trend by, among other things, promoting use of the salutation "comrade." See *Fear Abates Among Chinese But Few Find Cause for Hope*, N.Y. Times, Nov. 24, 1990, at A1, col. 3.

50. Gold, *supra* note 30, at 671.

51. *Id.* at 659.

52. *Id.* at 661.

53. *Id.* at 660; Liu Binyan, with heavy-handed sarcasm, gives a scathing portrayal of the *guanxi* institution among PRC officialdom: "This lovely curtain of fraternal loyalty, sincere gratitude, mutual concern, profound friendship, etc., concealed relationships of out-and-out power brokerage." Liu Binyan, *People or Monsters?*, in *PEOPLE OR MONSTERS? AND OTHER STORIES AND REPORTAGE FROM CHINA AFTER MAO* 11, 56 (1983).

54. Gold, *supra* note 30, at 660; R. Lee, *supra* note 24, at 79.

55. See A. WALDER, *COMMUNIST NEO-TRADITIONALISM: WORK AND AUTHORITY IN CHINESE INDUSTRY* (1986).

sors for many of their needs.⁵⁶ *Guanxi* thrives in Communist enterprises because scarcity characterizes the consumer economy and because supervisors and officials have wide discretion in interpreting rules and in distributing resources.⁵⁷ The emphasis in these instrumental-personal ties with supervisors and officials may fall on either side of the hyphen. When the primary motivation is instrumental rather than personal and when gifts or favors are bestowed on superiors in order to achieve benefit, "the principle is the same as in legally defined cases of corruption: the use of one's position for personal gain."⁵⁸ With the post-Mao reforms, workers have become somewhat less dependent on their work units.⁵⁹ Nonetheless, the basic working environment has changed little for the average worker, and the patterns of behavior created by instrumental, particularistic relationships are unlikely to disappear in the short term.

As mentioned above, gift-giving is often essential for cultivating *guanxi*. Traditional gift-giving practices may contribute to the prevalence of corruption within a society.⁶⁰ In his book *Bribes*, John T. Noonan points out that ancient Egypt, Greece, Israel, and Rome recognized bribery as immoral but that the idea preceded the word.⁶¹ There was no clear linguistic distinction between the word for "offering" and the word for "bribe."⁶² What was identified as a bribe could depend on the cultural context.⁶³ A certain ambiguity surrounded the idea. Offerings were made to gods and spirits to ensure their protection and cooperation; in a sense, they were bribed.⁶⁴ In human interactions, reciprocity was a recognized norm,⁶⁵ but accepting a gift could also be dangerous because it might obligate the recipient to the giver.⁶⁶

From early times in China, bribery and the taking of public goods for private use were plainly viewed as immoral acts.⁶⁷ Interest-

56. *Id.* at 13.

57. *Id.* at 26-27.

58. *Id.* at 180.

59. *Id.* at 237-38.

60. See generally J. SCOTT, *supra* note 35, at 10; S. ALATAS, *supra* note 6, at 15.

61. J. NOONAN, *supra* note 4, at 313, 683.

62. See *id.* at 313.

63. *Id.* at xiii.

64. *Id.* at 4; R. Lee, *supra* note 24, at 80.

65. See J. NOONAN, *supra* note 4, at 3.

66. *Id.* at 3.

67. See J. LEGGE, *THE CHINESE CLASSICS, VOL. V: THE CH'UN TS'EW AND THE TSO CHUEN* 607-09 (1960). The Qin (255-206 B.C.) Code contained provisions on punishments to be meted out to officials in charge of public grain when shortages were discovered. See A. HULSEWE, *REMNANTS OF CH'IN LAW* (1985). The author thanks Karen Turner for this citation. By the time of the Qing (1644-1911) Penal Code, corrupt practices by officials were

ingly, the modern Chinese legal term for bribery, *huilu*, is derived from the words *hui* and *lu*, which are approximately synonymous and have been used since antiquity to mean "rich gift."⁶⁸ The earliest known usage in the classical texts of the combined characters to mean "bribe" appears in the *Zuo Zhuan*.⁶⁹

The same ambiguity between gift and bribe may be found in the contemporary setting. Liu Binyan, in his famous piece exposing corruption in Heilongjiang Province, *People or Monsters?*, decries the blurring of the distinction between the two:

Where was the borderline between legitimate gift-giving and the offering and acceptance of bribes? Was using public funds for entertaining or for converting public property to one's own use (as in requiring a "test use," or a "test wearing," or a "taste test") any different from corruption and robbery? The former was within the law, even considered morally sound, but in essence was no different from bribery and corruption.⁷⁰

Until recently, the value of most gifts was generally low, and it was easy to disregard such gifts as bribes. Today, however, the value of gifts has increased with the greater availability of consumer goods, higher living standards, and rising expectations. One procurement officer said of his attempts to purchase much-needed coal for his enterprise, "In the past, one piece of silk quilt cover or a tin of Nestle's coffee would be good enough. But now things have changed. The current practice is to present refrigerators, colour TV sets, gold ornaments or cash as gifts."⁷¹ Gifts of this type are much more easily categorized as bribes.

Liu Binyan believes that the line between gifts and bribes is not

classified into eleven categories subsumed under the general heading of "accepting improper money and property." C. Lau & R. Lee, *supra* note 41, at 112.

68. The author is grateful to a dear friend and mentor, the late Edward H. Schafer, for this information.

69. 10 M. TETSUJI, *DAI KAN-WA JITEN* 749 (1960). During the debate surrounding the law code promulgated by Zi Chan in 536 B.C., Zi Chan's opponents reasoned that once laws replace Confucian values "disorderly litigations will multiply, and bribes (*huilu*) will walk abroad." J. LEGGE, *supra* note 67. The author thanks Donald Harper for these citations.

70. Liu Binyan, *supra* note 53, at 51.

71. *Xinhua Feature on Coal Profiteering*, British Broadcasting Corporation Summary of World Broadcasts—Far East [SWB—FE], Nov. 10, 1988, at B2/2. The article mentions some interesting practices in the coal purchasing business. One prospective purchaser lit a cigarette for the cadre in charge of coal allocation, showing a gold ring hidden in the matchbox. He left the matchbox on the table, and was later awarded his coal. Another cadre allegedly asked a purchaser whether any "old comrades" had come along on the trip. This referred to 100-yuan bills, on which four revolutionaries are pictured.

as blurred as actual practice would indicate. Others also suggest that people in most cultures understand that corruption is neither lawful nor customary⁷² and that it differs from gift-giving in that it is often done in secret.⁷³ Nonetheless, gray areas remain troublesome for both citizens and lawmakers and are accentuated in a culture like that of the PRC with a long tradition of formalized gift-giving.

As is evident from above, corruption in the PRC can stem from cultural and psychological roots. The Communist superstructure that has been built upon traditional Chinese society has not been successful changing behavior sufficiently to eradicate such factors. Moreover, the Communist system itself has tended to encourage certain forms of corrupt behavior.

B. Organizational, Institutional and Economic Causes of Corruption

1. Bureaucracy

Personal relationships and cultural behavior do not exist in an institutional vacuum. The Chinese bureaucratic structure itself facilitates corruption. The prevalence of *guanxi* relationships suggests that institutional inadequacies exist that foster their proliferation.⁷⁴

As the Party, in many ways ideologically antibureaucratic, effected its control over the vast territory and population of the PRC,⁷⁵ it became bureaucratized.⁷⁶ Harry Harding points out that the Chinese leadership has continuously struggled with the political and social problems associated with a bureaucratic structure, namely, public alienation from government and a bureaucracy autonomous from external control.⁷⁷ Bureaucracies "are not simply neutral machines that execute orders."⁷⁸ They have a tendency to become self-serving and parasitical unless an external mechanism or ideology exists to keep them in check.⁷⁹

Without a clear separation of government and Party functions in the Chinese bureaucratic arrangement and with political, economic, and administrative duties often assumed by one official,⁸⁰ the Party

72. R. KLITGAARD, *supra* note 11, at 64.

73. S. ALATAS, *supra* note 6, at 43.

74. *Id.* at xviii.

75. H. HARDING, ORGANIZING CHINA: THE PROBLEM OF BUREAUCRACY 1949-1976, at 2 (1981).

76. *Id.* at 28, 30-31.

77. *Id.* at 2, 11-12.

78. J. SCOTT, *supra* note 35, at 77.

79. *Id.*

80. See Decision of the Central Committee of the Communist Party of China on Reform of the Economic Structure (adopted Oct. 20, 1984) (translation appears in BEIJING REV., Oct.

has traditionally relied largely on ideological indoctrination to keep its ranks free of bureaucratic excesses.⁸¹ Given the progressive disintegration of belief in Party ideology, the breakdown of the Party apparatus during the Cultural Revolution, and the demoralization of large numbers of Party officials, no strong checks remain to keep the bureaucracy honest.⁸² What remains is an institutional structure that allows officials to pursue self-interested goals with relative ease.

2. Monopoly, Scarcity and Decentralization

According to Klitgaard's formula, monopoly power plus discretion minus accountability leads to corruption.⁸³ As producer, consumer, employer, and regulator, the PRC government exercises a monopoly over most goods, services, funds, and opportunities. Its agents, the bureaucratic officials, decide how these various resources are distributed. Economic policies, overpopulation, geography, infrastructural inadequacies, and natural disasters have caused demand to outstrip supply for many resources. Under these circumstances, a mentality of scarcity develops among the population, and practices such as cultivating *guanxi* and gift-giving may escalate as individuals seek the quickest access to scarce resources controlled by others. This is accomplished not by standing in the queue but by "going through the back door." Entrance through "back doors" is easier for officials with the requisite keys and may not be free for ordinary citizens seeking entry.⁸⁴

The PRC leadership faces a predicament concerning the degree of decision-making power to delegate to its agents. If power remains centralized, local initiative may be undermined and bureaucratic delays created.⁸⁵ In such circumstances, corrupt behavior can result

29, 1984, Documents, at I, IX) [hereinafter Economic Reform Decision]; Report delivered by Zhao Ziyang, Thirteenth National Congress of the Chinese Communist Party, Oct. 25, 1987 (translation appears in *Advance Along the Road of Socialism with Chinese Characteristics*, BEIJING REV., Nov. 9-15, 1987, at 37) [hereinafter 13th Party Congress Report].

81. H. HARDING, *supra* note 75, at 19-22, 31.

82. Alatas suggests the virtue of the leader is not enough in a large, complex organization. S. ALATAS, *supra* note 6, at 46. When even this virtue has evaporated as a model for good behavior, little is left to prevent self-interest from gaining the upper hand. Liu Binyan, in his March 15, 1989 Nieman Fellow lecture at Harvard University on bureaucracy in the PRC, said that the Chinese bureaucracy has been propped up on a tripod of ideology, iron discipline, and naked force. Ideology, in the form of Mao Zedong thought, is now dead, he believes. No doubt because of this, discipline has slackened. This leaves naked force, the police and the People's Liberation Army, to keep the bureaucracy in place. June 4th made this abundantly clear. A tape of the lecture is on file with the author. See also Liu Binyan, *Chinese Marchers, '19 and '89*, N.Y. Times, May 4, 1989, at A27, col. 3.

83. R. KLITGAARD, *supra* note 11, at 75.

84. See, e.g., Liu Binyan, *supra* note 53, at 21-26.

85. EFFECTS OF CORRUPTION, *supra* note 2, at 18.

from a lack of commitment at the local level⁸⁶ or from attempts to circumvent bottlenecks. If the leadership opts instead to decentralize power, it faces the danger of losing control to the extent that it delegates authority.⁸⁷

At least until June 4th, the economic reform policies encouraged greater decentralization as a means of spurring production. The market mechanism was allowed to play a greater role in allocating goods and services. Some shortages were thereby alleviated. Shortages have not, however, disappeared overnight, and the state has retained its monopoly over quite a few resources. Increased decentralization has left more decision-making power in the hands of local authorities, far from the watchful eye of central authorities. Yet even the central authorities take advantage of their control over scarce items such as raw materials and export licenses. Opportunities for corrupt behavior by officials thus abound, especially where the remaining element in Klitgaard's equation, accountability,⁸⁸ is absent.

3. Two Hats

Prior to June 4th, the PRC leadership sought to streamline the economy and to screen its officials from conflicts of interest by attempting to separate the political, economic, and administrative strands of the bureaucracy. Party functions were being disentangled from state administration, and state administration was being set more clearly apart from enterprise operations.⁸⁹ After June 4th, many such efforts were brought to a halt, and whether the conservatives or the reformers prevail in the current power struggle will determine how extensively and how quickly they are resumed.⁹⁰

During the transitional period, it has been common for officials to "wear two hats," that is, to hold concurrent posts in the government and in commercial enterprises.⁹¹ Although this is now technically illegal,⁹² "two-hatted" officials still exist, due to a shortage of qualified personnel, or a confusion over what is acceptable, or by

86. H. HARDING, *supra* note 75, at 3.

87. *Id.* at 5. "In the absence of agencies that could enforce performance standards, bureaucratic factions blossom luxuriantly and each division of the apparatus becomes a virtual feudal domain that may parasitically exploit its clientele or the portion of the economy over which it wields power." J. SCOTT, *supra* note 35.

88. *See supra* note 83 and accompanying text.

89. *See* Economic Reform Decision, *supra* note 80; 13th Party Congress Report, *supra* note 80, at 23.

90. *See Two-year Reform Effort Abandoned*, South China Morning Post [SCMP], July 6, 1990, at 10, col. 1.

91. *See infra* note 162 and accompanying text.

92. *See infra* notes 162, 164 & 165 and accompanying text.

design. For example, the *Renmin Ribao* reported on county government officials who attempted to set up a company and finance it with county funds.⁹³ When the deputy director of the local bureau for industry and commerce refused to issue the company a business license unless the officials resigned their government posts, he was dismissed for obstructing the county government in its efforts "to make use of the good policy of reform and opening up to help the masses eliminate poverty and become rich."⁹⁴ It is not entirely clear whether the officials involved had themselves in mind as the needy members of the masses or whether they were truly altruistic but unenlightened. In any event, the potential to "wear two hats" has given officials even greater means to divert state funds and resources into their own pockets.

4. Two Prices, Two Currencies

Another institutional factor that has added to the problems raised by monopoly and scarcity is the dual pricing structure. For many commodities, there is a state-controlled price and a free-market price or even a black-market price.⁹⁵ Under the State Plan, some commodities, particularly those in short supply, may only be bought and sold by certain departments at the fixed state price.⁹⁶ Other commodities may be sold for more than the fixed price after the state has received its quota.⁹⁷ Still other commodities may be sold freely at market prices.⁹⁸ Because of these restrictions and price controls, some officials devise ways to obtain goods at the fixed state price and sell them at the free-market or black-market price.⁹⁹ They bribe others to procure these goods or accept bribes from others seeking to obtain them.

The PRC also operates with two currencies, the domestic *renminbi*, which is not freely convertible, and foreign exchange.

93. *Government-Run Company Violates Rules*, FBIS—China, Dec. 8, 1988, at 47-49. This article appeared after the Decision on Reorganizing Companies but before the Notice on Concurrent Posts. See *infra* notes 162 & 164 and accompanying text.

94. *Government-Run Company Violates Rules*, FBIS—China, *supra* note 93, at 48.

95. See *Profiteers Did It*, *Economist*, Oct. 22, 1988, at 42-43; Silk, *Economic Crime in China*, *CHINA BUS. REV.*, Jan.-Feb. 1988, at 25-26; Zafanolli, *A Brief Outline of China's Second Economy*, 25 *ASIAN SURVEY* 715, 718 (1985); Chan & Unger, *Grey and Black: The Hidden Economy of Rural China*, 55 *PACIFIC AFFAIRS* 452, 456, 460 (1982).

96. Economic Reform Decision, *supra* note 80, at VIII, IX; Zafanolli, *supra* note 95, at 722.

97. Chan & Unger, *supra* note 95, at 456.

98. *Id.*; Zafanolli, *supra* note 95, at 722.

99. Silk, *supra* note 95, at 26; Zafanolli, *supra* note 95, at 718-19. One recent article noted, "Any businessman worth the name will try to buy at the state-controlled price and sell at the free-market price." *Profiteers Did It*, *supra* note 95, at 43.

Access to foreign exchange is controlled, and many items needed for upgrading and modernizing enterprises can only be purchased with it. As a result, a black market for foreign exchange has emerged, and many ingenious schemes, often involving officials, have been developed for diverting it.¹⁰⁰

5. Inflation

Inflation, another major source of dissatisfaction leading to the demonstrations in Tian'anmen Square, has also encouraged corrupt behavior.¹⁰¹ Since the economic retrenchment and the credit squeeze that began in the late 1980s, inflationary pressure has decreased. However, prices have continued to rise while salaries remain fixed. Even relatively honest officials may be tempted to bend the rules in order to get goods they can no longer afford. Moreover, higher free-market prices make speculative activities all the more attractive to officials.

IV. CONTROLLING CORRUPTION AND BRIBERY: PRE-JUNE 4TH

A. *Legislative Controls*

In his study on corruption, Klitgaard lists a number of measures that governments have employed to make officials more accountable.¹⁰² The PRC has made use of a number of these, some of which are examined below. In addition to ideological persuasion, the PRC leadership has relied most heavily upon the use of legislation to regulate corrupt behavior. Although an abundance of legislation has been passed, the definitions such laws, regulations, procedures and rules contain have often lacked clarity and detail. Enforcement has also been sporadic and unequal, creating continuing confusion as to the parameters of acceptable behavior as well as continuing opportunities for the unscrupulous to exploit ambiguities. As the battle against corrupt behavior has intensified, more specific definitions of crimes of corruption have emerged in supplementary legislation and interpretation. Even so, some question marks remain, particularly in gray areas created by the transition from a centrally-planned socialist economy to a freer market economy.

1. The 1952 Act

As noted previously, when the Party came to power in 1949, one

100. See, e.g., Silk, *supra* note 95, at 27.

101. See, e.g., *Second Thoughts: Laissez Faire or Plain Unfair?*, *supra* note 27.

102. R. KLITGAARD, *supra* note 11, at 67, 94-95.

of its major pledges to the Chinese people was to rid the country of the corruption that had riddled the Nationalist regime. The first PRC legislation against corruption (*tanwu*) was the 1952 Act of the People's Republic of China for Punishment of Corruption (1952 Act), promulgated as part of the "three-anti" movement to create an honest, efficient bureaucracy.¹⁰³ Its definition of corruption was very broad, encompassing almost all crimes with an economic aspect committed by those in public service. Corruption was viewed not simply as a problem of law but of ideology. Peng Zhen called corruption one of the "dirty poisons left over from the exploiters and reactionary rulers of the old society," inherited principally by the country's bourgeois elements.¹⁰⁴

The anti-Rightist campaign of the late 1950s saw the dismantling of the legal system. Increased emphasis was placed on ideology to control corruption. The chaos of the Cultural Revolution, however, spawned tremendous disillusionment among the population and led to widespread abuse of office. With the rehabilitation of Deng Xiaoping in the late 1970s, the utility and necessity of legal reform were recognized. Many new laws were passed, among them legislation aimed at the control of corruption.

2. The Criminal Law of 1979

The Criminal Law of the People's Republic of China (Criminal Law), promulgated in 1979,¹⁰⁵ categorizes corruption as a crime of property violation. The definition of the crime, however, is vague and circular: "State personnel who take advantage of their office *to engage in corruption* involving articles of public property are to be sentenced . . ." (emphasis added).¹⁰⁶ The Criminal Law contains separate provisions for bribery,¹⁰⁷ smuggling,¹⁰⁸ speculation,¹⁰⁹ misappropriation of state funds and materials allocated for disaster relief,¹¹⁰ stealing pub-

103. J. COHEN, *THE CRIMINAL PROCESS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949-1963, AN INTRODUCTION* 307 (1968). The "three-anti" campaign was to combat corruption, waste and bureaucratism. *Id.* at 313.

104. *Id.*

105. The Criminal Law of the People's Republic of China (adopted July 1, 1979, promulgated Jan. 1, 1980) (translation appears in *THE CRIMINAL LAW AND THE CRIMINAL PROCEDURE LAW OF CHINA* 5 (1984)) [hereinafter *Criminal Law*]. Corruption is mentioned in article 155.

106. Criminal Law, *supra* note 105, art. 155. "Public property" and "state personnel" are separately defined in Article 81 and in Article 83, respectively.

107. *Id.* art. 185.

108. *Id.* arts. 118-119.

109. *Id.*

110. *Id.* art. 126.

lic property or obtaining it by fraud,¹¹¹ and extortion involving public property.¹¹² These crimes are also poorly defined and their relation to one another is not clearly established. As in the 1952 Act, corruption apparently encompasses a broad range of economic crimes involving public property committed by state personnel. Since Article 64 of the Criminal Law provides for combined punishment when more than one crime is committed, a person could be punished both for committing one of the specific crimes involving public property listed above and for corruption.

3. The 1982 Decision

In 1982, the Criminal Law was amended by the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Undermine the Economy (Decision).¹¹³ Thirty years of Communist government was apparently an insufficient antidote for "the dirty poison of corruption left over from the old society," for the Decision stated that crimes such as smuggling, speculation, theft of public property, and extortion and acceptance of bribes were "rampant."¹¹⁴ It included an expanded definition of state personnel and increased the severity of punishment for a number of economic crimes. The Decision did little, however, to clarify the ambiguous definitions of official malfeasance set forth in the Criminal Law.

Because corruption was left essentially undefined, people unaccustomed to the new economic freedoms given them under the reforms had difficulty distinguishing between acceptable and unacceptable economic behavior. This made enforcement of the corruption laws difficult except in the most egregious cases. Certainly, there

111. *Id.* art. 152.

112. *Id.* art. 152.

113. Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Undermine the Economy (adopted Mar. 8, 1982) (translation appears in *THE CRIMINAL LAW AND THE CRIMINAL PROCEDURE LAW OF CHINA* 229 (1984)).

114. *Id.* Deng Xiaoping noted in a speech shortly thereafter that economic criminal activity had become much more serious than it had been during the "three-anti" and "five-anti" campaigns. *Resolutely Strike at Criminal Activities in the Economic Sphere*, *SELECTED WORKS OF DENG XIAOPING* 357-59 (1983). A "five-anti" campaign, similar to the earlier "three-anti" campaign, was launched in the early 1960s against corruption and theft, speculation, extravagance and waste, poor coordination and bureaucratism. See H. HARDING, *supra* note 75, at 205-06.

In what many have interpreted as a blow against his rival Deng Xiaoping, the chief architect of the economic reforms of the 1980s, Chen Yun recently said the current level of corruption is the worst seen since the founding of the Party 70 years ago. *Chen Yun Denounces Inner-Party Corruption*, *FBIS—China*, Sept. 12, 1990, at 30, 31.

were also those who quite consciously took advantage of the ambiguity in the law to further corrupt activities.

4. The 1985 Reply and the 1986 Notice

Attempts were later made to clarify the law. For example, the Reply Concerning Certain Questions on the Specific Application of the Law in the Present Handling of Cases of Economic Crime (for Trial Implementation), jointly issued by the Supreme People's Court and Supreme People's Procuracy in 1985 (1985 Reply),¹¹⁵ contained separate sections on corruption, bribery, speculation, swindling and the misappropriation of public funds and property, and provided illustrative examples of each.¹¹⁶ Interestingly, the 1985 Reply stressed that bribery was criminal even when the outcome was beneficial to the economy. It gave a mixed message, however, by also stating that a beneficial effect to the economy could be taken into account to mitigate punishment.

In 1986, the Office of the State Council, in its Notice Concerning the Strict Prohibition of Illegal Profit Seeking in Social Economic Activities (1986 Notice),¹¹⁷ focused on the practice of giving and accepting illegal remuneration and presents under names such as "kickbacks" (*huikou*), "sales commissions" (*yongjin*), "red envelopes" (*hongbao*), "royalties" (*tichengfei*) and "advantage fees" (*haochufei*) to grease the wheels of bureaucracy. The 1986 Notice directed that legally obtained "service fees" (*shouxufei*) could not go to individuals. Instead, such fees were to be handed over to the individual's work

115. Zuigao Renmin Fayuan Zuigao Renmin Jianchayuan Guanyu Dangqian Banli Jingji Fanzui Anjianzhong Juti Yingyong Falü 1985, reprinted in ZHIFA SHOUCE (Handbook on Enforcing the Law) 3 (7th ed. 1987) [hereinafter 1985 Reply]. The author thanks Stanley Lubman for providing this source.

Apparently, there was a draft version of supplementary provisions on punishments for the crimes of corruption and bribery available as early as 1982. Gao Xijiang, *Chengzhi Zousi Tanwu, Huilu Deng Fanzui de Zhongyao Falü Wuji*, 1988 FAXUE YANJIU 22, 26. The author has been unable to locate a copy. The fact that this draft is not referred to in the 1985 Reply or in any of the other relevant documents indicates that it was not widely relied on as a guide for handling cases of corruption.

116. 1985 Reply, *supra* note 115. The 1985 Reply was revised and supplemented in 1987 on the issue of misappropriating public funds and property. See Gaofa Gaojian Guanyu Nuoyonggongkuan Guigeren Shiyong Huozhe Jinxing Feifa Huodong yi Tanwu Lunchu de Wenti de Xiugai Buchong Yijian (Revised Supplementary Opinion of the Supreme People's Court and Supreme People's Procuracy Concerning Questions of Punishing as Corruption the Misappropriation of Public Funds for Private Use or to Carry Out Unlawful Activities), reprinted in *Zhongguo Fazhibao*, Apr. 6, 1987, at 2.

117. Guowuyuan Bangongting Guanyu Yanjin zai Shehui Jingji Huodongzhong Mouqu Feifa Liyi de Tongzhi (adopted June 5, 1986), reprinted in ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [hereinafter GUOWUYUAN GONGBAO] 1986, at 522.

unit.¹¹⁸ With respect to illegal remuneration, fines of two to three times the amount paid or received could be imposed on the units involved, and individuals (including persons in charge of such units) could be disciplined by administrative or criminal means.¹¹⁹

The 1985 Reply and 1986 Notice supplied some substantive content to the meaning of corruption in its most common forms. The Criminal Law itself, however, remained vague and provided little guidance for those seeking to distinguish between corrupt and legitimate behavior.

5. The 1988 Supplementary Provisions

It was not until 1988 that the Standing Committee of the National People's Congress (NPC Standing Committee) promulgated the Supplementary Provisions on Punishments for the Crimes of Corruption and Bribery (Supplementary Provisions).¹²⁰ Commentators suggest that they were intended to make the Criminal Law and the Decision more specific and easier to implement.¹²¹

a. *Corruption*

In language quite similar to that found in the 1985 Reply, Article 1 of the Supplementary Provisions provides as follows:

When state personnel, personnel of collective economic organizations, or other personnel handling or managing public property take advantage of their positions to embezzle, steal, obtain by fraud or by other means unlawfully to take possession of public property, this constitutes the crime of corruption.¹²²

The Supplementary Provisions also set forth in much greater detail the other constituent elements of the crime and the penalties to be imposed. For example, illegally obtaining two thousand yuan is set as the baseline for establishing criminal responsibility for corrupt behavior, as distinguished from administrative or other responsibility.¹²³ Criminal punishment can range from criminal detention to life imprisonment. Those who have illegally obtained fifty thousand yuan

118. *Id.* art. 6.

119. *Id.* art. 9.

120. Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Chengzhi Tanwuzui Huiluzui de Buchong Guiding (adopted Jan. 21, 1988), reprinted in Jiefang Ribao, Jan. 24, 1988, at 1 [hereinafter Supplementary Provisions].

121. Gao Xijiang, *supra* note 115, at 25. *Yancheng Tanwu Huilu Zousi Zuifan Baozhang Gaige Kaifang Shunli Jinxing*, Renmin Ribao, Jan. 26, 1988, at 4.

122. Supplementary Provisions, *supra* note 120.

123. *Id.* art. 2.

or more, when the circumstances are especially serious, can be sentenced to death.¹²⁴

Although the definition of corruption under Article 1 of the Supplementary Provisions clearly covers misappropriation of public funds, it is treated as a crime distinct from corruption (*nuoyong gongkuanzui*) in Article 3.¹²⁵ A time limit of three months is allowed for returning misappropriated funds.¹²⁶ Presumably, this means administrative rather than criminal sanctions will be imposed if the funds are returned within the three-month period. Perpetrators are only additionally guilty of the crime of corruption if they misappropriate "a relatively large sum" and do not return it.¹²⁷ The reason for making this further distinction between corruption and misappropriation of public funds is not evident.

The Supplementary Provisions still leave certain questions unanswered. For example, one commentator, Gao Xijiang, states rather mysteriously that the misappropriation of public property (other than money) is not specifically addressed because the circumstances surrounding misappropriation of public property are more complicated, and that relevant authorities have not yet reached agreement on the policy issues involved.¹²⁸ He suggests that such activity will for the time being be punished by administrative sanctions or, in serious cases, by criminal punishments meted out by analogy to the crime of misappropriation of public funds.¹²⁹ Since misappropriation of public property falls under the Article 1 definition of corruption, however, punishment by analogy need not be employed.

b. Bribery

The Supplementary Provisions also include a definition of bribery. According to Article 4, the crime of accepting a bribe (*shouhuizui*) occurs when

state personnel, personnel of collective economic organizations, or other personnel engaged in public service take advantage of their positions to extort property from others or unlawfully to receive property from others and seek to obtain benefits for others.¹³⁰

124. *Id.*

125. *Id.* art. 3.

126. *Id.*

127. *Id.*

128. Gao Xijiang, *supra* note 115, at 26-27.

129. *Id.*

130. Supplementary Provisions, *supra* note 120.

Such personnel are also guilty of accepting a bribe if they accept kick-backs or service fees in violation of state provisions.¹³¹ As first indicated in the 1985 Reply, enterprises, institutions and organizations owned by the state, as well as individuals, may be guilty of taking a bribe "when the circumstances are serious."¹³² When found guilty of accepting a bribe, the legal entity itself may be fined and responsible persons given criminal penalties, apparently regardless of whether they pocketed the bribe in question.¹³³

Prior to the Supplementary Provisions, the punishments for corruption and bribery under the Criminal Law were identical when there were no aggravating circumstances: a maximum of five years of imprisonment.¹³⁴ The Supplementary Provisions now provide for much more severe punishments for taking bribes than for other acts of corruption. Individuals who accept ten thousand yuan or more and severely harm state or collective interests are to be sentenced to life imprisonment or even death.¹³⁵ Commentators have suggested the reason for such strict punishment is that the consequences of bribery are more serious than other forms of corruption because bribery can adversely affect the normal activities of state organs.¹³⁶

Those who give property, sales commissions or service fees to state personnel in order to obtain improper benefits are guilty of giving a bribe (*xinghuizui*).¹³⁷ If a bribe is extorted from an individual, however, he is not guilty of giving a bribe unless he receives improper benefit.¹³⁸ Punishment for giving bribes is less severe than for taking bribes, generally comprising a sentence of not more than five years of imprisonment.¹³⁹

c. *Burden of Proof*

Klitgaard notes that one effective tool used by governments to combat corruption-related crimes is shifting the burden of proof for explaining income sources from the prosecutor to the individual under suspicion.¹⁴⁰ This tool has been incorporated into the Supplementary Provisions in Article 11:

131. *Id.* art. 4.

132. *Id.* art. 6.

133. *Id.*

134. Criminal Law, *supra* note 105, arts. 155 & 185.

135. Supplementary Provisions, *supra* note 120, art. 5.

136. Gao Xijiang, *supra* note 115, at 27. Zhang Qiong, *Lun "Liyong Zhiwushang de Bianli" de Falü Hanyi*, Fazhi Ribao, Aug. 19, 1988, at 3.

137. Supplementary Provisions, *supra* note 120, art. 7.

138. *Id.*

139. *Id.* art. 8.

140. R. KLITGAARD, *supra* note 11, at 102-33.

State personnel whose property or spending obviously exceeds their lawful revenue by a large margin may be ordered to explain the source. If the individual cannot explain that the source is lawful, the excess amount shall be treated as unlawful income.

The individual is then guilty of corruption. Arguably, such prosecutorial power cannot be considered extraordinary in the context of Chinese criminal procedure, which has no real equivalent to common law due process or the principle that a person is innocent until proven guilty. In any event, it does place officials on notice that they may not be able to continue living beyond their means without arousing suspicion and a legally-sanctioned response.

According to Gao Xijiang, the first task of those investigating a suspect in such circumstances is to ascertain whether income was obtained from illegal activities such as bribery, corruption or speculation.¹⁴¹ Only in instances when the income source cannot be explained clearly will Article 11 be applicable.¹⁴² Commentators note that in order to avoid abuse, this method can only be employed after a thorough investigation by supervisory and judicial organs.¹⁴³ Gao Xijiang also stresses that the only bodies having authority to demand an explanation for an income source are an individual's own work unit, the higher organs in charge, state supervisory organs and the procuracy.¹⁴⁴

d. Gift-Giving

Article 10 of the Supplementary Provisions addresses the problem of gift-giving:

When state personnel, in the course of their contacts with foreigners, accept gifts and fail to hand them over to the State when required to do so under state provisions, it shall be treated as the crime of corruption when the amount involved is relatively large.

Gao Xijiang notes that reference is made only to gifts received from foreigners because all other gifts apart from legal ones given by relatives or friends are considered property and therefore fall under the category of bribes.¹⁴⁵ However, this faulty logic was later recognized

141. Gao Xijiang, *supra* note 115, at 29.

142. *Id.*

143. Zhu Xiaoqing, *Feifa Suodezui Zhengju Zhengming de Kexuexing*, Fazhi Ribao, Dec. 30, 1988, at —. Gao Xijiang, *supra* note 115, at 29.

144. Gao Xijiang, *supra* note 115, at 29.

145. See Gao Xijiang, *supra* note 115, at 25. Gao makes reference to two other State

when the State Council specifically targeted the practice of gift-giving in the domestic context in its Provisions for Prohibiting State Administrative Organs and Their Personnel from Giving and Accepting Gifts in the Course of Official Activities Within the Country.¹⁴⁶ "Gifts" refers to presents, gifts of money, gift certificates and goods paid for at a low price, regardless of whether foreigners are involved. State administrative personnel are subject to punishment under bribery laws and regulations for giving or accepting gifts in return for improper benefits, or for extorting gifts. Moreover, those who do not turn over the gifts they have accepted to the State Treasury within one month after receiving them will be punished for corruption.

e. Overseas Deposits

Finally, Article 11 of the Supplementary Provisions also requires state personnel to declare "overseas deposits."¹⁴⁷ If they do not and the amount is relatively large, they can be imprisoned for up to two years. This provision may be in partial response to allegations that numerous high officials and their offspring have sequestered large amounts of money in foreign bank accounts. Fang Lizhi, for example, was said to have outraged Deng Xiaoping by making just such an accusation concerning Deng's children.¹⁴⁸

Given the relative severity of the punishments for corruption and bribery in the Supplementary Provisions, it is noteworthy that the harshest punishment those with large, unreported overseas deposits face is two years of imprisonment. Those who are most likely to have the connections and access necessary to establish overseas bank accounts are high Party officials. This provision appears in the article on unexplained income sources and thus implies that such deposits are of questionable legality. It is unclear, however, whether an indi-

Council documents relevant to gift-giving when foreigners are involved. These are Guowuyuan Guanyu zai Duiwai Huodongzhong bu Zengli, bu Shouli de Jueding (Decision of the State Council Concerning Not Giving or Receiving Gifts in the Course of Activities Involving Foreigners) and Guowuyuan Guanyu zai Duiwai Huodongzhong Zengsong he Jieshou Lipin de Jixiang Neibu Guiding (Several Internal Provisions of the State Council Concerning Giving and Receiving Gifts in the Course of Activities Involving Foreigners). The article gives no indication of when these were issued, and the author has not come across them in her research.

146. Guojia Xingzheng Jiguan ji qi Gongzuorenyuan zai Guonei Gongwu Huodongzhong Bude Zengsong he Jieshou Lipin de Guiding (adopted Dec. 1, 1988), 1988 GUOWUYUAN GONGBAO 807.

147. The government has so far resisted calls for the public disclosure by state personnel of their income and assets. See, e.g., *Beijing Dangzheng Lingdao yu Xuesheng Duihua*, Renmin Ribao—Haiwaiban, May 1, 1989 at 2, col. 1 [hereinafter *Dialogue with Students*].

148. See, e.g., Schell, *An Act of Defiance*, N.Y. Times, Apr. 16, 1989, (Magazine), at 27, 30.

vidual guilty of concealing overseas deposits would also be subject to additional punishment if the source of such deposits could not be explained to the satisfaction of investigators.

6. The Problem of Statutory Definitions

The preceding section shows that, over the course of the past decade, statutory definitions of corruption and other crimes of official malfeasance have become much more specific, but some problematic areas remain. For example, following the promulgation of the Supplementary Provisions, there was much debate concerning the meaning of the language in Article 4 concerning "kickbacks and service fees given and received in violation of state provisions." In a forum held in 1988, a number of lawyers, legal scholars and interested persons met to discuss the issue of kickbacks (*huikou*).¹⁴⁹ One law professor noted that *huikou* is not a standard legal term, thus contributing to confusion about its meaning.¹⁵⁰ Some viewed it as a sales commission, some as a discount, and still others as a kickback.

In the course of the forum discussion, attempts were made to clarify terminology. Forum participants agreed that a sales commission (*yongjin*) is generally regarded as remuneration for labor, while a discount (*zhekou*) is a preferential price that the seller offers to the buyer.¹⁵¹ A *huikou*, although sometimes confused with a sales commission or discount, is actually a kickback. It occurs when the seller returns a portion of the purchase price to the buyer, hence the use of the character *hui*, to return. This, in itself, is not necessarily different from a discount except that, in practice, the *huikou* is often pocketed by the buyer's agent or divided between the agents of the seller and buyer. The forum participants noted that the *huikou* is often, although not always, used as a way to move overstocked products or to sell inferior products. Some viewed it as a competitive method that should be allowed to exist as long as it is regulated.

A forum participant from the Ministry of Finance suggested that *huikou* should only be allowed between work units and written into the sales agreements, if allowed at all.¹⁵² He stressed that *huikou* should under no circumstances be given to individuals, especially government officials. He further stated that only independent middlemen registered with administrative agencies for industry and commerce should be allowed to accept sales commissions. Sales commissions

149. *Huikou Wenti Shang Wuding Lunxu You Guojia Zuochu Guiding*, Jingji Cankao, July 15, 1988, at —.

150. *Id.*

151. *Id.*

152. *Id.*

should also be contractually provided for and the middlemen required to pay taxes on them. State personnel and personnel of enterprises and institutions should be prohibited from accepting sales commissions. Finally, he suggested that legislation on *huikou* be adopted.

In discussing such legislation, another law professor recommended that the PRC adopt an unfair competition law.¹⁵³ It would constitute unfair competition to give *huikou* instead of discounts to purchasers of inferior products. *Huikou* would still be deemed bribes, however, when given or accepted by state personnel.

The forum discussion underscores the fact that statutory definitions of wrongdoing cannot be finalized until a consensus is reached on what is wrong. Until such a consensus is reached and made into law, individuals will not be easily discouraged from taking advantage of ambiguities and loopholes that they find.

7. Supervisory Organs

In addition to the passage of specific criminal legislation to combat corruption, the PRC has also experimented with the creation of "independent" administrative supervisory organs. Because such organs are under the direction of the State Council, however, the degree of independence they enjoy is debatable.

In 1987, the Ministry of Supervision was reestablished as a functional department of the State Council with special administrative powers to deter corruption in the government.¹⁵⁴ Its main responsibilities are to monitor the performance of government departments and supervise state administrative organs and their personnel, as well as leading cadres of state enterprises and institutions appointed by state administrative organs. Its focal point has been corruption.¹⁵⁵ Supervisory organs under its direction have been established in each of the government ministries and in the committees and organizations directly under the State Council.¹⁵⁶ Supervisory departments are reportedly being organized at lower levels as well.

In 1988, in the Interim Provisions on Administrative Sanctions for Corruption and Bribery of Personnel of State Administrative Organs (Administrative Sanctions Provisions), the State Council gave the Ministry of Supervision the power to impose administrative sanc-

153. *Id.*

154. Silk, *supra* note 95, at 28. *Supervision Ministry's Functions Defined*, FBIS—China, Dec. 16, 1988, at 30. The original Ministry of Supervision was established in 1954, but was abolished in 1959.

155. *Necessity of Supervision Ministry Discussed*, FBIS—China, Oct. 26, 1987, at 9-10.

156. *Over 3,000 Supervisory Organs Set Up*, SWB—FE, Dec. 24, 1988, B2/5.

tions.¹⁵⁷ These provisions cover infractions where the amount involved is less than the two thousand yuan floor required to find criminal liability or where a case involves special mitigating circumstances. Sanctions range from reprimands to discharge. The supervisory organs have the power or, more realistically, the discretion to turn violators over to the judicial authorities for prosecution if they believe the acts involved constitute a crime.

Similar supervisory power and power to impose administrative sanctions had already been given in 1987 to the State Administration of Industry and Commerce by the State Council in the Interim Regulations on Administrative Punishment for Speculation.¹⁵⁸ Although these regulations were not aimed exclusively at official malfeasance, they were intended to curb, among other things, the resale by officials of restricted commodities for profit.

The creation of independent watchdog organs as a check on corruption is laudable. However, both the Ministry of Supervision and the State Administration of Industry and Commerce are a part of the government and their independence from Party and government influence is thus questionable.

8. Dealing With "Two-Hatted" Officials

Klitgaard notes that corruption often cannot be brought effectively to heel until institutions are restructured and the responsibilities of their personnel altered to reduce discretion and increase accountability.¹⁵⁹ "Two-hatted" officials, those with concurrent posts in government and commercial enterprises, are ideally situated to line the pockets of their enterprises with public funds and resources because

157. Guojia Xingzheng Jiguan Gongzuo Renyuan Tanwu Huilu Xingzheng Chufen Zanxing Guiding (Interim Provisions on Administrative Sanctions for Corruption and Bribery of Personnel of State Administrative Organs) [hereinafter *Administrative Sanctions Provisions*], art. 7, sec. 2 (promulgated Sept. 13, 1988), *reprinted in* Renmin Ribao, Sept. 18, 1988, at 3.

158. Touji Daoba Xingzheng Chufa Zanxing Tiaoli (Interim Regulations on Administrative Punishment for Speculation) art. 2 (adopted Sept. 17, 1987), 1987 GUOWUYUAN GONGBAO 774. Implementing rules were only issued in late 1990. Touji Daoba Xingzheng Chufa Zanxing Tiaoli Shixing Xize (Rules for the Implementation of the Interim Regulations on Administrative Punishment for Speculation) (promulgated Aug. 9, 1990, adopted Sept. 10, 1990), *reprinted in* Zhongguo Gongshang Bao, Sept. 10, 1990, at 2. *See also* Guowuyuan Guanyu Jianjue Zhizhi Jiudi Zhuanshou Daomai Huodong de Tongzhi (Notice of the State Council Concerning Resolutely Preventing On-the-Spot Resale Activities) (adopted Mar. 13, 1985), 1985 GUOWUYUAN GONGBAO 233; and Guanyu Dangqian Chuli Qiye Shiye Danwei Jiguan Tuanti Touji Daoba Fanzui Anjian de Guiding (Provisions Concerning the Current Handling of Cases of Speculation of Enterprises, Institutions, Units, Organs and Collectives) (issued by Supreme People's Court and Supreme People's Procuracy), *reprinted in* Shenzhen Tequ Bao, Apr. 10, 1989, at 8.

159. R. KLITGAARD, *supra* note 11, at 95.

their government positions allow them the discretion to divert such funds and resources with little accountability. To deal with this problem, the Central Committee of the Party (Central Committee) and the State Council, beginning in 1984, jointly issued a series of notices, decisions and provisions prohibiting Party and government cadres from engaging in most commercial activities.¹⁶⁰ Even the children and spouses of high officials were restricted from working in the commercial area because of their special connections.¹⁶¹ Such prohibitions apparently fell on deaf ears, for in 1988 the Central Committee and State Council jointly issued the Decision Concerning the Regularization and Reorganization of Companies (Decision on Reorganizing Companies), once again to prohibit cadres from holding concurrent posts in government and business.¹⁶² It mandates that officials with dual government and commercial positions resign from one of them. Those who take advantage of their authority or connections to engage in improper commercial or financial activities face confiscation of any income obtained as well as civil and criminal sanctions.¹⁶³

On the same day that the Decision on Reorganizing Companies was issued, the Central Committee and the State Council issued Certain Provisions Concerning the Question of Retired (On Leave) Cadres of the Communist Party and State Organs at the County Level and Above Engaging in Commerce and Running Enterprises.¹⁶⁴

160. See Guanyu Dangzheng Jiguan Zaizhi Ganbu Buyao yu Qunzhong Heban Qiye de Tongzhi (Notice Concerning Cadres Working in Party and Government Organs Not Running Enterprises with the Masses) (promulgated July 7, 1984), *reprinted in* 1 JINGJI SHENPAN SHOUCE (Handbook of Economic Adjudication) [hereinafter ECONOMIC ADJUDICATION Handbook] 178; Guanyu Yanjin Dangzheng Jiguan he Dangzheng Ganbu Jingshang, Banqiye de Jueding (Decision Concerning Strictly Prohibiting Party and Government Organs and Party and Government Cadres from Engaging in Commerce and Running Enterprises) (issued Dec. 3, 1984), *reprinted in* 1 ECONOMIC ADJUDICATION HANDBOOK 200; Guanyu Dangzheng Jiguan Ganbu bu Lianren Jingji Shiti Zhiwu de Buchong Tongzhi (Supplementary Notice Concerning Cadres of Party and Government Organs Not Holding Concurrent Posts in Economic Entities) (issued July 9, 1985), *reprinted in* 1 ECONOMIC ADJUDICATION HANDBOOK 207; Guanyu Jinyibu Zhizhi Dangzheng Jiguan he Dangzheng Ganbu Jingshang, Banqiye de Guiding (Provisions Concerning Further Preventing Party and Government Organs from Engaging in Commerce and Running Enterprises) (issued Feb. 4, 1986), *reprinted in* 1 ECONOMIC ADJUDICATION HANDBOOK 209.

161. See Guanyu Jinzhi Lingdao Ganbu de Zinü, Pei'ou Jingshang de Jueding (Decision Concerning Prohibiting the Children and Spouses of Leading Cadres from Engaging in Commerce) (issued May 23, 1985), *reprinted in* 1 ECONOMIC ADJUDICATION HANDBOOK 206.

162. Zhonggong Zhongyang, Guowuyuan Guanyu Qingli Zhengdun Gongci de Jueding (adopted Oct. 3, 1988) 1988 GUOWUYUAN GONGBAO 739 [hereinafter Decision on Reorganizing Companies].

163. *Id.* art. 4.

164. Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu Xian Yishang Dang he Guojia Jiguan Tui(li)xiu Ganbu Jingshang Banqiye Wenti de Ruogan Guiding (adopted Oct. 3, 1988) 1988 GUOWUYUAN GONGBAO 741, *trans. in Regulations for Retired Party and State Cadres Engaged in Trade*, SWB—FE, Oct. 28, 1988, at B2/2.

These provisions strictly limit the circumstances under which retired officials can work in commercial enterprises because, even in retirement, such officials can rely on *guanxi* networks to obtain special benefits for themselves and their companies. Officials below the county level, however, are not affected, and it is unclear whether they are covered by the Decision on Reorganizing Companies.

Again, officials apparently paid little heed to these two documents. In February 1989, the Central Committee and the State Council jointly issued yet another pronouncement on the subject: the Notice Concerning Questions Relevant to Regularizing Cadres of the Communist Party and State Organs Who Hold Concurrent Posts in Companies (Enterprises).¹⁶⁵ It noted that a significant number of officials continued to hold concurrent posts and ordered them to resign from one position or the other by the end of March 1989, unless they met certain strict requirements.¹⁶⁶

Any mention of the treatment of relatives of high officials, especially children who hold positions of responsibility in commercial enterprises, was omitted from these later documents. As the student demonstrations made clear, many Chinese resent the favoritism shown these "heirs to the throne" in arranging employment.¹⁶⁷ Such arrangements create inevitable conflicts of interest and are often mutually, and improperly, beneficial. The children utilize their parents' official connections to benefit their enterprises. The parents supplement their fixed government incomes with their children's income (which income is often a reflection of the benefits the children can bestow, through their parents, on the enterprises).¹⁶⁸

The necessity of issuing so many prohibitions on holding concurrent positions in government and business suggests that enforcement of them is half-hearted at best. Enforcement may be difficult because of definitional ambiguity in the law. Even when the law is clear, however, inconsistent and unequal enforcement of it encourages the continuance of corrupt behavior. People are less easily deterred when they believe they can succeed in their misdeeds or, if apprehended, escape without serious punishment. As the following section illustrates, the privilege of membership in the Party has all too frequently permitted favorable treatment before the law.

165. Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu Qingli Dang he Guojia Jiguan Ganbu zai Gongci (Qiye) Jianzhi Youguan Wenti de Tongzhi (adopted Feb. 5, 1989), 1989 GUOWUYUAN GONGBAO 41.

166. *Id.* art 1.

167. See, e.g., *Dialogue with Students*, *supra* note 147.

168. See, e.g., *Profiteers Did It*, *supra* note 95; *Beijing Purge of Profiteers Sparks Alarm*, Asian Wall Street Journal [AWSJ], Oct. 7-8, 1988, at — [hereinafter *Beijing Purge*].

B. Party Controls

As already stated, a very large percentage of government officials are Party members. For much of its history, the Party depended on ideology and discipline more than formal legal structures and strictures to control its ranks. The Party has, since its inception, regarded law and "legalistic" methods with a certain degree of suspicion.¹⁶⁹ After the virtual dismantling of the legal system during the late 1950s, ideological controls were essentially all that remained to keep officials honest. Attacks against the established Party during the Cultural Revolution destroyed even these controls. It was not until the late 1970s that the Party was able to begin the work of rebuilding itself and strengthening its organizational structure.

In 1977, the Eleventh Party Congress reestablished a system of Party control in the form of discipline inspection committees (DICs).¹⁷⁰ The following year, the Central Discipline Inspection Commission (CDIC) was formed to supervise the DICs at lower levels.¹⁷¹ The main task of the DICs is to restore organizational norms, counter privilege and enforce political discipline.¹⁷²

As part of the effort in the late 1980s to separate the Party and the government, much of the supervisory work formerly handled by the DICs within government departments was reportedly transferred to the Ministry of Supervision and its subordinate organs. The Regulations of the Discipline Inspection Organs of the Chinese Communist Party on Case Investigation Work (for Trial Implementation) (Discipline Inspection Regulations) stress that the principle of separating the Party from the government should be carried out and that discipline inspection organs should limit themselves to the investigation and punishment of violations of Party discipline.¹⁷³ Moreover, the CDIC and the Ministry of Supervision jointly issued the Interim Procedures Concerning Division of Work and Coordination in the Examination and Handling of Cases by Party Discipline Inspection Organs and State Administration Supervision Organs to cover cases in which Party members were guilty of violating both state administrative rules

169. See Young, *supra* note 25, at 27, 28. This suspicion undoubtedly has its roots in early Marxist-Leninist theory that law originating with the state is a tool utilized by the ruling class to safeguard its own interests.

170. See generally *id.* at 24.

171. *Id.* at 30.

172. *Id.* at 32.

173. Zhongguo Gongchandang Jilü Jiancha Jiguan Anjian Jiancha Gongzuo Tiaoli (Shixing) (Regulations of the Discipline Inspection Organs of the Chinese Communist Party on Case Investigation Work (for Trial Implementation)), reprinted in Shenzhen Tequ Bao, Aug. 24, 1988, at — [hereinafter Discipline Inspection Regulations].

and Party discipline.¹⁷⁴ Separate disciplinary procedures also exist to deal with Party members who commit economic crimes.¹⁷⁵

Under Party disciplinary procedures, those who violate the law are generally to be expelled from the Party. Separate administrative or criminal punishment is to be handled by the appropriate administrative or judicial organ. The Discipline Inspection Regulations also state, however, that if a violation of administrative discipline or criminal law is discovered while disciplinary investigation is under way, the investigator *may* suggest that the case be handled by the relevant administrative or judicial organ.¹⁷⁶ Furthermore, these regulations provide that a disciplinary case should be filed if, among other things, "an activity in violation of state laws and decrees" such as corruption, bribe-taking, extortion, speculation, fraud or bullying the masses occurs that "does not yet constitute a crime" but requires examination by discipline inspectors.¹⁷⁷

Such language suggests that although Party discipline is technically distinct from and subordinate to state law, sufficient leeway is permitted by the disciplinary regulations to create a parallel and less severe system of punishment for Party members than for other citizens. Moreover, the significant discretion left discipline inspectors would allow them to shield Party members from prosecution. Qiao Shi, the First Secretary of the CDIC, as well as the member of the Standing Committee of the Politburo responsible for the nation's legal system, himself acknowledged this, stating that it is "imperative neither to evade contradictions nor practice favoritism, but to act against the practice of intercession and do away with interference from those who have established a network of mutual partiality."¹⁷⁸

Statistics also confirm the conclusion that a different standard is

174. These Interim Procedures are referred to in Article 36 of the Discipline Inspection Regulations. The author has not seen them.

175. Guanyu Gongchandangyuan Zai Jingji Lingyuzhong Weifa Fanzui de Dangji Chuli Zanxing Banfa (Provisional Interim Procedures of Party Discipline for Handling Violations of the Law and the Commission of Crimes in the Economic Domain by Communist Party Members). The author has not seen these procedures, but reference is made to them in Gongchandangyuan Zai Shewai Huodongzhong Weifan Jilü Dangji Chufen de Zanxing Guiding (Interim Provisions on Disciplinary Measures for Chinese Communist Party Members Who Violate Party Discipline When Engaged in Activities Concerning Foreign Affairs) art. 14 (promulgated July 1, 1988), reprinted in Renmin Ribao, Aug. 10, 1988, at 4. A rough translation of the latter appears in *CCP Rules for Members Dealing with Foreigners*, SWB—FE, Aug. 16, 1988, at B2/1, 2.

176. Discipline Inspection Regulations, *supra* note 173, art. 29.

177. *Id.* art. 15.

178. Qiao Shi Report on Party Discipline, SWB—FE, Nov. 2, 1988, at B2/1, 3. Party cadres are reportedly suspicious of DICs. Those under investigation can intimidate or retaliate against DIC cadres or their informants, or begin counter-investigations. Hence cadres have sought to avoid DIC posts. Young, *supra* note 25, at 45. Moreover, for the reasons stated, as

applied to Party members. A National Work Conference on Discipline Inspection reported in 1989 that "a considerable proportion" of Party discipline cases involve economic crime and that approximately 60 percent of such cases concern corruption and bribery.¹⁷⁹ According to the CDIC, a total of 1,944 cases involving disciplinary violations were filed for investigation and handling by ministerial and provincial-level DICs in 1988.¹⁸⁰ As a result, some 590 Party members were punished. Four of these held ministerial or provincial posts and 91 held posts at the prefectural or departmental levels. Among this group, 168 individuals were expelled from the Party, including 45 from the prefectural, departmental, county and section levels. Thirty-three of these individuals were investigated on criminal charges.¹⁸¹ When viewed against a Party membership in the PRC of more than 47 million, such statistics are absurdly low and testify to the limitations of the discipline system's effectiveness.

The numbers are not surprising. Few groups with a vested interest in the status quo possess the willpower to police effectively their own activities. In the PRC, even the organs of control that supposedly exist outside the Party, such as the Ministry of Supervision, the State Audit Administration and the courts and procuracy, are in large part staffed and controlled by Party members. Thus, any attempt to maintain an external check begins to fold in on itself and the oft-repeated phrase "everyone is equal before the law" becomes void of meaning.

V. CONTROLLING CORRUPTION AND BRIBERY: POST-JUNE 4TH

A. *New Legislation*

The outrage that poured into the streets of Beijing, Shanghai and other major cities in the spring and summer of 1989 was motivated in large part by government corruption. The demonstrations provided vivid proof that the numerous legislative and Party efforts to restrain corruption had proved ineffective. Despite this, the leadership has responded to the problem with more of the same.

1. The 1989 Decision on Pacifying the Masses

A little over a month after the hopes and bodies of the demon-

well as out of a misplaced sense of loyalty or to cover up their own misdeeds, those cadres who do accept DIC posts may not carry out their duties with much enthusiasm.

179. Chen Weiwei, *Discipline Inspection Work During Reform Viewed*, FBIS—China, Feb. 2, 1989, at 29.

180. *Strengthened Discipline Inspection Work Slated*, FBIS—China, Jan. 30, 1989, at 32.

181. *Id.*

strators were crushed along the avenues of the capital, the front page of the *Renmin Ribao* declared in boldface the Decision of the Central Committee of the Chinese Communist Party and the State Council on Doing Several Matters in the Near Future of Great Concern to the Masses (Decision on Pacifying the Masses).¹⁸² This decision set seven tasks for the leadership. In almost apologetic tones, it stated that these tasks would "involve some demands being made on leading cadres."¹⁸³

First, companies would be further regularized and reorganized. Companies such as the state-owned conglomerate Kanghua Development Corporation, closely affiliated with Deng Xiaoping's son, Deng Pufang, which was already under investigation on charges of profiteering,¹⁸⁴ would be closed and audits made public. Second, children and spouses of high-ranking officials would be prohibited from engaging in business operations, particularly commodity circulation. Leading cadres were also forbidden from using their power to the advantage of relatives and friends engaged in business operations. Third, the privileged access of leading cadres to foods in short supply was to be halted. Fourth, automobiles would be allocated more strictly among leading cadres and no new automobiles were to be imported by them. Fifth, leading cadres would no longer be able to entertain guests at public expense or accept local and special products as gifts. Sixth, overseas business trips, namely junkets, would be severely curtailed. Finally, special efforts would be made in the investigation of corruption, bribery and speculation. Although its content made glaringly evident that the opposite had too often been the case, the decision once again stressed the principle that everyone, no matter how high in rank, must be equal before the law.

It appears the authors could not quite bear the significance of such a statement, however, for the decision allowed those who had committed the above-listed crimes one last "opportunity to repent and make a fresh start" by establishing a unified amnesty.¹⁸⁵ Those who voluntarily surrendered themselves and actively returned their ill-gotten gains would be given reduced punishment or be exempted from punishment altogether. Those who did not would suffer more severe punishment once apprehended.

182. Zhonggong Zhongyang, Guowuyuan Guanyu Jinqi Zuo Jijian Qunzhong Guanxin de Shi de Jueding, reprinted in *Renmin Ribao*—*Haiwaiban*, July 29, 1989, at 1 [hereinafter Decision on Pacifying the Masses].

183. *Id.*

184. See *Beijing Purge*, *supra* note 168.

185. Decision on Pacifying the Masses, *supra* note 182.

2. Regulations Countering Privilege

The real message of the Decision on Pacifying the Masses was that abuse of office by officials had indeed continued unabated in spite of the growing body of legislation aimed at controlling it. Even so, the past year-and-a-half has seen a flurry of new provisions, procedures and rules regulating everything from bureaucratic eating habits to transport to housing. For example, the Central Committee and the State Council hastened into print the Provisions Concerning the Strict Prohibition in Official Activities Within the Country of Using Public Funds for Entertaining and Relevant Working Meals.¹⁸⁶ The same two bodies also issued the Provisions Concerning the Administration of the Allocation and Use of Automobiles by Central Party and Government Organs,¹⁸⁷ and the Provisions on Strictly Controlling Overseas Trips and Visits to Hong Kong and Macao by Leading Party and Government Cadres at the Ministerial and Provincial Level and Above.¹⁸⁸ Violations of all of the above are to result in Party disciplinary sanctions, administrative sanctions or both.

The allocation of housing, a practice long abused by officials, has also come under scrutiny in many localities.¹⁸⁹ Guangdong Province, for example, approved the Provisions Concerning Handling the Problem of Party and Government Cadres Building Private Houses to curb illicit use of land, public funds and building materials and the illicit hiring of labor for such purposes.¹⁹⁰

B. Anti-Corruption Drive

As for corruption, bribery and speculation, the Decision on Pacifying the Masses was soon followed by two notices, one issued jointly by the Supreme People's Court and Supreme People's Procuracy, the other issued by the Ministry of Supervision, each setting forth the terms of the amnesty, which was to last until October 31, 1989, and

186. 'Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu zai Guonei Gongwu Huodongzhong Yanjin Yong Gongkuan Yanqing he Youguan Gongzuocan de Guiding (adopted Sept. 18, 1989), reprinted in Beijing Ribao, Sept. 29, 1989, at 4. A rough translation of these provisions appears in *Regulations Prohibit Use of Public Funds for Banquets*, SWB—FE, Oct. 10, 1989, at B2/6.

187. Zhonggong Zhongyang Bangongting, Guowuyuan Bangongting Guanyu Zhongyang Dangzheng Jiguan Qiche Peibei he Shiyong Guanli de Guiding (adopted Sept. 6, 1989), reprinted in Fazi Ribao, Oct. 17, 1989, at —.

188. See *Regulations Controlling Officials' Overseas Trips Issued*, SWB—FE, Oct. 10, 1989, at B2/5.

189. To the author's knowledge there are not as yet any national regulations dealing with this problem.

190. Shengjiwei, Shengjianwei, Shengjianchating, Shengguotuting Guanyu Chuli Dangzheng Ganbu Jian Sifang Wenti de Guiding (adopted Sept. 9, 1989), reprinted in Shenzhen Tequ Bao, Oct. 23, 1989, at —.

the provisions of the criminal or administrative laws under which misdeeds would be punished.¹⁹¹ The *Remin Ribao* reported that during the ten-week amnesty nearly 36,200 people confessed to wrongdoing,¹⁹² no doubt motivated by the promise of lighter punishment as well as by the lingering specter of the bloodbath of June 4th. Approximately 70 percent were found guilty of corruption or bribe-taking. Among the offenders, 2,100 people from central government departments and 15,000 from local government organs pled guilty. They handed over 116 million yuan, U.S. \$22,100, and Hong Kong \$442,900 as well as automobiles, color televisions, video and tape recorders, and jewelry. These numbers compare favorably with prior statistics. In the whole of 1988, for example, approximately 21,000 cases of corruption and bribery were filed by the procuracy.¹⁹³

Although the number of confessed offenders declined after the expiration of the amnesty, prosecutorial zeal has apparently remained strong. In the first half of 1990, the procuracy handled a total of 53,000 cases of corruption and bribery, filed more than 28,800 new cases and retrieved 610 million yuan.¹⁹⁴ The State Administration of Industry and Commerce reported that in the same time period 179,000 cases of speculation had been dealt with.¹⁹⁵ A total of 158,826 Party members were given disciplinary punishments in 1989, nearly a 100 percent increase over the preceding year.¹⁹⁶ At the same time, however, only 33,400 people were expelled from the Party in 1989, a number not significantly higher than that of previous years.¹⁹⁷

C. *Reemphasis on Ideology*

Apart from criminal prosecution and administrative sanctions,

191. Zuigao Renmin Fayuan, Zuigao Renmin Jianchayuan Guanyu Tanwu Shouhui Toujidaoba Deng Fanzuifenzi Bixu zai Xianqinei Zishou Tanbai de Tongzhi (Notice of the Supreme People's Court and Supreme People's Procuracy Concerning the Mandate that Criminal Elements Guilty of Such Crimes as Corruption, Bribery and Speculation Confess Within the Prescribed Time) (adopted Aug. 15, 1989) 1989 ZUIGAO RENMIN FAYUAN GONGBAO 3 [hereinafter FAYUAN GONGBAO]; Jianchabu Guanyu You Tanwu Shouhuilu Xingwei de Guojia Xingzheng Jiguan Gongzuorennyuan Bixu zai Xianqinei Zhudong Jiaodai Wenti de Tongzhi (Notice of the Ministry of Supervision Concerning the Mandate that Personnel of State Administrative Organs Involved in Activities of Corruption or Bribery Take the Initiative in Confessing Within the Prescribed Time) (adopted Aug. 19, 1989) 1989 GUOWUYUAN GONGBAO 604.

192. *Economic Offenders Face Harder Punishment*, China Daily, Nov. 11, 1989, at 1, col.

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193. *Various Activities of Second NPC Session Noted*, FBIS—China, Mar. 30, 1989, at 11.

194. *Over 50,000 Corruption Cases Handled This Year*, FBIS—China, Sept. 26, 1990, at 26.

195. *Cases of Profiteering, Speculation Drop*, FBIS—China, Sept. 7, 1990, at 56.

196. *158,826 Party Members Punished Last Year*, FBIS—China, July 11, 1990, at 34, 35.

197. *Asia Briefs—China*, AWSJ, Apr. 2, 1990, at 22, col. 1.

the PRC leadership has also reemphasized ideology in its fight for clean government. At the same time that the Decision on Pacifying the Masses was issued, the Central Committee issued a Notice Concerning the Strengthening of Work on Propaganda and Ideology.¹⁹⁸ In the eyes of the leadership, corruption continues to be viewed as the result of incorrect political thinking.¹⁹⁹ The hardliners who gained the upper hand during the June 4th crackdown blame the rise of corruption on the reform policies, which they claim let in the true culprit: bourgeois liberal ideas.²⁰⁰ To counter these ideas, the rhetoric of past decades has been dusted off and put to work in page after page of newsprint, in night after night of radio and television broadcasts. It is fairly evident, however, that few believe such rhetoric anymore, if they ever did.²⁰¹ Sentences extolling the necessity "to strengthen ideological education for the ranks of cadres, and unremittingly enhance their understanding on the lofty selfless goal of the party and their sense of their role as public servants who are required to wholeheartedly serve the people"²⁰² no longer inspire confidence, for people appear all too aware of what the lofty, selfless goals of the Party have meant.

D. *Weakening Meaningful Controls on Corruption*

In their bid to retain power, the leadership has fallen back on outmoded methods of control that appear destined once again to fail, and has rejected many methods that could make a genuine difference in the war against corruption. Ironically, legislation is now also being used to control activities that could assist in the control of official misbehavior.

1. Public Supervision

June 4th dealt a severe blow to a crucial means of controlling corruption: public oversight. Article 35 of the PRC Constitution states that citizens enjoy freedom of speech, press, assembly, association, procession and demonstration, and Article 41 gives citizens the right to make complaints and charges against any state organ or func-

198. Zhonggong Zhongyang Guanyu Jiaqiang Xuanquan, Sixiang Gongzuo de Tongzhi, reprinted in Renmin Ribao—Haiwaiban, July 29, 1989, at 1, col. 1.

199. For a very interesting examination of PRC attitudes equating political disloyalty with corruption, see L. White, *Changing Concepts of Corruption in Communist China: Early 1950s and Early 1980s*, in 2 CHANGES AND CONTINUITIES IN CHINESE COMMUNISM 316 (Y. Shaw ed. 1988).

200. See *Article on Liberalization, Corruption Published*, supra note 29, at 10.

201. See, e.g., *China's Schoolboy Hero: Lesson is Lost on Many*, N.Y. Times, Nov. 2, 1990, at A4, col. 2.

202. *Article Stresses Avoiding Abuse of Power*, FBIS—China, Sept. 27, 1990, at 21, 22.

tionary for violation of the law or dereliction of duty. Nevertheless, Article 28 permits the state to maintain public order and suppress treasonable and other counter-revolutionary activities and to penalize actions that endanger public security.²⁰³ The leadership has relied on Article 28 to block avenues for meaningful public oversight. The Law of the People's Republic of China on Assemblies, Marches and Demonstrations, passed in October 1989,²⁰⁴ essentially bans such activities through its rigorous requirements for permits. Thus, any kind of organized public protest against corruption is unlikely to be allowed by the authorities.

Informal complaint mechanisms such as the "letters and visits" (*xinfang*) system and telephone hotlines are still encouraged, at least in theory. Letters and visits departments exist in political, judicial, administrative and non-governmental bodies to accept complaints and reports from citizens regarding, among other things, corrupt activities that occur within their jurisdictional competence.²⁰⁵ In practice, there is a significant overlap in functions and responsibilities among these departments, especially at the local level. As an extension of the letters and visits system, the procuracies and supervisory departments have also established crime reporting centers and telephone hotlines specifically aimed at corruption.²⁰⁶

The effectiveness of such informal mechanisms, however, depends on the responsiveness and integrity of those in charge. Because of the functional overlap among departments, complaints easily fall through the cracks. In addition, those in charge have discretion in deciding whether to pursue a complaint; they can easily shield the targets of accusations.²⁰⁷ Moreover, people may be

203. PRC CONST. arts. 6 & 7.

204. *Zhonghua Renmin Gongheguo Jihui Youxing Shiwei Fa* (The Law of the People's Republic of China on Assemblies, Marches, and Demonstrations) (adopted Oct. 31, 1989), reprinted in *Renmin Ribao—Haiwaiban*, Nov. 1, 1989, at 4. An interesting report appeared recently of a threat by seven workers in Quanzhou, Fujian Province, to stage an 11-day demonstration and hold an exhibition featuring the "bad records" of the municipal government, particularly the "corruptive rule" of the Party committee secretary, if they did not receive satisfactory replies to their inquiries from the Fujian Provincial Party Committee Secretary. *Quanzhou Official Probed for "Corruptive Rule"*, FBIS—China, Aug. 21, 1990, at 32.

205. The author's information on the letters and visits system comes primarily from Yvonne Y.F. Chan's LL.M. paper, *The Letters and Visits System as a Means of Redress of Grievances in the People's Republic of China* (1989) (unpublished manuscript available in Harvard Law School Library).

206. *Citizens Reporting Cases of Official Corruption*, FBIS—China, Oct. 12, 1988, at 29-31; *Public Tips Help State Prosecutors*, China Daily, Sept. 20, 1990, at 3. Guangzhou is even offering rewards to those who tip off the police about criminal activity. *City Offers Rewards in Crime Crackdown*, SCMP, Oct. 12, 1990, at —.

207. See, e.g., *Chinese Newspapers Tell of Corruption by Officials*, AWSJ, July 21, 1988, at —; *Listening to the People*, BEIJING REV., Apr. 2-8, 1990, at 28, 30.

deterred from making or pursuing complaints by threat of reprisals from those in power. Finally, the fact that these reporting mechanisms were used by the leadership after June 4th to expose those involved in the demonstrations has undoubtedly cast doubt over their credibility. Many regard them as simply another means to control the masses instead of controlling corrupt officials.

2. Media Oversight

Public supervision through the media has also been thwarted. The media have always been controlled by the government. For a period prior to June 4th, however, the press, television, and radio were taking tentative steps toward becoming more independent bodies. At the end of 1988, reporters from the *Renmin Ribao* helped uncover an automobile smuggling scheme, demanding an explanation for its existence from provincial authorities in Guangdong Province.²⁰⁸ The now famous (and defunct) *Shijie Jingji Daobao* also frequently published criticisms of Party activities.²⁰⁹ Under pressure from the demonstrators in Tian'anmen Square, the media were finally given permission to report "the actual state of affairs" surrounding the demonstrations.²¹⁰ Significantly, reporters themselves challenged their subservience to the state. Several hundred journalists for official publications gathered in front of the New China News Agency on the 70th anniversary of the May Fourth Movement to protest against false and biased reporting and call for the reinstatement of Qin Benli, the editor dismissed from the *Shijie Jingji Daobao* for his liberal views.²¹¹ Less than a week later, more than 1,000 journalists petitioned the government for greater freedom of the press.²¹²

Since June 4th, the government has only tightened control over the media. Television news anchors at the time of June 4th who openly expressed their disagreement with the crackdown were removed.²¹³ A deputy director of Radio Beijing who allegedly allowed an unauthorized broadcast reporting the June 4th killings

208. See *Guangdong Officials Embarrassed by Investigation*, FBIS—China, Dec. 13, 1988, at 21; *Officials Linked to Smuggling Ring*, SCMP, Nov. 18, 1988, at —. Admittedly, the investigation could not have proceeded without official sanction at some level.

209. See *China Bans Pro-Student Newspaper*, N.Y. Times, Apr. 25, 1989, at A3, col. 1; *Beijing Dismisses Outspoken Editor*, N.Y. Times, Apr. 27, 1989, at A7, col. 1.

210. *Students Are Cool to Beijing's Terms for Talks*, N.Y. Times, Apr. 29, 1989, at A5, col. 4.

211. *Urging Chinese Democracy, 100,000 Surge Past Police*, N.Y. Times, May 5, 1989, at A8, col. 1.

212. *5,000 Chinese Students Hail Journalists*, N.Y. Times, May 11, 1989, at A3, col. 1.

213. *Whither China? Back to the Era of Comrade*, N.Y. Times, Nov. 18, 1990, at A23, col. 1.

was imprisoned.²¹⁴ A campaign was launched to rectify newspapers and periodicals accused of "openly vilifying socialism and advertising the viewpoint of capitalism and bourgeois liberalism."²¹⁵ Approximately six hundred newspapers and periodicals have been closed.²¹⁶ The *Jingji Ribao* was placed under the control of the State Council and was directed "to stick to the correct political orientation."²¹⁷ In addition, a new press law is slated for adoption to "protect press freedom and, at the same time, ban any abuse of such freedom."²¹⁸ The Regulations on the Administration of Foreign News Organs and Foreign Resident Reporters have already been put in place to restrict the activities of foreign journalists in the PRC.²¹⁹ The combined effect of all of these restrictions is to destroy any possibility of the mass media playing a significant role in the battle against corruption.

3. A Multi-Party System

The PRC leadership continues to reject, with greater vehemence than usual since June 4th, a multi-party system as a means to keep government honest. It insists that under the PRC's multi-party "cooperation system," all democratic parties accept the leadership of the Party.²²⁰ A recent article in the *Jiefangjun Bao* stated that the Party is "the sole party in office in China and is capable of establishing a supervisory mechanism inside and outside the party to achieve self-restriction and self-purification, to guard against corruption."²²¹ Although some leaders pay lip service to the need to place members of democratic parties and figures without party affiliation in supervisory positions,²²² such non-Party people have no real power to make a difference. Even the "Qigong Party," comprised of the approximately 20 million members of *qigong* associations throughout the country, has been deemed a potential threat by the current leadership and is

214. *Re-education for Top Radio Official*, SCMP, Aug. 31, 1990; *State Radio Executive Wu Xiaoyong Released*, FBIS—China, Oct. 18, 1990, at 20.

215. *Official Views Rectifying Papers, Periodicals*, FBIS—China, Oct. 3, 1990, at 20.

216. *Id.*

217. *Jingji Ribao Placed Under State Control*, FBIS—China, Aug. 16, 1990, at 21.

218. *Laws to Promote Reform, Opening Up Being Drafted*, FBIS—China, Aug. 28, 1990, at 15.

219. *Zhonghua Renmin Gongheguo Guowuyuan Guanyu Guanli Waiguo Xinwen Jigou Jizhe de Zhanxing Guidong*, reprinted in *Renmin Ribao*, Jan. 20, 1990, at 2. A rough English translation appears in SWB—FE, Jan. 23, 1990, at B2/7.

220. *Characteristics and Advantages of the Multi-Party Co-operation System*, BEIJING REV., Mar. 26-Apr. 1, 1990, at 20.

221. *Multiparty System for Nation Rejected*, FBIS—China, July 18, 1990, at 14, 15.

222. *Chen Xitong on Bigger Role for Nonparty Figures*, FBIS—China, July 20, 1990, at 52, 53.

being suppressed.²²³

4. The Rule of Law

In the *Jiefangjun Bao* article mentioned above, the author underscores his premise that a multi-party system is unnecessary in the PRC with the argument that supervisory mechanisms exist outside the Party, namely, the National People's Congress, the Constitution and the law, and public opinion.²²⁴ Yet the bloody response of June 4th exposed the frailty of these supposed external mechanisms. Following the declaration of martial law in Beijing by the State Council on May 20, 1989, some members of the NPC Standing Committee attempted to convene an emergency meeting of the Committee. Their purpose was to use the power granted the Committee under the PRC Constitution to repeal martial law and possibly impeach Premier Li Peng.²²⁵ They argued that the declaration of martial law was improper and in direct contravention of the PRC Constitution. This effort was thwarted by the events of June 4th, its advocates arrested or forced to flee the country.

The promise of rule of law set forth in the PRC Constitution, that "all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law,"²²⁶ that "no organization or individual may enjoy the privilege of being above the Constitution and the law,"²²⁷ and that the people's courts exercise judicial power independently²²⁸ was shattered by June 4th and its aftermath. At the same time that the amnesty was offered to those guilty of corruption, the PRC criminal process was, and continues to be, blatantly abused in punishing those involved in the demonstrations.²²⁹ The President of the Supreme People's Court, Ren Jianxin, acknowledged in a speech that the courts must accept the leadership of the Party in addition to the

223. *Qigong* is a health regimen involving breathing exercises and meditation. It is usually taught by masters thought to possess special powers. See *CPC's Crackdown on Qigong Bodies Viewed*, FBIS—China, Sept. 13, 1990, at 24-26. The leadership is undoubtedly reminded of popular rebellions of the nineteenth century whose members came from secret societies that stressed esoteric practices and the martial arts.

224. *Multiparty System for Nation Rejected*, *supra* note 221.

225. For an excellent summary of this dramatic attempt, see Howson, *Cao Siyuan: A "Responsible Reformer" Silenced*, 8 UCLA PAC. BASIN L.J. 267 (1990). There is some doubt that the martial law decree itself was properly approved as required by law. See Cohen, *Tian'anmen and the Rule of Law*, in *THE BROKEN MIRROR* (G. Hicks ed. 1990), at 323, 325.

226. PRC CONST. art. 5.

227. *Id.*

228. *Id.* art. 126.

229. See Cohen, *supra* note 225, at 326.

rule of law.²³⁰ The political-legal committees, organs found at all administrative levels as a link between Party and state and a vehicle for Party intervention in judicial decision-making, were being dismantled prior to June 4th. Efforts have since been made to revive them.²³¹ Finally, as noted above, law has been used as Marxist-Leninists would predict, as a tool of the ruling elite to suppress the masses.

Respect for the rule of law has been further undermined by continued erratic enforcement. For example, a Vice Minister of Railways, Luo Yunguang, was recently exempted from prosecution for bribery by The Supreme People's Procuracy, even though he received over four thousand and eight hundred yuan in bribes, including a gold ring and a freezer. Luo violated the criminal law, but because he turned himself in during the amnesty and showed repentance, the circumstances of his case were declared "relatively minor" and his punishment was limited to removal from office and expulsion from the Party.²³² Such lenient treatment for a vice minister in the midst of an anti-corruption campaign sets a bad example and reinforces popular cynicism.²³³ There are also indications that some in political disfavor are being attacked through charges of corruption.²³⁴

VI. CONCLUSION

The economic reforms of the past decade have opened the PRC to remarkable change. Suddenly, to get rich was glorious and both black and white cats were applauded for catching mice. Whenever a value system undergoes a radical change, corruption can appear as a transitional malaise.²³⁵ This alone, however, cannot explain the prevalence of corruption in the PRC.

The system that existed in the PRC prior to the reforms already afforded privileged treatment—a kind of legalized corruption—to

230. See *China Puts Communist Party Above Rule of Law*, SCMP, Jan. 5, 1990, at —; *China's Chief Justice Defends Courts Against Foreign Slander*, Washington Post, Mar. 30, 1990, at A20.

231. See Cohen, *supra* note 225, at 333, 335.

232. See *Vice-Minister Sacked in Scandal*, BEIJING REV., Mar. 26-Apr. 1, 1990, at 13; *Former Vice-Minister Freed*, BEIJING REV., Aug. 20-26, 1990, at 7.

233. At the other extreme, a director of the Bureau of Economics in Wuhan was executed for taking 228,000 yuan and 100 U.S. dollars in bribes. *Hubei Official Executed for Corruption*, FBIS—China, Sept. 11, 1990, at 50. The crackdown on corruption has mainly affected the lower ranks of the Party, and the Renmin Ribao recently published an article indicating that the Party is ready to forgive members expelled for corrupt practices if they are willing to make amends. See *Forgiveness Offered to Expelled Officials*, SCMP, Oct. 12, 1990, at —.

234. See, e.g., Ma, *Dismissal of Minister Linked to Bribes*, FBIS—China, Feb. 4, 1991, at 23.

235. S. ALATAS, *supra* note 6, at 38.

those in power. The state monopoly over goods, services and opportunities already placed officials in a position to benefit from corrupt behavior. A further duality in the economy was created by the reforms, when the government freed its agents with one hand while maintaining control over scarce resources and prices with the other. Traditional cultural behavior such as reliance on *guanxi* networks and the custom of giving gifts was readily employed to take advantage of this duality, allowing corruption to flourish. One PRC researcher on inner-Party corruption summarized the problem as follows:

[A] situation has taken shape in which the new and the old structures co-exist . . . With the double-track situation, the following things are liable to occur: In the economic activities in the form of commodity economy, operations continue to flow along the old structure, especially that of power, thus shaping into a situation in which the commodity economy in the embryonic stage intertwines with the old structure characterized by excessive centralization. This has created a major hotbed for corruption within the party.²³⁶

Prior to June 4th, efforts were being made on a number of fronts to come to grips with widespread corruption. The primary means was through a body of increasingly detailed legislation that delineated acceptable economic behavior and contained harsh penalties. Other means included the restructuring of institutions by beginning the process of separating Party from government and both of these from business, and encouraging people to speak out against corruption. When they did speak out, the leadership was visibly shaken, for the bitter medicine the people proposed contained an ingredient even many of the reformers within the Party could not swallow: political reform. In the end, the dualities associated with two hats, two economies and parallel systems of supervision and enforcement have persisted so tenaciously simply because there is only one Party. Conflicts of interest and institutional schizophrenia are the inevitable result.

Even before June 4th, the above-cited researcher commented that the Party, in attempting to control corruption, had not acted beyond the level of "sentimental criticism and moral condemnation."²³⁷ Since June 4th, the hardliners have stifled all dissent while intensifying moral condemnation against official malfeasance. Instead of placing the blame where it rightfully belongs, at the front gates of

236. *An Investigation into the Causes of Party Corruption*, SWB—FE, June 24, 1988 at B2/1, 2.

237. *Id.* at B2/2.

Zhongnanhai,²³⁸ they have used the cry of corruption to discredit the reformers and consolidate their own power. Moreover, they reserve ultimate censure for foreign bourgeois liberal thought as the true source of corruption. Yet without meaningful dissent and independent oversight, continued entreaties to "be good cadres" will fall on deaf ears, for the Party seems no longer to possess the will or the means to keep its ranks in line. Laws bearing the Party seal of approval will be passed, but they will continue to be ignored if they are selectively enforced. Moreover, a proliferation of rules and regulations, unless they are properly enforced, merely creates more opportunities for corrupt behavior.

Power corrupts. If the PRC leadership hopes to suppress corruption, it must be willing to share power. It must defer to the rule of law instead of coopting the law for its own purposes and allowing a double standard of censure for Party members. In essence, this means liberating the people's congresses and the people's courts from Party interference. This means allowing the media freer rein to criticize and expose. This also means accepting some form of political opposition. When those in power are more accountable to forces independent of the Party as well as to dissenting voices within the Party, a looser grasp on the economy will not result in runaway corruption.

Klitgaard recognizes that controlling corruption has its costs.²³⁹ He asserts that it is impossible to eliminate corruption entirely, that the best any government can do is balance various considerations and determine its own "optimal level of corruption."²⁴⁰ In spite of its ongoing and vocal campaign against corruption, the current PRC leadership appears to have decided that living with a higher level of corruption is preferable to sharing power and potential political unrest. The risk, of course, is that what it deems optimal may be more than the people will tolerate for long and that the eventual result will be even greater political unrest. This is the conundrum that the Party now faces and will continue to face until it accepts more meaningful checks on its power. It must bite the bullet eventually, for, despite the late Chairman's thoughts about political power growing out of gun barrels, the Party cannot forever rely on bullets to maintain its position of privilege.

238. The compound in Beijing where a number of senior PRC leaders reside and where important Party and government business is conducted.

239. See R. KLITGAARD, *supra* note 11, at 120.

240. *Id.* at 24.