

Guoping Jiang

# Corruption Control in Post- Reform China

A Social Censure Perspective

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Guoping Jiang  
Nanchang University  
Nanchang  
China

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# Chapter 1

## Corruption and Anticorruption in China

### 1.1 Corruption<sup>1</sup> in General

Corruption has been a persistent feature of human history for thousands of years (Lo 1993:1). This is why Bardhan (1997:1320) calls it “an ancient problem.” From the Alps to the Yangtze River, from biblical time to the post-modern era, it is epidemic in most societies. As Zou (2000:323) claims that “corruption is a universal phenomenon. Where there are human beings, there is corruption in different forms and different degrees.” Therefore, “the subject has long been of interest to philosophers, historians, and social scientists” (Gillespie and Okruhlik 1991:77). Osborne (1997) documents that throughout human history, from ancient Greece or William Shakespeare in the West to Confucianism and Hinduism in the East, one can find repeated expressions of distaste by scholars and ordinary people for corruption and dishonesty.

However the people around the world still use it for daily life because arguably it is functional or beneficial to individuals. For example, it may help businessman to secure contracts from governments; it may help people to receive benefits from governments, such as housing, medical care, and privileged schooling; it may

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Throughout the text the Pinyin (拼音) system of Romanization is used for all Chinese names. Names are written according to Chinese tradition—family name first, given name second.

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<sup>1</sup>Corruption is a meaningful word. In any dictionary, we can see at least eight meanings. It also has at least two Chinese meanings. One is “腐败”; the other is “贪污”. In mainland China, “腐败” and “贪污” are slightly different. “腐败” refers to all corrupt behaviors, or to say, a phenomenon; while “贪污” means “embezzlement” specifically, or to say, a kind of behaviors. Since what the author focuses on is a phenomenon rather than particular behaviors, “corruption” in this thesis refers to “腐败”. To be consistent with such a use, the author used “腐败” in the questionnaire and interview. Official documents in Mainland China use “腐败” in general sense. The use of “腐败” was translated as “corruption”. Some interviewees used “贪污” in the interview. The “贪污” in such a case was translated as “embezzlement” or “taking money from public fund”. It is treated the same for some documentary cases.

facilitate reduction in taxes or fees levied by governments. Corruption might also speed up government's granting of permits, and help people to influence outcomes of legal and regulatory processes, so on and so forth.

Corruption may also be functional or beneficial to society in general. According to functionalism, every phenomenon serves some function, no matter whether it is positive or negative; corruption is no exception. In the 1960s, the functionalist school focused on the positive role corruption played. In their eyes, corruption was said to contribute to economic development by helping to allocate scarce resources, to make investments possible, and to reduce uncertainty. It was also suggested that corruption could help build alternative political institutions, thus serving as a means of channeling demand upon the system in lieu of violence. For instance, corruption can help otherwise excluded persons to gain access to public administrators. Also, bribery can be an efficient way of getting around burdensome regulations and ineffective legal systems, such as cutting considerable time needed to process permits and paperwork.

However, more and more people agree to that corruption brings more hurts than benefits to society, especially when conflict school in sociology comes onto stage. The waste of revenues and resources, the enormous degree of discretion that many politicians and bureaucrats can have, the eroded trust and loyalty, and the expanded inequality were paid more and more attention by either academia or the mass.

Gray and Kaufmann (1998:8) summarize the economic costs of corruption as follow: (1) bribery raises transaction costs and uncertainty in an economy; (2) it impedes long-term foreign and domestic investment, misallocates talents to rent-seeking activities, and distorts sectoral priorities and technology choices; it pushes firms underground, thus undercutting the state's ability to raise revenues, and it leads to ever-higher tax rates being levied on fewer and fewer taxpayers; (3) it imposes a regressive tax that falls particularly heavily on trade and services activities undertaken by small enterprises; (4) besides the economic costs corruption is hurtful to the political and administrative systems.

## **1.2 Corruption in Post-reform China**

China is definitely not immune to the problem of corruption. Actually, since the early days of Chinese Confucian civilization, the problem has been puzzling this nation. As Maguire (1997:73) summarizes, "corruption has been a recurring theme in Chinese history. Regimes that became too corrupt were felt to have lost the mandate of heaven and in due course they would be overthrown...By the late sixteenth century, the Ming dynasty had become corrupt and they were unable to resist the Manchu invasion from the north.... There was sporadic resistance to the new Manchu rulers...." Guomindang (or KMT) faced the same problem when it

was in power, and lost its sovereignty later. The founder of P.R. China, Mao Zedong therefore placed a lot of emphasis on corruption control, and launched mass-based campaigns against corruption.<sup>2</sup>

In Deng Xiaoping's era, there were greater emphases on economic development, and less on ideological struggle, so a new policy of "Open and Reform" was implemented in 1978. The policy was successful regarding economic development. People in China enjoyed a better life. However, "the 'second revolution,' initiated by Deng Xiaoping, precipitated a period of unprecedented social and economic change including increasing crime and corruption rate" (Friday 1998:296).

The Chinese government publishes statistics on corruption every year in the Chief Procurator's report at the Plenum of the National People's Congress (全国人大). Their data show that the corruption rate has decreased generally since 1999 regarding received and filed corruption cases,<sup>3</sup> and the case number stays stable around 40,000 per year. It is important to note, however, that these data only include cases uncovered. There might be tons of covered corruption cases, so in this sense, corruption should be worse than what official data show (Graph 1.1).

Just because it is so rampant, "in the post-Mao era, political corruption has become one of the central concerns, even an obsession, for the citizens of the People's Republic of China" (Hsu 2001:27). The studies by the Renmin University (1996),<sup>4</sup> He (2000)<sup>5</sup> and Hsu (2001)<sup>6</sup> agree with the above statement congruently that corruption is one of social problems which concern Chinese most.

The seriousness of corruption also caused central government's attention. Deng Xiaoping pointed out clearly that "to realize our strategic goals, there is a risk of failure if we don't punish corruption, especially the corruption happening to the high level of our party" (Deng 1993:313). Former Secretary General Zhao (1987:65–66) once commented at the Thirteenth Congress of the CCP:

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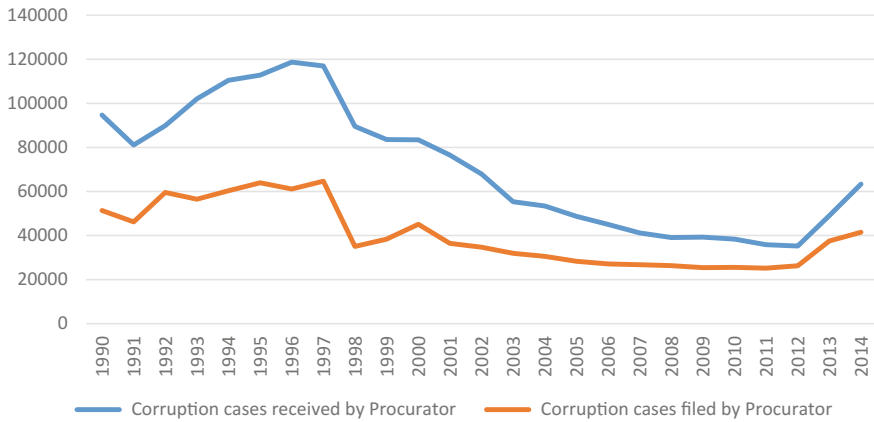
<sup>2</sup>In 1951 the Three-Anti Campaign against three 'evils' (corruption, waste and bureaucratism) was launched. The Five-Anti Campaign against five 'evils' (bribery, tax evasion, theft of state property, cheating on government contracts and stealing state economic information) was launched in 1952, targeting businessmen and industrialists. In 1962, the Four-Cleanups (cleaning up account book, granaries, properties and work place), another campaign to combat corruption at villages level, was launched. All these campaigns worked effectively, and China in Mao's era is regard to be clean. See [http://www.yangjianli.com/articles/01\\_minzhu\\_en.htm](http://www.yangjianli.com/articles/01_minzhu_en.htm).

<sup>3</sup>Received case refers to the total of case number reported to the Procuratorate from all channels, such as public security department, the mass, media and functionaries. However, not all cases will be filed for some are just rumors without strong evidence. That is why they have two separate statistics (filed case number and received case number).

<sup>4</sup>The survey was conducted by the Institute of Opinion Research which is affiliated to the Renmin University of China. Please refer to "Survey finds corruption greatest concern to workers" Beijing: Zhongguo Xinwen She (中国新闻社) in English (June 10, 1996) FBIS Daily Report—China, June 14, 1996 (PrEx 7.10: FBS-CHI-96-115).

<sup>5</sup>He states that up to now, "the corruption phenomenon is still much alive, and presently is seen as the second greatest public concern (behind unemployment)." See He (2000).

<sup>6</sup>Hsu (2001) did a fieldwork in 1997–98. His finding confirmed this fixation.



**Graph 1.1** Corruption cases received and filed by Chinese procurators since 1990. *Sources* China Statistics Yearbook 1990–2015 (<http://www.stats.gov.cn/tjsj/ndsj/>) and Chief Procurator’s Report to the National Peoples’ Congress 1991–2015 (<http://www.spp.gov.cn/gzbg/>)

The people complain a great deal now that a small number of Party members, particularly leading cadres, have abused their power for private gain at the expense of the people’s interests, hindering the smooth progress of the reform and implementation of the Open Policy and damaging the Party’s prestige. This is a grave problem which we must take seriously and tackle in earnest...The intra-Party struggle against corruption is unavoidable when we are carrying out Reform and the Open Policy. If we tolerate decadent elements in the Party, the whole party will decline.

Former Premier Li Peng once “discussed the importance of understanding corruption ‘from the high plane of the rise or fall of the party and the state’” (Manion 1997:58). In August 1993, former President Jiang Zemin warned that “the corruption phenomenon is a virus that is invading the healthy flesh of the party state institutions” (Tyler 1995: Feb 26th). Addressing the Third Plenary Session of the Party’s Central Commission for Discipline Inspection (the CCDI hereafter, 中共中央纪律检查委员会), former President Hu Jintao advocated “China will continue its fight against corruption and improve the Party’s style of work, while improving inner-Party supervision of leading Party officials.”<sup>7</sup> Obviously, “China watchers both within and outside the country have viewed this escalating epidemic of political corruption as a sign that the post-Mao reformist regime is suffering from a legitimacy crisis” (Hsu 2001:26).

<sup>7</sup>Retrieved on Sept 19, 2007 from [http://english.people.com.cn/200401/13/eng20040113\\_132410.shtml](http://english.people.com.cn/200401/13/eng20040113_132410.shtml).

### 1.3 Anticorruption in Post-reform China

Having realized the seriousness of corruption, Chinese political leaders stressed a lot on fights against corruption. Former president Jiang Zemin once warned the CCDI that “if we lapse into soft-heartedness, if we allow it to run rampant, it could spell an end to our party” (Tyler 1995: Feb 26th). Therefore, “since 1978, when the Chinese government began to implement the reforms, it has also intensified its anti-corruption efforts” (He 2000:263). Here are the main measures.

#### 1.3.1 *Establishment of Institutions*

The first move is to re-establish anti-corruption judicial institutes which were paralyzed in the Cultural Revolution (1966–1976). The first one is the CCDI<sup>8</sup> (re-established in 1978) which is always the first check point because most of officials in China are communist party members. Usually, all corrupt case will be passed to this organization first. After the first round check (or screening), the case will be passed to the procuratorate. As we know, although China is adopting a one party system, there are some officials from other small democratic parties. It is inappropriate to put them under CCP’s disciplinary supervision. Here comes the second institute: Ministry of Supervision<sup>9</sup> (监察部, re-established in 1987). Any non-CCP officials found to be corrupt will be reported to such supervisory organs first. If the case is tenable, it will be forwarded to procuratorate. As a matter of fact, the party’s commission for discipline inspection (CDI hereafter) and supervisory organs overlap a lot. After 1992, these two organizations merged.<sup>10</sup> The third re-established organization is procuratorate. Since the case has been reviewed, investigated, and approved by CDI or supervisory organs before sent to them,<sup>11</sup> procuratorate has no misgivings, but to prosecute the officials according to procedure. At the end of 1995, the Anti-corruption and Bribery Bureaus were established at various levels within the procuratorate.<sup>12</sup> It is “designed to strengthen the procuracy in controlling corruption through the criminal justice system” (Manion

<sup>8</sup>It is called the CCP CDI of XXX County (Municipal or Province) at local levels.

<sup>9</sup>It is called department of supervision (监察厅) of XXX Province or bureau of supervision (监察局) of XXX City at local levels.

<sup>10</sup>In Chinese, it is called “one team with two signs”. As Wedeman (2005:93) points out “in recent years, the two systems have in fact been effectively merged into a single non-judicial disciplinary apparatus.”

<sup>11</sup>After the initial investigation by Party’s Commission for Discipline Inspection or Bureau of Supervision, the case may be dropped, or forwarded to the Procuratorate.

<sup>12</sup>Refer to China Daily, August 13, 1996.

1997:59). There are other supplementary agencies, such as the Audit Bureau<sup>13</sup> (审计局), the Center for Reporting Corruption (腐败举报中心), the Office of Correcting Unhealthy Vocational Tendencies (纠正行不正之风办公室), the Office of General Inspection of Fiscal and Economic Disciplines, and specially appointed non-official corruption monitors. They are all involved in the anti-corruption actions. With the deepening of economic reform, the re-established anti-corruption organizations were improved later to curb corruption effectively.

### 1.3.2 New Laws

Not only were institutions set up to stop rising corruption, but also new laws and regulations. Since the late 1970s, “numerous anti-corruption, good governance laws and regulations have been promulgated” (Gong 1997:362). There is no particular separate anti-corruption law in Mainland China, but the *China Criminal Law* (刑法) passed in 1979 and amended in 1997, 1999, 2001 and 2002 includes the crime of corruption (more exactly, graft, bribery and dereliction of duty). Both corruption and bribery offenses come under the umbrella of economic crime in the *China Criminal Law*.<sup>14</sup> At the same time, nearly in every year, there are new regulations promulgated. For example, in the 1990s, the following regulations were passed, the *Declaration of Incomes of Public Officials*, the *Registration of Gift Accepted by Officials*, the *Avoidance of Close Relatives (among officials) Working in the Same Unit*, the *Disciplinary Action Rules of the CCP*, the *Implementation Measures on Intra-party Supervision*, the *Ethical Code of CCP Cadres*, the *Regulations on the System Responsibility to Conduct Party's Atmosphere and Clean Government Construction*, the *Rules Against Luxury Spending and the Administration Supervision Law*.<sup>15</sup> Other judicial organs and local governments such as the Supreme Court and Supreme Procuratorate also passed their own procedural rules on

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<sup>13</sup>Audit bureau launched an “audit storm” in 2004. Billion yuan were found lost, and hundreds of officials were punished in the “storm”. Retrieved on January 18 2007 from <http://au.biz.yahoo.com/050629/33/549m.html>.

<sup>14</sup>The concrete codes are as follows: embezzlement by state functionaries, misappropriation of public funds, acceptance of bribes by state functionaries, acceptance of bribes by a unit, offering bribes to state functionaries, offering bribes to a unit, introducing bribery, unit offering bribes, failing to explain significant excess of property or expenditure over lawful income, concealing saving outside the territory of China, illicit division of state-owned assets, illicit division of fines, confiscated money or property, acceptance of bribes by employees of companies and enterprises, offering bribes to employees of companies and enterprises, members of intermediary organizations deliberately providing false testifying papers, embezzlement through dereliction of duty by employees of enterprises, misappropriation of unit funds, misappropriation of specific funds and materials, dereliction of duty by ordinary people in public service, dereliction of duty by judicial personnel, and practicing favoritism and dereliction of duty by officials in administrative organs.

<sup>15</sup>Refer to Liaowang (瞭望), 1997, No. 18.

the base of the above rules. Just from the law and numerous complicated regulations, we can roughly say that the CCP spared no efforts to crack down on corruption.

### 1.3.3 *Anticorruption Campaigns*

What accompanied re-establishment of organization and law is anti-corruption campaign which is the third effort.<sup>16</sup> After the Reform and Open Policy, there is a new campaign against corruption about every 2 years, such as the *Campaign of Curbing Official Privileges and Unhealthy Tendencies in the Party* in 1980, the *Campaign of Cracking down on Economic Crimes Resolutely* in 1982, the *Campaign of Eradicating Housing Irregularities by Officials* in 1983, the *Campaign to Stop Officials from Engaging in Commercial Activities* in 1984, the *Campaign of Sanctioning Violations of Law and Discipline of the Party and the State* in 1986, the *Campaign to Build a Clean Government and Curb Corruption* in 1989, and the *Campaign Addressing the Issue of Self-regulation of Senior Officials* in 1994. These campaigns against corruption are not mass-based as what was adopted in Mao's era, but more like top-down method instead of bottom-up one. They usually consist of two phases: a confession stage during which corrupt officials are encouraged to report their own corrupt behaviors for reduced punishments and a crackdown stage during which recalcitrant offenders are dealt with harshly.

### 1.3.4 *Speeding Economic Reform*

Chinese government made the fourth effort by broadening and speeding the economic reform to reduce corruption from the sources. First, the role of government officials in the resource distribution process is constrained or reduced to restrain rent-seeking behaviors. Second, the "final establishment of a consumer goods market... reduced the speculation, profiteering, and smuggling in consumer goods" and producer goods (He 2000:264). Third, "the establishment and subsequent strengthening of the regulation of the stock and real estate markets...played a vital role in reducing the relevant economic crimes" (He 2000:264). Fourth, "the commercialization of public banks has helped...significantly reduce corrupt transaction

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<sup>16</sup>Wedeman (2005:96) analyzes the logic of campaign-style enforcement. According to him, there are four rationales for campaign-style enforcement. (1) Effective policing is very resource-consuming; anti-corruption campaign, however, can compensate by mixing routine "police patrols" with periodic crackdowns during which resources are redeployed from other areas for a burst of "hyper enforcement." (2) Anti-corruption campaign can deter officials by inducing fear, awe and uncertainty, and then turn out to be a psychological warfare. (3) Anti-corruption campaign can intimidate the guilty and shock them into surrender. (4) Anti-corruption campaign can effectively prevent corruption from spiraling out of control.

in bank loans and credits” (He 2000:264). However, scholars also acknowledge that “such a reform may again stimulate the growth of corruption by creating new opportunities for corrupt behavior” (He 2000:264).

### ***1.3.5 Limited Political Reform***

The fifth move is the limited political reform. For example, collective leadership, division of duties and subsequent responsibility system among cadres at various levels can help greatly to hold down the abuse of power by officials. The democratic supervision by relevant institutions such as the people’s congress at county, city and provincial levels also limits official’s corrupt behavior.

### ***1.3.6 Administrative Reform***

The sixth effort is the administrative reform aiming to reduce malfunctions in governments and to transform government functions. (1) The Chinese government reduced the 40 existing Ministries of State Council into 29 Ministries. (2) “With the relaxation over the state-owned enterprises, many government departments have lost their authority to directly control the relevant state firm.” (He 2000:265). (3) The public decision-making process, especially procedures and results of business fairs, became more and more transparent. (4) Mechanism of internal control of public power, such as teamwork, overlap of duties, and reduction of individual’s power were set up within many departments. (5) The rule of relative avoidance restrains development of social network which is the base of corruption.<sup>17</sup> (6) The transfer system (senior cadres are not allowed to work in their home towns; cadres are not allowed to work in one city or in one department for over a long time) can help cadres to avoid unintended corruption.<sup>18</sup>

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<sup>17</sup>Mainland Chinese always try to get their children into their own work unit if they son or daughter cannot go to school for higher education, especially if his/her work unit is very competitive in income and welfare. China also used to have replacement system (顶替 in Chinese) which helps employees’ children get employed in their own work unit after they retire if their children cannot go to college and subsequently find a job elsewhere. In such a case, it is very easy for them to develop social network (root of corruption, especially collective corruption). Such a rule means once if one individual works in a government department, his/her spouse, children, and close relatives are not allowed to work in the same department. In other words, it is designed to control nepotism which a major form of corruption.

<sup>18</sup>For some cadres, they grow up in their home towns and work there, so they have to face social lobbying since they have family members, friends, and relatives in the city. Corruption is very easy to occur in such a social environment.



### 1.3.7 *Other Measures*

He (2000:266–267) summarizes the CCP’s improvements in other fields direction. First is the increasing “transparency of the public decision making process”; the second is the “additional mechanism for internal control of institutional power such as teamwork, overlap of duties”; the third is the “transfer rule for senior officials at various levels;” the fourth is the “income reporting system for all senior officials at the county level and above”; the fifth is “the re-establishment and further improvement of reporting center”. All these changes reduced corruption opportunities for officials. Because a main argument for cause of corruption in China is the decayed moral, the CCP also tried to strengthen moral education at various levels. Almost all national leaders such as Deng Xiaoping, Jiang Zemin, Hu Jintao and Xi Jinping include anticorruption in his/her political ideas.

## 1.4 Research Interests

It is quite clear that the Chinese government made numerous efforts to keep corruption under control. However, it is regretful to note that the result has not been fantastically optimistic although scholars acknowledge its positive impact. Neutral research organizations conduct surveys on corruption across the world every year. None of their studies indicates China has clean governance. Let us use the most cited index, the Corruption Perception Index (CPI)<sup>19</sup> by Transparency International, as an example. According to this index, Mainland China was ranked in the middle among more than 150 countries. From 2000 to 2006, China’s CPI ranges from 3.1 to 3.5; while its ranking ranges from 57th to 78th. After President Xi Jinping came to power, he took harsh measures against corruption, but there is still no obvious improvement regarding the cleanness of governance based on Transparency International’s research. In a word, from their point of view, Mainland China could not be regarded as a ‘clean’ state in terms of functionaries’ behaviors (Table 1.1).

Another institute, Political and Economic Risk Consultancy (PERC), established in Hong Kong, “produces a range of risk reports on the countries of Asia, paying special attention to critical socio-political variables like corruption, intellectual property rights risks, labor quality, and other systemic strengths and weaknesses of individual Asian countries.”<sup>20</sup> Similar to the Transparency International’s finding,

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<sup>19</sup>It is “‘a poll of polls’ compiled from separate surveys among managers in multinational firms and commentators on international business.” The index “rates the extent to which business transactions in particular countries are perceived to be ‘clean’ and of the highest integrity at one extreme or dominated by kick-back, extortion and bribery at the other” (Snell et al. 1999:282).

<sup>20</sup>Refer to <http://www.asiarisk.com/>.

**Table 1.1** China's CPI and ranking position by Transparency International

Year	2000	2001	2002	2003	2004	2005	2006	2007
CPI	3.1	3.5	3.5	3.4	3.4	3.2	3.3	3.5
Ranking	63rd	57th	59th	66th	71st	78th	70th	72nd
Year	2008	2009	2010	2011	2012	2013	2014	2015
CPI	3.6	3.6	3.5	3.6	3.9	4	3.6	3.7
Ranking	72nd	79th	78th	75th	80th	80th	100th	83rd

Source [http://www.transparency.org/policy\\_research/surveys\\_indices/global/cpi](http://www.transparency.org/policy_research/surveys_indices/global/cpi)

their research shows that China's corruption situation is not optimistic either. In the Jan. and Feb. of 2008, China's corruption index reached 7.98 with 10 meaning "most corrupt" and 0 representing "cleanest."

Various scholars come to a similar conclusion with different studies. Zou (2000:346) cautiously agrees that "China can only curb the increase in corruption; it is impossible to eliminate it." Lu (1999:364) acknowledges the positive result only to a certain degree with a description of "limited results of the anti-corruption campaigns and institutions." More straightly, Manion (1997:56) states "China is one of many countries in which top political leaders have made efforts to control corruption, but without evident success".

Therefore, no matter what source to rely on (scholars' judgment or institutes' research), China is perceived to be corrupt albeit the Chinese government has made numerous efforts to eliminate corruption. Such a contradiction or dilemma puzzles me to a very large extent so that I want to investigate it. That is why my research interest is to explore the reason why the corruption in post-reform China is rampant given numerous efforts in corruption control.

## Chapter 2

# Corruption—Theories and Perspectives

### 2.1 Definitions on Corruption

Research always starts with a definition, and it is the same here. The persistence and negative impacts of corruption in human history attract scholar's attention from the very beginning of human history and more and more recently, especially in the 1990s when there was a "corruption eruption" in the world (William 1999:513). However, academic focus did not bring a unitary view into its being. "Numerous efforts have been made, but little consensus exists on what is corruption" (Gong 1994:1). "Since the time of Aristotle, scholars exploring the question of corruption have adopted a variety of different definitions, associated with different sorts of research questions and normative concern" (Manion 1997:58). Some scholars try to isolate particular behaviors that are subject to his concern; some seek out cultural aspect of corruption; some imagine about the scenario of corrupt behaviors. Moreover, the existing "definitions of corruption are problematic ... definitions of corruption run the gamut from being too broad as to be rendered relatively useless to being too narrow and thus be applicable to only limited, rare, well-defined cases" (Waite and Allen 2003:282). Perry (1997:9) expresses the same opinion: "it is conceptually problematic".

#### 2.1.1 Complexity of Corruption

The problem of corruption definition is understandable for its complexity. Corruption, as "a ubiquitous aspect of the exercise of governmental power and the transaction that go with it", shows an unbelievable complexity (Lapalombara

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Throughout the text the Pinyin (拼音) system of Romanization is used for all Chinese names. Names are written according to Chinese tradition—family name first, given name second.

1994:3). It does not belong to any particular type of political regime<sup>1</sup>; neither is it tied to the development of one country.<sup>2</sup> It can be applied both to a very wide spectrum of human behavior and institutions at different levels. Corruption is so sophisticated that Heywood (1997:6) states “it would be impossible to develop one generalizable and uncontested definition of political corruption.” Essentially, its complexity or difficulties of being defined is reflected in the numerous forms of corruption, relativity of norms and law, and ambiguous boundaries between the public and private.

### 2.1.1.1 Forms of Corruption

The numerous types of corruption render generalizing corruption a hard job. Literature on corruption is filled with a wild variety of corruption classifications. For instance, grand corruption<sup>3</sup> takes place at highest levels of political system, such as president, ministers and other top officials, and therefore involves substantial payoffs (Moody-Stuart 1997:3); petty corruption occurs at low levels, such as public administrative department where citizens seek services (Perry 1997:1). In his study of the Keating Five Case, Thompson (1993) distinguishes individual corruption which benefits officials personally and institutional corruption which benefits officials’ interest groups directly.<sup>4</sup> There is also a distinction between systemic corruption and systematic corruption. Systemic corruption is the product of weak administrative systems and absence of watch-dog institutions, thus endemic to the system (Johnston 1998); systematic corruption, regarded as organized crime, occurs when the pursuits of private interest subvert the very design of the political system or can be seen as the result of political manipulation of economic interest. Amundsen (2000:4) once categorizes corruption into five groups: (1) monetary payment in transitive relationship,<sup>5</sup> (2) the misappropriation of public funds, (3) economic swindle or deceit, (4) extraction of money or other resources from disadvantaged persons through coercion, threats or even violence, (5) the “natural human proclivity to favor friends, family and anybody close and trusted” in

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<sup>1</sup>Davis (1910) points out that corruption was present in the electoral behavior of the Roman Republic.

<sup>2</sup>Lo (1993) depicts a vivid picture of corruption in autocratic China after the foundation of P.R. China.

<sup>3</sup>World Bank classifies these two into: “state corruption” and “administration corruption”. Some scholars’ classification of “political corruption” and “bureaucratic corruption” is in a similar vein.

<sup>4</sup>Institutional corruption benefits individuals in the sense that it brings political capital to the person who may get promoted later. See also Philp (2002), *Conceptualizing Political Corruption*. Some scholars label them “private corruption” and “collective corruption”, or “individual corruption” and “aggregated corruption”.

<sup>5</sup>Amundsen (2000) also finds equivalent terms to bribery, such as kickbacks, gratitude, backsheep, sweeteners, pay-offs, speed money and grease money. In contrast to bribery which is top-down term, these are bottom-up perceptions.

the resource distribution process and political process. For Alatas (1990:Chap. 3), there are seven kinds of corruption: “autogenic” corruption (benefits detrude from pre-knowledge of a given policy outcome), “transactive” corruption (mutual benefit through exchange between a donor and a recipient), “excoriate” corruption (to avoid “harm being inflicted on the donor”), “defensive” corruption (a person in need of something is compelled to pay bribe otherwise his interest would suffers), “supportive” corruption (the activity undertaken to protect existing corruption), “investive” corruption (activities for a fulltime reward in view), “nepotistic” corruption (equivalent to favoritism). There are other categorizations: “corruption without theft” and “corruption with theft;” “professional corruption” and “amateur corruption;” “corruption according to rule” and “corruption against rule” (Transparency International); “primary corruption” and “secondary corruption” (Welin 2002); public corruption and private corruption; “extractive corruption” and “redistributive corruption” (Rose-Ackerman 1999); and “bureaucratic corruption” and “political corruption” (Williams 2000:425). All these corruptions have their own particular features and specific scenarios which make generalization a big challenge.

### 2.1.1.2 Relativity of Norms and Law

When corruption gets to people’s view, the first thing coming to their mind is always that it breaks the law or is against norms. However, as scholars have noticed, one big challenge is the relativity of norms and law (Heywod 1997). Norms and laws are built on culture, social structure, political structure, and economic structure. Since different states are in different stages of development, are from different civilization traditions, and adopt different political and economic systems, the norms and laws are definitely divergent. For instance, some specific norms and law may only exist in particular countries. This is why “some nations feel that ‘gift’ giving or cash payments are acceptable, while other nations have very detailed codes of conduct regulating both legislators and bureaucratic” (Gardiner 1993:36). Even if different states share law and norms, the concrete contents may be different. Such relativity of norms and laws not only makes a highly abstract definition hardly possible, but also puts cross-national studies into an embarrassing situation.<sup>6</sup>

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<sup>6</sup>What is worse is that the law or norms in one society may be totally inhuman. One obvious example is the Jewish laws in Germany during the WWII (Gardiner 1993). Philip (2002:48) points out that “the use of local norms and judgment” “have a role in identifying what types of activity are understood as corrupt, but they cannot be accepted as the only criteria, since this world be to embrace a conceptual relativism which renders any cross-cultural analysis of corruption incoherent.”

## 2.1.2 Previous Definitions

Actually long before the modern studies on corruption, thinkers had begun to think about corruption and made remarkable attempts to define corruption from different perspectives. Some borrow legalist view; some draw lessons from economic theory; some examine it from sociological stand. No matter what approaches they adopt, it can be grouped either into realist paradigm or nominalist paradigm.

“Realism is the doctrine that an external world exists independently of our representations of it. Representations include perceptions, thoughts, language, beliefs and desires, as well as artifacts such as pictures and maps, and so include all the ways in which we could or do know and experience the world and ourselves. Relativism repudiates this doctrine, arguing that since any such external world is inaccessible to us in both principle and practice, it need not be postulated or considered” (Cromby and Nightingale 1999:6). While the nominalism is “the doctrine holding that abstract concepts, general terms, or universal have no independent existence but exist only as names.”<sup>7</sup> It denies the existence of abstract and universal concepts, and refuses to admit that the intellect has the power of engendering them.<sup>8</sup> Applying these two opposite philosophical paradigms to previous studies on corruption, we can see that scholars intentionally or unintentionally fall into these two camps.

Realist scholars believe there is a kind of behavior in reality which is corrupt no matter whether you agree or not, and their mission is to find the behavior pattern and then define it. Therefore, this group of scholars always tries to clarify the behaviors which are regarded as corrupt. That is why Heidenheimer (1989:9–11) labels their definitions as behavior-clarifying approach. The definition which results from their attempts is also termed “positive” (Qizilbash 2001:267). On the contrary, “nominalist” (Philp 1997:444) scholars hold a relative stand on corruption behaviors. Instead of mapping out the exact corrupt behavior features, and defining it based on the characteristics, they pay more attention to the structural environments wherein corruption occurs, or to the dynamics of how corruption emerges.

### 2.1.2.1 Realist Paradigm

The first is moral approach which can be regarded as the oldest school of thoughts on corruption. For them, a shared understanding of the rules is necessary to maintain public order and confidence. Any behaviors deviating from norms are seen as immoral or bad, including corruption. Hence researchers just “compare potentially corrupt behavior with an absolute moral standard” to determine if it is corrupt or not (Williams 2000:127). Plato considers that rulers are corrupt if constitutions serve the interest of the rulers instead of being guided by the law (Friedrich 1972:17). Aristotle

<sup>7</sup>Retrieved on March 10, 2007 from <http://www.bartleby.com/61/22/N0132200.html>.

<sup>8</sup>Please refer to “nominalism” (Rohmann 1999).

thinks it is necessary to distinguish “right” political constitution (in the common interest) and “wrong” political constitution (only for the personal interest of rulers) (Girling 1997:2). Such a notion of treating corruption as “a general disease of the body” (Friedrich 1972:17) continues in later western academic research. Machiavelli defines corruption as “the process by which the virtue of the citizen was undermined and eventually destroyed” (Friedrich 1972:18). This idea lays foundation for moralist approach. Montesquieu sees “corruption as dysfunctional process by which a good political order or system is perverted into an evil one, a monarchy into a despotism” (Friedrich 1972:19). Later, “Rousseau’s concern with corruption is primarily with moral corruption, and only indirectly with corruption, as providing the setting for moral corruption” (Friedrich 1972:19). Even in modern time, scholars still follow the moralist paradigm. Wraith and Simpkins (1963:17) claim that “corruption is above all a moral problem, immeasurable, and imponderable” in their study of contemporary West Africa and in 18th and 19th century Britain. In a nutshell, the moralist approach develops from ancient western culture, and “defines corruption as an immoral deviant form of behavior which has serious and detrimental effects on a whole range of political and economic activities” (Williams 2000:127).

The second is the legalist approach. Realist paradigm holders always try to find criteria by which a corrupt behavior can be determined. As Scott (1972:3) points out, “corruption we would all agree, involves a deviation from certain standards of behavior. The first question which arises is what criteria shall we use to establish these standards?” The Moralist School uses morals as the gauge stick, while legalist adopts the law as the standard. Bryce (1921:121) offers us a tight legal definition: “corruption may be taken to include those modes of employing money to obtain private ends by political means which are criminal or at least illegal, because they induce persons charged with a public duty to transgress that duty and misuse the functions assigned to them.” Similarly, Leff (1964:8) defines corruption as “extra-legal institution used by individuals to gain influence over the actions of the bureaucracy.” The definition by this approach is very forthright: to see s/he is corrupt or not is just to check his/her behaviors with the laws. If it is against law, then s/he is corrupt; otherwise s/he is clean, no matter how his/her behavior is immoral or unethical.

The public-office-centered approach is the third approach in realist paradigm. “The dominant definition of corruption from the 1960s to the 1980s was a legally derived approach—the public office definition” (Williams 1999:505). In addition to the laws, scholars add regularities which are specific to the office as the criteria to determine corrupt behavior so as to fix the narrowness of legal definition. The classical definition of this approach is provided by Nye (1967:417):

[Corruption is] behavior which deviates from the formal duties of a public role because of private—regarding (personal, close family, private clique) pecuniary or status gains or violates rules against the exercise of certain types of private—regarding influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private regarding are).

The World Bank,<sup>9</sup> Transparency International<sup>10</sup> and some Chinese scholars<sup>11</sup> take up similar perspective. The basic view of public-offices definition is that there are certain defined and explicit rules governing their behaviors, including the laws. A perfect public official will perform his roles by following all rules, otherwise s/he is corrupt.

The fourth one is public-interest-centered approach. The above three approaches have an implicit assumption that the morals, laws or norms are widely acknowledged or represent whole society's interest. However, it is more close to the fact that morals, laws and norms are established by the ruling group who actually is on the opposite side of the ruled class. One classical example is what Rose-Ackerman (1978:9) offers: "one does not condemn a Jew for bribing his way out of a concentration camp." To address this problem, a new approach called public-interest approach occurred in the 1960s. As a representative of this approach, Friedrich (1966:74) states:

the patterns of corruption can be said to exist whenever a power holder who is charged will doing certain things, i.e., who is a responsible functionary or officeholder, is by monetary or other rewards not legally provided for, induced to take actions which favor whoever provides the rewards and thereby, does damage to the public and its interest.

Chinese official terminology is very close to it: corruption is "the notion of the use of public authority and public resources for private interests (Yi Quan Mou Si: 以权谋私)." In this definition, the standard is changed from norms to the harm to the public, or we can say, from external criteria on corruption to consequences of corruption, which makes a step forward, especially for cross cultural studies, compared to the public-office, moralist or legalist approaches. Obviously, to have a clear idea of what behavior is corrupt, a distinction must be made first between public needs or interests shared by a community at large and private interest. And in this definition, public interest is always above private interest in people's value system.

The fifth approach is public-opinion-centered. Moralist, legalist, and public-office-centered approaches face a similar challenge: whose criteria are being used to determine a corrupt behavior, the dominant class or the subordinate class? The fact is that the ruling class's standards are always imposed on the ruled class. Such a class bias makes those definitions weak in a critical sense. Public-opinion approach is an attempt to fix this problem. Scholars in this group define corruption as "what the public in any given state perceives it to be" (Heywood 1997:424). In this sense, "public opinion is an important element in the identifying and understanding of political corruption" (Philp 1997:441). For Gardiner (1993:32), it is significant to

<sup>9</sup>Corruption, for the World Bank (1997:8), is "the abuse of public office for private gain."

<sup>10</sup>For TI (1996:1), "corruption includes behaviors on the part of officials in the public sector, whether politician or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them".

<sup>11</sup>Corruption should be limited to the "abuse of the power of the office (zhiquan: 职权) by the employees (gongzuo renyuan: 工作人员) of the party and state apparatus". See also Wang (1993).



pay attention to public opinion, because “it is likely that officials and government employees will be guided more by local culture than by the words of a law, and thus will be more likely to violate the law,” and also because “effective action against corruption will be difficult or impossible if opinion does not correspond to the state’s definition,” last because “citizens’ values about corruption are likely to affect how they behave themselves—whether they will offer bribes or will abide by the requirement of the law.”

### 2.1.2.2 Nominalist Paradigm

Realist paradigm holders believe that there are some particular behaviors which are significantly different from others and thus can be mapped out conceptually, so their research rests on behavior-classifying definitions. On the contrary, nominalists focus on the macro or meso structure in which corrupt behaviors are possible. Holders of this paradigm are not eager to separate some specific behaviors from others, but to pay attention to the mechanism behind behaviors.

The first approach in the nominalist paradigm is market-centered. This approach is devoid of all moral, legal, or office-centered concerns by reducing the interactions between bureaucratic and public (always corruption) to a point on the supply-demand curve. Klaveren (1989:9) is most cited as providing such a definition:

corruption means that a civil servant abuses his authority in order to obtain an extra income from the public...thus we will conceive of corruption in terms of a civil servant who regards his office as an business the income of which he will ... seek to maximize. The office then becomes a ‘maximizing unit’. The size of his income depends ...upon the market situation and his talents for finding the point of maximal gain on the public demand curve.

This definition is more like a fruitful model of explaining how corruption occurs rather than a way of defining it. The neutral stand avoids the confusion between objective or universalistic components and local and relative standards. Also this definition includes situations or conditions where norms for official behavior are not clear, or not well defined.<sup>12</sup>

The second is principle-agent-client approach (P-A-C) initially proposed by E. Banfield in 1975. In contrast to the realist approaches, the P-A-C sets up an interaction scenario wherein corruption occurs. In this model, three parties are introduced: principle who represents authority, such as chief officer, department head, sheriff<sup>13</sup>; agent who contracts to “carry out specified tasks for the principle” (Williams 1999:514); and the third party who always “seeks to influence the agent’s

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<sup>12</sup>Refer to Banfield (1975).

<sup>13</sup>For example, behaviors which neutralize a monopolistic bureaucracy by providing alternate, extra-legal means to access decision making and to gain influence over resource allocation are included.

decision by offering him a monetary payment” (Rose-Ackerman 1978:6). Based on rational choice theory, this model argues that agent is easily corrupt if his or her net benefit from corruption is larger than net benefit from being honest. Corruption occurs when an agent is corrupt when s/he “betrays the principle’s interest in pursuit of her own” (Klitgaard 1988:24) or an agent receives payment from a third party and the payments are not passed on to superiors (principle).<sup>14</sup>

The third approach is rent-seeking derived from economics as the P-A-C approach. The basic assumption of this perspective is that people are driven by selfishness and they are concerned with maximizing their self-interests by seeking “rent” in the public administration. The rent can be the payment for a resource that is in fixed supply<sup>15</sup> or “legalized or systemic manifestation of greed”<sup>16</sup> or “any advantage or surplus created by nature or social structure over a certain period of time.”<sup>17</sup> There are different types of rent, such as differential rent, true rent, quasi rent, and monopoly rent. Sometimes, rent exists in society due to imperfection; sometimes, rents are created by political elites. Once rents are in existence, the pursuit of them is regarded as rent-seeking which is actually corruption. For example, a politician threatens to unleash the investigatory, legislative, taxing and other compulsive powers of the state to harass and impose losses on individuals and firms unless that politician is compensated to refrain from doing so. The rent-seeking is said to be “directly related to the scope and range of governmental activity in the economy, and to the relative size of the public sector” (Buchanan 1980:9), therefore corruption can be much less if government’s role is reduced to a minimum in the social process. In sum, pioneered by Tullock (1967), this approach demonstrates that monopoly and other market imperfection created by state action for private benefit entail more than deadweight losses.

### 2.1.3 *Criticisms*

#### 2.1.3.1 **Problem of Class Biases**

Most of the above definitions take the legal standards or the ruling group’s ideology for granted. The ruler’s ideology and interest consideration are not questioned at all in the approaches. However, it is hard to assume that the ruling group or government’s logic is neutral, objective and well supported by the mass. Actually the history of criminological theory tells that it is necessary to take the ruling group’s interests into account in the research of crime. In the very beginning of criminology, moral and legal standards were placed a great attention in the explanation of crime;

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<sup>14</sup>Refer to Rose-Ackerman (1978:6).

<sup>15</sup>See Alchian (1987).

<sup>16</sup>See Welin (2002).

<sup>17</sup>See Sorensen (1996:P1337).

and individual low moral was attributed to the crime. Later, criminologists started to attribute the crime to individual psychology and biological features, as Lombroso and Freud did. By and by, criminologists realized the social environment might be the real factor attributing to crime; so strain theory, subculture theory, social disorganization theory and control theory emerged. Later, social developments made criminologists think of the ruling group’s ideology and interests in crime research, therefore labeling theory and social interactionism occurred. Shortly conflict school started to consider power struggle and legal equality in crime research. At this stage, crime is not only about behavior violating law, but also about power and ideology because it is found that “the concept of deviance as behavior breaching social norms is so inherently problematic” (Sumner 1990:19). At present stage, criminologists advance theory in a sense that crime is a form of social control to maintain the ruling group’s dominance as proposed by social constructionism, social censure theory and postmodernist theory, because in most cases, what is defined as deviant, maladjusted or pathological behavior is very much a product of the ideology of the definer which is the ruling group (Mills 1943). Therefore “if we are to explain crime, we must first explain the social forces that cause some acts to be defined as criminal while other acts are not” (Chambliss 1974:39). From such a development of criminology, we can see that the ruling group’s ideology and dominance by and by come to scholars’ view and is challenged by scholars (Fig. 2.1).

Having this in mind, just like researchers cannot fully rely on the statistics on economic development by government because it may be cosmetic and doesn’t reflect the real economic conditions, we should not confine ourselves to the government’s logic in crime studies. As a matter of fact, a legal definition leans to the rule-maker which is the ruling group in society. As Lo (1993:153) points out, “the legal definition does not reflect the political dynamics behind the creation of a new piece of legislation, e.g. the powerful have greater capacity to influence its content

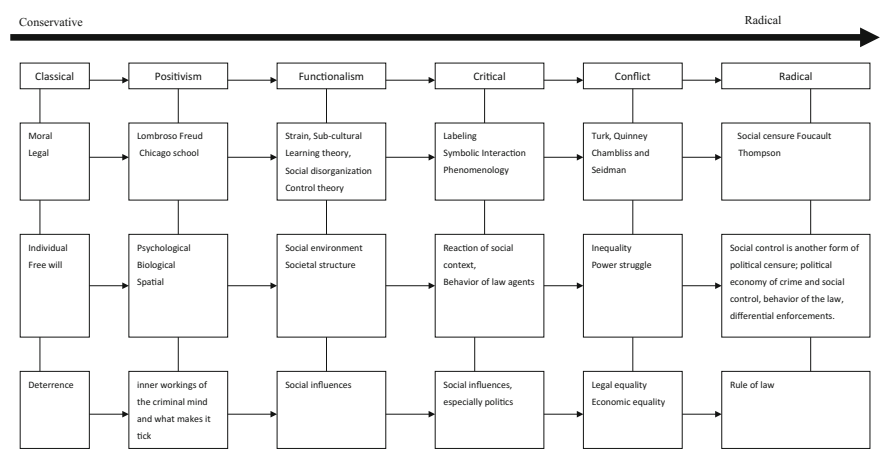


Fig. 2.1 Development of criminological theory

than the powerless.” The legal definition is obviously inclined to the ruling group, which is not fair to the caught or sentenced people. In the same vein, other definitions including moral, the P-C-A, and rent-seeking assume the government’s logic is right. Such a class or ideological bias confuses researchers. It is necessary to realize the problem and take it into account when researchers define it. As we know, “no particular behavior of personality can be shown to be universally deviant or criminal, and that the censures of crime and deviance are irredeemably suffused with ideology ... their definitions were constituted by the yardstick of their own ideals and norms” (Sumner 1997:22).<sup>18</sup> A good definition should reach the deep part of a phenomenon instead of its surface, but existing definitions are based on ruling group’s social construction, and those definitions do not jump out of the ruling group’s logic, and are about what behaviors are corrupt or how those behaviors happen.<sup>19</sup> That hurts his/her capability of reaching the essence or corruption. As a result, its interpretative capability and application capability are limited. Therefore, to grasp the implicit meaning behind corruption, it is necessary to break down contexts by exposing their underlying and hidden assumptions.

### 2.1.3.2 Problem of Inclusiveness

“The sanctions of positive laws are applied only to those more flagrant practices which past experience has shown to be so pernicious that sentiment has crystallized into statutory prohibitions and adverse judicial decisions” (Lo 1993:153). As we know, corruption occurs in different forms, such as grand corruption, petty corruption, bureaucratic corruption, and so on. All above definitions cover some specific corruption, but none of them explains all kinds of corruption, which decreases their applicability. For example, legal definition doesn’t include corruption in administration regulation, like banqueting, womanizing, minor misappropriation, or abuse of public utilities such as cars, electricity, phone bills and so on, let alone the new forms of corruption occurring everyday. Also, the P-A-C approach is “well suited to the analysis of bureaucratic corruption,” but may not be applied to “other more broadly-based forms, such as market corruption and extended patronage networks” (Johnston 1996:32). Similar to this, public-office approach and public-opinion approach miss out corrupt behaviors. With such a narrow and lag-behind definition, can corruption research be constructive and attributable to the academics? Moral definition is broad relatively, however, moral or public norms are not only subject to change, but also prove to be diverse. “An act may be considered ‘corrupt’ in one society, but ‘normal’ in another society or in the same society but different times” (Gong 1994:6).

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<sup>18</sup>Sumner (1997) points out that Wright Mills made similar argument in 1943.

<sup>19</sup>Sumner (1997:22) points out that the “perverse persistence has political, ideological and maybe even financial roots”.

### **2.1.3.3 Problem of Operationalization**

An abstract theory is always not good enough for research, especially today when empirical studies are in the heyday. To test their theories, researchers have to construct hypotheses and operationalize concepts. Several definitions offered above encounter such a problem of operationalization. The public-interest approach provides a much broader judging base than legal approach. However, how are behaviors determined to be against public interests? Public opinion is far from homogeneous in a complex society (Carino 1986). The difficulty also arises “from the vagueness of the notion of ‘public interest,’ and different ways of deciding who the ‘public’ is and what is in its interests” (Qizilbash 2001:267). Here, there is no absolute standard which can be used to determine. The same problem happens to the public-opinion approach and moral approach. Whose opinion should be used as the criterion? What level should the opinion base on? Obviously, “there is a danger that it will be the opinion of some specific group in society” (Qizilbash 2001:267). The market-centered approach does not classify any exact behaviors as corrupt, which makes it open to such a question of how researchers test their theory or what predictor variables they are going to use. In sum, more or less, operationalization is a big challenge to existing definitions.

### **2.1.3.4 Problem of Macro Structure**

All phenomena happen in a particular historical stage. In other words, every phenomenon has its own historical load. The specific social structure, political system, economic system, dominant culture and international environment determine one phenomenon only existing at that stage, or having some special features. Narrowing it down to specific behaviors, we can find the same logic. Although individuals are conscious of their own behaviors, their ideas, opinions, minds, and self are significantly influenced by the societal structure. Corruption, as a phenomenon, is determined by the historical conjuncture. Corruption, as behavior in appearance, is determined by societal structure. Existing definitions ignore such macro factors. Lo (1993:152) points out that the above definitions “fail to interpret the significance of historical changes, the class functions of corruption and the class manipulation”. For example, the public opinion approach or public interest approach touches the macro aspects, but don’t explore deeply the dynamics or mechanism behind the macro factors. In a word, these previous definitions leave “little room for the richness and subtlety of cultural and social settings” (Sun 2001:246).

### **2.1.4 Merits of the Previous Definitions**

Even though there are flaws or weaknesses in the previous definitions on corruption, they do offer some valuable points for future studies on corruption. Four aspects are especially salient: institution, inequality, benefit and mediation.

### 2.1.4.1 Institution

Humans are born to interact with each other and to meet their needs and satisfy their desires in nature. People are, therefore, organized for goal-oriented actions. However, human behaviors or goal-realization are processed in social environments. One important fraction of surrounding environment is human institutions. Human behaviors are constrained by human institutions. Therefore, it is necessary to consider corruption from an institutionalist perspective. The human institution, here, refers to a set of “humanly devised constraints that shape human interaction,” and “a set of rules, compliance procedures, and moral and ethical behavioral norms designed to constrain the behaviors of individuals in the interest of maximizing the wealth or utility of principles.”<sup>20</sup> The human institutions can also be viewed as human organizations itself.<sup>21</sup> We can see that previous definitions embrace important human institutions, such as law, office norms, and market. Morality is regarded as human institution too because human behaviors are influenced by the cultural or psychological constraints. Human behaviors can be understood as internalized human institutions which are passed down through generations by education, socialization and indoctrination. Three spheres (polity, economy, social life) of human institutions are methods to organize people engaging in the domains of human behavior.<sup>22</sup> Why a focus on human institution in corruption studies is better than a focus on particular behavior is that human institutions are relatively universal, stable and measurable in contrast to the diversity and ambiguity of human desires and individual rationality. Lo (1993: preface) criticizes previous definitions portraying society being “static and unhistorical”. However, an institutionalist perspective can help scholars see “the historically loaded structural conflicts underlying the creation...of corruption”.<sup>23</sup>

### 2.1.4.2 Inequality

It is well recognized that corruption produces lots of negative effects. McMullan (1961) lists several salient “evils” of corruption: injustice, inefficiency, mis-trust of government by the citizen, waste of public resources, discouragement of particular foreign enterprises, political instability, repressive measures, and restrictions on government policy. An outstanding negative effect or what the mass feel directly is

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<sup>20</sup>Refer to North, Douglass (1994:182).

<sup>21</sup>Refer to Kratochail and Ruggie (1986).

<sup>22</sup>Refer to Weber (1978:52, 333–337, 941–947), and Parsons (1951:136–150, 153–157).

<sup>23</sup>Peters (1999:6–12) summarizes four characteristics: legalism, structuralism, holism, and historicism and normative analysis. “Their analysis was concerned with how (their) contemporary system was embedded in their historical development as well as in their socio-economics and cultural present.”

inequality or injustice created by corruption. Equality means equal opportunity and equal reward for similar work in the social competition. Corruption destroys the fair competitive mechanism and creates inequality. First, corruption may facilitate the flow of information which is important to the third party. Second, the third party may exert influences on the agent who plays a critical role in decision making, such as recruitment or contract approval. Third, more generally, agents gain interests in an unacceptable way, which is unfair to all other social members who get rich in an acceptable or legal way. Fourth, not all corrupt officials are caught in corruption control. Some are lucky enough to get away; some are protected from prosecution. In other words, not all corrupt individuals receive the same treatment, which is unfair too.

#### **2.1.4.3 Benefit**

All preceding definitions agree on the interest incentive of corruption. Needless to say, all corruption entails private or collective benefits for the officials. Benefits can be instant or latent in the long run. Benefit can also be monetary or status, employment, or freedom during war. Benefits may be acquired by agents and may also be provided by bribe-giver. Both the bribe giver and bribe receiver can get benefits from the corruption process. Not only parties involved in the corruption benefit from it, but also the corruption control party such as national leaders or government. Gillespie and Okruhlik (1991) did a systematic study on corruption cleanups. They find that corruption “cleanups are political instruments which may be used to achieve several objectives: to de-legitimate the previous regime, to purge opposition, to manipulate the political agenda, or to decrease the incidence of corruption and thereby legitimate the current regime” (Gillespie and Okruhlik 1991:82).

#### **2.1.4.4 Moderations**

All agents in specific position are able to be corrupt, but not all of them are corrupt. Even though agents at similar positions are corrupt, the degree of corruption and the forms of corruption are diverse. Why is there such a difference? A key reason is that the moderation exists in the corruption process. There are many moderation factors, such as age, gender, conditioning structure, check and balance system, personality and so forth. Moreover, in different cultures, the above factors weigh differently. For instance, age plays an important role in Chinese culture. Chinese officials retire at the age of 60. Some officials who used to be “clean handed” begin to be corrupt at the age of 59 because most of their social resource will be gone one year later. It is called the ‘fifty-nine phenomenon (五九现象).’ Most of anti-corruption strategies start from moderation.

## 2.2 Cause Analysis

Most of approaches presume that

a social problem exists as an objective condition or arrangement in the texture of a society. The objective condition or arrangement is seen as having an intrinsically harmful or malignant nature standing in contrast to a normal or socially healthful society. In sociological jargon it is a state of dysfunction, pathology, disorganization, or deviance. The task of the sociologist is to identify the harmful condition or arrangement and to resolve it into its essential elements or parts. This analysis of the objective makeup of the social problem is usually accompanied by an identification of the conditions which cause the problem and by proposals as to how the problem might be handled (Blumer 1971:300).

Gary and Kaufmann (1998:9) also point out, “corruption is widespread...not because their people are different from people elsewhere but because conditions are rip for it.” Scholars have been doing their best to study the external “conditions” for corruption. Having analyzed the objective nature of the social problem, identified its causes, and pointed out how the problem could be handled or solved, scholars believe that they have accomplished their scientific mission. From the very beginning of research on corruption, scholars have been looking for the causes of corruption. Scholars from different disciplines discovered different causes for corruption.

### 2.2.1 *Economic Approach*

The economists claim that an incomplete and obstructed market, rather than the market, is the real culprit. They argue that a genuine and full-fledged market, which is based on fair exchange and equal competition, opposes diametrically to what corruption stands for. After China transforms herself from a planned economic system to a market economic system fully, corruption will diminish gradually with loopholes and discords removed and better coordinated. They argue that state power still plays a role in economic activities and resource allocation in transitional economy. The dual track system is always used as an elaboration. With reduced influences from government or officials, economic activities will be more “clean.” Therefore the institutional changes in economic system are necessary for the anticorruption.

### 2.2.2 *Political Approach*

Political scientists advocate that an irrational political system is the real drive behind corruption. Government or officials have excessive power and this is handy in officials’ rent-seeking. It is argued that the absence of checks and monitoring in



the political system causes corruption. The lack of transparency in administration and democracy, sectarianism, favoritism, and underdevelopment of interest representation are identified as the causal factors in corruption. Decentralization and over-centralization are also paid attention to by political scientist. Wade (1997) argues that over-centralized top-down structure was responsible for corruption in India, while Brueckner (1999) claims that corruption was more likely to be a problem among local governments due to decentralization. Huntington (1968) generally argues that modernization causes corruption.

### ***2.2.3 Sociological Approach***

Inequality is a classical topic in sociology. For sociologists, inequality is always in favor of the rich or the ruling group. As Glaeser et al. (2003:200–201) state, “inequality is detrimental to the security of property rights, and therefore to growth, because it enables the rich to subvert the political, regulatory, and the legal institutions of society for their own benefits.” In the same vein, sociologists always pay attention to the role of inequality in breeding corruption. You and Khagram (2005) argue that “the rich, as interest groups, firms, or individuals may use bribery or connections to influence law-implementing processes (bureaucratic corruption) and to buy favorable interpretations of the law (judicial corruption).” Uslaner (2005) further explores the way inequality cultivates corruption:

(1) leading ordinary citizens to see the system as stacked against them; (2) creating a sense of dependency of ordinary citizens and a sense of pessimisms for the future, which in turn undermining the moral dictates or treating your neighbors honestly; and (3) distorting the key institutions of fairness in society, the court, which ordinary citizens see as their protectors against evil-doers, especially those with more influence than they have (Uslaner 2005:17–18).

Where does inequality come from? The orthodox Marxist argues that corruption is rooted in power relations rather than production relations. The exploitation within the system is the dynamic of corruption. It can be even applied to socialist China on the basis that “some officials utilize public power to exploit economic gains just as the capitalist class’ economic dominance leads to money dominance in politics” (Sun 2001:256).

### ***2.2.4 Cultural Approach***

Culturalists argue that certain local culture is responsible for rampant corruption. Tanzi (1995) argues that firms in some countries are culturally less or more inclined to have arms-length economic relationships, which in turn may lead to more ingrained corruption. Non-protestant culture, colonial heritage, Confucianism, and

feudal values are also blamed for corruption. The selfishness and emphasis on personal relationships in these cultures are claimed the key unit influencing peoples' behaviors.

### 2.2.5 *Criticism*

The above causal analyses do provide insights on the reason of corruption. However, they face different limitations.

I categorize the causes into three groups: pre-corruption, in-corruption, and after-corruption. The pre-corruption category focuses on the institutional structure or cultural units which induce corruption. These factors are either opportunistic to officials or deterministic to corruption, and they exist before corruption happens. That is why I call them pre-corruption factors. These arguments are made very general and at the national level. Decentralization, SOE reform in China, limited social resources, human nature, guanxi (network and obligation), underpay of functionaries, and so forth are the most common ones accused for corruption. However, these factors are weak while explaining the difference of cleanness of governance in various societies which share the same features. For example, Confucian culture (guanxi 关系 and renqing 人情) is shared by mainland China, Hong Kong, Japan, Singapore, and Taiwan, but Hong Kong and Singapore are ranked the top clean governments among the world. Given so, can we still blame Confucian culture as the root cause of corruption? The same dilemma happens to the decentralization too. The decentralization is a political process taking place across the world. Only a few is found to be corrupt together with decentralization. Democracy cannot guarantee a clean government either. Bangladesh is a democratic country, but it is notorious for the rampancy of corruption. Autocratic government does not mean corruption either. China under dictatorship in Mao' era was famous for clean governance. Therefore, the interpretive capability of the pre-corruption factors is inadequate. In a second thought, there is no perfect system, no matter whether it is economic, political, or social; deficiency exists in all systems. According to the pre-corruption group, these deficiencies inevitably lead to corruption. In other words, corruption is an incurable cancer, but that is not the fact. We still have many clean governments on earth.

The in-corruption category stresses the working circumstance at the departmental level. The absence of check and balance in administration is found to be the real "curse". The transparency, self-discipline, and separation of levied fee account and department account are said to be effective in eradicating corruption. However, although China has reformed accordingly, there is no positive outcome. Obviously, there must be some other confounding factors behind it.

The third group is after-corruption category. This category analyzes at the national level. The focus of this group lays in the measures after corruption happens. How to fight corruption effectively is their top concern. An irrational judicial

system is always the most concerned factor. However a rational judicial system doesn't guarantee clean governance.

All the above causes may be able to explain corruption in a specific country, but all of them fail to interpret the corruption across-countries. There must be other confounding factors staying behind them. This study is planned to find those factors.

## **2.3 Suggestions for Anticorruption Measures**

### ***2.3.1 Previous Theoretical Suggestions***

Having researched the causes of corruption, various scholars also try to find effective anticorruption measure. The suggestions are based on the researchers' perspectives and the causes of corruption in their eye. Establishing an efficient and independent anticorruption system, for scholars (Clark 1987; Holm 2000; Doig 1995; Klitgaard 1998; Segal 1999), is a prerequisite for anticorruption, especially when Hong Kong, Australia and Singapore succeeded with it. Ades and Di Tella (1996), Goel and Nelson (1998), and Gurgur and Shah (1999, 2000) proved that judicial independence could reduce corruption significantly. Legal scholars therefore suggest reduced government control over the judicial system. Some countries, particularly developing countries in which functionaries' salary is low, tried to curb corruption by raising public sector's wage. Singapore and Hong Kong succeeded with such an improvement. Political scientists (Shackleton 1978; Dobel 1978) suggest diffusing authority, expanding access to political process, and administrative reform. Although it is controversial, reducing public sector size is a suggestion too. Elliot (1997) finds a negative relationship between budget size and government, but Tanzi and Davoodi (1998), LaPalombara (1994), La Porta et al. (1999) find a positive relationship between reduction in public sector size and less corruption. It is found that larger public sector and more involved government are associated with more opportunities for corruption. They, therefore, suggest allowing market forces to operate unencumberedly (See also Macrae 1982). Kaufmann and Sachs (1998), and Gurgur and Shah (1999, 2000) consider citizen participation is also important in the fights against corruption. A rational civil servant recruitment and promotion system is also thought to be useful in curbing corruption (Rauch and Evans 1997). Gurgur and Shah (1999, 2000) report a negative association between financial accountability and corruption. Improving financial accountability is therefore an important suggestion for anticorruption. Suggestions from some other economists are to reduce expected gross benefit, reduce number of transactions, increase the probability of paying penalties, or increase the magnitude of penalties (Huther and Shah 2000). Brunetti and Weder (1998) find that freedom of press is negatively correlated with the level of corruption. It is argued that an open press can serve as a threatening weapon against corruption. Rauch and Evans (1997) consider

moral character and quality of government officials are a noteworthy determinant of the extent of corruption. Their study shows that cross-country corruption ratings are statistically significantly related to the way civil servants are recruited and promoted. Therefore they suggest emphasizing the meritocratic recruitment, meritocratic promotion and security employment. Needless to say, all these suggestions (societal, legal, market, and political) are based on scientific researches, and provide intriguing proposals for anticorruption.

### 2.3.2 *Criticism*

However, all these suggestions have not caught the nature of corruption and therefore failed to offer a plan which can cure the disease of corruption completely. At least, those suggestions have not worked for post-reform China very well.

China made numerous changes after the Reform and Open Policy in 1978, such as simplifying administrative processes, formalizing legal systems, modernizing judiciary structures, and increasing the independence of the judiciary. While not explicitly targeted at preventing corruption, it is true that improving managerial skills, simplifying and clarifying procedures for case-management, and enhancing the transparency of and access to judicial information contributed to reduce corruption and discretion (De Asis 2000:15). Some bureaucratic reforms aimed at reducing opportunities for officials also helped to curb corruption. For example, administration fee or fine used to be collected and spent by the same department, but now fee collection and spending are separate. That means the fee collected will be deposited into a separate financial account, while the department in need of budget has to apply for it. However, the collateral effect of curbing administrative discretion and reducing bureaucratic corruption is very limited. Both the external report and internal report suggest that corruption is a serious social problem in post-reform China.

The limitedness of effect may be due to the previous definition, causal analysis and perspective which miss the essence of corruption. Theoretically, it is implausible to perfect administrative system. There are always loopholes or possibilities of discretion in all systems such as

the issuance of license, permits, quantitative import restriction, passports, customs and border-crossing documentation, and banking license, the implementation of price control, the blocking of entry to new firms and investor and the provision of monopoly power, the awarding of public procurement contracts, the granting of subsidies, soft credits, tax exemptions, and inflated pension and the allowing of tax evasion, the imposition of foreign-exchange controls resulting in multiple exchange rates, the over-invoicing of imports, and the flight of capital, the allocation of real estate, grain storage facilities, telecommunications, and power infrastructure, the discretionary application of socially desirable regulation such as those that apply to public health and the environment, and the maintenance of obscure or secret budgetary accounts as well as other 'leakage' from the budget to private accounts (Kaufmann 1997:123).

Given that government cannot clear these loopholes completely; they cannot be free of corruption as a result. Moreover, the new economic forms and subsequent new forms of administration come out as societies develop. Again, the new administration cannot be perfect. Officials will always find out its defects and use it for personal gains. That may be the reason why Lord Acton says power tends to corrupt and absolute power corrupts absolutely.

## Chapter 3

# A Contextualized Approach: Theory of Social Censure

### 3.1 Social Censure Theory

The approaches reviewed in the Chap. 2 share one point that corrupt individuals do something wrong according to ruling group's standards, no matter whether their behavior is against norms, laws, ethics, public interest, public opinion, or principle's objectives. In other words, their analyses are inner institutional. As pointed out in the earlier chapter, a commonly missed point in their analyses is that the ruling group's standards or positions are always right with no challenge. Such a class bias is commonly presumed. It might be overstated to refer it to "false consciousness." Nevertheless it is inappropriate not questioning ruling group's ideology and entrenched interests at all; after all, the ruling group's standards may not represent the whole society's interests. Social censure theory goes beyond it by rejecting the ruling group's normative assumption or behavioral prerequisite about corruption. "Given the impossibility of using the social categories of crime and deviance as scientific categories or observational terms with definable, constant and consistent behavioral referents (Sumner 1990:26), Lo (1993) examines corruption in a societal (social, political and economic) structure and historical background with the ruled group's interests and political economy taken into account instead of analyzing corruption following the ruling group's logic. As Sumner (1990:26) states, "it makes most sense to treat them as elements of highly contextualized moral and political discourses, i.e. negative ideological categories with specific, historical applications" (Sumner 1990:26).

As we know, "the categories of the criminal law and common morality are hopelessly inadequate as empirical descriptions of specific social behaviors" (Sumner 1990:25). Therefore, definitions of criminal or deviant behavior, including corruption,

even within a single society, exclude what should be included, include what should be excluded, and generally fail to attain unambiguous, consistent and settled social meanings. To this we can add massive cross-cultural differences in the meaning, enforcement and even

existence of categories of deviance, and endless instances of resistance to them involving alternative categories (Sumner 1990:25).

What should be included, what should be excluded, and what criterion to be used are in the hands of the ruling group. In the 1970s, Scott finds that previous scholars implicitly give “normative value to whatever standards of official conduct happen to prevail” and thereby fail to “treat corruption as an integral part of politics” (Scott 1972:5). Indeed, “the determination of whether a particular action is corrupt depends very much on the direction in which political groups seek to influence public opinion” at specific historical stages (Lo 1993:153). Or we can say, “there are moral-political judgments behind it” (Lo 1993:2). Chambliss, Bretton and Smart enrich this argument with empirical studies. All their studies show that corruption and anticorruption are subordinate to politics. Chambliss (1975) finds that anticorruption is very discriminatory so as to protect the interests of the ruling group; Bretton (1962) indicates that anti-corruption’s jurisdiction is a subject approved by the dominant group; Smart (1983) observes that corruption is a “political reality in which the ruling class patronized the ruled to preserve its entrenched interests” (Lo 1993:2). And it “involves complicated structural conflicts and political compromise (Lo 1993:3). From the experience of Mainland China and Hong Kong, Lo (1993) also observes that the definition of corruption varies from society to society on the basis of political and economic structures and historical changes. His research further tells us that definitions within the same society are divergent. In this sense, all kinds of deviance including corruption are not “scientific categories or observational terms with definable, constant and consistent behavioral referents” (Sumner 1990:25). Based on this, Lo (1993) treats corruption not “an objective behavioral category”, but “a form of social censure.”<sup>1</sup> In this sense, corruption is frequently a political tool used by the dominant group to preserve its power and interests and can go crazy if there are no constraints. In other words, it is only functional to the dominant group. Lo (1993) addresses the contradiction that dominant group censures corruption when it is the main beneficiary if not censured. For him, the dominant group decides to censure corruption for “a specific target to achieve, a pressing problem to solve, a hegemonic function to perform, or a good cause for concern” (Lo 1993:4). As we perceived above, corruption is practical, systematic and contextualized, so is censure on corruption (Lo 1993:4). In the process of censure on corruption, the targeted group is always in the disadvantaged position, because the dominant group is in charge of state apparatus and community organizations.

The concept of social censure is not static but flexible. It can serve the whole ruling group, and can also serve factions of the ruling group or just a small bunch of ruling political elites. Usually only the ruling group has capacity to create a form of

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<sup>1</sup>The word “censure” perfectly describes the image of anticorruption. First, it reflects status difference of two key parties in the anticorruption, which is government (ruling group) and to be punished officials. Only can the powerful censure the powerless. Second, it reflects interest presumed. The censurer will not hurt its own interest when censure other. Third, it reflects ideology or moral presumed. The censurer censure others based on his own ideology or moral rather than a well-based one.

social censure. In some cases, the dominant faction within the ruling group can use their political resources to create particular social censure. Since they create such social censure to reach specific political goal, they are the main beneficiary if the social censure is successfully applied. In mainland China, many social censures were created for group interests and it did help the ruling group to eliminate political enemy. Although, the working class and peasants also won a lot from those social censures. Once the social censure is created, the ruling group or the dominant faction within the ruling group has to rely on local officials to apply for it. The local officials may put their interests in the application of social censure. In such cases, these local officials are the main beneficiary although the ruling group as a whole receives benefit from it. In a word, who is the beneficiary depends on the historical conjuncture and specific situations. The beneficiary exists at macro, meso and micro levels, but they are definitely ruling political elites.

Such a perspective is advantaged in several aspects. First, it doesn't involve any value judgment, thus can avoid the debate whose criteria (dominant group or subordinate group) is used to determine corrupt behaviors. Having no biases towards any section of society, it is supposed to be value-neutral. Second, it is an integration of micro and macro perspectives. This definition focuses on macro factors like political systems, class, and institution, but the analysis with this approach can be lowered down to micro level like individual interactions. The flexibility allows this perspective to be applied to different cases. Third, the ambiguous distinctions between public and private sectors are avoided, so it is easier to get away from the difficulty of distinguishing between corrupt behavior and non-corrupt behavior. Fourth, this view is more inclusive than all other definitions. It can explain both agents and client's behavior in contrast to public-office, or public-interest approach which can only account for agents' behavior. In other cases, it can interpret both ruling group and ruled group's corrupt behaviors. Also for instance, the P-A-C approach is embarrassed for systematic corruption is not included in its definition. However, this definition can account for both systemic and systematic corruption. Previous definitions focus on political corruption, leaving private corruption out, but this definition is a great attempt which solves this problem. Many other opposing categories such as personal and institutional corruption, functional and dysfunctional corruption, grand and bureaucratic corruption can all be interpreted by this perspective. In a word, this definition avoids weaknesses of previous definitions, and integrates the strong points of them into a more flexible, inclusive and strategically situated framework.

### ***3.1.1 Origin of Social Censure***

Berger and Luckman (1966:151) point out that

Every individual is born into an objective social structure within which he encounters the significant others who are in charge of his socialization. These significant others are imposed on him. Their definitions of his situation are posited for him as objective reality.



He is thus born into not only an objective social structure but also an objective social world. The significant others who mediate this world to him modify it in the course of mediating it. They select aspects of it in accordance with their own location in the social structure, and also by virtue of their individual, biographically rooted idiosyncrasies.

With respect to this, we can see that social world is structurally constructed. All of us are living in such a subjectively constructed world. Then who are constructing the world? The answer is the ruling group whose representative is government. Superficially it is their responsibility to maintain social order. Then who has the power to construct? The answer is the ruling group or the dominant faction within the ruling group again. "In society which are substantially divided by class in terms of wealth, power and ideology, it is inevitable that the class bloc which dominates the economy, owns the means of mass communication and controls the reins of political power, will have the greatest capacity to assert its censures in the legal and moral discourses of the day" (Sumner 1990:27). It is hard to imagine scattered or immobilized individuals have such capacity (We have to acknowledge that the mass do have a little bargaining power, but it is very limited compared to the ruling group's power). The ruling group can construct a positive world and also a negative world, depending on their interests and concerns. Here we focus on the negative world constructed which is normally called social problems.

Instead of simply accepting the traditional approach, Blumer (1971:301) put forward the idea that social problems are identified as part of a collective definition process that has five distinct stages: "(1) the emergence of a social problem, (2) the legitimation of the problem, (3) the mobilization of action with regard to the problem, (4) the formation of an official plan of action, and (5) the transformation of the official plan in its empirical implementation." Here we can see a very important stage which is the legitimation of the problem. Blumer (1971:301) points out, "here ... we are confronted with a selective process in which, so to speak, many budding social problems are choked off, others are ignored, others are avoided, others have to fight their way to a respectable status, and others are rushed along to legitimacy by a strong and influential backing." Why there is a selective process? Who plays the major role in the selection? Blumer doesn't make it clear. Social censure theory holds it is the ruling group within the society which selects and legitimates the social problem. The reason for selectively censure is various. The most important one is maintaining the ruling group or political elites' hegemony. According to Gramsci (1971), such hegemony does not only refer to political and ideological leadership, but also includes the common sense knowledge of the everyday. In other words, the interests of the ruling group or political elites are not only reflected in politics and ideologies, but also in the taken-for-granted, assumed-as-natural knowledge that appears as common sense. By accepting a version of common sense that protects the interests of the ruling group as natural and inevitable, the ruled 'consent' to domination, and thereafter the revolution is prevented and the social order is maintained. "A particular censure of crime or deviance, and the level of its enforcement, may approximate to some democratically shared "social" value to some degree, and may

even contribute to some poorly defined social health, but as a whole censures and their enforcement tend to reflect the antisocial interests to capital, patriarchy, and ethnicities” (Sumner 2003:28).

### ***3.1.2 Creation of Social Censure***

As analyzed above, corruption is a form of social censure constructed by the ruling group or political elites to maintain its hegemony. And I also argue the creation or construction process of censures is a bargaining process rather than a straight top-down process. There are contests, negotiations or compromises between the ruling group and ruled group in the process. How does the ruling political group socially censure? They first pick out social problems or social phenomenon. Then they signify the phenomenon and interpret the phenomenon negatively with reference to their values or morals. What follows is establishment of law or regulation to enforce it.

First, the construction of censure must be based on social values or moral standards. We can say censure is moral in character (Sumner 1990). Otherwise, it may cause rebels from the ruled group. The most common social censures are “militants, muggers, extremists, deviants, thieves, prostitutes, perverts, nutters, delinquents, bastards, villains, freaks, rioters& scroungers” (Sumner 1990:26). Corruption is certainly an important form of social censure. It is not hard to see that what are socially censured are those against morals. Sometimes, the ruling group has to appeal to moral standards frequently in order to get a ground base. Social values or morality in most cases follow the dominant ideology or standards. If the values were not consistent with the ruling ideology, the ruling group or political elites will use their political sources to change it. Social censures “are rarely arbitrarily applied, and are rarely just external to their targets, whose capacity for reflexive action means that they were probably already aware of their discredibility” (Sumner 1990:28). In this sense, the ruling group’s capacity of censoring is limited too.

Second, censures are political in character (Sumner 1990). The ruling group’s “frequent appeal to general moral principles gives” social censures “inherent political potential in the constant struggle for hegemony” (Sumner 1990:27). Moreover, the censures “signify worth and correctness against wrong and danger... simultaneously form a justification for repressive action against the offender and for attempts to educate the recipient into the desired habits or way of life” (Sumner 1990:27). At the same time, as Blumer points out, the creation of social censure is a very selective process. What should be censured at specific time or places is a highly political (See Bergalli and Sumner 1997; Sumner 1997). There are tons of social problems emerging in a short time. The ruling group won’t censure all of them. The censures reflect “dominant economic, political, and cultural interests and preferences and targeting the groups, individuals, and acts offending those interests and preferences” (Sumner 2003:28). For example, “to include everything under corruption would actually play into the hands of political dissidents who magnify

government failures to stir up social discontent” (Sun 2001:249). Therefore the most challenging behaviors to the ruling group may be censured first. Internationally, Gillespie and Okruhlik (1991) find that corruption in different historical moments (post-coup, post-revolution, post-succession, post-election and incumbent) is in response to different stimuli (challenge from counter elite, personal values of president, adverse publicity and political development). The objectives (discredit prior leadership, justify assumption of power, fulfill mandate, consolidate power, manipulate political agenda, self-preservation, and facilitate re-election), accordingly, are different for the censure on corruption in various social backgrounds. Therefore, “the creation of social censure carries specific historical significance, because it reflects the historic struggle over political ideals, actions, and ideologies between antagonistic classes, and between competing power bloc” (Lo 1993:206). Sun (2001:246) summarizes it as that “the conceptualization of corruption is politicized.” Moreover, the ruling group or political elites create social censures through state machinery. Therefore, the social censure comes out in an official way without any folk gossip characteristics.

Third, the censure is negative once it is constructed. What is to be censured is against morals and the ruling group’s interests. Such a prerequisite determines that censure is a negative label to the censured individual and censured phenomenon. Since the ruling group or political elites can use state machinery to market it, the censures will be accepted by the mass as negative by and by although there maybe some resistance at the beginning.

Fourth, social censures serve certain goals for the ruling group or political elites. There are direct goals, such as to discipline “black horse”, signify “right” and “wrong” within society, cater for “people’s need”, redirect public attention, and so on. The indirect goal may be deduced from the accurateness (time, place, and topic) of emergency of social censures. By analyzing the corresponding historical backgrounds and ongoing issues, it is easy to map out the ruling group’s goal. In a word, the ruling group may maintain the status quo by denouncing the others. Therefore, the ultimate goal is to maintain hegemony.

Because it is political in nature, the creation of social censure is not unified. Viewed at international level, law contents on corruption (appearance of censure on corruption) across the world are noticeably diverged. What to include and how to define it are in the hand of ruling group of their own country rather than an international organization. Because there are interest blocs and interest contests in society, the creation of censure on corruption in a single country is not consistent either. For example, for the same censure on corruption, different names were constructed at different historical conjunctures in China, including Three-antis, Five-antis, Four-cleanups, party rectification, anti-spiritual pollution, bourgeois liberalization, white-collar crime, occupational crime, and economic crime. Moreover, the emphases on censuring corruption (although the cores are the same) are divergent. For example, the Three-antis focus on corruption, waste, bureaucratism; the Five-antis focuses on bribery, tax evasion, theft of state property, cheating on government contracts, stealing state economic information; and the Four-cleanups focuses on account books, granaries, properties and work-points.

These different faces of censure on corruption reflect political needs and the ideological struggle within the CCP, group interests, and international situations. As Sumner (1990:27) summarizes, “the perpetuity of contestation of social censures in divided societies means that there are always oppositional, alternative or negotiated forms of censure existing within subordinate group milieu, opposition parties, and political or cultural movements.”

### 3.1.3 *Application of Social Censure*

Once the censure is created, it will sustain a long time. The next part of social censure at this stage will be the application of censure. The censure is applied “for a variety of purposes and in a variety of contexts. They are practical, that is they are invoked or exist within the course of historically specific social practices” (Sumner 1990:26).

The punishment on individuals or organizations (application of social censure) is done bureaucratically. First of all, it is a long bureaucratic process instead of a simple arbitrary disciplinary action. Several procedures must be followed; several departments are involved. Even though the ruling group has the ability to censure, it has to follow the rules established earlier in the afraid of strong resistance from the censored and subsequent legitimacy crisis. Second, since it is an official and bureaucratic, it leads to status change for both the censurer and the censored. It is articulated that the creation of social censure serves for the censurer (the ruling group or political elites). Once the creation and the application of social censure is finished, the censurer’s interests are protected; status is maintained or moved upwardly; economic policy out of their ideology is carried out; and opponents are purged or denounced. In the contrast, the censored’s status moves downwardly; they may be thrown into jail, or lose the official post and salary; they may lose respect from society too. For Sumner (2003:26), “the bulk of real punishment is not in the form of the prison sentence or even a fine but in the loss of work, status, finance, and family, and, as such, is imposed on the offender’s relatives as much as upon the offender.”

The ideal application of social censure is to get all the “right” individuals or organizations punished in a bureaucratic way, but the facts are not always so. The same as the creation of censure, the application of social censure is much contextualized at all levels (central, provincial, municipal, and county). There are macro, meso and micro factors influencing the application of social censure; therefore problems always occur in the process of applying social censure. For every specific case, the influencing factors are different. We have to look into concrete conditions for each case when we analyze the application of such social censure. Using the law enforcement against prostitution in mainland China as an example, we may see how other factors interfere the application of social censure. It is stated clearly that prostitution is against *China Criminal law*. However, the prostitution is allowed in top hotels in most of cities with policeman’s tacit permission. Why? The logic is like that: a decent hotel is necessary for business;

entertainment (including sex service) in hotel is common for business reception; otherwise no guest would stay in hotel; all cities want to attract investments from outside (from Hong Kong, Taiwan, developed provinces, or western countries); the boss of hotel can get an exception from public security bureau at his/her city level. Therefore, to attract investments from outside, most cities allowed prostitution in the best hotel as a part of investment environment. Of course, there is prostitution at other places in cities, but they are at a big risk of inspection and arrest by the public security at any time. From the case, we can see that prostitution as law article is used for the ruling group's interests (development of local economy directly and hegemony indirectly).

It is the same for corruption; other factors may determine the time for censure of corruption, the method of censure, the content of censure, the targets of censure, and the ruling group's attitude toward people's demand for genuine anticorruption. Having the ultimate goal (hegemony) in mind, the ruling group or political elites has also to consider those factors when they apply the censure of corruption. That is why Lo (1993:71) states that the censure of corruption is "a structural reflection of real political and economic tensions."

As mentioned earlier, the application of social censure is to reach some particular goals. Among all, the most important one is to maintain hegemony, and it is its ultimate goal. Lo (1993:74) points out the "the ultimate objective of social censures is to uphold the dominant social relations." How is hegemony maintained? Is anticorruption enough for maintaining hegemony? Obviously it is not enough. There are many other things influencing its hegemony. Anticorruption is just one of these factors. All those concerns are in the ruling group's political agenda. And they have to take them into account when they applying social censure; it is impossible for them only to pay attention to corruption control. For example, they need mass participation in anticorruption, but also are afraid of losing control. Also for instance, they need to crack down economic crime, but do not like to hurt economic growth. In any case, they want to catch targeted corrupt officials but not too many, for it may hurt its ruling foundation at the same time. Chinese government's censure on corruption in 1989 reflects such a complicated dynamics. Manion (2004:199) describes it precisely as follows:

Anticorruption campaigns in the 1980s and 1990s are constrained by the new priority of economic growth and also by the regime's fear of a mass public truly mobilized against corruption, as it was in 1989, and perhaps ultimately mobilized against the regime itself.

Top leaders' ideology also plays a role in the application of social censure. The most salient example is the anticorruption movement in Mainland China right after its establishment. It is well known that P.R. China is built up on a base of a previous pro-capitalist state and a late pro-communism ideology. There are many gaps between social reality and communist prospective future. Mao wished to "maintain a clean, efficient and modern socialist government that could cater for the people's needs" (Lo 1993:41). To actualize their ideal, they had to change many realities (feudal or capitalist remnants) for future development. After all, "for the communists, the bourgeoisie, including intellectuals, businessmen, and any pro-American,

pro-Kuomintang and religious elements, were the remnants of imperialism and feudalism. They were the people's enemies and had to be wiped out" (Lo 1993:40). As a result, Three-antis, Five-antis and Four-cleanups were launched to clean up development obstacles. We can see that "the censure of corruption itself signified a communist attempt to get rid of bureaucratic and feudal elements, especially once Mao understood that one of the main reasons for the downfall of Kuomintang (国民党) was its entrenched and institutionalized corruption (Lo 1993:41). In Deng Xiaoping era, the censure of corruption was made use of for the ideological reasons too. In the October 1983, the CCP launched the Party Rectification Campaign aimed at correcting various kinds of abuse of power and irresponsible bureaucratism. However, the purpose was far from that simple. According to Lo's research, one goal of the Party Rectification was to "correct the leftist and rightist tendencies in the party ... Some members had not liberated themselves from the leftist thoughts of the past and resisted the modernization programmes, whilst others were contaminated with capitalist ideas and promoted bourgeois liberalization. Both of these incorrect tendencies were incompatible with Party principle" (Lo 1993:49). Not only the leaders' general ideology influences the application of social ensure, but also the ideological difference among leaders has a role. Some leaders favor mass participation; some favor the legal process. Some prefer top-down campaigns; others may be interested in bottom-up campaigns. Some leaders may dislike or hate corruption; some may tolerate corruption to some extent. Some may think corruption is a compensation for low-paid officials. These differences may influence the application of censure on corruption. For instance, the ideological differences between Mao and Liu in the 1960s are exposed in the application of social censure. Mao, as an "leftist", places more emphases on equality and ideology, while Liu, as a "revisionist," stresses more on liberal economic development; Mao prefers "mass line" and "popular justice," while Liu tends to use a well-defined legal code or institutionalized control in enforcement (Lo 1993:33–36). In the movement of Three-antis, Five-antis and Four-cleanups, these differences directed how Chinese government censured corrupt officials, urban bourgeois class and rural rich strata. In Deng's era, two opposing camps emerged again: "reformers advocate glasnost, whilst conservatives insist on tighter Party discipline and ideological control;" and "the censure of corruption and other political crimes has reflected these contradictions. The two opposing ideologies met face to face and came into overt conflict, which eventually led to intense political struggles among rival factions within the CCP" (Lo 1993:73). As a result, several rounds of anticorruption campaign for various political purposes occurred in various faces.

Not only does the difference in ideology play a role in the application of social censure, but also the difference of ideas on economic development. Deng Xiaoping and Peng Zhen differed on how to reform China in the early 1980s. Deng is "liberal" while Peng is "conservative." And they are tied up in the "discussion" of how to reform. To make China develop according to his idea, Deng used political maneuver by investigating Peng's daughter with an excuse of corruption (Lo 1993). Consequently, Deng won the "internal struggle" and reformed China following his idea. The case suggests that the censure of corruption "has the capacity to destroy

and colonize political enemies” (Lo 1993:74). In the same vein, the divergence in other aspects among top leaders weights the application of social censure too.

The pressure from the ruled also has a role in the application of censure on corruption. In the middle of 1980s, rampant corruption and people’s increased demand on political rights led to economic and administrative reform to curb corruption in China, such as removal of dual price system, election of cadres, supervision of cadres, separation of party from state administration, price inspection, rectifying state companies, promotion of younger party member, liberalizing all prices, correcting financial irregularities in the Army, establishment of Economic Crime Reporting Centers and hotlines, stopping public waste and extravagance such as conferences, banquets or luxury goods, income declaration system. Under people’s pressure, the ruling party tried to combat corruption by clearing the institutional roots in the socialist system.

An interest conflict may also play a role in the censure of corruption. There were political tensions between reformists and conservatives at the turn of 1970s. The Reform and Open Policy in China catered for reformists’ needs and ideas, but at the same time, would hurt conservatives’ interests. To win the battle, Deng Xiaoping resorted to censure of corruption targeting leftists, opportunist and conservative factions. However, the “leftist camp” was strong and caught chances to fight back in form of social censure against “spiritual pollution” (defined as “disseminating all varieties of corrupt and decadent ideologies of the bourgeoisies and other exploiting classes and disseminating sentiments of distrust toward the socialist and communist cause and to the Communist Party leadership” (Lo 1993:52). Deng, as a reformist, did not support such a campaign certainly, but had to step back in order to “satisfy critics of his reforms”. Obviously, the Anti-spiritual Pollution “attempted to counteract the rightist tendencies encouraged under the open-door policy, and attacked the position of the reformist faction” (Lo 1993:52). Expectedly, the reformer wouldn’t sit still and await destruction. The Communist Youth League under Hu Yaobang’s leadership advocated that the Anti-spiritual Pollution campaign should not represent a blanket ban on all western culture as had originally been intended. “Later, a compromise was reached between the two factions: the campaign would no longer focus on people’s hairstyles and clothing, not interfere with the work of the villages where Deng’s economic reforms had achieved tremendous success (Lo 1993:53). Therefore, “to understand the dynamics of the censure of corruption, we cannot ignore the factional conflicts which have shaped national policies at different political and historical conjunctures”. In the above case, Deng Xiaoping, Zhao Ziyang and Hu Yaobang, as reformers, tried to introduce material incentive for fast economic development and minor political reform; while the conservatives headed by the veterans favored “cautious policies which would slow down the reforms and maintain centralization control” (Lo 1993:54). To clean up obstacles, reformers launched the Party Rectification Campaign featuring anticorruption. “To preserve their political interests, the conservatives had to resist the censure of corruption by bringing in the campaign against spiritual pollution” (Lo 1993:54). The above process (the censure of corruption was defined and redefined, negotiated and renegotiated by both rival factions until a political

equilibrium was reached) demonstrates how social censure reflects the complexity of political struggle (Lo 1993).

Once the social censure is constructed, it relies not only on the top administration, but also the local administration to enforce. There are three levels of administration under the central government in China. They are provincial, municipal and county levels.<sup>2</sup> Besides the general goal of maintaining CCP's hegemony, local administrations also have their own local goals or concerns in the application of social censure. The concerns may be about economic growth, their own legitimacy (not CCP's legitimacy), stability, or interpersonal relationship. Their concerns may coincide with the central government's strategy of censure on corruption, or may be against the central government's intention of censure on corruption. Usually the higher the level of government, the closer the government follows the central. The town leaders may not care the whole group's hegemony or corruption problem at all. In a word, local government may follow central government closely or loosely, or there may be distortions in the application of social censure.

Not only has the level of government influences the application of social censure, but also the location of government. The government in the east part of China and those in the west part of China may adopt different attitudes toward the application of social censure; the government in the north part of China and those in the south part of China may divert in terms of applying social censure. Therefore, as the same as the differences among governments at various levels, governments at different locations also take various attitudes in the application of social censure on corruption. For example, five thousand renminbi may cause imprisonment in undeveloped provinces, but be ignored in developed provinces. The reason is that different provinces or cities have different situations (economic, political, and cultural).

The censure on corruption is concretely carried out by CCP cadres at various levels. Ironically, not all officials behave themselves well in the application of social censure on corruption. The application process should have nothing to do with personal issues; involvement of personal considerations is against the whole ruling group's interests. However, the officials handling anticorruption sometimes try to achieve personal goals in the application of social censure, and will distort the social censure. Although such selfish objectives are not allowed, due to absence of checks and balances, such behaviors might happen in post-reform China.

Just because of so many external factors influencing the application of social censure, it cannot be consistent theoretically. Some may stay on the powerful position while others are put into jail although both are corrupt. Some may be executed for 5 million yuan bribe while others received 10 years imprisonment for 5 million yuan. The inconsistency of application of censure on corruption reveals the politics behind the censure on corruption.

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<sup>2</sup>Town can also be regarded as a level, but it is incomplete for many departments have no corresponding office at town level.



In sum, as Chan (2000:508) argues, “an integration of macro-theories and macro-micro linkage are necessary to further an understanding of corruption.” Social censure theory provides us a good example of integrating various factors into a framework to illustrate how corruption is created and applied in various historical conjunctures. To have a full understanding of social censure which are negative categories of moral ideology, we need to refer to (1) the ideological formations and social relations in specific society which are the base of social censure, (2) human fears which support and constitute them, (3) the targeted phenomena, behaviors, or group social censure interprets and signifies, and (4) the specific historical conjuncture within which social censure are applied (Sumner 1990).

### 3.2 Status of Law

If corruption were a special form of social censure, it could easily be “instruments with which party leaders pursue ideological and political struggles” (Lo 1993:155).<sup>3</sup> Anti-corruption can be utilized to maintain a ruling position or to establish legitimacy; the anti-corruption then could be very selective in targets. That is why the common people always question whether the anti-corruption campaigns “start from above, from below, from part of the state apparatus aimed at other parts, from some political groups or individuals aimed at opponents” (Levi and Nelken 1996:1). With this logic in mind, it seems that it is hard to have a genuine anti-corruption move and anti-corruption cannot be completely successful. However, as a matter of fact, there are many clean governments across the world. Hong Kong is such an example. According to Transparency International’s research, the CPI of HK is 8.0, which ranks 15th among 176 countries.<sup>4</sup> The PERC’s survey also backs up such a point.<sup>5</sup> Why is Hong Kong successful in anticorruption? Is it because corruption is not a form of social censure in Hong Kong, or is it due to something else? One possibility might be the supremacy of law which is the most often used weapon against corruption.

All countries have laws, and almost all countries have law against corruption. Why only a small number of governments won the battle through legislation? Is it due to the law itself, or law enforcement? Yao (1999:412) observes legal actions towards anti-corruption in Mainland China. For example, top leadership’s emphasis on law, legislative explosion, establishment of legal institutions, law-popularization, and increasing number of legal staff, all these moved Mainland China off the road of rule of man. However, the corruption situation in Mainland China is not pleasing at all.

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<sup>3</sup>Nelken and Levi (1996:1) point out that “more important, however, is to appreciate that accusations reflect wider ideological positions—the right connecting corruption with wastefulness of left-wing administrations, while the right is accused of using it political base to line the pockets of business elites”.

<sup>4</sup>Retrieved on August 10, 2006. From <http://www.transparency.org/cpi/2004/dnld/chinese.pdf>.

<sup>5</sup>The Eastern Daily, Hong Kong, March 2nd, 2004, A31.

How come there is such an awkward situation? The answer may be traced to the general status of law in society. Theoretically, Mainland China made numerous legal progresses and has reached the rule by law rather than rule of law which is the key institution against corruption.

The rule of law is an ancient idea first posited by Aristotle as a system of rules inherent in the natural order. Although the meaning of rule of law is in debate, there is no huge divergence among scholars. Basically, the rule of law is the principle that governmental authority legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedure. The principle is intended to be a safeguard against arbitrary governance. The rule of law is intended to protect all individuals' and organizations' interests. It does not simply mean a bunch of laws, a huge team of legal professionals, and law enforcement. All these are apparently not enough for the rule of law. The most two cited scholars on the rule of law are Dicey and Raz. They interpret the rule of law in such a way.

Albert Venn Dicey's Lectures on the rule of law were first published in 1885. His doctrine of the rule of law consists of 3 core ideas: First, the rule of law means law is supreme and is contrary to arbitrary power. Unless a person's act violates the laws established before the ordinary courts, he or she will be penalized. Dicey also points out that governments should not have wide discretionary powers which should at least be limited to some extent. Second, Dicey believes that everyone should be equal before the law, that is, no matter who you are, government officials or peasants, you will be taken to the court and are subject under the same law if you have breach the law. Third, Dicey considers that the rules of constitution is not the source of law. In his view, each individual in a society should have this/her rights and freedoms to do what s/he wants to. Everybody with his or her rights infringed can seek remedy in the courts (Neumann 2002).

Raz (1977) believes that the doctrine of the rule of law consists of at least 8 principles. First of all, law should conform to a certain standard so that it can guide action. Therefore, (1) laws should be open and clear thus people would not be confused; (2) laws should be stable which is important to guide people for long-term decisions; (3) legislation should be guided by open, stable, clear and general rules. Raz (1977) also specifies that the legal machinery of enforcing the law should be capable of overseeing conformity to the rule of law and providing remedies. Therefore, the following principles such as judicial independence, natural justice and judicial review of legislation and administrative actions are of vital importance so they must be guaranteed in every jurisdiction. Also, the courts should be easily accessible. Last, the power delegated to the crime preventing agencies should not be abused.<sup>6</sup>

Checking the key elements of Dicey and Raz's understanding on the rule of law, we can see that the rule of law features in several ways. First, there must be a full-fledged legislation. Second, a rational judicial system is a basic prerequisite to

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<sup>6</sup>Refer to Jason Leung at <http://www.jasononline.com/law/ruleoflaw.htm>.

the rule of law. The third is “no man is above the law” (Neumann 2002:44), which means a universal submission to law. What is required is that all, not only the ruled but also the ruler, be under the law. The fourth is “equality before the law” (Neumann 2002:45). In other words, no one receives special privileges in front of the law. For instance, if one special person’s testimony counted twice as much as one common person, there would be no equality before the law. This feature makes legal behaviors predictable. The fifth is that “treat like cases alike” (Neumann 2002:47), which means a complete absence of discretionary authority. This is essential to the predictability as well as the fairness of the law.

If sovereign’s power is not circumscribed, or if the law is to favor the strong against the weak (a swindle designed to benefit the rich), or if the elite class use their influence to make, interpret, and apply laws to serve their class interests, or if a few powerful groups naturally sprout forth and cannot be prevented from manipulating law for their private advantage, the rule of law may be hurt. It is only rule by law wherein the privileged groups control the use of discretion in legislative, adjudicative, and law enforcement process. That “law is a tool for the powerful” is the feature of the rule by law. Rule by law can be either ad hoc (which is genuine despotism) or principled. Principled rule by law theory shares with rule of law theory the arguments that a stable, generally recognized law is needed in order to maintain generality, impersonality, and effectiveness of government. The differences between rule by law and rule of law are well elaborated by Li (2000).

Under the rule ‘by’ law, law is an instrument of the government, and the government is above the law. In contrast, under the rule ‘of’ law, no one is above the law, not even the government. The core of ‘rule of law’ is an autonomous legal order. Under rule of law, the authority of law does not depend so much on law’s instrumental capabilities, but on its degree of autonomy, that is, the degree to which law is distinct and separate from other normative structures such as politics and religion. As an autonomous legal order, rule of law has at least three meanings. First, rule of law is a regulator of government power. Second, rule of law means equality before law. Third, rule of law means procedural and formal justice.<sup>7</sup>

In sum, rule by law is very different from the rule of law, despite some superficial similarities between them. Rule by law is like that the ruling group or government rules by law (properly speaking) not because the law is higher than them but because it is convenient to do so and inconvenient not to do so for various reasons or interests. The key differences between the rule of law and rule by law lies in the people and government’s attitude towards law, the distribution of power, the dispersion of material resources and the multiplication of organized interests.

In a word, the rule of law requires the supremacy of law and everybody’s submission to the law while the rule by law doesn’t necessarily need the ruling group’s obeying. To see what is status of law (rule of law or rule by law) in a particular society, we need to look into legislation, judiciary and law enforcement in that society.

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<sup>7</sup>Retrieved on August 10, 2006. From [http://www.oycf.org/Perspectives/5\\_043000/what\\_is\\_rule\\_of\\_law.htm](http://www.oycf.org/Perspectives/5_043000/what_is_rule_of_law.htm).

### ***3.2.1 Legislation***

The legislation must be well developed to satisfy the legal needs in a rule of law society. If there were no laws to obey, how could citizens uphold the rule of law? Since social development is fast, legislation development in a rule of law society need to catch up with it accordingly to avoid “law vacuum.” Not only is the full legislation required, but also the legislation to be congruent with social values is needed. The law-makers have to follow moral or social values standard to make it acceptable to the citizens. The law-makers are always the ruling group within society. The rule of law does not allow any selfish objectives in law-making; in other words, the law is established to protect all citizens rather than a few elite people. The human rights are certainly the top goal of legislation. The legislation will be used as criteria in controversial situation; therefore any fuzzy contents should be avoided. All parts need to be clarified to gauge the violations. To make citizen to follow the law, it must be also publicized clearly.

### ***3.2.2 Judicial System***

A well developed legislation is not sufficient for the rule of law. The law still needs professionals including procurator, police and judges to operate. These judicial functionaries need to be trained professionally and morally. “Recent research has confirmed that absence of an independent enforcer increase transaction costs, distrust, and reticence to engage in commercial activities with unknown partners” (Messick 1999: 121-23), therefore judicial system in a rule of law society must be independent from the government or the ruling group. An independent judiciary is usually characterized by law enforcers who make decisions on legal cases regardless of political considerations or sympathies and without undue influence or pressure of other departments. Many Latin America countries once sought to enhance judicial independence through a professionalization strategy in 1990s. Professionalization is believed to be able to reduce politicization within the judicial system, especially in those countries which lack effective mechanisms of scrutiny and accountability over the appointment, promotion and impeachment of law enforcers. On the contrary, absence of meritocracy along with pervasive politicization undermines professionalism and fuels corruption in that decisions on recruitment, appointments and promotion of law enforcers tend to be arbitrary.

### ***3.2.3 Law Enforcement***

Law enforcement is a complicated process in which many issues are involved. There are many things in law-enforcers’ mind; many external factors may influence or distort the law enforcement. However, in a rule of law society, any favoritism,

preference, guanxi or nepotism is prohibited in law enforcement. Not only should legal stuff follow the rules and law strictly to maintain consistency, but also powerful individuals or organizations from outside. The influences from them should be avoided and rejected. Several principles must be upheld to maintain fair law enforcement. “First, the legal system must have a complete set of decisional and procedural rules that are fair. Second, the fair rules of decision and procedure must also be pre-fixed and pre-announced. Third, these decisional and procedural rules must be transparently applied. Fourth, these decisional and procedural rules must be consistently applied.”<sup>8</sup> The procedural rules are necessary for sophisticated situations, because (1) “without fair and just procedure, there is no guarantee that the end result will be just...(2) formal or procedural justice is a condition for constraining government arbitrariness and protecting individual rights...(3) procedural justice results in consistency, predictability and calculability that are desirable aspects of economic and social life.”<sup>9</sup>

### 3.2.4 *Witness Protection*

In a rule of law society, people respect law and follow law. If there is any violations against law, they feel be responsible to report to the law enforcement. There are two kinds of whistleblower. The first is internal whistleblowers who report misconducts or crimes to another employee or supervisor within their company or agency. The second is external whistleblowers who report misconducts or crimes to outside persons or entities such as lawyers, media, watchdog agencies, or law enforcement (Hunt 1998).

For the external whistleblower, once they report violations or crimes to the law enforcement department. The law enforcement department will handle the reporting carefully and seriously so that the whistleblower’s confidentiality such as ID, address and contacts will not exposed. The identity of the reporting person is confidential and subject to disclosure only with the consent of that person or by judicial process. Sometimes, the whistleblower that makes a report, cooperates in an investigation, or assists in any other requirement of this act is immune from civil or criminal liability that might otherwise be incurred by that action (Johnson 2002).

In the rule of law society, whistleblower and witness are not only guaranteed the confidentiality, but also protected by law and law enforcement in many ways so that the whistleblower or witness will not be discharged, assigned to undesirable shift, blacklisted, demoted, transferred, reduced pay or hours, suspended, threatened or harassed in any form because of the legal act done by them. For example, it can be

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<sup>8</sup>Retrieved on August 10, 2006. From [http://www.oycf.org/Perspectives/5\\_043000/what\\_is\\_rule\\_of\\_law.htm](http://www.oycf.org/Perspectives/5_043000/what_is_rule_of_law.htm).

<sup>9</sup>Retrieved on August 10, 2006. From [http://www.oycf.org/Perspectives/5\\_043000/what\\_is\\_rule\\_of\\_law.htm](http://www.oycf.org/Perspectives/5_043000/what_is_rule_of_law.htm).

relocating the person (and relatives or associates); it can also be the creation of a new identity (Alford 2001).

On the contrary, if the law enforcement fails to keep the whistleblower's confidentiality or exposes his/her confidentiality intentionality, the whistleblower can file a law suit against the law enforcement. The employer or the reported person who retaliates upon the whistleblower will also be punished judicially.

To sum up, the rule of law requires a well developed legislation that is fair and impartial, an independent judiciary especially judges, professional police, interference free in law enforcement by the powerful, good protection on witness and whistleblower, competent civil servants, an accessible legal profession that is properly trained and that maintains the highest standards of professional conduct and integrity. All of them have to work together, and all of them must be properly funded and equipped to uphold the rule of law.

### 3.3 Theoretical Framework

As argued earlier, maintaining power or hegemony including "forms of moral sensibility, feelings of moral righteousness, codes of law and ideological concepts" is always a top task for the ruling group or political elites (Sumner 1990:24). And "retaining power has always involved denouncing and censuring the opposition" (Sumner 1990:7). Or to say a popular technique for the ruling class to retain power is to weaken opponents by censure and validate their own violence through censorious propaganda. To censure successfully, the ruling group or political elites usually portrays other powers and their behaviors as the enemy of the whole nation rather than simply political rivals so as to maximize the profits (Sumner 1990). That is why we say the social censure including creation of social censure and application of social censure is always well planned by the ruling group or political elites to maximize the efficacy of anticorruption.

The ruling group creates social censure in a very political way. First of all, they will give the public a picture through censorious propaganda that the targeted specific group or behavior is against public interests, social values or healthy social development. Also at this stage, "they mark off the deviant, the pathological, and the dangerous and the criminal from the normal and the good" (Sumner 1990:27). Mass media plays an important role in this preparation work or signification stage. If the public wouldn't accept their propaganda, the ruling group or political elites would spend more time in changing people's attitude by appeal to general moral principles because they know a good preparation helps censure productively. The narrative in censorious propaganda on targeted group or behavior is certainly unenthusiastic and negative in the aim of undermining or destroying them. "Because they signify worth and correctness against wrong and danger, they simultaneously form a justification for repressive action against the offender and for attempts to educate the recipient" (Sumner 1990:27). Therefore after the public accept their narrative, the ruling group then will establish a set of rule, regulations or law so as to punish the targets. Social

censure then appears in the form of rules, regulations, and law, but the creation of social censure, is “first and foremost a reflection of the interests and ideologies of the governing class” (Chambliss 1974:37), so that the ruling group who controls the economic and political recourses of the society will inevitably see their interests and ideologies more often represented in the social censure than will others. Or to say their interests and ideology most probably will not be hurt in the censure. If there is a rule of law, the creation of social censure for the ruling group won’t be so easy. First, press freedom is guaranteed in the rule of law society so that the ruling group’s censorious propaganda could encounter different voices and the mass could hear more opinions. Its influential power will then be reduced; the ruling group’s preparation for the next step is therefore weakened. In addition, political goals of the ruling group or political elites may be exposed by rivals in the rule of law society, which could lead to abortion of the creation of social censure. Second, in the process of establishing rules, regulations and law, the role of the disadvantaged or their voices can be seen and heard in the rule of law society so that their interests will be represented in the rules or law. Then, social censure consequently will not only be “categories of denunciation or abuse lodged within...historically loaded practical conflicts” as happens in the rule by law society (Sumner 1990: 28). For example, the mass in post-reform China can not have an opinion on how to punish corrupt officials judicially (how many years for a certain amount of money), and what shall be defined as corruption. On the contrary, a neutral social censure will be created to protect interests of all class blocs.

Simply put, the rule of law constrains or conditions the ruling group or political elites’ ability of creation of social censure. In some cases, they may not able to create social censure successfully. In other cases, although they can create it, arbitrariness or manipulations in the creation process will be minimized because the mass can contest for the creation of social censure and state is autonomous. Therefore we believe that there are social censures in the western rule of law society. And it is argued that corruption in western states is also a form of social censure for the ruling group’s political goal. Corruption like other social censure in those developed countries was created one hundred years ago in those developed countries. A detailed scenario analysis can easily help find that corruption is not simply a category of crime in those countries. The difference is that social censure in western rule of law societies is less arbitrary and tends to represent all social blocs’ interests. While in the rule by law society, the ruling group or political elites can create social censure at their will without reservations. Therefore social censures in non-rule of law society are more pro-ruling group, more frequent, more arbitrary, and harsher.

The social censure is so practical that they are invoked or exist within the course of historically specific social practices (Sumner 1990). Thus after the creation of social censure, the ruling group or political elites will apply such social censure to “educate” dissent, opponents or rivals through harsh penalty. Because social censure is structured, motivated and contextualized, the ruling group or political elites use censures for a variety of purposes and in a variety of contexts. As mentioned earlier, Gillespie and Okruhlik’s (1991) research finds that anticorruption can be exercised for justification of power, discrediting prior leadership and facilitation of re-election.

The application of social censure has strong implication for social status; a strong social censure can maintain its hegemony and totally reconstruct the recipient's social status (Sumner 1990). For the social censure on corruption in post-reform China, it appears in the form of law and is applied through the criminal system which is an arena of contestation between unequal forces or rival factions. Usually the criminal system is "one of the social realms where the inequalities of social stratification, with all their variety and overlap, are fought out" (Sumner 1990:45). In the rule of man and rule by law society, although the criminal system is structured by society's need for public order and public interests, the "ruling group's ideological perception of what is peace, safety, health and order dominate the public articulation of legal and moral censures, and the specification of target populations for...censures" (Sumner 1990:45). That is why the task of the criminal system in those societies is always to sustain, reinforce and restore their power, and to articulate their ideologies amidst a field of social contradiction (Sumner 1990). However, in a rule of law society, the criminal justice is not direct protections of the status and wealth of the ruler, but institutions for justice and fairness. The instrumental function of criminal system for the ruling group or political elites will be minimized. In the rule of law society, the social censure by the ruling group can not be applied arbitrarily or freely either. They have to follow regulations and procedural rules to apply it. The political goals of anticorruption that Gillespie and Okruhlik (1991) found out will not be reached due to the constraints of the rule of law. Witness in a rule of law society is also protected so that the censorer has to respect witness's rights in the application of social censure. The rule of law requires equal application of law to everyone including the powerful. Such a principle can effectively reduce the selective targeting in the censure on corruption and improve consistency of the censure on corruption. The rule of law also requires the application of law without any reservation if there is a violation; and other political goals cannot be placed higher than the law. This can ensure that all corrupt officials are brought to justice in anticorruption. The raised difficulty of application of social censure on corruption thus makes anticorruption genuine and effective. However, all these advantages are not available in the rule of man and rule by law society. The rule by law or rule by man allows selective targeting, patronage phenomenon, scapegoat phenomenon, political goal-driven intentions, and harsher punishment in the application of social censure. In the rule by law society, the censure on corruption can be used to uphold dominant ideology, consolidation of power, establishment of legitimacy and purge rivals.

In a nutshell, the status of law plays a significant role between the social censure (both creation of social censure and application of social censure) on corruption and outcome of anticorruption. The rule of law (high status of law) can balance class bias in the creation of social censure and reduce the manipulations in the application of social censure; anticorruption as a form of social censure will then be efficient and fair to some extent. On the contrary, the rule by law or rule of man (low status of law) allows the ruling group to create social censure out of their interest and ideological considerations freely and apply the censure arbitrarily. As a result, selective targeting, personal patronage, scapegoat, case ignorance, and fabricated cases occur again and again in the application of censure on corruption.



## Chapter 4

### Methods

#### 4.1 Research Objectives

As mentioned earlier, my research interests of the study lies in the contradiction between continuous efforts against corruption by Chinese government and pessimistic corruption situation in post-reform China. Different from most of previous studies which follow the ruling group's logic, I question the nature of corruption by adopting social censure theory which is an "anti-mainstream" perspective. Data was collected to testify the social censure theory. Then, I tried to explore the status of law (rule by law or rule of law) which can influence the ruling group's ability of manipulation on social censure. More specifically, this study explores the relationships between the status of law, social censure and outcome of anti-corruption in post-reform Mainland China. The key concern of the study is how low law status allows or encourages the censure on corruption on targets arbitrarily and selectively by the ruling group or political elites, which renders anticorruption actions not well justified or supported. Given so, the research objectives of this study consist of:

- (1) Examine the status of law in post-reform Mainland China.
- (2) Examine the nature of corruption in post-reform Mainland China.
- (3) Explore the relationship between law status and censure on corruption.
- (4) Explore the relationship between law status and outcome of censure on corruption.

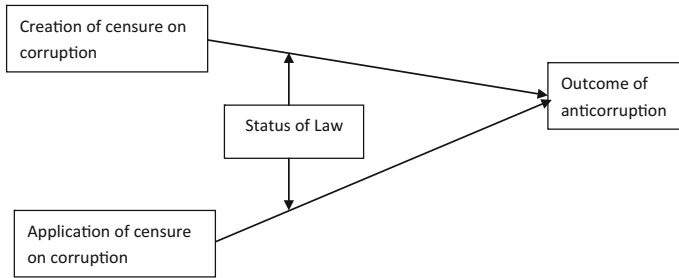
#### 4.2 Research Framework

As Lo (1993:5) argues, "in understanding corruption... we should consider the capacity of the state to produce a particular form of social relations, and shift the theoretical emphasis to the interplay of law, ideology and political economy."

First, the creation of social censure is reflection of ideology and political economy. Sumner (1990) points out that social censure are highly contextualized moral and political discourses. It is created in accordance to the dominant ideology, rather than the ruled people's ideology. For example, the censure on corruption in Mao Zedong's era is based on communist ideology, while censure on corruption in Deng Xiaoping's era diverts from leftist ideology. The creation of social censure expresses the corresponding political economy at particular historical moment because social censures would be different for different legal systems, different economic forms, different social relations and different social political systems. It is therefore necessary to combine social censure with social structure so as to find the dynamics behind the targeted phenomenon. Since most censure on corruption is processed in a bureaucratic and judicial form, we need to especially find out how the law and the creation censure on corruption interact and how they produce the "good" outcome for the ruling group or political elites. In a rule of man society, the creation of censure would be much easier for the ruling group or political elites for there are nearly no external constraints on them; in a rule by law society, the ruling group or political elites has to follow some rules to create social censure, and individual considerations will be less in the creation of social censure; in a rule of law society, the creation of social censure would much depend on some rules and voices from all factions of society.

Second, the application of social censure on corruption is an interaction of law and created censure. Different judicial system and different legislations lead to different application of social censure. For example, in Mao's era, the judicial system was collapsed so that the censure on corruption was mass-based and in campaign format; while in Deng's era, judicial system was reestablished so that campaigns and legal format were placed the same emphasis. Moreover, the law status further influences how censure on corruption is applied concretely. For instance, if law status is low, all sections of society, mainly the ruling group or political elites will try to use political maneuver to manipulate the process in order to reach political goals. If the law status is high and the law is respected greatly by the ruling group or political elites, government or disadvantaged, the application of censure tends to be neutral, unbiased or un-manipulated. There is much less possibility for the ruling group to make use of censure on corruption to build up authority, to establish legitimacy, to win ideological struggle, to win power struggle and to purge political enemy.

In a word, the status of law plays an important role in the creation and application of censure on corruption. The creation and application of censure in society receiving high law status and that in society receiving low law status would be divergent in content, process, and outcome. Expectedly, in a society in which law is not esteemed, the application of censure on corruption would be distorted and manipulated. The outcome of censure on corruption would also looks unacceptable to the public. For instance, there may be scapegoat in the application of censure on corruption; there may be ignored cases; there may be fabricated cases; there may be selective targeting; there may be personal patronage; and finally there is



**Fig. 4.1** Relationships between status of law, censure on corruption and outcome of anticorruption

unavoidable inconsistency of anticorruption in addition to failure of anticorruption. The relationships between the creation of censure, the application of social censure, law status, and outcome of anticorruption can be illustrated with following Fig. 4.1.

### 4.3 Theoretical Hypothesis

The hypotheses developed from the study objectives and research framework are as follow:

- (1) Post-reform Mainland China only reached the rule by law rather than rule of law;
- (2) Corruption in post-reform Mainland China is a form of social censure rather than a set of criminal behavior in nature;
- (3) Low law status allows and encourages the creation of social censure on corruption;
- (4) Low law status allows and encourages arbitrary application of social censure on corruption.

### 4.4 Research Design

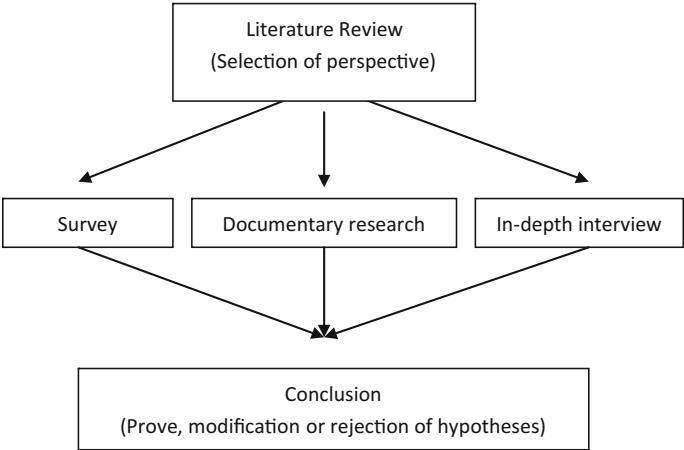
Corruption is sensitive to the government, and to the officials. Neither likes to expose such intrinsic issues. Government is afraid of the exposure because it may hurt its legitimacy; the officials are afraid of exploring it for it may make political enemy. Because of this sensitivity, it is very hard to get data on corruption from insiders, especially in China in which freedom of press is somehow limited. In such a sense, any information about corruption is helpful because pieces of information may help develop a full-fledged map on corruption in China. In other words, it is sort of naive to rely on only one source of data to study corruption in China.

Moreover, “there are problems with all ...measures. Some are easier to put into practice than others...Some are close to being nominal definitions rather than operational one” (Goldenberg 1992:52). Since all measures have its own weakness, researchers “will get a more accurate and a more comprehensive picture by combining several” (Goldenberg 1992:52). That is why the triangulation (the application and combination of several research methods in the study of the same phenomenon) is preferred in social sciences. Following such logic, I used both quantitative and qualitative method to collect data.

First, to have a general view of Chinese on corruption, the author conducted a survey on university students. The reason why choosing university students as the survey subject is that a general survey on all Chinese is impossible and there is even no a sampling frame, also because they played an important role in curbing corruption in modern Chinese history. The modern Chinese history shows that they are mature and insightful in anticorruption campaigns.

Second, the subjects of corruption study are various. It could be the people involved in corruption, and it could be the people having an eye on corruption. It could be the people holding negative attitudes to it; it could be the people holding sympathized attitude to it. The sole data source could lead to a biased research. Therefore a survey on the university students is not good enough to make a generalization on the corruption in post-reform China which is featured as diversified in population, culture and economic development. Moreover, the data and the result based on data are not heavily reliable due to the intrinsic nature of corruption no matter whom they investigated. The social censure theory stresses the importance of dynamics behind corruption cases including macro, meso and micro environments. However, such dynamics are hard to find in quantitative data. On the contrary, interview can satisfy such a requirement. With these two reasons, I chose in-depth interview as the second data collection method. There is no doubt that the best research subject is officials if the topic is on corruption. Almost all of previous studies got around them and did research on corruption due to the intrinsic nature of corruption. It makes their research outcomes questionable. On the contrary, I interviewed both officials-in-jail and officials-in-power trying to get first-hand and much reliable data. The reason why to interview both groups is that both may have biased views on corruption and anticorruption for the “winner” and “loser” reason. Therefore, a neutral or balanced view may be developed only if both are interviewed. Moreover, both are the insiders, and may provide interesting and reliable data.

Third, as argued earlier, the social censure theory holds that dynamics behind censure on corruption is much more important than corruption itself, therefore, the approach “demands much closer connections between sociology and literacy analysis” (Sumner 1990:31). The in-depth interview with officials can provide insiders’ perception and view on the dynamics in real cases; however it is still not enough to draw a full-sized picture of anticorruption. To have a precise view on dynamics behind the corruption, we still need put those cases in the general picture of historical conjuncture which may not be available in the in-depth interviews. Moreover, the



**Fig. 4.2** Research process

social censure theory and the status of law are so sophisticated that the survey and the in-depth interview may not be able to portray the corruption and law status in post-reform China vividly. Therefore the author also adopted documentary method to complement the other two methods and make the study full-fledged.

The whole process of study was as follows: a comprehensive literature review in order to develop a theoretical framework, followed by a survey testing the social censure theory initially, in-depth interviews, and documentary review. A conclusion was drawn from the data. The whole research process can be elaborated with the following Fig. 4.2.

**4.5 Research Methods**

**4.5.1 Quantitative Method**

**4.5.1.1 Samples**

Theoretically, all Chinese are research subjects because the topic is post-reform corruption in China. However, as mentioned earlier, it is infeasible to use whole Chinese as the sampling frame, therefore I decided to make a breakthrough via university students.

Surveying university students on corruption seems a bold action, but it is understandable if we take into account Chinese history. Youth or college students have been caring about social issues far from the beginning of 20th century. The students in 1910s, as antenna of society, were sensitive to the world development, laggings of Chinese development, and the corresponding causes. They also

thought of how to make China strong. Confucianism, for them, was the top obstacle, and was attacked. They stated to borrow successful experiences from the West, which are the “Mr. Democracy” and “Mr. Science”. Under such a condition, the “New Cultural Movement” and “May Fourth Movement” with a main body of students erupted. “The May Fourth Movement marked the beginning of the New Democratic Revolution in China. It also served as an intellectual turning point in China. It was the seminal event that radicalized Chinese intellectual thought.”<sup>1</sup> Young students, as pioneers, moved Chinese history forward a big step.

From such Chinese history, we can see that young students are not naive as people normally think. They are mentally and psychologically mature enough to have independent ideas or opinions. What is more is that they are radical in ideas, and it is their radical ideas that pushed China forward. They have no weight on mind and ready to take actions. Therefore, it is highly appropriate to choose them as the study subjects.

Choosing college students as the sample is also out of other considerations. For example, students are from different family backgrounds, which renders sampling more representative in a theoretical sense. Also, governmental universities recruit students from all provinces, which maximizes the district variations, and further makes sampling more representative. Moreover, it is easier to locate subjects since they reside and study closely.

#### 4.5.1.2 Sampling Method

Three surveys were conducted in three universities. They were picked up for the reason of representativeness. The first survey was finished in university one which is located in Tianjin City in north part of China; the second survey was done in university two which is located in Jiangxi Province in the middle part of China; the third survey was conducted in university three which is located in Guangzhou in the south part of China. The locations of North, Middle, and South secure a basic representativeness. As mentioned earlier, diversity of students’ origin and different family backgrounds further improve the representativeness.

Cluster sampling is used in each school. “A cluster is a naturally occurring, mixed aggregate of elements of the population, with each element appearing in one and only one cluster” (Schutt 1999:125). In this study the cluster is class.

“For professional studies of the national population...professional social science studies typically have used a sample size of between 1,000 and 1,500” (Schutt 1999:140). Based on this (social scientist’s experiences) and the given conditions, I determined the size of survey to be 1000. Overall 1,220 questionnaires were distributed with around 400 copies in each university. The following Table 4.1 tells the survey sampling generally.

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<sup>1</sup>Retrieved on August 2, 013. From [http://en.wikipedia.org/wiki/May\\_Fourth\\_Movement](http://en.wikipedia.org/wiki/May_Fourth_Movement).

**Table 4.1** General description of survey sampling

	Region	City	University	Class	Sample
1	Northern China	Tianjin City	University one	16 classes	412
2	Middle China	Nanchang City	University two	18 classes	408
3	Southern China	Guangzhou City	University three	15 classes	410

**4.5.1.3 Construction of Questionnaire**

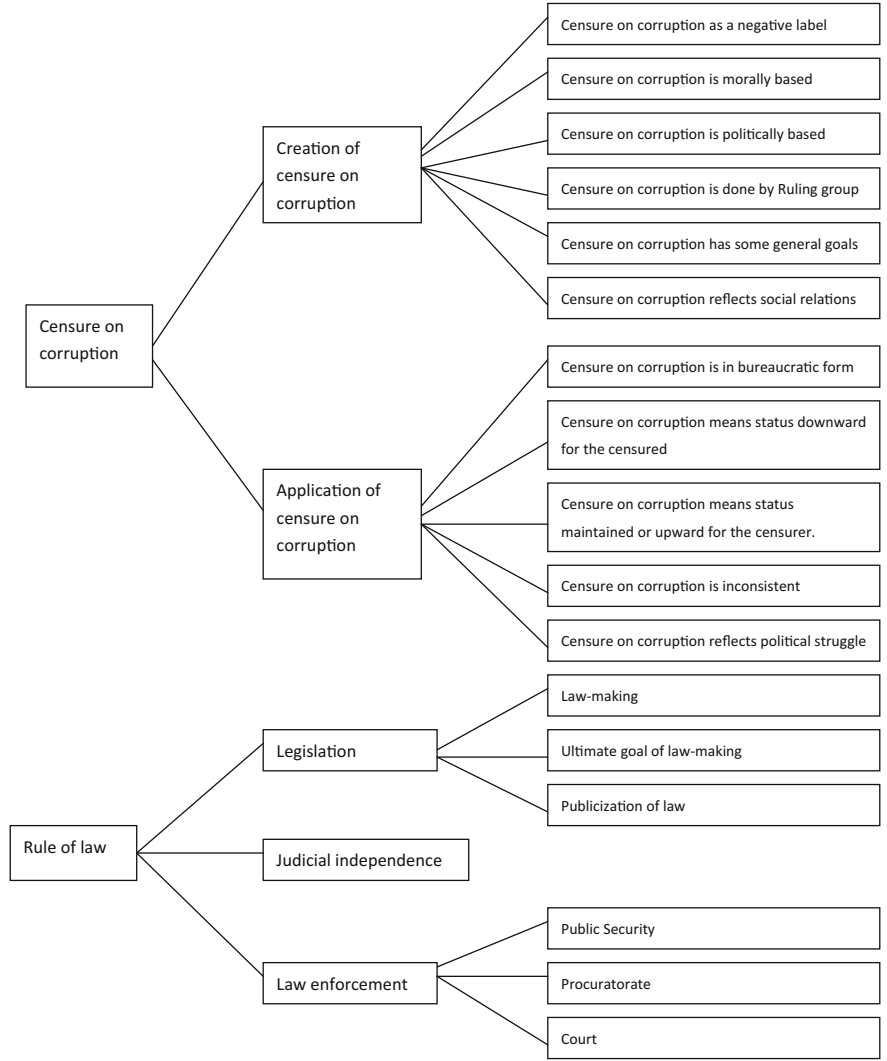
The questionnaire was based on the theory of social censure and status of law. As Schutt (1999:75) argues, “if just one question is used to measure a variable, the researcher may not realize that respondent had trouble with a particular word or phrase in the question...One solution.... But the best option is to devise multiple rather single questions to measure concepts.” Since the concepts of social censure and status of law are very sophisticated, scales were developed to measure concepts. The social censure on corruption is divided into two general parts: creation of censure on corruption and application of censure on corruption. The creation of censure on corruption is further divided into 6 sections; the application of censure on corruption is divided into five sections. The concept of status of law is separated into legislation, judicial independence, and law enforcement. The detailed scale construction can be illustrated by the following Fig. 4.3.

There are 101 questions in total. The questions were asked in a Likert format with “1” representing “strongly disagree”, “2” representing “disagree”, “3” representing “not sure”, “4” representing “agree”, and “5” representing “strongly agree”. Some variables are supposed to be combined for a scale; however, a few variables are constructed in the opposite direction for some purposes. Therefore, I did “reverse coding” by flipping the category values for those variables (i.e. 1 becomes 5, 2 becomes 4, etc.).

**4.5.1.4 Respondents’ Background**

There were 1220 questionnaires handed out, and all of them were collected back. Fifty nine cases were discarded due to a large number of missing values or low quality (some respondents filled out the questionnaire in a wrong way intentionally). One thousand one hundred and forty one copies were entered with SPSS 20 for analysis. Missing values also exist in some of these 1141 questionnaires, but the quantity is very limited. Thereafter, it was ignored, and proceeded with the analysis. The system-missing value was adopted for data analysis.

Majority of respondents are either freshman or sophomore. They take 87.3% of the whole respondents. But the respondents are basically evenly divided by gender with a small higher percentage of male. Most respondents are aged between 19–21. Since two universities are school with broad disciplines, the respondents are found in divergent majors. I categorized the majors into humanities, social sciences, sciences, engineering, business and others. Engineering and humanities students



**Fig. 4.3** Scale construction

take a large part with a percentage of 36.4 and 20.2 correspondingly. As mentioned in the previous chapter, youth is always the pioneer in social development in Chinese history, no matter in the early 20th century or middle 20th century. And their sensitiveness to social issues is a very important precondition in the study. The question 8 probes whether they are very concerned with social problems. Sixty two percent subjects chose “agree” and 12.1% chose “strongly agree”. It demonstrates that they are mature or close to mature enough to think of, and to be interested in social problems. It suggests that the youth in the early 21st century are the same as



**Table 4.2** Background of subjects

Item		Frequency	Valid percent
Grade	Year one	534	46.8
	Year two	462	40.49
	Year three	133	11.65
	Year four	12	1.05
	Total	1141	100
Gender	Male	636	55.74
	Female	505	44.26
	Total	1141	100
Age	18 or younger than 18	54	4.73
	19 or 20	668	58.54
	21 or 22	397	34.79
	23 or older than 23	22	1.93
	Total	1141	100
Major	Humanities	231	20.24
	Social sciences	101	8.85
	Sciences	184	16.13
	Engineering	415	36.37
	Business	162	14.2
	others	48	4.21
	Total	1141	100
You care social problems very much	Strongly disagree	14	1.23
	Disagree	131	11.49
	Not sure	150	13.16
	Agree	707	62.02
	Strongly agree	138	12.11
	Total	1140	100
	Missing	1	
	Total	1141	

those in the early 20th century caring about social development and social issues. The above background about respondents is shown in Table 4.2.

## 4.5.2 Qualitative Method

### 4.5.2.1 In-depth Interview

The in-depth interview is appropriate for this study because of the following advantages. First, the intrinsic nature of corruption determines that a close

relationship between researcher and respondents is indispensable for deep, reliable and rich information. The data from questionnaire survey faces the problem of superficiality, while an interview provides more comprehensive and reliable data. Second, given the nature of high contextualization of corruption and anticorruption, in-depth interview can help researcher to find the detailed contexts in which corruption and anticorruption happen dynamically.

#### **4.5.2.2 Samples**

The social censure theory holds corruption, as a form of social censure, reflects general social relations and concrete political struggle at specific historical conjuncture. However, such social relation or political struggle, due to its nature, is not exposed to the public. Only the “insiders” (officials) have rich information on such issues. Therefore, choosing officials as the research subjects is indispensable. In addition, the officials-in-power may be reluctant to expose explicitly and official-in-jail may distort to exaggerate the case. A group of balanced information (data) is of significance to the study. Based on such concerns, I chose both jailed officials and ordinary officials as research subjects.

#### **4.5.2.3 Construction of Interview Guide**

The interview guide is similar to the questionnaire in term of key points. It is made up of two major parts plus ice-breaking section and conclusion section. One key section is on law status; the other is on social censure. The general impression on corruption in China, moral attitude toward corruption, negative label of corruption, inconsistency in anticorruption, political dynamics behind of censure on corruption, and anticorruption procedures were probed in the social censure section. Agreement on law content, awareness of law content, publicization of law, goal of legislation, judicial independence, and interference in law enforcement were probed in the law status part. All questions are open-ended in semi-structured format. The interview guide for jailed officials and normal officials are separate and a little different, but the key components are the same.

#### **4.5.2.4 Group I: Officials-in-Jail**

- (1) The first group of interview was done in a jail. There are 8 jails in xxx province. The jail in XXX County was selected because some prisoners with a charge of corruption (“economic crime” in an official name) were detained there.
- (2) The sampling method is convenient sampling for there was no sampling frame available and there was no enough subjects. Seven jailed officials in this prison were interviewed. Although the interview was not random, the interviewees are

**Table 4.3** Background of interviewees (jailed officials)

Interviewee	Gender	Age	Ranking	Illicit money	Imprisonment
Interviewee A	M	35	股级	50,200	4
Interviewee B	M	44	正科级	34,000	3
Interviewee C	M	32	副科级	56,400	5
Interviewee D	M	45	正处级	63,000	6
Interviewee E	M	49	正科级	41,287	3
Interviewee F	M	46	副股级	39,000	3
Interviewee G	M	54	正股级	49,100	4

representative because they are from different occupations, and at divergent official ranking levels. Their backgrounds are detailed in the Table 4.3. Each interview lasted 30–40 min. The conversations were open and expounded within the topic.

4.5.2.5 Group II: Officials-in-Power

The second group of interview was done in XXX City and XXX County which is under the XXX City administration. The same as the first group of interview, the sampling method is convenient sampling due to unavailability of sampling frame and unwillingness of officials for the interview. Ten officials finally accepted. The anonymity and confidentiality were promised to them. Their backgrounds are detailed in the Table 4.4. The interview guide is similar with the previous one with different ice-breaking questions.

**Table 4.4** Background of interviewees (officials in power)

Interviewee	Gender	Age	Ranking
Interviewee H	M	50	正科级
Interviewee I	F	42	副科级
Interviewee J	M	35	副科级
Interviewee K	M	36	副科级
Interviewee L	F	41	副科级
Interviewee M	M	45	副科级
Interviewee N	M	50	正科级
Interviewee O	M	52	副科级
Interviewee P	M	48	正科级
Interviewee Q	M	49	正科级

### 4.5.3 *Documentary Method*

Social censure is “structured and contextualized” (Sumner 1990:27) and therefore a contextualized analysis is indispensable for the research. As Sumner (1990:31) argues:

the starting point will often be a reading of moral discourses, a historical hermeneutics, to discover the full meaning of the censure in a particular historical and structural context. This historical-sociological etymology should reveal the target of the censure, the agencies and procedures of targeting, and the shifts in its meaning and context of use. Such research will often begin with the questions: What does the censure (e.g. vandalism) mean? When was it first used? And against whom? Who was behind it and who enforced it? What ideological concepts give it such a meaning? What was the political and structural context of its application?

Therefore we should put anticorruption in a historical conjuncture, then we can touch the deep part of anticorruption rather than just echo the views of government. The interview data can certainly provide rich information on the context, but it doesn't mean no additional information needed. For example, one official may complain that s/he is the victim of one anticorruption campaign. The campaign background cannot be elaborated in the interview, and it needs to be done afterwards. The documentary method, on the contrary, can help present necessary data. In analysis, we need to refer to law, regulations and rules set up by the Chinese government. The law, rules and regulations have been changing all the time. A scientific corruption analysis needs a clear investigation on them. Documentary analysis can positively serve such a function. Many outstanding cases which support the argument are available in bestsellers. For example, A Chinese Canadian Sheng Xu's book on Yuanhua Case is based on the interview with Lai Changxing who is key person and insider in Yuanhua case. In such a sense, the content of her book is reliable and citable; and the content is important to the argument. In a word, the censure on corruption and status of law embrace many aspects. The interview and survey data may not be able to cover all features or may not illustrate them fantastically, but the documentary data can provide additional illustrations. In addition, there have been many “outstanding” corruption cases in post-reform China which can further testify the social censure theory and status of law propositions. And these cases can only found through documentary search.

Many documentary researches were done through the internet because of richness, reliability and convenience. The official internet news is as reliable as those in traditional media. Almost all government department such as Ministry of Public Security (公安部), Supreme People's Court (最高人民法院) and Supreme People's Procuratorate (最高人民检察院) have its own websites to publicize news, provide services and accept complaints. The information from these governments' websites is fruitful and reliable. Some official news agencies such as New China News Agency (or called Xinhua News, 新华社), Chinese Central TV (CCTV, 中央电视台), People's Net (人民网), and People's Daily (人民日报) report news on its websites too. The news from these websites (online version or so-called e-vision) is

official and represents central government's opinion, and also the same as those appearing in the newspapers. For important issues and sensitive issues including corruption cases, all other media such as local newspapers just cite, transfer or reprint news from these sources. There are other news websites such as Sina (新浪), 163, Sohu (搜狐) are not governmental, but they only publish or transfer important news from reliable sources like Xinhua News (新华社). Some international websites such as Transparency International, PERC are assumed to be neutral and cited in the thesis. There are certainly some folk websites which transfer gossips and rumors about Mainland China, and are avoided. The commonly cited news mainly comes from the following websites: [nanfangdaily.com.cn](http://nanfangdaily.com.cn) (南方日报), [cctv.com](http://cctv.com) (中央电视台), [xinhuanet.com](http://xinhuanet.com) (新华社), [spp.gov.cn](http://spp.gov.cn) (最高人民检察院), [sina.com](http://sina.com) (新浪), [tom.com](http://tom.com) (雷霆万钧网), [transparency.org](http://transparency.org) (国际透明), [southcn.com](http://southcn.com) (南方新闻网), [phoenixtv.com](http://phoenixtv.com) (凤凰卫视), [sohu.com](http://sohu.com) (搜狐), [people.com.cn](http://people.com.cn) (人民网), [gansudaily.com.cn](http://gansudaily.com.cn) (甘肃日报), [jcrb.com](http://jcrb.com) (检察日报), [singtaonet.com](http://singtaonet.com) (星岛日报), and [163.com](http://163.com).

In a word, documentary data from books, journals, websites and newspapers provide facts to testify the social censure theory and check the law status of Mainland China. The interview data, survey data and documentary data offer different particulars from different perspectives to prove or reject hypothesis.

## Chapter 5

# Shift of Mode: From a Mass Line Approach to a Bureaucratic Approach

As discussed earlier, the status of law in a society is significant as it shows whether the society has reached rule of law or rule by law. There is always a three-stage argument that societies have to go through: rule by man, rule by law and rule of law in order. The Fifteenth Chinese Communist Party Congress, convened in September 1997 in Beijing, proposed for the first time that the Party would give its highest priority to the rule of law. The second plenary session of the Ninth National People's Congress, held in March 1999, declared that a new constitutional amendment would be made to give constitutional legitimacy to the "rule of law".<sup>1</sup> Meanwhile, former President Jiang Zemin and other major leaders argued that the rule of law is a key to the building of Chinese democracy.<sup>2</sup> It means that Chinese government changed mode of anticorruption from mass line approach to bureaucratic approach gradually.

### 5.1 Judicial Dependence Regarding Institutional Structure

"In a free society practicing the rule of law, it is essential that the absolute independence of the judiciary be guaranteed" (International Commission of Jurists 1966:31), because such independence implies being free from interference by the executive or legislature with the exercise of the judicial function. "Procuratorial organizations in China are not subject to judicial administrative organizations, but belong to the judicial organizations together with the courts. Many Chinese jurists are also of the view that in addition to the courts and prosecutors' offices, the public security and national security organizations and the judicial administrative

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<sup>1</sup>*Renmin ribao* (People's Daily), March 14th 1999.

<sup>2</sup>For a full text of Jiang Zemin's report delivered at the 15th National Congress of the Communist Party of China on September 12th 1997, see *China Daily*, September 23rd 1997.

organizations are all parts of the judicial organizations” (Lin 1999:197). The author takes into account these organs so as to draw a more general picture of a judicial system especially the anticorruption part in post-reform China.

### 5.1.1 *“Traditional” Judicial System*

The author uses “traditional” because there are many new judicial organizations particular to post-reform China. The traditional judicial system refers to the most common judicial organizations including the police, procuratorate and court. The traditional judicial system was expanded by the CCP in the early days of new China, but collapsed in the Cultural Revolution Period (Lo 1993). These organs were re-established after the Open and Reform Policy which occurred in 1978. What is the judicial system like in Deng’s era? Are they functioning independently?

Similar to most states, China has a police department (called public security bureau: 公安局), procuratorate (检察院) and court (法院) which function to investigate, prosecute and open trial. These organizations exist at national, provincial, municipal, and county level. The names vary a bit at different levels, for instance, Ministry of Public Security (公安部), National Supreme People’s Procuratorate (最高人民检察院), National Supreme People’s Court (最高人民法院) at national level, Department of Public Security (公安厅), People’s Procuratorate (xxx省人民检察院), Supreme People’s Court (xxx省高级人民法院) at provincial level, Public Security Bureau (xxx市公安局), People’s Procuratorate (xxx市人民检察院), Intermediate People’s Court (市中级人民法院) at municipal level and Public Security Bureau (xxx县公安局), People’s Procuratorate (xxx县人民检察院), People’s Court (xxx县人民法院) at county level. These organizations are administrated vertically and the lower level is responsible to the upper level.

At the same time, these departments are subject to the Political and Legal Committee (hereafter PLC:政法委) within the CCP.<sup>3</sup> The director of public security department, chief procurator, and president of courts sit on the PLC while another CCP member chairs the PLC. The PLC functions as both a coordinator and supervisor. When there is a conflict among law enforcers or special coordination is needed, it is the PLC who steps out and solves the problem. Since PLC is more powerful than law enforcement agency, it is very possible (sometimes necessary) for the PLC, especially secretary of PLC to step in the judicial process and bring their opinion into the process. The interference of PLC may cause positive outcome if the PLC acts with justice. However, there is another possibility that PLC including its secretary and other members interfere out of concerns for personal or group interests.

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<sup>3</sup>In official document, the PLC is declared to function to maintain social order, coordinate between law enforcement departments, monitor law enforcement departments, and carry out policies from central government. Retrieved on May 8, 2006 from <http://www.yfzs.gov.cn/gb/info/xsll/2005-12/24/2252034058.html>.

The PLC is a section within the CCP committee, which means it reports to local CCP committee which represents the centralization of power at various level (standing committee of the CCP committee further centralizes the power). The CCP committee is usually composed of 20–30 members including secretaries, mayor, vice mayors and some directors of departments. To concentrate power and process efficiently, a standing committee is formed to represent highest authority at its level. Or to say the standing committee of the CCP committee at all levels actually is paramount in power at its levels (county, municipal, provincial or national). The secretary of the PLC is a member of the standing committee.<sup>4</sup> The other standing members as a rule are secretary of CCP committee, mayor (governor at provincial level), vice secretaries of CCP committee, executive vice mayor (vice governor at provincial level), director of organizational department (组织部长), director of propaganda department (宣传部长) and secretary of Commission for Discipline Inspection (纪委书记). The standing committee decides candidates for chief procurator, president of courts and director of public security bureau. In other words, all members of the standing committee are above the law enforcement departments in power, although they are not officially referred to as law enforcer's supervisor. Here we can see a three-level-administration: judicial system, the PLC and the standing committee of the CCP committee. Given so, we can hardly see separation of the CCP and judicial system. The judicial system looks more like an internal CCP organization.

Institutionally, it is inappropriate for all standing members of the CCP committee to interfere the judicial process, but actually the heads of law enforcement departments have to listen to them, otherwise, those leaders may encounter various kinds of problems including even a dismissal in the period of term-shift. The most powerful person in the standing committee is the secretary of CCP committee who actually is in charge of the standing committee. It works like a patriarchy system.<sup>5</sup> It is him/her who makes most of important decisions at his/her jurisdiction level (county, city or province), including nomination of heads for law enforcements. In some important cases which have an influence on the whole county, city or province, the secretary at its levels always steps in the judicial process to maintain or uphold his county, city or province's good. In his *"My Introspection"*,<sup>6</sup> Wang Wei who once held the post of secretary of Shucheng CCP Committee confirmed such a point. From his experience, he developed a view that the CCP secretary has tremendous power. Important issues, significant projects, and major personnel

<sup>4</sup>It is not always the case in Xi Jinping's era.

<sup>5</sup>In Chinese, it is called Jia Zhang Zhi (家长制) or Yi Yan Tang (一言堂), or Yi Ba Shou Zhi (一把手制度). They refer to patriarchy system, one-voice system, and the first man in command correspondingly.

<sup>6</sup>Wang Wei, vice mayor of Liuan City in Anhui Province. He was charged of taking 525 thousand yuan bribes, and 15 thousand US dollar. In the investigation stage, he wrote an 11 page long penitence called "my introspection." In his penitence, he summarized three causes of his degeneration. See Procuratorate Daily, Dec 18, 2006. Also retrieved on Sept 15, 2007 from <http://www.shu163.com/html/show.aspx?id=3971&cid=5>.



arrangement are subject to standing committee's approval, or more exactly the CCP secretary's approval, which provides "rent" for him/her. However, he also exposed that constraints or conditions on secretary are very limited, which is an institutional loophole of judicial system.

Besides to the above power behind law enforcement system, there are other institutions which can influence the judicial system. It is provided in the *P.R.C. Constitution* that the procuratorate and court report to the people's congress at their level legislatively. Also, although the power of nomination for candidates is in their hands of the local CCP Committee, the personnel decision (such as appointment of chief procurator and chief judge) has to be made by the people's congress. Here we can see that the methods of appointing, promoting and removing judges or procurators are not yet fully settled, or do not support the independence of the judiciary (International Commission of Jurists 1966). More exactly these officials are elected by the people's congress at various levels, although the people's congress seems like a rubber-stamp.<sup>7</sup> In addition, the chief procurator and president of court need to report to the people's congress every year on the plenum of the people's congress. In such a sense, these two judicial systems are under the authority of the people's congress too. The public security department is different because it is a functional department of government so that the head of public security department is nominated either by mayor, governor or premier, depending on its level.

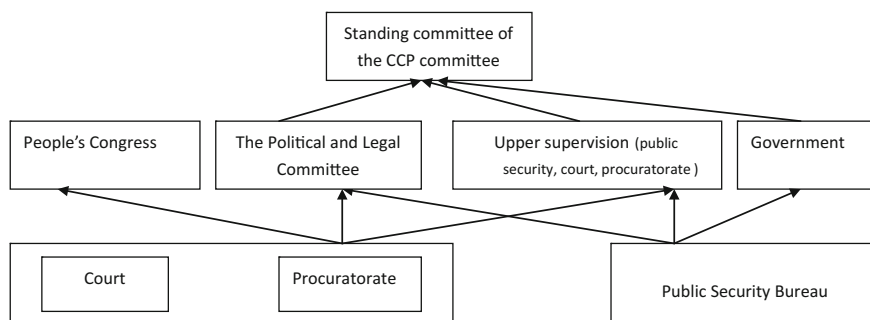
Institutionally, we can find that law enforcements are at least under tri-leadership. One is their upper supervision<sup>8</sup>; the second is the PLC which is further under the authority of the standing committee of the CCP committee at its level; the third is the people's congress which approves the nominations and appoints law enforcers. All have personnel or case decision-making authority over law enforcement departments. The relationship between them can be illustrated with the following Fig. 5.1.

Maybe due to the above institutional structure, in the survey which the author conducted with university students, respondents were highly consistent on the feedback that they don't believe there isn't governmental or individual power that interferes with the judicial process (Table 5.1).

Most respondents chose "disagree" or "strongly disagree" when asked whether there is power intervention in procurator, police, or judge's work. Only around 17 percent respondents thought there was no power interference. There is no outstanding difference among procuratorate, public security and court in terms of power interference in respondents' mind. In the interview conducted with jailed

<sup>7</sup>Retrieved on May 10, 2017 from [https://www.nytimes.com/2016/03/05/world/asia/china-national-peoples-congress-npc.html?\\_r=0](https://www.nytimes.com/2016/03/05/world/asia/china-national-peoples-congress-npc.html?_r=0).

<sup>8</sup>The upper level supervises the lower level. The candidates for the lower departments are usually nominated by the standing committee of CCP committee (lower level), however, the upper judicial supervision can also nominate. The situation depends on the interaction between upper judicial supervision and the local CCP standing committee.



**Fig. 5.1** Power relationship between law enforcements and their supervisions. *Note* arrows means the direction of power concentration

**Table 5.1** Responses on power interference in judicial process

Variables	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
There is no government's intervention in procurator's prosecution	15.2	41.9	27.5	13	2.5	2.5
There is no individual's interference in procurator's prosecution	17.7	39.3	26.6	12.4	4.1	2.5
There is no government's intervention in judge's decision-making	14.8	37.7	29.7	14.4	3.4	2.6
There is no individuals' intervention in judges' decision-making	13.2	38.6	29.3	15.8	3.2	2.5
There is no government's interference in Public Security law enforcement	15	39.4	27.7	15.1	2.9	2.5
There is no individual's interference in Public Security's law enforcement	16.1	37.4	27.3	15.3	3.9	2.5

*Note* 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

officials, interviewees also shared one opinion that there were frequent power interferences in judicial process.

There are certainly interferences...procurator and judges are just puppet. They listen to the secretary [secretary of the CCP committee, author added]...in China, it is the case that secretary is the no 1. The rest are green against the gold (Interviewee G, jailed official).

I didn't encounter such kind interference, but heard some. I guess it is unavoidable. No matter where you are, China or developed countries, the powerful people always can influence the judges (Interviewee A, jailed official).

This kind of thing is numerous. I heard one thing. A corruption case in my county was found to be linked the vice secretary of our county. The procuratorate didn't dare to investigate further; they reported to the secretary; and the secretary said stop there. As a result, the vice secretary was OK (Interviewee C, jailed official).

No matter from what perspective, we cannot see that the judicial system (procuratorate, court, or public security bureau) is independent from the ruling group's control. The institutional structure presents a picture that these systems are part of the CCP's internal control. This lays a foundation for the possibilities that politics becomes judicialized. Under particular political and institutional conditions, with dependent and non-neutral judges, a government may manipulate judicial activism in order to consolidate its power and weaken the oppositions (Maravall 2003).

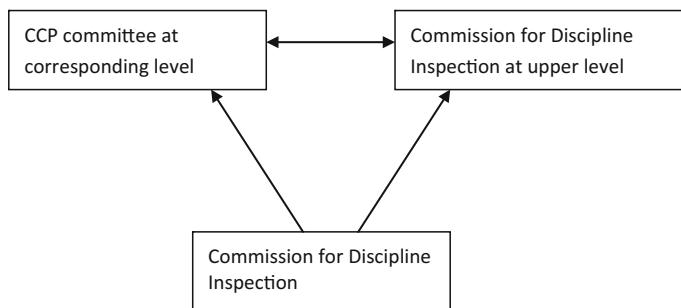
### 5.1.2 *The Commission for Discipline Inspection* (CDI: 纪律检查委员会)

P.R. China has been paying many attentions to CCP members' integrity, and has built up anticorruption institutions at various levels since its early days. However, such institutions were dismissed in the Cultural Revolution period. In Deng's era, a new institutional construction wave occurred; China then got back to the road of institutional approach. The anticorruption system in China is complicated and many departments are involved. Some of them are partly included and integrated in the judicial system. Some of them are separate from judicial system. The first is commission for discipline inspection (纪委); the second is the supervisory organs (监察部门); the third is the anti-corruption and bribery bureau (反贪污贿赂局); the fourth is the bureau of corruption prevention (预防腐败局).

The commission for discipline inspection (CDI hereafter) was abolished during the Cultural Revolution and was rebuilt up in 1978. It exists at four levels: national, provincial, municipal and county. The CCDI at the national level is named the Central Commission for Discipline Inspection (中央纪律检查委会 CCDI hereafter); CDI at local level are called CDI of XXX Province, CDI of XXX City or CDI of XXX County. *The Constitution of CCP* stipulates its main goal is

to uphold the Constitution and other statutes of the Party, to check up on the implementation of the line, principles, policies and decisions of the Party and to assist the respective Party committees in improving the Party's style of work and in organizing and coordinating the work against corruption.<sup>9</sup>

<sup>9</sup>Article 44 of the CCP Constitution, 《党政干部党内监督和纪律处分规定》, 中国法制出版社, 2004, p. 61.



**Fig. 5.2** The relationship between CDI, local CCP Committee and upper CDI

The commission for discipline inspection at all levels shall frequently provide education for Party members and adopt decisions for the upholding of Party discipline; they shall supervise Party members who hold leading positions in exercising their power; they shall examine and deal with relatively important or complicated violations by Party organizations or Party members and decide on or recommend disciplinary measures involved in such cases; they shall deal with complaints and appeals made by Party members; and they shall guarantee the rights of Party members.<sup>10</sup>

Similar to the law enforcement organizations, the CDI is under dual leadership, which is stated clearly in the CCP Constitution.

The Party's Central Commission for Discipline Inspection functions under the leadership of the Central Committee of the Party. The Party's local commissions for discipline inspection at all levels and primary commissions for discipline inspection function under the dual leadership of the Party committees at the corresponding levels and the next higher commissions for discipline inspection.<sup>11</sup>

The triangle relationships between CDI, local CCP committee and upper supervision can be illustrated with following Fig. 5.2.

First, CDI reports to both the CCP committee at its level and upper CDI. For some important cases, the CDI has to ask for the local CCP committee and upper CDI for advice. Or the local CCP committee or upper CDI may just deliver instructions to the CDI. Or to say the decision made by CDI are actually influenced or controlled by these two organs, which is elaborated and stipulated by the CCP Constitution:

Higher committees for discipline inspection have the power to examine the work of the lower commissions and to approve or modify their decisions on any case. If decisions to be modified have already been ratified by the Party committee at the corresponding level, the

<sup>10</sup>Article 8 of The Trial Regulations of the Inner Party Supervision of the CCP, 《党政干部党内监督和纪律处分规定》, 中国法制出版社, 2004, pp. 2–3.

<sup>11</sup>Article 43 of the CCP Constitution, 《党政干部党内监督和纪律处分规定》, 中国法制出版社, 2004, p. 60.

modification must be approved by the next higher Party committee. If a local commission for discipline inspection or a primary commission for discipline inspection does not agree with a decision made by the Party committee at the corresponding level in dealing with a case, it may demand the commission at the next higher level to reexamine the case; if a local or primary commission discovers cases of violation of Party discipline by the Party committee at the corresponding level or by its members, and if that Party committee fails to deal with them properly or at all, it has the right to appeal to the higher commission for assistance in dealing with such cases.<sup>12</sup>

Second, there are interactions between the local CCP committee and the upper CDI on some cases or issues, which are not seen in the CCP Constitution. As a matter of fact, they develop a shared opinion on some issues and then deliver to the CDI for practice. In the communications, the local CCP committee and upper CDI will try their best to have their own ideology or entrenched interests maintained. In a word, in the triangle relationship among them, the local CDI is the weakest and has to rely on local CCP committee and upper CDI for instructions. Whose opinion is represented most in the final decision to the CDI if there are communications between local CCP committee and upper CDI? Usually the local CCP committee has stronger weight on the decision of the CDI because in most cases the personnel of the CDI are nominated by local CCP committee rather than the direct upper CDI supervision. Also the direct upper supervision is usually located in another city, which renders it hard for them to monitor and influence local CDI. On the contrary, local CCP committee has tons of relationship with CDI staff. However for the significant cases for example if the vice secretary or vice mayor is involved, the upper CDI has more authority on it, because the upper CDI represents very much the opinion of the upper CCP committee and it is kind of out of local CCP's authority. Logically and in practice, it is impossible for the CDI to monitor local party committee at its own level although the Party Constitution provides that CDI could file a case on a member of Party committee at its level on the condition of approval by the Party committee.

### 5.1.3 *Supervisory Organs* (监察部门)

The second anticorruption organization is the supervisory organ which was reestablished in 1986. It is called Ministry of Supervision (监察部) at national level, Department of Supervision (监察厅) at the provincial level, Bureau of Supervision (监察局) at the municipal level and Bureau of Supervision (监察局) at the county level. Different from the CDI which is regarded as a CCP internal disciplinary organ, department of supervision is a public organ under government. The supervisory organs was established to supervise administrative organs, public servants and other staff who are appointed by governmental organs in accordance

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<sup>12</sup>Article 45 of the CCP Constitution, 《党政干部党内监督和纪律处分规定》, 中国法制出版社, 2004, p. 61.

with the *Administrative Supervision Law* (行政监察法). The supervisory organs, as provided in the *Administrative Supervision Law*, shall function to:

(1) to inspect the problems of the administrative organs of the State that occur in the course of their observing and enforcing laws and rules and regulations as well as government decisions and decrees; (2) to accept and handle accusations and expositions against administrative organs or public servants of the State or other persons appointed by such organs that violate rules of administrative discipline; (3) to investigate and handle violations of rules of administrative discipline committed by administrative organs or public servants of the State or other persons appointed by such organs; (4) to accept and handle complaints presented by public servants of the State or other persons appointed by administrative organs of the State who refuse to accept decisions on administrative sanctions made by the competent administrative organs, and other complaints to be accepted and handled by supervisory organs as prescribed by laws and administrative rules and regulations; and (5) to perform other duties as prescribed by laws and administrative rules and regulations.<sup>13</sup>

The same as the CDI, supervisory organs are under dual leadership. On one hand, it has to listen to the governmental leader, such as county mayor, municipal mayor, governor or premier. Because supervisory organs are under the government's leadership, its authority of personnel is actually in the hand of government at various levels. In other words, county mayors, municipal mayors, and governors nominate the directors of supervisory organs. On the other hand, they have to report to the upper supervision. The upper supervisory organs have authority over personnel arrangements too. As provided in the *Administrative Supervision Law*, "the chief or deputy chief of a supervisory organ of a local people's government at or above the county level shall be appointed or dismissed from office with the consent of the supervisory organ at the next higher level before the decision on the appointment or dismissal is submitted for approval."<sup>14</sup> Again, it is not hard to see that supervisory organs are under dual leadership too. The relationship among them can be illustrated with the following Fig. 5.3.

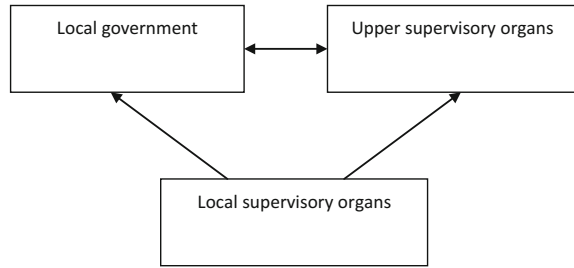
The relationship between the CDI and supervisory organs is complicated. They are supposed to be separate organs which work on anticorruption simultaneously, but there are some overlaps between their works. In 1993, these two organs were merged to secure an efficient supervisory and disciplinary structure and then work in the same office.<sup>15</sup> Both keep their names and organizational structure, but the personnel is interwoven between the two. For example, the director of supervisory organs assumes the post of executive vice secretary of CDI. There are many sub-committees in the CDI and many sections in the supervisory organs. Staff members usually take posts in both sides simultaneously. Such a phenomenon is called "one team, two organs (一套人马, 两套班子)". Institutionally, the secretary of CDI is one level higher than the supervisory organs and is in charge of overall

<sup>13</sup>Article 18 of the Administrative Supervision Law of P.R. China. 《党政干部党内监督和纪律处分规定》，中国法制出版社，2004，p. 65.

<sup>14</sup>Article 11. Administrative Supervision Law of P.R. China.

<sup>15</sup>Retrieved on Jan. 18, 2008 from <http://cpc.people.com.cn/GB/64162/71380/71387/71590/4855973.html>.

**Fig. 5.3** The relationship among supervisory organs, their upper supervision and government



supervisory work. As discussed earlier, the authority over the CDI's personnel is in the hand of local CCP committee. Here we see that the supervisory organs are subject to the CDI. Logically, the merge of the CDI and supervisory organs further put the authority over personnel of supervisory organs in the hand of the CCP too. Therefore, such a merge makes the anticorruption be more dependent on the ruling party, because supervisory organs are now officially a part of internal CCP disciplinary department. The distinction between the ruling party's internal disciplinary committee and public organ is then minimized. Although there is *Administrative Supervision Law* for supervisory organs to follow, but it doesn't mean a lot to the public because the CDI has more influence or authority on law enforcement than the supervisory organs. The *Administrative Supervision Law* in this sense is treated and felt more like an internal disciplinary ordinance rather than a public law.

#### 5.1.4 Anticorruption Bureau (反贪局)

The Bureau of Anticorruption and Graft was first established in Guangdong (广东) Province in 1989, and later copied by other provinces. The General Bureau of Anticorruption and Bribery (反贪污贿赂总局) was built up in 1995.<sup>16</sup> All bureaus of anticorruption and graft were established within the procuratorate. Or to say it is a sub section within the procuratorate. It functions to

- 1) guide the investigation and preliminary hearing of embezzlement, misappropriation, illicit enrichment, concealing overseas saving, and taking state owned assets cases; 2) investigate the serious corruption case; 3) file serious embezzlement and bribery cases directly; 4) organize, coordinate and direct the investigation of extremely serious embezzlement and bribery cases; 5) coordinate the investigation of extreme embezzlement and bribery cases; 6) research and analyze characteristics, and law of embezzlement and bribery nation wide and provide anticorruption suggestions; etc.<sup>17</sup>

Institutionally, the executive chief procurator takes the post of director of anti-corruption bureau at various levels. Since the chief procurator is in charge of

<sup>16</sup>For more information, refer to <http://www.jcjb.com/200803/ca688925.htm>.

<sup>17</sup>Retrieved on Feb 10, 2008 from <http://www.spp.gov.cn/site2006/2006-02-25/000504600.html>.

procuratorate and higher than the executive chief procurator in ranking, the chief procurator has more influence on the work of the anticorruption bureau than the director of the anticorruption bureau. As we discussed earlier, the local CCP committee is in charge of judicial system including procuratorate. Here we see the bureau of anticorruption and bribery is under the procuratorate. Therefore the bureau of anticorruption and bribery is under control of local CCP committee too. The CCP committee can decide the arrangement of key positions within the bureau of anticorruption and bribery. There seems no judicial independence of anticorruption bureau.

### 5.1.5 Bureau of Corruption Prevention (预防腐败局)

Borrowing anticorruption experience from Hong Kong, the Chinese government established National Bureau of Corruption Prevention in 2007. Such an organization has not been established across the nation. Only Shanghai, Sichuan, and Hebei Province are allowed to set up as a pilot. It is designed to

- 1) plan, coordinate, supervise and guide corruption prevention across the nation; 2) coordinate and guide the corruption prevention among enterprises, institutions, social groups, go-between organizations and other social organizations; 3) cooperate with international organizations on corruption prevention and international help.<sup>18</sup>

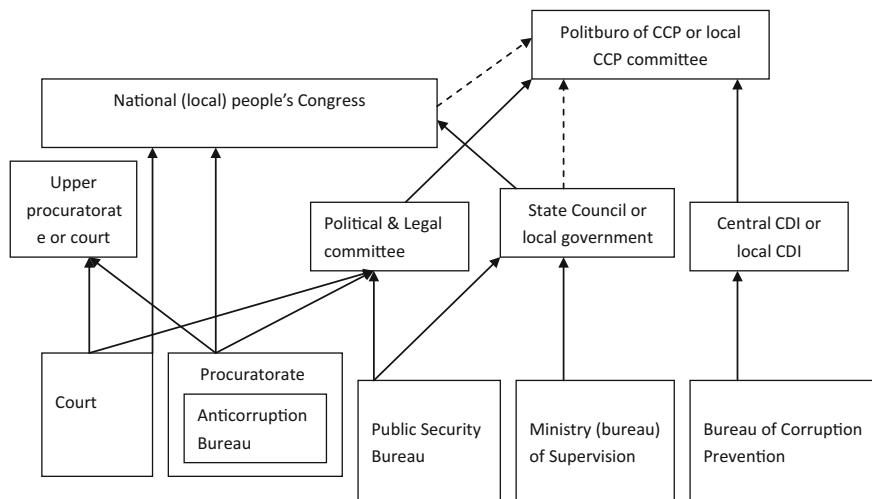
The same as the supervisory organs, the Bureau of Corruption Prevention is established within the CDI. The director of corruption prevention is always assumed by the executive vice secretary of the CDI. At the same time, its personnel are interwoven with officials from the CDI and supervisory organs. In other words, one official may take positions in the CDI, supervisory organ and bureau of corruption prevention simultaneously. For example, the executive vice secretary of the CCDI Ma Wen was Minister of Supervision and director of General Bureau of Corruption Prevention. Since the bureau of corruption prevention is under the authority of CDI, it has to listen to the CDI, and the secretary of CDI can interfere with its work. No matter whether the bureau of corruption prevention is regarded as a judicial organization or not, it is not independent from the ruling group, which violates the principle of rule of law.

In short, Chinese anticorruption system can be illustrated with the following two figures. The Fig. 5.4 shows the structure of anticorruption system (public security, court, procuratorate, anticorruption bureau, department of supervision, bureau of corruption prevention and the CCDI) in post-reform China. The Fig. 5.5 shows that overall map of anticorruption system (four levels) in post-reform China and also the supervisory system of the anticorruption system. The court and public security are not specific anticorruption organs and therefore left out in the Fig. 5.5 although they are involved in the anticorruption work.

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<sup>18</sup>Retrieved on April 1, 2008 from <http://yfj.mos.gov.cn/yfj/news.jsp?mid=20071109026296>.



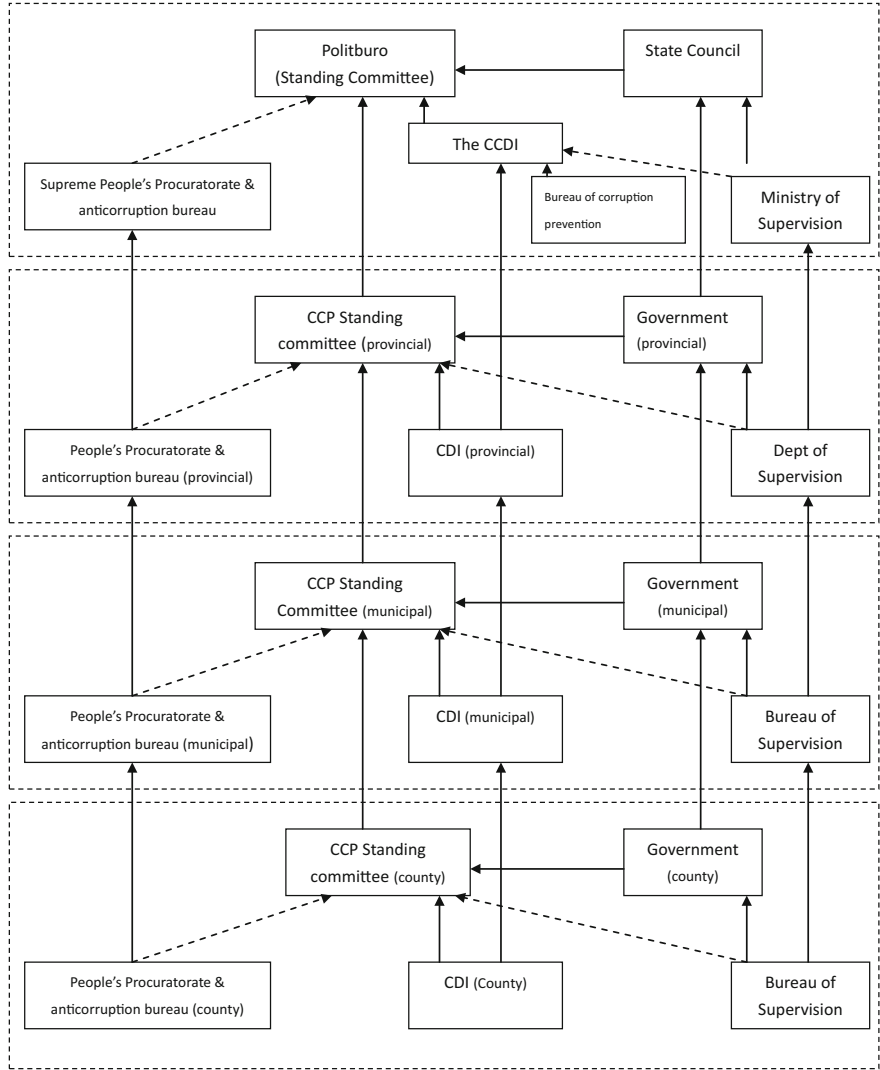


**Fig. 5.4** Structure of anti-corruption system in China. *Note* 1. The *arrow* means “responsible to” in accordance with the CCP rule or the Constitution, or more exactly, the power concentration direction. 2. The *dotted arrows* mean that organs are not responsible to it according to the Constitution, but responsible to it in real fact. 3. The vertical positions are consistent with the real official ranking de facto in-post-reform China

Thinking reversely, we may see influence or power the upper supervisions and local CCP Committee have on the lower levels. The following Fig. 5.6 shows the institutional power flow in the anticorruption system. However, we have to admit that there are many other powers or political elites who can influence anticorruption system, but not institutionally authorized.

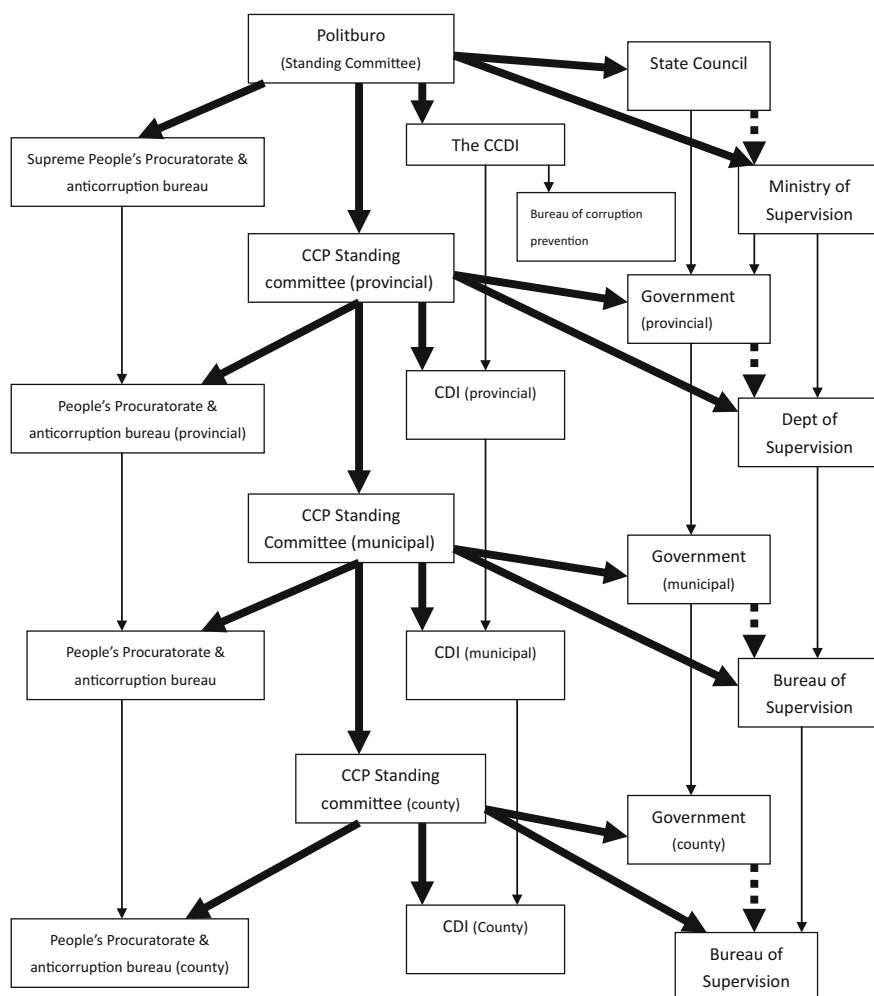
Just because of control by the CCP committee, the process of handling corruption case in mainland China is different from it in other countries. It can be illustrated in the following Fig. 5.7. Although not all corruption cases will be dealt with in the exact same way, most of cases have to pass these stages one by one.

From the above analysis, it is not hard to see that the power on anticorruption or law enforcement broadly is concentrated in the hand of CCP committee at variously levels, or more exactly, in the hand of the CCP secretary. Compared to CCP secretary’s power, the constraints and conditions are very limited. The CDI at the same level has no real authority over local CCP committee especially the secretary. The CCP Constitution provides that the CDI can profile standing members of local CCP committee, but need to be approved by the local CCP committee. It is then actually very impossible for the CDI to profile the local CCP committee members. As a matter of fact, although they are aware of corruption of local CCP committee, they couldn’t do anything about it. Reporting to the upper CDI is a choice, but they might have been punished before the upper CDI or upper CCP committee takes action on the local CCP committee members. The CDI at upper level is albeit able to profile local CCP committee members, but long distance (usually located in



**Fig. 5.5** The vertical structure of anti-corruption system in Mainland China. *Note 1.* The *dotted line* means that the people’s procuratorate is officially under the leadership of people’s congress at all levels, but the personnel arrangement is under control of the CCP committee, especially the standing committee of the CCP committee. The same is the relationship between department of supervision and CCP standing committee. *2.* The *arrows* mean the direction of power concentration or “responsible to”

another city) makes it difficult to monitor them. Given so, local CCP committee especially the standing members are actually under limited surveillance, which induces them to move to the edge of crimes. This is why “some local leaders in their



**Fig. 5.6** The power flow in the anti-corruption system in China. *Note* 1. The *boldness of arrow* means the magnitude of influence. 2. The vertical positions of political organs are consistent with their political ranking in post-reform China. 3. The *direction of arrow* means the power flow

jurisdiction dare to hold central directives which are not favorable to them, distort policy and regulations from the central authority, and issue documents that are inconsistent with the central document.”<sup>19</sup>

It sounds like a piece of good news that there is a minor institutional change regarding anticorruption for the sake of above reason. The central committee began to be aware of the concentration of power in the local CCP committee and the close

<sup>19</sup>Retrieved on Aug 20, 2007 from <http://guancha.gmw.cn/show.aspx?id=1634>.

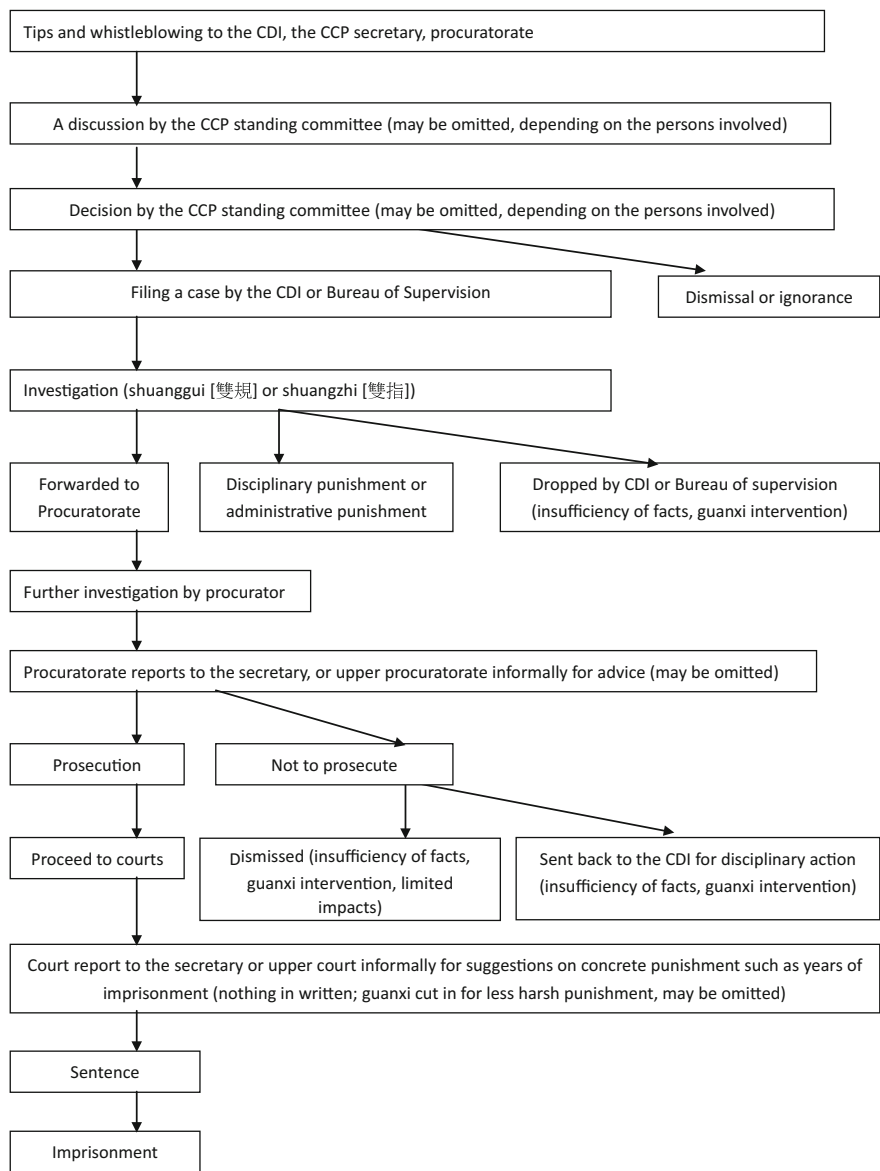


Fig. 5.7 The process of handling corruption case in Mainland China

relationship between the CDI and local officials. “The Party Central Committee realized that corruption cases involved local high-ranking officials are related, to a large extent, to the weak role of anticorruption of local CDI. To solve the large and

important cases, the CCDI must directly intervene.”<sup>20</sup> Former President Hu Jintao stressed at the 6th Plenary Session of the CCDI in 2006 that CCP need to “further enforce political discipline, firmly maintain central authority and make sure of implementing policies from central authority.”<sup>21</sup> Consequently, to avoid such an institutional loophole and break down the personal ties between the CDI and local officials which hinders the handling of the cases at local levels, after the Chen Liangyu Case, “disciplinary heads in various departments are no longer selected from inside the departments, but dispatched by the Party’s Central Commission for Discipline Inspection.... As a result, they would be more independent and effective.”<sup>22</sup> This type of direct appointment by the CCDI extends to six provinces such as Shanghai, Beijing, Tianjin, Chongqing, Guangdong, Zhejiang, and Henan. Moreover, “the Central Commission for Discipline Inspection has also been sending task forces, openly or secretly, to various localities to solicit grassroots comments on local high-ranking officials.”<sup>23</sup> Obviously, “the central authorities reinforced their vertical control and supervision over local officials. This helped reduce local organizations’ restrictions and intervention in the supervision by supervisory departments and ensured the central authorities’ direct control and supervision over localities” (BBC Monitoring Asia Pacific, Jan. 7 2007). However, such changes have not altered the affiliation status of the CDI as an organization under the CCP Committee. In other words, the judicial independence was not improved with such changes; therefore the principle of rule of law is still not supported. Judicial independence is so important that corruption is regarded as “caused by a lack of autonomy in bureaucracy as the bureaucracy fails to exist independently of other social groups and methods of behavior” (Chan 2000:516).

## 5.2 Screening Function of the Commission for Discipline Inspection

As analyzed above, the power of law enforcement including anticorruption is under control of the CCP institutionally, more exactly local CCP committees and the standing members of the CCP committee. It lays a possibility that the standing members especially the secretary may interfere with the judicial process out of any considerations; and local CCP committee may intervene out of collective interests.

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<sup>20</sup>Refer to “The Central Authority Controls Secretary of Discipline Inspection Committee at Provincial Level so as to Control Anticorruption”. *Wenhui News* (文汇报), Hong Kong, December 6, 2006. Also can be retrieved on August 20, 2007 from <http://www.sina.com.cn/2006-12-06/094711713873.shtml>.

<sup>21</sup>People’s daily, January 6, 2006.

<sup>22</sup>Retrieved on Feb 10, 2008 from <http://english.cri.cn/2946/2006/09/27/189@144586.htm>.

<sup>23</sup>Retrieved on Feb 10, 2008 from <http://english.cri.cn/2946/2006/09/27/189@144586.htm>.

One result of their interference is that some corrupt officials may be screened out and get away from criminal charge. Ma De case and Xiangfan case tend to suggest such a possibility.

### 5.2.1 *The Case of Ma De*

Ma De, former secretary of Suihua CCP Committee, Heilongjiang Province, has been charged for taking 17 bribes amounting to more than 6 million yuan (US \$726,000) between 1992 and 2001, when he was the deputy mayor of Mudanjiang City, Suihua prefectural commissioner, and Secretary of the Suihua Municipal CCP Committee.<sup>24</sup>

Ma De's "black money" mainly came from selling official positions. For him, the position of secretary of CCP committee at county level is wealthy of 500 thousand yuan. Over 260 government officials were alleged to have been involved in the corruption, and in Suihua alone more than 50 department heads were promoted after paying bribes.<sup>25</sup> The majority of the bribes Ma was alleged to have accepted were offered by senior officials, including county mayors and leading officials of government departments under Ma's jurisdiction, who wanted to be promoted to higher posts, the public prosecutors said.<sup>26</sup> For instance, the deputy CCP chief of a county-level city under the administration of Suihua, allegedly offered Ma a bribe of 500,000 yuan (US\$60,000) in November 2000. Just a few months later, he was promoted to the top position in another county under Suihua. Another young leader in Zhaodong County sent 250 thousand yuan to Ma when he heard that Ma De was not satisfied with his performance and wanted to transfer him to another position. He kept his position after that.<sup>27</sup>

Ma's being arrest sent a shockwave to the city's political circle as more than half of the local officials were allegedly involved. The aforementioned 260 officials committed crime of corruption either by giving bribes to or receiving bribes from Ma De. Should they all receive corresponding punishments? The CDI of Suihua's

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<sup>24</sup>Xinhua News Agency July 29, 2005.

<sup>25</sup>Retrieved on Feb 18, 2008 from [http://news.xinhuanet.com/legal/2005-07/28/content\\_3277859.htm](http://news.xinhuanet.com/legal/2005-07/28/content_3277859.htm).

<sup>26</sup>Heilongjiang Broadcast and TV News summarizes the scenario in which Ma of collects "black money": pass away of parents-in-law, son's entering university, hospitalization, Chinese traditional holidays, and cadres' reallocation. The former four are moments to show gratitude, congratulations, cares, and greeting in Chinese culture. The last is moment for cadres to get promoted or maintain current posts. And at any moment, any greetings, or congratulations need to be accompanied with a large amount of cash. Retrieved on March 1, 2008 from [http://www.hlj.xinhuanet.com/zfq/2006-03/23/content\\_6553880.htm](http://www.hlj.xinhuanet.com/zfq/2006-03/23/content_6553880.htm).

<sup>27</sup>Retrieved on Aug 20, 2007 from [news.sina.com.cn/c/2004-08-25/17153494259s.shtml](http://news.sina.com.cn/c/2004-08-25/17153494259s.shtml).

decision surprised all of Chinese.<sup>28</sup> The decision was that cadres or individuals involved with less than 50 thousand are waived from judicial punishment for the reason that there are too many cadres involved, and the deserved punishment will cause political quake and collapse of administration.<sup>29</sup> The Xinhua Net further exposed that the bottom line was raised to 100 thousands for cadres with strong relationships with political elites. Some involved cadres were even promoted later, said the report.<sup>30</sup>

### 5.2.2 The Case of Sun Chuyin

Ma De case is not the only case to waive corrupt officials' criminal charge with such an excuse. In the first volume of 2006, *Democracy and Legal System* (民主与法制) published an article commenting on corruption happening in Xiangfan Municipality of Hubei Province. The Xiangfan corruption case is featured by Sun Chuyin, former secretary of Xiangfan CCP Committee. More than 70 cadres were involved in the case. Sun was of course put in jail.<sup>31</sup> How about the rest? In the same vein, Xingfan CDI waived the cadres or individuals with less than 50 thousand RMB involved. However, the action is never publicized, but working as a latent rule. When a reporter from *Democracy and Legal System* questioned the issue to the Xiangfan CDI, their answer was that the case was handled by Hubei Provincial CDI, and please talk to them should he have any questions.<sup>32</sup> It is hard to track Xiangfan case in local Media, not because of media's reluctance, but because of government's pressure. The local Media were prohibited to report on it. The *Magazine of Democracy and Legal System* cited a local people's congress delegate's analysis: "family scandals should never be aired in public"<sup>33</sup>; some uncaught corrupt cadres working as protecting umbrella; transfer local people's focus, and move on" (Wei 2006:3). The *China Criminal Law* (刑法) provides that cadres involved in a bribery of 5 thousands should be profiled, and should be sentenced to death for 100 thousand. Compared to the *China Criminal Law*, 50 thousand is not a trivial case at all. The article 383 of *China Criminal Law* further stipulates that the minimum criminal punishment for corruption is a fine of 5 thousand. There is no rule of amnesty for corrupt officials who are involved in actions for less than 50 thousand. In a society that practices the rule of law, the legal outcome is predictable

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<sup>28</sup>Actually, the CDI of Suihua has no such authority to make such a decision. The decision must be made by the CDI of Heilongjiang or other authorities.

<sup>29</sup>China Youth News, Aug. 25, 2004.

<sup>30</sup>Retrieved on March 10, 2007 from [http://news.xinhuanet.com/newscenter/2005-04/07/content\\_2799104.htm](http://news.xinhuanet.com/newscenter/2005-04/07/content_2799104.htm).

<sup>31</sup>Sentenced 17 years imprisonment in August 2005.

<sup>32</sup>Wei Hong (2006), 襄樊官腐并发现, 《民主与法制》, 2006, Jan 3.

<sup>33</sup>Or in English idiom, a skeleton in the cupboard, 家仇可不外扬 in Chinese.

if there is a crime; no organization or power is allowed to be above the law. However the Xiangfan case and Ma De case suggest that there is a distance between China and rule of law. However, local governments have their own excuse: What they adopt is based on realistic politics; if they had punished all involved officials in accordance with *China Criminal Law*, government couldn't function at all for most of officials will be jailed. No matter what kind of excuse they have, one thing is clear that the CDI in some sense is above the law and the CDI either listen to the local CCP or upper supervision which always have many political considerations. In a word, we can develop such logic: law > CDI > CCP. It is not hard to see judicial system's dependence on the ruling group.

Such judicial dependence is confirmed by a Ph.D. student who conducted a survey in Zhejiang Province. He completed a survey on judges at Beilun District Court of Ningbo City, and discovered many kinds of risks and huge psychological pressure judges facing.<sup>34</sup> The most influential<sup>35</sup> are local government which controls court's financial budget approval and personnel; hence judges and court administration have to consider it seriously if there is a request or pressure from local government. Such a concern actually hints there are tons of other constraints on the law enforcers, such as pressure from the electricity company, water company, banks, railway station, and so on. In a non rule of law society in which people don't respect law and justice, these institutions may use their power to seek revenge on court administration if their requests are not satisfied. On the other hand, law enforcers are human being and have to face ordinary difficulties like others. For example, law enforcers usually won't offend electricity company staff because they need to ask them for help at particular moment; also for instance, law enforcers need railway tickets at special moment such as the Spring Festival, so a good relationship has to be maintained with railway station. In such a sense, law enforcement department is in a social net; they have to care and maintain relationships with those that are close to them. However there is a price for maintaining a good relationship; the price is giving up justice in law enforcement when asked for help. In this sense, not only is judicial system in China dependent on CCP committee and local government, but also other departments and companies.

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<sup>34</sup>Legal Daily, 2006, Nov. 14.

<sup>35</sup>The second most influential one is litigant and their family. The litigants are most related, therefore judges' decision brings a lot impacts on their interests. When unfair decisions found, they will make every effort to get justice. Sometimes, they will try to obtain decision leaning to them by inappropriate or illegal behaviors. Judges have to take into their pressure into account in decision making. In the Zhao Jianxin case, a report from Legal Daily (法制日报) exposed what a judge had in mind: "supervisors ordered to finish the case; the victim's family requested to execute the criminal; pressed from both the above and bottom, we had no other choice but to finish the case as soon as possible. Facing the pressure from the victim's family, judicial organizations don't dare to release the initially detained suspect, although the evidences are not strong. Moreover, given several requests for retrial by Supreme Court, plus the victim family's non-stopping demonstrations, what we can do is to stand on the side that makes case stronger." The case confirms that judiciary is not independent at all. Retrieved on August 20, 2007 from <http://www.nanfangdaily.com.cn/rwzk/20061121/sz/200612060020.asp>.



### 5.3 System of Shuanggui (双规) and Shuangzhi (双指)

The Chinese government has made numerous efforts to fight corruption. The establishment of the judicial system including procuratorate, anticorruption bureau, CDI, supervisory organs, and bureau of corruption prevention is only one aspect. The Chinese government also set up particular measures to combat corruption. Shuanggui and shuangzhi are one of such measures. Since there is no corresponding English word describing its full meaning, the author uses it as a verb and noun in the following writing.

Shuanggui first appears in the *Administrative Supervision Ordinance of P.R. China* which is passed on December 9, 1990. The *Administrative Supervision Ordinance* is established to “supervise the governments, state functionaries and other appointed staff who practice law, policy and rules, and the violations of law and disciplines.”<sup>36</sup> The paragraph 5 of the article 21 of the Ordinance stipulates that the supervisory organ needs to “order related persons to provide explanation for the related issues under supervision at designated place and time (责令有关人员在规定的时 间、地点就监察事项涉及的问题作出解释和说明).” Therefore all government officials are under the supervision of the Ordinance, including high ranking officials, low ranking officials, and some non officials who carry out government’s duty. At this moment, shuanggui is enforced by the supervisory organs, and not yet a particular rule to investigate CCP members’ corruption. In 1993, the CDI and supervisory organs were merged together to raise the efficiency and reduce overlaps between them. The *Administrative Supervision Ordinance of P. R. China* was then abolished in 1997. On May 1, 1994, the CCP passed the *Case Inspection Ordinance for the CCP Disciplinary Organizations* (中国共产党纪律检查机关案件检查工作条例). This Ordinance is established to “standardize and institutionalize the case investigation and increase the quality and efficiency of case handling.”<sup>37</sup> Shuanggui was included in the this Ordinance too. The paragraph 3 of Article 28, it provides that CDI can “ask related persons to provide explanations for the related issues at designated place and time (要求有关人员在规定的时 间、地点就案件所涉及的问题作出说明).”<sup>38</sup> Then shuanggui occurs in both ordinances, but it refers to the second one when people talk about shuanggui.

The shuanggui by the CDI is originally applied to all related persons in practice including non CCP members. Recently the CCP issued a red-headed document (called No. 7 document) which confines shuanggui to the CCP members only, and only the CDI at county level or above can practice shuanggui. The period of shuanggui was not defined clearly in the earlier Ordinance so that some officials

<sup>36</sup>Article 1 of the Administrative Supervision Ordinance of the P.R. China. Retrieved on April 1, 2008 from [http://www.jxxdxy.com/News\\_Detail.asp?NewsID=2898](http://www.jxxdxy.com/News_Detail.asp?NewsID=2898).

<sup>37</sup>Article 1 of the Case Inspection Ordinance for the CCP Disciplinary Organizations. 《党政干部党内监督和纪律处分规定》，中国法制出版社，2004，p. 192.

<sup>38</sup>Article 28 of the Case Inspection Ordinance for the CCP Disciplinary Organizations, 《党政干部党内监督和纪律处分规定》，中国法制出版社，2004，p. 195.

were shuanggui for more than one year. The No. 7 Document also sets up the limit of shuanggui as three months which can be extended one more month. A normal procedure for shuanggui is that

- (1) the CDI staff suggest to the standing committee of the CDI if the suspects found to be corrupt with one or two strong corruption facts, and then take actions;
- (2) for some special persons, shuanggui needs to be approved by the appointing organizations before take actions. For instance, shuangguiing a director of bureau in a county needs to be approved by the CCP committee of the county;
- (3) if the suspects are the members of the CCP committee at the same level as the CDI, the suggestion for shuanggui should be submitted to the upper CDI and transfer the case to the upper CDI.

The shuanggui in practice means that the CDI takes related persons to an isolated place which is segregated from his work, his friend, his family, and communications with the outside. In other words, the shuanggui person loses his official position and personal freedom immediately. What s/he needs to do is to cooperate with the CDI and write materials on related issues (either confession or explanation). Since the shuanggui may take a long time (several months), and CDI staff need to accompany the shuanggui persons all the time (eat and sleep together to ensure suspects not committing suicide and to ask suspects to confess), the CDI officials hate to do such kind of job. Therefore, in most cases, the CDI “borrow” temporary staff from outside to do it. The CDI is not allowed to build special housing or use judicial places such as prison to shuanggui officials, so they usually rent a small hotel or motel which is located in the suburb. The CDI will notify the organization where the shuanggui person works and let the organization to inform the family of shuanggui person, but the place and reason of shuanggui won’t be exposed. Here we can see that the legal status of Shuanggui is quite blurry. As a CCP’s special action, it is not in the *China Criminal Law*, but works as law. Moreover, shuanggui is argued not to be detention, but actually it is detention. In the shuanggui period, the CDI staff try all methods to get confession from the suspects (called “to provide explanation for related issues”). Although the Chinese have taken this practice for granted without challenging it, it is an awkward situation when questioned by legalists.

Shuanggui appears in both the *Administrative Supervision Ordinance* and the *Case Inspection Ordinance for the CCP Disciplinary Organizations*. It leaves a loophole for jurists to criticize in that there is no difference between internal rule of the CCP and public law. Therefore in 1997, the *Administrative Supervision Ordinance* was abolished and the *Administrative Supervision Law* was enacted at the same time. Shuanggui in the *Administration Supervision Ordinance* was replaced with shuangzhi in the *Administrative Supervision Law*. The paragraph 3 of article 20 of the *Administrative Supervision Law* provides that the supervisory organ can “order suspects who violates administrative disciplines to provide explanations for issues related to the investigation at designated place and time (责令有违反行政纪律嫌疑的人员在指定的时间、地点对调查事项涉及的问题做

出解释和说明).” Although *shuanggui* in the *Administrative Supervision Ordinance* and *shuangzhi* in the *Administrative Supervision Law* look different, there is no real difference between them, but some wordings. The convenience of replacing *shuanggui* with *shuangzhi* for the ruling group is that it could clarify the difference between the CCP rule and public law on one hand, and also control the investigation of corruption on non-CCP members on the other hand, after all there are many corrupt persons who are not CCP members. To this moment, therefore *shuanggui* and *shuangzhi* work together to cover all the potential suspects.

*Shuanggui* and *shuangzhi* share common features but differ in other ways. First, as we just discussed, *shuanggui* is for CCP members and *shuangzhi* is mainly for the non-CCP members. Since the CCP is the only ruling party in Mainland China and only a very small faction of officials are non CCP members, *shuanggui* is used much more often than the *shuangzhi*. Given so, *shuanggui* is much more well-known than the *shuangzhi*, but actually both exists and are applied in post-reform China. Second, *shuanggui* is the CCP's internal disciplinary measure while *shuangzhi* is authorized by law. Therefore the legal statuses for them are divergent. The similarities and differences between them can be illustrated by the following Table 5.2.

No matter whether it is *shuanggui* or *shuangzhi*, there is a problem of personal freedom. *Shuanggui* is only a discipline of the CCP rather than a part of law. Detention of official suspects by *shuanggui* violates the *Constitution of P.R. China*. In the *Administrative Supervision Law*, it is stipulated clearly that it is not allowed to take suspects into custody, but in practice all suspects are detained for confession. A case happening in 2006 challenged the legal status of *Shuanggui* and *shuangzhi*. The manager general (Shenzhen section) of China Construction International Cooperation, Yao Chuanrui, was *shuangguied* at a Beijing hotel in 2005, and the *shuanggui* had been over 4 months. Having got news, his mistress named Liu Qian and friends “rescued” him by buying off securities in February 2006. “Unfortunately”, they were captured later on the escaping way.<sup>39</sup> Liu's behavior is seen by the public as a radical and unreasonable way of correcting injustice in law enforcement, but it is totally unacceptable to the government. However, there is no law which can be applied to Liu Qian's behavior for *shuanggui* is neither in *China Criminal Law* nor *China Administrative Supervision Law*, therefore it is hard to charge judicially for rescuing *shuangguied* officials. Finally, in the trial at Beijing Haidian District Court, Liu Qian and other suspects were prosecuted for “gathering to disturb public order”, and were sentenced 1–6 years in December 2006.<sup>40</sup>

To sum up, *shuanggui* and *shuangzhi* tend to suggest that the ruling group is above the law, which is against the essential principle of the rule of law. In a rule of law society, nobody including individuals, governments, or groups stays above the

<sup>39</sup>Refer to *Jinghua Shibao* (京华时报), 2006, 11, 29, p. 9.

<sup>40</sup>Retrieved on August 18, 2007 from <http://news.163.com/06/1220/02/32OJUHKT000120GU.html>.

**Table 5.2** Comparison between shuanggui and shuangzhi

Items	Shuanggui	Shuangzhi
Authorizing organs	The Central Committee of the CCP	The Standing Committee of the National People’s Congress
Predecessor	The Case Inspection Ordinance for the CCP Disciplinary Organizations (trial)	The Administrative Supervision Ordinance of P. R. China
Base	The Case Inspection Ordinance for the CCP Disciplinary Organizations	The Administrative Supervision Law of P. R. China
Objects	CCP members violating rules	Suspects violating administrative discipline
Article	Paragraph 3 of Article 28	Paragraph 3 of Article 20
Enforcing organ	The CDI at county level or above	Department of Supervision
Legal status	The internal rule of the CCP	Law
Restriction on personal freedom	Yes	Yes
Restrictions on authorization	No	No
Time limit	Four months <sup>a</sup>	Four months <sup>a</sup>
Conversion to imprisonment	No	No
Effective since	1-May-1994	9-May-1997

<sup>a</sup>The time limit is 3 months and can be extended for 1 more month; effective from April 2006 when the No. 7 Document was issued

law (Neumann 2002). They have to follow law and stipulated procedure in all situations. Violators of law will be sued and punished. Here we can feel a distance between China and the rule of law from shuanggui and shuangzhi.

5.4 Concluding Remarks

Law status can be evaluated from many perspectives. Here we used anticorruption organs and anticorruption measures to assess it. It is necessary because anticorruption needs to go through the normal judicial process and is boarder than the normal judicial process. In this sense, evaluating the law status in post-reform China by reviewing the anticorruption organs and anticorruption measure helps to check law status institutionally.

The post-reform China came from the Cultural Revolution which destroyed normal institutions and traditional culture. Deng Xiaoping chose to reform China institutionally with market and legislation. The procuratorate and court system were expanded to catch lagged legal development. The judicial independence is provided in many law or rules. For example, judicial

independence was set out in the 1982 Constitution (Article 126), the 1996 code of criminal procedure (Article 5) and the 1995 law on judges (Article 8 and Article 43 against interference). More precise, the rules of the Supreme People's Court adopted in 1998 provide for the independence of judges (Article 78), the autonomy of prosecutors (Article 9) and even the limitation of the role of the CPC, which must now 'conduct its activities within the limits defined by the Constitution and laws' (Delmas-Marty 2003:18).

However, the status of these judicial organs was not changed very much. There is a political and legal committee at four levels which is particularly in charge of the procuratorate, court and public security (Zhou 2007). And the political and legal committee is a sub committee within the CCP committee at various levels. Logically and practically, these judicial systems are totally controlled by the ruling group rather than independent, which is not consistent with the rule of law (Ginsburg 2003).

Several other anticorruption organs are further inclined to suggest that there is a distance between post-reform China and the rule of law. The CDI plays a key role in anticorruption. Most anticorruption cases go to the CDI first. Similar to the PLC, the CDI is sub-committee within the CCP committee. Or to say, it is the CCP committee at various levels that make the final decision on corruption case. For those non-CCP officials, Chinese government established the supervisory organs to investigate and deal with their corruption facts. However, it is interesting that the supervisory organs merged with the CDI and is under the leadership the CDI. Since the CDI is responsible to the CCP committee, the supervisory organs actually are in the hand of the ruling group. The CDI and supervisory organs help the CCP to keep corruption among CCP officials and non CCP officials under control. There is no obvious judicial independence in the work of the CDI and supervisory organs.

Two other anticorruption organs, the Bureau of Anticorruption and Bribery and the Bureau of Corruption Prevention, were also set up to curb corruption. The bureau of anticorruption and bribery is established as a sub-section within procuratorate at four levels and the bureau of corruption prevention is newly established in some provinces. Since the procuratorate is under the direct leadership of the PLC and the CCP committee indirectly, the bureau of anticorruption and bribery also follows the direction of the CCP committee.

Institutionally, the whole judicial system including the procuratorate, court, police, the CDI, supervisory organs, bureau of anticorruption and bribery and bureau of corruption prevention are under the leadership of the CCP committee. Judicial dependence unavoidably leads to a possibility that the ruling group may interfere with the judicial process for various interest considerations (Barros 2003).

The concrete anticorruption measures by the CDI confirm that the ruling group or political elites does interfere the judicial process for political considerations. In the both Xiangfan case and Sun Chuyin case, the CDI or the CCP committee went easy on officials whose involved money is less than 50 thousand. The reason is that if they followed the law tightly, too many officials would have to leave the power center and this might cause a local political earthquake. In the investigation on corruption, the CDI set up a procedure of *shuanggui* or *shuangzhi* to screen corruption cases. First, in the *shuanggui* stage, the CDI extracts confession from the

suspects and then forwards it to the procuratorate to prosecute. In this sense, the CDI plays a role of police department or procuratorate. At this stage, they can decide what to forward and what not to forward, and influence the judicial outcome. There could be many political considerations in the shuanggui process. As Steidlmeier (1999) argues, Chinese “rules of the game” lack transparency as well as universality across both (a) regions and (b) factions leaving local officials with tremendous discretionary power. Second, shuangguiing means detention and lose of personal freedom de facto, which is against the *Constitution of P.R. China*. Both the establishment of shuanggui and inappropriate use of shuanggui violate the principles of rule of law and hint there is only rule by law in current China.

In sum, the irrational institutional structure and anticorruption programs suggest that there is no rule of law in post-reform China.

## Chapter 6

### Status of Law

From previous chapters, we can see that Mainland China is distant from the rule of law regarding the institutional structure and some basic anticorruption measures. How about other aspects of law system and law enforcement in post-reform China?

A state can be either regarded as a rule of man state, rule by law or rule of law state. The contrast between the rule of men and the rule of law is first found in Plato's *Statesman* and *Laws* and subsequently in Aristotle's *Politics*, where the rule of law implies both obedience to positive law and formal checks and balances on rulers and magistrates. In rule of law, the law is something the government serves; in rule by law, the government uses law as the most convenient way to govern. Leaders rule its domain by law (properly speaking) not because the law is higher than oneself but because it is convenient to do so and inconvenient not to do so. Therefore we need to look into the law system and law enforcement particularly to assess the law status in any specific society.

The rule of law, in its most basic form, is the principle that no one is above the law. Therefore there, first of all, must be law which is a system of rules to be enforced through a set of institutions (Hart 1961). Moreover, the law system must be complete and fair to all sectors of society. That is base of the rule of law. If there were no law to apply or no rule to follow, the rule of law would be just a mirage. Or to say, an incomplete legislation hints rule by law partially. Moreover, in Raz's view, the rule of law "requires that laws be clear, prospective, stable and open, and that these laws be adjudicated upon by an impartial and accessible judiciary" (Barber 2004:476); while in a rule by law society the ruling ideology reflects very often in the legislation, and the law may be fuzzy and against social values.

In practice, the most important feature of the rule of law is that governmental authority is legitimately exercised only in accordance with written, publicly disclosed law which are adopted and enforced in accordance with well-established and open procedural steps that are referred to as due process. Such a basic principle is intended to be a safeguard against arbitrary governance which is possible in a

totalitarian regime or in mob-rule state. In such a sense, the rule of law is no friend either to dictatorship or to anarchy. Just because of the restriction on arbitrary law enforcement, law will not be an instrument for the government, ruling group, or the powerful. More precisely, it is a set of neutral rule which is reasonable to all social members and entities. On the contrary, the rule by law allows the ruling group's manipulations of judicial process for private interests.

One fundamental goal of the rule of law is to protect human rights. It is stated in the Preamble of the *Universal Declaration of Human Rights* that human rights should be protected by the rule of law. The rule of law is seen as directly integral to the implementation of human rights. Without the rule of law, rights remain as lifeless paper promises rather than the reality for many throughout the world. The rule of law may protect human rights in many ways. For example, the rule of law is associated with economic development, democracy and political stability and further determines rights performance; the rule of law is integral to democracy and good governance; the rule of law helps facilitate geopolitical stability and global peace (Peerenboom 2005). And the most basic protection exists in the law enforcement so that suspects' human rights will not be hurt in judicial process. In a rule by law state, human rights may be infringed due to the ruling group's manipulations or law enforcer's disrespect to law.

The rule of law not only protects human rights, but also suspect's legal rights which are, clearly, rights existing under the rules of legal systems, such as rights of silence and due process (Halpin 1997). There will be open, fair and strict procedure rules which law enforcers respect and follow. If the law enforcers violate the law or procedure rules in the judicial process, they will also be punished to maintain justice and the rule of law. While in a rule by law state, there is either no procedure to follow or procedures are not fair and justified, hence suspects' legal rights might be ignored or hurt.

In sum, as Aristotle states, "the rule of law, it is argued, is preferable to that of any individual" (Solum 1994:120). A well developed legislation and fair law enforcement work to protect suspects' human rights and other legal rights, which hints a rule of law; while incomplete law system and arbitrary law enforcements imply rule by law.

## 6.1 Judicial Vacuum

A key requirement of the rule of law is a complete law system for the public to follow. China made a number of laws after the Reform and Open Policy. From 1978 to the end of 2003, the National People's Congress has passed 341 laws among which 36.5% are on economy and 4.7% are social legislation.<sup>1</sup> Legislation

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<sup>1</sup>Li Lin (ed.) 中国法治发展报告 No. 6 (2008), 中国社会科学院法学研究所, Refer to [http://product.dangdang.com/product.aspx?product\\_id=20163531](http://product.dangdang.com/product.aspx?product_id=20163531).



**Table 6.1** Frequency of response on “no law to obey”

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
There are “no law to obey” phenomena in Mainland China	0.9	11.6	15.2	56.4	16	3.75

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

storm helped China to get rid of rule of man and institutionalize administration. However, in the survey respondents’ eye, there are still judicial vacuum in post-reform China, so that no law can be applied in many situations. More than 72% (Table 6.1) thought there were “no law to obey phenomenon” in post reform China.

A case happening in Shenzhen also suggests that the judicial vacuum does exist in China. Many illegal private buildings were constructed for lease in the suburb of Shenzhen. The illegal buildings influenced the geological structure and caused the landslide. It is found that the owners are three officials from a Luohu public security station. The three officials confessed that they misappropriated public exchequer and built the hostel; they also confessed using the money from the little exchequer to bribe supervisors An Huijun. Therefore, An Huijun, vice director of Luohu Port Administration Office, was shuanggui<sup>2</sup> in October of 2004. An Huijun had been the political commissioner and director of Luohu Public Security Bureau before being transferred to Luohu Port Administration Office. Ms. An was charged of taking bribe 1.63 million yuan and 0.53 million HK\$ from his subordinates and businessmen.<sup>2</sup> However, what is more astonishing to the public is that Ms. An asked or took sex bribe from male subordinates according to procurator. The *Legal Evening News* reports that An Huijun always asked handsome male subordinates to accompany her for business travel and requested sex. If he fell in with her wishes, he would be promoted later; otherwise his promotion would be denied for “remaining steeling himself”. It is also reported that a male official was promoted from an assistant role of section to a leading role of division in 2 years.<sup>3</sup> It is regarded as sex bribe by the media and public. However, the sex bribe doesn’t appear in the indictment in June of 2005. The explanation from Shenzhen Procuratorate is that they “only investigate corruption and sex bribe is not in their jurisdiction.”<sup>4</sup> Although their excuse is unacceptable to the public, but it stands well institutionally for *China Criminal Law* truly doesn’t include sex as a form of bribery. It is therefore a judicial vacuum that no law can be applied to. There are many other judicial vacuums wherein criminals can escape from criminal charge such as

<sup>2</sup>Retrieved on Jan 15, 2008 from <http://www.southcn.com/NEWS/dishi/shenzhen/ttxw/200504130160.htm>.

<sup>3</sup>Retrieved on Jan 15, 2008 from <http://news.sina.com.cn/c/2005-04-26/14276498302.shtml>.

<sup>4</sup>Retrieved on Jan 15, 2008 from [http://news.xinhuanet.com/legal/2005-04/13/content\\_2842538.htm](http://news.xinhuanet.com/legal/2005-04/13/content_2842538.htm).

internet crimes,<sup>5</sup> software administration,<sup>6</sup> oversea investment, future corruption<sup>7</sup> etc. The law system can never be complete, but too many judicial vacuums and lagged legislation suggest a distance to the rule of law.

## 6.2 Ignorance of Human Rights

Rule of law is the very foundation of human rights. As stated in the *Universal Declaration of Human Rights* of 1948, “it is essential if man is not to have recourse as a last resort to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.” In the Western legal tradition, law is applied equally to all; it is binding on the lawgiver and meant to prevent arbitrary action by the ruler. Law guarantees a realm of freedom for the members of a political community that is essential to the protection of life and human dignity against tyrannical oppression and to the regulation of human relations within the community (Michael 1988). In the rule of law society Hong Kong, human rights are guaranteed in the investigation of corruption. As Chan (2001:920) finds, the issues of “proof in guilty in corruption case, the power of the ICAC in investigation and search, admissibility of evidence in court, and confidentiality of ICAC investigation” were once concerned by human rights activists in Hong Kong, and were solved finally. It therefore is necessarily to test the protection of human rights in law enforcement.

### 6.2.1 Violent Interrogation

Violent interrogation or extracting confession by torture is prohibited by Chinese law. The *China's Criminal Law* stipulates that the extracting confession by torture is against law. On the base of 1979 version of *China Criminal Law*, the 1997 version provides that “any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 232 or 234 of this Law.”<sup>8</sup> However, such principle of “Suspect-Crime-Means-None (疑罪从无)” and “Innocent Estimation (无罪推论)” are weak in front of “presumed

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<sup>5</sup>Retrieved on Jan 15, 2008 from [http://news.xinhuanet.com/tech/2007-01/18/content\\_5621769.htm](http://news.xinhuanet.com/tech/2007-01/18/content_5621769.htm).

<sup>6</sup>Retrieved on Jan 15, 2008 from <http://www.bitscn.com/news/internet/200701/91871.html>.

<sup>7</sup>Retrieved on Jan 15, 2008 from <http://cq.people.com.cn/NewsCenter/20070913162247.shtml>.

<sup>8</sup>China Criminal Law (1997), Article 247.

guilt” in real judicial enforcement. Recently exposed cases and interviews show that violation in the interrogation might be common in judicial process.

#### 6.2.1.1 Teng Xingshan Case

In late 1980s, a dismembered female body was found in Jinjiang River of Mayang County. Policemen firmly believed that it is Shi Xiaorong who was working at a hostel of Mayang and had been missing. Then who killed Shi? Public Security decided to start from doctor and butcher because dismembering body needs professional skills. They didn't find any doctor suspects, and Teng Xingshan (滕兴善: a farmer and butcher) went into their focus because it is said Teng bought sexual service at Square Hostel. Teng was sentenced a death penalty in December of 1988. He pleaded not guilty, and appealed. The Hunan People's Supreme Court maintained the original court decision in January of 1989, and Teng was executed in January of 1989. It is out of people's imagination that Shi Xiaorong went back to home alive in 1993. Since Teng really didn't make the homicide, why did he admit it in the interrogation? Was there anything which it would be awkward to disclose? In 2003, Teng's daughter was told by a male who shared the jail room with her father that Teng cried for misjudgment everyday in prison. In the detention place, Teng didn't admit the homicide initially, but several months later, he “confessed”. He once talked to the male that he never got sleep in the investigation period, and was tortured with two thumbs bonded together. He “confessed” because he couldn't stand it anymore.<sup>9</sup>

#### 6.2.1.2 She Xianglin Case

In another case, a woman named Zhang Zaiyu disappeared in 1994 and an unrecognizable female body was found in a close pond. His husband She Xianglin therefore was accused of making homicide. She Xianglin was sentenced a death penalty, but received 15 years imprisonment instead of immediate execution due to many inconsistencies in the case. It was raised that the 15 years imprisonment was made by judges on the base of inconsistencies and suspect's confession, but never taken any department. Several years later, his wife went back alive. Obviously She Xianglin didn't make the homicide, but why did he admit it? The question always intrigues others. After release, She Xianglin stated that he was tortured so much that he couldn't stand anymore and therefore admitted the homicide. He wrote in the appeal materials:

At that moment, I had been tortured for 10 days and 10 nights. I had only one wish which is to take a rest. As long as they let me take a nap, no matter what they ask for, I would conform to without any hesitation.

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<sup>9</sup>Retrieved on Jan 15, 2008 from Refer to [news.sohu.com/20060214/n241816037.shtml](http://news.sohu.com/20060214/n241816037.shtml).

Investigator asked me draw a map of the Guanjiao Reservoir. However I never went there, and didn't kill Zhang. How could I draw it? On April 15, 1994, they drew a map, pull me to the desk, and asked me to copy it.

One reporter from *Chongqing Evening News* interviewed the Lu Dingcheng who had been in charge of She's case, and was the vice director of Jingshan Public Security Bureau at the time of interview. The interview confirms She Xianglin's words.

Reporter You were the captain of vice squad, and you were directly involved in the investigation. For such a misjudged case, how do you feel?

Lu When I recall the whole case, I feel very sorry. What is regret is that I didn't give "brothers"<sup>10</sup> a prohibition.

Reporter Is the prohibition you refer to "prohibition of extracting confession by torture"?

Lu No. The prohibition I meant is that I didn't require them to check DNA. If we had checked the DNA of the dead body and Zhang Zaiyu's mother, the facts would have been very clear.

Reporter So your meaning is there was no extracting confession by torture?

Lu For a case like this, normally we don't allow it, and don't dare to extract confession by torture.

Reporter When policemen interrogated She Xianglin, he really didn't know the spot of dead body. One policeman then drew a map, and asked him to copy it. Were you aware of it?

Lu I don't know it.

Reporter She Xianglin didn't commit crimes, but how could he admit the homicide, and how come there were so many details in the indictment?

Lu Now when we think of it, it looks like a mystery. Just the day before yesterday, I reviewed the case file. It really shows that She admitted he used a stone weighing 19 kg to kill Zhang Zaiyu. And we weighed the stone; it is just around 19 kg.<sup>11</sup>

There is a mild progress towards to the rule of law if we compare Teng Xingshan case and She Xianglin case. Teng was executed for suspected homicide and extracted "confession", but She Xianglin only received 15 years imprisonment. However the violent "interrogation skills" still happen in China's judicial process.

### 6.2.1.3 Procurator Is "Blackest"

In the interview done at XXX jail, almost all interviewees especially interviewee E (jailed official) complained the interrogation method by procuratorate. Interviewee E was non-CCP director of a design institute; therefore his case was

<sup>10</sup>It means "subordinates" in local slang.

<sup>11</sup>*Chongqing Morning News* (重庆晚报), 2005, April 4. or refer to <http://news.sina.com.cn/c/2005-04-04/04186276032.shtml>.

handled by procuratorate.<sup>12</sup> He was taken to an isolated house where procurator interrogated him. Feeling to be clean, he didn't admit corrupt behaviors at first, but that was not what procurator expected. When asked how procurator treated him when he felt not guilty, he said so:

They (procurators) put an iron bucket over my head, and used a stick to beat the bucket. Can you imagine it? The noise was unbearable for everybody. I was tough but only insisted for a few days. (Interviewee E, jailed official)

The reason why he couldn't resist longer is:

They (procurators) interrogated continuously for 24 h without a break. And it is like that for several days. They are OK for they could change the shift, but not me. (Interviewee E, jailed official).

The interrogation continued for four days and got worse for interviewee E.

Four days without sleep. I fell asleep when they were interrogating. You know what they did? They poured one basin of icy water over my head. It was winter! I was stimulated to be awake. The interrogation continued. Again and again, I couldn't bear anymore and had to 'confess' (Interviewee E, jailed official).

The author: "However it is about your future? If you admitted, you would be imprisoned."

I had no choice. I was too tired, nearly exhausted. And I found out that they wouldn't stop if I didn't admit. If I admitted, I could receive less torture (Interviewee E, jailed official).

The author: "Is that only you who received such a treatment?"

No. all people received such kind of interrogation. Several of us (sharing the jail room) have good relationship and communicated on such an issue. Then we started to know that we all tortured by procuratorate. It is their interrogation style (Interviewee E, jailed official).

Other interviewees complained the same issue which occurs in the investigation process.

They didn't let me sleep. That is worse than beating. It makes me think of the torture done by Guomindang described in the history book (Interviewee D, jailed official).

Beating is very common. Everyone here was beaten. My crime is apparent, and I had no disputes, so I signed the confession quickly, and so I received less beating, but they still beat me. In fact, they beat you no matter whether you confess or not (Interviewee A, jailed official).

They beat you first, then they start the investigation. (Interviewee C, jailed official).

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<sup>12</sup>Design Institute is not treated as government department, and their staff is seen as enterprise employees rather than state functionaries. The corruption case in which they are involved is handled by Procuratorate directly instead of by CDI.

The interviews suggest that human rights might not be respected and upheld in the judicial process in China. The procurators take suspect's criminal behaviors for granted and use inhuman methods to extract suspects' confession. Sometimes, their torture behavior may extract true confession, but sometimes, torture can only extract "faked confession". The faked confession then leads to a misjudged case.

Actually stated clearly in the *China Criminal Law*:

Any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 or 232 of this Law.<sup>13</sup>

The *China Criminal Procedure Law* also stipulates that

Judges, procurators and investigators must, in accordance with the legally prescribed process, collect various kinds of evidence that can prove the criminal suspect's or defendant's guilt or innocence and the gravity of his crime. It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means.<sup>14</sup>

However these law articles on one hand mean nothing to law enforcers, on the other hand, are not known to the common Chinese so that they didn't know using law to protect themselves. In the survey on university students, less than half respondents believed that law enforcers will follow rules in the law enforcement (Table 6.2). Less respondents didn't know law enforcers have to obey the law or rules (Table 6.3), let alone using law for self-protection. The law is established to protect human rights, but due to ignorance of law enforcers, human rights might not be shielded in many actual cases.

## 6.2.2 Tortured to Death

### 6.2.2.1 Liang Yuncai Case

There are worse cases in which suspects were not only hurt to confess, but also beaten to death. The *New Beijing News* reported on May 11 of 2005 that Liang Yuncai, the chairman of board<sup>15</sup> of Hebei International Trust and Investment Co. Ltd died suddenly in the shuanggui period. In March of 2005, Liang received a call and left home, but he never went back after that. Two days later, his family was

<sup>13</sup>China Criminal Law, Article 247.

<sup>14</sup>China Criminal Procedure Law, Article 43.

<sup>15</sup>Also the secretary of the CCP of the Hebei (河北) International Trust and Investment Company.

**Table 6.2** Responses to the question that whether law enforcers follow rules

Variables	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Public Security follows rules in law enforcement	6.8	19	24.9	46.6	2.7	3.19
Judges follow rule in law enforcement	5.1	12	26.1	53.6	3.2	3.38
Procurators follow rules in law enforcement	6	14	32.3	43.7	3.9	3.25

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

**Table 6.3** Responses to the question that whether law enforcers have a set of open rules

Variables	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Public Security has a set of publicized law enforcement rule	6.8	19.8	30.9	38.7	3.8	3.13
Courts have a set of publicized law enforcement rule	6.7	20.4	30.9	37.5	4.6	3.13
Procurators have a set of publicized law enforcement rule	5.1	21.7	32.9	34.5	5.9	3.14

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

noticed that Liang was shuangguied due to an internal report on his concealing national asset and abusing “little safe”.

His wife was informed later that Liang fell off and died. In the hospital, she found that Liang was black and blue with blood stasis and broken bones on the chest. The original diagnostic log showed Liang had been dead when he arrived at hospital. It also showed he died because of “external hit”, but it was revised as “died due to falling off”. Later on, Liang’s medical record and death certificate were taken away by related departments, but these two are supposed to be belonged to Liang’s family.<sup>16</sup>

His family was skeptical of the argument that Liang died for the sake of falling off. On May 8, Liang’s wife submitted a complaint to the Hebei People’s Procuratorate accusing the Monitoring Office of Hebei State-owned Assets Supervision and Administration Commission of doing harm to Liang and requested a second identification. She was informed that Hebei People’s Procuratorate has filed the case, and has arranged body check by legal examiners from Ministry of

<sup>16</sup>New Beijing News, 2005, Oct 10.

Public Security and Supreme People's Procurator. On May 11, a joint team of legal examiners started the examination. Their report shows that Liang died because of bloodshed and trauma shock.

It is found that the Hebei State-owned Assets Supervision and Administration Commission transferred several staff from outside to do the investigation. These staff beaten Liang for confessions and caused his death. Three involved persons were detained for the suspicion of intentional injury. The written opinion recommending prosecution states that three persons kicked or punched Liang's back, waist, leg, shoulder and breast in the excuse of not sitting right or no honest confessions. One of them used mop stick and chair to hit Liang's back; and the stick was even broken. In December 2005, they received judicial punishments ranging from 3 years imprisonment to life imprisonment. In the meantime, the director of Monitoring Office and a section member were prosecuted for the dereliction. The prosecution recommendation states that they were aware of three persons' violent behaviors but didn't stop, and thus caused Liang's death.<sup>17</sup>

### 6.2.2.2 Liang Jiping Case

Liang Yuncai case happened in 2005. There seemed no apparent improvement in the following years. On June 8, 2007, *Southern Metropolitan News* exposed that a vice director of Ganyu Electricity Bureau, Liang Jiping, was also found dead in the shuanggui (双规) period. An explanation from Ganyu Procuratorate is that Liang died due to heart shock, which aroused suspicion of his family. His wife found that Liang is covered by suggillation which looks caused by hits of electrical spontoon. Three days later, Department of Public Security of Jiangsu Province arrived and did a body check. The body check report says Liang died because of trauma shock which was caused by repeated external hits. The case was then filed by public security bureau and transferred to Nanjing Procuratorate for neutrality consideration.<sup>18</sup>

Here we can see many outstanding issues. First, in Liang Yuncai case, none of those criminals are officials from the CDI, but temporary workers or non-law enforcers. They may have the monitoring authority, but definitely not the interrogation authority. Second, the more outstanding issue is that how to protect suspects' human right and legal right. In Liang Yuncai's case, he was bit and hurt by chairs and sticks; in Liang Jiping case, he was hit by electrical spontoon; and both were hit to die. Not only the *China Criminal Procedure Law* prohibits the violent interrogation, but also the No. 7 Document issued by the CCDI in 2005 (forbids CDIs to hit, curse or physically punish suspects). The shuanggui procedure, shuanggui time

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<sup>17</sup>Retrieved on 8 May 2007 from <http://finance.people.com.cn/GB/42774/3849328.html>.

<sup>18</sup>Retrieved on Jan. 3, 2007 from <http://www.nanfangdaily.com.cn/southnews/jwxy/200706080048.asp> and <http://www.nanfangdaily.com.cn/southnews/jwxy/200707090046.asp>.



limit and shuanggui subject are made specifically clear in the No. 7 Document.<sup>19</sup> (1) The shuanggui can only be authorized by the CDI at county level or above. (2) The CDI at the county level should report to the CDI at provincial level via municipal level before they shuanggui any cadres; the municipal CDI should report to provincial CDI ahead of any action; the provincial CDI should file a case with the CCDI for reference before any action. (3) The shuanggui should not exceed the investigation time limit which is 3 months accordingly to the Investigation Ordinance for the CDI of CCP. (4) The No. 7 Document stipulates that CDIs need to maintain cadres' defense right, appeal right, body right, asset right, and right to know. (5) Offense-reporter, witness, cadres' relative and accuser's legitimate rights should be protected. (6) The No. 7 Document asks to put security responsibility system in shuanggui into effect. If there were a security problem in shuanggui, the person in charge would be pursued for responsibility. Such concrete rules were in effect when Liang Yuncai case happened. With such rules in hand, local CDI or procuratorate still ignored suspect's rights and bit them to death. It is hard to see there was a strict sense of rule of law in their mind. A strong presumption of guilt renders them just to extract pre-assumed criminal facts and bring suspect to "justice".

### 6.3 Ignorance of Legal Rights

One principle of the rule of law is that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws which is further adopted and enforced according to established procedure rules (Sanchez-Cuenca 2003). The principle is intended to be a safeguard against arbitrary governance. The Chinese Constitution provides that "all citizens of the People's Republic of China are equal before the law. Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law."<sup>20</sup> To have a sense of law status in post-reform China, it is therefore necessary to see whether legal or procedure rights are upheld.

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<sup>19</sup>The CCDI issued the 7th document of 2005 at the end of May which is therefore called No. 7 Document in China. It was transmitted to city level in January, 2006, and in February from City level to county level. The No. 7 Document has 7 chapters, including shuanggui content in the section three of chapter four. The No. 7 Document stipulates that shuanggui objects should be CCP members, and should also satisfy one of following conditions: found to be corrupt with strong evidence and need further investigation; found violating regulations and potentially escaping or destroying evidence; and involved in corruption case and not providing evidences. For the shuangguied subjects, there is no much difference from the before.

<sup>20</sup>The Constitution of P.R. China, Article 33.

### 6.3.1 *Misjudged Cases*

The evidence is the base of court decision no matter what country you are in (Gleeson 2003). The *China Criminal Procedure Law* takes evidence very seriously too. The article 141 of the *China Criminal Procedure Law* provides that

When a People's Procuratorate considers that the facts of a criminal suspect's crime have been ascertained, that the evidence is reliable and sufficient and that criminal responsibility should be investigated according to law, it shall make a decision to initiate a prosecution and shall, in accordance with the provisions for trial jurisdiction, initiate a public prosecution in a People's Court.

The Article 161 of *the Criminal Procedure Law* stipulates that

if the evidence is insufficient and thus the defendant cannot be found guilty, he shall be pronounced innocent accordingly on account of the fact that the evidence is insufficient and the accusation unfounded.

However suspects' such legal rights are not well respected in real legal practice. Law enforcers in post-reform China always presume suspects' criminality, pay less attention to the evidence link, and ignore suspect's rights. Many misjudged cases therefore occur. The aforementioned Teng Xingshan case is good example to show how law enforcement department ignored weakness of criminal evidence and disrespected suspect's legal rights.<sup>21</sup> Since there were so many inconsistencies and weakness of evidence in Teng Xinshan case, he should not have been imprisoned or executed in accordance to the law. However, the judicial organs chose to rely on weak evidence and executed him. There is an improvement in the late She Xianglin case for he only received 15 years imprisonment. In his case, law enforcers started to respect law and suspect's legal right gradually to some extent. However, there is still a long distance to rule of law for law enforcers still manipulate judicial process out of other considerations or their interest. The continuation of She Xianglin case proves such a point.

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<sup>21</sup>First, Teng "confessed" he choked the victim to death. However, the judicial investigation shows that the victim's cheekbone was broken. It must be hurt by a heavy tool, and couldn't be done by hands. Second, Teng "confessed" that he dismembered the victim with an axe, but the legal inspection report by Zhongshan Medical University shows that there was no human blood on the axe. Third, the skull verification by Tieling Public Security shows that there are some non-coincidences between the verified skull and Shi's photo. Fourth, the materials usually float from the upper river to lower bank. The body was found in the upper river, but the criminal spot "confessed" by Teng was in the lower river. Teng's lawyer raised such questions to the court, but never taken seriously by the law enforcers.

### 6.3.2 *Pan Yujun Case*

She Xianglin case has been proved a wrongfully judged case. It is good that local government took the case correction seriously. However, it is still hard to see that local government respected suspect's legal seriously. On one hand, they corrected wrongful treatments for She Xianglin; on the other hand, they made new wrongful treatment in the case correction. Pan Yujun was the police who dealt with She Xianglin case 11 years ago, and was suspected to extract confession by torturing She Xianglin.<sup>22</sup> On May 25 2006, Pan Yujun was found to have committed suicide in a cemetery of Wuhan City. He had been under investigation by Hubei CDI and Hubei Supreme Procuratorate before he committed suicide. Based on Wuhan policeman's explanation, Pan hung himself, but such a conclusion is questioned by Pan's family. First, based on words from Pan's wife, Pan once called his family, and expressed desperate feelings. It seems that Pan received a huge amount of external pressure.<sup>23</sup> Second, Pan had been under surveillance since he was taken to Wuhan for investigation. It is very strange he could leave from the controlled house in the earlier morning and went to a cemetery to commit a suicide. Moreover, they only started to search him 4 h after Pan left. Third, Pan was found dead in a cemetery with words of "I suffered wrongful treatments" on a tombstone and artery cut.<sup>24</sup> It is deduced that Pan cut his artery, and used his blood wrote those words. What does "I suffered wrongful treatments" mean? Tortured investigation or "scapegoat"? Fourth, Pan's wife asked for the cause of Pan's death when confronted Jingshan government. However, the Jingshan Public Security refused to investigate further but to pay funeral fee and a little compensation. Why did the Jingshan government refuse to investigate further especially the person dies left words of "wrongful treatments"? Is it because some powerful person's interest will be hurt if investigate further? Although Pan was deduced to have made suicide, he still has his legal rights if there are doubts that he was forced to commit suicide. The case suggests that suspect's rights are not always in law enforcer's mind but the interests of government or powerful people are in top priority in post-reform China.

There are many other cases in which suspect's legal rights were not respected and were found to be wrongfully judged:

#### Case 1

On January 18, 2005, Henan Yingyang Public Security caught a male suspect called Wang Shujin. He confessed that he once raped and killed 4 females in Guangping of Hebei

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<sup>22</sup>According to She's memory, Pan did torture him for confession, and it is above the medium. Refer to <http://www.chinanews.com.cn/news/2005/2005-05-30/26/579891.shtml> and [http://news.xinhuanet.com/legal/2005-05/27/content\\_3008196.htm](http://news.xinhuanet.com/legal/2005-05/27/content_3008196.htm) and <http://news.sina.com.cn/c/2005-05-27/01126759414.shtml>.

<sup>23</sup>Retrieved on Jan 15, 2007 from [http://news.xinhuanet.com/comments/2005-05/31/content\\_3024730.htm](http://news.xinhuanet.com/comments/2005-05/31/content_3024730.htm).

<sup>24</sup>Retrieved on Feb 10, 2007 from [http://news.xinhuanet.com/legal/2005-05/27/content\\_3008196.htm](http://news.xinhuanet.com/legal/2005-05/27/content_3008196.htm).

Province. However, when policemen brought him to the criminal spot, victim's colleague told that the case had been resolved, and the criminal was executed 10 years ago. Nie Shubin, a 21 years old youth, was the scapegoat.<sup>25</sup>

#### Case 2

Xu Jingxiang was sentenced 16 years for the accusation of burglary because he wore a green vest with the same of the criminal. Fifteen days away from his completion of the imprisonment term, he received a no-prosecution statement, but he has served the sentence for 16 years, and got nephritis therefore.<sup>26</sup>

#### Case 3

Not only have the common people encountered such unfair and misjudged court decision, it happens to public security staff too. Li Jiuming, a prison police, was implicated to a burglary and homicide case. He was suspected to commit the crime, and sentenced death penalty with 2 years' probation. Later, a criminal called Cai Mingxin was caught for rape, robbery and homicide (received a death penalty). He confessed right before the execution that he sneaked into jail policemen's apartment stealing stuff, and wounded the owner when found, which is Li Jiuming's case.<sup>27</sup>

We cannot help questioning why could all these cases be completed by law enforcers given all "criminals" are wrongly judged? The "criminals" certainly wouldn't admit the crime initiatively, but they finally signed the confession. The interviews with officials in power may helps reveal the reason of so many wrongfully judged cases.

Public security's pressure is huge; there are so many cases, and they have to resolve it in a short time. Sometimes they haste to finish cases (Interviewee J, official in power).

There are sure such kinds of thing. It is not their thing, therefore it is impossible for them to treat it so carefully. In fact, winding up a case quickly has been a tradition in public security system. Closing cases quickly will certainly bring wrongfully judged cases (Interviewee I, official in power).

Suspects have no rights in public security's eyes. Once you are found the suspect, their responsibility is to get your confession. If they care suspects, they can never wind up a case for there are always inconsistencies (Interviewee O, official in power).

These interviewees are normal officials who are still in power and therefore have a sympathy attitude towards policeman. However, from the above cases and interviewees' testimonies, what comes to people's mind is the ignorance of suspect's legal right including extraction of confession by torture and due procedure rights. If suspects' legal rights were respected, and laws would not be a tool for government or law enforcers, such misjudged cases would be much less (Carter and Beth 1978).

<sup>25</sup>Retrieved on August 20, 2007 from [http://news.xinhuanet.com/newscenter/2005-03/18/content\\_2712116.htm](http://news.xinhuanet.com/newscenter/2005-03/18/content_2712116.htm) or <http://www.nanfangdaily.com.cn/rwzk/20050406/sz/200504210020.asp>.

<sup>26</sup>Refer to Procuratorate Daily 2005, 03, 12. or <http://www.jcrb.com/n1/jcrb787/ca365961.htm>.

<sup>27</sup>Retrieved on Jan. 18, 2007 from <http://news.sina.com.cn/s/2004-11-27/23394362868s.shtml> or [http://news.xinhuanet.com/focus/2005-06/24/content\\_3125962\\_1.htm](http://news.xinhuanet.com/focus/2005-06/24/content_3125962_1.htm).

### 6.3.3 Ignorance of Rights in Shuanggui

Since the foundation of CCDI, many kinds of rules for common officials and CCDI staff have been established to secure a clean government and fair judicial process, such as the *Constitution of CCP* (中国共产党党章, revised on Nov. 14, 2002), *Internal Supervision Ordinance of CCP* (中国共产党党内监督条例, revised on Dec. 31, 2003), the *Disciplinary Punishment Ordinance of CCP* (中国共产党纪律处分条例, revised on Dec. 31, 2003), the *Administration Supervision Law of P.R. C.* (中华人民共和国行政监察法, passed on May 9, 1997), the *Rules for Clean Governance of CCP Officials* (中国共产党党员领导干部廉洁从政若干准则, revised on March 28, 1997), the *Rules on Officials to Report Important Issues* (关于领导干部报告个人重大事项的规定, revised on Jan. 31, 1997), the *Rules on Accountability of Party Conduct and Construction of Clean Governance* (关于实行党风廉政建设责任制的规定, revised on Nov. 21, 1998), the *Ordinance on Complaint and Appeal for CDIs* (中国共产党纪律检查机关控告申诉工作条例, passed on May 21, 1993), the *Petition Ordinance* (信访条例, passed on Oct. 28, 1995), the *Rules of Protection of Informer and Accuser* (关于保护检举、控告人的规定, passed on Jan. 19, 1996), the *Temporary Ordinance on State Functionaries* (国家公务员暂行条例, passed on Aug. 14, 1993) and so on so forth. One part of the above rules is to constrain officials' behavior and secure clean governance; the other part of the above rules is for anticorruption organs such as CDI to follow in the investigation and prosecuting process in order to protect suspects' rights and a fair procedure. However, as law enforcers, the CDI staff does not always obey their own rules, which damages the rule of law.

For example, as mentioned earlier shuanggui literally means that officials need to provide information on suspected cases at designated place and time. It doesn't support detaining or detention at all. In other words, officials suspected should work as normal in shuanggui period and just need to answer CDI's inquiries as designated time and place. However, the actual shuanggui in China means detention by CDI and lose of personal freedom, which is against the *Legislative Law of P.R. China*.<sup>28</sup> In almost all cases exposed in media, the suspects are taken to a secret place for investigation. In 1998 the CCDI issued a notice to stop building special house for shuanggui purpose, the CDIs then always rent housing (hotel or hostel) to extract confession from suspects.

Moreover, the time limit of shuanggui, as provided in the *Case Inspection Ordinance for the CCP Disciplinary Organizations* (中国共产党纪律检查机关案件检查工作条例, article 39), is 3 months. Under particular circumstance, shuanggui can be extended for one more month. However, in practice, shuanggui would be more than 3 months if the wanted confession were not extracted or other political goals were not achieved. For instance, in Zhu Xiaohua case, he had been

<sup>28</sup>The article 8 of Legislative Law provides that detaining citizens and confining citizen's freedom can only be proved by law. The CCDI rule is not law and therefore is not authorized to confine citizens.

shuanggui for 2 years before he was officially detained in May, 2001. Having been aware of such kind of violations, the CCP stipulated in the No. 7 Document clearly in 2006 that CDI “cannot exceed the time limit for case investigation.”<sup>29</sup> It is arguable that Zhu Xiaohua case had happened 4 years before the No. 7 Document was issued. However, in a well known Chen Liangyu case related to Shanghai CCP Committee, the same thing (exceeding the shuanggui time limit) still happens. The Secretary of Shanghai CCP Committee Chen Liangyu had been shuanggui for nearly 1 year (from September 2006 to July 2007) before being deprived of his NPC membership and forwarding to judicial process.<sup>30</sup> It is not a particular thing happening to Zhu and Chen. Almost all corrupt officials will be shuanggui, and almost all shuanggui will exceed 3 months if expected confession is not obtained. From such cases, we may see that the CDI may not respect their own rules to a great extent. The law and CCDI rules work for the ruling class’ need or some specific group’s need rather than for a fair justice or judicial procedure.

In addition, violence is prohibited in the shuanggui period in the *Notice on “Shuanggui (双规)” and “Shuangzhi (双指)”* issued jointly by the CCDI and Supervision Department in 1998. The Notice provides that shuanggui and shuangzhi:

- (1) Cannot use judicial methods; cannot use office or detaining place of judicial organs and collecting post of administration.
- (2) Cannot build special houses or buildings for “shuanggui” or “shuangzhi” purpose.
- (3) Neither trickery nor coercion nor corporal punishment is used to secure confession; cannot beat, curse and humiliate suspect’s personality; cannot use tools.<sup>31</sup>

However, in real cases, violence or torture in the shuanggui period is a common phenomenon. The aforementioned Liang Yuncui case, Liang Jiping case and interviews show that the CDI organs ignored such regulation and extract confession in inhuman ways. As law enforcers couldn’t follow law and rules tightly, it is harder for the mass to obey them. A rule of law society sounds impossible.

### 6.3.4 *Shuanggui Private Entrepreneur?*

As discussed earlier, shuanggui is the first step in the application of anticorruption in post-reform China. Irrational institutional structure plus people’s disrespect for

<sup>29</sup>Retrieved on Feb 10, 2008 from [http://news.xinhuanet.com/politics/2006-05/09/content\\_4523744.htm](http://news.xinhuanet.com/politics/2006-05/09/content_4523744.htm).

<sup>30</sup>Retrieved on Feb 10, 2008 from <http://news.sina.com.cn/c/2007-07-26/192313534436.shtml>.

<sup>31</sup>Rules of Inner Supervision and Disciplinary Punishment for Party officials and Government Officials, P223. China Legal Press, 2004.

law makes it very easy to have trump-upped case. Zeng Jinchun is such an official whose power wasn't constrained and then developed a style of overload. His most used words is "bring him to Chenzhou and shuanggui him."<sup>32</sup> As provided by the *Case Inspection Ordinance for the CCP Disciplinary Organizations* and the *Administration Supervision Law*, shuanggui is applicable to the CCP officials only and shuangzhi is applied to non-CCP officials, but Zeng abused his power and extended shuanggui to the private entrepreneurs. Peng Beijing once displeased a mine owner who was Zeng's friend. Because of the offence, Peng was "shuang-guided" by Chenzhou CDI on the trip from Guangzhou to Chenzhou. Peng was held in custody at a hotel for 8 days, but the Chenzhou CDI couldn't find any graft from Peng and had to release him later. Peng was also asked to pay for the hotel expenses.<sup>33</sup>

In Marxian sense, anticorruption system and law are established by the CCP to maintain the ruling class's interest and reflect its ideology. However, the fact tells that individuals might apply the anticorruption out of other concerns such as private interest considerations. The distinction between personal and public in those officials' mind is sometimes blurry. A possible root lies in the tremendous power which officials have and the mass lack. As interviewee C (jailed official) said, "the power of CDI is too big; they can do anything they want. Although you know they intentionally punish you, you can do nothing." Without constraints and conditioning factors, they may use it extraordinarily for personal interests. If there is rule of law, the officials including law enforcers would follow the regulations and rule tightly so that the outcome of judicial process is predictable. The rule of law also encourages complaints if suspects receive unjustified hurts (psychological or physical) so that the law enforcers take a lesson and stop it in the future. However, that didn't happen in post-reform China. The above cases tend to prove that suspect's legal rights are not respected and maintained well, which is against the principle of the rule of law.

## 6.4 Power Over Law

The rule of law differs from the rule by law in that the rule of law imposes meaningful restraints on state and government officials, but in a rule by law society the law might serve the interests of the powerful and government. One of the main functions of rule of law is to limit the arbitrary acts of government and impose meaningful constraints on the ruling elite, therefore, in a rule of law society, law is not just a tool to be used by the ruling regime to control the people or promote the interests of the privileged. Legal rules are applied with principled consistency to both state and its citizens, the ruler and the ruled, as required by the rule of law; they generally restrain rather than expand the arbitrary exercise of state power. The

<sup>32</sup>Retrieved on Sept 19, 2007 from <http://news.163.com/06/1008/00/2SSD1PFA0001124J.html>.

<sup>33</sup>Retrieved on Sept 19, 2007 from <http://news.sina.com.cn/c/2006-10-07/230311175700.shtml>.

establishment of a legal system with some degree of autonomy acts as a counterweight to political power. One of key features of restraints on government is absence of power interference in judicial process. In other words, law is supreme rather than government or state. However, in interviewees' eye, power intervention in the judicial process is very popular and sometimes necessary.

Normally government doesn't interfere, but if the case is important, government will... (Interviewee D, jailed official).

Certainly government will interfere. Even if the case is not related to government, plaintiff will find relationships with government officials and try to win the case, so there is a case, there is power intervention (Interviewee G, jailed official).

Sometimes government or secretary has to interfere for local interests... (Interviewee J, official in power).

Police is CCP's; judge is CCP's; procurator is CCP's. It is hard to avoid power intervention.... Justice is not always important; interests are always the first (Interviewee L, official in power).

My case is just power intervention. If I hadn't offended the vice secretary, I wouldn't be imprisoned. It is him who talked to public security, judges and procurator and gave me the longest imprisonment. Otherwise, I only got a 3 years sentences, but now I received 10 years due to his interference (Interviewee B, jailed official).

These interview data only reflect a small part of the interviewees' opinion. The following cases may be a clue for the possible power intervention in judicial process in post-reform China. The relative position of law and power can be seen more clearly.

### ***6.4.1 Power Interference for State Interests***

The rule of law requires that people should be governed by accepted rules, rather than by the arbitrary decisions of rulers. These rules should be general and abstract, known and certain, and are intended to protect all individuals equally. However, that may not be the case in all states. To find out the status of law in one country, we need think of the purpose of law in that country and the interests the law is established for (Younkins 2002). For this study, university students surveyed were not optimistic about the purpose of legislation in China. In their point of view, the law is made to serve the ruling class which is Chinese Communist party. Only 24.8% subjects held the opposite view (Table 6.4).

In the interviewees' mind, law also serves the government. When asked whom law serves most such as government, elite class and the mass, all interviewees said government. Might be influenced by Marxism, one interviewee (C, jailed official) even thought you never tried to sue government for you will never win the case. In his word, "law is something in government's pocket. When he wants to use it, it is his; only when he doesn't use it, it belongs to the mass." Another interviewee (F, jailed official) said, "law 80% serves government. The rest 20% serve the public on



**Table 6.4** Responses on the purpose of law in China

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
The goal of law is to protect the CCP's interests	3.9	20.9	23.5	42.9	8.9	3.32

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

the face, but eventually serves the government again.” Such a view echoed the aforementioned judicial dependence giving audience a feeling that law is a tool for state or government rather than an institution for good social order.

The Lai Changxing case may show it more deeply how law works for government or how power is above law. Lai Changxing is a Chinese businessman and entrepreneur from Fujian in China. Lai was the head of the lucrative Yuanhua Group in the Special Economic Zone of Xiamen which became implicated in a large smuggling and corruption scandal in the late 1990s. He was described by the official *Xinhua News agency* as “China’s most wanted fugitive”. He fled to Canada in 1999 with his wife and their children. The Chinese government had refused to drop the charges laid on him, and been seeking for his deportation. In the same corruption case, many high-level municipal and provincial officials were sacked and a few were sentenced to life in prison or death with 2 years probation. The Chinese government has been seeking the couple’s extradition.

*Mingpao Newspaper* reported on October 28, 2001 that Chinese President promised to Prime minister of Canada that Lai Changxing would not be executed once he were extradited to China at the APEC meeting.<sup>34</sup> It is reported that Chinese Premier made a similar promise when he visited Thailand in May, 2001.<sup>35</sup> In the meanwhile, Chinese government wrote a letter to Immigration Department of Canada government, promising that Chinese criminal court wouldn’t sentence Lai a death penalty which he deserves based on his criminal behavior once he were extradited. It is also said that the highest judicial organization, China Supreme People’s Court has made such a decision.<sup>36</sup> However, all promises violated both *the Constitution of the P.R. China* and *Chinese Criminal Law*.

According to the article 89 of the Constitution, implicitly nor explicitly, the premier has no authority to waive a person’s death penalty. Moreover, the article 123 of the *P.R.C. Constitution* stipulates court is state’s trial organization. The article 126 of the *Constitution* provides that court excises trial authority independently without government, social group and individual’s intervention. Besides this, the article 3 of *China Procedural Law* (CPL: 刑事诉讼法) stipulates that the

<sup>34</sup>Mingpao cited Canadian newspaper for the report.

<sup>35</sup>Retrieved on Feb 10, 2008 from <http://news.phoenixtv.com/phoenixtv/83885040617914368/20051011/657770.shtml>.

<sup>36</sup>Sheng Xue (2000). Black secret of Yuanhua case (Unveiling the Yuanhua Case), Mirror Press, pp. 474-475.

investigation on criminal case, arrest, detention are public security organization's authority; prosecution belongs to procuratorate's jurisdiction; trial is in the charge of Courts; no other organization, social group, and individual can perform such authority except law stipulates. The article 5 *the Criminal Procedural Law (CPL hereafter)* stipulates that the procuratorate exercises procuratorial authority independently; the court exercises trial authority independently. Obviously, both Chinese leaders' promise of no death penalty violates what the Chinese constitution stipulates, although what they did was to protect state's interests.

Even for the promise of Supreme People's Court, the law doesn't support it strongly either. Yuanhua case happened in Xiamen City of Fujian Province and Lai Changxing may face a death penalty, therefore the case is in the authority of Xiamen Intermediate People's Court according to the Article 20 and 24 of the CPL.<sup>37</sup> In addition, Yuanhua case can be seen as a giant case which has significant influence on Fujian Province or even the whole country, therefore, both Fujian Supreme Court and National Supreme Court have authority on the case according to the CPL. For this reason the Supreme People's Courts is authorized to write to Canadian government in the promise of waving Lai's death penalty. However, there had been no trial when the letter was sent to Canada. Given that the courts haven't given Lai a trial; could they waive Lai's death penalty? The article 12 of the CPL stipulates that no organization can decide anybody criminal without the trial by the Courts. The article 11 of the CPL further stipulates that all trials are open except required by law; the defendant has right to defend; the courts have obligations to guarantee the accused get defense, therefore, the CPL excludes trial by default. Since Chinese government cannot extradite Lai, and trial by default is not recognized by the CPL, Fujian Supreme Court or China's Supreme Court have no justified legal right to sentence Lai death penalty, and let alone death waiver. In sum, Chinese national leaders or Chinese government's promise of no death penalty on Lai is not well legitimated. Chinese leaders' promise leaves the world an impression that law is just governmental tool in post-reform China. To reach its political goal or protect state's interests, they may forget to respect law and treat law as its internal regulation, but it is not a feature of rule of law society. Once law is established, the rule of law requires all parties follow legal procedure and accept judge's sentence; no pre-decision is allowed before the trial. Chinese national leader's promise suggests China's distance to the rule of law.

#### 6.4.2 Power Interference for Economy

Zhang Guofang is a Zhejiang businessman who is active in Gansu Province. He bribed both mayor of Lanzhou City and Secretary of Lanzhou CCP Committee (Lanzhou: capital of Gansu Province). His bribery was exposed later and was

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<sup>37</sup>People's Court at county level or lower has no authority to sentence death penalty to criminal.

therefore detained for investigation in May 2004. However, Lanzhou officials from Gansu CDI confirmed that Zhang Guofang was released in Feb. 2005.<sup>38</sup> The reason leaked by Gansu Procuratorate is that Zhang was only involved in deceitful registration and tax evasion, and those have been cleared.<sup>39</sup> Looks like his bribe-giving behavior didn't cause any penalty. But Mayor of Lanzhou received criminal charge because of bribes from Zhang Guofang, which is an obvious discrepancy. In the *China Criminal Law*, it stipulates clearly that both bribe-giver and bribe-takers are subject to criminal charge. The article 392 of *China Criminal Law* provides only when the bribe-giver gives himself/herself in can s/he be waived from penalty. As Article 391 of *China Criminal Law* provides,

whoever commits the crime of offering bribes shall be sentenced to fixed-term imprisonment of not more than 5 years or criminal detention; whoever offers bribes to secure illegitimate benefits, if the circumstances are serious or if heavy losses are caused to the interests of the State, shall be sentenced to fixed-term imprisonment of not less than 5 years but not more than 10 years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment and may also be sentenced to confiscation of property.

Zhang Guofang didn't surrender himself, therefore didn't deserve such a treatment. The hidden reason is that Zhang's being detained influenced Zhejiang businessmen's investment in Gansu Province. Some Zhejiang businessmen were inclined to leave Gansu, which might hurt Gansu economy in Gansu leaders' eyes. That is why Gansu leaders freed Zhang Guofang in order to maintain economic development. Another reason is that Zhang Guofang loaned a large amount of money from Gansu banks. His being imprisonment would definitely lead to loss of the loans for banks which are state owned enterprises. To protect SOE's interests, Gansu government had to free Zhang Guofang. The mayor who took bribes from Zhang Guofang questioned such a governmental behavior. He defended himself with thought-provoking remarks on August 25 of 2005 at the Dingxi People's Court with following doubts:

Why has no one who offered bribes been given sentences so far while a lot of government officials who have accepted bribes receive sentences?...Is offering a bribe not a crime while taking a bribe a crime?<sup>40</sup>

He obviously intended to get Zhang Guofang in jail as retaliation, but his words also reflect a prevailing phenomenon in society.<sup>41</sup> It is an indisputable fact that many persons that offered a bribe have not been punished in China. Recently the

<sup>38</sup>Retrieved on Jan 18, 2007 from <http://finance.sina.com.cn/review/20050704/12491756712.shtml>

<sup>39</sup>Retrieved on Jan 18, 2007 from <http://finance.sina.com.cn/review/20050704/12491756712.shtml>

<sup>40</sup>Retrieved on Feb. 16, 2008 from [http://news.xinhuanet.com/legal/2005-08/26/content\\_3405426\\_1.htm](http://news.xinhuanet.com/legal/2005-08/26/content_3405426_1.htm).

<sup>41</sup>Retrieved on Feb. 16, 2008 from <http://www.gansudaily.com.cn/20050902/112/2005902A0004G003.htm>.

news that Hu Xing who bribed the largest amount in China were free of charge has aroused a hot discussion in China.<sup>42</sup> Obviously it is not right that only those that accept bribes are punished while those offering under the table incentives remain at large. “Bribers should be given imprisonment terms of less than 5 years or detentions, or even more severe sentence terms if their behavior gives rise to some serious consequences,” the article 390 of the *China Criminal Law* clearly stipulates. However, it seems that the law has not been properly enforced.<sup>43</sup> The obvious cause is the power intervention no matter for what reasons to free Zhang Guofang (attracting investment or getting bank loan back). The judges from Gansu People’s Court wouldn’t have such macro considerations, but Gansu leaders. It must be them who made the decision and forward to the court to practice. It confirms the point that judicial system are subject to CCP leadership rather than being independent. The root is that the law listens to power and too many political considerations in judicial process. The government can interfere the judicial process at any stage and change the judicial decision. However, in a rule of law society, any person or organization has no supremacy over the law and cannot influence or alter the judicial decision.

### 6.4.3 Power Interference for Family Interests

The above case showed the local economic development was of significant and therefore local government interfered in the aim of maintaining a booming economy. It is apparently for collective interests. There are many cases in which local government interferes for personal interests. An interview case proves such a possibility. Shao XXX is Interviewee Q’s (official in power) classmate. He went into business after high school graduation. However, he died for love affairs. The interviewee Q (official in power) exposed how power intervention creates injustice.

...His wife had an affair with the captain of 110 of our county.<sup>44</sup> Shao XXX was so desperate that he wanted to talk to the man aiming to stop it. That man asked him to have a talk at a hotel next day. Shao XXX went there with a bunch of friends. That man brought many 110 policemen too. They only allowed Shao XXX to go to upstairs (the second floor). Shao agreed to leave his friends waiting downstairs. Shao XXX’s friends started to be nervous 30 min later for there was no response upstairs. They wanted to go up, but were stopped by 110 policemen who kept the gate. Ten minutes later, they were told by 110 policemen upstairs that Shao committed a suicide by jumping out of window from the back of the hotel. Shao XXX’s friends went to the back and saw Shao lying on the road nearly dead. They called 110 immediately, but never got through. It was busy all the time. Some of them called taxi and sent Shao XXX to the First People’s Hospital, the rest fought to go

<sup>42</sup>Retrieved on Feb. 16, 2008 from [http://news.xinhuanet.com/politics/2008-01/27/content\\_7501899.htm](http://news.xinhuanet.com/politics/2008-01/27/content_7501899.htm).

<sup>43</sup>Retrieved on Feb. 16, 2008 from <http://www.gansudaily.com.cn/20050902/112/2005902A0004G003.htm>.

<sup>44</sup>The 110 emergence system is the same 999 call in Hong Kong and 911 in US.

upstairs and check the spot. Again, 110 policemen stopped them in excuse of protecting the scene. One hour later, Shao XXX's friend finally went upstairs, but the scene was washed already. There was no blood or any fighting evidence left on the spot.... The First People's Hospital refused to accept him. It is said that 110 headquarters pressed the hospital to do so. Therefore, they transferred Shao XXX to Chinese Medical Hospital, but it was too late. The hospital certified him death (Interviewee Q, official in power).

When asked why Shao committed the suicide, he (Interviewee Q, official in power) had a reserved opinion on Shao's suicide. "It is definitely not a suicide. They said he committed a suicide, but nobody thinks so. They beat him to death," said he.

That man said Shao XXX jumped from a bathroom window. As you know, toilet window is too small for an adult to jump out. Shao XXX even couldn't get out of it normally, let alone at an intense moment. When Shao XXX's friend went up to check the site, 110 policemen stopped them. Later, when they finally went there, and found the site cleaned with water. If it weren't a suicide, there was no need to clean the spot. Moreover, the 110 call even couldn't get through. Shao XXX told his friend earlier that he just wanted to get the problem resolved peacefully. He didn't have any suicide motive.... The doctors from the Chinese Medical Hospital investigating Shao XXX said his head was hit by blunts, for one side is sunken and the other is bulged. Obviously, it is not caused by jumping from windows. On a second thought, could jumping from the second floor lead to a death? (Interviewee Q, official in power).

Shao's family didn't buy the argument of suicide either. To win the justice, Shao's parent moved Shao's dead body to the gate of Public Security Bureau in the purpose of seeking justice. The body was placed there for 10 days. However, the request for justice didn't go smoothly for Shao's family. The reason is the power interference from the opposite party.

Shao XXX's family didn't win the case. That man's side is too powerful. His uncle is chief procurator of XXX municipal city.<sup>45</sup> It is actually a power fight between two families. Shao XXX's mom is a vice chairman of our county's People's Political Consultative Conference, but still two levels lower than that man's uncle. And a vice chairman of people's political consultative conference doesn't have real power. It is only an official post with little to do (Interviewee Q, official in power).

Author: "How do you know his uncle joined in the fight?"

It is said his uncle meet director of Public Security Bureau, and other county leaders. County leaders pressed Shao XXX's mom to give up. Shao mom is a county leader, so she was afraid to lose her post. More important, Shao is her only son; she has to take the responsibility of bringing up Shao 3 years' old daughter. Too many burdens on her, and finally she gave up (Interviewee Q, official in power).

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<sup>45</sup>XXX is a municipal city which neighbors to YYY Municipal City. Shao case happened in a county in YYY city's jurisdiction. From such a administrative ranking difference, we can see that a chief procurator of municipal city means a lot of power for an official at county level.

The power intervention is successful, for Shao's mother agreed to withdraw the complaint, and the 110 captain only received disciplinary punishment, not criminal penalty.

Yes. He only received a dismissal from his 110 post. Other supportive 110 policemen received administrative warnings. It is said his family gave Shao XXX's mom 300 thousand yuan as compensation. And what makes people angry is that man started to work at the National Tax Bureau. He killed a person, and took no responsibility. It is all because he has a powerful background. Law enforcers never follow law, but power. Who has power, and then they listen to them (Interviewee Q, official in power).

It is hard to see a gap between personal problem and public issues in Shao case. First, when law enforcers like 110 policemen had problem with others, he brought his subordinates or colleagues to the bargaining site to back him up. When they killed a person, they stopped the opposite party to check the scene in the excuse of protecting scene giving audiences a feeling that law serves them only. When victim's family tries to get justice, the powerful party interfered by administrative action giving audience another feeling that government can interfere law enforcement. As a matter of fact, not only the criminal's family tried to interfere the judicial process, but also victim's family. Shao's family tried their best to locate guanxi to work things out, but was pressed down by the criminal's family for the criminal's side is more powerful and more influential. Like the interviewee Q (official in power) mentioned, the judicial process turned out to be a power fight between two parties. And it is expectable that the more powerful side won the game.

#### **6.4.4 *Fabricated Corruption Case***

If power is over law, as we just discussed, there may be power interference in judicial process for various purpose, either state interest, collective interests or family interest. If power reached its paramount and there were no opposing forces to constrain it, the things could go crazy. Fabricated corruption by officials is reflection of such plausibility that officials could abuse the power in hand.

In 2002, almost all leaders of Chenzhou Environment and Protection Bureau were shuangguied together with 10 officials from Bureau of Forest Resource. However, it is later found that they were set up by the Secretary of Chenzhou CCP Committee Li Dalun and Secretary of Chenzhou CDI Zeng Jinchun. Chenzhou is a city which is rich in mineral resources. There are thousands of mines either private or state-owned. All mines have to obtain approvals or registration from tax bureau, industrial and commercial bureau and environment protection bureau before going into operation, and to be checked annually for the approvals. A gold-silver mine was found to have polluted the soil and water; the Environment and Protection Bureau suggested to close it and wrote a report to the Chenzhou CCP Committee. The secretary of CDI Zeng Jinchun replied with comment of "improving related

equipment.”<sup>46</sup> The director of Environment and Protection Bureau Wen Bada misunderstood Zeng’s intention. In the assessment meeting, the Environment and Protection Bureau didn’t approve the renewal. However, Wen Bada didn’t know that Zeng Jingchun and Li Dalun’s family had a share of the mine.<sup>47</sup> In Feb of 2002, Wen Bada and his colleagues were shuanggui. The accusation was that they accepted 440 thousand yuan from Ouyang Ming in eight times. All of them refused the corruption fact on the trial, but still received 4–11 years imprisonment. Their families felt not guilty and were trying to appeal all the time. One thing happened in Oct 2002 gave them a hope. Wen Bada’s wife was once making some copies near the Hunan Supreme People’s Court. A strange man standing behind her for a long time asked: “are you doing the Wen Bada case?”<sup>48</sup> Then he told that he shared a jail room with Ouyang Ming, and heard Ouyang Ming said he even hadn’t know Wen Bada, and he was set up too. And it is interesting an official from the Forest Resource Bureau whom Ouyang Ming confessed to have bribed is in the same jail room. Prisoners asked whether they two knew each other, but they didn’t. When the forest officials knew it was Ouyang Ming, he went to mad and yelled to him, “you don’t even know me and say I took your money.”<sup>49</sup> The jail management had to separate them the next day. With such facts in mind, Wen’s wife believed her husband was set up by others. She mobilized all kinds of relationships (*guanxi* in Chinese) to reduce criminal charge or dismiss the case. Finally a procurator friend told her that it was impossible for the case had been decided by the secretary and vice secretary. Then she started to know that it was them who set up the case.<sup>50</sup>

The case was possible because Li Dalun and Zeng Jinchun are giant regarding power in anticorruption. First of all, Zeng Jinchun, as the secretary of Chenzhou CDI, is in charge of anticorruption. The CCP rules offer him such power: reportings about corruption are usually screened by him; he can initiate *shuanggui*; he also has power to file a case or to drop a case; judicial decision (years of imprisonment) can be suggested by him and forwarded to the procuratorate and court to carry out. Second, since the secretary of CCP committee is the real boss at all levels; only the secretary can control him institutionally. Li Dalun as the secretary of Chenzhou CCP Committee, could interfere Zeng Jinchun’s work and make decisions on cases. In this case, they two collaborated with each other; they therefore could do anything they want. The law or the DIC rules has no authority at all when confronts the power in their hand. “The rule of law stands against arbitrariness and caprice: it regularizes political power and renders it impersonal, hence the phrase ‘the rule of law and not of men.’ It works by insisting that governments act through general, public rules made in advance of any persecutions, rules that apply to public officials and citizens alike” (Macedo 1994:149). These were not

<sup>46</sup>“改进相关设施” in Chinese.

<sup>47</sup>Retrieved on Aug 8, 2007 from [http://news.tom.com/2007-11-09/OI27/35163179\\_04.html](http://news.tom.com/2007-11-09/OI27/35163179_04.html).

<sup>48</sup>Retrieved on Oct 15, 2007 from <http://news.sina.com.cn/c/2007-11-09/162014272878.shtml>.

<sup>49</sup>Retrieved on Oct 15, 2007 from <http://news.sina.com.cn/c/2007-11-09/162014272878.shtml>.

<sup>50</sup>Retrieved on Oct 15, 2007 from [http://news.tom.com/2007-11-09/OI27/35163179\\_04.html](http://news.tom.com/2007-11-09/OI27/35163179_04.html).

seen very common from the above cases, which suggests a distance between law enforcement and requirements of the rule of law in post-reform China.

## 6.5 Judicial Inconsistency in the Use of Death Penalty

As pointed out earlier, in a rule of law society, law and rules are applied to all citizens including officials or government equally which creates equal protection under the law (Solum 1994). The equal application makes judicial result predictable for similar cases. It is therefore essential to look into the judicial consistency in post-reform China through specific cases.

### 6.5.1 *The Case of Liu Zhixiang*

Liu Zhixiang was the director of Hankou Railway Station, and was sentenced to 12 years imprisonment for homicide and corruption in 2006. Liu's issue was exposed because of Gao Tiezhu's "revenge". Gao rented a Reception Place of Hankou Railways Station in 1997 to run a hostel (8 years contract). With loaned 280 thousands yuan from bank, Gao was able to upholster the hostel and started the business 9 months later. However, Liu requested to take back the hostel right after Gao started his business. Since Gao invested a lot and he had an 8 years contract in hand, he refused Liu's request. The law enforcement of Hankou Railway Station Department sealed the hostel, and drove Gao's family out violently in October of 1997. Gao therefore filed a lawsuit against Hankou Station, and won the case (200 thousands yuan compensation). However, he didn't get anything in real for Liu Zhixiang refused to pay. Gao then started his 4 years' "indemnity march" without any success. Frustrated and infuriated by Liu's refusal, Gao thought to get the compensation money back through another way.

He went to Wang Hanlin who had been reporting Liu's corruption facts for years for help.<sup>51</sup> Wang gave him a set of copy of reporting materials. Gao brought the copies to Liu Zhixiang in face requesting his money back. However, such a bold action brought them unbelievable result. To stop Gao, Liu instigated a male to "repair" Gao and Wang.<sup>52</sup> Wang was hurt and Gao died. Having predicted Liu's retaliation, Gao had written a letter explaining his case which was hidden in his

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<sup>51</sup>Liu's fortune started from selling ticket on black market. He controlled the tickets and allocated them to He Jian who was a TV station logistic staff buying tickets and other staff for TV station workers. Building relationships with Liu in a TV program, he turned out to be a ticket broker. With Liu's help, He's computer was connected to the ticket program of Hankou (汉口) Railway Station. He sold ticket for higher price, and gave certain kickbacks to Liu Zhixiang.

<sup>52</sup>"Repair" is a typical Chinese slang which means to beat or hurt someone in order to give him/her a lesson.



clothes. In the letter, Gao predicted that the criminal would be Liu Zhixiang if he died, Gao said. After Gao died, Wang Hanlin went to State Council, the National People's Congress, the Supreme Procuratorate, the Supreme People's Court, the Central Political and Legal Committee, the Ministry of Public Security, and Hubei government to report Liu's corruption. From 2002 to 2006, Wang went to Beijing twice and Zhengzhou six times. He sent out more than 100 registered mails, and made more than 100 long distance calls.<sup>53</sup> Wang's report caused government's attention finally. A special inspection team was formed to collect evidences in Nov. of 2003. Two years later, Liu was shuangguied. In Sept 2005, Liu was recalled by Wuhan People's Congress, and later was arrested by law enforcement department, but, Liu was only sentenced a death penalty with 2 years' probation and confiscation of 1 million yuan on April 30, 2006.<sup>54</sup>

### 6.5.2 The Case of Yuan Baojing

Yuan Baojing was active in securities and bond market. His assets were valued at more than 3 billion yuan as of 1996. In the fall of 1996, Yuan lost 90 million yuan in the futures trading. He believed that his businessman friend Liu Han's manipulation caused him such a big loses. Yuan hated Liu so much that he offered a reward of 160,000 yuan to Wang Xing for murdering Liu. A contract murderer called Li contacted by Wang fired two shots at Liu in 1997, but missed. Li was caught and sentenced to life imprisonment. Wang Xing requested more money many times, but was turned down by Yuan and then threatened to blow the whistle on the murder. Therefore, the story is that the man who found the hit man for Yuan then blackmailed him. Again, Yuan paid his brother and then his cousin to kill the blackmailer Wang thereafter. In Oct of 2003, Yuan Baofu and Yuan Baosen, and Yuan Baoqi shot Wang dead in front of the gate to Wang's apartment. The police identified them as suspects, and detained four of them in Nov. 2003. They confessed, but later retracted their testimony. The *Jinghua Shibao*'s report shows that Yuan and his brothers accused police department of extracting confession by torture.<sup>55</sup> On January 13, 2005, three of them were sentenced to death penalty, one to death penalty with probation. The execution was planned on the Oct 14 2005, but was postponed. Most media's explanation is that Yuan donated 49.5 billion yuan to Chinese government. The explanation from Yuan's lawyer is Yuan reported a 120 million yuan corruption case in which a provincial leader is involved.<sup>56</sup> Yuan

<sup>53</sup>Retrieved on Jan 17, 2008 from <http://news.sina.com.cn/s/2006-07-03/103010318437.shtml>.

<sup>54</sup>Prosecutorial View (2006), No. 10.

<sup>55</sup>Retrieved on Jan 17, 2007 from <http://www.jcrb.com/zyw/n55/ca469498.htm>.

<sup>56</sup>It is said that Yuan and his brothers were executed to bury crimes committed by a Liaoning (辽宁) provincial leader in political and law field who "borrowed" HKD \$120 million to register a company in Hong Kong from Yuan, but the money was never returned. Refer to <http://finance.sina.com.cn/g/20060318/08362428034.shtml>.

Baojing and two accomplices were put to death by lethal injection on March 17, 2006 after a court in Liaoning Province upheld the death sentence handed down in 2005.

The two cases are highly comparable. Both Liu Zhixiang case and Yuan Baojing case are the second hand homicide for they didn't kill others directly, but bought the third party to do it. Both criminal charges are "intentional murder" through contract. However, the judicial decisions are different with one execution and the other suspended death penalty. Given the fact that suspended death penalty usually will be changed into 15 years imprisonment later, the fates for two criminals are extremely divergent.<sup>57</sup> There is only one criminal law in China, however, the applications of criminal law for the two cases are not the same. We might see two opposite tendencies. For Liu Zhixiang case, the law enforcers tend to favor the criminal; for Yuan Baojing case, the law enforcers tend to favor the victim. Such favors are not random, but seem to be caused by power interference if we take the background of stories into account. Liu Zhixiang's older brother, Liu Zhijun is the Minister of Railway Transportation;<sup>58</sup> Yuan Baojing reported corruption facts about a provincial leader.<sup>59</sup> The difference of their fates suggests the power can "rescue" or "destroy" a suspect in China. However, "the rule of law protects the equality of citizens as lawmakers, by insuring that judges do not substitute their own legislative preferences for those of democratically elected officials on the guise of doing equity" (Solum 1994:126). The two similar cases tend to show that there is judicial inconsistency in China which can be improved.

## 6.6 Retaliation on Whistleblower

In the scenario of anticorruption, there are always three actors: law enforcer, reported officials (suspects) and reporting persons (witness or whistleblower). The previous sections discussed the complicated relationships between government or powerful persons and law enforcer and found the former always use their power to influence the latter. However an anticorruption case is involved more than that. Reporting persons also play an important role in the anticorruption. Sometimes, the

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<sup>57</sup>Death penalty with 2 years probation is totally divergent from immediate execution in China. Usually, the death penalty will be changed to life imprisonment with criminal's good performance in jail, and then the life imprisonment will be changed into 20 or 15 years imprisonment further. Following this logic, criminal will be released in about 10 years. The Article 50 of China Criminal Law provides that anyone who is sentenced to death with a suspension of execution commits no intentional crime during the period of suspension, his punishment shall be commuted to life imprisonment upon the expiration of the 2-year period; if he has truly performed major meritorious service, his punishment shall be commuted to fixed-term imprisonment of not less than 15 years but not more than 20 years upon the expiration of the 2-year period.

<sup>58</sup>Retrieved on Jan. 20, 2008 from <http://chinese.irib.ir/news/06-03-18/06031819.htm>.

<sup>59</sup>Retrieved on Jan. 20, 2008 from <http://www.jcrb.com/zyw/n55/ca469517.htm>.

interactions among reporting person, reported party and arbitral authority make investigation more complicated and out of control. One of outstanding outcome is retaliation upon the whistleblower.

The CCDI and Ministry of Supervision issued *the Regulation of Protection on Offence-reporter and Accusant* (关于保护检举, 控告人的规定) on January 19 of 1996. In the Regulation, it states clearly that

CDI and supervisory organs should maintain confidentiality when handling offence reporting, and accusation...establish responsibility system in order not to leak secrets such as reporting letters, records of phone call, and jogged notes ... offence-reporter's name, working unit, family address and content of reporting should be kept absolutely confidential. It is strictly forbidden to transfer the reporting materials to the reported person or reported department or other departments .... No department or individual is not allowed to retaliate upon the offence-reporter in any kinds of excuses.<sup>60</sup>

However, there are many retaliation cases in which the reported content were leaked to the reported department or individual, and caused hurt on the offence-reporter in post-reform China. The Li Wenjuan case and the aforementioned Liu Zhixiang case demonstrate how offence-reporters vividly are retaliated against.

### 6.6.1 Reporting Letter Transferred to the Complained Party

Liu Zhixiang stood his trial on March 6 of 2006, but insiders had been reporting his corruption since the early days of 2002. One staff of Hankou Railway Station anonymously reported Liu's graft to related department, but the letter was transferred to Liu Zhixiang later. In the monthly meeting, Liu showed the reporting letter to the attendants, and said:

It is useless to report my 'economic issues. See, the letter has been transferred to me. I have relationships with both the black and white channels. No matter where you report to, it is useless.<sup>61</sup>

Later from the construction projects of Hankou Railway Station, Liu Zhixiang took bribes again from businessmen. A staff member at Hankou Station reported such facts to related department. The letter was transferred to Liu's hand again although it is provided that "it is forbidden to transfer the reporting materials to the complained department or reported persons."<sup>62</sup> He called in him, showed him the letter, and warned him:

<sup>60</sup>Article 4 of the Regulation of Protection on Offence-reporter and Accusant, refer to 《党政干部党内监督和纪律处分规定》, 中国法制出版社, 2004, p. 129-130.

<sup>61</sup>Prosecutorial View (2006), No. 10.

<sup>62</sup>Article 6 of the Regulation of Protection on Offence-reporter and Accusant, refer to 《党政干部党内监督和纪律处分规定》, 中国法制出版社, 2004, p. 130.

Be wise. Don't get up to little tricks. No matter who writes the letter, it will be transferred to my hand.<sup>63</sup>

In fact, Liu Zhixiang was crazier than that. He instigated others to beat and even kill the whistleblowers. The whistleblower Zhang was cut in his office;<sup>64</sup> Gao was killed;<sup>65</sup> and Wang was beaten.<sup>66</sup>

## 6.6.2 Imprisonment for Whistleblowing

Li Wenjuan is a former employee of the Anshan State Tax Bureau in Liaoning (辽宁) province (ASSTB hereafter). She blew a whistle on corruption of the ASSTB in 2002 and paid dearly for it. In a confidential letter to the National State Tax Bureau with real name and a copy of ID in May 2002, Li Wenjuan offered physical proof of illegal behaviors of the ASSTB. According to her findings, 295 million yuan state taxes were evaded due to ASSTB's illegal behaviors in 2001. Ten days after her report, The National State Tax Bureau sent an investigation team to the Anshan (鞍山) City. However, when the investigation team reached ASSTB, two related tax books had been destroyed. Obviously, the news had been delivered to ASSTB before the team arrived. The result is predictable: the team found no illegal acts of ASSTB. In 2003, Li reported the tax evasion case again with real name and proofs. In the report, she detailed illegal behaviors of the ASSTB, such as holding back added-value tax, less-charging enterprises income tax, holding back STB public fund, changing tax retain level, and making fake accounting book. However, what shocked her is that the reporting letter was transferred to the key complained person, the director of ASSTB. On June 6, 2003, Li was fired by the ASSTB with the excuse of not showing up without approval of leave or a good reason. In February of 2004, Li was able to go back to work with numerous appeals to the higher authorities. On September 3 2004, three policemen arrested Li with a warrant of slander signed by a vice mayor of Anshan City.<sup>67</sup> The accusation is that Li published papers at the *People's Net* with faked facts and an intention of disgracing leaders' fame (defamation). She was sent to a detention center without family members notified. On September 6 2004, Anshan Public Security Bureau extended the detention 4 days longer in the argument that they need more time to investigate the case for complicatedness reasons. On September 9 the Public Security Bureau

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<sup>63</sup>Prosecutorial View (2006), No. 10.

<sup>64</sup>Retrieved on December 10, 2007 from <http://news.163.com/06/0611/05/2JAJ92OA0001124J.html>.

<sup>65</sup>Retrieved on December 10, 2007 from [http://www.xj.xinhuanet.com/lianzheng/2006-03/18/content\\_6506998.htm](http://www.xj.xinhuanet.com/lianzheng/2006-03/18/content_6506998.htm).

<sup>66</sup>Retrieved on December 10, 2007 from [http://news.21cn.com/domestic/shiyong/2006/11/26/3045241\\_1.shtml](http://news.21cn.com/domestic/shiyong/2006/11/26/3045241_1.shtml).

<sup>67</sup>The vice mayor also took the post of Director of Anshan Public Security Bureau simultaneously.

extended detention 23 days further. October 3 2004, Li Wenjuan's detention was released, but she was sentenced to 1 year transformation through labor and education.<sup>68</sup> The accusation on her is the continuous complaints and disturbing administrative order. Therefore, she was sent to Masanjia Female Transformation Institute. On July 18 2005, her transformation was over.<sup>69</sup> Feeling so much injustice, Li Wenjuan complained to the National People's Congress and other departments, and also filed a lawsuit against Anshan Administrative Committee of Reeducation through Labor. The Court of Yuhong District of Shenyang City finally made the first trial; the judgment is that Li Wenjuan's reeducation is withdrawn for the reason of insufficient evidences and confusing, but the sentence arrived several months later after Li Wenjuan finished the reeducation.<sup>70</sup>

Both Liu Zhixiang and Li Wenjuan cases are related to retaliation for reporting officials' dereliction or corruption. The difference is that Li is the victim in the case, but Liu is the "revenging" person. Li was dismissed twice, detained once, educated once through labor for 1 year, and lost her job finally. Liu incited somebody to cut and kill three whistleblowers. The key and similarity between two cases is that the reporting letter was transferred to the person who was complained for corruption, which is obviously against the regulation of the CCDI. Although Liu Zhixiang was finally sent to trial with whistleblower's continuous efforts, and Li Wenjuan was finally released from education through labor, the whistleblowers have paid a lot for justice and clean administration. There are copious rules or regulation to protect reporters, but none of them worked. These cases suggest that the supervisory department shares interests with the complained department and local government. The interests of local department or local governments and supervisory organs are damaged due to offence-reporting because the supervisory organs are not independent. To maintain their interests, they chose to cracking down reporting persons via institutional methods. Justice and state interests are therefore subject to departmental interests and local government's interest.

## 6.7 Concluding Remarks

Law or rules plays a key role in maintaining social orders in all societies. However, the law or rule is respected or upheld in different ways in different societies. The status of law is reflected in the ways which people and governments make and follow law in society. Scholars usually categorize societies into rule of man society,

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<sup>68</sup>Another form of imprisonment in China.

<sup>69</sup>Retrieved on December 19 from [http://news.xinhuanet.com/legal/2007-07/23/content\\_6417341.htm](http://news.xinhuanet.com/legal/2007-07/23/content_6417341.htm).

<sup>70</sup>Retrieved on April 3, 2007 from <http://www.jcrb.com/zyw/n56/ca474105.htm> or <http://www.nanfangdaily.com.cn/southnews/jwxy/200603290115.asp>. In the period of Li's transformation, Li's mother couldn't bear the spiritual shock, thereafter, was hospitalized. Because family members received intimidations and threats again and again, Li's son stopped schooling for 1 year.

rule by law society, and rule of law society in accordance to law status. In a rule of man society, the dominant group or the powerful individual administrate arbitrarily, and their personal opinion, idea or interest rather than pre-established rules is used as the gauge stick or standards to deal with administration. On the contrary, the opinion or interests of the ruled is less paid attention to. In a rule by law society, the regulation or law system are relatively complete so that the ruling class or powerful individual can reduce personal arbitration and political manipulation, but the law or rules are not obeyed tightly therefore we may see law enforcers' violations in judicial process or administration. Compared to the rule of man, it is a progress that law enforcers or the dominant group's power or personal will is conditioned and constrained. In a rule of law society, the legislation is made out of social values and law enforcement is carried out fairly so that all social members respect and follow pre-established rules or law in 95% situations and there are rarely cases in which power is over law and personal interests is over justice (Solum 1994).

The post-reform China made dramatic changes in all fields, including economy, culture and politics. The changes in judicial area is the establishment of judicial institution and a new direction towards rule of law which was stated clearly in either Deng Xiaoping, Jiang Zemin and Hu Jintao's political speech.<sup>71</sup> The changes are positive and optimistic, but there are still some phenomena which don't fit in the rule of law.

The post-reform China passed and enacted numerous laws. To 2005, there have been more than 200 laws covering all social fields have been put into practice (Li 2008). However, in either interviews or survey respondent's eyes, there are still "no-law-to follow" situation. The An Huijun case confirmed this point that there are judicial vacuum in post-reform China. The law enforcers faced dilemma in the situation that there was no law to apply, and had to ignore those behaviors which is obviously against justice and social values.

In the situations wherein there are laws to apply, law enforcers or the dominant group may not respect and follow law tightly. In many cases, the power rather than law had more influence in the judicial process, or to say, the power was treated above the law, which is prohibited by the rule of law (Solum 1994). For instance, in Yuanhua case, former Chinese president and former premier promised not to execute the key smuggler Lai Changxing, however, neither *the Constitution of P.R. China* nor *the China Criminal Law* offers them such authorities (out of their jurisdiction). The National Supreme Court and Xiamen Intermediate People's Court do have such authority, but such judicial decision can only be made after the trial. Their early promise hints that the law is used as an instrumental for state, which is a feature of the rule by law (Spigelman 2002). The Zhejiang businessman Zhang Guofang was detained for bribery, but was released later because his being imprisoned would bring a huge loss of bank and influence Zhejiang businessman's investment in Gansu Province. Although it is a good sign that Gansu leader made such a decision for the interests of Gansu Province, the law and justice was scarified

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<sup>71</sup>Retrieved on March 10, 2008 from <http://news.sina.com.cn/c/2007-08-24/180613737807.shtml>.

for such political goal. The phenomena of power interference in judicial process also existed at micro level. In the interview case in which a male was killed due to love affairs, both parties employed power in order to win the case. The result is that the side with more power won the case. Power is again above the law out of family interests. In some extreme case, the law enforces even abused their power to retaliate upon “enemy” with the excuse of corruption. These “interesting” cases imply that law is subject to power, or the law is not placed at a supreme position in the ruling group or political elites’ eye.

The rule of law requires that human rights and legal rights to be protected in judicial process (refer to the *Universal Declaration of Human Rights*), however in Teng Xingshan and She Xianglin case, the suspects were assumed guilty and tortured to extract confession. The cases were proved to be wrongly judged for the killed victim were found alive later. The possibility of ignorance of human rights by law enforcers is further confirmed by interviewees. One interviewee exposed that procurators poured icy water over him in the winter to force him to confess. The things went to worse in Liang Yuncui case and Liang Jiping case although there had been a 9 year legal development since She Xianglin case. Both suspects were tortured to death in the shuanggui period. The reoccurring of similar cases hints that the rule of law has not been upheld in post-reform China. Not only human rights were ignored by law enforcers but also legal rights. There are many cases were full of inconsistent evidence, but were closed with suspect sentenced. These suspects deserved a more careful investigation and more serious protection and trial, but the due procedure for them was ignored. In many shuanggui cases the CDI ignored the procedure rule and detained the suspects; the lose of personal freedom is apparently against the *Constitution of the P.R. China* and the *China Criminal Law*. The law or the CDI rules in law enforcer’s eye is therefore proved to be much less important than the convenience brought to them.

Whether law is respected or followed can be partially verified by the protection of whistleblower. The organs which received whistleblowing and reporting on crimes or violations should keep it confidential so as to protect their rights. However, both Liu Zhixiang and Anshan Bureau of State Tax, as complained party, received the leakage from the supervision and retaliated against the whistleblowers. The anger of the reported or complained person is understandable, but the law enforcers’ leaking information to the complained party is absolutely unacceptable. It only proves that those law enforcers didn’t place law or rules a supreme position but placed entrenched interests a high position.

Maybe due to the above reasons, there are judicial inconsistencies in post-reform China. A salient comparison can be made between Liu Zhixiang case and Yuan Bojing case. For the same judicial charge (contract murder), Liu stayed alive while Yuan was executed and Liu was accused of corruption too (more than 20 millions). One key spirit of the rule of law, “treat like cases alike”, was not upheld therefore. To have “treat like cases alike”, there should be absence of discretionary authority and predictability of cases should be maintained (Neumann 2002).

In sum, it is hard to say that the post-reform China has reached the rule of law for various reasons. As we found above, the judicial system in post-reform China is in

the hand of the ruling party without obvious independence. The judicial system works for the state and government rather than for justice principally. The human rights and even suspect's legal rights are not fully respected in law enforcement. Power or personal relationship plays a significant role in law enforcement. The interventions render justice not upheld and create many judicial inconsistencies. The law cannot restrict the ruling class' absolute power and coercion, nor defend the people from the ruling class's all-intrusive claims (Lo 1993). Such evidences suggest that the law status is not tremendously high as expected in post-reform China. More accurately, post-reform China is only a rule by law society rather than a rule of law society.



## Chapter 7

# Creation of Social Censure on Corruption

Once the ruling group or political elites finds a particular behavior or phenomenon that doesn't fit in its ideology or is antagonistic to its dominance, they will create social censure to crack down on the behavior or phenomenon in society. The creation of social censure which shows flexible, interconnected ideological concerns and feelings of disapproval of the ruling power (Sumner 1990) is a complicated process in which many considerations are taken into account.

The creation of social censure, first of all, reflects the basic social relation in a society (Sumner 1990). The definitions of the ruling group and those who are the ruled are shown clearly through the censuring process. Obviously only the ruling group can censure the ruled group as only can parents censure children. On the contrary, the ruled group can only complain to or rebel against the ruling group. They have no power or authority to censure the upper strata. In the same vein, we can see who the dominant group within the ruling group is because in most cases can only the dominant group censure the disadvantaged group within the ruling class rather than the reverse. The creation of social censure also reflects other sides of social relations, for example political system (democratic or autocratic), strength of dominance of the ruling class, and the way of interactions between the ruling group and the ruled group. In the autocratic political system, the ruling group may care less about the ruled group's responses and the creation of social censure maybe a little arbitrary; while in the democratic system, the creation of social censure will be more mass-based and compromised.

The ruling group or political elites create specific social censure out of certain interest considerations. First of all, they want to crack down or suppress particular social phenomenon which is against its ideology or interests although the punishment on targeted phenomenon appears to be neutral. Once the targeted behavior or phenomenon is denounced and suppressed, the ruling group's dominance or hegemony is then maintained. However, such ultimate goal of social censure is covered up by numerous explanations that seek to legitimize the action. The ruling group or political elites can use its discourse right to convince the ruled that the denunciation is necessary and is for healthy social development rather than any selfish

considerations, but actually the ruling group's discourse is not objective and pure (Foucault 1986). As Mills argues, social problem can only be constituted within specific universe of discourse with typical vocabularies of thought action and motive (Sumner 1994). The ruling group or political elites just makes use of propaganda to develop a consensus among the ruled that such social censure is indispensable and acceptable. Through signifying targeted persons or behavior, denouncing targeted persons or behaviors, and regulating targeted persons or behaviors, the ruling group or political elites can preserve their interests (Sumner 1990).

Social values are the foundation of society. Social values are interwoven with moral, mores, customs and cultures. The formation of social values is sophisticated: it could be responses to natural environment; it could be the evolution of opinions; it could be outcome of political manipulation. Sociologists argue that society is impossible if there are no social values. The creation of social censure is related to the whole body of society and has to conform to social values. That is why although social censure is in the hand of the ruling group, the ruling group or political elites has to be cautious in its use because inappropriate social censure may bring negative impacts on them and may hurt their dominance. By invoking "the widely accepted general moral principles" (Sumner 1990:28), the ruling group or political elites can successfully censure targeted phenomenon without any resistance from society. If the morality doesn't support the censure strongly, the ruling group or political elites may use the discourse right to influence people's opinion and change the morality. In this sense the creation of social censure is a double-edged sword which may strengthen the ruling group or political elites' dominance and may also hurt their dominance; therefore the ruling group has to consider all factors and ensure that social censure won't hurt itself.

The word "censure" itself tells that it is "hurt and resentful" (Sumner 1990). As a basic element of social censure, negative-ness and denunciation play a significance role in the process. The ruling group or political elites' goal depends on how negative the censure is created. The negative-ness of social censure leaves little space for the targeted groups or behavior to survive. Any violator will be attached such a negative label and then receives slanders from society. The humiliation further renders the violator to retreat and internalize the social censure which follows the ruling group or political elites' ideology. In such a sense, the ruling class' ideology will be accepted by more and more people and any violator will be changed according to dominant interests and ideology quickly once found.

In Sumner's (1990:17) view, social censure is "organized slanders in what is essentially a political or moral conflict." Obviously social censure is politically loaded. It is political first because the social censure is created to fulfill the ruling group or political elites' interests. Although the social censure appears in various forms, such as legal, technical or universal (Sumner 1990), it is political in nature for social censure is created for the ruling class' considerations rather than justice or social development. Among those considerations, one political need is to purge opposing group to eliminate their rivals or dissents. If the targeted group doesn't learn, history tells that the dominant regulatory agencies will try to undermine,

destroy, colonize or police them until the censure is useless (Sumner 1990). The social censure is political also because the creation of social censure needs political resources to finish. The mass has no power or authority and therefore no capability to create any censure to reach their aims.

All in all, to see whether corruption is a form of social censure, we need to check how corruption is created in Mainland China and what the feature of corruption is as a label.

## 7.1 Anticorruption Law Is Based on Social Values

It is argued that law or regulation is established mainly by the ruling group or political elites, while the people's role is minimal in the establishment process. However, to have support from the ruled as much as possible, the ruling group or political elites usually chooses to base the social censure on social morality (Sumner 1990). Without such a base, it is hard for the mass to accept new social censure. Also the punishment on targeted groups or individuals will be much easier if the social censure is based on moral because it has been accepted by the public that violations of moral can bring disturbance to individual conscience and social sanctions (Boltanski 1999). The data from both interviews and surveys show that respondents have no objections to the anticorruption provisions in *China Criminal Law*:

Law [anticorruption law, author added] itself is ok for me. I don't find any article which is against my opinions apparently (Interviewee G, jailed official).

Law [anticorruption law, author added] is good for it is close to our social value. What we value in mind; it is valued in law. What we hate in mind; it is hated in law.... I cannot find any flaws in law (Interviewee C, jailed officials).

Basically I can accept the law [anticorruption law, author added]; for example, the criminal law stipulates corruption is illegal and need to be punished; can I say something bad about it? (Interviewee I, official in power).

What I am not satisfied with is not the punishment on corruption, but the concrete article such as how many years should the criminal be imprisoned if found corrupt? (Interviewee H, official in power).

Some imprisoned interviewees are in agreement that their corrupt behavior is against their own moral, and they took bribes out of social pressure.

I know it is not good, but I have no other way for I really need money. You can't make a living in current society if you just rely on salary (Interviewee A, jailed official).

Everybody takes [money, author added]; you will be seen as a freak if you don't take. Your social relationship will be cut. For this, you have to do something against your conscience (Interviewee E, jailed official).

I know it is not right to take the money; but my supervisor took already. If I didn't take, I would be in problem (Interviewee C, jailed official).

**Table 7.1** Responses on relationships between moral and corruption

Variables	Strongly disagree	Disagree	Not sure	Agree	Strongly agree	Mean
The laws are congruent with the public's values	2.02	11.04	25.24	57.23	4.47	3.51
You hate briber giver	3.07	6.49	9.03	40.14	41.28	4.10
You hate briber taker	0.96	4.47	10.00	50.61	33.95	4.12
You hate briber asker	1.14	3.33	8.85	42.77	43.91	4.25
You hate corrupt behavior	1.14	5.09	7.90	42.76	43.11	4.22

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

To be frank, I know taking other's money is immoral, but everyone is doing this. What can I do? Follow it! (Interviewee D, jailed official).

The respondents from the survey cannot explain exactly why they don't oppose the anticorruption part of *China Criminal Law*, but they did agree that corruption is against their moral or values. When probed whether the law are congruent with the public values, 57.2% respondents chose "agree" and 4.5% chose "strongly agree", while only 13% chose "disagree" and "strongly disagree". In the follow-up questions, respondents further showed that they hate bribe giver, briber taker, bribe asker and corrupt behavior. All percentages for "agree" and "strongly agree" are over 80%; and all means are over 4 (Table 7.1). This shows that bribery and corruption is a negative label created by social censurer.

The above data tend to suggest law especially the part on corruption conform to the public value and social moral. It confirms what Sumner (1990:20) says in 1990s that what is defined as "crime and deviance reflects the political economy and culture of a society." That is why the public including jailed officials have no objections although they have no influence on the legislation. If the new regulation, rules or legislation are against current social values, the ruling group can still make it acceptable to the public by promoting new values in accordance to the ruling ideology or interests.

## 7.2 Corruption as a Negative Label

Once officials are shuangguiued, the label of "corrupt official" will be attached to him/her. Since corruption is against moral and social value, it is born to be negative. The ruling group or political elites creates social censure in a more negative way because their aim is to denounce targeted phenomenon (Sumner 1994). The strengthened negative-ness renders violators feel humiliated when exposed and don't dare to violate again. The others will also learn from the labeled officials that violation causes severe chastisement and is not wealthy of doing it (Sumner 1990).

**Table 7.2** Responses on corrupt official and corrupt behavior in media

Variables	Strongly disagree	Disagree	Not sure	Agree	Strongly agree	Mean
Description of corrupt cadre in TV is negative	5.35	21.74	15.34	44.87	12.71	3.38
Description of corrupt cadre in newspaper is negative	3.86	19.19	18.40	47.68	10.87	3.43
Description of corrupt cadre in radio is negative	2.72	17.35	38.56	34.71	6.66	3.25
Description of corrupt cadre on the internet is negative	2.72	13.16	27.98	45.44	10.70	3.48
Description of corrupt cadre in magazine is negative	2.98	15.86	34.97	38.21	7.98	3.32
Description of corrupt behavior in TV is negative	4.03	21.65	20.86	46.10	7.36	3.31
Description of corrupt behavior in newspaper is negative	2.98	19.11	24.10	46.54	7.27	3.36
Description of corrupt behavior in radio is negative	2.98	16.40	38.25	37.02	5.35	3.25
Description of corrupt behavior on the internet is negative	2.02	12.09	32.69	45.05	8.15	3.45
Description of corrupt behavior in magazine is negative	2.19	14.81	37.25	39.35	6.40	3.33

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

Both the interviews and survey show that corruption is a negative label attached to the suspects and bring negative influence to the suspects. Ten questions were included in the questionnaire to judge respondents' opinion on description of corrupt official and corrupt behavior. All the means (Table 7.2) are over 3.2 suggesting most respondents either "agree" or "strongly agree" that description of corrupt official and corrupt behavior are negative in media including TV, newspaper, radio, internet, and magazine. For all questions, the respondents choosing "strongly disagree" and "disagree" are less than 25% which further suggests a relative high consensus among respondents.

The imprisoned interviewees particularly are impressed by the negative label and even "hate" it in deep mind. The label is attached to them so that they feel humiliated while walking on the street. The negative label also brings pressure on their families such as child in school. Here is what they said.

Since I was shuangguied, I have a feeling that there is a tag on my body which everybody can see. Sometimes, I don't want to raise my head (Interviewee A, jailed official).

I am OK, after all I don't face others here, but my families cannot stand anymore, especially my daughter. Now everyone knows her dad is corrupt and imprisoned; previously she is very vivacious, but her mother said she is very dumb now (Interviewee C, jailed official).

Once I was shuangguied, I know my life is totally ruined. The bad image will stay with me forever. Even if I go out [after release, author added], it is still with me. People will see me differently when I go back to society (Interviewee D, jailed official).

Before I was shuangguied, many friends went after me pretending to be my brothers. The thing changed totally after I was shuangguied. They kept a distance from me as far as possible. It seems that they don't know you. They were afraid that my image will bring negative influences on them. Our society is like this, everyone is pragmatic (Interviewee G, jailed official).

The Party made much propaganda. Basically, the mass accept such an opinion that corruption is not good. Corrupt officials should like mouse on the street which is beaten by everyone. An imprisoned official will find it very hard to find a friend any more (Interviewee E, jailed official).

### 7.3 Anti-corruption Controlled by the Ruling Group

"In society which are substantially divided by class in terms of wealth, power and ideology, it is inevitable that class bloc which dominates the economy, owns the means of mass communication and controls the reins of political power, will have the greatest capacity to assert its censures in the legal and moral discourses of the day" (Sumner 1990:27). That is why Marxist criminologists hold that laws are the products of the ruling class' means of establishing hegemony (Turk 1969), and the definition of crimes are constituted by the yardstick of the ruling class' ideas and norms (Mills 1943). What kind of role can different strata play in the social censure? It is imagined that the creation of social censure is not an easy work but needs tremendous social authority and recourses such as state machine to complete. The ruling group or political elites possess such resources while the mass lack them. It is predicted that the creation of social censure is in the hand of the ruling group or political elites and the mass are distant from it (Sumner 1990).

Both the survey and interviews found that the anticorruption was absolutely done by the ruling group or political elites in the ruling class while the common people cannot have a hand in it. In the survey (Table 7.3), more than 60% of respondents agree that they personally have no capacity to fight corruption. More than half of the respondents further agree that the definition of corruption is defined by government (mean: 3.0), the way of anticorruption is decided by government (mean: 3.26), the time of anticorruption is determined by government (mean: 3.39), and fighting what kind of corruption is decided by government (mean: 3.22).

For the interviewees, regulations, rules or legislation on corruption is established by the ruling party so that some of them are not totally satisfied with the content of anticorruption part of criminal law.

The anticorruption law is not fair...from 50 thousands to 100 thousands, they can sentence you either 5 years or life imprisonment. The range is so wide....It would be better if we the mass can participate in the legislation (Interviewee A, jailed official).

**Table 7.3** Response on decisive power in anticorruption

Variables	Strongly disagree	Disagree	Not sure	Agree	Strongly agree	Mean
You personally have no capacity to fight corruption	4.38	17.53	17.88	44.08	16.13	3.50
What is corrupt behavior is defined by our government	6.32	29.06	28.71	30.55	5.36	3.00
When to fight corruption is decided by our government	4.73	17.53	29.54	30.24	17.97	3.39
How to fight corruption is decided by our government	6.31	17.53	29.97	36.72	9.47	3.26
Fighting what kind of corruption in specific period is decided by our government	5.78	16.21	34.88	36.63	6.49	3.22

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

Anyway, the law is made by the CCP; the common people like us have no decisive power at all. Although delegate of people's congress can vote, it is only a rubber stamp, and the normal people can not be the delegate....If I can participate in the legislation, I will make it more concretely and more fair (Interviewee C, jailed official).

It is born a thing in the government's hand. It is the same in all countries (Interviewee J, official in power).

Our party has made complete anticorruption law system...it is good enough for all kinds of corrupt behaviors. Although I can not play a role in the legislation or regulation-making, basically I agree to what have been made (Interviewee K, official in power).

Since the creation of social censure is totally in the hand of the ruling group, the ruling group's interests will be definitely secured in the creation of social censure. In the Chinese legislation including the anticorruption part, the law reflects the will and interest of the CCP since it was established under its leadership. Anything against or not good for CCP's leadership will not be included in the legislation. For example, the CCP will never add contents like "any officials including standing members of Politburo found corrupt will be criminally charged" to the *China Criminal Law*. Neither would an article "the party in power should step off power if most officials are found to be corrupt" be added the Constitution (it is the same for so-called western democratic states). Such ruling class' reservation in legislation is in public's mind. The survey tells that more than 50% of university students thought the goal of law in China was to protect CCP's interests, while only 24.8% held opposing view (Table 7.4).

As a matter of fact, there is a team of experts in China who is responsible for legislation.<sup>1</sup> The law will be reviewed, discussed and revised again and again by these experts before being passed by the National People's Congress (全国人民代

<sup>1</sup>These experts work as professors or researcher in academia normally, but will be called up to work on the specific legislation at particular times.

**Table 7.4** Responses on the goal of legislation in Mainland China

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean (%)
The goal of law is to protect the CCP's interests.	3.9	20.9	23.5	42.9	8.9	3.3

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

表大会) to ensure CCP's interests or political agenda not hurt.<sup>2</sup> Although interviewees have no objection to the content of laws, they do think that there won't be any article which is against the CCP's interests. As interviewee J (official in power) says, "law is fair to everyone on the face, but in fact, it favors the party in power. After all, the law is made by them. There is nothing strange here; it is same all over the world .... Since the law doesn't oppose our basic social values, the public can accept them."

In sum, in the interviewees' and survey respondents' mind, legislation on corruption and anticorruption are controlled by the CCP in post-reform China, therefore the ruling group or political elites' interests will be secured in the process, although anticorruption is just "another way of handling the enemy within" (Sumner 1994:247). If the mass have the capacity to define the corruption and can fight corruption at their will, the ruling group will lose control over anticorruption and may face a crisis of legitimacy.

## 7.4 Anticorruption Is Political

Corruption, as a "formal rebuke" or "official displeasure",<sup>3</sup> is predicted to be political because it mainly happens to officials. Just because it occurs in political circles most, there are many political maneuvers that are applied in the process of defining corruption and fighting against corruption. Also because it happens in political circle, defining corruption and anticorruption are strongly related to power and power struggle (Lo 1993).

In interviewees' eyes, the CCP faces corruption all the time in post-reform period, and government has to fight corruption rigorously every 2 or 3 years, however, there are too many concerns in national leaders' mind, therefore anti-corruption appears to be political. For instance, the CCP or Chinese national leaders created various names for corruption at particular historical conjuncture, such as white collar crime, occupational crime, and economic crime. Moreover, the creation of denunciation on corruption embraces many other political contemplations. For

<sup>2</sup>Retrieved on Sept 16, 2007 from <http://www.justice.gov.cn/epublish/gb/paper4/9/class000400001/hwz622493.htm>.

<sup>3</sup>Retrieved on Sept 17, 2014 from <http://www.thefreedictionary.com/censure+>.



instance, anticorruption forms “a justification for repressive action against the offender and for attempts to educate the recipient into the desired habits or way of life ... their frequent appeal to general moral principles gives them inherent political potential in the constant struggle for hegemony” (Sumner 1990:27). In a word, the anticorruption is treated as a tool for the ruling group or political elites. They can manipulate the process and get the result wanted. The disadvantaged or powerless is always the victim. Having such an opinion in mind, the interviewees sometimes are discontented with anticorruption in post-reform China.

In Chinese history, we have many sayings about corruption, such as bourgeoisie liberation, rightist tendency, and decayed lifestyle. Now our party calls it white collar crime and occupational crime. All these are the same. That is corruption.... They make so many names for nothing else but to fight corruption (Interviewee B, jailed official).

Corruption is called occupational crime now. I guess the CCP wants to minimize the negative effect of corruption on her, after all corruption of China is too serious in people's mind...what government should care most is social development rather than its own ruling power (Interviewee G, jailed official).

Corruption in some sense is made by our Party. When it is criticized for corruption internationally, they will then work hard on anticorruption. Sometimes, to save face, they don't say it is anticorruption, but to name it in another way. ...in fact, there are many concerns in anticorruption...sometimes, you can call it a project (Interviewee L, official in power).

As a matter of fact, Jiang Zemin's 'Three Stresses' and Hu Jintao's 'Keeping advance' are anticorruption too ... the wine is the same, but in different bottles.... Government's concerns are so many that they have to make new names....You can say it is Chinese characteristic (Interviewee J, official in power).

Usually anticorruption is like waves, sometimes it is high and sometime it is low. The cycle is around 3 years...the reason is that corruption will be serious with three years accumulation; government has to lay aside other things and comfort the public. Moreover, they also have to create some new names (Interviewee N, official in power).

## 7.5 Concluding Remarks

As Sumner (1990:4) argued, “to believe that what is anti-social, wrong, wicked, dangerous or nuisance is a matter of collective, transcendental, normative or moral agreement, and not a question of economic, political and ideological constitution, is contrary to the evidence of history, and therefore a poor basis for a realist politics of crime justice.” To have a trans-class view on corruption, we have to look into the politics behind the anticorruption. Generally, to maintain legitimacy or preserve dominance is always the ruling group's top concerns. One key to maintain hegemony is successful social control, and social censure is one of key social control methods. Sociologists identify two basic forms of social control. One is internalization of social norms or morality so that the mass conform to the ruling group's ideology consciously; the other is sanction which can be either positive or negative

(Jary and Jary 1991). The social censure integrates the two forms of sanction by, on one hand, instilling ruling group' ideology with discourse rights and, on the other hand, punishing violator judicially.

To socially censure on particular phenomenon or group, the ruling group or political elites has to create a form of social censure. The created social censure is featured as negative, political, controlled by the dominant group, moral-based, goal-serving and reflection of social relations. And corruption is form of social censure.

Corruption is an ancient political form. The new Chinese government once established law to curb it and discarded it later. The new government after the Reform and Open Policy rebuilt judicial system and legislation to fight corruption. The new legislation such as *China Criminal Law* (刑法) includes articles defining corruption and providing appropriate judicial punishments for violations.

The legislation on corruption reflects a basic picture of social relation in post-reform China; that is the CCP is the only ruling party while the mass are the ruled although the mass are believed to be the new owner of the country. Both survey respondents and interviewees agreed to that the legislation on corruption is made by the state or a few elite participants while they have no role to play in the legislation. The opinions such as "born a thing in government's hand", "I have no decisive power", and "I don't play a role" expose interviewees' feeling of disappointment in legislation. Such a picture is inclined to suggest that corruption is a form of social censure because social censure as an official rebuke is always the sanction on the disadvantaged by the ruling group or political elites, like the case in which male censures female (Roberts 1993). The article on corruption in *China Criminal Law* doesn't contain any negative narrative on violators, but the supporting propaganda in media is so negative that corruption leaves the public a deep impression of negative label. Most survey respondents hesitate to make friends with once shuanggui'd officials and hate to be colleague with once shuanggui'd officials, let alone be called "corrupt official". It seems to suggest that the mass media are agencies involved in extensive and powerful social denunciation (Sumner 1990). For the interviewees, the feeling is stronger due to direct negative experience with such a negative label. The negative labels "humiliation", "distance", "differently" and "dumb" also were frequently used in interviews. We have to agree that the negative labels of corruption "draw upon ideological images of deviance to portray opponents as abnormal people or even as inhuman" (Sumner 1990:7), and bring tremendous negative influence on officials. In this sense, "politics and morality have...always been intertwined" (Sumner 1990:7). The negative nature of corruption also tends to imply that corruption is a form of social censure. Since corruption is a negative label, anticorruption receives support from both survey respondents and interviewees. When asked whether they hate bribe-givers, bribe-askers, briber-takers, and corrupt behaviors, almost all respondents chose either "agree" or "strongly agree". Imprisoned Interviewees described their own corrupt behavior as "immoral", "not good" and "not right"; and they agreed to the legislation on corruption with the terms "good", "OK", and "accept". Apparently, the legislation on corruption is consistent with their moral standards or social

values, which further hints that corruption is a form of social censure. Anticorruption is suggested to be a political action in this chapter. Interviewees gave us an idea that defining (creation of censure on) corruption is political because national leaders use political strategy to come up with various names for anticorruption due to political environment at specific historical conjuncture. The considerations behind the diverse names for interviewees are interest-driven. Although anticorruption is political, it is often depoliticized before it reaches the courts, through public denunciation which negates political content and consigns it to the dustbin categories of badness or madness (Sumner 1990).

In a nutshell, corruption is not simply a form of behavior separate from state definition as some new realist criminologists argue, but constructed by the ruling group or political elites in post-reform China with little reference to the mass's opinion. The public generally accepts the legislation on corruption because it conforms to their social values. It is not only defined as "a set of distinguishable behaviors offending collective norms" (Sumner 1990:17), but also as "a battery of flexible, interconnected ideological terms and feelings of disapproval" (Sumner 1990:17). The construction of corruption in legislation and in campaigns in post-reform China is processed politically and reflects political scenario or political goals at particular historical conjuncture. The negative-ness of corruption helps the ruling class to punish dissidents or black-sheep and reach its political goal. Corruption is then seen as "complex compositions of images of personal deviance and images of political propriety" (Sumner 1990:8). Such features of corruption suggest that corruption is a form of social censure created by the dominant group to achieve its own interests.

## Chapter 8

# Application of Social Censure on Corruption

As seen in the earlier chapter, the ruling group use political resources and social resources to target particular phenomenon, denounce it, and create a set of rule or regulation in the aim of keeping it under control or shaping it according to the ruling ideology. In other words, crime including corruption is “doubly constructed, as practical or behavioral responses to social conditions, and as social censures reflecting the emotions, ideology and values of powerful social groups” (Sumner 2004:9). The next step for the ruling group or political elites is to apply the rule or regulation.

Sumner (1990:35) argues that “the concept of social censure registers several key features of modern practices of social regulations: their political character, their reliance on value judgments, and their formal, bureaucratic character.” As suggested in the Chapter seven, the creation of social censure is political. Actually, the application of social censure is political too because of power struggle and political strategy adopted in the process. As seen earlier, social censure is not an easy project for the ruling group although they possess tremendous resources. An unsuccessful social censure can bring negative impacts on the ruling group or political elites too. Therefore they have to resort to delicate political strategy to create social censure. It is same to the application of social censure. For example, there may be “enemy within” for the ruling group or political elites. A harsh enforcement of rules may hurt its own body, and total ignorance may bring public complaints to them. In such condition, the ruling group or political elites have to punish some “enemy within” and ignore some “enemy within” to comfort public resentment on one hand, and not to hurt themselves on the other hand. For the ruling group or political elites, if the whole opposite group is the target, the application of social censure will then be the power struggle between political rivals. The application is then featured as both subtleness and merciless.

To apply the social censure delicately is still not enough for a success. To make the application of social censure appear fair and justified and further secure a success, the ruling group or political elites usually employ bureaucracy in the application of social censure, especially in the modern days when bureaucracy has

been a basic feature of most of societies. To apply the social censure in a bureaucratic form can reduce public dissents and make the social censure more legitimate.

The application of rule or regulation is complicated with various considerations, scenarios, interests taken into account. The Chap. 7 shows that the ultimate goal of creation of social censure is to maintain its dominance or hegemony which includes political leadership, ideological leadership and common sense knowledge (Gramsci 1971). In the application stage, such an ultimate goal still decides the whole process. In some cases, the ruling group or political elites will take other actions to shore up the application of social censure to secure a success; in some cases, other factors will influence the ruling group's dominance in a greater magnitude at particular historical moment; and the application of social censure will then have to give way to those factors; in some cases, the different groups within the ruling group will fight for application of social censure for the application will influence their fates differently. In a word, there are prerequisites for the whole ruling group or political elites and the different factions within the ruling group in the application of social censure. The prerequisites are not universal and eternal. They only exist at specific historical conjuncture; or to say different historical conjunctures determine different prerequisites of the application of social censure for different groups.

The application appears differently because it is "used for a variety of purposes and in a variety of contexts" (Sumner 1990:26). First, it is argued that social censure is created by the ruling group, therefore born a handy tool for the ruling group or political elites. It serves the ruling group's interests inevitably. In the "normal period", social censure may be seen just as a part of judicial process to maintain social order and justice. However, in the specific historical conjuncture, social censure may function to reach ruling group's particular political goals. These political goals or considerations are the real dynamics behind the application of social censure. Second, the social censure is created by the ruling group for the whole group's interests, but it is not always the real case in the application of social censure. The application of censure is operated by officials at various levels. Without rule of law, it is easy for different fractions within the ruling group (national level, provincial level, municipal level and county level) to exercise it for faction's interests such as power, ideology and personnel rather than for the whole ruling group's benefits. In this sense, application of censure sometimes can also be a tool for such subgroups or political elites within the ruling group. These political factions may use it on their own initiative; and they may use it passively. They may use it to censure on others; they may make use it to avoid hurt from other's censure on them. Such factions utilize such a weapon on the prerequisite of not hurting their dominance. Third, the individuals may use the censure to reach personal goals because the application of censure is handled by individuals. Without rule of law, it is hard for officials to apply it only for the whole ruling group or subgroups' interests. Theoretically imagined, officials at various levels use anti-corruption as a handy tool to satisfy individual needs, such as cleaning political opponent and personal revenge. In this sense, the application of social censure is not only a handy tool for the ruling group, but also a weapon for the groups or individuals. In sum,

these various groups or individuals utilize the application of social censure to win ideological struggle, consolidate power, build-up legitimacy, comfort public bitterness, and fight with opponents. The criminalization then plays a role in legitimizing political control (Lo 1993).

## 8.1 Bureaucratic Form for Authority and Official Purposes

Anticorruption is done differently in different states. However, it seems that anticorruption in most countries is done through a set of well defined process which is bureaucratic. The bureaucratic form makes the censure on corruption official, formal, authoritative, unchallengeable, unarguable, and convincing to the public. It also helps make the application of censure on corruption be accepted by the public so that it can continue. The anticorruption procedure in post-reform China was probed in the survey and interviews. Both survey data and interview data suggest that the ruling class applied the anticorruption in a consistent bureaucratic form in Post-reform China.

Most respondents agreed to that anticorruption in post-reform China had following steps: discovering on corruption facts, reporting to the CDIs, shuanggui, investigation, prosecution, sentence and punishment. All means are over 3.6 suggesting a strong consensus among them (Table 8.1). For all steps, more than 65% of respondents either agreed or strongly agreed to. On the contrary, for all probed anticorruption steps less than 8% respondents thought they didn't exist.

**Table 8.1** Response on anticorruption procedure in Post-reform China

Variable	Strongly disagree	Disagree	Not sure	Agree	Strongly agree	Mean
One step of anticorruption is to find cadres' economic problem	0.96	6.13	16.91	65.56	10.43	3.78
One step of anticorruption is to report to the CDI of the CCP	1.49	5.35	17.88	67.66	7.62	3.75
One step of anticorruption is to shuanggui	1.75	5.35	25.07	58.55	9.29	3.68
One step of anticorruption is to send the case to procurator for inspection	0.96	3.24	17.70	70.03	8.06	3.81
One step of anticorruption is to prosecute the reported officials by procurator	0.96	2.28	16.30	70.99	9.47	3.86
One step of anticorruption is to sentence by the courts	0.79	2.10	17.27	69.41	10.43	3.87
One step of anticorruption is send officials to jail to serve a sentence	1.31	4.21	19.11	61.09	14.29	3.83

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

For interviewees, there are many necessary steps in the anticorruption, but shuanggui, prosecution and consistency of procedure left them a deeper impression. Jailed officials and officials in power shared the same opinion in terms of anti-corruption process in post-reform China.

Initially shuanggui, followed by investigation, then prosecution, trial and sentence (Interviewee C, jailed official).

The people here all experienced the same procedure, being reported, shuanggui, prosecution and trial...Some may have two trials, because they felt not guilty in the first trial. The appeal has to be settled by the higher court (Interviewee D, jailed official).

My case is a little complicated, so it takes longer time...From the beginning to the sentence, it took one and half year. General procedure is shuanggui, prosecution and trial (Interviewee G, jailed official).

There is a set of pre-decided procedure; every corrupt official will be processed in the same way (Interviewee P, official in power).

There is no difference in procedure. Usually it is shuanggui (双规), prosecution and sentence (Interviewee H, official in power).

The consistency of procedure and involvement of judicial system such as procuratorate and court demonstrate that anticorruption in post-reform China is done in bureaucratic form. The bureaucratic form of anticorruption means no space for argument between suspects and government. Also because of its bureaucratic character, the anticorruption becomes the legitimate political weapon of the powerful to outlaw opponents or dissents; and the real crime of corruption as opposed to censure for political goals is then undifferentiated to the mass (Lo 1993).

## 8.2 Prerequisites of Anticorruption

In current China, the adopted political system is dominance of one-party with involvement of other democratic parties. The *Constitution of P.R.C.* states the CCP's paramount authority clearly and firmly.<sup>1</sup> The main body of all officials in China are CCP members; therefore the anticorruption is actually the denouncement on the CCP members. And more interesting is that the anticorruption is in the hand of the ruling class which is CCP. In other words, the anticorruption is basically CCP's self-disciplinary action. Usually, there are many factors the ruling class has

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<sup>1</sup>There are eight democratic parties and many other social groups in China, such as the Revolutionary Committee of Chinese Kuomintang (中国国民党革命委员会), the China Democratic League (中国民主同盟), the China Democratic National Construction Association (中国民主建国会), the China Association for Promoting Democracy (中国民主促进会), the Chinese Peasants and Workers Democratic Party (中国农工民主党), the China Zhi Gong Party (中国致公党), the Jiu San (September 3) Society (九三学社), the Taiwan Democratic Self-Government League (台湾民主自治同盟). However, they function more like a political supporter in China. No such a party is able to challenge CCP's dominance.

to consider before they start the creation of social censure or application of social censure. Some factors are even more important than anticorruption to the ruling class at specific historical conjuncture, and turn out to be the prerequisites of anticorruption. In the current China, two prerequisites are particularly vital when the ruling class censure on corruption.

### 8.2.1 *The CCP's Full Control*

Almost all parties want to stay in the power, and they want to stay there forever, in other words, to maintain the dominance forever. The CCP is no exception. Before the foundation of P.R. China, building up dominance is CCP's main goal, while after the foundation of P.R. China, maintaining dominance is her ultimate goal. All other goals including anticorruption are subject to it or serve it. Anticorruption is based on such a prerequisite. Therefore the CCP's dominance will be protected and stressed in the application of social censure. Any possibility of hurting ruling group's hegemony will be eliminated or cleared in the process.

After the *China Criminal Law* (刑法) is passed by the National People's Congress (全国人民代表大会), the CCP's goal of dominance is reflected in law enforcement. To secure the goal of dominance to be reached, such a prerequisite is overtly expressed in the CCP's official document. In the *Implementation Outline of Building-up Anticorruption System Based on Combination of Education, Institution, and Supervision* (建立健全惩治和预防腐败体系实施纲要), it says we

must adhere to the leading role of the CCP in order to keep the right direction of preventing and combating corruption...Only adhering to the leadership of the Party can we set up and adhere to the correct guiding line, basic principle and leadership system of anticorruption, fight effectively for economic and social development.<sup>2</sup>

In the *China Supervision Law* (中国监察法) promulgated in 2006, the third section provides that the standing committee of people's congress at various levels has a function of supervision on governments, but it further stipulates that the supervision should be carried out according to goals of state and the economic construction, adhering to the leadership of the CCP, Marxism, Leninism, Mao Zedong thoughts, and Deng Xiaoping's theory, and Jiang Zemin's three Representatives, and also adhering to the people's democratic dictatorship and socialist road. When asked what should be followed principally in the supervision function of people's congress, Chen Sixi, director of State Law Office (国家法制办) of the National People's Congress, interpreted explicitly that law enforcers must adhere to the leadership of the Party, and then collective supervision and enforcement by law. Among those principles, the fundamental one is the adhering

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<sup>2</sup>Retrieved from the website of the Supervision Ministry of the PRC. On Oct 10, 2007: <http://www.mos.gov.cn/Template/article/display0.jsp?mid=20060302021322>.



**Table 8.2** Responses on the relationship between CCP and anticorruption

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Anti-corruption is related to the essential interests of the CCP	3.25	5.79	8.51	47.19	35.26	4.05
Anti-corruption can make you uphold the CCP as the ruling party	1.75	5.79	14.65	54.56	23.25	3.92

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

to the Party's leadership.<sup>3</sup> Both jailed officials and officials in power had such knowledge deeply in mind.

Our country has only one ruling party, and anticorruption is certainly in the hand of the ruling party...I think they won't let such power go. Otherwise it is too dangerous for them (Interviewee C, jailed official).

It is a useful weapon which can hurt the ruling group. If the government let it independent, other parties or power can use it to fight against our party. Our party's dominance is definitely of most significance (Interviewee P, official in power).

Although the surveyed university students didn't know clearly the above CCP official documents on the leadership of CCP in anticorruption, they were aware of that anticorruption was about CCP's crucial interests and only governments (more precisely CCP) could decide the agenda of anticorruption. More than 82% of respondents replied positively when asked whether anticorruption is related to the essential interests of the CCP. In which way does the anticorruption influence the essential interests of the CCP? A follow up question probing respondents' logic also received a strong positive response. More than 78% of university students agreed that anticorruption could render them to support CCP's dominance, which is the CCP's ultimate goal (Table 8.2).

Interview data also show that corruption or anticorruption is about CCP's fate. In their eyes, the CCP came from the communist ideology and has a great stress on clean governance. It is the base of CCP. If the CCP lose such a base, it is hard to maintain it power.

The mass made some money at current stage so are not critical of corruption. By and by, people will take a second thought and have a higher standard on corruption control, but at that time, corruption may be uncontrollable to the CCP. The CCP will be in difficulties then (Interviewee Q, official in power).

Anticorruption benefits the party in power more than the mass. The mass lose a little money and money can be made in the future. But the party in power may lose the dominance and it is hard to win the dominance back (Interviewee P, official in power).

<sup>3</sup>People Daily (人民日报), August 30, 2006.

The fact is that corruption after the Reform and Open Policy damaged our party's legitimacy already. I guess the mass don't like the CCP as they did before...our leaders should note this and take some actions to save trust from the public (Interviewee J, official in power).

Given this, the anticorruption is vital to the CCP because it can win public support from the anticorruption. Just because it is strongly associated to the CCP's fate, the CCP wants to keep it under control fully so as to protect its interests or hegemony.

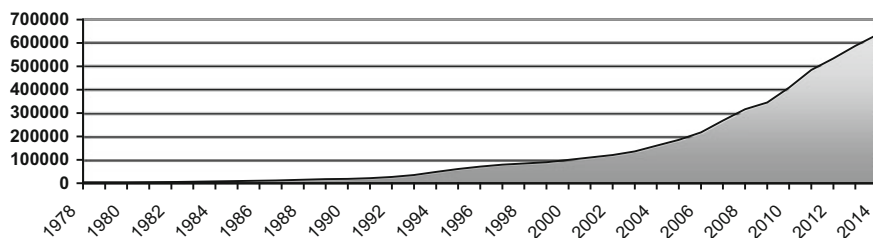
### ***8.2.2 Yield to Economic Development***

As pointed earlier, there are many factors which influence the ruling class' hegemony. Anticorruption is just one of them. Economic development and improvement of people's living level is another key factor. At some particular historical conjuncture, economic development may be more important than the anticorruption and placed higher than the anticorruption.

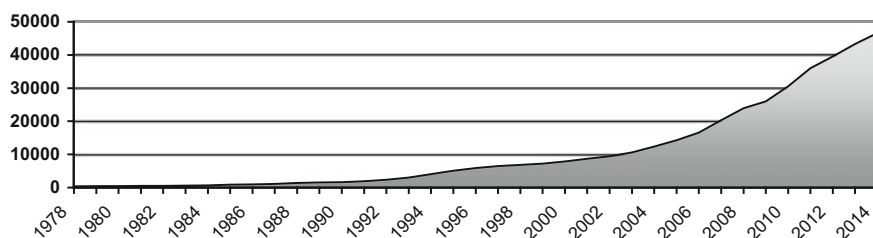
Before Deng Xiaoping came into power in 1978, leftist values had prevailed in China. Spiritual values rather than material values were placed at a higher position in public's mind. Such a social atmosphere changed after the Reform and Open Policy which was initiated in 1978. Chinese government began to see the economic gap between China and developed countries and started to put more focus on monetary goals. The current initiated by government influenced the mass and continued to today. In such a social context, economic development and making people rich are of most significance for the ruling party. Otherwise, its ruling legitimacy will be hurt or challenged. The CCP put China and Chinese on such a material-driven boat and has no way to return. It is an impending and continuous task for the CCP to lift people's living level so as to win public trust and support and to consolidate its dominance. Deng Xiaoping's famous slogan "development is the irrefutable argument (发展才是硬道理)" reflects such a background. In sum, economic achievement which concerns people's living level has become the most important base of the legitimacy of the CCP's rule.

Having such a task in mind, the CCP put almost major focus on economic development. And Chinese government's economic policy has been very successful. The following graphs about GDP and GNP (Graphs 8.1 and 8.2) show that China's economy has been booming since the Reform and Open Policy.

From the China's official statistics, it is easy to see a steady and fast GDP growth after 1978. It grew from 36.452 billion of 1978 to 636138.7 billion of 2014, which is a 17451 times growth. The per capita GDP grew quickly at the same time albeit the fact that Chinese population has been growing fast since 1978. It grew from 381.2 yuan per person (1978) to 46629 yuan per person of 2014, which is a 122.3 times growth.



**Graph 8.1** China's GDP after the Reform and Open Policy *Source* China Statistics Yearbook, 1980–2015



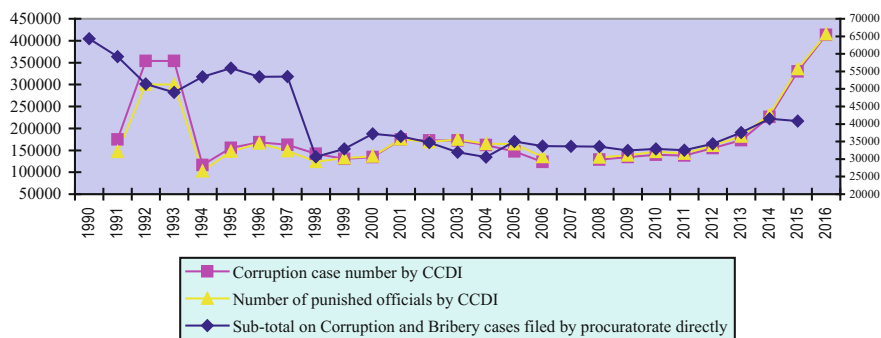
**Graph 8.2** China's Per capita GDP after the Reform and Open Policy *Source* China Statistics Yearbook, 1980–2015

The economic development pleased to the whole Chinese society, but failed corruption control counterfeits such pleasure. The following figure (Graph 8.3) shows the statistical trends from procuratorate organs and the CCDI.<sup>4</sup> The statistic dropped in 1994 and stays stable roughly after that. The drop in 1994 is due to Deng Xiaoping's southern tour in 1993 and subsequent loosened ideological control and corruption control. The statistic from procuratorate dropped in 1997 and stays stable roughly after that. The reason for the drop in 1997 is the adoption of new criterion (such as new *China Criminal Law* in 1997).<sup>5</sup> The concurrent growth of economy and corruption suggests a possibility that the ruling class went easy on corruption control to grease economic development because P.R. China comes from a low corruption country and is well experienced in corruption-control, and should be able to keep corruption under control (Fan and Grossman 2001).

Not only had the government put economic development on the top of agenda, but also the public. The economic development brought people so many benefits

<sup>4</sup>As analyzed earlier, the Procuratorate and CCDI are two anticorruption departments which work separately. The statistics from these two organs are collected and compiled separately too.

<sup>5</sup>President Jiang Zemin launched an anticorruption campaign after the Tiananmen movement. Harsh criteria were adopted in the campaign. The campaign was later stopped by Deng Xiaoping's southern tour in 1992. The anticorruption was then loosened and government went easy on corrupt behaviors among officials. Retrieved on Aug 19, 2007 from <http://www.phoenixtv.com.cn/home/phoenixweekly/157/1612page.html>.



**Graph 8.3** Statistics of Corruption case from the CCDI and Procuratorate *Source* Corruption Case number and Number of punished officials: CCDI reports 1987–2017; Sub-total on corruption and bribery: China Law Yearbook 1997, China Statistics Yearbook 1998–2016

that they could even tolerate corruption as long as economic development was maintained. Sometimes, people not only tolerate corrupt officials, but also prefer to selecting officials who give them benefits though are not clean instead of those in adverse.

Now who cares leaders' corruption? As long as they provide them housing, bonus, and benefits, their subordinates will be happy (Interviewee K, official in power).

I know there is a director. He can handle relationships with both his supervisor and his subordinate very well. He took money, but has no problem at all...so the problem is not that whether you took money, but is how you deal with relationship. As long as you are not greedy and give others some benefit, you won't have any problem (Interviewee I, official in power).

Now what is most significant is economy. Leaders at all levels know it...in their mind, anticorruption should not be treated seriously until there is a new direction from the top (Interviewee P, official in power).

As I said earlier, nobody would care my case in the normal time. They are all devoted to economy (Interviewee A, jailed official).

Current people care more about money. As long as economic development is maintained, other thing doesn't matter (Interviewee B, Jailed official).

Given interviewees' such opinion, no wonder scholars conclude that "it is conducive to protecting the political and social status of government officials and Party members who made immediate contributions to the success of economic system reform by taking limited tolerance of corruption as compensation instead of direct compensation" (Fan and Grossman 2001: 150).

From the official data and interview data, we can see that both Chinese government and the public won't bother to fight against corruption seriously as long as economy develops. They won't agree to fight corruption if anticorruption hurt booming economy or influence their benefits. In such a case, economic development is a prerequisite for the anticorruption, although such a view is absent in the

open official documents. However, in a rule of law society, both government and the mass respect law. If there is a violation against law, insiders will report to the judicial organs, and the judicial organs will enforce the law tightly without reference to government or national leaders' prerequisite.

### 8.2.3 *Leaders' Interest Preservation*

It is well known that the CCP is the only ruling party in post-reform China. However, it doesn't mean the whole party work coherently. There are interest groups or ideological factions within the CCP. As Mao Zedong summarizes, "it is an emperors' idea that there is no other parties besides its own; it is exceedingly strange that there are no factions inside the party."<sup>6</sup> These factions exist at various levels such as national, provincial, municipal and county. All these factions want to maintain their faction's dominance. Therefore various considerations are taken into account when they make and implement the policy including anticorruption. Among these considerations, maintaining local government's interests or faction's dominance is most significant. If the anticorruption impairs their dominance, they will try to pause it or get around it. In addition, Chinese politics is featured as patriarchal system. That means the no.1 leaders makes most of decisions and is weighted with power. In some case, new anticorruption campaign is mainly out of no.1 leader's concern or opinion; it therefore is related to the fate of the no.1 leader. The leader certainly wants the campaign either to clean social disease or to reach other goal such as building up authority, however, when the anticorruption brings negative impact on his/her dominance, s/he will then stop the campaign and try to maintain his dominance first. Interactions about former President Jiang's leftist approach and Deng Xiaoping's correction in early 1990s portray the above possibility luminously.

In the 1989 social movement, Jiang Zemin was promoted to the top partly because of his leftist approach in the 1989 democratic movement (tough maneuver). To fulfill public's request for a clean government and to win public support, a new anticorruption campaign was launched with the *Notice for the Corrupt Officials, Bribe-takers and Speculation Involvers to Confess in the Stipulated Period* issued jointly by the National Supreme Court and National Supreme Procuratorate on August 15 1989. The campaign continued for a long time; while economic reform was laid aside. However, such a leftist approach is against Deng Xiaoping's pragmatic ideology. In Deng's eye, the new government just needed to press down corruption to some extent so as to calm down public emotions and then get back to economic reform immediately. To stop such a leftist approach, Deng initiated a southern tour to several cities which are experimental zone of reform, such as

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<sup>6</sup>“党外无党,帝王思想;党内无派,千奇百怪” in Chinese. Retrieved on Sept 10, 2007 from <http://www.mzdthought.com/html/mxzz/mzdwg/12/7719.html>.

Shenzhen, Wuchang, Shanghai and Zhuhai in January of 1992. He used the opportunity to express his political idea of reform in order to prevent leftist ideas. Several speeches were delivered in the tour with clear signals sent out. For example, he stressed “rightistness could ruin socialism; leftistness could spell an end to socialism too; China should be aware of rightistness, but mainly should prevent leftistness.”<sup>7</sup> He further pointed out in a straight way that “reform is a general tendency and receives support from the whole nation and Party; the one who doesn’t reform should step off power.”<sup>8</sup> Economic development and reform were put on the top political agenda again. China was then back to the road Deng Xiaoping designed. In this sense, there was an absence of rule of law, and anti-corruption seems more like a tool for national leaders. They could choose to use it and could also choose to idle it.

From the anticorruption campaign in 1989 and national leaders’ responses, we can see how the prerequisite of anticorruption worked for the political factions. First, leftist anticorruption was adopted by former President Jiang for either authority-building or public support. Second, For national leader Deng, continuous anticorruption campaign would pause the economic development, therefore should be stopped. Third, President Jiang changed his mind and stopped leftist anticorruption thereafter. In this case, both national leaders have prerequisite for anticorruption. If their prerequisite was hurt, they would stop corruption control immediately. The same kind of dynamics exists in the all corruption control, either at national level or local level. For example, the central government launches a new anticorruption campaign; the leaders at provincial municipal or county level may slack in anticorruption if the strict anticorruption may bring uncertainty to his/her future.

Similarly, political elites may manipulate anticorruption for faction’s interests, but the manipulation is based on the prerequisite that their dominance would not be hurt or influenced. Otherwise, the political elites manipulating the censorship will take a conservative strategy such as pause or choosing other mild methods. The interview data and documentary data suggest that the powerful will secure that their dominance wouldn’t be injured if they choose to apply the anticorruption.

They will make a good preparation before they ‘repair’ you. They will not be so stupid that they hurt themselves when “repairing” others...at least, I haven’t heard such kind of cases (Interviewee B, jailed official).

That is sure...but usually it will not hurt himself because usually he is more powerful than his opponent if he wants to punish him. It is using egg to hit stone if he doesn’t have such power (Interviewee G, jailed official).

It is understandable to secure its dominance before making somebody suffer. Everybody does it (Interviewee K, official in power).

<sup>7</sup>“右可以葬送社会主义,‘左’也可以葬送社会主义。中国要警惕右,但主要是防止‘左’”。 See Selected works of Deng Xiaoping, V3, p.372.

<sup>8</sup>“改革开放是大势所趋,得到了全党全国人民的拥护,谁不改革谁下台”。 See Deng (1993:372).

### 8.3 Political Character of Anticorruption Measures

#### 8.3.1 *Format of Campaign*

Corruption as a form of crime in post-reform China can be created for the ruling group's interests, and anticorruption is handled in a bureaucratic form. However, employing anticorruption is not good enough to reach some specific goals; therefore the ruling party in post-reform China, the CCP, also makes use of campaign as a supplementary method to fulfill its needs, although it is not perfectly legitimate. As found in the Chap. 7, most respondents hold that government has absolute power in deciding when to fight corruption, how to fight corruption and what to fight at specific moment. The ruling class in post-reform China did use such absolute power in arranging appropriate anticorruption at appropriate time. The format of campaign is a vivid reflection of such arrangement if we examine "socio-political reality, structural conflicts and historically specific phenomena behind corruption" (Lo 1993:2).

The new China established law and rules to maintain social order, including anticorruption ordinance after 1949. However those law and regulations were ignored in Mao's era; and campaign replaced the law and rules. Legal institutions were rebuilt in Deng Xiaoping's era, but numerous campaigns were also launched. We cannot help questioning why the ruling class chose such a temporary method given if anticorruption legislation was available. There must be some reasons behind such a phenomenon. First of all, the ruling party or the dominant group within the ruling class has such power in hand, which is the precondition. Second, it could be due to the inefficiency of judicial institutions and so-caused government's legitimacy crises. The ruling group has to rely on campaign to stop the rising tendency of corruption and win a quick result. Third, it may be due to the political goals set up by the ruling group or political elites; and these goals cannot be reached through institutional approaches. In such a case, anticorruption itself is not the main purpose of anticorruption campaign, but the political goal. The campaign helps the ruling class to reach political goal such as pressing down rising corruption tendency, diverting public attention, improving efficiency of anticorruption, winning legitimacy from the public, and winning political battle. Moreover, the campaign can help the ruling group or political elites achieve those goals in a short time, which is significant at some particular moment.

For example, as Lo (1993) finds, when the Reform and Open Policy was just in practice, the leftist ideology still prevailed in Post-reform China. Leftist ideology was certainly an obstacle for the reform. To move such a barrier, the ruling group headed by Deng Xiaoping launched the Party Rectification Campaign to clear the obstruction, although the campaign was propagandized as a necessity for the modernization. Leftist faction within the CCP were the targets; the first stage focused on the high ranking leaders and the second stage focused on the low level officials. The leftist ideology was so deeply rooted in some officials' mind that they (also called conservatives) fought back later. Anti-spiritual Pollution Campaign (反

精神污染) was then launched by the conservatives to counteract the rightist tendencies encouraged under the open-door policy, to attack the reformist faction and to recapture the power from the reformists. This campaign failed to reach its goal and brought another campaign called Anti-corruption and Economic Crime Campaign (打击严重经济犯罪) into practice. Reformist ideology and rightist group survived in the campaign and won the power struggle again. However, the incomplete reform did cause corruption and people's complaints. To save its legitimacy, the reformist group launched a political reform in 1987 and anticorruption campaign in 1989 to curb corruption (Table 8.3). Because these campaigns are formed in practical conflict with opposing factions, they are subject to continual resentment, resistance and redefinition by the oppositions (Sumner 1990). In around 10 years, anticorruption campaign was used again and again by opposing political factions to reach their own goals. The contents and names of campaign were various for different historical conjunctures, but anticorruption was a key component in all campaigns. Such campaigns tend to suggest, on one hand, the political feature of anticorruption, on the other hand, the absence of rule of law. To say it is political because the political goals behind the campaign are salient; to say there is no rule of law because such kind of campaign is against the law and judicial institutions. These extra-legal institutions acted like law and went beyond law. It was more selective and harsh. The reason why campaign was used is that law is not effective and inconvenient for them to reach particular political goals.

### 8.3.2 “Outcome” of Campaign

The campaign style of censure in Post-reform China, as a supplementary method of application of censure, works for the ruling group or political elites' special needs in a political way. However, not all members in the ruling group benefit from it; on the contrary, some members have to be sacrificed to show the efficacy of campaign and reach the goal of campaign.

Interviewee A (jailed official) is a police of the Executive Division of XXX Intermediate Court. His division accepted “gifts money” from a plaintiff who won the case, but never got the compensation from the sued party. Several Court policemen handling the case divided the “gift money” among themselves. However, they were put into jail later because of it. When questioned why he was imprisoned, he answered “unlucky”, showing his negative sentiment.

There is nothing special in my case, and it is not a big case. I am a court policeman. Our division received some “gift money” from a winning party, but we did help them... We had helped him before we took their “gift money”. It is not bribe but thank-you money. If it happened in the normal time, there would be no problem... We were not lucky for the National Supreme Court issued a notice against corruption in the execution practice last year. All courts took strict action on the execution practice and were harsh on “gift money” which is common in the past... Plus we had a difficult time with two colleagues and were reported by them (Interviewee A, jailed official).



**Table 8.3** Political campaigns after the Reform and open Police in Post-reform China

Time	Name	Background	Contents	Targets	Direct goal	U/goal
10/1983-winter/1984	First stage of Party Rectification Campaign	End of the Cultural revolution; remnant ideas of extreme leftist which had been disturbing to modernization programme; Deng Xiaoping, Zhao Ziyang, and Hu Yaobang coming into power; implementation of Open and Reform policy; rampant corruption practice: bribery and obstructions of justice, misappropriation and excessive spending, official profiting due to dual price system, favoritism and nepotism	Illegally retained profits, evaded taxes, hindered state plans, wasted public funds, illegitimately requested promotion, and violated financial rules. Unfair distribution of benefits, wage increase, employment, education...	Leftist faction from the Cultural Revolution such as those who rose to prominence by rebellion, those with serious factionalist opinions and the beaters, smashers, and looters. They maybe true leftist, opportunists, or conservative political faction. This stage focus on party organs at the central, provincial, municipal and autonomous region level, and the higher grades of the army.	Facilitate modernization; rectify work practices by correcting various kinds of abuse of power and irresponsible bureaucratism; purify the leftist poisons left over from the Cultural Revolution; strengthen discipline by insisting on the principle of democratic centralization and opposing paternalism, factionalism, anarchism and liberalism.	dominant group's hegemony within the ruling party and implementation of their ideas

(continued)

Table 8.3 (continued)

Time	Name	Background	Contents	Targets	Direct goal	U/goal
Winter/1984-	The second stage of the Party Rectification Campaign	End of the Cultural revolution; remnant ideas of extreme leftist which had been disturbing to modernization programme; Deng, Zhao and Hu coming into power; implementation of Open and Reform Policy; rampant corruption practice: bribery, misappropriation, official profiting, favoritism and nepotism	Illegally retained profits, evaded taxes, hindered state plans, wasted public funds, illegitimately requested promotion, and violated financial rules. Unfair distribution of benefits, wage increase, employment, education...	Ditto. This stage focuses on the remaining party members	Ditto	Dominant group's hegemony within the ruling party and implementation of their ideas
Winter/1983-spring/1984	Anti-spiritual pollution campaign	Open and Reform policy, reformist's party rectification campaign against leftist and conservatives	Rotten life style, decadent social values, full acceptance of capitalist philosophical, political, social thoughts such as love, democracy, humanitarianism and liberalism, untrust in communism	Rightist faction (reformist group)	Counteract the rightist tendencies encouraged under the open-door policy; attack the position of the reformist faction; recapture the power from the reformists, maintain their position, authority and interests	Dominant group's hegemony within the ruling party and implementation of their ideas

(continued)

Table 8.3 (continued)

Time	Name	Background	Contents	Targets	Direct goal	U/goal
Jan/1986-Win/1986	Anti-corruption and economic crimes campaign	NPC headed by Peng Zhen; he tried to revive the supreme role of the NPC; resistance from reformists; 8000-member plenum	Buying and exchanging of foreign cars; sending officials on unnecessary visits abroad; use of public revenue for personal tours; offering of luxurious and unnecessary gifts or entertainment to visitors; earning incomes in excess of what they received in official salaries and welfare payments; cadre relatives taking advantage of their status to run business	Influential conservative members	The ruling reformist faction's attacks upon influential conservative members, especially those in the NPC	Dominant group's hegemony within the ruling party and implementation of their ideas
1987-1988	Political reform to curb corruption	Students' demonstration for popular election; Hu Yaobang's lenient attitude; conservatives' criticism; Hu's	Removal of dual price system, election of cadres, price inspection, investigating state companies suspected of	Corrupt behavior	Attack what reformist saw as the root cause of corruption, i.e. shortcomings of orthodox socialist	Ruling class' hegemony

(continued)

Table 8.3 (continued)

Time	Name	Background	Contents	Targets	Direct goal	U/goal
		resignation; Zhao Ziyang's step-up; people's increased demand for political rights; CCP need to mobilize and gain the people's 'active consent'.	profiteering, supervision of cadres, separation of the party from state administration, the promotion of younger party member, stopping retired cadres sitting on business board, correcting financial irregularities in Army, income declaration system, stopping public waste and extravagance such as conference and banquet, luxury goods, establishment of economic crime reporting center and hotlines		system. Institutional changes	
1989	Anticorruption campaign	Complaint about officials' obtaining scarce consumer goods, overseas trips and high-paid	Confess their 'crime' in the Tiananmen incident, linking	Cadres involved in democratic movement and corruption, or those	Repair their image and to recapture public support which had been totally undermined	Dominant group's hegemony within the ruling party and (continued)

Table 8.3 (continued)

Time	Name	Background	Contents	Targets	Direct goal	U/goal
		job for their relatives through influential position, 1989 social movement, Zhao's resignation, domination of conservatives within the CCP, legitimacy crisis	corruption with four principles	disloyal to the ruling section	by the Incident, censure of corruption to perform some hegemonic functions and resolve the crisis of legitimization that they were facing, purify the party, purge disloyal faction and rival ideology	suppression opponents, destroy rival ideology

Source Lo (1993)

Since the campaign has strong political goals, and its efficacy is stressed, strict enforcement and selective punishment are then very possible. The fact is that in any campaign, governments in post-reform China at all levels work hard to catch the targets to show their serious attitude towards the campaign. As a result, the political goal of campaign will be reached. For example, in 2007 the CCDI requires corrupt officials surrender and confess before June 30.<sup>9</sup> To show their excellent work in this anticorruption campaign, Henan Province published a report showing 979 officials confessed and 8.78 million yuan was confiscated.<sup>10</sup> Also, in the interview done with interviewee A (jailed official), when the author asked about the outcome of campaign, interviewee A (jailed official) hesitated for a while and finally agreed to that taking gift money in the court in which he had been working become much less than before and complaints from the public became less too. Obviously the campaign produced some pleasing outcome for the ruling group, and such kind of prompt outcome may not be obtained through normal institutional channel. However, the interviewee A (jailed official) also has other opinions on the outcome of campaign.

Author: why did you say there would be no problem in the normal time?

Since I joined the court team, such kind of “gift money” has been common. Nobody had been prosecuted for it... Everybody needs to make a living. The judges receives gifts from the plaintiff and defendant; why not us? If there were no such a notice from the Supreme Court, nobody would listen to you no matter what department you report to. The notice came out, a new campaign came out too... As you know, the law enforcement is always harsh in the campaign (Interviewee A, jailed official).

Author: So your imprisonment is mainly due to the campaign?

Of course, it is because of campaign and personal revenge. Once the campaign is launched, it must have its own goals... We are the victim and targets of the campaign. Perhaps it can deter the rest; maybe not (Interviewee A, jailed official).

The interview tells that some corrupt functionaries’ waterloo happens only in the campaign period. When asked why it only happens in the special period, interviewee’s answer is quite simple. From their point of view, everyone has this kind or that kind of economic problems (means corruption in post-reform China), and their graft-taking is known to each other just like open secrets. However, that is not the problem for them; the problem for them is that there maybe particular campaigns in which their behaviors are the targets and are subject to punishment. Since not all targeted officials will be punished, there has to be some functionaries to be selectively punished for the goal of campaign. And what people are always interested in is who will be “victimized” in this round of campaign. Even though the campaign is effective regarding anticorruption, it suggests no rule of law on the other side for the

<sup>9</sup>Retrieved on Sept 20, 2007 from [http://news.xinhuanet.com/legal/2007-07/03/content\\_6320326.htm](http://news.xinhuanet.com/legal/2007-07/03/content_6320326.htm).

<sup>10</sup>Retrieved on Sept 20, 2007 from <http://news.tom.com/2007-06-15/OI27/08389119.html>. However, such a report doesn’t get applause from the public but causes people’s cynicism for the average of corrupt money per person is only 8 thousands yuan which is a trivial amount for current Chinese.

selective targeting and ‘victim’ of campaign. The rule of law at least requires fairness in front of law. Even for the campaign, all violators rather than a few should be brought to the justice.

The campaign is not an anticorruption tool in a long run, but a temporary extra tool for corruption control. Or to say it is a product of political manipulation. The nature of campaign, (“an operation or series of operations energetically pursued to accomplish a purpose”<sup>11</sup>) determines it cannot last forever. However, such a temporary weapon did serve the ruling group in post-reform China.

### 8.3.3 *Roundabout Protection*

The creation of social censure is political for the political strategies employed in the creation process and political goals hidden behind, so is the application of social censure. If we say the creation of social censure is not an easy work for the ruling group or political elites, the application of social censure sometimes is even harder. To secure a success, the ruling group or political elites has to take all factors into account, and make a precise calculation of power, and fight at the right moment with right strategy. Otherwise, the application of social censure may be used by opposing group or targets to fight back. Having a great certainty of success in mind, the ruling group or political elites then can make arrangement and start the application of social censure. If it is possible, they will try to manipulate the process and get the result wanted. For example, they can punish you harshly for misdemeanor; they can charge you lightly for serious graft; they can dismiss you first upon popular opinion and then bring you back to the political circle; they may not fight straightforward with the dissents, and take a roundabout route.

A case happening in Yunnan Province implies how the dominant group manipulates the anticorruption politically to protect the enemy within. Sun Xiaohong, President of Yunan Supreme People’s Court, was reported for violations of CCP discipline by officials from his own court in early of 1999. After the reporting letter signed by “upright cadres and masses at Yunnan Supreme People’s Court”<sup>12</sup> was sent to the CCDI, an investigation team went to Yunnan immediately. Based on the report of the CCDI, Sun smuggled two luxurious vehicles and thus evaded tax 637 thousand yuan. When he was the president of Kunming People’s Intermediate Court, he concealed 77.43 million yuan from 1992 to 1997 from costs and spent on the office decoration and judges’ welfare and bonus even if the Ministry of Finance and National Supreme Court issued a document stopping distributing costs for welfare and bonus in 1996. He also was alleged to have used

<sup>11</sup>Retrieved on Feb. 10, 2008 from <http://www.thefreedictionary.com/campaign>.

<sup>12</sup>“省高级法院正直的干部群众” in Chinese. Retrieved on Sept 19, 2007 from <http://www.chinanewsweek.com.cn/2003-09-05/1/2155.html>.

100 thousands in extra budget to decorate his office.<sup>13</sup> With strong evidences caught, Sun was dismissed for “violation of CCP rules in the upwind<sup>14</sup>” by the Yunnan People’s Congress in 1999, and late approved by the National People’s Congress on Dec 25, 1999. In the third plenum of the Ninth National People’s Congress, the President of National Supreme Court, Xiao Yang, used Sun’s case as an example of successful anticorruption, and won applauses from 3000 attendees.

However, since from the day of dismissal, Sun Xiaohong hasn’t left the power center. After the dismissal, he was even sent to the Central Party School in Beijing for study.<sup>15</sup> In the middle of 2000, he was assigned to be the chairman of Yunnan Council for the Promotion of International Trade which is a very good transit post for him. Obviously, from the very beginning, the Yunnan government hasn’t pressed him to the bottom, or Yunnan government used roundabout strategy to handle case. From the day of punishing Sun, a second road had actually been prepared for him. As expected, in early 2002, Sun took the post of vice director of Yunnan Dept of Foreign Trade and Economic Cooperation. In Oct 2002, he was promoted as the secretary of CCP committee of Yunnan Dept of Foreign Trade and Economic Cooperation. In January 2003, he was further promoted the post of director.<sup>16</sup> Reporters from *News Weekly* interviewed a cadre named Fu Yajie from the Dept of Organization of Yunnan CCP committee about Sun’s being promotion.<sup>17</sup> Fu confirmed the assignment, and stated Sun’s being assignment to the new post was done strictly according to related regulations, and approved by Yunnan CCP Committee. He further explained that Sun’s being promotion was legitimate for it is only provided that the dismissed cadre cannot be assigned to any post higher or equal his original post within 2 years, but Sun’s new assignment wasn’t against it.<sup>18</sup> However, people still question the legitimacy and reasonability of his revival. The mass even wonder why there was no other appropriate person for the post but a dismissed corrupt official. Compared to Sun Xiaohong, two officials in Southern Korea weren’t lucky. When the President, Kim Dae-jung, stepped on power, he nominated a president of one university and a chairman of newspaper as the premier. However both were rejected by the congress for both had tax evasion behaviors.<sup>19</sup> The differences between these cases do show how differently anticorruption is handled in different countries.

From Sun’s case, we can see how the ruling group or political elites, on one hand, punish enemy within, on the other hand, protect enemy within through

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<sup>13</sup>Retrieved on Sept 19, 2007 from <http://web.peopledaily.com.cn/zdxw/7/19991209/19991209001028.htm>.

<sup>14</sup>“顶风违纪”in Chinese. Retrieved on Sept 19, 2007 from <http://www.chinanewsweek.com.cn/2003-09-05/1/2155.html>.

<sup>15</sup>Studying at the Central Party School is usually a “benefit” for CCP officials. The newly promoted cadres or cadres to be promoted in a short time need to study at the Central Party School for a semester. Here sun’s study is more like a buffering zone.

<sup>16</sup>Retrieved on March 10, 2008 from <http://www.chinanewsweek.com.cn/2003-09-05/1/2155.html>.

<sup>17</sup>Retrieved on May 10, 2007 from <http://news.sina.com.cn/c/2003-09-03/11281667341.html>.

<sup>18</sup>Retrieved on May 10, 2007 from <http://business.sohu.com/73/04/article212630473.shtml>.

<sup>19</sup>Retrieved on May 10, 2007 from <http://news.sina.com.cn/c/2003-08-28/12511635181.shtml>.



political manipulation. From the very beginning, the ruling group, the Yunnan CCP Committee, had the whole process under control and decided how to handle the case. Here we may see the ruling group's real attitude in anticorruption (genuine anticorruption or politically manipulated anticorruption). Most important, we may see that how government uses political strategy to maintain the powerful individual's interests. It is hard to see any violations against law or rules in Yunnan government's handling, but audience can feel the disrespect for law in their deep mind. The Yunnan government as matter of fact played law to fulfill public request and protect political elites' interests.

Such a political feature of anticorruption is echoed by interviewees. In their mind, there is too much politics going on in the anticorruption. The disadvantaged may be hurt by political manipulation, while the powerful may be protected by political manipulations. You may be punished in the upwind of anticorruption; while others may be ok even for more serious corruption in the normal period.

My being shuangguied is because I offended others. That guy caught my small mistake and put me in jail. To punish me, that guy used all kinds of relationship so that nobody can speak on my side...If it is not his revenge, I might have no problem...if it is not his isolation, I may not be so bad. After all other leaders may support me (Interviewee A, jailed official).

My boss established his authority after he punished a section director who was corrupt and nobody could "repair" him (Interviewee P, official in power).

I know there is a Democratic Party official who is as corrupt as another CCP official. It seems the same amount of money. However he was ok because he is democratic party member...it seems that our party has protection policy for democratic party members...I don't know why he was protected? Because of political consideration? (Interviewee H, official in power)

Some are just unlucky to be caught in the political movement. Things in China like this. It is not consistent... In the upwind of political movement, you may be punished; but after the movement, you may be ok; so, many people have opposing opinion on it [anticorruption, the author added]. If all things are consistent, there won't be many problems in China (Interviewee J, official in power).

Usually anticorruption is like waves, sometimes it is high and sometime it is low. The cycle is around 3 years...the reason is that corruption will be serious with three years accumulation; government has to lay aside other things and comfort the public...in fact, the ruler are playing politics with the mass (Interviewee N, official in power).

Both Sun Xiaohong case and interviews tend to suggest that (1) The anticorruption in post-reform China is very political, which means many considerations (collective or personal) are taken into account in the process;<sup>20</sup> (2) The anticorruption is well planned by the ruling group or political elites for interest protection reason; (3) There could be numerous interferences in the process which lead to inconsistency; (4) There are political purposes behind the anticorruption, like what

<sup>20</sup>Here political not only means the corruption and anticorruption is related to politics, but also means political maneuver adopted or under-table goal served. For example, the reason of being targeted may be group contest, personal fight or severe strike in the campaign.

once happened in Hong Kong. “The ICAC had taken over the work of police special branch in collecting ‘dirty information’ on influential pro China public images” (Chan 2001:921). In a word, the political feature of anticorruption makes it look more like a tool for the ruling group or political elites. They can manipulate the process and get result at their will. Having such an opinion in mind, the interviewees sometimes are discontented with anticorruption in post-reform China. Therefore we should always doubt whether political leader “would use anti-graft agency for political or other personal purposes” (Chan 2001:922). Otherwise, we may miss the key component in the anticorruption and be misguided by political maneuver.

## 8.4 Various Purposes of Anticorruption

### 8.4.1 *Reflection of Ideological Struggle Between Classes*

Society is composed of various people with various ideas. An organized collection of ideas forms ideology which is a base that usually remains invisible to most people within the society.<sup>21</sup> There may be various ideologies in a single society, especially the ones possessed by the top class and bottom class. For Karl Marx (1998), because the ruling class controls the society’s means of production, the superstructure of society including its ideology will be determined according to what is in the ruling class’s best interests. And the dominant ideology appears as “neutral”, holding to assumptions that are largely unchallenged.

Once the CCP went into power, it started to transform Chinese society in accordance to their ideology. However, there were various obstacles in the transformation so that the ruling class, the CCP, tried to find many ways to eradicate them. Anticorruption was used as an effective tool to reach such a goal. In the survey, the author probed respondents’ opinion on the anticorruption in post-reform China in terms of its function and received a positive echo from respondents (Table 8.4). For sensitiveness of such a question it was constructed negatively. The question was proposed as “anticorruption is not a political tool in Post-reform China.” More than 40% of respondents strongly disagreed that anticorruption didn’t serve as a political tool for the ruling class in addition to 19.9% disagreeing to it. On the contrary, only 16.5% believed that anticorruption was not a political maneuver for the ruling group.

Similarly, interviewees were skeptical in the genuine motive behind anticorruption campaigns. In other words, they also considered that anticorruption played some political roles in Chinese politics.

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<sup>21</sup>Retrieved on Sept 4, 2007 from <http://dictionary.reference.com/browse/ideology>.

**Table 8.4** Responses on anticorruption is not a political tool in Post-reform China

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Anti-corruption is not a political tool in post-reform China.	40.7	19.9	23.0	14.3	2.2	2.2

*Note* 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

Politics is complicated and covered up. We never know the real motive and goal behind the political movement... anticorruption in the mainland is like this. No matter whether it is a tool for our party or not, it did benefit our party (Interviewee K, official in power).

Anticorruption is a joke in our China... Everything is done by the CCP. They can fight corruption in any way they want; they can fight corruption at any time they want... What is it if it is not a tool? Nobody believes that there is no political goal behind (Interviewee B, jailed official).

If anticorruption is purely the fight against corruption, our country would be much different... Just because anticorruption is used by some people for secret goals, anticorruption in China has failed (Interviewee F, jailed official).

Politics is like this... anything related to politics would be dirty. Anticorruption is like that. It is the same in all countries... (Interviewee L, official in power).

In fact, the anticorruption did function as a political strategy in contemporary Chinese history. The CCP established the P.R. China on the base of the immature capitalist system which Guomindang Party (or Kuomintang) adopted. The CCP faced the problem of capitalist ideology which is in conflict with communist ideology when she just came into power. Many capitalist bureaucratic styles still prevailed and a huge bourgeoisie class existed in society. What is more is that many CCP members who used to be clean were influenced by capitalist ideology and turned out to be corrupt when they entered the city. Such a bad scenario rendered the ruling group, the CCP, in an embarrassing situation. To get out of the embarrassing situation and get the cadres or functionaries back to the communist ideology line, the CCP launched a mass-based campaign called “Three-antis” at the end of 1951 through June of 1952 which are anti-corruption, anti-waste and anti-bureaucratism. The People’s Daily published a leading article called “Fight against embezzlement behaviors tightly” on November 23, 1950. The campaign spread to all provinces and all fields, including the education, medicine, arts which are not supposed to have fringe profit in that era.

Three stages are distinctive in the campaign. The first stage is featured as “launch and promotion”. All departments were required to fight against three capitalist behaviors. And some boundaries were set up between waste and corruption in order to differentiate the punishments. Some fields such as transportation, industry and construction were paid special attention to. Model cities (Beijing) were created for the nation to follow. The second stage features as “catching fight

tigers.”<sup>22</sup> Mao Zedong thought there were many high ranking corrupt cadres getting away in the campaign and requested all departments and military districts to fight tightly on “tigers” (high ranking official). Quotas of tigers were even allocated to each department. For example, Guangzhou Military District was required to catch 20 “big tigers” and 180 “medium tigers”. Some tigers, like Liu Qingshan and Zhang Zishan, were brought to Court and executed during the campaign. With such targets in hand, all departments worked hard on the completion of such a political task. The result was satisfactory to the top leaders for thousands of tigers were caught in each province or military district. The third stage features as “cooling off and rationalization”. Because of pressure from the top, the local governments used cruel method to extract confession from cadres. A lot of misjudged cases came out and officials cried out for misjudges or tortures. The top leaders realized the exceedingly leftist tendency in the campaign and asked local governments to start from the accounting check rather than extraction by torture. Many revision and corrections were also made to cool off complaining people. Later on Chinese government issued the *PRC Anticorruption Ordinance* (中华人民共和国惩治贪污条例) to institutionalize the anticorruption. It stipulates clearly the corruption behaviors and corresponding criminal charges.<sup>23</sup> The anticorruption here signified a communist attempt to dispose capitalist and feudal elements (Lo 1993). The Three-antis were effective regarding to the number of caught corrupt officials and control of ideology. The CCDI reports leaks that more than 3 million cadres or functionaries participated the movement and more than 1 million corrupt officials were caught in five administrative districts (military and central government were not included). Around 16% of caught officials were CCP members. Forty two officials were executed; nine received death penalty with probation; sixty seven received life imprisonment; and 9942 received various imprisonments (An 1952). Lo’s research finds that the Three-antis “acted as a status-degrading ceremony...those regarded as ‘corrupt’ by the CCP were condemned at mass meetings. Even their family members and relatives were urged to denounce them” (Lo 1993:25). As a result, the capitalist ideologies left by “old China”, living style and administrative styles in state machines were pressed down by the movement. The cadres and functionaries as a group were targeted in the campaign. The ruling class’s ideology, communist ideology, was therefore upheld and strengthened. It tends to suggest that the anti-corruption has the capacity to destroy the old social relations of feudal and capitalist society and make new social relation (Lo 1993). There seemed no rule of law at all

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<sup>22</sup>Mao once defines the tigers as follow: (1) Embezzled money reaches 100 millions yuan (old currency, the same thereafter); (2) embezzled money doesn’t reach 100 millions, but causes huge damage to state; (3) chief conspirator of collective corruption case in which embezzled money reach 100 millions; (4) embezzled money reaches 50 millions and serious in nature such as misappropriation of donations for the Korean War; (5) economic spy and causes 100 millions lose to state; (6) concealing and misappropriating state assets or capitalist assets during the liberation period. See Mao Zedong (1952).

<sup>23</sup>Refer to Legal Research Materials for New China, 2003, V.2, P. 1978-1979. The China Legal and Political University Press.

in the Three-antis. First, the legislation on anticorruption wasn't even established before the three-antis. Second, the creation of Three-antis is totally for ruling class' political goal at that historical moment, and it didn't last. It can be seen as a once time use weapon for the ruling class.

#### ***8.4.2 Reflection of Ideological Struggle Among National Leaders***

Anticorruption in Mao's era is based on a requisite that all national leaders have conscience on ideology. Therefore, censure on corruption is mainly for the shared ideology. However, after Mao's demise, China, under Deng Xiaoping's leadership, entered a stage which pro rightist ideology prevails. In this period, social disparity increased; spiritual need is least stressed; materials reward is emphasized. A famous slogan which reflects such rightist ideology is Deng's statement of white cat and black cat. However, Maoist ideology had been deeply rooted in Chinese's heart, including top leaders. Therefore, there was an ideological difference among national leaders in 1980s although most of them support rightist ideology (Lo 1993). Back to five years ago, secretary of Chongqing Municipality, Bo Xilai, was popular among the mass, but believed to have been outset partially because of his leftist ideology which was not mainstream at the time among leaders.<sup>24</sup>

#### ***8.4.3 Anticorruption for Power Consolidation***

##### **8.4.3.1 Five-Antis: Elimination of Political Enemy**

As seen earlier, the new Chinese government used anticorruption (Three-antis) as a weapon to crack down capitalist ideology carried from the old China. However, the cleaning of capitalist ideology didn't resolve all problems for the CCP, which is the ruler in Post-reform China. She still faced challenges and difficulties internally and externally. One main problem is that there were still many non-communist classes such as bourgeoisies and remnant of feudal landlord. Their existence was a great potential challenge to the CCP. Consolidating power and eradicating potential enemy was then on its top political agenda after the communist ideology is upheld. Or as Lo (1993) argues, a new round of anticorruption which was basically essential political battle had to be won if the CCP wanted to advance its transition to communism.

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<sup>24</sup>Refer to <http://www.reuters.com/article/uk-china-politics-chongqing-idUKBRE87K03R20120821> and <https://www.theguardian.com/world/2012/mar/30/bo-xilai-profile>, retrieved on Oct 15, 2014.

As mentioned earlier, the foundation of New China didn't eliminate the capitalist class automatically and immediately. Private economy was allowed to stay in the New China for a period of time because the top leaders considered utilizing "the positive qualities or urban capitalism in the interest of fostering the economy" (Lo 1993:25). "In the interest of the national economy, Mao continued to tolerate exploitation by capitalist. But this tolerance was only temporary" (Lo 1993:25-6). When the CCP's political agenda reaches the point, she will take actions to remove private capital section gradually. Five-antis was the move made at such a specific historical conjuncture to reach such a goal. The CCP realized that leaving industry out would undermine the result of Three-antis and allow the bourgeoisies to undermine its communist team. Moreover, although the capitalist ideology within the state machine (government) was pressed down by the Three-antis, it still existed within the private economy which was an obstacle for the CCP's dominance. To obtain control over private economy, consolidate its power and partly solidify the outcome of Three-antis, right after the Three-antis, the CCP moved her attention to the industrial circle. A new campaign called "Five-antis" targeting at industrialist was then launched in 1952. The Five-antis focuses on bribery, tax evasion, fraud, theft of state property, obtaining economic information through corruption. Starting from the big cities, the campaign is still mass-based, but with inspection brigades' help. Chinese government categorized the industrialists into five sections: completely law-abiding industrialist, basically law-abiding industrialists, half law-abiding and half law-breaking industrialist, and completely law-breaking industrialist. The law-breaking suspected entrepreneurs received special attentions from the mass and brigades. Extraction or confession by torture and private interrogation happened, which renders many businessmen to commit suicide and closure of manufactories. For the CCP, the outcome of Five-antis is fabulous to the CCP. In the official report on the Five-antis, statistics shows that 999,707 industrialists participated the Five-antis, with 1,407 individuals receiving various imprisonments, 20 receiving life imprisonment, 5 receiving death penalty with probation and 14 executed (Liao 1952). The federations of businessmen and industrialists were dissolved. The bourgeoisie class as a stratum was suppressed, uprooted, disorganized and nearly collapsed. They were not strong enough anymore to compete with the proletarian class (Lo 1993:30-1). More importantly, through the Five-anti, the private economy was under control of CCP, which laid foundation for future socialist transformation movement. The anticorruption, therefore, on one hand, degraded an entire opposing class, on the other hand, reconstructed national economy for the CCP (Lo 1993). In addition, the communist ideology was further strengthened. The Five-antis, as a matter of fact, served three purposes with one action. In sum, the ruling class' power was therefore consolidated. Here we may see that the anticorruption expressed, constructed, and contained the historical weight of economic contradictions, social divisions, levels of moral development and the limits of human reflexivity (Sumner 1990). Similar to the Three-antis, the Five-antis is created particularly for the CCP's political goal; the ruling class didn't follow any law or rule to practice it. There seemed no sense of rule of law in the Five-antis; the ruling party just organized "the state apparatuses and community organizations against the targeted groups (Lo 1993:5).

### 8.4.3.2 Anticorruption for Personnel Reshuffles

Power is always a top consideration for leaders. They will try to expand or maintain power at any moment. Sumner (1990) argues that retaining power has always involved denouncing and censuring the opposing parties, groups or individuals. Cracking down opponents or dissents directly as happened in the Five-antis is an example of retaining power by denouncing the ruled class. Censuring oppositions first and then arranging henchmen or trusted-persons is another way of expanding power. Top leaders have to use their political intelligence to reach the goal and also get support from the public.

In 2006, anticorruption in four municipalities might help national leaders to remove unfavorable officials. The four municipalities directly under the central government are Beijing, Shanghai, Tianjin and Chongqing.<sup>25</sup> These municipalities are in privileged position and receive special treatments from the central government. Officials' privilege, compared to corresponding ones in other provinces is their relative higher official rankings.<sup>26</sup> For example, the secretaries of the CCP committees of these municipalities are unquestionably members of CCP politburo, but not secretaries from other provinces. However, privileges come with risk. In 2006, the year right before term-shift, some officials in these municipalities were not "lucky" enough to survive. The national leaders completed their office-term and faced a term-shift in 2007. Similar to political arena in other states, power struggle became white-hot at the special moment. To give their subordinates or interest groups a message that they should conform to the central government, to secure the personnel arrangement, and to satisfy their own needs, it is necessary to punish black sheep in these municipalities.

<sup>25</sup>Chongqing was added in 2000 to facilitate development of the China's west. The leaders of these municipalities control great wealth and enjoy broad autonomy. No investigations of their activities are likely to be initiated without the approval of the top-most leaders. See also Kahn (2006).

<sup>26</sup>Civil servants are found in a well-defined system of ranks all over the world. The rank of a civil servant determines what positions he/she may assume in the government or the military, how much political power he/she gets, and the level of benefits in areas such as transportation and healthcare in China. According to the *Temporary Regulations for National Civil Servants* (国家公务员暂行条例), civil servants are put into a total of fifteen levels. Level 1: Premier of the People's Republic of China; level 2–3: Vice Premier of the People's Republic of China and members of the State Council; level 3–4: Leading roles of ministries or equivalents (正部级), or of provinces or equivalents (省级); Levels 4–5: Assisting roles of ministries or equivalents (副部级), or of provinces or equivalents (副省级); Levels 5–7: Leading roles of departments or equivalents (正司级 / 正厅级), or of prefectures or equivalents (地级), or counsels (巡视员); Levels 6–8: Assisting roles of departments or equivalents (副司级 / 副厅级), or prefectures or equivalents (副地级), or assistant counsels (助理巡视员); Levels 7–10: Leading roles of divisions or equivalents (正处级), or of counties or equivalents (县级), or consultants (调研员); Levels 8–11: Assisting roles of divisions or equivalents (副处级), or counties or equivalents (副县级), or assistant consultants (助理调研员); Levels 9–12: Leading roles of sections or equivalents (正科级), or townships or equivalents (乡级); Levels 9–13: Assisting roles of sections or equivalents (副科级), or townships or equivalents (副乡级); Levels 9–14: Staff members (科员); Levels 9–15: Clerks (办事员).

On August 11 of 2006, Zhu Junyi, Director of Shanghai Social Security Bureau was shuanggui. He was charged of loaning 3.2 billions social security fund to Fuxi Investment Company without any guarantees. The money was used by Fuxi to purchase Shanghai-Hangzhou highway. On August 24, the new director of Baoshan District, Qin Yu, was shuanggui. He was suspected to be involved in Fuxi case when he was acting as Chen Liangyu's secretary. The "fire" spread to Chen Liangyu later. Chen Liangyu, a member of politburo and Secretary of Shanghai CCP Committee, was shuanggui on September 24 2006. "The decision to sack Chen was made by the politburo in a meeting on Sunday which discussed 'a preliminary investigation report on Chen's problems', the state-run Xinhua News Agency said on Monday. The party's central commission for discipline inspection will continue to investigate Chen's case" (Wu 2006). The official explanation is that he helped illegal entrepreneurs to get interests, and protected his friends who violated rules and law, and helped family members to get rich by his prestigious advantages. The Xinhua News also stated that the charge on Chen showed the CCP's firm attitude of anti-corruption. "Whoever it is, no matter how high their position, anyone who violates party rules or national law will be severely investigated and punished,"<sup>27</sup> the Xinhua report said, citing the central leadership's decision.

On June 09, 2016, vice mayor of Beijing Liu Zhihua was shuanggui due to mundane and corrupt life.<sup>28</sup> The Standing Committee of the 12th Beijing People's Congress called in all standing members and held the 28th meeting to discuss Liu's case on June 11, 2006. Liu was dismissed from his post according to law on the meeting. Xinhua News says that Liu's dissolute and depraved behaviors have been against the CCP regulations, and he was profiled by the CCDI and Ministry of Supervision.<sup>29</sup> Usually, the suspected official is shuanggui or arrested several weeks or months after the case is exposed by media. However Liu was shuanggui and dismissed immediately.<sup>30</sup> It seems to suggest that the CCDI intended to avoid evidence destroyed or criminals' escape, or Liu's case may leave negative impression on the world about the Olympics in 2008.<sup>31</sup> It is therefore a better strategy to take quick action so as to maintain the positive image of Olympic Games

<sup>27</sup>Retrieved on April 10, 2008 from <http://news.eastday.com/eastday/node17/node136/node15563/u1a187109.html>.

<sup>28</sup>Detailed information can be found in Wang Qiang's report in the volume 13 of Business Weekly, 2006.

<sup>29</sup>Retrieved on April 10, 2008 from [http://news.xinhuanet.com/mrdx/2006-12/13/content\\_5479065.htm](http://news.xinhuanet.com/mrdx/2006-12/13/content_5479065.htm).

<sup>30</sup>There was no clue that he would be shuanggui. On May 26 Liu inspected the line 5 of metro; on May 29 Liu inspected baseball field construction work in Fengtai District; On June 7 Liu accompanied Secretary of Beijing CCP Committee to inspect protection of ancient building (yan dai xie jie). On June 8 he was announced as the chairman of Organization Committee of Beijing 12th Sport Meeting. Everything looks like smooth for him.

<sup>31</sup>Liu was the director general of Olympic Project Construction Office before the shuanggui. Retrieved on august 15, 2007 from [http://finance.singtaonet.com/china/200612/t20061214\\_418930.html](http://finance.singtaonet.com/china/200612/t20061214_418930.html).



and show Beijing's zero tolerance on corruption.<sup>32</sup> However story never ends. Beijing vice procurator, Yong Zhansheng, was shuanggui'd two months after Liu Zhihua's being shuanggui'd.<sup>33</sup> There is no detailed corruption behaviors exposed by official media.<sup>34</sup> Another senior official named Zhou Liangluo, the ambitious director of Haidian District, was shuanggui'd by the CCDI on charge of corruption in early April 2007.<sup>35</sup>

Anti-corruption storm also brought political quake to the port city of Tianjin (天津). Five high ranking officials were questioned or alleged for corruption linked to shady real estate deals. President of Tianjin People's Political Consultative Committee, Song Pingshun,<sup>36</sup> Deputy Mayor, Chen Zhifeng,<sup>37</sup> Chief Prosecutor Li Baojin,<sup>38</sup> Director of Tianjin Public Security Bureau Wu Changshun,<sup>39</sup> and standing member of Tianjin CCP committee Pi Qiansheng,<sup>40</sup> were the focus of the investigation.

The 17th plenum of the CCP was to be held in 2007. The personnel reshuffle including national leaders was to be discussed and decided in the meeting. Before the meeting, the arrangement of provincial leaders would be discussed and decided roughly. The hard strike on corruption served to show Beijing's determination on anticorruption, warned local cadres and more importantly manipulated the personnel arrangement. For example, as Wu (2006) analyzed "the timing of the announcement of Chen's removal is intriguing. The party's policy-making central committee is to hold a plenum in October or early November. On top of its agenda is to set the parameters for the leadership reshuffle in the 17th National Congress

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<sup>32</sup>A clean Olympic is a serious promise from Beijing to the Olympic O.C. New York Times wrote that Beijing stressed many times that Beijing Olympic will be "the cleanest Olympic ever". Liu's behavior certainly humiliated Beijing government for Liu was the director general of Olympic Project when he was shuanggui'd.

<sup>33</sup>Retrieved on April 10, 2008 from [http://news.xinhuanet.com/legal/2006-11/04/content\\_5287964.htm](http://news.xinhuanet.com/legal/2006-11/04/content_5287964.htm).

<sup>34</sup>Retrieved on April 10, 2008 from <http://legal.people.com.cn/GB/42733/4997910.html>.

<sup>35</sup>Retrieved on April 10, 2008 from [news.xinhuanet.com/legal/2007-11/28/content\\_7157257.htm](http://news.xinhuanet.com/legal/2007-11/28/content_7157257.htm).

<sup>36</sup>Retrieved on April 10, 2008 from [http://news.xinhuanet.com/ziliao/2003-02/20/content\\_737742.htm](http://news.xinhuanet.com/ziliao/2003-02/20/content_737742.htm).

<sup>37</sup>Retrieved on April 10, 2008 from [http://www.singtaonet.com/china/t20060627\\_264641.html](http://www.singtaonet.com/china/t20060627_264641.html).

<sup>38</sup>Li also once served as deputy head of the municipal Public Security Bureau and of the Politics and Law Committee of the Party's municipal committee. The National People's Congress dismissed Li Baojin (李宝金) from his post on charges of "severe breach of discipline" on August 27, 2006. The NPC notice did not provide detailed reasons for Li's dismissal, but said he is suspected of "grave violations of discipline". Tianjin Television News exposes that Li was accused of taking advantage of his powerful position to obtain several millions yuan from large enterprises, misappropriating a huge amount of public funds, improperly favoring real estate enterprises, and registering off-the-book accounts under a subsidiary. The report from Tianjin Television also said Li was accused of living a decadent life, which usually means hoarding mistresses. Retrieved on august 17, 2007 from [http://news.xinhuanet.com/lianzheng/2006-12/13/content\\_5478779.htm](http://news.xinhuanet.com/lianzheng/2006-12/13/content_5478779.htm).

<sup>39</sup>Retrieved on April 10, 2008 from <http://www.peacehall.com/news/gb/china/2006/07/200607081412.shtml>.

<sup>40</sup>Retrieved on April 10, 2008 from <http://news.163.com/07/0614/02/3GTPQUQI0001124J.html>.

next year.” The message of anticorruption intended to shore up support as the national leadership was preparing for its five-yearly political transition with the convening of the 17th Party Congress (Kahn 2006). Wu (2006) and Tao (2006) also express that same feeling:

Hu will now be on a position to launch a major personnel reshuffle at the party’s 17th National Congress next year to further consolidate his power. The removal of Chen will also strongly enhance the authority of the power center in Beijing to rein in disobedient regional officials (Wu 2006:56).

The anti-graft campaign has been launched one year ahead of the all-important 17th Congress of the Chinese Communist Party (CCP) and thus is seen as President Hu Jintao’s maneuver to gain full control by eliminating all Jiang’s influence (Tao Sept. 1 2006).

In a word, anticorruption worked as a tool for national leaders to punish potential dissents and give warnings to the whole Chinese political circle. After such an anticorruption storm at high level, it is much easier for the national leaders to control the upcoming personnel arrangement and consolidate power. The anticorruption could be then a reflection of political struggle between opposing forces. Rival forces can resist and negotiate its content, but its character remains unchanged. It exists to control, denounce, educate, police, punish and eliminate political opposition (Lo 1993).

#### ***8.4.4 Anticorruption for Legitimacy Re-building***

For politicians, power is forever; however, power is based on legitimacy, otherwise power will be challenged by the public. Legitimacy can be obtained through democracy, propaganda, or catering for public needs. All politicians try their best to attain legitimacy as much as possible through various ways. The survey shows that anticorruption can be a method for Chinese government to get hold of legitimacy.

The responses (Table 8.5) from the survey tell that 78.1% of respondents were sure that anticorruption in China catered for the public’s request. It proves from one perspective that anticorruption is not only about the crackdown of corruption behavior in society, but also a reflection of social relation in general. The social relation may be changed or improved in accordance to the ruling class’ interests because the ruling class may win public legitimacy and further consolidate dominance by catering for their request or satisfying their need, which is confirmed by two following questions. The responses (Table 8.5) to the two questions show that anticorruption first can help government win trust from the public (84.4% respondents holding positive answer), also can make public uphold the CCP as the ruling party (77.74% holding positive answer). It implies that corruption as a social disease is harmful to the ruling party, but anticorruption is helpful to the ruling party, and therefore welcomed by them to some extent.

In fact, the CCP did use anticorruption to rebuilding legitimacy by catering for public requests. In the middle and later 1980s, domestically, the ruling class’s reputation was also damaged deeply for corruption. People started to question the

**Table 8.5** Responses on anticorruption caters for public request

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Anticorruption caters the public's request	3.68	14.02	14.20	41.37	26.73	3.73
Anti-corruption increases your trust in government	1.40	5.26	8.94	54.78	29.62	4.06
Anti-corruption can make you uphold the CCP as the ruling party	1.75	5.79	14.65	54.56	23.25	3.92

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

CCP's legitimacy and authority. Given such a situation, the new Chinese government had to find a way out of legitimacy crisis and to rebuild authority. Since what people were critical of is corruption and official racketeers, the CCP tried to tear a hole from there. After the Tiananmen Incident, the CCP launched a new anti-corruption campaign to cater for public request.

In the Fourth Plenum of the Thirteenth CCP Central Committee in 1989, anti-corruption was listed as one of four big issues to handle.<sup>41</sup> A series of red-headed documents<sup>42</sup> were issued later on from the Central Committee of CCP to local committees to emphasize the anticorruption, such as the *Decision Concerning Doing Several Things the Mass Care*, the *Notice on Strengthening Party's Construction*, the *Decision Concerning Strengthening the Relationships with the Mass*. Simultaneously, The National Supreme Court and the Supreme Procuratorate jointly issued the *Notice on Criminals Engaging in Embezzlement, Bribe-taking and Speculation must Surrender and Confess His/her Crimes within a Definite Time* in August 1989. The Notice provides that based on Central Committee's policy of combining leniency and punishment, article 59 of Criminal Law, article 101 of the CPL, and Supplements to the Regulation for Suppression of Corruption issued by NPC, criminals engaging in embezzlement, bribe-taking and speculation must surrender and confess before October 30 1989. Those who surrendered, gave-up ill-gotten gains and informed against other criminals would receive lighter criminal charge or be waived criminal charge. On the contrary, those who didn't give up would be punished harsherly. Four days later, the Ministry of Supervision issued the *Notice on State Administrative Staff Engaging in Embezzlement and Bribery must Confess within a Definite Time*. A new anticorruption campaign was then

<sup>41</sup>The other three are as follow: (1) stopping riots completely; (2) maintain economic reform; (3) strengthening political education, such as patriotism and socialism. Retrieved on Sept 28, 2007 from <http://www.people.com.cn/GB/shizheng/252/5301/5302/20010613/488135.html>.

<sup>42</sup>Red-headed documents are officials documents issued from governments or CCP committees, such as "the Document 15 of XXX City Education Bureau" (in red). In China, the red-headed document means official document which are coercive, directive, and interests-related. Other NGOs or civil organizations are not allowed to issue such kind of documents.

formed. The campaign worked as a political storm which run across the whole nation. The mass reported 133,765 corruption cases; 25,544 corrupt officials<sup>43</sup> surrendered and confessed. Among confessing officials, 742 are at above county level; 40 are at city level; 1 reached assistant role of ministries. As promised in the Notice, 5,823 confessing officials were waived criminal charges (Liu 1993).

The anticorruption in 1989 reflected the political tensions and hegemonic crisis that the rulers were facing at that time (Lo 1993). It was effective and received applauses from the mass. As interviewee F (jailed official) holds, “anticorruption in 1989 did cater for public need and comfort the mass. In fact, the mass care anti-corruption more than Tiananmen shock.” People’s attention was then transferred from Tiananmen shock to anticorruption. Encouraging people’s reporting on corruption further aroused their political participation which was ignored by the reformists, and requested in the social movement. Finally, the anticorruption storm fulfilled people’s need for a clean government temporarily; the CCP and new top leaders therefore re-won legitimacy and re-built up their authority. It can be seen here that the anticorruption, on one hand, fulfilled people’s request, on the other hand, served for the dominant group.

#### 8.4.5 *Anticorruption for Authority Building*

China is featured with one-party in power. There is no so-called western democracy in post-reform China neither within Party nor outside Party. Basically all leaders including national ones and local leaders come into power out of supervisor’s selection or handing over. Without broad political support usually obtained in the democratic election, they may face crisis of legitimacy when just step in the position. However, authority is a prerequisite for effective leadership, therefore one of urgent political goals for new leaders at various levels is to build up authority immediately. There are various methods of building authority, but anticorruption is used very often to reach such a goal. Interviewees were well aware of such political strategy employed by officials.

A new broom sweeps clean (新官上任三把火). New leaders will always take some action to show he is the new leader and you need to listen to him (Interviewee J, official in power).

Anticorruption is the best method to build authority. It is like the children’s education. You beat him; he then will listen to you (Interviewee N, official in power).

Chinese politics is like this. When the new leader comes, s/he will punish some and promote some so as to build up his own kingdom of power... usually after this, his/her subordinates will listen to him and follow him. All leaders know it (Interviewee A, jailed official).

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<sup>43</sup>Three thousand nine hundred thirty five individuals are involved in illicit money more than 10 thousands; 239 individuals are involved in illicit money more than 50 thousand but less than 100 thousands; 78 individuals are involved in illicit money more than 100 thousand but less than one 500 thousands; 3 individuals are involved in illicit money more than 500 thousand but less than one million; and 3 officials embezzled or took more than one million yuan (Liu 1993).

Current people are very sly; you don't give him a little color (means punishment in Chinese, author added), they won't listen to you... The best way is to kill chicken to warn monkey (杀鸡儆猴). Catching one or two corrupt officials; nobody won't listen to you (Interviewee B, jailed official).

Both documentary research and interviews imply that anticorruption was used as a tool to build up authority at either national level or local level. The national leaders build up authority by promoting political ideas featured by anticorruption; while local leaders build up authority by direct punishment on corrupt officials.

#### 8.4.5.1 Authority-Building by Promoting Political Ideas Cored by Anticorruption

Any political leader need to rule his people with political ideas. In 1998, former President Jiang started to promote a set of political ideas under his name. Anticorruption is a key component in the thoughts. To legitimate Jiang's political education and concealing political aims behind, public official documents (from Xinhua News) states that

our party's team is good in general, and making progress. However we must see that some cadres' political and ideological quality cannot adapt to the new tasks. The main problems are as follow: ... some lost belief in socialism and communism, lack political sensitiveness and political ability ... some treat themselves bureaucrat, are indifferent to people's sufferings, hanker after enjoyment, spend extravagantly, abuse power for personal gain, wink at relatives' wrongdoings, and even bend the law for benefits of relatives, embezzle and take bribes, and degenerate. Such problems happening to the officials...hamper the practice of Party's policy and current work focus, harm the relations between the Party and government and the public, weaken Party's coherence and combat effectiveness. If we allow such wrong ideas and working style creep, it will ruin socialism with Chinese characteristics and cause serious outcome.<sup>44</sup>

Based on the above argument, former President Jiang argues out that it was necessary to "stress study, stress politics and stress uprightness" in political education given the problems among officials in Nov of 1995. People's Daily further published an editor's article on November 25 of 1995 called *Stress Study, Stress Politics and Stress Uprightness*. In the article, it is clarified that "stress study" refers to professional education; "stress politics" means education of political stance; and "stress righteousness" refers to good tradition, good style and fighting against corruption. The 6<sup>th</sup> plenum of the 14th CCP Committee passed the *Decision of Carrying out Three Stresses Education among Officials Ranked County Level and Above* in 1996. Then a three-year party education campaign starts. The education movement was done in a similar way to the previous party rectification movement, such as from top to bottom, stage by stage, combination of inter-party criticism and self-criticism. Almost all cadres including those in enterprises have to go through it

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<sup>44</sup>Retrieved on Oct. 5, 2007 from [http://news.xinhuanet.com/ziliao/2003-01/18/content\\_695451.htm](http://news.xinhuanet.com/ziliao/2003-01/18/content_695451.htm).

one by one, and promise to be a good cadre. The Three Stress gives the whole CCP a signal that Former President Jiang was going to start a new phase with new ideas.

When former President Hu stepped on the paramount power, he followed his precedent President Jiang's approach, and chose to use political education featured by anticorruption to establish his authority. At a meeting held on October 21 2004, the Politburo decided to start "the *Education of Keeping Communists' Advance*" from January of 2005.<sup>45</sup>

In the Red-headed document, the Keeping Advance Education is legitimated as follows:

Currently, we are at a developmental stage of constructing well-off society and carry forward socialist modernization.... The new situation and mission raise new higher requirements for keeping communist's advance... However there are problems of adapting to the requests of keeping advance among our party members. Some member's ideals and beliefs are shaken; their party consciousness and administration consciousness are weak... Some members' devotion to work and sense of responsibility are not strong; their ideas and style of work are incorrect; they divorce themselves from the mass... some even abuse power for personal gain or become corrupt and degenerate... These problems seriously influence Party's advance and Party's work and hurt Party and people's undertaking.<sup>46</sup>

The Keeping Advance Education is scheduled to be done in three groups one by one. Each group takes half of year to finish. The first group is the party and government departments and some enterprises at county level and above. The second group is grass-roots organizations and departments at town level. The third group is organizations at village level. The Education is separated into three stages for each group. The first stage is promotion and study. All departments need to carry out such policy and organize various study such as Deng Xiaoping Theory, textbook on Keeping Communist' Advance, Theory of Three Representatives. They also need to secure that all members from their organization to participate. The second stage is the analysis and discussion. Members need to summarize their own recent ideas, work and styles in contrast to the Party regulations. If there exists inconsistencies with the Party rules, members should find out the roots from values on world and values on life; cadres also need to self-analyze from the perspective of power, status and interests. The third stage is improvement. After finding out the problems and the roots of problems, members should work out plan for improvements and publicize the plan so as to receive public supervision. The whole party went through the Education and is advised to be consistent with the Central government, or exactly be consistent with President Hu. The same as the Three Stresses carried out in Former President Jiang's period, it is a political signal to the whole CCP that President Hu has new ideas on developing China. The key and most operationalizable part of the Education is anticorruption. As the mass joke, nobody can guarantee that s/he is totally clean; therefore the inclusion of corruption in the

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<sup>45</sup>Retrieved on July 27 2007 from <http://www.china.com.cn/chinese/zhuanti/xjxjy/753458.htm>.

<sup>46</sup>Retrieved on Oct 20, 2007 from [http://news.xinhuanet.com/newscenter/2005-01/09/content\\_2436158.htm](http://news.xinhuanet.com/newscenter/2005-01/09/content_2436158.htm).

Education therefore could, on one hand, curb corruption to some extent, on the other hand, to intimidate members to follow the Central government. It further confirms Lo's (1993:74) argument, "whenever a political faction captures power, social censures are often drawn upon to reinforce its position and suppress its enemies, so that its interests can be safeguarded."

#### 8.4.5.2 Authority-Building by Anticorruption

Documentary research and the interview done with a procurator suggest that anti-corruption can be also used to establish authority in a practical way. A new chief procurator was assigned to the People's Procuratorate of XXX municipality. The new chief procurator was the Secretary of XXX County CCP Committee, and had no experience of procuratorial work. It is expected that he would face challenge of authority from his subordinate, but he finally overcame it by anticorruption.

We had one section director who was corrupt. Everybody knew it, including the former chief procurator... He was investigated for corruption for many times, but no corruption facts were found. After the new chief procurator came, he received many reports from subordinates that the director was corrupt. The new chief procurator was very smart. He transferred the director to another section. Then the corruption facts were exposed... The reason why the previous investigations failed is that staff in his section didn't dare to talk when the director was still in charge of the office. They talked when the director was transferred; the corruption facts were thereafter uncovered (Interviewee P, official in power).

When asked what changed after the punishing the corrupt section director, the interviewee P (official in power) says:

...Since that, everybody knows that the new chief is very sharp; and all are convinced by him. At the same time, everyone is in fear of him, and is afraid to be 'finished off'.

The same thing happened to Chongqing officials recently. Bo Xilai was promoted as the secretary of Chongqing Municipal CCP Committee and member of politburo in 2007. Facing the same problem with the above chief procurator, Bo Xilai resorted to anticorruption to building up authority. One or several months after his arriving, seven high-ranking officials in Chongqing were challenged by anti-corruption. Vice director of Yuzhong District, Vice secretary of Yuzhong District, and vice director of Shapingba District were shuanggui'd the end of 2007; director of Jiulongpo District, director of City Plan Bureau and several officials were shuanggui'd in April of 2008.<sup>47</sup> Obviously these officials' corruption had happened before Bo Xilai arrived. Bo's tough action could deter the unhealthy political

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<sup>47</sup>Retrieved on April 8, 2008 from <http://www.zaobao.com/special/newspapers/2008/04/hongkong080404q.shtml>.

atmosphere in Chongqing, on one hand, and establish his authority, on the other hand.

Leaders at various levels use anticorruption to scare officials and establish authority successfully, but the goal of establishing authority is covered up with other excuses such as anticorruption. Used again and again, anticorruption has been a popular political technique in post-reform China. Interviewee F (jailed official) even calls it “an essential technique for Chinese officials”. These stories prove that the anticorruption is strongly related to the politics in post-reform China, and the anticorruption is very political. The cases also suggest that anticorruption contains interpretations of real phenomena, models of human nature, principles of moral self-justification and the weight of self-interests (Sumner 1990).

#### ***8.4.6 Anticorruption for Power Struggle***

Power struggle between different factions is ceaseless in all political circles. What is different among different political circles is how to win the struggle? The anticorruption is not only related to the relationship between the rulers and ruled (for example, legitimacy building), the relationship between leader and subordinate (for example, authority building), but also the relationship between parallel leaders. Anticorruption happening between parallel officials is always interconnected with political struggle.

##### **8.4.6.1 Power Struggle Between Mayor and Secretary**

As mentioned earlier, the application of censure is in the hand of the ruling group or political elites, the ruling group may use it for faction's interests in the power struggle and political elites may use it for personal interests in the power struggle.

The Lanzhou case was exposed due to the power struggle between mayor and secretary. Lanzhou is the capital of Gansu Province. No matter from the viewpoint of region or economic development, this city is in the marginal fringe of China. However Lanzhou enjoys a special position in Chinese politics. Former President Hu Jintao and former Premier Wen Jiabao started their careers there, therefore, the Lanzhou officials are always believed to have higher political standards on themselves.

In 2004, Lanzhou suffered a tremendous blow to that reputation. For personal fight, the former Lanzhou mayor Zhang Yushun made a secret denunciation against Lanzhou CCP Committee Secretary Wang Jun for accepting bribes. Zhang had been the director of Lanzhou Commerce Bureau, and was promoted to the position of vice mayor, later vice secretary of Lanzhou CCP Committee, and further Mayor in 2000. When Zhang took the post, he found Wang Jun was always against him. His ideas for development were turned down many times by Wang Jun; his subordinates from government side followed Wang much more than him (Zhou 2006).



For example, in 2001, Zhang recommended an entrepreneur for a rehabilitation contract at the standing member meeting of Lanzhou CCP Committee. All other standing members had no objection, but not Wang Jun. Later on, an entrepreneur recommended by Wang took the contract. Thereafter, Zhang started to be picky on Wang. No matter what proposal Wang raised, Zhang would find shortcomings and went hard on it. The conflict between them went up at the end of 2001. Based on the report by the First Financial Daily, Lanzhou taxi drivers took the street and went to strike in 2001.<sup>48</sup> Wang put the charge on Zhang, and Zhang kicked it back to Wang. Wang Jun later stated on the standing members meeting of Gansu People's Congress that he would not support Zhang's work anymore. Zhang was then voted off in the election for term renewal. As a result, Zhang was transferred to the post of vice secretary general of the Gansu People's Congress, which is regarded as an official post with very little to do or power in hand.<sup>49</sup> Apparently, Zhang lost the "battle" in this political game; and expectedly, Zhang attributed his transfer to Wang's maneuver, and hated Wang deeply. Therefore, he began collecting Wang's "black materials" (corruption facts). With two years' efforts, the "black materials" about Wang and Wang's henchmen have been more than 100 pages long. Wang Jun was eventually dismissed, but what is more astonishing was that Zhang Yushun was found later to be involved in corruption as well and shuangguied. The reason is that the briber who corrupted Wang Jun confessed that he gave black money to Zhang Yushun too. The Intermediate People's Court of Dingxi City in Gansu Province made a first hearing of the case on August 25, 2006. Zhang Yushun stood trial for taking 350,000 yuan (about 45,000 US dollars) and 60,000 US dollars in bribes. Zhang received 12 years imprisonment finally.<sup>50</sup> Many other officials such as vice mayor of Lanzhou, secretary general of Lanzhou CCP Committee, CCP Secretary of Lanzhou Anning District and Zhang Yushun's predecessor were also punished.<sup>51</sup> One reporting letter brought so many corrupt officials to the court. From the result, it is a tremendous anticorruption victory. However, the victory is not pleasing to the people at all, because the case was brought to the public due to the power struggle. The public continue to question why couldn't anticorruption exist as a thing-in-itself but must be deployed as a strategic device. It seems that the anticorruption is much more flexible and dynamic than the creation of corruption as a crime; and the anticorruption is lodged within very complicated, historically loaded practical conflicts (Sumner 1990).

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<sup>48</sup>Retrieved on Oct 20, 2007 from First Financial Daily, May 24, 2005.

<sup>49</sup>Retrieved on Feb. 10 2007 from [http://news.xinhuanet.com/legal/2005-07/11/content\\_3202732\\_1.htm](http://news.xinhuanet.com/legal/2005-07/11/content_3202732_1.htm).

<sup>50</sup>Retrieved on Jan. 28 2008 from <http://lzlw.scol.com.cn/guanzhu/20051216/20051216153621.htm>.

<sup>51</sup>Retrieved on Jan. 28, 2008 from <http://news.sina.com.cn/c/2005-07-01/11006321393s.shtml>.

#### **8.4.6.2 Power Struggle Between University Leaders**

A case recently happening in Wuhan also proves the anticorruption as a form of social control is “part of political process” and “part of competition for power and the struggle for domination” (Sumner 1997:30). The secretary of Wuhan University of Science and Technology CCP Committee Wu Guomin reported corruption facts about Liu Guanglin who was president of his university, but finally he was found to be corrupt as well. In March of 2006, a reporting letter exposing Liu Guanglin’s corruption facts was sent to Hubei Anticorruption Bureau. Several letters containing more facts arrived later. The facts were about the construction of new District of Wuhan University of Science and Technology. Many construction businessmen wanted to win the contracts of new district construction, and bribed Liu Guanglin. As a result, they won the contracts. Liu Guanglin’s being shuangguied pulled the contractors into the investigation. However, the contractors’ confession further brought Wu Guomin into procurator’s view. The procurator searched Wu’s home and found a letter which is the same as the one sent to Hubei Anticorruption Bureau.<sup>52</sup> It is then known that it was Wu Guomin that reported Liu Guanglin’s graft-taking. When questioned why he reported President Liu Guanglin’s misbehaviors, Wu Guomin explained that the President was interested in personnel, material and financial management too much, which was not good to the University. Again, it is evident that the anticorruption reflects “a real political struggle between opposing forces ... it exists to control, police, punish and eliminate political opposition” (Lo 1993:73).

#### **8.4.6.3 Power Struggle Between the Supervisor and Subordinates**

The creation of corruption by the ruling class is to protect ruling group’s interests. Any possible negative impacts to the ruling group or political elites will be eliminated in the creation. However, it is impossible for the ruling group to create social censure which can only be applied by them; otherwise, legitimacy of social censure will be challenged by society. The disadvantage group or people can still use it to fight back if their interests are harmed. After all, the created social censure is made neutral and unbiased towards to any group in appearance in most cases although it does target specific group. A case provided by interviewee L (official in power) shows that the disadvantaged group may also apply social censure targeting the powerful successfully albeit the odd is pretty small.

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<sup>52</sup>Retrieved on Oct. 21, 2007 from <http://news.sina.com.cn/c/1/2007-06-17/102213247662.shtml>.

Wang XX had been a regimental commander in military, and was transferred to the local government out of his own request.<sup>53</sup> Since he was a medium level officer in army, he was assigned to the post of the director of Public Security Bureau of XXX County. He introduced military management style into the public security bureau in the aim of building up authority when he took the post. For example, he required all policemen to have a drill every morning, which is actually torture to Chinese policemen who lack in training. Also he treated his subordinates as his soldiers. When one old policeman was late in the morning drill, “he criticized him in public as he criticizes his son” (Interviewee L, official in power). His subordinates couldn’t become accustomed to his style. Just because of that, he created many “enemies”. Finally, his “enemies” took the opportunity of his taking bribes from someone, and reported to the upper authority jointly.

It is said only 50 thousands. He should be ok with that much amount of money, but he offended many persons in work. It is those people that wanted to drive him off (Interviewee L, official in power).

Author: Why did you say he should be OK?

50 thousand is a small amount. Which leader has no “extra income” of 50 thousand?..... If it were not because of his stupid-ness in the administration, nobody really would care about that (Interviewee L, official in power).

The anticorruption is contesting in nature, but it doesn’t reflect the power and ideologies of various rival groups equally (Lo 1993). Here we may see an unbalanced power struggle. On one hand, the new director wanted to expand his power or establish authority and therefore took some actions. On the other hand, the subordinates couldn’t get used to his management style and applied the anticorruption to drive him off power. The director is more powerful than the subordinates and should have more authority in the application of social censure, but he didn’t use such an authority. On the contrary, his subordinates made use of it with goals hidden. The case suggests that the anticorruption is flexible and is not consistent across various backgrounds. A scientific analysis of anticorruption needs to start from the case background and search the dynamics behind it.

Zhang Yushun case, Wu Guomin case, and Wang XXX case were uncovered and pursued because of the power struggle between rivals or factions. The feature of selective targeting run through all these cases; and the anticorruption was made hurtful and resentful to targeted people. Although the anticorruption is selective, it is not arbitrarily applied and is rarely just external to the targets because they are probably already aware of their discredibility (Sumner 1990).

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<sup>53</sup>It is a Chinese policy that soldiers and officers from air force, army and navy can request transfer to local districts and will be arranged a job. Officers will be assigned to posts in accordance with the post in the army.

### 8.4.7 *Anticorruption for Catering for Public Will*

The social censure is created for dominant groups' interest such as hegemony including ideology or even common sense of knowledge, so is the application of social censure. The application of social censure serves the ruling group or political elites in many ways. A direct way is to punish the targeted phenomenon or group and shape them out of their preference. A second way is to apply the censure to its own group and thus win public support in the long run by catering public will temporarily. In such a case, the ruling group or political elites makes concessions in order to gain advantages in the future, which is a political skill. A case happened in Nanjing does prove such a possibility.

One Zhejiang newspaper, *Today's Morning News*, exposed a bizarre story which happened in Ningbo City. In late night of November 26 2001, several drunken men speaking non-local dialect ordered a box at a karaoke recreation center. They intimidated manager to close the club when were refused for prostitutes, the report says. A policeman was accidentally there when doing ordinary checks, but he failed to stop their rudeness, and was also threatened verbally that they could peel off his uniform (means losing job in Chinese, author added). The farce didn't stop until more policemen arrived. Later on, more than 70 media reprinted the story that several males from Nanjing City pulled four waitresses into a box trying to impolite them, and resisted policeman's negotiation at a night club. Moreover, other media exposed their identifications: Zhu Ziqiang (Director of Nanjing Municipal public Bureau), and several senior officials from Nanjing Water Company. Such reports caused hot public discussions and social pressure on Nanjing government. Under such a circumstance, Nanjing government held a meeting of strengthening healthy work style on December 8 2001.<sup>54</sup> Zhu Ziqiang was dismissed from his post consequently. The rest received Party's serious warning.<sup>55</sup>

Lo (1993:4) argues that "if the dominant class decides to censure corruption at the expense of jeopardizing its entrenched interests, then, it must have a specific target to achieve, a pressing problem to solve, a hegemonic function to perform, or good cause for concern." Zhu Ziqiang case aroused strong public will against Nanjing government, and ignorance to the case would certainly bring negative influence on Nanjing government. Or to say, the case put Jiangsu provincial and Nanjing leaders into an embarrassing situation, and they tried hard to get out of the situation. Such a scenario pushed government to apply the anticorruption to complained officials. Therefore the ruling group showed a humble attitude towards public will and yielded to the mass on the base of interest calculation. Having learned such political skill, interviewee E (jailed official) was regretted not have mobilized the mass to support him. He said

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<sup>54</sup>Retrieved on Oct 9, 2007 from <http://news.sina.com.cn/c/2001-12-08/415743.html>.

<sup>55</sup>People's Daily, 2001, December 28, Page 2.

It is a common practice in my occupation (designing product for bidder, author added). All my subordinates are doing this... When I was shuanggui'd, they all felt unfair... If I had their signatures, my case would be different. As Chairman Mao said, the strength of the mass is great. Current judges and government is afraid of public will. They definitely will consider this kind of pressure and give me a lighter punishment (Interviewee E, jailed official).

Zhu Ziqiang wasn't lucky enough to stay on his post. Public will won in this struggle. It might be because: 1) the negative influence of Zhu's case was limited to certain areas rather than nationwide. Only some local newspapers reprinted the report, and no internet discussion formed. The case didn't catch the central government's attention very much either, therefore the central government didn't intervene in the process. 2), the ruling group, Nanjing government and Nanjing CCP committee, could win legitimacy and support from the mass by punishing Zhu Ziqiang,<sup>56</sup> and the same time wouldn't lose power control. In sum, to protect local government's interest, Nanjing government followed public will and punished the black sheep out of calculation of lose and winning. The Zhu Ziqiang case further suggests that social censure is very flexible. Sometimes, the ruling group or political elites apply it initially; sometimes, they apply it passively. No matter it is initiative or passive, there are always political goals behind the application of censure, and it serves the ruling group or political elites.

## 8.5 Concluding Remarks

The anticorruption appears to be neutral and unbiased, but if we "unearth the social relations and contexts material to the genesis of the conflicts of interest and mores" (Sumner 1990:31), we can find that the anticorruption in post-reform China is complicated, manipulated, and biased.

The anticorruption in post-reform China is basically in the hand of the ruling group or political elites within the CCP. They play a key role in the application of anticorruption. Without any check and balance as well rule of law, anticorruption is born to be a tool for the ruling group. It unavoidably works for the ruling group or political elites' interest. When the ruling group's dominance are hurt or endangered by other powers, anticorruption may be used as a tool to maintain such dominance. The ruling group or political elites have initiatives in deciding whom to target, when to launch, how to launch, and what to fight. Or to say, the anticorruption is applied by the powerful side (class, group, or individual level), and they have a

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<sup>56</sup>What is more interesting is that the punishment didn't last long. All of them were either re-appointed to new posts, promoted, or retired, based on a report of 21st Century Talent News (2003, July, 9). Zhu Ziqiang was appointed as the vice-director of Nanjing Metro Office; The other punished senior officials either retired or were promoted later. It further suggests that the application of anticorruption is in the full control of the dominant group and manipulated by them for interest consideration. Their retreat is a temporary political strategy.

great odd of winning because they are able to “mobilize the police, the judiciary, the mass media and even ordinary civilians to justify its oppression and legitimize its authority” (Lo 1993:5). However, it is used sometimes by the disadvantaged group or individual too, but the chance of success is much smaller. There are always sub-groups within the CCP. These subgroups contest for power, ideology, and personnel arrangement, interest, and so on. The political struggle among them is practiced in the format of anticorruption. In addition, anticorruption is run for the ruling group or political elites’ interests, but daily work is done by individuals, therefore the anticorruption for political consideration such as power struggle happens at individual level too. For example, officials may initiate anticorruption to purge political opponents. Just because of individual interests in the anticorruption process and absence of rule of law, anticorruption may be distorted and leads to bizarre outcomes, such as scapegoat phenomenon and patronage phenomenon.

No matter who applies the censure on corruption, there is a prerequisite. That is the dominance or hegemony of those in power won’t be hurt according to their calculation. When the anticorruption hurts or endangers its dominance or top political agenda, it will be postponed, paused or lowered down to ensure ruling group’s interest maintained. Political factions or individuals may apply the anticorruption, but it is hard for them to guarantee success. Therefore, the anticorruption “is not static but rather a dynamic and contested process” (Lo 1993:5). In other cases, political factions or individuals may apply the anticorruption, but the whole ruling group’s hegemony should not be influenced. After all, they share the same umbrella (the CCP); the CCP’s prerequisite of anticorruption has to be fulfilled. Only under such an umbrella can they reach subgroup’s goal. In some cases, not only can’t the application of anticorruption hurt ruling group’s hegemony, also can’t hurt the sources of hegemony. For instance, a major source of current CCP’s hegemony is fast economic development and improvement of people’s living. If anticorruption hurts economic development, the ruling group or political elites has to pause it so as to save its hegemony.

The anticorruption in post-reform China is basically done in a bureaucratic form. As survey finds, to punish a corrupt official is complicated and needs to pass several stages one by one, such as shuanggui, investigation, prosecution, trial, sentence and imprisonment. There is a rare case which can skip these steps. In the whole process, many departments are involved such as the CCP’s commission for discipline inspection, anticorruption bureau, department of supervision and court. Since it is done in a bureaucratic form, the punishment is official, authoritative, and unchallengeable. The anticorruption in post-reform China tends to be political for its extra format. We just see that anticorruption is done bureaucratically; however, the ruling class in post-reform China adopted another method which is campaign. The campaigns were launched again and again by either the CCP or the political factions within the CCP for political purposes. For instance, the Three-antis and Five-antis were initiated for pressing down capitalist ideology and bourgeoisie class; a party rectification in 1983 was to cleanup the remnants of the Cultural Revolution. Since China created law and ordinance against corruption already, such kind of campaigns were really not necessary. Frequent use of campaign was due to the political

goals at specific historical conjuncture. Documentary research and interviews exposed the political manipulations in the handling process of corruption case. In post-reform China, corruption is not a static legislation which is only applied when there was a violation. The fact is that the anticorruption might not be applied even when there was a violation; and it might be applied when there was no violation. Anticorruption is more like a tool in the hand of the powerful. As a result, "the real crime of corruption, as opposed to censure for political ends, was hardly differentiated by the mass" (Lo 1993:43). It further suggests political features of anticorruption.

The anticorruption in post-reform China was used for divergent reasons for different historical conjunctures, such as ideology, power, legitimacy, authority and public request. For example, the anticorruption campaign in 1989 helped Chinese government to rebuild legitimacy. Although the anticorruption didn't resolve all problems for the ruling class, it did assist the CCP to recover from the support crisis. The anticorruption storm sweeping across several municipalities in 2007 suggests that anticorruption can help the ruling group or political elites to win a power struggle. Anticorruption in 2006 helped President Hu on controlling the personnel arrangement in the 17th congress of the CCP. Interviewee P's story puts forward that anticorruption can be used for authority building. His new leader had no experience in his field and faced authority crisis when he was promoted to the position, but he managed to overcome the crisis by anticorruption. He took the opportunity of one director's corruption fact and punished him. The rest officials were scared and started to be humble in front of him. Zhu Ziqiang case is likely to suggest that anticorruption can be the satisfaction for public will, but the case also suggests that the ruling group can manipulate the anticorruption and protect the group's interests. All these manipulations were possible because there seemed no rule of law in post-reform China. The rule of law could play a conditioning role and constrain the ruling group's manipulations.

In sum, anticorruption in post-reform China is political although it is mainly done in a bureaucratic form. The ruling group or political elites applies the anticorruption on the prerequisite of hegemony maintained or source of hegemony maintained. The anticorruption is complicated and different for dissimilar historical conjunctures. They are not haphazard, but practical, systematic and contextualized (Lo 1993). It can be used to win ideological struggle, win power struggle, to build up legitimacy, to establish authority, to cater for public will. The anticorruption always starts from isolation, degrades, restriction, sanction, and ends in penalization (Lo 1993). Given these characteristics of anticorruption, we tend to believe that anticorruption in post-reform China is the application of social censure on corruption. Also to understand corruption, we need to understand the social relations, context expressed and ideology, or to say put the theoretical emphasis on the interaction of law, ideologies, and political economy and so-caused outcomes (Sumner 1990). To raise efficacy of anticorruption, it is necessary to place more external supervision and control over the anticorruption agency as Hong Kong did in the past (Chan 2001).

## Chapter 9

# Outcome of Social Censure on Corruption

As discussed earlier, the ruling class or the ruling group or political elites seem to create and apply censure on corruption in order to reach some political goals. If they successfully create and apply the censure on corruption, their goals can certainly be reached, however, there were also some other outcomes which the censurer may not predict or don't care about if there were no rule of law.

The first outcome of censure is the status change for both parties (the censurer and the censured). Lo finds that the social censure was so powerful that it could “destroy the old social relations of the feudal society and produce a new social formation under the CCP's political and ideological leadership” (Lo 1993:40). For the censurer's side, their status will be maintained or improved. The status can be political positions, respect from society, friendship, and so on. In most cases, the key component is the political post from which people's respect and friendship come. Therefore official always fight for power or ideology in the aim of keeping their position. Whether their status is maintained or improved depends very much on how censure on corruption is applied because the application of censure on corruption needs mature political skills. For the censured, their status will be degraded or even destroyed, because one function of social censure is to denounce and punish the targets. As we discussed in the Chapter Eight, the ruling party of the pre-reform China censured the capitalist ideology and the bourgeois class by campaigns. As a result, communist ideology was upheld and the bourgeois class was cleaned up, therefore the status for the censurer and the censured changed in opposite directions.

Both the creation and application of social censure are selective targeting. There are various groups or phenomenon which may be against social values, but the ruling group selects one or two which is actually against its hegemony to censure. The created social censure is to signify, isolate, criticize and punish the target group or phenomenon. The creation of social censure may target a specific group or particular phenomenon; however, in the process of application of social censure, the whole targeted group may not be brought to punishment. In such a case, the ruling group will selectively punish some targeted ones. Some unlucky targets will be



picked out to be punished for the ruling group's interests. In other cases, the social censure is on enemy within, so it is more impossible to punish all targeted persons due to self-harming reason and netted personal relationships. A selective punishment is then necessary and practiced. In other situations, some targeted persons receive special treatment like protection by another ruling group as a result of the absence of rule of law. Also, in some cases, the social censure for the ruling group is out of no other choices, for example a huge pressure; once the pressure is gone, the application of censure will be stopped accordingly. Without rule of law, the ruling group or political elites may step out and "save" their henchman using political strategy in the process of applying social censure. Given so, some lucky persons may get away because of political patronage and absence of rule of law. For example, in the Cultural Revolution of China initiated by Mao Zedong, some corrupt or rightist group were targeted for denunciation; but many high-ranking officials were protected by former Premier Zhou Enlai or even Chairman Mao for various reasons. General Su Yu was one of the generals receiving their protection.<sup>1</sup> Premier Zhou even tried to establish new rules to protect intellectuals in the Cultural Revolution.<sup>2</sup> Obviously, Mao launched the Cultural Revolution for political goals, but when he found it might hurt his own sides, he chose to protect them with political maneuver.

Just because of the nature of anticorruption (a form of social censure and a tool for the ruling group) and absence of rule of law, the application of censure on corruption is not consistent in post-reform China. As what the author found in the survey, most respondents agreed to that some corrupt official received lighter punishment, while some received harsher punishment and some even got away from the punishment. The absence of rule of law encourages political maneuvers to be employed in the application of censure frequently, resulting in judicial inconsistency.

Besides judicial inconsistency, we may also see scapegoat phenomenon in the application of censure on corruption. In many cases, targeted officials or complained party are so powerful that they can manipulate the process and use others as scapegoat in order to escape from the denunciation and punishment. In other cases, the law enforcers are too weak and have no authority to bring the high-ranking official to justice. Given so, they usually punish several scapegoats who usually are low level officials so as to close the case. In the interviews with jailed officials, they expressed a similar opinion that the punished are always the marginalized officials. It seems that the real tigers will never face problems in the application of censure on corruption as long as they don't hurt or are not against bigger tigers' interests. In the past, the CCP punished one or two tigers in order to show their tough attitude towards corruption, but the public were still not satisfied. In their mind, many more high-ranking officials escaped from punishment via scapegoating others.

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<sup>1</sup>Retrieved on Jan. 15 2008 from [http://www.jbda.gov.cn/detail.asp?xw\\_id=902](http://www.jbda.gov.cn/detail.asp?xw_id=902).

<sup>2</sup>Retrieved on Jan. 15 2008 from <http://culture.people.com.cn/GB/40479/40480/3696958.html>.

The application of censure on corruption should be based on created rules or regulations. In other words, once a form of social censure is created, the application of censure should follow the created rule tightly. However, in a no rule of law society, the persons who operate the application of social censure may ignore the rules and distort the application for interest considerations. For example, the law enforcers may fabricate corruption fact about the targeted persons and apply the censure so as to satisfy their intentions.

In a word, the application of social censure is much more complicated than the creation of social censure. Using anticorruption in post-reform China as an example, we may see many bizarre anticorruption outcomes. These peculiar outcomes are possible because the nature of corruption and absence of rule of law. For the nature of corruption, we can conclude that it is a form of social censure based on the previous chapters, therefore the creation and application of censure are in the full control of the ruling group or political elites. There is a great potential for the dominant group to manipulate and distort the application of censure on corruption. The absence of rule of law allows such a potential possibility to be realized because there is no external supervision to constrain ruling group's ability of manipulations.

## 9.1 Status Changes for the Censurer and the Censured

The creation of social censure is to target, punish and shape particular group or behavior; the application of censure therefore will certainly bring some impacts to both the censurer and the censured. The quantitative and qualitative data show that once the corruption label is attached to the officials, it will bring dramatic changes to them. First of all, they will receive disciplinary or criminal punishment. The disciplinary punishments mean possible removal from post and lose of salary and benefits. The criminal charge means imprisonment. If they are privileged in social status before, they lose those privileges after being punishment. High status is then lowered to the bottom.

Most of respondents held that sentenced officials couldn't keep his/her position, salary and respect from the society if censured for corruption; only 12.4% and 15.73 students think the censured official could keep their original position and salary (Table 9.1). About 74.93% of subjects consider illegal income of censured officials would be confiscated (Table 9.1). Only 19.01% of respondent hold that censured official still received their respect (Table 9.1).

The power, in interviewees' eye, is the source of respect and high status. The censure on corruption will take power away from the suspect, then official' high social status will be lowered to the earth. They all know that from the day of shuanggui, their fate will be much different.

When you are in position, everybody respect you and go after you for help. But when you are driven off power, you will lose power and respect from others... What is worse is that perhaps they will even look down on you (Interviewee J, official in power).

**Table 9.1** Responses on status change for the shuangguied officials

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Sentenced corrupt cadre can keep his position	43.86	27.19	16.49	10.61	1.84	1.99
Sentenced corrupt cadre can keep his salary	38.30	26.73	19.19	11.74	4.03	2.16
Once sentenced corrupt cadre can still receive your respect	25.77	31.29	23.93	16.21	2.80	2.39
Illegal incomes of sentenced corrupt officials will be confiscated	1.40	3.86	19.81	46.10	28.83	3.97

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

I don't even dare to think of status. Previously you can get anything you want, but now you can't get anything you want...People like us basically are at the bottom of society, even worse than the poor (Interviewee B, jailed official).

Officials' status comes from power. If you have no power, you have no status (Interviewee L, official in power).

I have a neighbor who was shuangguied and dismissed from his post. He is idle at home now. People don't even look at him, let alone say hi to him... Social status before and after shuanggui are the difference between heaven and hell (Interviewee P, official in power).

The application of censure on corruption not only brings status changes to the censured officials, but also the ruling class or anticorruption planner (state, government, national leaders, the party in power, dominant figure in power etc.). Contrast to the status change of the censured cadres, anticorruption planners' status moves upwardly. Most survey respondents hold that they would trust government more (84.4%), uphold national leaders more (75.79%) and uphold CCP as the ruling party more (77.81%) if anticorruption succeeded (Table 9.2).

The interviews suggested that censurers' goal of anticorruption was to maintain its dominance or repair its damaged dominance, therefore, after the successful application of censure on corruption, the planners' goal will be reached and planners' status will be maintained thereafter.

Our government gains greatly... She originally faced many challenges and crises from public, but those crises were gone after the anticorruption...so people began thinking of its good governance...but actually that is not the case (Interviewee D, jailed official).

That secretary is promoted to the post of vice mayor the next year. It is said that it is because of his tough approach in the anticorruption and efficacy of anticorruption (Interviewee H, official in power).

The court system repaired its bad image in public's mind ... Relatively speaking, there are fewer complaints against execution. They benefit themselves by victimizing us ... Moreover, the problem comes out again after a certain period of time (Interviewee A, jailed official).

**Table 9.2** Response on status change for the ruling class

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Anti-corruption increases your trust in government	1.40	5.26	8.94	54.78	29.62	4.06
Anti-corruption can make you uphold our national leaders	2.19	6.32	15.70	54.74	21.05	3.86
Anti-corruption can make you uphold the CCP as the ruling party	1.75	5.79	14.65	54.56	23.25	3.92

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

After our vice manager general is imprisoned, the manager general acts like a tyrant because nobody opposes him anymore. Other staff in our company became very intimidated. Manager General's power reaches its summit (Interviewee C, jailed official).

The creation of censure on corruption is done by the ruling group or political elites at a very top level, but the application of censure on corruption relies on officials at various levels. Since they (group or individual) carry out the application of censure, their interest and ideas are considered in the process; and finally they benefit from the application of censure. Their status is improved or maintained, but the status of their opponents or dissents are degraded.

## 9.2 Selective Targeting

There is a popular saying in China. It says corruption in China is so rampant that there would be misjudged case if you executed all officials in China but there would be escaping ones if you executed one in every two officials (让中国官员排成一排, 挨个枪毙, 可能会有冤枉的, 但隔一个枪毙一个, 肯定会有漏网的). The saying implies the unbridled corruption is associated to most officials. Although it is not a scientific or accurate statement, it does reflect people's perception on corruption. If the CCP treated anticorruption seriously and punished all corrupt officials tightly in accordance with the *China Criminal Law*, almost all current officials would be put into jail according to people's imagination. It would indeed undermine CCP's dominance and administration. To press down anticorruption, on one hand, and maintain dominance on the other hand, selective targeting has to be the main strategy.<sup>3</sup> When the application of censure on corruption is carried out by local officials, they may not apply the censure firmly according to the rules set by the

<sup>3</sup>Also in the anticorruption process, it is hard to keep external interference outside for individual or group's protection, which causes selective targeting in practice.

CCP, and only target some persons (political enemy most probably). The interviews evidenced such a possibility.

There are too many corrupt cadres. For example, there are five directors in a bureau; four of them take money, but usually there is one or two is punished (Interviewee D, jailed official).

A popular official excuse is to steady public will, but in fact, it is selective targeting (Interviewee C, jailed official).

It is absolutely selective targeting. The victim is like us, the disadvantaged group in the political circle (Interviewee E, jailed official).

Interviewee J (official in power) detailed selective targeting with a case happening in his county. The background is that there was a huge flood in 1998 in Jiangxi province. Tons of villages and towns were flooded because they were constructed at the lower bank of river or reservoir.<sup>4</sup> It is therefore advised to rebuild villages and towns at higher locations so as to solve the problem in perpetuity, which is called the project of "Immigration and Town Construction."<sup>5</sup> The central government allocated a huge amount of money to subsidize the reconstruction of village and towns, but the project money was misappropriated and embezzled by local officials to a great certain. Nearly 400 officials in Jiangxi Province were imprisoned in total. Interviewee J (official in power) was working at the Personnel Bureau of XXX County at that moment and exposed local authority's selective targeting when handling corruption cases. Thirty officials in XXX County received criminal charge, but there was much more corruption than that in interviewee J's perception.

It is impossible to punish all corrupt officials. If so, nobody works; all are sent to jail; so they select some to punish... the most distinguished one is Zhang XX and Li X. Both were secretary of town, and both embezzled around 50 thousands from the 'immigration and town construction' budget. Zhang was able to get away, but Li was imprisoned. The reason is that Zhang is a relative of county mayor...but the official version is that Zhang was said to have made great contribution to the development of his town and the embezzled money had been returned. The county government also broadcasted to the public that the goal of punishment is to educate officials rather than punishing them itself...Since Zhang had acknowledged his mistake and corrected his mistake, government should give him one more opportunity (Interviewee J, official in power).

Interviewee J (official in power) also leaked that the towns where Li worked is very poor and many other cadres embezzled the money. In other words, his town is "corruption model" and therefore should receive "special treatment" in anticorruption. "Li is the best negative example to be punished with the aim of warning other cadres and showing government's anticorruption efficacy" (Interviewee J, official in power), therefore the image of 'corruption model' made Li the victim of 'anticorruption model' finally.

<sup>4</sup>Retrieved on Feb 5, 2007 from [http://www.jxfx.gov.cn/98/98\\_index.htm](http://www.jxfx.gov.cn/98/98_index.htm).

<sup>5</sup>"移民建镇" in Chinese. Retrieved on Feb 10, 2007 from <http://finance.sina.com.cn/jjbx/news/146.shtml>.

Selective targeting has been a basic latent rule of anticorruption in China. All officials are well aware of it and try to dodge in the anticorruption with guanxi. At the critical moment, all officials use guanxi for self-protection, but not all are immune. The simple guanxi cannot guarantee a free life, but the quality and quantity of guanxi. The decision-makers will weigh all guanxi the suspects have and victimize the weak ones. At the same time, political considerations step in the process. Therefore that one official is imprisoned doesn't mean s/he is the only one corrupt; it may only denotes s/he has no guanxi or no strong guanxi, and is an appropriate victim in politics. The case interviewee J (official in power) exposed shows the intertwining of personal relationship and political consideration in the application of censure on corruption.

### 9.3 Patronage Phenomenon

Politics is about interests and ideology, not only because every political action is considered on base of interests and ideology, but also because politics is featured in connections and grouping. Nepotism and patronage are basic characteristics of politics and corruption, either in western counties or eastern countries. It may be more salient in post-reform China due to various reasons. Many officials in post-reform China have developed such an opinion that you can survive in political arena as long as you have patronage no matter what kind of mistakes you make. However, you may be hurt when the patronage doesn't exist. Such an opinion is reflected in the interviews.

You should stand in the right line. As long as you stand in the right line, corruption won't be any problem... All cadres here (prison, the author added) are not good at building up relationships...we are too honest. If we had done well in maintaining good relationship with the upper leaders, we would live a pleasant life outside now (Interviewee A, jailed official).

Protection from the upper level is important; they can help cover up your issue...I failed on it, so I am here (Interviewee D, jailed official).

As long as your problem is not so serious, the leaders you have good relationship with can help you to be waived of punishment (Interviewee G, jailed official).

The case would be different if there is a leader who can speak on your side (Interviewee J, official in power).

#### 9.3.1 *Protecting Umbrella*

Liu XXX (Interviewee C, jailed official) used his own example to show how important the patronage is in the censure on corruption. He was section director of a stated-owned construction company, and was close to a vice manager general of the

company, but the vice manager general has conflict with manager general. Once the manager general found the vice manager general took kickbacks from customers, he asked others to report to the local CDI. The vice manager general was shuanggui'd later and prosecuted further. As a henchman of the vice-manager general, Liu took a part of the kickbacks too, and therefore was sent into jail. When I interviewed him, he showed his anger. The reason is that he felt unlucky for a wrong patronage.

I only followed a wrong person... the money I took is nothing... If I had followed a more powerful person, that would be no such thing (Interviewee C, jailed official).

Author: "Why did you say that? The vice manger general has certain power."

However, compared to the manager-general, the vice manager general is powerless. In fact, the manager-general is corrupt too. His subordinates also took kickbacks. But they are OK... Those people are as "black" as me. They are OK not due to their cleanness, but their protecting umbrella... Our society is just so unfair. Therefore, if you want to be safe, you need to find a "good" umbrella, a big umbrella. Otherwise, you may die at any time (Interviewee C, jailed official).

Author: "You just mentioned that the manager-general and his henchman are corrupt too. Why could they be ok?"

It is still because of guanxi. It is said that the manager-general has good relationship with the vice mayor who is in charge of construction and city planning. The thing is like pyramid; an upper level protects next level. There is no absolute right and wrong (Interviewee C, jailed official).

The case implies that the key of survival in Chinese politics is not whether you are clean or corrupt, but the patronage. If you have patronage, you can violate CCP rules or law; otherwise you may be punished even if you are right. Just because of such kind of political factor (patronage phenomenon), there might be promoted corrupt officials. A recent popular online paper detailed eight well-known cases in which officials were corrupt but still promoted to higher post.<sup>6</sup> These corrupt officials not only could survive, but also could be promoted; their experiences suggest that patronage (more influential official) could control the censure on corruption. For instance, Qin Yu began to be corrupt in 1998, but was promoted again and again and finally to the post of Director of Baoshan District; Han Guozhang was promoted but was shuanggui'd two days later; Pang Jiayu had been reported for graft for 9 years but still stayed in power and was promoted; Hu Xing who took bribes on the post of director of Kunming City Planning Bureau, but was promoted as mayor and further vice director of Yunnan Transportation Department; Duan Yihe's "dirty behavior" began 13 years ago; He Minxu who took the first bribe in 1991, but was shuanggui'd in 2007; Dong Suwan who had taken 4 million bribe before was promoted. These officials had been reported for corruption before they were promoted, but no complaints worked. They might be the targets of the censure on corruption, but their patronage helped them to escape from punishment.

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<sup>6</sup>Retrieved on Sept 12, 2007 from <http://www.chinacourt.org/html/article/200801/04/281309.shtml>

In some case, their patronage may be the planner of censure on corruption, and therefore has definite power to go easy on them. These particular cases support interviewee's idea that corruption is not the main obstacle in their way of promotion. Patronage may help the corrupt official get around such barriers.

### 9.3.2 *Insider's Patronage*

The patronage's role also reflects in the judicial process. The interviewee G (jailed official) is extremely angry at procurator because procurator acted as patronage for others and brought injustice to him. He was a section director in a county Water Resources Bureau. He embezzled some money from agricultural funds together with others. His anger comes from the fact that he was the only one put in jail among them. In his mind, procurator played a significant role in the creation of injustice.

He stated,

Procuratorate can help you get away from charges or have lighter charges. We have 6 cadres who took money. According to procuratorate's internal regulation, the person who receives less than 10000 yuan bribes won't be prosecuted. If it is over 10000 yuan, one year imprisonment for per 10000 yuan, so to say fifty thousand means five years imprisonment. I hadn't known this before and learned after I came here... Those five persons received the same amount money as me; they should receive the same imprisonment. However, they had relationship with procuratorate. The procurator told them to overthrow their own confession. Those five persons then changed their corrupt money from 50,000 to 40,000, then from 40,000 to 30,000... And, finally, the graft money they took is less than 10,000, therefore no criminal charges on them, but party disciplinary punishment (Interviewee G, jailed official).

When asked why the Procuratorate accepted those fake confessions, the interviewee G (jailed official) said the procurators worked as a team. If one procurator asked the suspect to change confession, the other procurator would "open one eye and close one eye." Therefore even though the suspects' confessions were obviously not true, the procurators would not question them. The suspects as a result could escape from criminal charge by these un-honest confessions. In this case, procurators are not the censurer, but law enforcer. They don't have censuring power, but they have tremendous power regarding to investigation and filing a case. Acting as a gatekeeper, they can drop a case and forward the case to the next stage. Such power is critical for some suspects as long as the suspected is not particularly targeted. The procurators can work together to protect suspects who have guanxi with them or leaders. Just like as interviewee E (jailed official) said, "it depends on procuratorate who decides to prosecute whom. They have screening power ... It is obviously not be able for them to prosecute the powerful ones or those who have connections with the powerful ones. Only people like us, the disadvantaged group, are meat on the chopping board."



Patronage phenomenon itself may be another corruption phenomenon. Since the suspect is under the patronage of his/her supervisor, and got away from the criminal charge, s/he will deliver his/her thanks to the patronage, and usually the thanks are delivered in material or financial formats. In such a sense, patronage turns out be corrupt. Therefore the relationship between the patronage and corrupt official is very complicated. Sometimes, they extort from the suspect; sometimes, they invest in the corrupt official; sometimes, they protect the corrupt officials. The linkage between them is some sense like the relationships between triads and businessman in Hong Kong (Chu 2000). And both groups of relationship share a feature that the powerful side's interest won't be hurt.

## 9.4 Ignorance of Corruption Case

The censure on corruption created by the top leaders may hurt local groups' interest in the application process; the local group, on one hand, has to apply the censure, and on other hand, has to find ways to minimize negative effects. A commonly used method is case ignorance. The possibility lies in the absolute power of censure which is in the hand of the ruling group or political elites. The mass has trivial influence or little ability to participate in the application of censure on corruption. The situation of unbalanced power determines a high probability of case ignorance by the ruling group or political elites.

### 9.4.1 *Legitimate Ignorance*

On October 26 2004, a parent posted a letter from his child's school to him on a website. The letter shows that five Shenzhen government departments<sup>7</sup> issued a red-headed document asking students to watch a designated movie called *7 h Time Difference* on their own expense in the class time.<sup>8</sup> The parent questioned the rationality of such official behavior. The posted letter aroused hot discussion on the internet; all websites including official ones such as the *People's net*, *New China Net*, *China Youth online*, and *Sina* were eager to transfer the letter.

*Beijing Youth News* further exposed that the investor for the movie had shares of three companies. At the same time, some "busy-bodys" started to go deep into the case. It is found that Niuniu, the actress, is daughter of a vice secretary of

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<sup>7</sup>The five departments are Propaganda Dept of Shenzhen CCP Committee, Shenzhen Education Bureau, Shenzhen Bureau of Culture, Youth League of Shenzhen, and Shenzhen Committee of Caring-next-generation.

<sup>8</sup>The price is 20 yuan.

Shenzhen CCP Committee. Further, some “trouble-makers” further checked the company record of the investors. It is surprising that Niuniu herself was the boss of the investing company<sup>9</sup> and she still owned another two companies.<sup>10</sup> Based on the registered capital, Niuniu, a 25 years old girl who has been studying all the time,<sup>11</sup> has 7.9 million yuan assets. She was still a high school student when she was investing the three companies (16, 17 and 18 years old respectively). Such a bizarre story tells that there could be disciplinary violations or law-breaking behaviors behind it.

In the interview on a *China Central TV* (CCTV) program,<sup>12</sup> Niuniu agreed that it could be that her mother used her name to do business. However, how could her parent have so much money? Her parents’ job determines that they couldn’t be so wealthy.<sup>13</sup> The *China Criminal Law* revised in 1997 stipulates that any state functionary whose property or expenditure obviously exceeds his/her lawful income, if the difference is enormous, may be ordered to explain the source of his/her property; if s/he cannot prove that the source are legitimate, the part that exceeds his/her lawful income shall be regarded as illegal gains, and s/he shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention, and the part of property that exceeds his/her lawful income shall be recovered.<sup>14</sup> Li’s unexplainable wealth hints that he might violate law.

The second company, owned by Niuniu, Renhe overseas Investment Service Company was established in 1993. The registered capital is 5 million yuan. It is a self-financed organization providing overseas study service recognized by the Ministry of Public Security and Ministry of Education. Niuniu’s father is a vice secretary who is in charge of education, arts, and culture.<sup>15</sup> According to the article 76 of the *Chinese Communist Party Discipline Ordinances*, communist members should correct it if his/her spouse or offspring do business which may influence her/his fair work in his/her occupational field; if s/he refuses to correct, s/he should resign from current position, or be adjusted by the CCP; those refusing to resign or refusing justification shall be dismissed from the CCP post. Shenzhen also has its

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<sup>9</sup>It is called the Dream Tunnel Movie and TV Culture Development Company. Niuniu has 82.99% share which is wealthy of 2.69 million yuan. Retrieved on Dec. 15 2007 from <http://ent.sina.com.cn/m/2004-11-05/ba556257.shtml>.

<sup>10</sup>One of them is called Renhe Overseas Investment Service Company. Niuniu has 70% share which is wealth of 3.5 million yuan. Retrieved on Dec. 15 2007 from <http://ent.sina.com.cn/m/2004-11-05/ba556257.shtml>. The other is called the Peak Electronic Company. Niuniu has 15% share which is wealthy of 1.5 million yuan. Retrieved on Dec. 15 2007 from <http://ent.sina.com.cn/m/2004-11-05/ba556257.shtml>.

<sup>11</sup>Niuniu have been studying abroad since 1995, first at Felsted School in England, then in United States.

<sup>12</sup>A CCTV program called Face to Face interviewed Li Qianni on Oct. 31, 2004.

<sup>13</sup>In the interview, she claimed that there was no problem for her family to support her abroad studying because her mother works in Hong Kong.

<sup>14</sup>Article 395 of China Criminal Law.

<sup>15</sup>Retrieved on August 10, 2006 from [http://www.gdwh.gov.cn/shownews.php?BAS\\_ID=5341](http://www.gdwh.gov.cn/shownews.php?BAS_ID=5341).

own corruption prevention ordinance which clearly stipulates that if cadres will be asked to resign or dismissed if s/he makes use of his power to obtain interests for his/her relatives or himself/herself.<sup>16</sup> Li's family members were running business within his jurisdiction, which is apparently against both CCP Ordinance and Shenzhen rules. And it had been for years before being found out. Li should be well aware of the CCP disciplines. According to a report of *China Youth News* on Nov 6 of 2004, Niuniu's father made a deep self-criticism to the Shenzhen Committee of the CCP.<sup>17</sup> He just regretted that he misunderstood the CCDI rule or regulations partially and thought obtaining interest using authority was only limited to the financial, stock, assets and construction fields.<sup>18</sup> For the three companies owned by his family members. Li explains that the companies were shell companies transferred to his wife. However, according to the article 159 of *China Company Law*, whoever, when applying for company registration, obtains the registration by deceiving the competent company registration authority through falsely declaring the capital to be registered with falsified certificates or by other deceptive means shall, if the amount of the falsely registered capital is huge, and the consequences are serious or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention and shall also, or shall only, be fined not less than 1% but not more than 5% of the capital falsely declared for registration.

No matter how did Li explain his issue and make self-criticism, he couldn't clear several public doubts. First, Li's family income and expenses exceeds their salary range. Second, receiving "companies" is very likely corruption. Moreover, Is that a real shell company? Are they gifts or exchanges? Third, establishing shell companies violates the *China Company Law*. Public at large states directly that Niuniu case was involved in corruption and requested Shenzhen CDI's further investigation. However Shenzhen government chose to minimize the negative effect. There was no exception that Shenzhen media kept silent on the Niuniu case. The page containing Li's self-criticism in *China Youth News* sold in Shenzhen was even taken out, which means the *China Youth News* in Shenzhen had one page missing on that day. On November 11th 2004, the CCTV program called "Narrative" interviewed Fu Jianfeng who is a reporter at *Southern Metropolitan News* and wrote an article called "Exposure of Niuniu's assets."<sup>19</sup> However, the program were interrupted in Shenzhen when it was on air. The excuse from Shenzhen Cable TV was that they need to check cables to secure a good information transfer, but it was

<sup>16</sup>The fourth draft was finished in 2004. See, Beijing Morning Post, August 4.

<sup>17</sup>Retrieved on April 10 2007, from <http://www.people.com.cn/GB/paper2086/13941/1244503.html>.

<sup>18</sup>He also states that writing the book and shooting the movie are Niuniu's own choice, and he never recommended the movie to any departments or schools.

<sup>19</sup>The first broadcasting arrangement was from 21:45 to 22:05 on Nov. 11, 2007. It was re-aired from 1:40 to 2:00 and from 10:30 to 10:50 on Nov. 12, 2007. However, Shenzhen Cable TV issued a notice that they would do regular cable maintenance at these three periods.

not the case in public perception.<sup>20</sup> On the same day, the *Notice of the Investigation and Settlement of the Niuniu Case* was circulated at the tenth plenum of the third Shenzhen CCP Committee. It was discovered that some departments recommended the movie following a normal procedure without Niuniu father's requests. It was stated that among the three companies, two of them were "shell company transfer". The settlement was to ask Niuniu's family to withdraw from the companies which are in her father's jurisdiction.<sup>21</sup> There was no other disciplinary or criminal charge on him. It seems that the Shenzhen government, as a collective, apparently played a role of protection. Obviously, public pressure required the Shenzhen to apply the censure on Li, but at this historical conjuncture, Li was not the target in ruling group or political elites' eye; it might be difficult to apply censure on Li without hurting Shenzhen government's interests. Li's being investigated might embarrass Shenzhen which is a model city in China and bring negative influences on her. Shenzhen City's interest rather than justice was then placed on a higher priority in local government's mind. Niuniu case tells a fact in China that the external power or authority may intervene the judicial process and waive suspect's criminal charge, and the reason is that local interests would be hurt if these suspects were brought to justice, sub-group's benefit is therefore given priority to the justice and respect for law. Niuniu case further proves that the power of censure is in the hand of the dominant group. They can choose to censure or not to censure. The decision is made on the base of interest considerations. Having such absolute power in hand, they can ignore a corruption case.

#### 9.4.2 *Don't Even Bother to Legitimate Ignorance*

The Niuniu case shows that the dominant group could use the power of censure to choose not to apply it, and compromise if there is a strong public pressure. What if there is no public pressure? A case exposed by interviewee K (official in power) shows that the ruling group or political elites could ignore the corruption totally if there were no external pressure. It seems there is no need for them to make an explanation why somebody's corruption is ignored. The power of censure in their hand is abused perfectly for them.

Interviewee K (official in power) has an uncle who was a director of bureau in XXX County. As mentioned earlier, the CCP launched a new anticorruption campaign across the nation in 1989. Governments at all levels began to make efforts to curb corruption so as to meet public request. Since the central government didn't set up a standard of campaign format, different governments adopt different strategies. The CCP secretary of XXX County adopted an extremely leftist

<sup>20</sup>Retrieved on April 10, 2007 from [http://gb.atimes.com.hk:82/gate/gb/www.atchinese.com/index.php?option=com\\_content&task=view&id=5798&Itemid=66](http://gb.atimes.com.hk:82/gate/gb/www.atchinese.com/index.php?option=com_content&task=view&id=5798&Itemid=66).

<sup>21</sup>Refer to Shenzhen SER News, Nov 12, 2004.

approach which was popular in the Mao's era. He asked all corrupt officials to confess before a deadline, and encouraged officials to expose each other's corrupt behaviors. The un-confessing officials if found to be corrupt would receive an extreme punishment. Under such an atmosphere, 70% officials in XXX County confessed; some reported to have misappropriated 100 yuan from public fund; some confessed to take two bottles of liquor. It aroused a political quake in the County. Nobody calmed down to focus on his/her work; the attentions were diverted by their own fate. Interviewee K's (official in power) uncle was a "victim" in the campaign in K's opinion.

His uncle once made a phone call to an friend (an official) to recommend a businessman to a company. The businessman "won" a contract and gave him a pager as a thanking gift. K's uncle never thought that was a problem until the campaign launched by the secretary. To be afraid of his career future, his uncle confessed. He thought he could stay in the position after confession, but the new secretary asked him to resign. Interviewee K (official in power) was not happy about secretary's decision. In his mind, the secretary "played games" and "ate his words". When asked whether his uncle complained, he says:

Complain? Impossible...after all, my uncle accepted a pager. At that time, a pager means corruption. If it were not the campaign, he would be no problem, but in the campaign period, nobody could help you (Interviewee K, official in power).

Author: do you mean he would not have any problems in the normal time although he accepts a pager, but at that special moment, he had to take the responsibility?

Yes. Any problems found in the campaign will be treated seriously. It is a Chinese characteristic (Interviewee K, official in power).

But later the interviewee K overturned his point that corruption found in campaign causes severe punishment by exposing that the secretary was reported to have taken bribes from lower officials, but the case never went up. The secretary seemed to be immune to the counter-attack on him. Interviewee K (official in power) strongly questioned the double standards used by the new secretary. Using his words, it is like that "one may steal a horse while another may not look over the hedge (只许州官放火, 不许百姓点灯)." Why is the rule only applied to the ruled, not the ruler? interviewee K's (official in power) doubt further suggests that corruption is a form of social censure which is played by the ruling group or political elites. A prerequisite for the application of censure is that the planner of censure or ruling group's interest won't be hurt; otherwise they will stop the censure or just ignore their own corruption facts. They could abuse their power in such a way was because there seemed to be no rule of law.

Other interviewees shared the same opinion that inconsistency of censure on corruption prevails in China, although their reasons for inconsistency were not the same.

Every department is black. The public security is black for they only catch you; the procurator is black for they prosecute you for severer imprisonment; the court is black for they sentence you more years imprisonment if you have no guanxi...China's law is

problematic; the range is so wide. Judge's power is too big. The outcome would be different if they lean to you a little (Interviewee A, jailed official).

There is no judicial consistency at all in China. In my room, there are 12 prisoners; six committed the same crime, but all got different punishments (Interviewee F, jailed official).

To be frank, it is not an easy job to keep judicial consistency. Judges have to consider all kinds of factors when sentence. My impression is that there are always minor differences in penalty (Interviewee M, official in power).

It is impossible to get rid of human factors in law enforcement. Procurator and judge are ok for the law doesn't give them many space, but public security faces more difficulties when maintaining judicial justice (Interviewee I, official in power).

Although there are tons of reasons for different judicial treatments, in a rule of law society, law is always prior to other considerations; and political factors, personal relationships and economic factors should not be taken into account in court's decision making. If we check the background of each case, we may find that corrupt officials receiving lighter judicial punishment share a common situation that political and personal considerations worked in the judicial process. It is because the application of censure in nature serves the ruling group or political elites (a tool for the ruling group).

## 9.5 Scapegoat Phenomenon

The application of censure on corruption in post-reform China is bureaucratic, but there are still spaces for dominant group's manipulation in irrational and incomplete bureaucracy. Once the corruption case is reported or exposed, it will be preceded to the next stage, which is the investigation, disciplinary punishment or prosecution and sentence. However, the process may not be full of justice. External influences may twist the process and lead to unexpected outcomes through political strategy. Scapegoat phenomenon exposed by Interviewee M (official in power) is one of such bizarre outcomes.

There is a state-owned hotel in xxx City, which used to be the best in that city. The same as other state owned enterprise (SOE thereafter), it faced business difficulties in late 1990s. Also, as other cities did, xxx City government tried to revive it by selling it. However, corruption emerged in the privatization of such a SOE according to the interview. In 2005, two directors of government bureaus were asked to resign. One is the Bureau of Housing Management of XXX City; the other is City Construction Bureau of XXX City. Another clerk was put in jail for the same issue.

The hotel was estimated to be wealthy of 100 million yuan in market. The Secretary (CCP Committee of XXX City, author added) called up a high level meeting with major top officials of XXX City attending. It says it is a democratic meeting, but in fact, everybody listens to the Secretary... The Secretary had made his decision before the meeting started. When the Secretary raised his ideas, nobody had objections. As a result, the hotel was sold for the price of 30 million yuan to a businessman from Zhejiang Province. The meeting

decided that the businessman was allowed to rebuild a new hotel in the same place and no other business action was allowed (Interviewee M, official in power).

When asked what is the social response when the news was leaked, the Interviewee M (official in power) continued that “all local real estate businessmen were surprised and jealous of the Zhejiang businessman for he bought a piece of land at a price 60% lower than the market price, but nobody dared to make a complaint.”

The businessmen started the construction without any obstacles. However, he not only built the hotel, but also four commercial apartment buildings. That was not allowed according to the contract with government... The Bureau of City Construction and Bureau of Housing Management saw the violation from the very beginning, therefore, didn't approve the construction initially. Then it irritated the Zhejiang businessman. How to do it? The businessman wrote a report to the City Committee (CCP committee of XXX City, author added) requesting a special approval. The Secretary endorsed the report with the words of ‘special arrangement for special case’.<sup>22</sup> He brought the endorsed report to the two bureaus. The two directors approved the case immediately when they saw Secretary's signature and comments.... (Interviewee M, official in power).

Expectedly, the Zhejiang businessman made a great amount of easy money by selling the four buildings of apartment. It also raised the real estate price of the XXX city, because the four blocks of apartment are located at a “golden place” and sold at a high price. As Interviewee M (official in power) said:

The previous real estate price on average in our city had been around 2000 yuan per square meter before the XXX Apartments were built.<sup>23</sup> Now, the XXX Apartments pulled up the price. You know how much is the price per square? 5000!... Few people can afford a 100-squared apartment now. The Zhejiang guy must have made 100 million... Everybody can feel corruption from the project... Suspicious of the corruption in the hotel construction and headed by one retired vice director of Dept of Propaganda (XXX CCP committee, author added), many cadre retirees<sup>24</sup> started to report the corruption through official channel. However, it is useless. The Secretary was still in power... There was a small change later. The Secretary was transferred to provincial Dept of National Land Resource... People guess it was because of corruption reporting (Interviewee M, official in power).

A vice governor was assigned to the post of secretary. The retirees were not fully satisfied with the outcome. In their mind, the real corrupt official was still free of charge. They continued to complain to the new secretary. Apparently the mass used their mass power to initiate the application of censure on corruption. The new secretary then faced a difficulty. As interviewee M (official in power) analyzed, on one hand, the provincial CCP committee was certainly aware of the potential corruption, but they only transferred the former secretary to a new post, which has been a punishment, otherwise he would be promoted to a higher position due to the significance of XXX City in XXX Province (like the position of Shanghai, Beijing

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<sup>22</sup>“特事特办” in Chinese.

<sup>23</sup>XXX city is a medium sized inland city which is not well developed compared to coastal areas. The asset market is not as high as the coastal cities.

<sup>24</sup>These old cadres are influenced by communist ideology and Mao's thoughts.

or Guangdong in China). In other words, the provincial CCP committee didn't want to file the case and accuse the former secretary of corruption. The new secretary definitely couldn't stand opposite to the provincial CCP Committee. However, the retired cadres continued to complain his predecessor's corruption giving him pressure; He was then in a dilemma. The created censure on corruption does authorize the public such power, but the decisive power is still in the hand of the ruling group or political elites. Although the new secretary faced difficulty, he solved the problem using political technique later.

The directors for Bureau of City Construction and Bureau of Housing Administration were accused of dedication, and asked to resign... The two directors felt wrong, but had no choice. They knew they couldn't win the case if appealed, and might have a worse outcome. If they resign, they still can keep the social welfare and social security of their former positions. Otherwise, they would have nothing for the rest of life, such as pension... The section director who handled the approval concretely was imprisoned, and had nothing behind. He had nowhere to appeal for no one would buy his argument. He is just a shrimp, and did what his supervisor asked him to do, but turned out to be a criminal... With such punishments, the new Secretary stopped the retiree's complaint. If the retirees would continue complaining, the new Secretary might fight back. The retirees know the Chinese politics very well. It is apparently the best result for them. They finally gave up. The case has, then, completely resolved... The new Secretary changed the case from a corruption case to a dereliction case by political trick. The poor fellow is the section director of City Construction Bureau. He is only the scapegoat (Interviewee M, official in power).

From interviewee's words, we can basically see that "the ruled negotiated their acquiescence, and the rulers responded to their needs" (Lo 1993:3). The new Secretary undoubtedly knows his predecessor took bribes from the Zhejiang businessman, but he chose to punish the section director and director of two bureaus who processed the approval concretely. What he did is not for anticorruption, but to protect his interests. It further confirms that the ruling group or political elites has a prerequisite when apply the censure on corruption. Here the prerequisite for the new secretary is maintaining his dominance because a tough application of censure on corruption may cause the conflict between the provincial CCP Committee and him. Not to risk his political life and also comfort the retired cadres, he used political maneuver to scapegoat others and ignored the justice.

## 9.6 Inconsistency of Censure on Corruption

The application of censure on corruption is done in a bureaucratic form; therefore it is supposed to be consistent. However, the nature of corruption (a form of social censure) lends the ruling group or political elites magnitude power to control the application of censure. Plus the absence of rule of law, such as manipulation is very possible. The controlled or manipulated application of censure absolutely leads to inconsistency.

The *China Criminal Law* (CCL) stipulates the appropriate judicial punishment for various corruption facts. For example, the Article 383 of the CCL provides:



**Table 9.3** The Judicial decision for corrupt officials involved black money

Black money (BM)	Judicial decision (JD)
$BM < 5000$	$JD < 2$ years imprisonment
$5000 \leq BM < 50000$	$1 < JD < 7$ years imprisonment
$50000 \leq BM < 100000$	$5 < JD \leq$ life imprisonment
$BM \geq 1000000$	$10 < JD \leq$ execution

An individual who embezzles not less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than 10 years or life imprisonment; if the circumstances are especially serious, he shall be sentenced to death and also to confiscation of property. An individual who embezzles not less than 50,000 yuan but less than 100,000 yuan shall be sentenced to fixed-term imprisonment of not less than five years and may also be sentenced to confiscation of property; if the circumstances are especially serious, he shall be sentenced to life imprisonment and confiscation of property. An individual who embezzles not less than 5,000 yuan but less than 50,000 yuan shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than seven years but not more than 10 years. An individual, who embezzles less than 5,000 yuan, if the circumstances are relatively serious, shall be sentenced to fixed-term imprisonment of not more than two years or criminal detention.

From above, we can see four levels of corruption which is measured by the amount of “black money”. They are “under 5000”, “from 5000 to 50000”, “from 50000 to 100000”, and “over 100000”. Because there is a range in each category, the corresponding judicial punishment for each category varies to some degree too. For example, criminals in the range of “from 50000 to 100000” may receive 5 years imprisonment and may also receive a life imprisonment, which is shown in the following Table (9.3).

These ranges such as from administrative sanction to 2 years imprisonment, from 1 year to 7 years imprisonment, from 7 years to 10 years imprisonment, 5 years to life imprisonment, and from 10 years imprisonment to execution leave a judicial space for court decision. In other words, the judges have opportunity to apply the same law article with some autonomy. Just because of such judicial space and dependence of court system, the ruling group or political elites can influence the decision-makers for political consideration and group interest consideration. If we look at corruption cases across countries, we can hardly find a strong correlation between length of imprisonment and amount of “black” money in the cases. Here is a very small list of corruption case which shows the corruption money involved and sentenced imprisonment length (Table 9.4).

The judicial inconsistency is most salient in the fourth category which is “over 100,000 yuan”.<sup>25</sup> Most officials received similar criminal charge (around 12 years imprisonment) although the involved corruption money varies from 1 million to 7 million. However, Zhang Dengbang, Luo Yaoxing, Li Honghong, Bi Haibo, Xu

<sup>25</sup>For Zhang Chun, Li Qingchun and Wang Kang cases, the court decisions are even against the law. The court decisions are out of range allowed by the China Criminal Law.

**Table 9.4** The involved corruption money and corresponding judicial punishment in some corruption cases

Officials	Corruption (million ¥)	Court decision
Luo Chaolong	0.03	4 years imprisonment <sup>1</sup>
Zhang Chun	0.033	13 years imprisonment <sup>2</sup>
Liao Xiaochuan	0.045	2 years imprisonment <sup>3</sup>
Wu Jianlin	0.06	6 years imprisonment <sup>4</sup>
Wu Jianyu	0.0635	6 years imprisonment <sup>5</sup>
Li Qingchun	0.066	3 years imprisonment with five years probation <sup>6</sup>
Cui Hua	0.092	8 years imprisonment <sup>7</sup>
Wang Kang	0.17	3 years imprisonment with five years probation <sup>8</sup>
Li Haifeng	0.179	8 years imprisonment <sup>9</sup>
Zhang Risheng	0.185	8.5 years imprisonment <sup>10</sup>
Li Hongyong	0.2	10 years imprisonment <sup>11</sup>
Jiang Liping	0.22	7 years imprisonment <sup>12</sup>
Wang Ling	0.23	10 years imprisonment <sup>13</sup>
Nie Xiaohong	0.2558	14 years imprisonment <sup>14</sup>
Han Yuzhen	0.26	7 years imprisonment <sup>15</sup>
Liu Dazhi	0.28	11 years imprisonment <sup>16</sup>
Wang Ronggen	0.28	12 years imprisonment <sup>17</sup>
Luo Kaiqing	0.29	15 years imprisonment <sup>18</sup>
Du Fulai	0.3	11 years imprisonment <sup>19</sup>
Huang Guixing	0.35	15 years imprisonment <sup>20</sup>
Wang Qiaosheng	0.36	20 years imprisonment <sup>21</sup>
Yang Bin	0.36	11 years imprisonment <sup>22</sup>
Xiong Daoquan	0.37	10 years imprisonment <sup>23</sup>
Zhoushi Bo	0.42	6 years imprisonment <sup>24</sup>
Fan Yongjian	0.43	11 years imprisonment <sup>25</sup>
Tang Xingya	0.439	10 years imprisonment <sup>26</sup>
Shen Zhenlin	0.59	13 years imprisonment <sup>27</sup>
Wang Yong	0.66	20 years imprisonment <sup>28</sup>
Sun Jing	0.735	12 years imprisonment <sup>29</sup>
Wang Degui	0.8	11.5 years imprisonment <sup>30</sup>
Liu Zhibing	0.86	15 years imprisonment <sup>31</sup>
Hou Wujie	0.88	11 years imprisonment <sup>32</sup>
Shangjun	0.9065	10 years imprisonment <sup>33</sup>
Liu Jiayi	0.915	13 years imprisonment <sup>34</sup>
Cai Haisheng	0.92	13 years imprisonment <sup>35</sup>
Wang Xingyao	0.95	10 years imprisonment <sup>36</sup>
Yang Zhixin	0.968	12.5 years imprisonment <sup>37</sup>
Hao Heping	1	15 years imprisonment <sup>38</sup>
Zhong Lei	1.005	10 years imprisonment <sup>39</sup>

(continued)

**Table 9.4** (continued)

Officials	Corruption (million ¥)	Court decision
Diao Min	1.0145	13 years imprisonment <sup>40</sup>
Kong Fanli	1.068	12 years imprisonment <sup>41</sup>
Zhang Dengbang	1.07	life imprisonment <sup>42</sup>
Luo Yaoxing	1.1185	life imprisonment <sup>43</sup>
Zhou Yinxiao	1.2	14 years imprisonment <sup>44</sup>
Yao Zhiyi	1.21	12 years imprisonment <sup>45</sup>
Ji Hanping	1.35	10.5 years imprisonment <sup>46</sup>
Tang Nishan	1.39	15 years imprisonment <sup>47</sup>
Li Honghong	1.6	life imprisonment <sup>48</sup>
Lv Zongming	1.65	8 years imprisonment <sup>49</sup>
Lian Zhenhui	1.7	13 years imprisonment <sup>50</sup>
Zhu Zuoyong	1.7	12 years imprisonment <sup>51</sup>
Liang Fawen	1.73	6 years imprisonment <sup>52</sup>
Bi Haibo	2	life imprisonment <sup>53</sup>
Tang Huaimin	2	15 years imprisonment <sup>54</sup>
Xu Fangming	2.14	life imprisonment <sup>55</sup>
Ma Ping	2.23	13 years imprisonment <sup>56</sup>
Xu Zhirui	2.24	14 years imprisonment <sup>57</sup>
Yang Jianzhong	3.3	14 years imprisonment <sup>58</sup>
Kui Zhennan	3.45	death penalty with two years' probation <sup>59</sup>
Ma Sheng	3.63	20 years imprisonment <sup>60</sup>
Zhang Yuren	3.95	15 years imprisonment <sup>61</sup>
Chen Jiarong	4	15 years imprisonment <sup>62</sup>
Zhang Enzhao	4.193	15 years imprisonment <sup>63</sup>
Yang Zhengfa	4.7	life imprisonment <sup>64</sup>
Yang Zhiming	5.4	15 years imprisonment <sup>65</sup>
Zhu Xuechun	5.92	15 years imprisonment <sup>66</sup>
Wu Zhenhan	6.07	death penalty with two years' probation <sup>67</sup>
Zheng Daofang	6.21	death penalty with two years' probation <sup>68</sup>
Wang Youjie	6.34	death penalty with two years' probation <sup>69</sup>
Zheng Xiaoyu	6.49	death penalty <sup>70</sup>
Hu Changqing	7.13	death penalty <sup>71</sup>
Ruan Shineng	7.23	13 years imprisonment <sup>72</sup>
Liu Jianghua	8.15	death penalty <sup>73</sup>
Li Yushu	8.16	death penalty <sup>74</sup>
Shen Hua	8.4	death penalty with two years' probation <sup>75</sup>
Lei Yuanli	9	death penalty with two years' probation <sup>76</sup>
Cong Fukui	9.36	death penalty with two years' probation <sup>77</sup>
Liu Zhongshan	10	death penalty with two years' probation <sup>78</sup>
Luo Yaoxing	11.185	life imprisonment <sup>79</sup>

(continued)

**Table 9.4** (continued)

Officials	Corruption (million ¥)	Court decision
Wen Mengjie	15	death penalty <sup>80</sup>
Wang Zhaoyao	15.14	death penalty with two years' probation <sup>81</sup>
Liu Junqing	35.6	death penalty with two years' probation <sup>82</sup>
Chen Xin	40	death penalty <sup>83</sup>
Li Rongxing	41.81	death penalty with two years probation <sup>84</sup>
Li Weimin	101	20 years imprisonment <sup>85</sup>
Sang Yuechun	120	death penalty <sup>86</sup>
Wang Shouye	160	death penalty with two years' probation <sup>87</sup>

*Note* 1. The amounts of corruption are not accurate for some officials embezzled or took bribes in foreign currency. The calculation is based on exchange rate on the writing date. 2. The Court decision is also based on other considerations such as reporting others' crime and confess.

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<sup>2</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-05/0002710926.html>

<sup>3</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-21/0002711199.html>

<sup>4</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-11-21/0002710736.html>

<sup>5</sup>Retrieved on Dec 12, 2007 from [http://www.smjcy.xm.fj.cn/case/20040101.htm#Scene\\_1](http://www.smjcy.xm.fj.cn/case/20040101.htm#Scene_1)

<sup>6</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-10-19/0002710214.html>

<sup>7</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-18/0002711083.html>

<sup>8</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-06-12/0002714052.html>

<sup>9</sup>Retrieved on Dec 12, 2007 from <http://www.chinanews.com.cn/2001-01-04/26/64524.html>

<sup>10</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-06-12/0002714051.html>

<sup>11</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-10-23/0002710277.html>

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<sup>13</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-03-30/0002713108.html>

<sup>14</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-01-11/0002711524.html>

<sup>15</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-03-29/0002713085.html>

<sup>16</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-11-20/0002710701.html>

<sup>17</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-08/0002710948.html>

<sup>18</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-10-16/0002710192.html>

<sup>19</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-11/0002710972.html>

<sup>20</sup>Retrieved on Dec 12, 2007 from <http://past.people.com.cn/GB/channel11/11/20001126/327051.html>

<sup>21</sup>Retrieved on Dec 12, 2007 from <http://news.sina.com.cn/c/146699.html>

<sup>22</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-11/0002710975.html>

<sup>23</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-11-06/0002710527.html>

<sup>24</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-08-06/0002714646.html>

<sup>25</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-19/0002711142.html>

<sup>26</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-11/0002710980.html>

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<sup>29</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-03-30/0002713109.html>

<sup>30</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-11-02/0002710496.html>

<sup>31</sup>Retrieved on Dec 12, 2007 from [http://news.xinhuanet.com/newscenter/2002-06/24/content\\_454883.htm](http://news.xinhuanet.com/newscenter/2002-06/24/content_454883.htm)

<sup>32</sup>Retrieved on Dec 12, 2007 from [http://news.xinhuanet.com/politics/2006-09/19/content\\_5108403.htm](http://news.xinhuanet.com/politics/2006-09/19/content_5108403.htm)

<sup>33</sup>Retrieved on Dec 12, 2007 from [http://news.xinhuanet.com/legal/2007-02/02/content\\_5688220.htm](http://news.xinhuanet.com/legal/2007-02/02/content_5688220.htm)

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- <sup>73</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2007-02-05/0002712049.html>
- <sup>74</sup>Retrieved on Dec 12, 2007 from <http://www.sc.yfw.com.cn/shownews.asp?id=9448>
- <sup>75</sup>Retrieved on Dec 12, 2007 from <http://news.sohu.com/52/81/news146808152.shtml>
- <sup>76</sup>Retrieved on Dec 12, 2007 from <http://news.sina.com.cn/c/l/2006-09-05/230910928892.shtml>
- <sup>77</sup>Retrieved on Dec 12, 2007 from <http://news.sina.com.cn/c/2003-06-13/1843217017s.shtml>
- <sup>78</sup>Retrieved on Dec 12, 2007 from <http://www.sc.yfw.com.cn/shownews.asp?id=9448>
- <sup>79</sup>Retrieved on Dec 12, 2007 from [http://www.gd.xinhuanet.com/newscenter/photo/2006-09/03/content\\_7940865.htm](http://www.gd.xinhuanet.com/newscenter/photo/2006-09/03/content_7940865.htm)
- <sup>80</sup>Retrieved on Dec 12, 2007 from [http://news.xinhuanet.com/legal/2005-12/21/content\\_3949050.htm](http://news.xinhuanet.com/legal/2005-12/21/content_3949050.htm)
- <sup>81</sup>Retrieved on Dec 12, 2007 from [http://www.ycwb.com/ycwb/2007-01/13/content\\_1349005.htm](http://www.ycwb.com/ycwb/2007-01/13/content_1349005.htm)

<sup>82</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-12-19/0002711125.html>

<sup>83</sup>Retrieved on Dec 12, 2007 from <http://news.sohu.com/52/37/news146853752.shtml>

<sup>84</sup>Retrieved on Dec 12, 2007 from <http://www.chinacourt.org/public/detail.php?id=206061>

<sup>85</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-11-27/0002710787.html>

<sup>86</sup>Retrieved on Dec 12, 2007 from <http://www.spp.gov.cn/site2006/2006-09-30/0002710025.html>

<sup>87</sup>Retrieved on Dec 12, 2007 from [http://news.phoenixtv.com/society/1/200612/1222\\_343\\_52406.shtml](http://news.phoenixtv.com/society/1/200612/1222_343_52406.shtml)

**Table 9.5** Responses on judicial charge on corrupt officials

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
Some corrupt cadres were less-charged	2.28	5.70	19.28	53.29	19.46	3.82
Some corrupt cadres were over-charged	14.99	25.77	39.61	16.48	3.16	2.67
There are some uncaught corrupt cadres	2.02	2.98	8.85	47.85	38.30	4.17

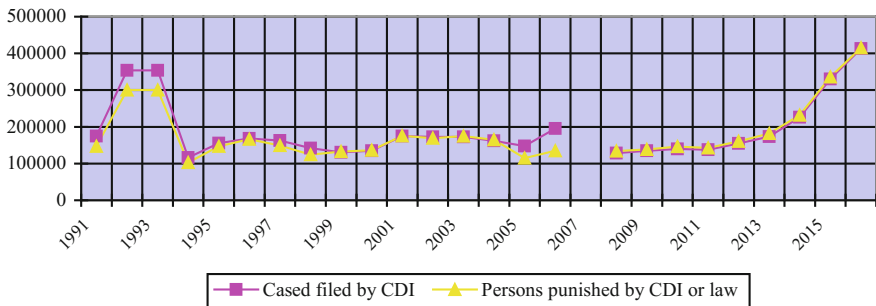
Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

Fangming and Yang Zhengfa were particularly “unlucky” for they received life imprisonment but others received around 12 years imprisonment with similar amount of bribes. Or we can say other officials are particularly “lucky”. These “lucky” or “unlucky” are definitely not random, but have stories behind them. Although the judicial space offers judges authority to interpret the law in their own way, some “famous” cases could be used as judicial standards, which had been practiced by judges. For example, Hu Changqing was executed for 5 million yuan. The cases later in which officials misappropriate, embezzle or receive over 5 million yuan should follow it, but the facts differ from that. In the above list, more than 23 officials took more than 5 million yuan black money, but only 7 were executed. The rest either received life imprisonment or death penalty with 2 years probation. Such a fact confirmed respondents’ opinion (Table 9.5) that some corrupt official were less-charged (72.7%) and many officials escaping from judicial charge due to many reasons (86.2%). The judicial inconsistency of anticorruption further suggests that the application of censure on corruption is complicated and involves many interest parties. The rule of law guarantees an independent, open, and checked and balanced judicial system which can resist external interference or influences is indispensable for efficacy of anticorruption (Neumann 2002). However, if there were no rule of law in post-reform China, there were no effective external conditioning factors that could balance their power, therefore these parties were able to input their interests into the application of censure, and distort the process.

## 9.7 Facial Result of Censure on Corruption in Post-Reform China

Corruption is a form of social censure which is created and applied for the ruling group or political elites' interests; therefore the key "product" of censure on corruption is the purge of dissents, degrading enemy class, and maintaining ideology which are the political goals of the social censure. We discussed these key "products" earlier. However, since corruption appears in the form of behavior, we need to check another side of result for the censure on corruption which is the efficacy of anticorruption we normally consider. What is the efficacy of anticorruption in post-reform China?

Both internal and external research suggests that anticorruption in post-reform China wasn't pleasing to the public given that there was no rule of law. The Corruption Perception Index (CPI) calculated by the Transparency International implies there has been no obvious improvement for the cleanness of governance in post-reform China. Its ranking on cleanness stays stable in the middle. In 2004, it was ranked 71st out of 145 countries; in 2008, it was ranked 72th out of 158 countries; in 2012, it was ranked 80th out of 163 countries; in 2015, it was ranked 83nd out of 179 countries; and the CPI scores stay stable around 3.5.<sup>26</sup> The research result from the PERC tells a similar story.<sup>27</sup> The Chinese internal reports also suggest a steady degree of corruption. Every year, there are around 40,000 cases filed by Procuratorate in the whole China although they received many more reporting and only a small part of reporting were filed. The statistics of filed cases from the CCDI stays around 150,000 before Wang Qishan is in charge of the CCDI



**Graph 9.1** Statistics of filed cases and punished individuals with CCP regulations by the CCDI  
*Sources* China Statistics Yearbook 1990–2016

<sup>26</sup>Retrieved on April 1, 2008 from [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi).

<sup>27</sup>Refer to <http://www.asiarisk.com/>.

**Table 9.6** Responses on the corruption in post-reform China

Variable	Strongly disagree (%)	Disagree (%)	Not sure (%)	Agree (%)	Strongly agree (%)	Mean
There are more and more corruption in post-reform China	1.31	12.09	30.06	38.12	18.40	3.60
The averaged involved money in corruption case increased in the last two years	0.88	4.12	33.74	42.33	18.93	3.74

Note 1: strongly disagree; 2: disagree; 3: not sure; 4: agree; 5: strongly agree

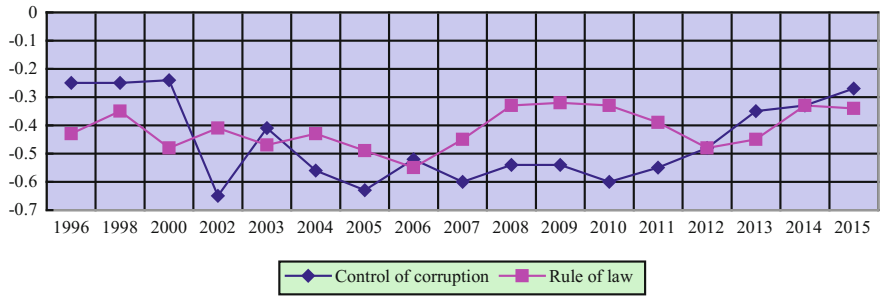
which are much larger than the statistics from the procuratorate, so is the statistics of punished individuals (Graph 9.1).<sup>28</sup> Since all cases have been screened by the CCDI or CDIs first, there are a large part of cases in which suspects only received disciplinary punishment, and not forwarded to procuratorate for judicial prosecution. Apparently, from either statistics of the external neutral organization or statistics of internal reliable source, it is hard to see a noticeable progress in the cleanness of governance.

The author's research tends to suggest that the corruption in mass's perception may be even worse than the above reports because of absence of the rule of law. In the survey, most of respondents thought that there were more and more corruption in Post-reform China and the averaged involved money increased in the past years (Table 9.6). The interview data supported findings from the survey; most interviewees held that corruption was getting worse in China. As Interviewee N (official in power) said, "economic level is raised, so is the corruption level." Both the quantitative and qualitative data were not pleasing regarding the corruption in post-reform China; so are the results from external and internal organizations. Given these, we are therefore inclined to say the combat against corruption in post-reform China has not been successful although the application of censure on corruption was successful for the ruling group or political elites.

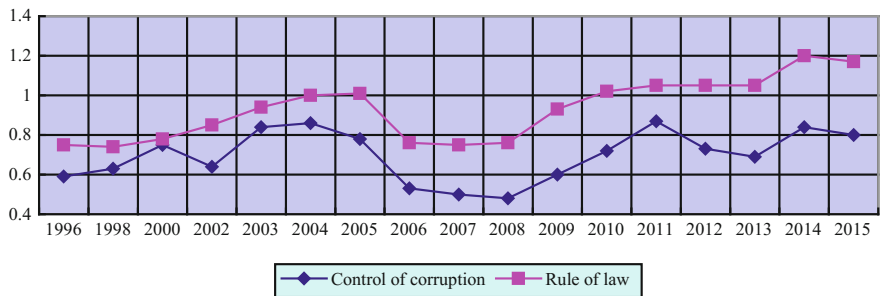
The unsuccessfulness of anticorruption is suggested to be caused by the arbitrariness and manipulation which is further brought about by the political nature of corruption and absence of rule of law. The rule of law is so important that it co-varies with clean of governance in all Chinese-speaking societies. The World Bank measures governance of most countries every year in six dimensions. They are voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. If we graph the rule of law and control of corruption, we may see the co-variation between

<sup>28</sup> The increasing case number in 1991, 1992 and 1993 is due to the tough anticorruption campaign after the Tiananmen Square Protest. The drop in 1994 is because of Deng Xiaoping's Southern Tour and warning against Jiang Zenmin's leftist approach.

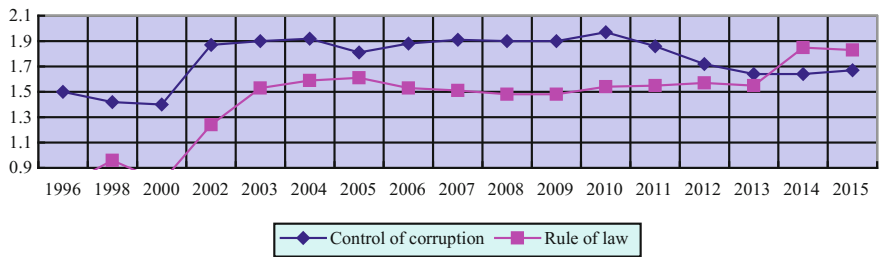




**Graph 9.2** Co-variation of the rule of law and control of corruption in Post-reform China *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)

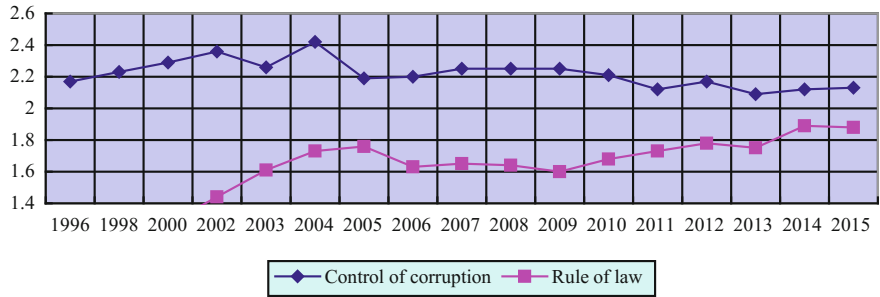


**Graph 9.3** Co-variation of the rule of law and control of corruption in Taiwan *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)

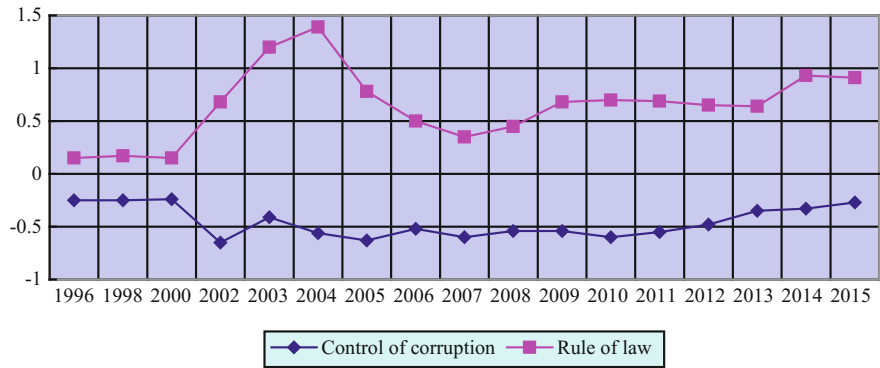


**Graph 9.4** Co-variation of the rule of law and control of corruption in Hong Kong *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)

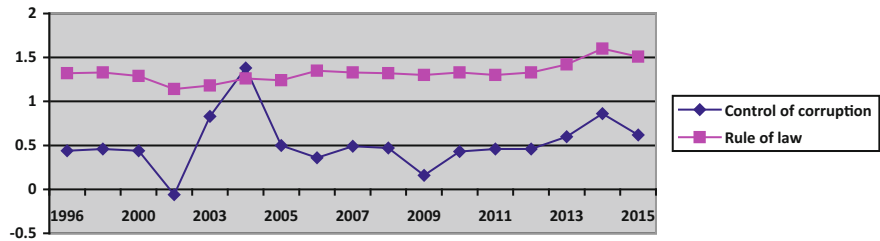
them. Political system may be the confounding factor, and therefore is controlled for. The two indicators for five major Chinese-speaking societies (post-reform China, Hong Kong, Taiwan, Macao, and Singapore) were graphed (Graphs 9.2, 9.3,



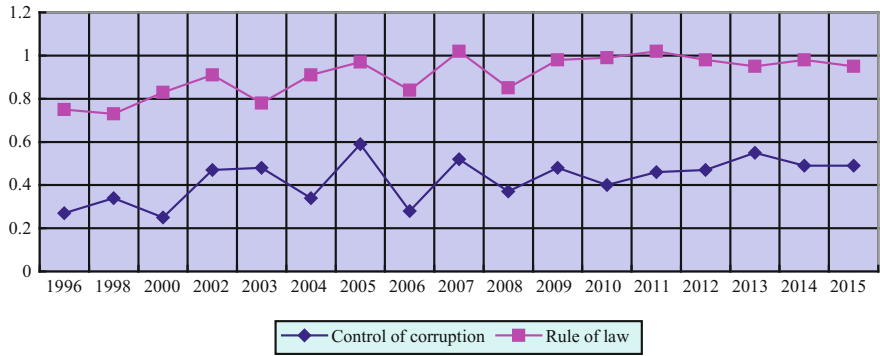
**Graph 9.5** Co-variation of the rule of law and control of corruption in Singapore *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)



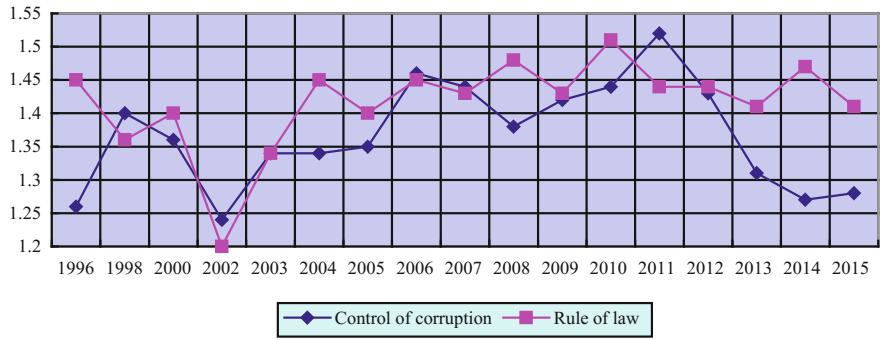
**Graph 9.6** Co-variation of the rule of law and control of corruption in Macao *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)



**Graph 9.7** Co-variation of the rule of law and control of corruption in Japan *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)



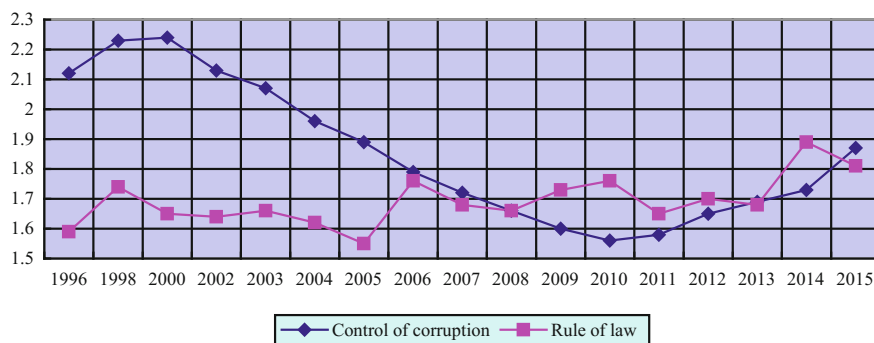
**Graph 9.8** Co-variation of the rule of law and control of corruption in South Korea *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)



**Graph 9.9** Co-variation of the rule of law and control of corruption in France *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)

9.4, 9.5 and 9.6). There is no exception that they co-vary in all five societies. That is say, when the score of rule of law goes down, the score of control of corruption descends too. While the score of rule of law ascends, the score of the other also soars.

To eliminate the possible confounding factor of nationality, the author further graphed the rule of law and control of corruption in Japan and South Korea which share Confucian culture with Chinese-speaking society (Graphs 9.7 and 9.8). The finding is the same to the one found from five Chinese societies. That is to say control of corruption co-varies with the rule of law.



**Graph 9.10** Co-variation of the rule of law and control of corruption in United Kingdom *Sources* The website of the World Bank Institute. Retrieved on Dec 20 2016 from [http://info.worldbank.org/governance/wgi/mc\\_countries.asp](http://info.worldbank.org/governance/wgi/mc_countries.asp)

The co-variation may be partially caused by Confucian culture. Therefore the author also graphed the rule of law and control of corruption in France and United Kingdom which come from Christian and Catholic culture (Graphs 9.9 and 9.10). The result from these two countries tells the same story. It also suggests that the rule of law does play an important role in reducing arbitrariness and manipulation in the application of social censure and then helping curb corruption.

## 9.8 Concluding Remarks

A successful creation and application of social censure undoubtedly can help the ruling group or political elites to reach its goal. For example, Mao Zedong used censure on corruption to cleaned up capitalist ideology within the CCP by Three-antis (Lo 1993); Mao also used censure on corruption to purge the bourgeoisie class through Five-antis (Lo 1993); Deng Xiaoping used party rectification to clear obstacle for the reform policy (Lo 1993); Jiang Zemin used censure on corruption to rebuild legitimacy for the CCP after the Tiananmen Incident; Hu Jintao used the censure on corruption to move hinders on the way of development; local cadres used the censure on corruption to establish authority; some official used the censure on corruption to win power struggle. These are the intended positive results for the planner of the censure. However, the nature of corruption as a form of social ensure and the absence of rule of law also lead to two kinds of outcome which might not been in the predictions of the planner of the censure, which is the rampancy of corruption and the weird anticorruption cases.

Regarding the rampancy of corruption, the CPI from Transparency International is convincing to either scholars or the public because of its neutrality. The CPI is calculated on the base of several other surveys on corruption in Post-reform China. It avoids possible biases in single surveys. The CPI for China is not optimistic

compared to its economic development. Or to say corruption is regarded to be serious among government officials. The contradiction between rampancy of corruption and Chinese government's numerous efforts to fight against corruption make audience to suspect the real motive of government's anticorruption.

Moreover, we may find many astonishing phenomena or cases in the censure on corruption in post-reform China. We may see the ruling group or political elites target officials selectively for various reasons. The target is always the political opponents or dissents for the ruling group. We may also see patronage phenomena wherein the ruling group use political strategy to protect their henchman when their henchmen are targeted. In some extreme cases, the ruling group or political elites just ignore corruption fact when it hurts their dominance. Such bold action is plausible because the mass have no power to influence the censure on corruption, what they can do most is to report it through official channel which is further controlled by the dominant group. We may also see some key persons in corruption cases escaped from the investigation and shuanggui while the non-significant staff is put in jail. The ruling group or political elites scapegoat the disadvantaged persons for the privileged person's interests or their group interests. We may also see some ruling groups or political elites are so powerful that they can use the power of censure to fabricate corruption fact in the aim of cracking down targeted group or persons. These strange phenomena are inclined to suggest that there is hardly a consistency on the censure on corruption: some officials were punished wrongly; some received less-years imprisonment than others; some got away from the criminal charge. In a word, the ruling group or political elites dominate the political arena, and abuse their position for private gains; they make rules for society, and manipulate the loopholes in the law to serve their own interests (Lo 1993).

A common feature of the above cases is the abuse of power on censure and absence of rule of law. Since corruption is a form of social censure, and born a tool for the ruling group, the interests of the ruling group or political elites are secured and maintained in the application of censure on corruption. However, the rule of law can effectively constrain the ruling group's power abuse and help reduce injustice in the application of censure on corruption. First, in the rule of law society, judicial system is independent so that the ruling group's influence on the judicial process will be decreased. Second, legislation is complete so that there is no judicial vacuum for the ruling group or political elites to manipulate. Third, the rule of law excludes the ruling group, political elites and government's interference in the judicial process so that it is fair and neutral. Therefore we need to "shift the theoretical emphasis to the interplay of law, ideologies, and political economy" (Lo 1993:5). For Chinese government, to win the war against corruption, the key will be realization of the rule of law.

## Chapter 10

# Conclusion

Corruption accompanied Chinese history all the time, so is anticorruption. The written legal codes in China started from Shang Dynasty (商朝), and the anticorruption has been included in its legislation (Wang 2005). Since that, governments at all stages (slavery system, feudal system, capitalist system, socialist system or communist system) put a lot of efforts on corruption control. There emerged several periods of clean governance, such as Tang Taizong period (唐太宗时期), Ming Taizu period (明太祖时期), Yongzheng Period (雍正时期)<sup>1</sup> and Mao Zedong Period. Taking lessons from the corrupt dynasties and learning from clean governances, Deng Xiaoping used both institutional and campaign approaches to curb corruption.

China in post-reform period has been making amazing progress in economic development. However, what accompanied booming economy was the rampant corruption. Chinese government realized the uncontrolled corruption and its negative impacts on healthy social development and tried very hard to curb it with disciplinary actions, judicial efforts and political campaigns. However, the outcome has not been pleasing. Data from various sources such as the Transparency International, the Political and Economic Risk Consultant, the survey and interviews conducted by the author suggest that China is facing difficulties in curbing corruption. As Steidlmeier (1999) states, corruption is endemic and flies in the face of Chinese (as well as Marxist) tenets and traditions of public morality and the moral dimensions of a public officials' responsibility. The contradiction between great efforts of fighting corruption and pessimistic outcome of anticorruption gave birth to my initiatives on the topic: what is the real reason behind the failure of anticorruption in post-reform China? The author considers it is necessary to overthrow the assumption of normal perspectives on corruption study which is the ruling class's neutrality and unbiased stands in anticorruption. Actually the defining corruption and anticorruption is full of interest considerations and political

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<sup>1</sup>Retrieved on May 1, 2008 from <http://www.lianzheng.com.cn/html/szjj/20060629102856625.htm> and [http://www.cniciw.gov.cn/info\\_disp.php?id=5687](http://www.cniciw.gov.cn/info_disp.php?id=5687).

manipulations. The author also holds that the law status plays an important role in the process of defining corruption and anticorruption. The interactions between law status and the essence of corruption and anticorruption might cause the unbridled corruption in post-reform China.

## **10.1 Categories of Behavior or Social Censure?**

### ***10.1.1 What Is Social Censure?***

Corruption comes from the ancient era, so is the anticorruption. However, the question what is corruption has been puzzling scholars for a long time. One group of scholars holds that corruption is a set of behaviors which either violates law, morality, public interests, or public opinion no matter what situation it is in (Friedrich 1972; Bryce 1921; Nye 1967; Rose-Ackerman 1978; Heywood 1997). For them, corruption is regarded as a clear-cut, neutral and objective behavior category which truly exists in all societies; we call them as realist approaches. There are some other directions studying corruption. For instance market-centered approach just holds people treat their job as a pure market to maximize the profit (Klaveren 1989). Rent-seeking approach considers corruption is a process in which officials seek rent (Tullock 1967); the principle-agent-client approach states that corruption happens when an agent betrays his boss (principle) for his own interests (Banfield 1975). These approaches devoid the behavioral feature of corruption and try to explain how and why corruption happens, therefore are named as nominalist approaches. Both realist approaches and nominalist approaches provide insights for corruption research and explain some aspects of corruption. However, they all face difficulties. The realist perspectives ignore the societal structure wherein defining corruption and anticorruption happens; the nominalist perspectives ignore the appearance of corruption which is some particular behaviors. Moreover, both groups of perspectives are in dilemma when face changing definitions of corruption by governments and interweaving feature of anticorruption and politics. On the contrary, social censure theory keeps the merits of both groups of perspectives and avoids the shortcomings of those perspectives. Or to say it successfully integrates the virtues of realist perspectives and nominalist perspectives and analyzes corruption or anticorruption dynamically and statically.

It is true that corruption appears in the format of behavior which is defined in the legislation. The behaviors are defined basically clear-cut and nonnegotiable. However, corruption is much more than a set of behavior category. First, the definition of corruption and anticorruption are class-biased; they are done for the interests of government with political considerations taken into account rather than for a neutral and unbiased stand. Second, since governments are different at different stages in terms of ideology and class interests, definitions of corruption and anticorruption would be different. Third, the defining of corruption and

anticorruption are much contextualized. Although the ultimate goal is the same, the concrete goals and strategies of anticorruption may be different for different historical conjunctures which reflect social relations and particular political scenarios at particular moment. To take all these factors into account, the best perspective to view corruption is social censure theory which embraces all aspects of corruption and touches the deep nature of corruption.

Social censures are “negative ideological categories with specific, historical applications” (Sumner 1990:26). The word “censure” itself gives us a basic feature of the perspective: the censurer takes the moral and political commanding height. Or to say, there are two assumptions behind the word “censure”. First, the censurer’s moral or political standards are assumed absolutely right and unchallengeable and the censured people’s behavior is absolutely wrong according to the ruling group’s standards and need to be corrected. Second, the censure usually happens from the top to bottom not the way reversed, just like only can parents condemn children if parents think the children are wrong while children cannot blame parents even if the children think parents are wrong. Therefore social censure takes place when the ruling group or political elites are motivated by their interests and use their own morality, ideology or interests as the gauge stick to criticize and denounce the targeted behavior or persons with punishments.

### ***10.1.2 The Creation of Censure on Corruption***

The creation of social censure has certain characteristics which is different from other social processes. First, the creation of social censure needs power or authority to complete, and therefore usually is done by the ruling group or political elites (Sumner 2004). For the disadvantaged group within the ruling class, it is possible for them to create a form of social censure, but the possibility of success is smaller than that for the dominant group within the ruling class. “As the dominant class bloc has the capacity to mobilize the mass media and government institutions, it is always in an advantageous position to articulate its own interests” (Lo 1993:153). The ruled people have no political resources to create social censure and can only contest with the ruling group or political elites for the definition of social censure. In the dictatorship states, the disadvantaged even have no contestation power (Lo 1993). Survey respondents admitted that they couldn’t fight corruption individually and the definition of corruption was created by government. Interviewees in this study hold defining corruption was government’s thing and favored the party in power. In this sense, the ruling class, dominant group, government, or political elites is suggested to have such capacity to create such a destroying label while the ruled class, disadvantaged or individuals lack such a power. In other words, to define corruption needs political resources to accomplish. It is not the case that everyone can define corruption or modify the definition of corruption out of their intention or ideology.



Second, since the creation of social censure is a game played by the powerful side, it is mainly based on ideology, social values, mores and morality which belong to the powerful side such as the ruling group or political elites. The ruling group's ideology will usually be accepted by the public. If there are parts of dominant ideology or social values not generally accepted by the public, the ruling group will use their political resources such as propaganda to influence and change people's opinion first and make it accepted to the public, which is similar to the case of "false consciousness." Both interviewees (including jailed officials) and survey subjects in this study agreed that corruption was against their morality and had no objections to government's definition on corruption. The jailed officials explained that it was out of social pressure for a living to take bribes or misappropriate public fund rather because their morality or mores accept it. Such a moral foundation wins legitimacy of censure on corruption for the ruling party and makes the censure on corruption much easier for the ruling group.

Third, with such a moral base, the censure on corruption is created as a negative label to be attached to the targets. The survey responds suggest that descriptions on corrupt official and corrupt behaviors in all media such as TV, newspaper, magazine and radio were negative. The impacts of negative label of corruption were suggested to be huge. It is created to be so negative that both the censured and the public hate it and stay from it. Its negative-ness particularly leaves great impacts on the censured. The censured feel humiliated once the negative label is attached to them and therefore will change so as to confirm to the dominant values or ideology. Its negative-ness also brings influences to the public. Once the public accept its negative-ness, they will mark off those labeled persons and try to stay distance from them or even their family, which further gives a huge pressure to the censured. Respondents in the survey don't like to make friends with corrupt officials and don't like to be colleagues with corrupt officials. Interviews in this study confirm it because jailed officials' social circles collapsed and even their children felt humiliated in school. The negative-ness of censure on corruption helps signify some particular behaviors and denounce those behaviors in the aim of correcting those behaviors (Sumner 1990).

Fourth, the creation of social censure is political. It is political as we discussed above, because political resources are indispensable for a successful creation of censure on corruption. It is political also because there are always political goals behind social censure and these political goals are for the censorer's interests. For example, by exploring the complex dynamics between (1) state institutions, (2) state institutions and class relations, (3) state and civil society and (4) local government and central state, Vogler (1990) discovers the composition of the magistracy of England and Wales in history has not conformed to democracy suggesting the advocacy of a so-called apolitical professional, scientific criminal system is an extreme political position for the sustenance of bourgeois and Tory domination of judiciary. With an analysis of one month's television crime drama, Sparks (1990) finds that the censure of suffragettes was intended to affect public discourses on crime and law enforcement so as to reinforce or precondition any social tendencies towards a more authoritarian 'law-and-order' society. Sumner and

Sandberg (1990) analyze the press censure of political demonstration in 1973 by examining the correspondence between the ideology contained in the censure and the growing Tory rhetoric for a program of penal law and a morally aggressive state arguing that the selective censure of demonstration in the early 1970s was to restructure liberal ideology which further is an antecedent causal condition of Thatcherite authoritarian statism and the neo-liberalism of the 1980s. The common political goals may be to purge political opponent, to remove dissent, to win legitimacy, to build up authority, to win a political reform, to crack down opposing class, and to cleanup opposing ideology (Lo 1993). These goals are usually “unseen” to the public and can only be found by analyzing the historical conjuncture in which censure on corruption happens. It is political further because political strategy is needed to create a form of social censure successfully for social censure “are subject to continual resentment, resistance and redefinition” by the oppositions (Sumner 1990:27). For the censure on corruption, to modify corruption or to include it into other political movement also needs political strategies for there are always opposing group which may be against it. For example, both former president Jiang Zemin and Hu Jintao tried to rectify the CCP with the censure on corruption to build up his authority. However, the censure on corruption was covered up and appeared as a set of political ideas under their name (namely “Three-stresses” and “Keeping Communist Advances”). It is an appropriate political strategy for them to cover up censure of corruption and its political goals because a campaign called anticorruption may encounter objections from opposing groups and the public at particular historical moment; on the contrary, a campaign titled differently can help win legitimacy from the CCP and the public.

### ***10.1.3 The Application of Social Censure on Corruption***

The application of censure on corruption is more complicated than the creation of corruption as a crime. First, the ruling group or political elites will ensure that their ultimate dominance won't be hurt in the process of censure. Or to say, there are prerequisites for censure of corruption in the ruling group's mind. The censure on corruption is like a double-edged sword which can be used to achieve particular goals, and may also bring harms to the censurer. The harms may be caused by various reasons. For example, economic development currently is the main source of legitimacy for the CCP, so economic development is placed a higher position than the censure on corruption at particular moment (Fan and Grossman 2001). Or to say, if the censure on corruption would hamper economic development, it would be stopped or paused. Former President Jiang launched the anticorruption campaign after the Tiananmen Incident and it lasted for a long time, which hurt economic development. Deng Xiaoping realized such negative impacts and stopped it by giving speeches in a southern tour. Also for instance, to avoid unusual resistance from the censured, Chinese government had to remove the commander of Military

District of Shanghai and director General of Shanghai Armed Police Force with his henchmen before cleanup corruption in Shanghai (Chen et al. 2007).

Second, to legitimate censure on corruption, to have a quick result, and to reach other political goals, the censure on corruption in post-reform China is done in both bureaucratic form and campaign style. The Chinese government established judicial system such as anticorruption bureaus to fight corruption; special anticorruption organs such the Commission for Discipline Inspection and Supervisory organs were also set up at four levels to handle corruption cases (Ding 1997). Both survey respondents and interviewees agreed to that anticorruption was dealt with by those departments, especially the CCDI. Such kind of bureaucratic form can help the ruling group or political elites to cover the political goals of social censure, legitimate the social censure, and make it acceptable and unchallengeable to the public including the targeted people. Besides the bureaucratic form, the censure on corruption is also done in campaign format in post-reform China. Chinese leaders chose campaign format to fight against corruption for various reasons. A common reason is that the institutional approach was not effective and the CCP had to rely on campaign to stop rising tendency of corruption. In many cases, campaign could help the ruling group or political elites to achieve its political goal more efficiently and easily. For instance, Deng Xiaoping used anticorruption campaign (called party rectification) in the early 1980s to clean-up leftist ideology and leftist group who were against the Reform and Open Policy.<sup>2</sup> The conservative group led by Hu Qiaomu and Deng Liqun fought back with another anticorruption campaign called Anti-Spiritual Pollution later.<sup>3</sup> These objectives obviously couldn't be achieved via normal institutional approach. What approach to choose at particular historical conjuncture depends on the ruling class's political goal. They will choose what is convenient to them.

Third, as mentioned above, there are always political goals behind the censure on corruption although the political goals are covered up by the excuse of normal anticorruption which is about justice and healthy society. Because the created social censure is to be applied to many situations and by so many agents, the political objectives are not the same. For instance, in the situation of post-coup, the anticorruption is launched to discredit prior leadership and justify assumption of power; in the situation of post-revolution, the main objective of anticorruption is to fulfill mandate, consolidate power and manipulate political agenda; in the situation of incumbent, anticorruption is to maintain political security and acceptance, manipulate political agenda and for self-preservation; in the situation of post-succession, anticorruption is made to consolidate power and create public perception of continuity; in the situation of post-election, the leaders will always use anticorruption to facilitate re-election, consolidate power and manipulate political agenda (Gillespie and Okruhlik 1991).

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<sup>2</sup>Retrieved on May 10, 2008 from [http://news.xinhuanet.com/ziliao/2005-02/07/content\\_2558439.htm](http://news.xinhuanet.com/ziliao/2005-02/07/content_2558439.htm).

<sup>3</sup>Retrieved on May 10, 2008 from <http://news.163.com/05/0508/10/1J7ND22H00011247.html>.

Those situations are the general political background in which the censure on corruption arises. There are some variations in the same political background which influence the objectives of anticorruption too. For example, in the same socialist background of China, the political objectives for the censure on corruption are divergent. Chairman Mao initiated Three-antis and Five-antis in continuous 4 years, however, the Three-antis was to cleanup opposing ideology while the Five-antis was to purge opposing class. Former President Jiang launched the anticorruption campaign to re-win legitimacy for the CCP from the public because Chinese government or the CCP faced legitimacy crisis in 1989 (White 2005; Ding 1995). Mayor of Lanzhou City exposed corruption facts of Secretary of Lanzhou CCP Committee for power struggle (Hao 2006). Secretary of Wuhan University of Sciences and Technology exposed corruption facts of his university president out of power struggle.<sup>4</sup> Former President Hu applied the censure on corruption to punish subordinates across four municipal cities so as to control personnel reshuffle on the 17th plenum of the CCP. These confirm Steidlmeier's (1999) argument that the "corruption debate" among the Chinese also functions as cover for a power struggle or, perhaps more accurately, for multiple power struggle between factions in the post-reform era. In 2001, Nanjing CCP Committee applied the censure on corruption to cater for public requests by pulling off several involved officials. From the above cases, we can see many hidden political goals of the censure on corruption such as maintaining ideology, winning power struggle, purging class enemy, consolidating power, winning public legitimacy, catering for public request, cleaning opponents and diverting public attention. These are the direct goals of censure on corruption; the ultimate goal is to maintain the ruling group or political elites' hegemony. In a word, these political goals are real dynamics behind the application of censure on corruption. The goals are basically for the ruling class's interests; sometimes it is for the ruling group's interests. And sometimes personal interests are interwoven with the group's interests in the application of censure on corruption. These goals usually are covered by the excuse of violation of law or clean governance. The censorer would never admit these political goals. Exploration of case background and social relations may help reveal the force and contests behind the application of censure on corruption.

Fourth, political strategies are indispensable in the application of social censure. For example, Albertyn and Davis (1990) find that the dominant group always portrays the opponents as the enemy of the whole nation so as to expand power by examining how the suppression of black power in South African state was involved the deployment of law. In their eyes, political trial and censure is an important device in the struggle for hegemony within the white population. Young (1990) discovers that social censures including crimes is usually depoliticized before it reached the courts although it is about politics or political power by revealing a strong ideological emphasis on female hysteria as well as the familiar criminalization of political militancy in media discourses. Different situations also mean

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<sup>4</sup>Retrieved on May 10, 2008 from <http://news.sina.com.cn/c/1/2007-06-17/102213247659.shtml>.

different strategies for the censure on corruption. In the post-coup situation, anti-corruption will be immediately initiated, highly publicized, and precisely targeting; in the post-revolution situation, anticorruption may involve community justice, construction of new legal codes, construction of new commissions, restructuring of economic and bureaucratic institutions, and return of property from prior leadership; in the incumbent situation, leaders will clarify legal code, build up special courts and commissions, and take stiffer penalty and medium level targeting; in the situation of post-succession, leaders will continue cleanup in progress; and in the situation of post-election, the leaders will enhance legal restrictions and punishments (Gillespie and Okruhlik 1991). In a word, there is no universal and everlasting strategies, the strategy appropriate at this stage may not be appropriate at that stage.

Fifth, the creation of censure on corruption is done by the very top level leaders, but they have to rely on agents at various levels to carry out it. Different agents (or political elites) have different initiatives and different strategies in the application process. Therefore in the application process, agents' ideas, emotions, interests and personal relationships matter. It renders the application of censure on corruption inconsistent and sometime distorted from the ruling group's true intention.

Sixth, the censure on corruption is designed for the ruling group's interests, however, sometimes the ruling group or political elites still manipulate the censure process so as to maximize interests. From the research, we can see that the ruling group or political elites did manipulate the censure process in post-reform China, such as when, where, how, what, and why to censure on corruption. In addition, because there are always subgroups within the ruling group, and these subgroups are divergent in interests, the competition and interest struggle are unavoidable. The contests make these subgroups manipulate the censure on corruption too. The "selfishness" from various levels and variations of agent render censure on corruption inconsistent. The officials close to the power center may be immune to the censure while the marginalized is more likely to be the victim.

#### ***10.1.4 Outcome of Social Censure***

The creation of social censure on corruption have specific political goals. When it is successfully applied, it will bring huge changes to political structure, culture structure or social structure.

First, the status for the censurer and the censured will be changed considerably after the successful creation and application of censure on corruption. The censurer's goal will be achieved and therefore they can maintain or strengthen their dominance or hegemony. On the contrary, the censured will be humiliated, and lose job, dignity, friend, and a bright future. Their status goes downward dramatically.

Second, the censure on corruption can help the ruling group or political elites to achieve political objectives but it is at the expense of losing some interests (on the prerequisite that the lost interests are less important than satisfaction of the political

objective). In other sense, the censure of corruption will hurt the ruling group's interests inevitably in some cases. To minimize the damage, the ruling group or political elites have to try to manipulate judicial process and play the role of patronage. Interviewees used "protection from the upper", "speaking on your side", and "covering your issue" to express what they saw as patronage phenomenon. It causes numerous inconsistencies in the application of social censure. Niuniu case which was ignored by Shenzhen CCP Committee legitimately is inclined to tell that such patronage did exist in political circle (Jie 2005; He 2004; Sun 2004). A similar interview case also exposes that corruption could also be ignored even without legitimacy. These suggest that the CCP and its agents "have a great deal of discretion in determining who is to be identified and processed as a criminal (Lo 1993:154). Such discretion is allowed only by the rule by law rather by the rule of law. In the application of censure on corruption, there should be someone to be punished for the ruling group's interests, but it is flexible that who will be the victim. The persons possessing *guanxi* with the political elites are in advantageous position.

These bizarre outcomes tend to suggest inconsistency of censure on corruption. In other words, some will be victimized; some will be ignored. Such inconsistency and dependent judicial structure developed a special political culture in post-reform China. Specifically officials consider: (1) anticorruption is a game of the ruling group or political elites; (2) the political elites or their families including national ones are corrupt too; (3) the CCP will never bring all corrupt officials to justice because a true anticorruption would bring an end to the CCP; (4) it is therefore silly for them to treat anticorruption seriously; (5) they can use anticorruption for their interests; (6) they can get away by patronage even if they are corrupt. Such political culture is contagious and accepted by most of officials. Therefore, in post-reform China the ruling group or political elites play the game of social censure; the officials also play the game of anti-anticorruption. Given such political culture, it is hard to keep corruption under control.

To sum up, the corrupt behaviors stipulated in the law by the ruling group or political elites are just one side of a coin; they are the issues on the table. There are political goals under the table, which is the other side of a coin, and which people cannot see normally. However, both sides are essential to the coin. If we want to have an exact definition on the coin, it is indispensable for us to check both sides. Ignoring on the political dimension of anticorruption, we may only develop a class-biased perspective on corruption. After all, the corruption is not only about law, or administration disease in essence, but more about politics. Anticorruption is a part of politics embodied by law and administration. These features of corruption are inclined to suggest that corruption is a form of social censure which is moral, political, ideological, negative, interests-driven, bureaucratic, and controlled by the ruling group or political elites. Social censure on corruption as "highly contextualized moral and political discourse" (Sumner 1990:27) is very practical. It is moral because the censure on corruption is mainly based on dominant social values; it is political because the creation and application of censure on corruption have hidden

political goals and need to apply political strategy to accomplish; it is practical because its meaning, goals, strategies, and methods are quite flexible.

A typical process of social censure will be like as follow. First, the ruling group or political elites find something which is against its ideology or interests and then targets it. Second, the ruling group then labels it as a negative phenomenon with political sources on the base of social values and moral. Third, the ruling group or political elites use their political advantage to establish formal regulations, rules or even legislation against the targeted phenomenon with corresponding punishment clarified. The social censure is then created. Fourth, the social censure created will be promoted so that the public accept it fully. Fifth, once any individual is found to violate the regulation, rule or legislation, the ruling class will apply the social censure to the violators in a bureaucratic form. Sixth, the violators will be punished in accordance with the established rules, regulations or legislation. Seventh, the censurer's goal will be reached when targeted phenomenon or persons are disciplined, and changed in accordance to its ideology and interests. It is easy to see that the censure on corruption in nature is pro-ruling class and disadvantageous to the ruled or targeted ones.

Social censures may be different for divergent states and cultures, including the creation of social censure and application of social censure. First, since the social censure is morality based, what to be censured is different for different cultures. For instance, individualism is appraised in the western culture, but may be censured in ancient China. Second, the social censure is a reflection of historical conjuncture, therefore cannot be the same for different nations. For instance, racism and black power are widely censured in the USA, but there won't be such censure in China due to homogeneity. Also for instance, political campaign is a special tool for communist countries and it won't occur in the western states (except for presidential election). Third, the application of social censure is arbitrary or manipulated. Post-reform China is noted for her collective democracy. The application of censure is therefore less conditioned and balanced, compared to western states. Political elites at all levels are able to put their interests ahead of the real goal of censure. The application of censure may be then distorted. The political goal of censure plus goal of agency make application of censure in post-reform China have bizarre outcomes. While in the western countries, the ruling group or political elites' power is relatively balanced or conditioned, hence the disadvantaged or powerless can contest for the creation of social censure and application of social censure. As a result, manipulation and arbitrariness are reduced to some extent.

There are obvious advantages adopting social censure theory to examine corruption and anticorruption in post-reform China. As the author pointed out earlier, social censure theory helps researchers to avoid any value judgment, thus to avoid the difficulty of using whose criteria (the ruling group or the ruled group) to determine corrupt behaviors. Social censure perspective also helps researcher to integrate micro and macro elements into a coherent analytical framework. A third pro of social censure perspective lies in its flexibility. The analysis with this approach can be lifted up to the level of class, and can also be lowered down to individual interactions. Social censure perspective further helps avoid the

ambiguous distinctions between public and private sector, therefore to get away from the confusion of distinction between corrupt behavior and non-corrupt behavior. Social censure approach can also explain both agents and client's behavior and interpret both ruling class and ruled class's corrupt behaviors.

However, we have to face that there are difficulties for social censure perspective. First, its radical-ness influences its development. As I explained earlier, social censure theory challenges the assumption of normal perspectives and exposes the political nature of many negative labels and its application. Or to say the ruling group's political goals, dynamics behind anticorruption, and interests are brought to the table, therefore it may not be welcome by the ruling group or governments. It is therefore difficult to be testified in illiberal states. The second difficulty is that the social censure theory is not easy to handle. Researchers have to consider macro structure, related social background and micro relations in the analysis. Its sophistication and abstractness determine that it needs theoretical thinking, historical information and analytical thinking. A third difficulty is its operationalization, because social censure theory is very sophisticated, and abstract. Fourth, for some important data, it is hard to be obtained. For example, there are always political goals or manipulations behind the anticorruption. And these goals or manipulations are not brought to the public. For such kind of data, researchers have to rely on heavy social relations to get.

## 10.2 Rule of Law or Rule by Law?

As we see above, the censure on corruption is created for the ruling group or political elites' interests, and the censure on corruption is applied by the ruling group, political elites or their agents. In this sense, the censure on corruption looks like born a handy tool for them and uncontrollable for society. However, the rule of law is an effective mechanism that can constrain the ruling group's manipulation on the creation and application of social censure.

China used to be a feudal society. Mao Zedong changed the old China into a communist China with his charisma and team work. Deng Xiaoping changed China again with the Open and Reform Policy and rule of law strategy. However, the data collected suggest that it is a long journey which China hasn't finished.

First, the rule of law requires a strict judicial independence so that judiciary is not controlled or even influenced by the ruling group or political elites (Walker 1988). However, judiciary system (in a broad sense) in post-reform China is under the Political and Legal Committee which is further a sub-committee under the CCP committee at various levels. The CCP committee is the real power controlling the law enforcement (procuratorate and court are subject to the People's Congress institutionally, but the real personnel arrangement is controlled by the CCP



committee). The CCP established several special institutions to fight corruption, but these organs are also under the leadership of the CCP committee. Institutionally there seemed no judicial independence in post-reform China.<sup>5</sup>

Second, the rule of law forbids legislation for such a purpose that the law “is a convenient stick with which to beat ‘political incorrectness’, especially if that means a desire to change language use in the interest of advancing social causes” (Nuemann 2002:70). Therefore the legislation is established for the whole society’s interests rather than for a faction’s benefits in the rule of law society. However, the fact doesn’t support it well in post-reform China in survey respondents’ and interviewees’ perception. Most survey respondents thought that the goal of legislation was to protect the ruling party’s interests; interviewees said law served governments in eighty percent cases. These perceptions partly reflect the unfair legislative process in post-reform China.

Third, there were many situations to which no law could be applied in post-reform China, which is against the principle of the rule of law. In survey respondents’ view, there existed judicial vacuum so that many criminals escaped from charges. An Huijun case is a typical one in which suspects asked for sex bribes and escaped from criminal charge for the reason of judicial vacuum.

Fourth, the rule of law requires that law contents are publicized to the whole society so that everyone knows it and follows it (Walker 1988). If there is no knowledge of law content, obeying law is just an illusion for people. However, such a requirement has not been fulfilled very well in post-reform China. Both survey respondents and interviewees didn’t see law publicization in mass media such as TV, news and radio very much. Their knowledge on law contents was also very limited.

Fifth, to ensure judicial consistency and reduce arbitrariness in judicial process, there must be fair and open law enforcement rules for police, judge and procurator to follow (Walker 1988). Survey, interviews and documentary cases suggest that such kind of rule or regulation was absent in post-reform China. There might be such rules in post-reform China, but at least they were not open to the public for them to learn their rights and due process. Because of the absence of such rules, suspect’s human rights and legal rights were not respected in the judicial process well.

Sixth, a basic principle of the rule of law is that law is above everything including power. Not only the mass but also the ruling group, governments, and powerful individuals should obey the law (Walker 1988). However, the data show that in post-reform China, power basically was above the law. Many power interferences happened in law enforcement for state interests, class’s interests, group’s interests and even individual interests, such as the Yuanhua case, Zhang Guofang case and a case exposed by interview Q. In other cases, power is so paramount that official could fabricate crimes and put targeted people into jail. Chenzhou case is such an example that several officials were shuanggui because

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<sup>5</sup>Retrieved on May 11, 2008 from [http://www.cecc.gov/pages/annualRpt/annualRpt05/2005\\_5c\\_judicial.php](http://www.cecc.gov/pages/annualRpt/annualRpt05/2005_5c_judicial.php).

they impaired the interests of Chenzhou CCP Secretary and Chenzhou CDI Secretary. "The CCP enjoys a monopoly of power; its status is above the constitution and law" (Lo 1993:159), so is its agents.

Seventh, in a rule of law society, treating like cases alike is necessary to make judicial decision predictable (Neumann 2002). In other words, judicial consistency has to be maintained so as to show the justice and fairness, but we could see judicial divergence between similar cases in post-reform China. For instance, both Liu Zhixiang and Yuan Baojing were accused of contract murder, but one received life imprisonment while the other was executed (Yang and Yang 2007). Actually, Liu Zhixiang was also charged of 20 million embezzlement and bribery; and such single charge of corruption could cause a death penalty (Tao 2006).

Eighth, the law enforcers should protect the whistleblower's rights in order to encourage more and more reporting from the public and destroy criminal's defense line (Robinson 2005). It is also a requirement for the rule of law because whistleblower's confidentiality and rights should be highly respected and protected. However it is only ideal for post-reform China in that many whistleblowers' identity was leaked to the complained party by the law enforcement departments. The outcome is that the whistleblowers were retaliated in uncontrolled ways. In Liu Zhixiang case, the whistleblowers were intimidated, cut and killed (Rui 2006); in Li Wenjuan case, the whistleblower was put into jail by corrupt official's retaliation (Zheng 2007); in Deng Qiang case, he was pressed to knee down and paraded through the streets (Wen and Huang 2007). The retaliation by the complained party was understandable in some sense, but the law enforcers' leaking information was totally against the spirit of the rule of law. It confirms Lo's (1993:158) argument that "when its political neutrality becomes a myth, popular justice confuses and obscures justice, and no longer protects the people."

These evidences suggest that China is only a rule by law state in which law is applied, but not highly respected by all classes or stratifications, especially the ruling group, government or political elites. Precisely law is used by government, the ruling class, and political elites. Also as Lo (1993:159) found, "the state, the law, and popular or bureaucratic justice are ultimately political tools of the governing class, and they represent mainly the political interests of that class, or of a particular ruling faction." Just because of absence of rule of law and absence of extreme leftist ideology in post-reform China, corruption was out of control and contagious across country.

However we have to admit that post-reform China is making progress towards the rule of law. For example, the new rules constrain anticorruption agency's ability of shuanggui and shuangzhi. Agency lower than county level is not allowed to shuanggui officials. And under former President Hu's slogan of "harmonious society", violations in law enforcement were paid a great attention and handled. Recently the explosion of internet use helps expose violations and form strong social pressures on government. There are more and more cases of violations handled due to such public pressure, such as Weng'an case which happened in July 2008. Law agencies also have to publicize law enforcement rules and receive public monitoring. Complaining system and punishment system have been also

established in all law enforcement agencies. Although complains could not help clean up all misdemeanors in law enforcement, it does deter extreme violations in law enforcement. All these moves restrict the ruling group or political elite's manipulation on the censure on corruption. Anticorruption is then expected to be neutral and genuine by and by. However, as long as the problem of judicial dependence is not resolved, there are still possible manipulation and selfish arrangement. The improvement can only reduce insane application of censure on corruption, instead of eliminating it.

### 10.3 Outcome of Censure on Corruption Without the Rule of Law

Without rule of law, the ruling group or political elites can create social censure at their sweet will and can apply the censure in a slipshod way. Or to say the censure on corruption is little constrained; strange or astonishing outcomes are then predicable.

First, the consistency of censure on corruption may be damaged due to the absence of rule of law and the ruling group or political elites' subsequent manipulation. Applying the censure on corruption equally and fairly will not help the ruling group or political elites to reach its goal. Moreover, their interests such as dominance may be hurt by the fair law enforcement. Therefore they usually selectively target specific group or individuals so as to reach its goals, and the dependent judicial system offers them such power and opportunities. In many cases, government's selective targeting is legitimated with such an excuse: to avoid political earthquake. For example, in a very corrupt environment, government won't bring all corrupt officials to justice because they need to retain some official to keep government running and therefore those corrupt officials with *guanxi* with the ruling group or political elites could stay away from punishment. However, the rule of law requires treating like cases alike and guarantying there is no selective targeting. In addition, the ruling group or political elites also interfere the judicial process to reach various political considerations. For example, the *China Criminal Law* stipulates that officials embezzling more than 100,000 yuan can be sentenced a death penalty and some high-ranking officials such as Hu Changqing and Cheng Kejie were executed for millions of black money (Dangshiwenyuan 2003; Xu 2007); officials such as Liu Zhixiang, Gu Huijuan,<sup>6</sup> Zhang Shaocang,<sup>7</sup> and Shi Faliang<sup>8</sup> taking more than 10 millions yuan received only lifetime imprisonment. There are many more cases

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<sup>6</sup>Retrieved on May 10, 2008 from [http://news.xinhuanet.com/legal/2006-08/10/content\\_4943060.htm](http://news.xinhuanet.com/legal/2006-08/10/content_4943060.htm).

<sup>7</sup>Retrieved on May 10, 2008 from <http://cpc.people.com.cn/GB/64093/64371/6237387.html>.

<sup>8</sup>Retrieved on May 10, 2008 from [http://news.xinhuanet.com/legal/2006-08/04/content\\_4916661.htm](http://news.xinhuanet.com/legal/2006-08/04/content_4916661.htm).

falling in the same criminal range (such as from 50,000 to 100,000 yuan), but the final criminal charges were diversified. Without rule of law, leaders can also manipulate and distort the application of censure on corruption with scapegoat strategy. An interview case in this study shows that to preserve his own interests, political elites might choose to penalize others and free the real corrupt official.

These outcomes of censure on corruption and unhealthy political culture are due to the absence of rule of law. No rule of law; then no conditioning power on the law enforcers and government (Walk 1988). Hence, the ruling group or political elites' interests, political will and arbitrariness could play a key role in the application of censure on corruption. On the contrary, the rule of law could work to reduce of political or judicial manipulations and then make most anticorruption genuine and out of justice. For instance, once the corruption is found, the rule of law can ensure that there is no outside power intervening and distorting the judicial process. The consistency of censure on corruption is therefore maintained. In a word, the nature of censure on corruption won't change, but the rule of law may help stop corruption by curbing the ruling group or political elites' ability of manipulation on censure.

## 10.4 Anticorruption in Xi's Era, an Ongoing Phenomenon

Xi Jinping was elected General Secretary of the Chinese Communist Party Central Committee at the first plenary session of the 18th CPC Central Committee on Nov 15, 2012.<sup>9</sup> He was elected President of the People's Republic of China (PRC) and Chairman of the Central Military Commission of the PRC at the fourth plenary meeting of the first session of the 12th National People's Congress (NPC) on March 14, 2013.<sup>10</sup> With three key positions in hand, his leadership on China is then well established. Once he stepped on the peak of power hierarchy, he started to clean corruption, which is the main public concern. An anticorruption storm was launched nation-wide. His anticorruption has some features making it distinct from prior ones. First, different from his predecessors Jiang Zeming or Hu Jintao, his anticorruption is not named under a big and fashion title such as "Keeping CCP member's advance" or "Three Stresses". It is carried out at a low profile but intensively. Second, different from previous anticorruption which lasts only for a short period and only catches a few "flies" (low ranking officials), Xi's anticorruption movement spread to all fields of society and all ranks of officials. Date to Nov 19, 2015, there have been 130 officials at province level shuanggui'd, detained, under investigation, or arrested, including four at the nation level.<sup>11</sup>

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<sup>9</sup>Retrieved on Dec 10, 2015 from [http://news.china.com.cn/18da/2012-11/15/content\\_27121188.htm](http://news.china.com.cn/18da/2012-11/15/content_27121188.htm).

<sup>10</sup>Retrieved on Dec 10, 2015 from [http://www.chinadaily.com.cn/china/2013npc/2013-03/14/content\\_16308182.htm](http://www.chinadaily.com.cn/china/2013npc/2013-03/14/content_16308182.htm).

<sup>11</sup>Retrieved on Nov 11, 2016 from [http://politics.chinaso.com/detail/20151119/1000200032851721447914391989338555\\_1.html](http://politics.chinaso.com/detail/20151119/1000200032851721447914391989338555_1.html).

The storm has been going on for more than 5 years and seems nonstopless. Third, it seems Xi's anticorruption is not selective as what was done by his predecessors. It sends inspection group to all provinces, ministries and state own enterprises in order to cleanup corruption in all governmental fields. Once s/he is found corrupt, s/he will be under investigation no matter who s/he is. Fourth, Xi's anticorruption covers both serious behaviors and misdemeanors. Recreational activities using public fund had been rampant in post-reform China. It was condemned and prohibited, but no positive outcome turned out. Chinese government under Xi targets four bad atmospheres, namely formalism, bureaucratism, hedonism and extravagance which cover misdemeanors which were not treated as corruption before.<sup>12</sup> Some business field such as high class restaurants, alcohol and cigarette are greatly influenced by this anticorruption movement because a large percentage of luxury goods are purchased as gifts for officials.<sup>13</sup> Fifth, impeachment system is well established to encourage whistle-blowing. The CCDI had no website before but now is ready for the public to report corruption case, follow up cases and understand central government's new move. To report a corruption case, there is no real name of whistle-blower required, which facilitates reporting. Consequently, the CCDI of the CCP gains more power than before because of anticorruption.<sup>14</sup>

Xi's anticorruption approach is out of many scholars' surprises. It seems to be a form of social censure on corruption, but political goals behind it is not clear to the public. Xi may curb corruption for the interest of the whole CCP for many scholars claim the CCP may lose power if she doesn't keep corruption under control. A person who is on the tip of power hierarchy may care national interests and his party's interest very much as he knows that he will be in China's history book. Sense of historical responsibility pushes him to act out of national interests. In this sense, his anticorruption will be scrapping bone to clear the toxin in the bone. Xi, might like his predecessors, fight corruption to consolidate personal power, but it is unclear to the public at the moment. It seemed to be a tradition in Chinese politics to clean up disloyal officials and cleanse opponents through anticorruption. The third possibility is that Xi grew up in Mao's era and therefore was deeply influenced by Mao's leftist ideology which doesn't tolerate corruption.<sup>15</sup> If he holds a strong leftist ideology, it won't be surprising to see his harsh attitude towards corruption. We have to bear in mind that Xi's anticorruption movement has not finished yet.

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<sup>12</sup>Retrieved on Nov 11, 2016 from <http://qzlx.people.com.cn/n/2013/0618/c364565-21884589.html>.

<sup>13</sup>Retrieved on Nov 11, 2016 from <http://news.qq.com/a/20140225/016612.htm>; <http://js.xhby.net/system/2014/02/12/020221781.shtml>; <http://gb.cri.cn/42071/2013/12/06/2165s4348668.htm>; <http://www.chinanews.com/sh/2013/10-04/5344784.shtml>; <http://opinion.people.com.cn/n/2014/0906/c159301-25614921.html>; <http://news.wenweipo.com/2014/01/08/IN1401080069.htm>; [http://news.ifeng.com/mainland/special/2013guoqing/content-3/detail\\_2013\\_10/07/30092089\\_0.shtml](http://news.ifeng.com/mainland/special/2013guoqing/content-3/detail_2013_10/07/30092089_0.shtml).

<sup>14</sup>Retrieved on Nov 11, 2016 from <http://hk.apple.nextmedia.com/news/art/20140630/18782257>.

<sup>15</sup>Retrieved on Nov 11, 2016 from <http://www.chinanews.com/gn/2013/07-12/5032898.shtml>.

## 10.5 Policy Implications

Based on the above research, the author suggests improving the status of law so as to curb corruption effectively. As seen above, the distance to the rule of law in post reform China is reflected in many aspects such as “no law to follow” and “ignorance to human rights”, but the most negative factor is the judicial dependence and power interferences. On the base of the study, the author proposes the following policy suggestions for Chinese government to catch up with the rule of law.

First, free judicial system off local government’s control, following ICAC model of Hong Kong. Because the anticorruption system is in the control of local CCP committee (provincial, municipal and county), local government, sometimes local leaders, can interfere the anticorruption process (for collective or personal interests) and influence the justice. The outcome of such power intervention is the inconsistency of anticorruption and an unhealthy political culture which further lead to rampancy of corruption. To decrease corruption, it is necessary to clear such an institutional root by separating CDIs and anticorruption bureau from local governments. Without authorized power, local political elites will not be able to interfere the anticorruption process. And the CDIs will not listen to local political elites in that the CDI’s fate is not in the hand of these local leaders.

Second, to decrease potential power intervention further, the CDIs or anticorruption bureau is suggested to be structured as two-level system. One level is set up at municipal level while the other is in the central. The current anticorruption system is structured at four levels (national, provincial, municipal and county). The upper level supervises the lower level; the internal power intervention is then possible. The simplified two-level system can effectively reduce the possibility of power intervention from the upper supervision and raise the efficacy of anticorruption.

Third, the CDIs of the CCP, supervisory organs, and anticorruption bureaus can be merged to increase the bureaucratic efficiency. These three organizations overlap and contest for interests. The combination can diminish department conflicts and elevate coherence.

Fourth, legislation can be improved and perfected. A single separate anticorruption law should be established to advance coherence. The CCDI and Department of Supervision issued tons of rules and regulations, but also caused confusions among officials. A single and separate anticorruption law can help educate cadres proficiently and plainly. Moreover, suspects’ rights should be articulated well in the law so as to reduce ignorance to human rights and legal rights in the judicial process. Rules for law enforcement should also be established and included in the separate law so that law enforcers follow it tightly. In addition, there are always new types of bribery. Timely revision and improvement can eliminate judicial vacuum and leave minimal space for criminals seeking loopholes. Moreover, some articles can be refined to meet the requirement of justice and clarity. For example, the range from 5 years to life time imprisonment for 50,000–100,000 yuan bribery may be too broad. Lastly, the single and separate anticorruption law needs to be

publicized well in order that both law enforcers and suspects know their rights and obligation.

Fifth, loosening the press control on the fight against corruption is necessary for effective anticorruption. Currently press freedom is relatively limited in China, therefore, notoriousness of cases is not exposed; local political elites dare to manipulate the anticorruption process. The openness of press control can mobilize public's participation in anticorruption and give leaders pressure to handle the case impartially.

In a word, the pro-ruling class nature of censure on corruption and the absence of rule of law are the reason for the rampancy of corruption in post-reform China. To keep corruption under control, Chinese government has to resort to the rule of law. The rule of law requires a complete and clarified law system, publication of law, judicial independence and fair law enforcement without any interference. The above policy suggestions would help China to develop the rule of law and fight corruption effectively.

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