

**Assessment and Analysis of Corruption in China**

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**Abstract**

Criminal corruption refers to instances in which employees of the government, private companies or other work units take advantage of their position to embezzle funds or accept bribes. The state of criminal corruption can be assessed both objectively and subjectively; both methods exhibit insufficient accuracy in some respects. Presently, criminal corruption is a severe problem in China,<sup>1</sup> having become both systemic and socially ingrained. Causes of corruption can be traced back to human nature and instincts, social practices, and the general operation of the systems in question. A clear understanding of these causes can provide us with a method for developing countermeasures.

Keywords: Corruption, crime, assessment, cause

China's current government has already sounded the alarm regarding the problem of corruption, and fighting it has become the ruling party's most serious challenge. The situation is indeed as President Xi Jinping described in his 17 November 2012 address before the first collective study session of the 18<sup>th</sup> National Congress of the Communist Party of China (CPC):

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<sup>1</sup> Except when specifically noted, "China" in this article refers to mainland China.

In the past few years, persistent, long-term contradictions in some countries have led to widespread public anger, social upheaval, and even the collapse of political authority. The preponderance of facts tells us that as the corruption problem continues to intensify, the party and even the nation are put at risk! We must take heed.<sup>2</sup>

It is necessary to fight corruption. However, we must first understand the current nature of corruption in China, as well as its causes, in order to formulate effective and long-lasting countermeasures.

### **1. Defining Criminal Corruption: Duty Crime or Occupational Crime**

In Chinese, the word for “corruption” (*fubai*) has its etymological origins in biology, namely the decay and decomposition of organic matter. In more recent times, the definition of the word has grown to encompass the fields of politics and sociology, wherein it refers to darkness and disorder in systems, organizations, institutions, or policies. It can also refer to the decay and degeneration of a person’s ideology or behavior. Today, the word is used mainly to describe the use of public privilege for private profit. In English, “corruption” refers to an event in which an official or someone in a position of trust, in violation of their own duties and the rights of others, illegally and wrongfully uses their position or role to unlawfully benefit themselves or others.<sup>3</sup>

Strictly speaking, criminal corruption, or corruption crime, is not a legal term; it is a concept universally acknowledged. A closely related concept in Chinese discourse is *zhīwù fānzui*: “duty crime,” or “official occupational crime.” According to the Chinese Criminal Code, “duty crimes” are acts, punishable by law, characterized by private use of the privileges of position in national agencies, national companies, business or enterprise work units, or people’s

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<sup>2</sup> See Xu Yuangong, “Corruption Gets Worse the More it is Committed and Will Ultimately Ruin Party and Nation,” December 27, 2012, <http://theory.people.com.cn/n/2012/1227/c49150-20030406.htm>, last accessed June 26, 2014.

<sup>3</sup> Bryan A. Garner, *Black’s Law Dictionary* (Seventh Edition), St. Paul, USA: West Group, 1999, p. 348.

organizations, for the purposes of embezzlement, bribery, favoritism, dereliction of duty, or violation of a citizen's personal and democratic rights.

English has no exact counterpart for the Chinese concept of “duty crime,” the closest professional term being “occupational crime,” which could be understood as a broader term for “duty crimes” committed by anyone, not just national-level officials. According to the definition in Gary S. Green's work, *Occupational Crime*, the term refers to “any act punishable by law that is committed through opportunity created in the course of an occupation that is legal.” Green separates occupational crime into four categories: (1) crimes which benefit an employing organization, or “organizational occupational crimes,” such as falsification of production inspection reports, fraud committed by sales personnel, or theft of trade secrets; (2) crimes by officials committed through the exercise of their state-based authority, or “state authority occupational crimes,” such as the bribery of a lawmaker, embezzlement by officials, or police abuse of criminal suspects; (3) crimes by workers within their own professional areas, or “professional occupational crimes,” like the sexual assault by a physician of a patient undergoing examination, sexual harassment of children by childcare center workers, or insider trading on the stock market; and, finally (4) crimes committed by individuals, as individuals, or “individual occupational crimes,” such as employee embezzlement or theft for personal benefit, kickbacks taken by sales personnel, public bus drivers who operate under the influence, or falsification of reports by employees.<sup>4</sup>

Corruption crime and duty/occupational crime are compatible concepts. Corruption crime is one type of occupational crime, because all criminal corruption is crime that takes advantage of duty or occupation. There is some overlap between corruption crime and duty crime. Duty crime is committed by state officials, but corruption crime is not limited to state officials. On the

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<sup>4</sup> See Gary S. Green, *Occupational Crime*, Chicago, USA: Nelson-Hall Inc., 1990, pp. 10-18.

other hand, graft and bribery committed by state officials are at once duty crimes and the most fundamental form of criminal corruption. But generally speaking, malfeasance and violation of a citizen's rights should not be considered within the scope of criminal corruption.

Certainly, in most countries around the world, first attempts to fight corruption will focus on state workers or government officials, but with the increasingly endemic levels of corruption and the deepening of the struggle against it, the target scope will necessarily expand to include non-state workers, including executives working for private companies. For example, Article 21 of the United Nations *Convention against Corruption*,<sup>5</sup> passed in 2003, states:

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offenses, when committed intentionally in the course of economic, financial or commercial activities: (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.<sup>6</sup>

The fundamental distinctive feature of criminal corruption is direct or indirect use of public power to obtain individual profit. Here, "public power" includes the public power in the hands of both government officials and officials at private companies and organizations.

"Power" here refers to the ability to produce a certain result through compulsory means. In all human societies, the function of power is to effectively influence or constrain valuable resources.

"Public power," then, is a type of ability invested by human populations in the individuals or

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<sup>5</sup> China ratified and joined the convention on October 27, 2005, by a vote at the 18th session of the 10th Meeting of the Standing Committee of the National People's Congress.

<sup>6</sup> Zhao Bingzhi and Yang Cheng, eds., *Implementation of the United Nations Convention against Corruption*. Beijing, China: Law Press, 2011, p. 121.

groups serving as the governing entities to control the valuable resources of the entire population or its members.

Public power can be divided into two types: state and social. The latter includes the ability to control the valuable resources collectively accrued to private companies and non-governmental organizations. Commercial bribery is any corrupt act involving the misuse of this social power. For example, according to Article 163 of Chinese Criminal Law, the stipulation regarding “Bribery among those not working personnel of the state,” reads:

Where an employee of a company, an enterprise or other unit who, taking advantage of his position, demands money or property from another person, or illegally accepts another person's money or property in return for the benefits sought for that person, and if the amount involved is relatively large, he shall be sentenced to fixed-term imprisonment of not more than five years of criminal detention; and if the amount involved is huge, he shall be sentenced to fixed-term imprisonment of not less than five years and may, in addition, be sentenced to confiscation of his property. Where an employee of a company, an enterprise or other unit who, taking advantage of his position in economic activities, accepts rebates or service charges of various descriptions and takes them into his own possession in violation of State regulations, he shall be punished in accordance with the provisions of the preceding paragraph.<sup>7</sup>

In summary, criminal corruption refers to all acts of graft or bribery perpetrated by personnel of the state and personnel of corporate enterprises or other work units by taking advantage of their position.

## **2. Assessing Criminal Corruption: Objective and Subjective Assessments**

Despite the fact that familiarity due to repeated exposure can cause the general public to become less sensitive to any issue, corruption has drawn the attention of the Chinese public for many years. Evidence for this appeared in November 2011, when the magazine *Insight China*

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<sup>7</sup> English text of the Chinese Criminal Law, Article 163, is taken from:  
[http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content\\_21899058.htm](http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/11/content_21899058.htm).

and the Media Survey Lab at Tsinghua University conducted a survey of the top ten issues concerning Chinese citizens: housing prices, commodity prices, food safety, health-care reform, corruption, housing reform, the moral climate, education reform, the increased cost of living, and employment. *Insight China* first took this survey in 2005, and then repeated it in 2007, 2008, and 2010. Only four issues made the list in every instance: health-care reform, food safety, social security, and corruption.<sup>8</sup> In more recent years, not only have corruption and anti-corruption efforts remained at the top of public consciousness, they have also drawn international attention.<sup>9</sup> All this indicates the severity of the problem, but how should it be understood and properly assessed? The methods and principles of criminology will allow us to perform both objective and subjective assessments.

### **A. Objective Assessments of Criminal Corruption**

One traditional research methodology used in criminology is statistics. In the nineteenth century, Belgian statistician Adolf Quetelet (1796-1874) applied his statistical knowledge to criminology. Using data on Belgium and France, Quetelet developed his theory of the relative stability of crime. He discovered that when some basic elements of society and the economy remain stable, instances of criminal activity also tend to remain stable. He concluded that: “Criminal activity is the result of economic investment based on social stability.” Later approaches built on his results, and developed the standard deviation curve, which made it possible to use criminal statistics to predict the probability of certain types of crime occurring in

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<sup>8</sup> See Su Feng, “The Ten Hottest Social Issues Regarding the People’s Livelihood, 2013,” *Insight China*, December 2012 issue.

<sup>9</sup> The author can raise one example of this in giving a resume of his own lectures abroad. In May 2012, I was invited to Moscow for the “Asian Anti-Corruption Forum” as part of the “Innovative Mechanisms for Fighting Corruption” conference; I delivered remarks at the China and Russia roundtable session. In September 2013, I was invited to London for “Corruption and Anti-Corruption: Challenges and Future Perspectives.” In December of the same year, I went to the University of Bergen School of Law in Norway to deliver a lecture on Corruption and Anti-Corruption in China. In May 2014, I was invited by the Koerber Stiftung to deliver a lecture titled “China: the Fight against Corruption” (“China: Kampf gegen Korruption”).

certain places at certain times. The French statistician André-Michel Guerry went on to analyze criminal statistics in different areas of France, which he drew up into a graph, and laid the foundation for the school of criminal analysis developed further by later scholars at the University of Chicago.<sup>10</sup>

This method of uncovering and investigating data about criminal cases to assess the level of criminal activity in a country or locality is what is meant by “objective assessment.” For example, according to a 3 March 2012 report by Yan Huan, a *People’s Daily* journalist in Mexico, judicial authorities for various countries in North and South America announced the results of a survey of crime in the Americas: during 2010, there were a total of 154,836 murders, an average of 424 per day. Of these, 40,974 took place in Brazil, which has a population of 190 million; nearly the same number of murders occurred in Colombia, whose population is only 46 million. Mexico, with 112 million inhabitants, accounted for 20,583 of the murders, while the USA, with 308 million people, saw only 14,159 murders. Venezuela, a country of 27 million people, had 13,986 murders.<sup>11</sup> Given these numbers, the murder rate in each country can be objectively assessed, and include not only the number of murder cases, but also the ratio of murder cases to population. From a purely numerical standpoint, Brazil tops the list, and more murders occurred in the USA than in Venezuela. But if we examine the number of murder cases per 10,000 inhabitants, we get 21.6 for Brazil, 86.9 for Columbia, 18.4 for Mexico, 4.6 for America, and 51.8 for Venezuela; Columbia rises to the top.

We can also assess change over time in a country or locality by examining the number of criminal cases or criminal convictions over a certain number of years. For example, in 2014, just before the FIFA World Cup was held in Brazil, crime rates soared in that country. The latest

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<sup>10</sup> Brunon Holyst, *Comparative Criminology*, translated by Gao Ming et. al., Shenyang, China: Liaoning People’s Publishing House, 1989, pp. 67-68.

<sup>11</sup> Yan Huan, “Brazil: Highest Murder Rate in the Americas,” March 3, 2012, [http://news.timedg.com/2012-03/03/content\\_8823420.htm](http://news.timedg.com/2012-03/03/content_8823420.htm), last accessed June 20, 2014.

survey reports from public security researchers in Rio indicate that in March 2014, crime rates were up 23.6 percent over the same period the previous year. The first quarter of 2014 saw 1,459 murders in the urban district of Rio, a 22 percent increase over the same period in 2013; there were also 23,675 robberies, a 46.2 percent increase over the previous year.<sup>12</sup>

Statistical accuracy is crucial to the usefulness of these objective assessments. According to recent working reports by the People's Procuratorate, there are on average over 30,000 cases of duty crime involving 40,000 people in China every year. Of these, over 2,000 perpetrators are county-level cadres, over 200 are department-level cadres, and five or six come from the provincial level or higher. In the last thirty years, the number of high officials<sup>13</sup> apprehended for corruption reached its height in 2009 and 2013, with the apprehension of seventeen<sup>14</sup> and eighteen<sup>15</sup> high officials respectively. And yet, the number reached a new high in 2014, with the

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<sup>12</sup> See the website of the *Dahe Daily*, "FIFA Warns: Crime Rates High in Brazil, Sleeping in Cars at Night not Safe," May 14, 2014, <http://news.dahe.cn/2014/05-14/102848177.html>, last accessed June 22, 2014.

<sup>13</sup> By "high officials," I mean officials at the provincial or ministerial level and higher, and equivalent officials serving within the Communist Party of China (CPC), as well as the leaders of state enterprises. According to criminal procedure, corruption cases involving such figures are first inspected by the Commission for Discipline Inspection of the Central Committee of CPC, hereafter referred to as the China Discipline Commission. Once the facts are clear, the case is sent to the Procuratorate for formal investigation and indictment in accordance with the Criminal Procedure Law. The verb "inspected" (*chaban*, more literally "inspected and handled") refers to the way the China Discipline Commission announces that "Such and such a person is suspected of grave unlawfulness and is now being inspected in coordination with authorities." Officials who are removed from office and undergo investigations are generally subject to indictment and sanction.

<sup>14</sup> The 17 officials apprehended in 2009 were: 1. Zheng Shaodong, former Assistant Minister of Public Security; 2. Liu Zhihua, former Deputy-Mayor of Beijing; 3. Chen Shaoyong, former Secretary-general of Fujian provincial government; 4. Wang Yi, former Vice-President of China Development Bank; 5. Mi Fengjun, former Vice-Chairman of the Standing Committee of Jilin Provincial People's Congress; 6. Xu Zongheng, former Mayor of Shengzhen, Guangdong Province; 7. Zhu Zhigang, former Director of the Budgetary Work Committee of the NPC Standing Committee; 8. Pi Qiansheng, a former member of the Standing Committee of Tianjin Municipal Party Committee; 9. Chen Tonghai, former CEO of China Sinopec; 10. Kang Rixin, former General Manager of China National Nuclear Corporation; 11. Wang Huayuan, former Deputy-Secretary of Zhejiang Provincial Party Committee; 12. Chen Shaoji, former President of Guangdong Provincial People's Political Consultative Conference; 13. Sun Yu, former Vice-Chairman of Guangxi Zhuang Autonomous Regional People's Government; 14. Song Yong, former Vice-Chairman of the Standing Committee of Liaoning Provincial People's Congress; 15. Li Tangtang, former Vice-Chairman of Ningxia Hui Autonomous Regional People's Government; 16. Huang Yao, former President of Guizhou Provincial People's Political Consultative Conference; 17. Sun Shuyi, former President of Shandong Provincial People's Political Consultative Conference.

<sup>15</sup> The 18 officials apprehended in 2013 were: 1. Yi Junqing, former Director of Compilation and Translation Bureau of the CPC Central Committee; 2. Wu Yongwen, former Vice-Chairman of the Standing Committee of Hubei Provincial People's Congress; 3. Liu Tienan, former Deputy-Director of the National Development and Reform Commission; 4. Ni Fake, former Deputy-Governor of Anhui Province; 5. Guo Yongxiang, former Vice-Chairman of the Standing Committee of Sichuan People's Congress; 6. Wang Suyi, a former member of the Standing Committee of the Inner Mongolia Party Committee; 7. Li Daqiu, former Vice-President of Guangxi Zhuang Autonomous Regional People's Political Consultative Conference; 8. Wang Yongchun, former Vice-President of state-owned China National Petroleum Corporation; 9. Jiang Jiemin, former Chairman of the State-owned Assets Supervision and Administration Commission; 10. Ji Jianye, former Mayor of Nanjing, Jiangsu Province; 11. Liao Shaohua, a former member of the Standing Committee of Guizhou Provincial Party Committee; 12. Chen Bohuai, former



apprehension of thirty-nine high ranking officials, including Su Rong, former Vice-President of Chinese People's Political Consultative Conference, Xu Caihou, former Vice-Chairman of the Central Military Commission of CPC, Zhou Yongkang, a former standing member of the Politburo of CPC, and Ling Jihua, former Vice-President of Chinese People's Political Consultative Conference.<sup>16</sup> In the past few years, the number of officials apprehended for corruption in China has ranked among the highest in the world. A survey undertaken by the United Nations Criminal Justice Information Network of twenty-seven countries with high rates

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Deputy-Governor of Hubei Province; 13. Guo Youming, former Party Secretary of Yichang, Hubei Province; 14. Chen Anzhong, former Vice-Chairman of the Standing Committee of Jiangxi Provincial People's Congress; 15. Tong Mingqian, former Vice-President of Hunan Provincial People's Political Consultative Conference; 16. Li Dongsheng, former Vice-Minister of Public Security; 17. Yang Gang, former Deputy-Director of the State Bureau-General of Qualification Inspection; 18. Li Chongxi, former President of Sichuan Provincial People's Political Consultative Conference.

<sup>16</sup> The 39 officials apprehended in 2014 were: 1. Ji Wenlin, former Deputy-Governor of Hainan Province; 2. Zhu Zuoli, former Vice-President of Shaanxi Provincial People's Political Consultative Conference; 3. Jin Daoming, former Vice-Chairman of the Standing Committee of Shanxi Provincial People's Congress; 4. Shen Peiping, former Vice-Governor of Yunnan Province; 5. Yao Mugen, former Vice-Governor of Jiangxi Province; 6. Shen Weichen, former Vice-Chairman of China Association of Science and Technology; 7. Song Lin, former Chairman of Huarun Group; 8. Mao Xiaobing, former Party Secretary of Xining, Shaanxi Province; 9. Tan Xiwei, former Vice Chairman of the Standing Committee of Chongqing Municipal People's Congress; 10. Yang Baohua, former Vice-President of Hunan Provincial People's Political Consultative Conference; 11. Zhao Zhiyong, a former member of the Standing Committee of Jiangxi Provincial Party Committee; 12. Su Rong, former Vice-President of Chinese People's Political Consultative Conference; 13. Du Shanxue, former Deputy-Governor of Shansi Province; 14. Ling Zhengce, former Vice-President of Shanxi People's Political Consultative Conference; 15. Wan Qingliang, former Party Secretary of Guangzhou, Guangdong Province; 16. Xu Caihou, former Vice-Chairman of the Central Military Commission of CPC; 17. Tan Li, former Deputy-Governor of Hainan Province; 18. Han Xiancong, former Vice-President of Anhui Provincial People's Political Consultative Conference; 19. Zhang Tianxin, former Party Secretary of Kunming, Yunnan Province; 20. Wu Changshun, former Vice-President of Tianjin Municipal People's Political Consultative Conference; 21. Chen tiexin, former Vice-President of Liaoning Provincial People's Political Consultative Conference; 22. Chen Chuanping, former Party Secretary of Taiyuan, Shanxi Province; 23. Nie Chunyu, a former member of the Standing Committee of Shanxi Provincial Party Committee; 24. Bai Yun, a former member of the Standing Committee of Shanxi Provincial Party Committee; 25. Bai Enpei, former Party Secretary of Yunnan Province; 26. Ren Runhou, former Deputy-Governor of Shanxi Province; 27. Sun Zhaoxue, former General Manager of Aluminum Corporation of China; 28. Pan Yiyang, former Vice-Chairman of the Inner Mongolia Autonomous Regional People's Government; 29. Qin Yuhai, former Vice-Chairman of the Standing Committee of Henan Provincial People's Congress; 30. He Jiacheng, former Vice-President of the National College of Government; 31. Zhao Shaolin, a former member of the Standing Committee of Jiangsu Provincial Party Committee; 32. Yang Jinshan, former Deputy Commander of Chengdu Military Region of PLA; 33. Liang Bin, a former member of the Standing Committee of Hebei Provincial Party Committee; 34. Sui Fengfu, former Vice-Chairman of the Standing Committee of Heilongjiang Provincial People's Congress; 35. Zhu Mingguo, former Vice-President of Guangdong Provincial People's Political Consultative Conference; 36. Wang Min, former Party Secretary of Jinan, Shandong Province; 37. Han Xuejian, a former member of the Standing Committee of Heilongjiang Provincial Party Committee; 38. Ling Jihua, former Vice-President of Chinese People's Political Consultative Conference; 39. Sun Hongzhi, former Deputy-Director of State Administration for Industry and Commerce.

of bribery found that China tops the list of prosecuted bribery cases, far surpassing the other countries.<sup>17</sup>

According to a report in the *Beijing News*, on 22 October 2013, the Chief Procurator of the Supreme People's Procuratorate, Cao Jianming, detailed anti-corruption and anti-bribery work for the NPC Standing Committee: between January 2008 and August 2013, prosecutors nationwide investigated 151,350 cases of corruption and bribery involving 198,781 people, including 13,368 county-level officials, 1,029 department-level cadres, and 32 cadres at the provincial level or higher, including former politburo member and party chief of Shanghai, Chen Liangyu, and Chongqing Party Secretary, Bo Xilai. Compared with previous years, the number of officials apprehended for bribery increased by 19.5 percent. Among the cases investigated, 48,671 (or 32.1 percent), were initiated by public tip-offs; 53,532 (35.4 percent) were discovered by the procuratorates themselves; 14,354 (9.5 percent) were opened and submitted for investigation by the discipline inspection commissions; and 34,793 (23 percent) were opened by law enforcement agencies, the suspect himself, or by other bodies. In this period, procuratorates nationwide indicted 167,514 people, of whom 148,931 have been found guilty in courts of law. Conviction rates in the cases with the final judgment reached as high as 99.9 percent, and resulted in RMB 37.7 billion in recouped funds.<sup>18</sup>

Are the data above sufficient to prove China to be the most corrupt country in the world, or prove that corruption was more severe during the period from 2008 to 2012 than in the five years previous? The answer to both questions is no. First, criminal corruption often has a long incubation period; the cases investigated in a particular year may not take into account cover

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<sup>17</sup> See Lu Youxue, "Bringing Criminal Bribery Legislation in Line with International Standards," *Collected Papers of the Annual Meeting of the China Law Society* (vol. 2, part one). Beijing, China: the University Press of People's Public Security, 2004, p. 395.

<sup>18</sup> See Song Shijing and Xing Shiwei, "Thirty-two Cases of Ministerial-Level and Higher Officials Investigated over Five Years," *Beijing News*, October 23, 2013, p. A07.

crimes committed that year. Moreover, corruption tends to be invisible, with criminal investigations only ever representing a fraction of crimes committed; thus, the data available cannot accurately reflect the extent of corruption.

“Corruption’s unknown number” refers to cases that have not been discovered. There’s an “unknown number” associated with all types of criminal cases, and its scale is variable. In some cases the number is relatively small, for example with murder cases, since relatively few murders remain undiscovered. Other categories have larger numbers, such as fraud, which may go unreported or undiscovered because the amount of money stolen is too small to be noticed initially, or for other reasons.

The unknown number of corruption cases is certainly higher than that of all other categories of crime. In the first place, corruption, especially bribery, generally leaves no direct victim. There is little in the way of obvious criminal action, and often no eyewitness. Frequently the only people who know the details of the events are the presenter and acceptor of the bribe, and having reaped the benefit of their “transaction of power for money,” neither is likely to report it. It does happen that the person paying the bribe will report the crime when their action fails to elicit the desired results. Further, the ratio of investigations initiated to reports filed is relatively modest when it comes to corruption. Compare bribery cases to murder cases: whenever a case of murder is reported or when a corpse is discovered, the case merits an investigation. But to prosecute a case of bribery it is necessary to first accumulate robust evidence; the accusation of bribery must be verified before an investigation is warranted, and so the report-to-case ratio is lower.

According to statistics released by China’s Central Commission for Discipline Inspection at a press conference on 10 January 2014, the total number of petitions received by all levels of

commissions for inspection was 1,950,374; of these, 1,220,191 instances led to investigation, and only 172,532 to indictments.<sup>19</sup> The ratio of cases received to cases leading to indictment is just 14 percent. Taking into account China's "no break, no indictment" method (if there is no clear break in the case, then an indictment is not indicated) and the "unknown number" of criminal corruption cases increases.

The "unknown number" is also affected by the strength and competence of corruption investigations: it varies by country, locality, and time. It is true that the "unknown number" varies inversely to the strength and competence of investigation.

China faces three difficulties with regard to fighting corruption: discovery, proof, and punishment. As described above, the methods, actions and results of corruption tend to remain obscure, and are much more difficult to uncover than crimes such as murder, so a large number of cases go unreported. In addition, proof in these cases depends heavily on witness testimony, because there is usually little material evidence. Many of those involved in corruption are also highly intelligent, with a well-developed understanding of how to avoid detection and association with the crime. Moreover, corrupt officials often have extensive networks of relationships that can extend umbrellas of protection over their communities of interest, with the result that even when the prosecution has robust evidence, it may be difficult to institute a substantial punishment. The following case may serve as an example of this.

In 2004 Gao Yuchuan, Party Secretary of Yulin Township, Jingbian County, Shaanxi Province, was reported to authorities by local farmers for embezzling over RMB 80,000 from funds earmarked for alleviating rural poverty. But the report only resulted in Gao's transfer to the position of Director of the county Forestry Bureau. He remained recalcitrant, and the farmers

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<sup>19</sup> See the website of the *People's Daily*, "China Central Discipline Commission 2013 Annual Report on Fighting Corruption and Building a Corruption-Free Government," January 10, 2014, <http://politics.people.com.cn/n/2014/0110/c1001-24081364-2.html>, last accessed June 22, 2014.

sought to retrieve the money due to them from the Forestry Bureau. They personally lodged multiple complaints with the county Party Committee, the county government offices, and the Yulin Municipal Procuratorate. Meanwhile, cadres at the Forestry Bureau reported that Gao used over RMB 10 million to commission forestry-related projects that benefited his own family. The Yulin Municipal Procuratorate finally launched a criminal investigation, but local leaders connected to Gao acted as his guarantors pending trial, as they had previously. Gao not only continued in his post as bureau Director and representative for the county People's Congress, but also ignored the subpoena of the Procuratorate for over three years! However, in July 2007, under pressure from a higher-level procuratorate, the Jingbian County Procuratorate at last issued an indictment and brought Gao to court. In August, Gao was removed from his posts, and found guilty at trial but "exempt from criminal punishment." Later, protests against this leniency by the Yulin Municipal Procuratorate, prompted a second trial, resulting in a conviction for corruption and a sentence of six years imprisonment. Still, the facts of this case provide much food for thought.<sup>20</sup>

Given the difficulty of discovering, proving and punishing, it can be inferred that about half of corruption crimes already committed have not been discovered; and half of those discovered have not been proved; and for those in which sufficient evidence exists, half have not resulted in punishment. If these three inferences are at all reasonable, the fraction of corrupt officials actually punished stands at 12.5 percent. In other words, the unknown number of

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<sup>20</sup> See Liang Juan and Tao Ming, "How Hard It Is to Sanction Corrupt Officials: A Look Back at the Case of Gao Yuchuan, Former Director of the Jingbian Forestry Bureau," February 24, 2008, [http://news.xinhuanet.com/politics/2008-02/24/content\\_7675708.htm](http://news.xinhuanet.com/politics/2008-02/24/content_7675708.htm), last accessed June 21, 2014.

corruption crimes may account for as high as 87.5 percent of the total.<sup>21</sup> Of course, this is a subjective inference, and cannot serve as a basis for objective assessment.

In summary, understanding the number of corruption cases in a particular country or locality is a comparatively objective and authoritative method for estimating the scope of corruption. But the number of cases investigated alone can not reflect the severity or change in levels of corruption with complete accuracy because there will always be a certain unknown number of cases. Since we have no way to determine the true number of cases, and must rely only on the number of cases actually discovered, the use of objective assessment techniques is feasible for a single country or locality, but inappropriate in horizontal comparisons across a variety of countries and localities. This is the major deficiency of objective assessment techniques.

## **B. Subjective Assessments of Criminal Corruption**

Levels of corruption can also be assessed by understanding public sentiment and perception of the issue through the use of analytical tools like questionnaires. We may take the public opinion reflecting a “sense of social safety” as an example. In 2001 and 2002, the National Bureau of Statistics of China distributed such questionnaires to over 100,000 people aged sixteen and older across thirty-one provinces and autonomous regions.

In 2002, in response to the same question asked a year before, when asked, “Given the current social security environment, do you feel safe?”, 6.9 percent responded, “Very safe,” representing an increase of 0.7 percent over 2001; 35.6 percent responded, “Safe,” up 4 percent;

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<sup>21</sup> Another scholar has developed an estimate for the likelihood that a corruption official will be investigated: given that 50 percent are ever discovered, and 50 percent of those discovered are ever reported, and 50 percent of those reported ever tried, and 50 percent of those tried actually punished, then the percent punished of the total is 6.25 percent. That is to say, out of 100 corrupt officials, not even seven are ever punished. See Che Chengjun, “The Moral Character of Corruption and the Design of Anti-Corruption Mechanisms.” *Teahouse for Jurists*: Issue 38, March 2013.

41.6 percent responded, “Basically safe,” a decrease of 2 percent; 12.4 percent responded, “Not very safe,” a decrease of 2.1 percent; 3.5 percent responded, “Not safe,” a decrease of 0.6 percent.<sup>22</sup> Because this type of assessment takes as its basis the subjective feelings of those being surveyed, it is therefore called “the subjective-assessment method.”

The application of subjective-assessment methods to levels of corruption in a particular country or locality can lead to especially fine-grained qualitative data, useful for both vertical and horizontal comparative studies. In this field, the “Corruption Perceptions Index” (CPI) released each year by Transparency International is without a doubt the most influential.<sup>23</sup>

Transparency International’s reasoning for using subjective-assessment techniques runs thus:

Corruption generally comprises illegal activities, which are deliberately hidden and only come to light through scandals, investigations or prosecutions. There is no meaningful way to assess absolute levels of corruption in countries or territories on the basis of hard empirical data. Possible attempts to do so, such as by comparing bribes reported, the number of prosecutions brought or studying court cases directly linked to corruption, cannot be taken as definitive indicators of corruption levels. Instead, they show how effective prosecutors, the courts or the media are in investigating and exposing corruption. Capturing perceptions of corruption of those in a position to offer assessments of public sector corruption is the most reliable method of comparing relative corruption levels across countries.<sup>24</sup>

Transparency International’s CPI is the product of the combined and evaluated data from reports by important or well-known organizations such as the World Bank and the World Economic Forum. The data is first evaluated to determine whether it meets Transparency International’s standards, and then all the reports undergo a comprehensive evaluation based on

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<sup>22</sup> See the Guangdong News website: “Eighty Percent of Chinese Feel Safe; Crime a Factor for Feeling Safe,” March 11, 2003, <http://www.southcn.com/news/china/zgkx/200303110749.htm>, last accessed June 22, 2014.

<sup>23</sup> The Berlin-based Transparency International was founded in May 1993 by Peter Elgin, a German national and former official with the World Bank specializing in Africa; it is now the most well-known international NGO doing research on corruption. Transparency International maintains a neutral stance, with no reliance on any political party. Its mission is to raise awareness of the damage done by corruption all around the world, and to urge all countries to develop methods to deal with this problem.

<sup>24</sup> See the webpage of Transparency International, “Frequently Asked Questions” [http://cpi.transparency.org/cpi2013/in\\_detail/](http://cpi.transparency.org/cpi2013/in_detail/), last accessed June 19, 2014.

their corresponding data, which is aggregated to produce a numerical index representing the perception of corruption in a particular country and place. For this reason some call the CPI a “survey of surveys.” Transparency International’s CPI only assesses corruption in the field of public management; its surveys target economists, business managers, risk-analysis and risk-evaluation experts, and people’s representatives.

In CPI ratings produced between 1995 and 2011, a 10-point scale was applied, with numerical score inverse to perception of corruption. In other words, low-scorers are more corrupt and high-scorers are relatively corruption-free. Scores of 8-10 are considered low corruption, 5-8, light corruption, 2.5-5, moderate corruption, and 0-2.5, high corruption. Every country receives one position on the ratings, and this position comes with five different fields: rank, country name, score, number of survey reports, and confidence range (also called the “standard deviation”). The number of reports forms the basis for the assessment of the country or locality, and is normally between 5 and 10, though it can be as few as 3, and many are above 10. The “confidence range” uses the difference between scores of the various survey reports used in a single location to rate the reliability associated with that score. China, for example, was ranked number 70 on the 2006 CPI rankings, with a score of 3.3 and 9 survey reports, with a confidence range of 3.0-3.6. Saudi Arabia also ranked 70 with a score of 3.3, with 3 reports and a confidence range of 2.2-3.7. Beginning in 2012 Transparency International adopted a 100-point scale in an effort to provide more accurate data: a past score of “1” corresponds to “10” on the new scale.

Transparency International does not necessarily use the same data sets every year. In 2013 the CPI took input from 13 types of reports from 12 different organizations, including the African Development Bank Governance Ratings; the Bertelsmann Foundation Sustainable Governance Indicators; the Bertelsmann Foundation Transformation Index; the Economist



Intelligence Unit Country Risk Ratings; the Freedom House Nations in Transit; the Global Insight Country Risk Ratings; the IMD World Competitiveness Yearbook; the Political and Economic Risk Consultancy (PERC) Asian Intelligence Report; the Political Risk Services International Country Risk Guide; the Transparency International Bribe Payers Survey; the World Bank - Country Policy and Institutional Assessment; the World Economic Forum Executive Opinion Survey, and the World Justice Project Rule of Law Index.<sup>25</sup>

Each of the sources of data that influence the CPI preserve independence in terms of personnel, methods, content, and standards. For example, the World Bank - Country Policy and Institutional Assessment measures a country's economic management, structural policies, policies for social inclusion and equity, and public sector management and institutions. World Bank experts take their assessments and issue their scores for the above areas based on their own standards. To investigate corruption, experts assess the transparency of the public management sector, accountability systems, and the state of corruption in public sector management. These three areas influence each other. Transparency in decision-making can increase official accountability, and higher transparency and accountability can also prevent corruption and abuse of public power. Each expert issues a score in three different areas: the responsibility of civil servants and institutions operating under the supervision of the chief executive; paths by which members of civil society may obtain public-affairs information; and the ability of a country's minorities to reap the benefits of that country. Scores are calculated on a scale from 0 to 6, with half points possible; a score of 1 indicates low transparency while 6 indicates high transparency.

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<sup>25</sup> See the webpage of Transparency International, "Frequently Asked Questions: What are the Data Sources for the CPI?" [http://cpi.transparency.org/cpi2013/in\\_detail/](http://cpi.transparency.org/cpi2013/in_detail/), last accessed June 19, 2014.

In 2012 eighty countries and localities were assessed, with work typically beginning in the fall and ending in spring; the results of the 2012 assessment were released in June 2013.<sup>26</sup>

The following year 177 countries were surveyed, with the CPI rankings released by Transparency International on 3 December 2013. Out of those countries, Denmark and New Zealand tied for the least corrupt, each with a score of 91. Hong Kong ranked 15 with a score of 80; China came in at 80 with a score of 40. Somalia, North Korea and Afghanistan all shared next-to-last place with a score of 8.

In the past few years, the Transparency International CPI rankings have exhibited a few significant characteristics: one, corruption-free countries are mostly small geographically, with low populations; two, most low-corruption countries are Western and democratic; three, most countries with moderate levels of corruption are those in the midst of political and economic transition; and four, most of the countries with high levels of corruption are African and Asian states in the midst of political instability or outright war.

In the 1995 CPI rankings China was second-last of 41 countries, but has managed to rise as more countries have come to be included, keeping, for the most part, a spot in the middle for itself. During the first three years of assessment, China scored between 2.16 and 2.88, and then later ranged between 3.1 and 3.6. With the 2012 change in scale China's score surged to 39, and in 2013 reached 40. It is often remarked that China's progress in this regard is the product of new scores from Global Insight and the World Economic Forum — China's score in the former report has leapt from 32 to 42, reflecting the report's support for China's anti-corruption efforts.

However, China ranked 100 with a score of 36 in 2014, with the CPI rankings of 175 countries

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<sup>26</sup> See the webpage of Transparency International, "The 2012 World Bank Country Policy and System Planning Rules," [http://cpi.transparency.org/cpi2013/in\\_detail/](http://cpi.transparency.org/cpi2013/in_detail/), last accessed June 19, 2014.

released by Transparency International on 3 December. It was a shock to many Chinese people, because of the anti-corruption efforts of Chinese government in past two years.

Transparency International's CPI continues to raise awareness of corruption among the general public, and helps to promote anti-corruption efforts around the world. That said, the CPI remains a subjective-assessment method, based on surveying individual feelings. Though random sampling, bulk sampling and multi-channel sampling can reduce the influence of individual error on results, it cannot change the fact that feelings are prone to many variables, and there is no bridging the gap between subjective knowledge and objective reality. It has been posited that the surveys used by Transparency International in China have mostly targeted foreigners, and if so: "Can survey subjects from other countries truly understand China? Can they give China a fair score? How large is the gap between their subjective opinions and objective reality? Such questions help explain why China's CPI score was so low. Clearly it is unfair."<sup>27</sup> Subjective assessment will certainly exhibit bias, and foreign assessment of Chinese corruption will certainly do so. Yet perceptions may diverge significantly between different populations within China. Even as foreign scholars have expressed approval for Transparency International's efforts in the battle against corruption, criticism of subjective-assessment methods has also emerged. Anti-corruption researchers Staffan Anderson and Paul M. Heywood point out a weakness of the CPI in their article "The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption:"

First, the CPI measures perceptions of corruption rather than corruption itself. Secondly, there are fundamental definitional problems leading us to be very unsure of what respondents actually understand the terms bribery and corruption are used interchangeably and are for many one and the same thing. Thirdly, the CPI suffers from 'false accuracy' and there is no way of knowing what the real difference between scores that are closely grouped together is in practice. A difference, in other words, of just a few

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<sup>27</sup> Sun Yanmin, "The So-Called 'Integrity Index:' Can We Have a Clear Look?", *Procuratorate Daily*, December 10, 2013, p. 5.

decimal places can lead to countries being a fair distance apart in the league table and yet we are not at all sure that these differences actually reflect what is happening in the real world. Finally, responses to the various surveys are very likely to be shaped by – whether directly or indirectly – the assumptions and attitudes of the western business community; for the simple reason that the majority of people asked have roots in this particular milieu.<sup>28</sup>

Transparency International itself does not deny that their assessment methods are not perfect. The original designer of the CPI, Johann Graf Lamedorff, admits that the differences in CPI from year to year indicate changes in perception of corruption and not necessarily changes to the state of corruption *per se*.<sup>29</sup> This is why Transparency International supplies other data to supplement the CPI, including the Bribe Payers' Index (BPI), the Global Corruption Barometer (GCB), the Global Corruption Report (GCR), the National Integrity System assessments (NIS), and the report on Transparency in Corporate Reporting. The most significant of these is the Bribe Payers' Index.

Transparency International first released the BPI in 1999, and has continued to do so every three years. In 2011 Transparency International distributed questionnaires to over 3,000 businesses around the world, assessing their experiences related to the bribery of public officials in the course of overseas trade in twenty-eight major export economies (both traditional and newly emergent in trial countries and localities). The results were arranged on a 10-point scale on which high scores indicated low bribery and vice versa. The BPI posts not only the score and rank for each country or region, but also whether the country or locality is a signatory to the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, and the *United Nations Convention Against Corruption*. In 2011 topping the list of

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<sup>28</sup> Staffan Andersson and Paul M. Heywood, "The Politics of Perception: Use and Abuse of Transparency International's Approach to Measuring Corruption," *Political Studies*, 57 (4), 746, also reprinted in Dan Hough, ed., *Corruption, Anti-Corruption and Governance*, Hampshire, England: Palgrave Macmillan, 2013, p. 16.

<sup>29</sup> See Dan Hough, ed., *Corruption, Anti-Corruption and Governance*, Hampshire, England: Palgrave Macmillan, 2013, pp. 16-17.

twenty-eight countries were the Netherlands and Switzerland, with scores of 8.8; the USA ranked at number 10 with a score of 8.1, and Hong Kong at number 15 with a score of 7.6. China scored second to last with a score of 6.5, just above Russia, whose score was 6.1.<sup>30</sup> These rankings indicate that multinational corporations from the Netherlands or Sweden are unlikely to win business abroad by paying bribes, unlike companies from Russia and China.

The BPI is another subjective assessment tool. If we agree that the CPI reflects the “demand” for corruption in the public sector, then what the BPI reflects is the “supply” of this corruption by business enterprises. When Transparency International was first established, it focused on graft and bribery among public officials, and only later turned to the problem of the “supply side from the private sector.” The BPI is thus an important supplement to the data provided by the CPI. Taken together, they not only reflect corruption levels in countries and localities, but also reveal those places where corruption thrives. It has been suggested that China should carry out its own assessment to determine which Chinese cities are most free from corruption. Unfortunately, it would be difficult to guarantee the fairness and objectivity of such an assessment; in fact, such an assessment could easily become subject to corruption itself.

In summary, both objective and subjective assessment methods can tell us about the state of corruption in a country or locality, but only to a certain degree. Objective assessment cannot reflect cases of corruption that have not been discovered or investigated, especially in places where the unknown number of cases is significant. Subjective assessments can indicate levels of overall corruption, especially in places where the unknown number is also significant, and where this data appears objective and accurate, but since the basis for such assessment is a survey of subjective opinion, bias is unavoidable. Nevertheless, these methods yield a basic understanding

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<sup>30</sup> *Baidupedia*, “An Examination of the 2011 Bribery Index.” July 12, 2013, <http://baike.baidu.com/view/10768087.htm?fr=aladdin>, last accessed June 23, 2014.

of the state of corruption in China today. Which is to say that it is serious indeed, and not a matter pertaining to a few individuals; rather, it is systematic and systemic corruption.

Corruption can be delineated into individual, systematic (also known as institutional), and systemic (also known as social) corruption. Individual corruption refers to occasional incidents caused mostly by moral defects. Such cases may occur even in places mostly free of corruption. An example of this is the case of Rafael Hui, former Chief Secretary for Administration for Hong Kong, who accepted bribes from Sun Hung Kai Properties, Ltd., in what has been called the “crime of the century.”<sup>31</sup>

Systematic corruption refers to chronic corruption caused mainly by deficiencies within the system, i.e., the system facilitates corrupt practices with such frequency that even people with moral qualms might participate. Professor Gary Copeland of the University of Oklahoma supplies an example: During the early 1980s, taking “kickbacks” upon signing public-private contracts was a universal practice in Oklahoma county government. It was eventually exposed and several hundred county commissioners were indicted. Likewise, in the early 1990s, writing blank checks was common practice among US congresspersons, because they were protected by overdraft funds. The banks allowed such behavior out of deference to their clients’ political status. Since the law did not specifically prohibit such behavior, some congresspersons followed others’ leads, until dozens were doing it. When the media began covering the scandal, many elected officials began to feel that the practice was unacceptable.<sup>32</sup>

Systemic corruption refers to universal corruption caused by social factors such as cultural customs and accepted practices. It is often connected to systematic corruption, but

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<sup>31</sup> See Qin Wei, “Crime of the Century: The Diary of Guo Binglian Becomes Key Evidence”, *Twenty-First Century Business Herald*, June 8, 2014.

<sup>32</sup> Gary Copeland, “Legislative Corruption and the Fulfillment of Key Parliamentary Functions,” *Studies in Procuratorial Theory*, 1986, issue 1, p. 85.

spreads beyond the public sector into every industry and profession in a society, including business, social organizations, arts, sports, education and health care.

Corruption in China is certainly both systematic and systemic. We see the severity of systematic corruption in the all-too-common cases of extreme, deeply interconnected incidents that show leaks in the system, as in the embezzlement cases involving Xu Chaofan, Yu Zhendong, and Xu Guojun, three managers of the Kaiping sub-branch of the Bank of China,<sup>33</sup> or the corruption cases involving three successive presidents of the Fuyang Intermediate People's Court in Anhui.<sup>34</sup> We perceive society-wide, systemic corruption when we observe corruption in rural village government, in private enterprise, in charitable organizations, on the sports fields, in literature and arts circles, in health-care agencies, and in the education system. Yet the public really begin to lament when they find that the criminal justice system is itself corrupt;<sup>35</sup> and with the education system corrupt as well,<sup>36</sup> where can we go to find a field free of corruption?

### **3. Factors Leading to Criminal Corruption: Social and Systemic**

Why does China seem to be endemically corrupt? It is said that 'power corrupts,' and that people are by nature filled with greed. But why, then, are there countries where the officials are not as greedy as those in China seem to be? Why were Chinese officials less greedy in the period

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<sup>33</sup> See *CBN Daily*, "The Complete Story of How Three Chinese Bank Managers in Kaiping Stole 50 Million US Dollars," October 27, 2008, <http://news.163.com/08/1027/23/4PA2KDTE0001311U.html>, last accessed June 26, 2014.

<sup>34</sup> See *Democracy and Legal Times*, "A Case of Successive Corruption Among Three Chief Justices of the Intermediate People's Court in Yiyang, Anhui Province", September 10, 2006, [http://news.xinhuanet.com/legal/2006-09/10/content\\_5071562.htm](http://news.xinhuanet.com/legal/2006-09/10/content_5071562.htm), last accessed June 26, 2014.

<sup>35</sup> Cases that have received media attention in recent years include: former Supreme People's Court justice Huang Songyou, who allegedly accepted bribes, as well as Tian Fengqi, former Chief Justice of the Guangdong Province Supreme People's Court, Wu Zhenhan, an Associate Chief Justice of the Hunan Province Supreme People's Court, Zhang Tao, Associate Chief Justice of the Chongqing Municipality Supreme People's Court, and some 10 other supreme court justices.

<sup>36</sup> Examples of corruption in education include the "Wuhan Incident" of the early 2000s, in which school leaders were apprehended and investigated for taking bribes at Wuhan University, Wuhan University of Science and Technology, Wuhan University of Technology, as well as the Wuhan-based Zhongnan University of Economics and Law. More cases have been exposed by the media in 2014, including alleged corruption by former President Hu Tiehui of Central South University, former President Liu Qingcheng of East China Institute of Technology, former Vice-President Zhao Luping of Sichuan Nursing Vocational College, former Party Secretary Zhang Lizhou of Liaoning Medical University, as well as a case that really shocked the Chinese public, that of Cai Rongsheng, former Head of Admissions for Renmin University.

after the founding of the People's Republic of China (PRC)? Why are officials less greedy in Singapore, which is after all a nation with Chinese as the majority population? Why do they seem to be less greedy in Hong Kong? They are equally human, equally Chinese. Chinese society and its systems must be at fault. Still, corruption is a product of human action, and so the question of human nature is unavoidable. Some American scholars believe that corruption is a product of the natural propensity towards greed, a quality so deeply imprinted in human nature that it can never be eradicated. Indeed, at times, human endeavors in this regard bring about results the opposite of those intended. The American experience with alcohol prohibition, and the fallout from Prohibition, are one good example of this.<sup>37</sup> Our analysis of corruption must therefore address the question of human nature first.

#### **A. Causes Related to Human Nature and Instincts**

What is human nature? The ancient Chinese philosopher Xunzi writes, "That which is so from birth, we call 'nature' (Xunzi, "Human Nature is Evil")." That is to say, human nature includes the original and unmodified natural characteristics of a person, as opposed to acquired habits. Does this human nature contain within it the seeds of corruption? To answer this question, we must determine whether the original quality of human nature is good, or evil.

##### **i. Is Human Nature Good or Evil?**

The question of whether human nature be good or evil is one that has drawn diverse and confused answers from people across the world and through the ages. In China, traditional Confucianism holds that human nature is good, as in the lines from the widely disseminated

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<sup>37</sup> See Peter DeLeon, "Political Corruption in Contemporary American Politics." In *Developments in Anti-Corruption and Social Stabilization*, Beijing, China: Red Flag Publishing House, 1996, p. 291.



school text *The Three-Character Classic*, “At birth, people are by nature good; their natures are similar, but habit makes them distant.” In actuality, the views of Confucian scholars do not entirely accord on this. For example, Mengzi and Xunzi, two of the great philosophers of the Warring States period [(256 – 221 BC), held opposing views. Mengzi said humans were by nature good, and Xunzi claimed humans were by nature evil. Mengzi believed that human nature strove naturally towards good, as water flows downstream. (Mencius, Book VIb). Xunzi claimed that, on the contrary, survival instincts like the desire for food and sex drove human nature towards evil. Humans act morally only after acquiring an understanding of morality through cultivation. For Xunzi, the need for moral law, custom, and cultivation was evidence that human nature was intrinsically bad. Humans had to strive for the good, he thought, because they lacked good at the outset. If the state of nature were good, then there would be no need for moral law and custom (*Xunzi*, “Human Nature is Evil”).

Before we continue, we should first make clear what we mean by the concepts of “good” and “evil.” In Chinese, “good” (*shan*) denotes “goodness” (*hao*), with connotations including kindness, goodness and goodwill, whereas “evil” (*e*) denotes “badness” (*huai*) with connotations of wickedness, ugliness, and meanness. Good and bad are relative concepts, as are good and evil. Only with evil or badness can the good manifest itself, and one cannot exist without the other - light and dark; day and night; life and death. And it must be taken into account that what may be good for one person might be bad for another. That which may be considered good in one place might be bad in another. Thus the standards for determining good and bad are collective, not individual. Humans are social animals, and so naturally there are various relationships between individuals; it is only in the midst of these relationships that goodness and evil become manifest. Since that which benefits one individual may be different from, and even in conflict with that

which benefits another, individual benefit cannot serve as a determining standard; only the benefit of the collective can. Actions that benefit the collective are good, while those that harm it are bad. The needs of the collective frequently demand that an individual act to benefit others and not him or herself. Thus we can conclude: acting for one's own benefit shows a tendency towards evil while acting for the benefit of others shows a tendency towards good. Acting against the benefit of others is the most representative example of evil, while sacrificing oneself for others is the most representative example of good.

So let us now return to the question of how human nature influences behavior. Every individual has her or his own destiny, but at the same time there is a collective dimension to all human lives. Thousands of years of evolution have left these attributes "in our blood" as important motivators of behavior. On the one hand, a person strives to satisfy their own needs in order to stay alive, at times going so far as to harm others or even the collective good in the process. But on the other hand, to thrive within the collective a person must defer to the needs of the collective, with consideration for the collective good, and especially the good of those others with whom a person has a special relationship. Parents, for example, may sacrifice their own individual good for the sake of their children; lovers may do the same for the objects of their affection. From this we can see that to benefit the self is natural, yet benefiting others is also natural. In other words human nature has both good and evil sides. Individual destiny is the source of evil, whereas goodness begins in the social dimension. This is the law of survival from the natural world applied to human nature. Humans are thus by nature good and also by nature bad; moreover, our attitudes towards goodness and evil change with the times. In times of peace and prosperity, people tend to behave in ways that are simple, honest, and accept more easily the claim of good nature. However, when materialism becomes dominant, the view that humans are

naturally evil gains credence in the mainstream. Mencius lived during the early years of the Warring States Period, when social conditions were relatively peaceful and government fairly stable, so human behavior tended towards the good. Xunzi lived in the waning years of the same period, when society had grown more dangerous and unstable, and governments more tyrannical, so human behavior tended towards evil. In these terms, the theories of Mencius and Xunzi on human nature were both reflections of social conditions. Once we admit that human nature has an evil side, we can see that the source of corruption lies within human nature.

## **ii. The Human Instinct for Food and Sex**

Gaozi famously said to Mencius, “Human nature consists of food and sex.” (Mencius, Book VI, Part A). As we stated above, Xunzi also thought that the desire for food and sex, as well as the instinct for self-preservation explained why human nature was intrinsically evil. Humans want to live, just like all animals. We need the nutrition from food to survive, and procreation is necessary to the survival of our species.

As with many other types of crime in society, corruption is related to the “instincts for food and sex.” The most primitive form of corruption involves the use of one’s powers to obtain money illegally; [the desire for] money is an extension of the desire for food and sex. In fact, many corrupt officials seek not only money but also sex; they exchange their power for sexual favours as well as for money. These crimes originate in human instinct, but they also run counter to human nature. Objectively speaking, corrupt officials are not total monsters. Some corrupt officials were once not bad at all, or at least not very bad, but exist in a social environment tending towards evil because of an excess of materialism; unable to restrain their own instincts for food and sexual gratification, they fall into a quagmire of corruption.

### **iii. Yield or Struggle**

Mencius claimed that human nature was intrinsically good because of what he called our “politely declining heart.” Xunzi claimed that human nature was intrinsically bad due to our rapacious hearts. While Mencius and Xunzi seem to have polar opposite views, their goals were the same: both advocated that humans act for the good, and both emphasized the importance of moral enlightenment. The main difference between their arguments is that Mencius advocated the cultivation of human nature by keeping a close watch on the heart, what we might call self-cultivation. Xunzi, on the other hand, believed that “falseness comes from a transformed nature,” and so emphasized the importance of external enlightenment.

Competition is necessary to society, but excessive competition risks developing into viciousness, which can lead to a degradation of human nature. In overly competitive places, people will resort to any means necessary to get what they want; it becomes a matter of the strong versus the weak. In the worst instances it can be a contest of martial strength, in which only the victor survives. In the case of bribery, the one who accepts the bribe is using the power invested in them to extort wealth, while the person who pays the bribe is using wealth to get even more wealth. Whether in social or commercial spheres, people who pay bribes are introducing competition improperly. To successfully bribe an official is to gain unfair advantage, and shows the competitive mindset itself to be linked to that aspect of human nature that leads to corruption.

## **B. Social Customs Leading to Corruption**

A commonly heard lament in China today is that there are too few good people. Why? Because the current social environment in China is not conducive to producing good people! In a

society that encourages, in both material and spiritual spheres, the sort of unhealthy competition in which the strong take advantage of the weak, then citizens of that society are not encouraged to be good to each other. In a society that rewards rapacious profit-seeking, casting it as praise-worthy and enviable, it can be difficult for individuals to hold on, or even identify their moral code and integrity: take, for example, the corrupt officials who have stated in their defense that “they had no other choice.” Likewise, foreigners who have paid bribes to do business in China have remarked: “When in Rome...” Such sentiments should compel us to consider the social customs in China that lead to corruption.

#### **i. A Culture of Emphasizing Relationships**

In China there has long been an emphasis on *guanxi*, or relationships, between people. Certainly all people who live in societies become involved in all manner of relationships, good, or bad, close, or distant. The law is not opposed to relationships; on the contrary, the law is meant to set behavioral norms and standards for them. But what this paper refers to by the term *guanxi* is that sort of relationship that “opens doors” to “hidden paths,” and this sort of *guanxi* goes against the spirit of the law.

The Chinese emphasis on *guanxi* to accomplish various tasks dates from the mid-1970s. During the large-scale movement to send educated youth to the countryside, families that possessed *guanxi* sent their children into the army or had them returned to the cities using “back doors.” As time went on families that lacked *guanxi* tried to cultivate it in order to improve their employment situations.<sup>38</sup> Gradually, it seemed that *guanxi* was necessary to accomplish anything desirable, like entering university; seeing a doctor; finding goods to purchase; eating at

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<sup>38</sup> The author himself was born in Beijing and “sent down” to a farm in Heilongjiang province in 1969. He was permitted to return to his hometown in 1977. “Going by the back door” was not just something he heard about; he saw it with his own eyes.

restaurants; getting a job; asking for a raise; being promoted, and doing any kind of business.

*Guanxi* was even more critical to government bureaucracy. Thus, taking sides and forming cliques became and continues to be a common feature of socio-economic life in China.

In a society that places such high emphasis on *guanxi* the rules are often overlooked, because when *guanxi* is available, the rules can be ignored — they can be applied when needed, and not applied when not. This is especially true when rules are unclear or never made public: there will be a difference in the treatment of those who have *guanxi* compared to those who have none. Those with none will have a hard time of it even if their demands are simple. And those who have *guanxi* may find that their needs are met smoothly even when they are far from reasonable. The result is that the people will do anything to obtain or construct *guanxi*. Also, the sheer use value of *guanxi* also keeps increasing, from purchasing rationed meats to land- and resource-development deals, from amounts in the tens of *yuan* up to hundreds of millions of *yuan*. In the wake of this, a whole field of study centered on *guanxi* has arisen, with books concerning “*guanxi* studies” now often gracing the bestseller ranks. Never strong in the first place, laws and customs weaken further in Chinese society, as its members consider the law to be of little consequence or use. Those who ignore the rules are counted all the bolder for it, while those who find ways around them are admired for their talent.

## **ii. A Culture of Gift-Giving**

A regrettable culture of gift-giving and banquet-sponsoring has long been common practice throughout China, and the phenomenon has become more widespread. Giving gifts frequently goes hand-in-hand with seeking *guanxi* and “back doors” to opportunity. It has always been the custom of the Chinese to exchange gifts among relatives during the festival of the Lunar New

Year; however, the recipients have now become people who are wealthy, influential or otherwise useful. During the 1970s and 1980s, with the economy under the reins of state ownership and with productivity low, there were shortages of many resources. Those who could acquire or distribute such resources (or valuable services), even people like doctors, drivers, and retail sales clerks, became very useful. Even the simple management of daily life required the intervention of a third party, so with the Lunar New Year many a gift-giver would show up at the doorsteps of the influential. And given that the standard of living was lower, the major gifts of those days were cigarettes, alcohol, candy, and cakes.<sup>39</sup> As time has gone on and the economy has developed, the contents and value of gifts has gone up; the throwing of banquets has also become more colorful and extravagant. Gift-giving has begun to focus on fewer, more powerful people, so much so that on important holidays the gift-givers form long lines, and successive banquets go on for days. Because it has long been the custom in China, gifts are given without fear of reprisal and accepted without shame. Even if they do feel some compunction, there is little sense of guilt. Yet the bar to corruption has lowered.

### **iii. Collapsing Private and Public Interests**

After the founding of the PRC, national policy raced to set up public ownership, state ownership or collective ownership, before society was materially or spiritually prepared for it. Whether it was “public-private partnerships” in the world of business enterprise or “people’s communes” in the countryside, all efforts aimed to overturn the concept of private property ownership. The slogan “enlarge the public interest and eliminate private interest” became current

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<sup>39</sup> One source tells of a doctor who occasionally sought rare commodities from a certain sales clerk and so would send along two bottles of fine alcohol during the festival period. The clerk, who sometimes used a certain driver in his work unit for off-the-clock private tasks, would “re-gift” these two bottles to the driver. This driver, finding himself in need of a prescription, would give those two bottles back to the doctor. Such dramatic gift exchange was remembered with more rancor than the participants could express, but it also reflects the culture of gift-giving in this society.

under the Communist Party leadership of the time. However, neither the reality of the times nor basic human nature could live up to such ideals; the irony was that for many the difference between the private and public interest became very ambiguous. Selfish desires cannot be eliminated. Even at the height of the fanfare-filled campaigns to “struggle against private interests,” and “strike fiercely at the idea of private interests,” those interests remained, albeit dormant, in people’s minds — and at times, it was hidden in full view under the dignified veil of “public interest.” What belongs to the public belongs to everyone, which means: I must have my share. Taking another person’s property without their consent constitutes a crime, but taking what belongs to the public does not. This idea became universal. Many work units did in fact allow employees use of shared resources, from things as small as stationery to others as large as cars and housing. Of course the leaders received a bigger share, and could make use of it openly, in contrast to those who often had to enjoy what they took (or were given) in relative secrecy.

In a society that fails to distinguish between public and private interests, people who use or expend public resources in violation of regulations do so with impunity; even outright stealing of public resources renders no sense of guilt. Since the end of the Cultural Revolution and the beginning of the reform era, economic development has accelerated, the country’s wealth has increased, and so have public resources; private use of public resources has kept pace with this increase. Eating, drinking and even traveling on the public tab is no longer unusual; private use of public cars and housing is also common. It is now fashionable for those treating friends and family to dinner to flaunt their ability to file for reimbursement; or for others profiting their own cliques to acclaim the “sharing of the wealth.” It has been such a long time since there was a clear line distinguishing public and private that some officials with influence now fall into corruption without even fully realizing it, or without realizing it at all.



#### **iv. Loving Special Privileges**

For thousands of years, replacing any feudal ruler in China meant simply replacing one small group enjoying special privileges with another. The fact that it was the rural farmers who revolted against inequality could not change the fact that in the end, the new leaders (former farmers) were all lovers of special privileges. According to a survey conducted by the magazine *People's Forum*, 50 percent of respondents understand clearly that privileges are unfair, but that nevertheless, they would not decline such privileges themselves, given the chance.<sup>40</sup> Perhaps the Chinese do not wish for others to enjoy privileges but do wish to enjoy such privileges themselves. The following is an example.

Beijingers frequently encounter traffic control officers, and just as frequently encounter cars given the privilege of disregarding the law. At such times, citizens may express their disgust and even outrage at the phenomenon, but they may inwardly wish they could enjoy similar privilege. Some even seek out various means to obtain such privileges, like the illegal use of police and military license plates, illegal installation of police lights and sirens, and the illicit obtainment of permits of all kinds. Some, lacking the means for any of the above options, find other ways to privilege themselves, by using the lanes reserved for emergency vehicles, running red lights, or cutting in line. And while corruption is produced by using privileges to obtain things, it is also as much produced by the search for special privilege *per se*. Corruption is more severe when those in positions of authority have more privileges than the common citizen. Corrupt officials are not the only ones hoping to reap the benefits of their positions; what we might call “special treatment” is also the goal of ordinary people, sending along gifts and bribes

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<sup>40</sup> See Che Chengjun, “The Moral Character of Corruption and the Design of Anti-Corruption Mechanisms.” *Teahouse for Jurists*: Issue 38, March 2013.

to those whose influence they aim to cultivate. This desire for privilege is a custom that may also contribute to corruption.

### **C. Factors Leading to Corruption in a Transitioning Society**

Some American scholars posit that the market itself becomes a major source of corruption because it emphasizes private property and individual profit over social and collective profit, and encourages the collection of wealth by those most able to accrue it. Moreover, because market economies emphasize the short-term material benefits of trade, social interaction becomes based on monetary exchange. These market features have a dual effect on social development: first, the free market encourages dynamism, productivity and adaptability; second, the market can overturn certain morally beneficial values that were hitherto crucial to the well-being of that society as a whole.<sup>41</sup> In the past thirty years China has transitioned from a spiritual to a materialist society, as evidenced by rapid economic development and the widening gap between rich and poor, as well as the resuscitation of private interests and the collapse of traditional morality. Society has not yet built up a steady enough behavior environment governed by rule of law, and the public have not cultivated the habit of acting lawfully, in part because there are so few opportunities to do so.

#### **i. Lacking Beliefs**

History shows that any political party or collective requires a set of high ideals to attract passionate, hot-blooded young people to struggle and even die for its cause. But once that party has taken power, those lofty ideals gradually become empty slogans set against a backdrop of

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<sup>41</sup> Michael Johnston, "Corruption, Markets and Reform" in *Working against Corruption and the Development and Stabilization of Society*, Beijing, China: Red Flag Publishing House, 1996, p. 299.

real conditions. It cannot be denied that the current population of China faces an enormous crisis of belief. The once all-encompassing faith in the Communism has lost its luster, yet both imported and revived native religious beliefs have found it difficult to fill the void. Though much of the population counts itself as adherents of Buddhism, Daoism, Christianity, or Islam, the number of true believers is likely low. One only need look at the commercialization of some sacred Buddhist spaces to find evidence of this. Some have lamented that, if even temples and monks can be “all about the money,” what a terrible thing it must mean for faith and belief in China overall! If ordinary people believed only in money, then society would be full of thieves and swindlers. If officials empowered by the state believed only in money, the country would be overcome by graft. Thus among the major factors leading to criminal corruption, the lack of strongly held belief systems among any class must certainly count as one.

## **ii. Moral Decline**

China was once known as the “country of rites and courtesies,” but now it is a place where “etiquette is dead.” That morality as a whole is on the decline in China today is an uncontested fact. Certainly the old line, once so popular, calling on the Chinese to “enlarge public interest and eliminate private interests, to become a person by eschewing the self,” has now been embracingly replaced by the once-reviled saying: “every man for himself, and devil take the rest,” as is the even worse sentiment of “curse the impoverished, not the prostitute.” Society has taken a greater interest in pleasure-seeking, and though certainly there are still good, morally upstanding and generous people, including even officials who serve with integrity, they are exceptional.

### iii. Private Desires on the Rise

As stated earlier, the instinctual drive for self-preservation gives every person private, selfish desires. But in any society a person's private desires must accept restrictions lest they harm the interests of the community. China's rapid economic development has brought transformative prosperity, but it has also sparked a move towards rampant materialism. Development of a consumer-goods market has given the Chinese a glut of choice, and the Deng Xiaoping policy of "allowing a certain portion of the population to get rich first" has inspired innovation and productivity among the citizenry at the expense of a close connection between rich and poor, making China the most economically unequal country in the world.<sup>42</sup> Such inequality leaves everyone uneasy – it is dangerous, and leaves many disaffected. It also intensifies private desires that drive many to unethical and probably illegal schemes to get rich, including the use whatever power one holds to embark on "rent-seeking."

### iv. Loss of Behavioral Norms

In a transitional society, subjective factors cause human behavior to depart from established norms. Corruption, for example, is an abnormal action that often starts as sexual transgression. The ancients have it that sexual impropriety (*yin*) is chief among the multitude of vices. Such a remark is no trifling matter and must be judged through experience. Over the past thirty years, China has rapidly gone from being very closed to very open about sex and sexuality, and some officials have followed the trend themselves, relaxing the rules on their own behavior.

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<sup>42</sup> According to the 2010 annual report of the Economic Reform Foundation, authored by its director, Wang Xiaolu, the average income of the 10 percent highest-earning Chinese families is 65 times greater than the average income of the 10 percent lowest-earning families. A separate report from the University of Michigan holds that the Gini coefficient (an international index to measure the income inequality of a nation or locality, running from 0 to 1 and directly proportional to wealth inequality, with coefficients lower than 0.3 being considered minimal inequality; 0.3 to 0.4 is normal; above 0.4 is considered alert level, and at 0.6 a dangerous level of inequality exists) is 0.55. This represents a nearly 100 percent increase from the 1980 coefficient of 0.3, and surpasses the American Gini coefficient, making it the highest disparity in the world. See the website of the newspaper *Dingsheng junshi*, "USA Announces China Wealth Disparity Index," May 6, 2014, [http://www.top81.com.cn/jujiao/gdzh2/20140506/82912\\_2.htm](http://www.top81.com.cn/jujiao/gdzh2/20140506/82912_2.htm), last accessed June 29, 2014.

The situation has gone rapidly from telling dirty jokes to keeping a mistress, and from keeping a mistress to opening brothels. Recent scandals include the story of the Chongqing Party Secretary and his online sex tape,<sup>43</sup> and the Shanghai judges who kept a private brothel.<sup>44</sup> Norms governing sexual behavior have an important place in a person's greater moral structure. A person who transgresses sexually is liable to transgress in other areas as well, so that sex crimes can lead to other types of crime, including criminal corruption. In the words of many common citizens, if an official dares to do *that*, what might he not dare to do? In today's China, the descent of officials into corruption often begins with a sexual transgression, and many cases of corruption involve the trading of power for sex. Such transgressions are not limited to male officials, of course. Male officials use their power to get sex, but female corrupt officials use sex to get power, and may also use power to scheme for sex as well, as in the case of An Huijun, former police chief of Luohu, Shenzhen.<sup>45</sup> Thus, loss of social behavioral norms is also a factor leading to criminal corruption.

#### **D. Factors Leading to Corruption in Designs of the System**

As stated above, the most serious cases of corruption are often caused by flaws in the social system. One American scholar has maintained that corruption is nothing more than the abuse of loopholes in the regulatory system, and that there is an indirect relation between acts of corruption and the amount of regulatory order in a society. When the regulatory system reaches

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<sup>43</sup> A sex tape involving Party Secretary Lei Zhengfu of Beibei District, Chongqing Municipality, went viral on the internet in November 2012. The Municipal Secretariat later had Lei removed from office. See, "Chongqing Beibei District Secretary Plays Himself." Also see the website of Phoenix News, "Chongqing Beibei District Party Secretary Maintains that Man in Sex Tape is not Him," November 23, 2012, [http://news.ifeng.com/mainland/detail\\_2012\\_11/23/19476723\\_0.shtml](http://news.ifeng.com/mainland/detail_2012_11/23/19476723_0.shtml), last accessed July 9, 2014.

<sup>44</sup> 2 August 2013, internet informers leaked news of several justices of the Shanghai Supreme People's Court operating their own brothel. The Shanghai discipline inspection commission carried out an investigation. Four of the justices of the Supreme People's Court of Shanghai were asked to step down. See the relevant entry in the *Baidupedia*, November 19, 2013, [http://baike.baidu.com/link?url=v7iLkorNqHGx00Y6Qx6XD7Yd6ruDdV3rmfF8O\\_FcZoYWMpPfNwFuRdpYgxnANu7JqfcHTOt3g4ISLmUkxUECa](http://baike.baidu.com/link?url=v7iLkorNqHGx00Y6Qx6XD7Yd6ruDdV3rmfF8O_FcZoYWMpPfNwFuRdpYgxnANu7JqfcHTOt3g4ISLmUkxUECa), last accessed July 9, 2014.

<sup>45</sup> See the website of the newspaper *Ta Kung Pao*, "Taking Stock of a Female Corrupt Official's 'Love Affairs,'" June 20, 2013, [http://finance.takungpao.com/gscy/q/2013/0620/1317422\\_4.html](http://finance.takungpao.com/gscy/q/2013/0620/1317422_4.html), last accessed July 7, 2014.

critical failure, corruption flourishes. In American history, for example, periods of bank regulatory failure are also periods when corrupt acts take place most often in the banking industry.<sup>46</sup> Needless to say, the founders of PRC were experts in military affairs and violent revolutions, and although they had the previous models of the Guomindang (KMT) government and the Soviet Union (then considered a “big brother”) they lacked both theory and practice necessary to design a modern nation-state. The result of their inexperience was an inability to throw off the unhealthy influence of Chinese feudalism. The design of the system included some inherent flaws that have since become incubation grounds for corruption.

#### **i. Power in the Hands of the Few**

In China, the tradition of placing power in the hands of a strong leader has a long and deeply rooted history. Since Pan Gu divided heaven and earth, from the time of the Three Sages and the Five Emperors, strong control by a person or group has been the hallmark of Chinese governance. Although Chinese slave and feudalist societies were law-abiding, and even produced such legalist icons as Shang Yang and Shen Dao, with their maxims “rule according to law” and “decide cases according to law,” the more dominant positions are held by Confucius, whose maxim was “government is a human matter,” by Mencius, with his “respect worthies and put them to use according to their abilities,” and by Xunzi, with his own theory of “government by the superior.” That ideology has allowed a particularly stubborn “strong-man complex” to develop in China. On the national stage, the populace believe that the nation need only a “good emperor” to recreate the golden age of the Ming and the Qing dynasties; in their daily lives, people expect their work units need only “good leaders” for everyone to be content.

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<sup>46</sup> See Michael Johnston, “Understanding Corruption as a Process,” in *Theory and Practice of Anti-Corruption Efforts around the World*, translated and edited by the Anti-Corruption Bureau of the Supreme People’s Procuratorate, 1995.

The strong-man ideology gets some things right, at least in the abstract. History shows that when a good emperor leads good ministers, it is indeed possible for the country to be both functional, prosperous, and peaceful. The difficulty is that good emperors and officials are hard to find, and have relatively short lives. It is simply too dangerous to base the security and well-being of the nation and its citizens on such a weak foundation. Yet the Chinese system presumes that the person or group holding power are good, and so lacks provisions against those who abuse their authority. Just a single ‘emperor’ going bad is enough to send the system into a vicious cycle of corruption.

## **ii. Erosion of Democracy**

Democracy is a fashionable concept in the world today. It also may mean different things to different people. For Westerners it means the application of a majority vote among the citizenry to select a government, and so remains opposed to both direct elections by the entire population, and party-based elections. But when Chinese people use the word “democracy,” what they think of is the saying “the people are the masters,” which leads them to agree to general elections and party-based elections.

The Chinese word for democracy, *min zhu* or “master of the people,” referred in classical Chinese to the emperor, as in one passage from the *Commentary of Zuo* about Zhao Meng, the King of Lu: “As the moment of his death approached, Zhao Meng’s words were incoherent; he no longer seemed like a ‘master of the people’ (*min zhu*).”

In contemporary Chinese, the word has been changed to mean that the mastery belongs to and derives from the people. At its founding, the People’s Republic affirmed this; however,

because the system lacks any concrete measures to uphold this seemingly foundational principle, its essence has become eroded. Article Two of the PRC Constitution, for example, stipulates:

All power in the People's Republic of China belongs to the people.

The National People's Congress and the local people's congresses at various levels are the organs through which the people exercise state power.<sup>47</sup>

The key term here is “People’s Congress,” and we need to look carefully at the people chosen to act as representatives within it. To be sure, government officials and company executives are also members of the “the people,” but a “people’s congress” composed mostly of government officials and company executives is disingenuous when it claims that its mastery has been sanctioned by people. It is worth pointing out that all upper-level leaders should be elected by a vote of one of the people’s congresses, but when there is only one name to vote for, how can the vote be democratic? In sum, as long as the design of the Chinese system lacks guarantees to enable the people to be the masters of the system, democracy shall be a mere pretense. Further, without popular supervision of the leadership, and the means to implement corrective measures (such as impeachment), those in power may easily turn toward corruption.

### **iii. Consolidation of Power**

Article Three of the PRC Constitution states, “The state organs of the People's Republic of China apply the principle of democratic centralism.”<sup>48</sup> In theory, this overall design may be justified, but since there are no protections to maintain it, the “democratic” part has weakened and become a mere accessory to “centralism.” When the authority to decide, implement, and supervise the execution of policy rests in the hands of a single leader, nick-named as “the hand number one”, it is a sign that consolidation has gone too far. In recent years the Chinese have

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<sup>47</sup> *Constitution of the People's Republic of China*. Beijing, China: Law Press, September 2012, p. 7.

<sup>48</sup> *Constitution of the People's Republic of China*. Beijing, China: Law Press, September 2012, p. 7.



been shocked by cases of corruption involving “the hand number one” on various levels of the government. A major contributing factor in many of these “the hand number one” cases is the inappropriate consolidation of power into the hands of a single individual, such as a local government or work-unit leader, who operates under the banner of both government and Party, and controls the fates of people, money and material resources — especially the power to appoint and remove personnel. Some of these leaders see themselves as embodying the Party, and insist on dominating on important issues, and making decisive choices in matters regarding the appointing or removing of cadres.

Since the power is so consolidated into one hand, nepotism runs rampant. Some leaders would often, if not always, promote his relatives, secretaries, or even drivers. Furthermore, the buying and selling of officials becomes a common practice in some places. Not only are mayors, county heads, bureau heads, and agency heads bought and sold, but even more prestigious officials like members of the National People’s Congress or the Chinese People’s Political Consultative Conference are also for sale. When officials become purchasable goods, a vicious cycle of corruption begins, since officials who pay bribes to gain promotions will no doubt accept or even solicit them. Corruption will then spread like a plague. We see this happening in corruption cases like those in Maoming, Guangdong,<sup>49</sup> or the Baiyun district of Guangzhou,<sup>50</sup> both coincidentally reported in the media on 7 June 2014. The scandal involving retired deputy

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<sup>49</sup> According to a June 7, 2014 report in the *Beijing Times*, in Maoming, 159 people involved in cases of unlawful bribery and corruption were tried and concluded, with the result that eight people were demoted, 63 were removed from their positions, 71 were transferred, 1 was given early retirement, and 16 were issued warnings. See “In Guangdong, 866 ‘Naked Officials’ Lose Their Positions.” June 7, 2014, [http://news.xinhuanet.com/video/2014-06/07/c\\_126589700.htm](http://news.xinhuanet.com/video/2014-06/07/c_126589700.htm), last accessed June 29, 2014.

<sup>50</sup> According to a June 7, 2014 report in the *New Express*, a storm of corruption cases blew in from Baiyun in the previous year, with the former District commissioner Zhong Dongxiang along with his associates, former District Party Secretary Gu Wenyao, former District Director Wu Jinming, and former Party group official Liu Jiansheng were taken in for questioning and trial. On June 6, Zhong Xiangdong appeared for prosecution before the Guangdong Intermediate People’s Court, where he was convicted of accepting bribes, corruption, and paying bribes. See the *Sohu* news report that reported individual bribes accepted included those exceeding 2.078 million RMB as well as over 6,000 British Pounds. The investigators pointed out that during the course of Zhong’s rise through the ranks, between 2003 and 2007, he paid bribes in excess of 1.07 million RMB to Gu Wenyao. Zhong pled no contest to these charges. 7 June 2014, <http://news.sohu.com/20140607/n400533700.shtml>, last accessed 29 June 2014.

commander of the PLA Xu Caihou even gave the world a glimpse of the buying and selling of military office.<sup>51</sup>

#### **iv. Lack of Balance**

State power is both extremely expansionary and extremely corrosive, and for this reason requires strict controls in place at the time of system design. One basic way to establish oversight in government is through separation of the state power. Abuses can be prevented through mutual restriction and distribution of the power, as well as so-called “checks and balances,” as in the tripartite system (legislative, executive, and judicial branches) advocated by French Enlightenment thinker Montesquieu, as well as the five-part system developed by that pioneer of the Chinese democratic revolution, Sun Yat-sen (executive, legislative, judicial, inspection, and examination branches).

The basic concept of separation of powers is this: every kind of power requires some specific form of restriction, and among the various powers mutual restrictions must be balanced and monitored. Any agent of power that lacks a mechanism for restriction risks becoming dictatorial. Any agent of power that transgresses the restrictions placed against it by the other powers, thus destroying the balance of power, risks being abused. The designers of the PRC system did not apply this model; instead, they established the National People’s Congress as the highest office of power, to be served by a single government (the State Council or the executive branch) and by a two-part judiciary (the courts and the procuratorates). Although the design

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<sup>51</sup> According a July 1 report from the *Beijing News*, on June 30, President of the PRC Xi Jinping assembled the members of the Politburo to hear reports from the Central Discipline Inspection Bureau on the case of Xu Caihou and then, in accordance with the *Rules and Regulations of the Communist Party of China* and the *Disciplinary Regulations of the Communist Party of China*, to strip Xu Caihou of his Party membership and to recommend his case to the Supreme People’s Procuratorate. Trial revealed that Xu Caihou had indeed used the privileges of his office to aid in the promotions of others, to accept bribes directly and via members of his family, used his office to influence the careers of others, and that members of his family accepted other inappropriate financial gifts, making it a very severe case of unlawfulness with widespread negative influence. July 1, 2014, <http://mil.sohu.com/20140701/n401591312.shtml>, last accessed July 6, 2014.

intends for separation of power, the courts and the procuratorates risk becoming mere accessories to the executive because the system is centralized. Mutual restrictions on power become toothless, and the resulting consolidation of power creates ideal conditions for corruption.

The discussion above concerns chiefly a big-picture view of the flaws and missteps in the design of China's political system. In addition, we may also observe how in certain concrete ways the system has afforded space for the incubation of corruption. Recent scandals in the health-care industry, for example, expose how excessive commercialization creates a grotesque circle in which "patients feed doctors, doctors feed hospitals, and hospitals feed pharmaceutical companies." There were also the extremely severe corruption cases of Gu Junshan<sup>52</sup> and Wang Shouye,<sup>53</sup> both former directors of construction and housing within the PLA Logistics Department. Their flagrant acceptance of bribes for their work in military housing and construction indicates a flaw within the greater system.

## **E. Factors Leading to Corruption in Operation of the System**

A high-quality, efficient system is founded on good design and maintained through competent operation. As long as the system's controls are robust, they may often supplement and correct flaws in the system; if not, those flaws will magnify. In China today, system operations related to public power include the following elements that often lead to corruption.

### **i. Insufficient Transparency**

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<sup>52</sup> See the *Baidupedia* entry for "Gu Junshan", June 7, 2014, <http://baike.baidu.com/view/3131495.htm?fr=aladdin>, last accessed June 29, 2014.

<sup>53</sup> Wang Shouye is the former commander of the PLA Navy, with a rank of Vice Admiral, and has served as director of construction and housing for the PLA Logistics Department. On 10 May 2006 Wang was sentenced to death for embezzling 16 million RMB, with his sentence to be carried out after two years. See the *Baidupedia* entry for "Wang Shouye", July 4, 2014, <http://baike.baidu.com/view/3131495.htm?fr=aladdin>, last accessed July 9, 2014.

As stated above, excessive consolidation of power, especially power monopolized by a single actor, is a defect of the Chinese system. If the employment process were transparent and open, nepotism and the buying and selling of official positions would certainly decrease. Unfortunately these systems do not yet operate transparently enough in China; the light is unable to penetrate their shady inner workings.

Transparency also directly affects the public's right to information. Unfortunately, in China, only those in positions of authority are believed to truly possess such a right. In other words, those in higher office have a right to know about their subordinates, as well as the citizenry, but the citizenry and those below often have no right to know what the higher officials are doing. And in a modern state adhering to the rule of law, what deserves protecting is the public's right to information, to knowledge, and will to aid the effort to fight corruption. To raise one example: under the current system in China, even though the public does not have the right to decide how the country spends money, it should have a right to know where the money has gone. And even though the public does not have the right to decide who becomes county chief or city mayor, it should have a right to know where and how these officials are selected.

## **ii. Insufficient Supervision**

The designers of China's political system understood the importance of oversight, which is why the constitution provides for the oversight of the executive, judicial and procuratorial organs of the government by the people's congresses, and for the oversight of the people's congresses by the people.<sup>54</sup> In addition, Article 129 of the constitution states clearly: "The people's procuratorates of the People's Republic of China are state organs for legal supervision."<sup>55</sup> This

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<sup>54</sup> See the *Constitution of the People's Republic of China*, Article Three. Beijing, China: Law Press, September 2012, p. 7.

<sup>55</sup> *Constitution of the People's Republic of China*, Article Three. Beijing, China: Law Press, September 2012, p. 120.

makes it clear that effective public supervision is an important measure against corruption.

Public supervision goes hand-in-hand with freedom of the press, which we must also understand to be another path to freedom from corruption. Journalists should have the right to report on the workings of the government, and ought also to have the right to expose corrupt acts by public officials. According to the original design, the exercise of power should be supervised from nearly every angle: from above and below, from left and right. Yet oversight mechanisms are ineffective. As is often said, supervision from above is too remote; from below, too soft; from the public, too ineffectual; from the press, too messy. Insufficient oversight is a contributing factor in the rise of official corruption.

### **iii. Operating against Prescribed Law**

Laws form the foundation of a political system and serve as its strongest defense. For the system to run well and according to plan, its operators must adhere strictly to the law at all times. “Law” here refers not only to the statutes passed by the people’s congresses, but also the rules and regulations pertaining to government agencies. But the reality in China today is that the laws are ignored, to the detriment of the system and its aims. As stated above, the Chinese have a habit of dismissing the law, in particular having experienced the absolute lawlessness of the Cultural Revolution. To give one example: “Red light means stop, and green light means go” is a rule known to every child, yet on city streets in China, it is common to see drivers, bicyclists and pedestrians run red lights. It should perhaps come as no surprise that government officials dare also to “run red lights.” Abuse of the powers of office, illegal government action, bending the law for friends, and unfair adjudications are all forms of behavior that are against prescribed law.

#### **iv. Rules of Law not Strictly Enforced**

Since the 1970s there have been many indisputable legislative successes in China, which have brought the country from anarchy to relative lawfulness. Nevertheless, the Chinese have not yet cultivated behavior conducive to rule by law. The state of Chinese society is not one of insufficient legislation, but of legislation insufficiently applied and adhered to. As system operators, many officials continue to think that power stands above the law, and so certain people stand above the law: internal policy is above the law, as are the demands of superiors. In many places, the officials in charge operate according to this principle: if there is no instruction, the law is followed; if there is an instruction, then the instruction is followed, not the law.

Selective application of the law is a sign that the law is not being followed strictly enough. Some officials turn their backs on the basic principle that all are equal in the eyes of the law, and instead treat people differently based on who they are. For example, in March 2014 the Supreme People's Procuratorate initiated hearings on commutation of punishment, parole, and the temporary serving of sentences outside prison, requiring procuratorates nation-wide to survey the potential for penalty alteration among three types of crime: employee crime, financial crime, and organized crime, hunting especially for signs of judicial corruption. By the end of May 2014 the procuratorates had found 188 cases of illegal commutation of punishment, parole, and temporary serving of sentence outside prison, and suggested a review of cases involving 247 convicts who won such rights; 18 of these cases involved officials of deputy department level or higher.<sup>56</sup> From such examples, we can get a glimpse of how inconsistently the law is applied.

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<sup>56</sup> See the Changjiang website, "What Does it Mean that 18 Officials are Serving Sentences Outside Prison?" July 1, 2014, <http://news.cjn.cn/cjsp/wz/201407/t2497471.htm>, last accessed July 8, 2014.

The Ming dynasty statesman Zhang Juzheng once said: “Of all things under Heaven, the difficulty is not in establishing law, but in enacting it.”<sup>57</sup> The best measure of a country’s progress toward rule of law is not legislation, not the laws on the books, but rather the enactment of the law in real life, the place it holds in the eyes of the people. The law ought to command the highest levels of respect. Adherence to law must be strict and disobedience must be rectified. No matter who the person, or how high the office, nobody is above the law. No country in which policies, morals, and official orders claim a higher place in people’s minds than the law can truly be said to have the rule of law. No legal system in any country where the officials would rather disrespect the law than disobey their superiors can truly be said to have built it up. Legal systems with intrinsic flaws and leaks are more likely to add to the number of corrupt officials in the course of operation.

In summary, corruption in China today is an endemic and a severe problem, attributable to many interrelated factors. Anti-corruption efforts must take the upper-most level of design as their base, gain strength from public consensus, repair the leaks in the system that lead to corruption, and eradicate those social spaces that incubate it. In Chinese medicine it is often said that the impatient cure only the symptoms, while the truly patient cure the root cause. As Wang Qishan, Secretary of the Central Commission for Discipline Inspection, pointed out on January 23, 2013 at the meeting to study and implement the spirit of the 18<sup>th</sup> National Congress of the Communist Party of China:

We must understand clearly the long-term nature, the complexity, and the difficulty of building a Party and a government free from corruption. Continuing with comprehensive

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<sup>57</sup> Zhang Juzheng, *Memorials on Investigating the Facts to Elucidate the Truth To Reform Government*; see the Chinese Education Publishing website, *Dictionary of Famous Written Quotations*. [http://chengyu.zzstep.com/mingju\\_content.php?classid=788&contentid=16432](http://chengyu.zzstep.com/mingju_content.php?classid=788&contentid=16432), last accessed July 7, 2014.

reform, while we at present mainly treat the symptoms of corruption, it would save time to work instead on the causes.<sup>58</sup>

Rigorous investigation of corrupt officials is a method that addresses the symptoms. Treating the root cause requires clearing away the factors conducive to corruption, and is the prescription that will achieve results. In short, for anti-corruption efforts in China, the load is heavy and the road is long. However, as an old saying, there is a will, there is a way.

### 中国腐败问题的评估与分析

何家弘

**内容摘要：**腐败犯罪是国家工作人员以及公司企业或其他单位的工作人员利用职务之便实施的贪污受贿行为。对腐败犯罪的状况可以从客观和主观两个方面进行评估，但二者都有不够准确之处。当下中国的腐败犯罪是相当严重的，已经成为制度性腐败和社会性腐败。腐败犯罪的原因是多方面的，包括人性本能中生成腐败的原因、社会习俗中生成腐败的原因、社会转型期中生成腐败的原因、制度设计中生成腐败的原因、制度运行中生成腐败的原因。认清腐败犯罪的现状及其生成原因，可以为制定反腐败对策提供依据。

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<sup>58</sup> See the text in *Caixin*, “Wang Qishan: At Present We Fight the Symptoms of Corruption; Fighting the Causes Would Save Time.” January 26, 2013, <http://news.qq.com/a/20130126/000006.htm>, last accessed June 1, 2014.