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From Rule of Man to Rule of Law: an unintended consequence of corruption in China in the 1990s

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The ethics of government in the People's Republic of China have been corroded by rampant corruption over the last two decades. The corruption has not only weakened the state's legitimacy and capacity to govern, but also provided an opportunity (to a certain degree, a catalyst) for a possible change from a traditional society ruled by man into a rational-legal society ruled by law. Economic reforms over the past 20 years have unleashed market forces in a nation so dominated by the Party-state that basic boundaries and distinctions defining the limits of markets and official power have been weak or nonexistent. At one level, this has made for an increase in corruption and confusion about the meanings of the term. At another, it has produced a situation that requires the improvement of the legal system to handle the issue effectively. Beijing leadership seems to have realized the importance of strengthening the legal system in addressing this issue. This shift in strategy may have profound implications for the prospect of institutionalizing the changes in post-Deng China. This paper hopes to reveal how corruption, or the effort to check corruption, is helping to draw a distinction between private and public domain and between politics and administration, to redefine codes of conduct for public administrators, and to demand institution-building in political processes.

The ethics of government in the People's Republic of China have been corroded by rampant corruption over the last decade.¹ While the Chinese economy is experiencing spectacular growth under Deng Xiaoping's reform program, embezzlement, bribery, extortion, favoritism, nepotism and smuggling have not only increased in frequency, scale and variety, but have also spread into every corner of society. The perversion of government function (using existing office for the purpose of private

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1. For an assessment of China's corruption situation and its links to economic reforms, see Yufan Hao and Michael Johnston, 'Reform at the crossroads: an analysis of Chinese corruption', *Asian Perspective* 19(1), (Spring–Summer 1995), pp. 117–149, and 'China's surge of corruption', *Journal of Democracy* 6(4), (October 1995), pp. 80–94; Scott Kennedy, 'Comrade's dilemma: corruption and growth in transition economies', *Problem of Post-Communism* 44(2), (March/April 1997), pp. 28–36; Michael Johnston, 'The vices—and virtues—of corruption', *Current History* (September 1997), pp. 270–273.

gain) has become so serious an issue that it begins to threaten social and political stability. Corruption has often been viewed as a useful issue for critics of unresponsive or repressive regimes, but its significance in China is especially profound. It has not only weakened the state's legitimacy and capacity to govern, but also provided an opportunity (to a certain degree, a catalyst) for a possible change from a traditional society ruled by man into a rational—legal society ruled by law. Since the early 1990s, the Beijing leadership seems to have realized the importance of defining the boundary and distinctions between the limits of markets and official power as well as the importance of strengthening the legal system to handle corruption effectively. This apparent shift in strategy may have profound implications for the prospect of institutionalizing the changes brought forth by the reforms of the last 20 years. This paper discusses how corruption is helping to change perceptions of ethics in China by changing the definition of public and private ownership, to redefine codes of conduct, and to demand institution-building in the political process. By exploring the relationship between corruption and ethics of government, it will examine how corruption, especially the efforts to check corruption, will change the ethical conduct of the Communist Party and the government in post-Deng China.

The changing conception of corruption

Most scholars tend to treat corruption as the illegitimate use or appropriation of public roles or resources by public or private parties. However, attempts to treat corruption as a clear-cut category of behavior prove to be extremely hard in China, since it has become difficult to distinguish from market-oriented reforms. The meaning of 'corruption' was very much in flux throughout the 1980s: for example, is moonlighting by officials legal, or is it an illegal solicitation? The state encouraged officials and Party groups to 'create income' for themselves and their offices (*chuangshou*), accelerating official profiteering (*guandao*) that, while intensely controversial, was defended as an aspect of economic reform in the late 1980s. If corruption is the illegitimate use or appropriation of public roles or resources by public or private parties, how are notions such as 'illegitimate', or 'public' and 'private' defined in a transitional China?

China's state of uncertainty in these terms is illustrated by the new terms in the vocabulary of corruption and the extreme range of activities being termed 'corrupt'. Conceptions of corruption have been affected in the past by official campaigns, but in the late 1970s official corruption still broadly meant three things: *tanwu*, *shouhui* and *tequan*. *Tanwu* (malpractice) was the misappropriation of public property by state officials through embezzlement, theft or swindling. *Shouhui* referred to the use of official positions to extort or accept bribes. *Tequan* (privileges) encompassed a range of privilege-seeking activities by officials. By the early 1990s, however, 'corruption' had broadened to include *fubai* (decay and putrefaction) and official speculation or profiteering (*guandao*). The forms of conduct labeled 'corrupt' have multiplied. A collation of corruption reports in the Chinese press between June 1993 and September 1998, for example, included not only embezzlement and

bribery, but also offences against financial and economic discipline, swindling and indiscriminate collection of fees; blackmail, smuggling, black market currency exchanges; establishing illegal businesses by governmental agencies, resale profiteering, and substitution of defective or counterfeit goods; excessive housing; illegal price increases, indiscriminate issuance of bonuses, and malpractice in assigning jobs and promoting cadres; work units' 'small treasuries' (*xiao jinku*); illegal transfer of public assets; gambling, ticket scalping, visiting prostitutes, decadent behavior, usury, outright piracy, insider trading in the new security markets and future markets, ignoring laws, perverting justice for a bribe, imposing fines and making unjustified financial levies at random, deceiving their superiors and deluding their subordinates, vocational misconduct, and so on.² Obviously it is dubious to view some of the above listed behaviors as corruption since power was abused not purely for private gain but, in many cases, for the benefit of one's institution or work unit. Many participants in corruption hold both public and private roles (or roles that do not fit neatly into either sphere), and operate in economic gray areas where clear-cut rules and expectation do not exist. This clearly indicates the shifting perceptions of corruption that accompany new relationships between wealth and power, and the new problems created by the market-oriented reforms. Some scholars question whether it is corruption, or the *perception* of corruption including a rapidly expanding range of behaviors, that has actually grown.³ Just when China needs stable standards, 'the reforms created a crisis of institutionalization by turning existing official norms upside down (getting rich was now "glorious", etc.) and changing the rules to permit new economic activities. In this context it was frequently unclear just which activities were legal and which illegal'.⁴

China's surge of corruption is not only a consequence of market reforms, but also of the system of order that preceded them. That system was built upon revolutionary ideology, a charismatic leader and Party-state dominance. What it lacked were several critical boundaries and distinctions that mark the domain, and draw upon the vitality, of a viable civil society compatible to a market economy. These were boundaries and distinctions between public and private domains, between individual and collective rights and interests, between politics and administration, and between state and society. If a society is to have an active market economy and yet hold corruption to tolerable levels, these boundaries and distinctions must be reasonably clear, and legitimate. But they were fused within the pre-reform structure of Party-state dominance, and a viable civil society was nonexistent.⁵ As a result, China would prove unable to contain either market forces or official exploitation once reforms began.

2. *Renmin Ribao*, (28 June 1993, 12 November 1993, 7 February 1996, and 11 September 1998).

3. Barbara Sands, 'Decentralizing an economy: the role of bureaucratic corruption in China's economic reform', *Public Choice* 65, (1990), pp. 86-91.

4. Connie Squire Meaney, 'Market reform and disintegrative corruption in urban China', in Richard Baum, ed., *Reform and Reaction in Post-Mao China* (New York: Routledge Press, 1991), pp. 129-130.

5. Johnston and Hao, 'China's surge of corruption', pp. 80-94.

Drawing the line between the public and private

Since the late 1970s, the Chinese government has encouraged the privately owned sectors to compete with state enterprises in production and services. This development has produced dramatic changes, not only making life much more convenient for urban residents but also legitimating private wealth and creating a new rich class. The ostentatious lifestyles of many private businesspeople have made this class the target of both admiration and envy. It triggered an entrepreneurial fever, with people from all walks of life 'jumping into the business sea'.

Many newly licensed companies were formed by officials or their relatives, who were in a position to distribute administratively allocated goods at market prices, issue production and foreign trade licenses, obtain bank loans, and otherwise use their offices and connections to do business in the mixed economy. Planned and market processes are tightly intermingled, with many market players still dependent upon powerful remnants of the planned economy.⁶

Stable relationships between wealth and power rest, in market-oriented societies, upon an institutionalized separation *between state and society*—a prerequisite for any notion of *public and private* roles, resources and interests. The coexistence of legitimate private interests and a bounded state in turn raises the question of relationships *between market and authoritative mechanisms of allocation*. It further implies a distinction between *politics*, with its personal or group agendas and incentives, and impersonal principles of *administration* and legality. The idea of limits on what may be done to enrich oneself rests upon an accepted distinction between *individual and collective* interests, and raises the question of proper relationships between the two.

Decentralization and price decontrol did not curb the growth of bureaucratic power and prerogatives, nor did it fundamentally change the hierarchical nature of the Chinese administrative system. It did, however, alter the power structure by delegating more discretion to middle and local levels. There, bureaucrats retained the power to determine who would receive contracts and when. As a result, bureaucrats became the ultimate beneficiaries of reform, since they had information and administrative power that could be exploited to enrich themselves. Indeed, market-oriented reforms have led to a proliferation of entrepreneurs both public and private, and in the extensive gray area between.⁷ The fastest-growing category of firm since 1987 has been those owned or operated by officials, their friends or families—the 'new monied elite'⁸—or by government agencies themselves,⁹ and the most controversial corruption issue has been *guandao* by officials and private partners through '*laissez-faire* socialism'. Public—private distinctions became unclear, and notions of service or merit have become confused in the new partially reformed system. More power—and opportunities for exploitation—has been

6. Dorothy Solinger, 'Urban entrepreneurs and the state: the merge of state and society', in Arthur Rosenbaum, ed., *State and Society in China: The Consequences of Reform* (Boulder, CO: Westview, 1992), pp. 121–124, 128.

7. *Ibid.*, pp. 123–125, 128.

8. Anita Chan, 'The social origins and consequences of the Tiananmen crisis', in David Goodman and Gerald Segal, eds., *China in the Nineties: Crisis Management and Beyond* (Oxford: Clarendon Press, 1991), p. 115.

9. Clemens Stubbe Ostergaard and Christina Petersen, 'Official profiteering and the Tiananmen Square demonstrations in China', *Corruption and Reform* 6, (1991), p. 95.

conferred upon local officials and cadres.¹⁰ Cash has partially supplanted connections as the means of access to information, raw materials, goods and services. From a policy standpoint corruption is a subset of 'economic crime', but reform created a broader 'incoherence of values' threatening both traditional political culture and the Party's claims to legitimacy.¹¹

Corruption violates rules; but in China, rules are ambiguous. For example, in 1985, a professor of electric engineering who had helped an enterprise solve a technical problem was arrested by the Liaoning provincial public security bureau for the 'fee' he received from the factory. In the same year, another engineer who provided similar assistance to an enterprise in Guangdong province was given an economic reward.¹² Not surprisingly, many people are not so sure what rules apply in the new economy. Was this the professional moonlighting familiar in any market economy, or a violation of socialist spirit and the law? The line between corruption and market activities becomes further blurred when the activities in question are not purely for the purpose of personal gain, but for the interests of local community. As a reform experiment, some local governmental agencies (such as Bureaus of Industry and Commerce) were also half-contracted, and what these offices needed to do was to submit a certain amount of revenue to their superior agencies and to divide whatever was left among officials after leaving a certain percentage to the office. Legitimate market activity for some is corruption in the eyes of others. Inside access and information, to many people, became priceable goods in the market.

In 1992, the Party Central Committee issued Document No. 5, encouraging institutions to run various economic entities to 'make a profit' in an attempt to legalize official speculation and power-backed business, and to downsize administrative agencies. This policy turned out to be a disaster. After serious confusion and a new wave of registering companies, including numerous companies run by the military, armed police and law enforcement, official corruption became even more serious. The policy was quickly revoked in December 1993. Directives were issued to forbid official involvement in commercial business and ban companies run by Party and governmental institutions for profit-making purposes. This, in fact, was the first serious effort by the government to define what was public, what was private and what rule should apply. A consensus has gradually emerged among Chinese leaders that official profiteering was detrimental to reform and to society in general. The boundary began to be drawn. By the middle of 1997, almost all the official profiteering companies had been, at least in theory, disconnected from their mother-institutions, although many still operated illegally.

To a certain extent, reforms have contributed to a pervasive consciousness of corruption, and helped to bring on the official agenda the issue of drawing a distinction between the private and the public domain, between politics and

10. Jean Oi, 'Partial market reform and corruption in rural China', in Baum, ed., *Reform and Reaction in Post-Mao China*, pp. 144-145; Gong Ting, 'Corruption and reform in China: an analysis of unintended consequences', *Crime, Law and Social Change* 19(4), (June 1993), p. 324.

11. James Myers, 'Modernization and "unhealthy tendencies"', *Comparative Politics* 21, (January 1989), p. 206.

12. Su Ya and Jia Lusheng, *Heimao baimao: Zhongkuo gaige xianzhuang toushi (Black Cat and White Cat: An Analysis of Current Reform in China)* (Changsha: Hunan Wenyi Press, 1992), p. 76.

administration, and of defining ethical codes for public administrators' behavior. In the last few years, many township and village enterprises have been created by local governments rather than private individuals and many of the local officials have acted as company executives. Some ranking officials in the central ministries also manage big profit-making companies established by governmental agencies without retiring from their positions.¹³ Although it is sometimes still difficult to define the boundaries and distinguish between what is administration and what is market activities, which have largely contributed to the increasing number of bankrupting state-run enterprises, the need to define them and the need to separate profit-making (or money-losing) enterprises from administration has been painfully realized. In the recently convened 15th Party Conference, the Party chief Jiang Zeming elaborated the urgent need to define the boundaries:

The power and responsibilities of the state and enterprises will be more clearly defined. The state will enjoy the owner's equity according to the amount of capital it has put into the enterprises and bear limited responsibilities for the debts of enterprises while enterprises will operate independently according to law, responsible for their own profits and losses. The government should not directly intervene in the operation of enterprises, and the enterprises have to be restrained by the owner and shall not harm the owner's equity. China will adopt all kinds of possible means ... to push the separation of administrative functions from enterprises management and change the way enterprises operate.¹⁴

Corruption and reform have also put onto the agenda the issue of redefining ethical codes for bureaucrats. In fact, the notion of bureaucratic ethics has been undergoing a gradual change as reform proceeds. Government ethics is a system of moral value and principles, concerned with what is morally good and bad, right and wrong in terms of bureaucratic behavior. In pre-modern China, Confucianism was the dominating force defining the ethics by which the ruling performance was evaluated. For more than 2,000 years of imperial history, as the ethical system for politics and government, Confucianism emphasized the exemplary virtues of uprightness (*yi*) benevolence (*ren*) and propriety (*li*) as a workable code of ethics for both rulers and their elite-bureaucracy to model. When communists took power in 1949, traditional ethics were partially replaced and supplemented by a communist ideology. The government relied on a strictly defined, moralistic communist value system to prevent bureaucrats' wrongdoing. There were also clearly defined codes of ethics shaping communist officials' perception of right and wrong. 'To serve the people heart and soul', for instance, was morally good, and to seek privilege and 'go through the back door' were ethically wrong. The Leninist organizational structure, communist value, and the repeated political movements orchestrated by Mao and his immediate followers, afforded the Party considerable control over governmental officials' behavior, and corruption, though never extinct, was not a major issue in the political agenda before 1978.

13. Vice Premier Zhu Rongji criticized vice ministers and deputy bureau chiefs who became managing directors of economic enterprises without retiring from their positions. See Hilton Root, 'Corruption in China', *Asian Survey* 8(xxxvi), (August 1996), p. 748.

14. Jiang Zeming's Political Report at the 15th CPC National Congress. *China*, FBIS Daily Report, (12 September 1997), downloaded from www.fedworld.gov.

However, Post-Mao China is passing through a crisis of values. The tragedy of the Cultural Revolution created a widespread disillusion among the Chinese people. Many people, including bureaucrats, lost their confidence in communist ideals, turning instead to money as an outlet for emptiness and frustration, and as a symbol of status and success. This 'moral vacuum', together with the reform experiment, blurred the boundaries between legitimate and illegitimate behavior, and has increasingly undermined the ethical standard for people working in public institutions. By clearly defining public and private ownership and the notion of ethics in China, endemic corruption, and political reactions to it, has led to a gradual change in the codes of conduct for governmental officials. This change is more of a slow and uneven process than an event, and is far from completed. In the recently convened Party Congress, Jiang Zeming tried to give his definition of what constitutes unacceptable conduct for officials: 'illegal earnings must be banned', he said, 'those who embezzle public property or seek gains by evading taxes, trading power for monetary profits, and using other illegal means must be punished in accordance with the law. We must control irrational gains. Those who engage in trade monopoly or earn extra personal earnings by relying on special conditions must be stopped'.¹⁵ Yet, as to what may constitute such 'illegal means' and 'special conditions', Jiang stopped short of giving a clear answer, leaving the Party authorities at all levels to decide at their own discretion. However, through continuous and sometimes uneasy contentions and contestation, a consensus on certain issues has been gradually reached, although others are waiting to be done. By the middle of 1997 it seems clear that no-one in China doubts what constitutes legal moonlighting: a moonlighting job for a professor is okay, while for an officeholder it is not.

Corruption and legal responses

The traditional anti-corruption method in the PRC was a political campaign based on Mao's mass line. Since corruption was perceived as individual wrongdoing rather than as an institutional or systemic problem, people were mobilized to participate in periodic rectification campaigns, to report wrongdoing and to criticize decadent thoughts and behavior. Corruption was attributed to feudalistic influences, bourgeois money worship and out-and-out egoism, and corrupted officials were punished in public to shame other 'lawbreakers' and to educate the masses. The 'Three-Antis' (corruption, waste and bureaucracy) and 'Five-Antis' movements (bribery, tax evasion, theft of state property, cheating on government contracts and stealing economic information) in the early 1950s, the 'Four Cleans' Campaigns (investigating how cadres determined workpoints, kept accounts, distributed supplies, and handled warehouses and granaries) in the early 1960s were examples of this strategy. This deviance-control approach was combined with ideological and political education, and with thought reform, but these were neither institutionalized nor directed at systemic causes of corruption. The legal system was politicized and widely disregarded, especially during the Cultural Revolution.

15. *Ibid.*

Since corruption mainly took the form of perks and privileges in Mao's time, the political approach was relatively effective. Despite the changes that have occurred since 1978, the post-Mao leadership still relied on ad hoc campaigns to control deviance, as for example, the anti-corruption rectification during 1982–83, the anti-corruption campaign of 1988–89, and again of 1991–93. However, there is little evidence that corruption has significantly abated since. Market economics depends on compatible legal systems to standardize relationships among private parties, and between them and the state. Yet China, after four decades of command economics under one-party rule, and a much longer tradition of skepticism about extensive legal codes, was unprepared in this respect, and its hybrid socialist system lacked clear-cut ethical, legal and commercial codes to regulate market-driven activities. While China's bureaucracy is gigantic, its internal checking systems have never been fully developed. In fact, many corruption cases involved bureaucrats exploiting inconsistent procedures and deficient supervision for private gain. Weak enforcement mechanisms and sporadic campaigns were simply insufficient to control spreading corruption in the new situation. The leaders have realized the urgent need to control corruption and official arbitrariness through legal devices. This apprehension among Chinese leaders has helped to accelerate administrative and legal reforms, and in this way corruption has indirectly contributed to the rise of a new legalistic culture.

In fact, Deng Xiaoping first initiated China's legal reconstruction for a broad political purpose. After uncovering appalling accounts of lawlessness during the Cultural Revolution by the media, Deng discovered that law could play an important role in stabilizing the social order, and at the same time serve as an instrument of rationalizing state administration.¹⁶ With the official commitment to the laws and predictability of the state, the post-Mao leadership hoped that people's confidence in the Party and the state could be restored. Meanwhile, the reform-minded leaders also realized that 'a market economy means economy operated under a legal system'.¹⁷

The past two decades have witnessed a legislative explosion in China. Laws aimed at regulating market economy include: the Company Law, the Advertising Law, the Arbitration Law, the Law Against Improper Competition, the Foreign Trade Law, the Bills Law, the Insurance Law, the Security Law, the Chartered Accountant Law, the Budget Law, the Audit Law and the Contract Law. Other important laws such as the Criminal Law, Law of Criminal Procedure, General Principle of Civil Law, a Civil Procedure Code, Administrative Procedure Law and more than 1,100 other laws and regulations have been enacted.¹⁸ The local legislative bodies in provinces and municipalities have also enacted more than 6,000 laws and regulations concerning local matters. This is an impressive effort in building new institutions, and there is some real, if limited, progress in the political

16. Deng firmly believed that the party's principle and guidelines should be molded into a legal form if they were to enjoy the highest authority and people's support.

17. *FBIS*, (12 May 1994), pp. 14–16.

18. According to Tian Jiyun, 300 laws have been enacted by the National People's Congress and 800 regulations issued by the State Council since 1982. See *People Daily*, (12 September 1996), p. 4. See also *Beijing Review*, (20–26 November 1995), pp. 11–12, and 'Positive signals', in *China Rights Forum* (Fall 1996), pp. 13–15.

process. Even critics in the New York-based Lawyers Committee for Human Rights found some meaningful improvements in China's legal development—in the areas of pretrial detention, the right to counsel, prosecutorial determination of guilt (the 'presumption of innocence') and the conduct of trial proceedings.¹⁹

The National People's Congress has begun to exercise something more than a 'rubber-stamp' function. Specialists have begun to participate in the law-making process, which is 'more hospitable to relatively innovative policy ideas, and more accessible to a wide variety of non-bureaucratic groups and interests'.²⁰ During the past few years, the NPC has made considerable initiatives—sometimes with sizable number of negative votes—in originating legislation and providing an oversight to the nation's administrative and legal work. Since Li Peng came to chair the NPC, the Chinese legislature has become more assertive in fighting for the right to oversight the State Council. The courts, although still under the Party's control, have begun to exercise interpretative functions of the law, and there has emerged an aggressive and creative Supreme People's Court which can issue implementing regulations for some laws.

The Party even applied its traditional campaign method to promote juridical and legal awareness, initiating three 5-year plans for the dissemination of legal knowledge in China (*pufa*), the first during the period of 1986–90 and the second during the period of 1991–96.²¹ The goal of these *pufa* (*law-popularization*) movements was to abolish official despotism, to replace the supremacy of persons by the supremacy of law, and to create a socialist government based on the rule of law with Chinese characteristics, and of course that the authority of the Party should not be challenged. It was reported that 700 million people got involved in the *Pufa* movements over the last 10 years, which may have contributed to public awareness of law and legal enforcement.²² The third 5-year *pufa* movement began in 1996 and is now spreading throughout the country.

China's runaway corruption has created a situation in which both the rulers and the ruled acknowledge the need for institutional actions to cope with the problem. Since 1988, the People's Congress has passed a series of laws dealing specifically with bribery, speculation, profiteering and abuse of power,²³ and judicial organs have stepped up the processing of corruption allegations through the legal system, with over 215,000 graft and bribery cases being investigated by supervisory organs nationwide in 1992. Although the Party's Central Commission for Discipline Inspection at all levels has remained the main checking force for corruption within the Party and handled over 630,000 cases from 1993 until March 1997, more and more cases involving Party members were later handed over to the state's procuratorial organs. The CCP's decision in September 1997 to handle Chen Xitong's corruption case through the courts highlighted this effort, since corrupted

19. James Feinerman, 'The rule of law ... with Chinese socialist characteristics', p. 278.

20. Murray Scot Tanner, 'How a bill becomes a law in China: stages and process in lawmaking', *The China Quarterly* 141, (March 1995), p. 64.

21. For an interesting analysis of a Chinese legal education campaign, see, Mechthild Exner, 'Convergence of ideology and the law: the functions of the legal education campaign in building a Chinese legal system', *Issues & Studies* (August 1995), pp. 68–102.

22. *Ibid.*, p. 97. Also see 'China: 20 years of legal development', in *Quishi* (December 1998), pp. 12–13.

23. *Zhenli dezhiqiu* (*Seeking Truth*) (March 1992), p. 29.

high-ranking officials traditionally remained outside the reach of the law and were only disciplined within the Party.

The government has also created new institutions to cope with corruption. Besides the Party Discipline Inspection Committee established earlier, the Ministry of Administrative Oversight (Jianchabu) was created in 1982, which has grass-roots offices in most of the public institutions at all levels and has the power to investigate the abuse of power by officials. The Public Accounts Review Bureau (shenjishu) was also created after reform started to monitor compliance with state budgets and accounting procedures. It has discretionary power to check the accounts of any public institutions and state-owned enterprises when necessary. A public monitoring system, the Center for Reporting Economic Crime was established in 1988 with local offices nationwide. Several special agencies were also created to oversee the compliance of public and private enterprises with taxing, pricing and book-keeping.

In terms of checking corruption within the government, the central government issued provisional regulations for public servants in August 1993 (which took effect on 1 October 1993). They are aimed at establishing a public service system based on strict assessment and selection of recruits by public examinations. The Party monopoly over personnel management has been loosened.²⁴ Rewards and punishments, training, promotion, wage increases and work assignments are to be based on well-defined procedures and assessments. Not only are embezzlement, bribery and the abuse of power explicitly barred; public servants are also forbidden from operating enterprises or from participating in any other business activity. There is also a so-called 'stand-off' system providing that married couples, direct or blood relations, collateral relations within three generations, and individuals related by marriage shall not hold posts in an institution where both sides are directly subordinated to the same administrative leader.²⁵ Obviously, this is another commendable effort to regulate the codes of conduct in the government. At the same time, the leadership has committed itself to raising the salaries of public servants, on the assumption that higher pay will offset incentives to corruption and increase the cost of bribery. These changes directly affect the interests and activities of over 32 million people working for governmental institutions.²⁶

Beijing also passed the State Compensation Law in December 1995, which was supposed to protect the legal rights of all Chinese citizens, corporations and organizations to demand and receive compensation from the state whenever their legal rights or interests are violated by the government's executive and judicial bodies.²⁷ Although there is strong resistance from gigantic bureaucracy which foresees the difficulty in its implementation, this can be viewed as an advance for both Chinese lawmakers and the public toward the understanding that the individual is an important factor affecting social development, since governments in China, for thousands of years, were immune from any legal investigation and

24. Suisheng Zhao, 'Political reform and changing one-party rule in Deng's China', *Problems of Post-Communism* 44(5), (September/October 1997), pp. 13-20.

25. *Beijing Review*, (6-12 September 1993), pp. 4-5.

26. *Beijing Review*, (20-26 September 1993), p. 7.

27. *Beijing Review*, (4-10 December 1995), p. 20.

punishment, even when they were clearly guilty. Since the implementation of this law, People's Courts at municipal level and above have settled at total of 870 cases nationwide involving compensation by the state, of which 364 cases resulted in verdicts of compensation by the state.²⁸ The government has recently allowed and even encouraged press coverage of legal abuses in the form of police brutality.²⁹

This shift from the old mass mobilization approach, based on the infallibility of the Party, toward legal and institutional mechanisms requires increasing numbers of legal staff. In early 1995, China had about 60,000 lawyers and 4,100 law agencies representing 140,000 enterprises and institutions. By the end of 1997, the number of lawyers had reached 100,200 in about 8,500 law agencies, representing more than 210,000 enterprises and institutions. However, there are 5 million enterprises across the country, of which only about 4% of the total have legal advisors. Also, many of the Chinese lawyers are ill-prepared to work as independent lawyers and barely one-fifth of them have earned law degrees.³⁰ There is also a difficult task of transforming the mentality of 'state legal workers' into that of an independent profession and an equally difficult task of 'policing the police'. Currently there is a tendency among lawyers, judges and officials who regulate the legal profession to get involved in bribery and in a variety of corrupt practices. On 15 May 1996, the Chinese 'Lawyers Law' was passed by the NPC and went into effect in 1 January 1997. In this law, the definition of lawyer was changed from 'state legal workers' in the previous regulations (the Provisional Regulations on Lawyers passed in 1981) to what is now called 'legal personnel who provide legal service to society' and 'legal workers for society', from state cadres who receive governmental salaries to self-employed people who set up business on their own or form firms as partnership and are responsible for their own profits and losses.³¹ This obviously represents an important progress in China's legal development, since the separation of legal personnel from the state administration is prerequisite in creating an independent judicial system in China.

Therefore, the legal system has begun to evolve into a distinct body of rules and institutions in China, although the achievement is so far limited and represents only a first step of a very long journey. Indeed, as so many laws have been enacted, the implementation and enforcement in the legal process have become a serious problem. Many laws are grossly neglected, and, in many cases, the courts simply lack the power to enforce their decisions. As Luberman correctly pointed out, so many forces, political, economic and cultural, presently contend in the arena of law reform: 'the ideal of the rule of law, the desire for bureaucratic regularity; adherence to Marxism—Leninism and the doctrine of Party supremacy; central—local tensions; the rise of familial network; Western influence; and the influence of the Overseas Chinese—in the midst of declining state power, diminishing legiti-

28. 'China: 20 years of legal development', *Quishi* (December 1998), p. 12.

29. 'Police abuses start to get attention in China', *The New York Times*, (8 March 1999), p. A1.

30. William Alford, 'Tasseled loafers to barefoot lawyers: transformation and tension in the world of Chinese legal workers', *The China Quarterly* 141, (March 1995), pp. 31–33.

31. See 'Positive signals', in *China Right Forum*, p. 15.

macy and authority of the CCP and a broad crisis of value. Most of these forces thrust against the growth of the rule of law'.³²

In fact, what the current Chinese leaders have tried to achieve is to exercise the 'rule by law' rather than 'rule of law' (as is understood in the West).³³ In his comparative analysis of law in modern society, Roberto Unger made an important distinction between three kinds of law: the customary (or interactional) law based on the accepted moral standards and practices of a community; a bureaucratic (or regulatory) law based on explicit rules of the government; and an autonomous (or pluralistic) law protecting various social—economic classes and strata against each other and against the arbitrary tutelage of government.³⁴ This pluralistic law is the 'rule of law', as the law is institutionally autonomous to the extent that its rules are applied by specialized institutions whose main task is adjudication. If the difference between customary law and bureaucratic law is similar to that between Confucianism and Legalism in Chinese political philosophy, the difference between the bureaucratic law and pluralistic law lies in that the latter 'exists not to protect the state from the unrestrained impulses of its citizens, but precisely the reverse—to protect citizens against the predation (real or potential) of the state'.³⁵ Therefore, the rule of law requires a further distinction between state and society which is complemented by a contrast within the state itself among legislative, administration and independent adjudication.³⁶

We have reasons to believe what the post-Mao leadership have been trying to do is to perfect the Chinese legal system along the line of the bureaucratic law. The law should not limit the power of the Party and the state, but rather serve as an instrument for state power and the Party's interests. Just as Lenin stated after Russian communists took power in 1918, 'the proportion as the fundamental task of the government becomes, not military suppression but administration, the typical manifestation of suppression will be, not shooting on the spot, but trial by court'.³⁷ The 15th Party Conference convened in September 1997 underlined the post-Deng leadership's determination to develop and perfect a law-based system to handle various domestic problems. Jiang Zemin stated that 'the deepening of economic structural reform and the development of the entire society's modernization ... require us to continue pressing ahead with political structural reform, further expand socialist democracy, perfect the socialist legal system, administer the country according to law, and build a socialist country ruled by law'.³⁸ Jiang used an unusual length of his political report to elaborate upon why and how the CCP should perfect China's legal system:

32. Stanley Luberman, 'Introduction: the future of Chinese law', *The China Quarterly* 141, (March 1995), pp. 12–20.

33. Richard Baum, 'Modernization and legal reform in post-Mao China: the rebirth of socialist legality', *Studies in Comparative Communism* XIX(2), (Summer 1986), pp. 69–103; James Feinerman, 'The rule of law ... with Chinese socialist characteristics', *Current History* (September 1997), pp. 278–281.

34. Roberto M. Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (New York: The Free Press, 1976), pp. 51–52.

35. Richard Baum, 'Rebirth of socialist legality in post-Mao China', pp. 70–71.

36. Unger, *Law in Modern Society: Toward a Criticism of Social Theory*, p. 52.

37. Cited from Richard Baum, 'Rebirth of socialist legality in post-Mao China', p. 72.

38. See FBIS *China Daily Report*, (12 September 1997), p. 10.

We should administer the country according to law, which means that under the Party's leadership, the broad masses of the people manage state affairs and economic, cultural, and social affairs in accordance with the Constitution and stipulations of the laws and through various ways and forms and ensure that the state's work in various fields is carried out according to law, gradually realize the institutionalization and legalization of the socialist democratic system so that the system and laws will not change along with the changes in leadership and with changes in leaders' views and their focus of attention.

Adhering to the principle of going by laws, of the need to absolutely abide by laws, of strict enforcement of laws, and of punishing those who break the law are the premise for the Party and the state to smoothly carry out their undertakings. Legislative work will be stepped up and legislative quality will be raised to bring about a socialist legal system with Chinese characteristics by the year 2010. There is a need to safeguard the dignity of the Constitution and other laws. We must see to it that all people are equal before the laws and no individuals or organizations shall have the privilege to overstep it. All government organs must manage their affairs according to law and protect citizens' rights in an earnest manner. There is a need to implement a responsibility system with regard to law enforcement and enforce an appraisal system. Judicial reform needs to be promoted so as to institutionalize judicial organs' independent and impartial exercise of their jurisdiction rights according to law. There is also a need to establish a system whereby wrong and unjust cases can be redressed. The ranks of law enforcement need to be strengthened. In-depth drive should be launched to popularize laws so that the people may have an enhanced sense of the law. Emphasis should be given to raising leading cadres' rule-by-law concept and their concept of managing affairs according to law.³⁹

It seems quite encouraging to hear that the Communist Party Chief called for the whole Party to use a legal mechanism to provide greater predictability and accountability in its governance. This not only represents a major progress from the lawlessness of the red terror under Mao, but it also symbolizes a step forward to further the transition from a Party-state domination to the rule by law first, and eventually to the rule of law. Deng's view of law is the classic example of statist instrumentalism, the law, although useful, must be subject to the four cardinal principles. What Jiang stated recently may imply a beam of hope that law in China may be developed to shield against the arbitrary action of the state (rule of law). This change can be viewed largely as a direct result of the runaway corruption in China, and the domestic and international pressures to cope with it, as the leaders realized that they could not check corruption in a market economy without adequate legal mechanisms. To a great extent, corruption is playing an important role in giving birth to a law-based bureaucracy and a law-based culture in public institutions in China. Although it is reasonable to doubt if the post-Deng leadership would have the will and capability to implement fully what was said in the political report, some scholars argue that law has its peculiar, if limited, capacity to stimulate and consolidate change, and legal reform may be an agent that accelerates social change by creating a vocabulary of concepts that can be employed by the

39. *Ibid.*

Chinese to give new definition and predictability to their relationships with each other and with the state.⁴⁰

Prospect for institutionalizing the changes

It is highly likely that China will remain a Leninist dictatorship in the year 2015, but with certain pluralistic features. The post-Deng leaders will continue the current policies of market-oriented economic reform and opening China to the world. The politics will remain authoritarian with the CCP still in power, but a market economy may be further established. As the Chinese market economy is further integrated into the world economic system, the Chinese legal system will surely be developed and strengthened, although with Chinese characteristics. This legal development will not only be pushed by the needs of a market economy and the need to have a hospitable environment for foreign direct investment, but also by the need to address problems created by corruption. It will be shaped not only from the top down by the Chinese state apparatus but also by responses and pressures from Chinese society. Without popular indignation, as revealed in the 1989 demonstration, the central leadership would not have taken the corruption issue so seriously.

Corruption has brought China, and its economic reform process, to a crossroads. In some ways, corruption is a result of, and contributes to, progress, in the form of the partial shift from Party-state dominance toward a market economy, and (perhaps) the first tentative steps away from a totalitarian regime as rapid economic growth strengthens groups and interests in society. Official responses to corruption, in the form of the control measures discussed above, will contribute to a new institutionalization in the next 15 years, aiding the transition from ideological and collective to legalistic and individualistic norms. It is likely that the current trend of legal reforms will continue. Such reforms, and the pre- and post-1989 political grievances that necessitate them, may in time more clearly delineate the limits of the state and the political realm, weakening the bureaucratic monopoly on day-to-day power. Corruption and anti-corruption efforts will contribute to the momentum of reform by disrupting the still-considerable remnants of the old bureaucratic order, and by creating both incentives to economic change and the need for new values and institutions to contain those changes.⁴¹

There are, however, reasons for serious concern. First, corruption in its most serious forms requires money, access or special expertise, and thus is most likely to benefit the well-connected and newly-rich. As such, it widens income inequalities among people and regions, with the majority remaining poor and feeling abused by the increasingly corrupt system. If, as is likely, such income disparities continue to grow, the resulting mass discontent could threaten the stability of the social order and the legitimacy of government and Party. Second, corruption has substantially weakened the state's capacity to rule. Although this might be viewed

40. *Ibid.*, p. 20.

41. For a similar argument with respect to Poland's political and economic transition, see Jacek Tarkowski, 'Old and new patterns of corruption in Poland and the USSR', *Telos* 80, (Summer 1989), pp. 55-61.

as a positive consequence of reform, one making way for a new balance of power between state and society, the functional role of the state—to 'penetrate society, regulate social relationships, extract resources, and appropriate and use resources in determined ways'⁴²—is being called into question. In the absence of clear alternatives to Party-state dominance this is a serious matter. Third, and most seriously, corruption may get out of control. China's gradualist approach to reform may give rise to the possibility of developing an administratively managed economy like that of India, which is designed to enrich the gatekeepers at the expense of both consumers and producers. Some have already begun to worry that China's corruption may become systematized into an intermediary form of bureaucratic capitalism,⁴³ and may become a 'giant Thailand—wealthy, corrupt and regionally powerful'.⁴⁴ Indeed, to corporatize state enterprises is an effective step to rescue those near-bankruptcy enterprises, but to corporatize governmental agencies would be a disaster awaiting the PRC.

The present crisis offers opportunities too, and while a full set of prescriptions lies beyond the scope of this discussion, a few steps can be identified. In most market societies, anti-corruption efforts typically change the structure or management of public institutions, or the rules governing their contacts with private interests. Improved auditing and record-keeping, and careful recruitment and training of personnel, are examples of the former; regulations governing lobbying and political contributions typify the latter. These approaches can succeed if there is some agreement as to who and what is 'public' or 'private', and as to the desirable relationships between the two. Although the situation is being improved in China, there still exists a large and active 'gray area' in which public and private concerns, individual and collective interests, politics and administration—indeed state and society themselves—intermingle. What is needed now is an effort to further define them and the changes that will institutionalize the new relationships between state and a viable civil society.

A first major step would be to work out a 'vocabulary' of reform—relatively clear and accepted distinctions between the public and private realms, politics and administration, collective and individual interests, and state and society themselves. But these have yet to emerge in the ways they are found in many other nations. Economic reform and growth cannot draw those boundaries; if anything, they have made them less distinct. An extensive and relatively open process of political contention among competing values and interests will be essential to working out those basic elements of lasting reform (as it has been, historically, elsewhere⁴⁵). If people can contend with where boundaries should be drawn, they may reach settlements that engage their interests, and enforce them by keeping watch over officials and each other. Corruption, after all, is an expensive and risky form of

42. Joel Migdal, *Strong Societies and Weak States: State—Society Relations and State Capabilities in the Third World* (Princeton, NJ: Princeton University Press, 1988), p. 4.

43. Hilton Foot, 'Corruption in China: has it become systemic?', *Asian Survey* 8(xxxvi), (August 1996), pp. 749–750.

44. Ken Jowitt, 'Dizzy with democracy', *Problems of Post-Communism* (January—February 1996).

45. Michael Johnston, 'Political corruption: historical conflict and the rise of standards', *Journal of Democracy* 2, (Fall 1991), pp. 48–60.

influence, while accepted rules can foster more orderly competition. To agree that private parties should not bribe officials may make it more difficult for those officials to demand payoffs through extortion.⁴⁶ From accepting that there are public domains where market forces may not intrude, it is not such a great leap to agreeing that there are private affairs from which public power is similarly barred. Different societies draw these boundaries in different ways; conflict will not always lead to settlements, and settlements are rarely permanent. But without opportunities for political contention, they are unlikely to emerge at all.

No one array of institutions will in itself assure such a development. Competitive elections, civil liberties, and a legitimate opposition, among others, are critical, but before they can emerge there must be a willingness on the part of the leadership to allow some political opening—to create opportunities for the routine expression of grievances, and for contention among points of view. In that setting, state and society can attain a degree of mutual autonomy,⁴⁷ and groups and interests within society can develop greater strength and more freedom of action. Legal reform may, thus, provide the first opening for that purpose. Indeed, some of the very interests now partaking of corruption could become forces for institutional changes, for corruption (as noted) bears long-term costs and uncertainties even for its immediate beneficiaries. For those costs to become decisive, however, safe and reliable alternatives to corrupt influence must be seen to be available. Private interests must not only support the law but believe that their competitors will do likewise.

The development of boundaries and distinctions entails not just changing official structures, but also strengthening groups and interests in society. Political development in many market-oriented societies was marked by the emergence of 'intermediary groups' with interests of their own and the political resources to advocate them. At times their activities made for more corruption, but they also helped define the working rules of politics and business. They did this less out of reformist zeal than from a desire to protect their own interests. There are opportunities at this level for outside groups—the businesses and non-governmental organizations such as trade associations and citizen organizations—to establish their presence in China's new economy. They can (and many already do) work on questions of how to deal with official agencies (and what sorts of treatment to hope for in return), on the limits of what their groups can do (or be asked to do) to advance their own interests. The more fundamental task will be to make those groups more able to articulate and defend their interests, which will be essential to drawing clearer boundaries between state and society.

Another effort related to this is for the courts and bureaucracy to further develop the sense of property.⁴⁸ The market-oriented reforms of the last 18 years have already posed this issue, whether it is officially recognized or not. Official and

46. Norman Givant, 'The sword that shields', *China Business Review* (May–June 1994), pp. 29–31.

47. S. P. Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968); Eva Etzioni-Halevy, 'Elite power, manipulation and corruption: a demo-elite perspective', *Government and Opposition* 24(2), (Spring 1989), pp. 215–231.

48. Helena Kolenda, 'One party, two systems: corruption in the People's Republic of China and attempts to control it', *Journal of Chinese Law* 4(2), (Fall 1990), pp. 196–197.

social recognition of private as well as social property is essential to a stable conception of corruption, and can help to solidify the distinction between individual and collective interests and rights. The incentive system that would thereby be ratified would energize the social groups and interests, and the contention among them, essential to democratic reform. Moreover, a sense of 'mine' would seem to be essential to the creation of an accepted sense of 'not mine', which is integral to controlling economic crime.

Another major step is to encourage greater independence for bureaucracy which would take political pressures off decision makers and be a step toward more predictable, less arbitrary treatment of (and access by) citizens. This would encourage the growth of a distinction between politics and administration and a new *esprit de corps* among bureaucrats. The economic miracles in Japan, Taiwan and South Korea depend, to a large extent, on credible bureaucracies being neutral. The bureaucracies in these countries have been constitutionally protected from political interference so that they can enforce contracts and function in an impartial manner.⁴⁹ In China, however, the civil service is tightly controlled by the Party through the nomenclature system.⁵⁰ A distinction should be made between political appointees and career civil servants and a bureaucratic neutrality should be protected in the policy process. A genuine autonomy for enterprises should also be encouraged, since it may differentiate between public and private roles and resources, and between market and authoritative allocation in place of the current hybrid system. It could begin to remove politics from enterprise decision-making, and economic self-interest from official policy making and implementation—further strengthening the distinction between politics and administration.

The last major step is to develop an independent third-party enforcement in China, which may be the most effective method to control spreading corruption and to improve the ethics in government. This requires the most fundamental and most difficult political change. It means subjecting the Party to independent oversight and distinguishing the interests of the Party from those of the state. For the rule of law to develop, there must be a situation in which no group occupies a permanently dominant position or is credited with an inherent right to govern.⁵¹ A gradual independence for the courts would be the first move in this direction and might provide an institutional foundation for individual as well as collective rights. Difficulties abound with any scenario for political reform: apart from the fundamental unwillingness to tolerate challenges and disorder, it may be difficult to transfer legitimacy from the monolithic old order to the many (and potentially confusing) forces of a new one. The persistence of traditional values adds to this problem and poses real obstacles to distinctions between individual and collective interests. A more codified system of rules will be a major change in a nation and culture that have generally not conceived of order in terms of legalisms. For these reasons, any new system of public order will be distinctively Chinese in many respects and institutional corruption controls will be essentially a political reform.

49. See Edgardo Campos and Hilton Root, *The Key to the Asian Miracle: Making Shared Growth Credible* (Washington, DC: Brookings Institutions, 1996).

50. See John P. Burns, *The Chinese Communist Party's Nomenclature System* (Armonk, NY: M.E. Sharpe, 1989).

51. Unger, *Law in Modern Society: Toward a Criticism of Social Theory*, p. 66.

All of these steps are difficult and long-term in their nature; all would depend upon the willingness of a reform leadership to allow them to happen. They are interlocked in many ways, so there is no neat sequence of reform. What is clear to us, however, is that the strategy of economic but not political reform is reaching its limit: political liberalization is long overdue. They have also pointed to basic lessons to be learned by considering the development of market-based societies elsewhere.

Conclusion

China's corruption is linked both to its heritage of Party-state dominance and to its new mixed economy. Economic reforms in the past 20 years have unleashed market forces in a nation so dominated by the Party-state that basic boundaries and distinctions defining the limits of markets and official power were weak or nonexistent. At one level, this has made for both an increase in corruption and confusion about the meanings of the term. At another, it has produced a situation that requires the improvement of the legal system to handle the issue effectively. The examples of other market-oriented societies suggest that both the boundaries and distinctions essential to workable rules, and the political capacity to address corruption issues, are forged through political contention among private interests, and between them and the ruling elite. This depends upon the existence of a civil society with the capacity—and opportunities—to articulate views other than (and often critical of) those of the leadership; it also depends upon the existence of an effective institution with the capacity to monitor the legal abuse of officials. China's strategy of pursuing economic but not political reform has left it vulnerable to corruption both real and perceived. The fundamental dilemma that China faces is its aim of developing a market economy and at the same time maintaining the current rule of a Leninist Party. To a certain extent, these goals have determined that China's path to a society governed by the rule of law will be exceptionally difficult and uneven. Corruption may trigger a dynamic process moving China further toward rational and institutional government—or it could disrupt social progress and wipe out the remarkable economic accomplishments of the last decade as happened in Indonesia in 1998. All depends upon whether the government has the capacity and the will to confront the political aspects of the corruption crisis. The current leaders seem to have realized the urgent need to build legal institutions in the political process to cope with the problem, and have taken laudable steps in that direction. Jiang Zeming even alert the Party that their 'power is granted by the people' and therefore 'all cadres, as the public servants of the people, are subject to the supervision of the people and to laws'.⁵² In the spring of 1999, at the second session of the Ninth NPC Conference, the Communist Party even recommended strengthening of the status of law in the Constitution. Among several constitutional amendment proposals, Article Five of the current Constitution is to be amended as follows: 'the People's Republic of China shall be run in accordance with the law

52. See Jiang's Political Report at the 15th Party Congress, *Renmin Ribao* (11 September 1997).

and the PC will construct a socialist state under the rule of law'.⁵³ This is obviously another commendable step. The chances are good that the post-Deng leadership will continue the current trend of improving the ethics of government with the help of legal mechanisms. Whether or not China's leadership will further construct and strengthen the Chinese legal system in the years to come may well make the difference between progress and catastrophe for a quarter of humanity, and the people in *Zhongnanhai* seem to have fully realized that.

53. *Renmin Ribao* (6 March 1999), p. 1.