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Sugar coated bullets: Corruption and the new economic order in China

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Abstract. The recent political debate concerning the influence of corruption on the “new economic order” in the People’s Republic of China is unique not only for its detailed and public manifestations, but also because it works around the acceptance of some degree of corporate private ownership of the means of production within China. The concern for corruption in Chinese government and commerce is not, of itself, novel.

We prefer in this paper briefly to focus on the economic and political environment from within which this concern has been generated, to comment on the significance for the Government of the PRC in associating the pall of corruption with the undermining of more capitalist economic reform, and then to examine how the legal definitions and controls on corruption have been transformed to complement a new political agenda. Associated with this, it has been necessary to advance some rather tentative predictions concerning the development of new anti-corruption initiatives in the PRC, their justifications, and pressures on the economic transition which is said to be corruption generative.

Speculation about the future face of economic corruption in China is of limited value when one is interested in questions of regulation and control. As the definition, indication and interpretation of corruption is a political process which may pay little regard to realistic indicators, so too the creation of control initiatives may not be dependent on predictions of actual developments in graft. We have endeavoured to show that recent regulatory programmes in the PRC themselves indicate much about the commercial contradictions that underly the new economic order, as well as evidencing the socio-legal dilemmas inherent in anti-corruption official discourse.

Introduction

Recent statements by the most senior political figures in the Peoples Republic of China (PRC) have evidenced a new and urgent concern for the effect on economic re-adjustment, of wide spread corruption throughout Chinese commercial and administrative life. Zhao Ziyang was quoted in the *Peoples Daily* as admitting that

now there is indeed corruption amongst some party and government officials. If we do not take effective measures to control and overcome it, this phenomenon will spread and deepen. If we let matters drift the new economic order will not be established, the reforms will not continue.¹

What is interesting about such warnings is not so much the admissions they contain, but rather the conscious political association between corrupt practices and the potential success in “capitalising” the PRC.

The Hong Kong press has been quick to adopt the official position that corruption is viewed in the PRC as the biggest threat to China’s ambitious and troubled programme of economic reform. In commenting on the moves initiated by Deng Xiaoping to curb corruption, *The South China Morning Post* highlighted a recent automobile trade racket which operated between Guangdong and Hunan, and involved military police and government employees.² The editorial reflected on the ever flourishing weed of corruption in China and speculated that

exposure to western business practices, which themselves are not always blameless, is only recent, and there are years of social and cultural habits to break before deals can be made quickly and cleanly as a matter of course. In the past some Chinese leaders blamed contact with the west for the decline in moral standards. With Chinese officials being exposed for the first time to the lure of capitalist luxuries, it is inevitable that some will not be able to resist the temptation to take more than they deserve. But avarice can be a force for progress if properly harnessed, as Hong Kong proves every day.³

The socio-legal and political significance of the present concern in the PRC about corruption will not be appreciated by adopting such a paternalistic and naive personalised analysis of the phenomenon. We prefer in this paper briefly to focus on the economic and political environment from within which this concern has been generated, to comment on the significance for the Government of the PRC in associating the pall of corruption with the undermining of more capitalist economic reform, and then to examine how the legal definitions and controls on corruption have been transformed to complement a new political agenda.

“The New Economic Order” in brief

One simple way to understand the economic transformation which the PRC is currently undergoing is to examine the Special Economic Zones (SEZ). The success story amongst these zones is that which centres on Shenzhen, the closest large Chinese city to Hong Kong. Like the other SEZ’s, the Shenzhen Special Zone has a degree of regional economic and administrative autonomy which is permitted by the central government in order to encourage economic development of a western style. This economic restructuring rests on the promotion of joint venture commercial activity. As a consequence the central

government has benefited from an inflow of foreign capital at the expense of its universal commitment to communal ownership of the means of production, and the struggle against the structures of capitalist profit making.

The Shenzhen Special Zone has been favoured by its strategic position in the Pearl River estuary and hence its physical and financial proximity to the markets of Hong Kong. But as the economy of the PRC has benefited from the Shenzhen experiment, the central government has paid a higher price than simply that of ideological compromise. The powerful conservative element in the many organs of the party, the Central Committee, and the National People's Congress, has been able to focus on the growing evils, both individual and organisational, which seem to be an inevitable consequence of this regional capitalization. In so doing this opposition has been able to challenge the wider programme of economic reform which Deng Xiaoping and Zhao Ziyang are sponsoring. It is a process of undermining the new superstructure by highlighting the flaws in its favoured operational bases.

This critique has not simply dwelt on the greedy party official who believes

the only way to do business in China is for the other party to offer favours from expensive gifts to entertainment at restaurants and night clubs, including outright cash bribes.⁴

Its more telling incursions have exposed corruption of an organisational and administrative nature which is openly in violation of the most basic socialist principles. Such revelations can tar the "new economic order" with the same brush. Deng Xiaoping has responded by recently threatening to dismiss provincial leaders who ignore the directions of central government. In particular, the Communist Party's Central Committee has directed one of its attacks on corruption against Government and party officials who exploit an economy to some extent trapped between central planning and market freedom.⁵ But Deng's fierce criticisms of nepotism and corruption have not been reserved for individuals alone. As the new factor of joint ventures has entered the Chinese economic scene, so too the focus of anti corruption discourse has moved to attacks on state-owned companies and other forms of business conglomerates. The potential subjects of corrupt practices in China are now also viewed in a corporate guise.

The practical consequences of this realisation have seen Deng Xiaoping ordering several major conglomerates to be stripped of their tax privileges, under the accusations of "official profiteering". As such this is said to amount to the use by state-owned companies of political contacts and special privileges to gain access to much needed state-controlled goods and materials, which they then sell at a huge profit on the fledging free market.⁶

But such regulation of commercial activity in China has not been spasmodic

or isolated. The Chinese press has reported that hundreds of trading companies have been ordered to halt business, and tight controls have been imposed on the bank accounts of thousands more, as part of the mounting anti-corruption campaign. The prevailing form of corruption, and one which is viewed with great concern in the light of skyrocketing inflation in the PRC, is speculation in scarce goods. Recently introduced banking regulations in Beijing prevent companies from withdrawing more than 500 yuan (\$130 US approx.) a day. These are an attempt to force such corporations to settle transactions by cheque, which in turn may make corrupt business transactions more traceable. It is also an attempt to regulate the source of cash into the black market, which may be channelled to the west and reinvested in China, attracting a minimum of regulation and centralised interference as a result.

In order to understand more fully the nature of corrupt practices which have recently come to light in the Special Economic Zones, it might be useful to describe several relevant cases which were disposed of recently in the Peoples Court of Shenzhen. From 1985 to 1987 there have been 216 cases of "economic crime" reported in this Zone, resulting in 216 people being convicted. Amongst these cases, 100 concentrated on corruption – related behaviour.⁷ One such case involved one Lam Shing, the manager of the Sha Tau Kok Commercial Trading Company. Lam Shing was also a member of the communist party. It was found that he conspired with a group of thirteen people, including the accountant, cashier and the deputy manager of the company, to forge temporary payroll sheets so as to pretend that the company had employed a number of temporary workers. This deception was further substantiated by forged documents, and false claims for expenses. Through these methods the conspirators misappropriated 32766 RMB, 4535 Foreign Exchange Certificates (FEC) and \$54136 HK. They all received prison sentences as a result.

In May and November 1985, Lau Tat Wai who was formerly the manager of the Lo Wu District Material Supply Company, borrowed \$30000 US from a joint venture company, and gave it to his son who lived in Hong Kong. In April 1986 he appropriated a similar amount from one of the company's subsidiaries, claiming that the money was necessary to conclude a deal which was secured by the parent company. In fact he used this sum to settle his earlier loan. When the case came to light in 1987 he was struck off the membership of the party and was relieved of his managerial responsibilities. The court sentenced him to 3 years imprisonment, suspended for a four year period.⁸

In 1985 Chang Way Lap, (former deputy director of the Shenzhen Film Company) represented her company in negotiating a joint venture with Hong Kong merchants. On the setting up of this joint venture she took advantage of her position so as to misappropriate state capital totalling 1.15 million RMB and \$3 million HK. In addition she later misappropriated a further 18000

RMB and \$ 20000 HK. In April 1987 she was suspended from her duties in the company. Since that time she also borrowed \$ 70000 HK from the Hong Kong company of which she was a joint partner. This was done without the permission of the other joint venturers. She was charged with corruption under the provisions for administrative procedure in the Schenzhen SEZ.

These examples give testimony to the extent to which corrupt practices have adapted to the corporate environment of the new economic order. They also indicate that middle management, and not just senior party officials are being identified as the corrupt.

The political utility of a connection between corruption and economic reform

Since the mid 1980's the PRC government has permitted the formation of semi-independent companies in China in the hope of stimulating competition and efficiency, and attracting foreign capital. Yet in so doing the government has strictly limited the number of business licences which it issues. This led to a new potential source of corruption in that the only people who can get such licences, it is alleged, are those with good party connections. "The Market" newspaper is quoted as stating that, "behind every profiteer is a big protector".⁹

The practical and ideological contradictions inherent in the development of China's "socialist commodity economy" are becoming impossible to paper over with the cover of Maoist ideology. In fact in recent years the supporters of Deng Xiaoping have chosen to reinterpret the role of ideology in modern China. One of the main messages to emerge from the 13th National People's Congress (1987) was that economic development would be the only yardstick for progress. A recent editorial in *The People's Daily* called for a "revamping of the ideological work".

The Basic criterion for judging the success of ideological work is whether it can fully arouse the initiative and creativity of the masses and cadres and effectively protect, enhance and emancipate productive forces.

The *Guangming Daily* takes this theme further by encouraging Chinese ideologues to

pluck up our courage and restudy capitalism. Bourgeois democracy and law have been further improved and developed. Some reasonable and useful things in the ideological and cultural fields in capitalist society have transcended the limits of time and space.¹⁰

However the legacy of Mao both theoretical and practical cannot simply be

subsumed and transformed by the new ideology of pragmatism, or by Deng's experiments with capitalist economic development. Not only are the conservative opponents of the new economic order massed against the incursions of capitalist enterprise, but a very significant sector of the Chinese people hold the Maoist image of a people's China with shared wealth and hardship, still dear to their hearts. These are the people who also blame the new economic reforms for the 40+ percent inflation now plaguing the PRC, and its consequent reduction of living standards.¹¹ It is they who find the obvious inequalities between life as it is said to be in the Special Economic Zones, and as it is in the remainder of China, difficult to accept. It may taken more than the restrictions of the household registration system (S Dutton 1986), to buttress the Special Economic Zones against a swell of discontent which may arise as a result. This is despite the universal attractions offered by the freeing of the supply of consumer durables which the SEZ's can offer.

The leaders of the new economic direction are sensitive to the privileged position of the Special Economic Zones. They are particularly aware that they should not be seen to allow the capitalist characteristics of business life in the Zones to lead to a greater potential for corruption and profiteering in these environments than appears to be the case throughout the rest of China. Thus it was not surprising to read that;

Shenzhen special economic zone is to pay central government 20 per cent of the foreign currency it earns through exports. Currently the special economic zones in China can retain 100 per cent of the foreign exchange they earn in the zone for future development but the rules will change on January 1 (1989). China traders in Shenzhen, and officials of the municipal government, have said that the new move is part of a crackdown on profiteers and speculators in the zone . . . Other provinces and cities in China must pay the majority of foreign currency they earn in order to support the development of the country. The result was that profiteers and speculators became active in Shenzhen, using the foreign currency to buy "cheap" yuan in the black market . . . and using the money to buy products from the other provinces . . . Some goods from the zone can be priced more competitively than those from areas that do not deal in as much foreign exchange . . . The vice-mayor (of Shenzhen) claimed that the central government requested Shenzhen to pay 20 per cent of its foreign currency with the aim of stopping the competition between provinces in purchasing products and stabilising the price of China-made products . . . A senior official of the municipality disclosed that almost 40 per cent of Shenzhen's exports are purchased from other provinces at higher than standard prices.¹²

The focus of these criticisms is that capitalist excess leads to corruption and this

then directly undermines the life of the Chinese people. This is not a new tune in the PRC. Since the Communist state was established in 1949, the association between capitalism and corruption constantly has been drawn in official policy, and as such has formed a principal motivation for the efforts against corruption in the PRC. Further, the association between corruption and the challenge to economic stability also always has been clearly manifest in PRC policy initiatives. For example, the Criminal Law of the PRC (adopted by the Second Session of the Fifth National People's Congress 1979) classifies the offences of smuggling and speculation (art. 118), taking of advantages by government officials (art. 119), and the misappropriation of state funds (art. 126) under the heading "Crimes of Undermining the Socialist Economic Order".

In his address to the Third International Anti-Corruption Conference (1987), Xie Baohui (Director, Economic Crime Prosecution Department, PRC) emphasised the social harm posed by corruption: "Corruption not only sabotages the property relationship protected by law, but also ruins the good prestige of state personnel". Yet interestingly Xie was particular to point out that "the work of anti-corruption (sic) in China is not contradictory to the policy of revitalising China's domestic economy". This is consistent with the current efforts by the present "reformist" administration of the PRC to colonise the "moral highground" of anti-corruptionism. Zhao Ziyang has taken the barbs of his economic critics and returned them by alleging that it is corruption which is threatening the realisation of the new economic order. He chooses to ignore the suggestion that it is the socialist commodity economy which itself is promoting such corruption, while joining the anti-corruption chorus, but for distinctly different reasons. The recognition of the socio-economic threat posed by corruption is the common ground. The measure of patriotism has become the vigour with which it is attacked. But while Zhao's critics use the spectre of corruption to attack his reforms and suggest that the cure for corruption may be found in dismantling the new economic order, his position is that the eradication of corruption will significantly ensure the realisation of the success of this new order. The debate about where corruption originates has been purposefully bi-passed in the scramble for the legitimacy inherent within the anti-corruption posture.

The official attack on corruption

On 21 January 1988 the Supplementary Provisions of the Standing Committee of the National People's Congress Regarding the Punishment of Corruption and Bribery, were adopted by the 24th Session of the Standing Committee of the Sixth Congress (Zhonghua Renmin Gongheguo Guowuyun Gongba).¹³

These comprised two sets of regulations providing for the severe punishment of smuggling, corruption and other related offences. They made further amendments to the previously mentioned Criminal Law of the PRC, more clearly defining certain offences and giving more concrete guidelines for penalties. We will examine these provisions in more detail when discussing the legal dimension of the anti-corruption initiatives in the PRC.

More recently (21 September 1988) the State Council promulgated detailed "interim provisions on the administrative measure against state office workers for embezzlement and bribery". Unlike previous guidelines this one specified which punishments were to be meted out for which crimes. A week later the Finance Vice Minister Chi Haibin inaugurated a "national campaign to rid the country of financial irregularities" including tax evasion and falsifying of accounts. "Those who take advantage of the present (two tiered) price system to profiteer from production materials and consumer goods in short supply will be punished", he warned. The following day the State Administration of Commodity Prices issued new "Regulations for Handling Price Violations in Conducting Tax Finance and Price Inspections", and the Foreign Trade Ministry released its own rules to keep "government functionaries honest and upright". On 24 September the State Council sent out a circular prohibiting "all units in China from recklessly distributing money, materials and gifts," including "unauthorised bonuses, subsidies and allowances".

Hubei province, under central pressure, announced on 25 September, what was intended as a precedent setting measure forbidding all government departments and offices "from buying cars and building new offices for two years". The next day Premier Li Peng signed an order to tax banquets in an effort to discourage lavish entertainment at the states expense. The State Council, under Li Peng's supervision, next decided to pose "independent" price inspectors in provincial and municipal capitals throughout the nation. The Supreme People's Court meanwhile issued a circular ordering a "crack-down on economic offenders", especially profiteering officials.

The next major official initiative against corruption was Deng Xiaoping's attack on several of China's largest state-run trading and investment conglomerates, including one affiliated with his eldest son. Premier Li Peng then capped off this stage of the anti-corruption effort when on 9 October he launched a nationwide "campaign to call an immediate halt to thousands of construction projects including some under way". This was an attempt to deal with the serious bottlenecks and shortages which have lead to widespread corruption within China's construction industry. As a result of these and other concerns associated with the pace of economic development in China seven foreign joint ventures worth an estimated 2 billion yuan were cancelled or postponed some three weeks later.¹⁴

The move coincides with the news that Communist Party Secretary General Zhao Ziyang has set specific goals of reducing investments in fixed assets next year by 50 billion yuan, a drop of about 20 percent from this year. He said that overall economic growth should be slowed to 10 percent or lower . . . In a speech released yesterday (27 October), Mr Zhao warned that if widespread corruption amongst party and Government officials did not end, the party would lose the support of the people . . . He said price increases, unfair distribution of wealth and official corruption were the main causes of public dissatisfaction.

This potted history of recent official attempts to control corruption in China also reveals the extent to which corruption appears to have permeated all aspects of public and commercial dealings in China. Since 1950 the PRC government has experimented with many different systems of control: internal administrative audits, separate control commissions, discipline inspection bureaux and “supervision of the masses”. None of these seem to have worked very well. As the Beijing correspondent for *The South China Morning Post* observes,

the potential for an independent system of supervision is further weakened by the pervasiveness of the problem. China’s network of personal and back-door relations – allowed to flourish in the eight years of market-oriented reform – precludes consistent disciplinary action against corruption, just as it precludes an enforcement of building and spending prohibitions. Nobody is scared and everyone has a friend in the right place . . . The situation is aggravated by the fact that the central government is unable to regulate the economic processes it has set in motion and the fact that the prevailing economic “system” is neither fish nor fowl . . . Corruption is also built into the very structure of the system. The overlap between state/administrative and production/commercial authority is an open invitation for underpaid functionaries to transform their bureaucratic power into cash.¹⁵

In addition to such structurally and historically based scepticism, doubts have been expressed as to whether this public push against corruption would see a universal application in practice if corruption was openly exposed at the highest levels of the party’s upper echelons. Agence France Press has quoted unidentified “diplomats” as stating that the latest campaign against corruption will fail, like the ones before it, to reveal the most powerful figures involved in abusing power for personal gain. It is suspected that fearing one leak about high level corruption could trigger a chain reaction in their ranks, reformists

and conservatives alike have an unspoken agreement that their business dealings will remain untouched¹⁶. Whether such unsourced press speculation has any basis in fact is difficult to substantiate. As is the case with the very limited English language commentary on current affairs in the PRC, we are to a large extent slaves to a very small contingent of wire service writers and western press agencies. Even so, the dubious reaction to these recent anti-corruption initiatives says something about the past and present divergence between what is said and done about corruption in the PRC.

The legal dimension

It could always be argued that law reform on any issue may only indicate the posture of a legislature which should not be assumed to be synonymous with any commitment to action. Having said this, one should not depreciate the significance of new legislation as an indication of a government's intent, particularly in a jurisdiction such as the PRC where law revision is not a simple process. Further, in respect of the recent changes to the laws controlling corruption in China, their importance is increased by the fact that they attempt to make more concrete and enforceable the earlier legal sanctions.

The most significant example of recent legislative reform to the laws controlling corruption in the PRC is the Supplementary Provisions of the Standing Committee of the National People's Congress Regarding the Punishment of Bribery and Corruption (adopted by the 24th Session of the Standing Committee of the Sixth National People's Congress, 21 January 1988). These Provisions are an adjunct to the Criminal Law of the PRC as amended by the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Undermine the Economy (adopted by the 22nd Session of the Standing Committee of the Fifth National People's Congress, 8 March 1982). The 1988 reforms are primarily concerned with three forms of serious economic crime: corruption, misappropriation of public funds and bribery, all of which appear in some form in the Criminal Law of the PRC. Take for example corruption, which in its original form refers to situations where "state personnel . . . take advantage of their office to engage in corruption involving articles of public property" (Art. 155) and as such lacks specificity in its object and its definition. The latter provisions clarify the requirements of the crime. Thus "engage in corruption" is replaced in section 1 with "embezzle, steal, defraud, or use other means illegally to take public property". While the object of the crime is not elaborated on, the potential authors of such offences now include "state functionaries, staff of collective economic entities and personnel in charge of public property". Further to the inclusion of corporate or collective offender categories is the

provision that “people who collude with state functionaries” etc. or “enterprises, undertakings, institutions and organisations” (section 9) which may be non-state and while not being able to subjects of corruptions, can be punished if they offer bribes to public officials or conspire toward their corruption. This legislative mention of private or semi private organisations within the PRC, is of itself a significant recognition of the direction which the new economic order is taking. The punishments for such graft on balance are higher under the Provisions than earlier tariffs proposed for comparable offences.

The Provisions have also created new crimes of graft. Misappropriation of public funds (embezzlement) is effectively a new offence. Section 3 now makes it an additional offence to misappropriate public funds in the following cases:

- if the funds are for personal use to carry out illegal activities (i.e., smuggling, gambling, or speculation);
- if the amount is relatively large and is used to engage in profiteering; and
- if the amount is also large and is not repaid after three months.

This latter situation where failure to return public funds is deemed to be corruption, is interesting in the way in which it removes the emphasis from the “embezzlement” and redirects it to the retention and use of public funds as being the criminal act. Perhaps this is one of the practical recognitions in these Provisions that effective anti-corruption controls must have the potential of recouping moneys misappropriated as much as they are designed to punish the misappropriation itself. Section 12 extends this emphasis:

All embezzled or misappropriated public property will be chased back. All benefits offered as a bribe will be confiscated. Embezzled or misappropriated public property when recovered will be returned to the original units. Those which by law should not be returned will be handed over to the state.

Also it appears that the inference to be drawn from the obvious concern in the Provisions with the “return of large sums of money”, is that minor forms of embezzlement will either be tolerated or will only provoke the internal discipline of the local unit, and not of the law.

In their focus on taking advantage of one’s position to unlawfully acquire possession and use of public property for illegitimate purposes, the corruption and misappropriation offences are similar. They diverge in the means used to carry out the offence, and in the ultimate intention of the offender. If the property concerned is to be taken and used permanently as if the ownership had been transferred into private hands, this constitutes corruption.

The bribery offence presented in sections 5 and 6 takes two forms: accepting a bribe and offering a bribe. These offences are now more clearly defined to include such activities as to “illegally accept and keep in personal possession

rebates, service charges, sales commissions etc. under false pretences”. As with the corruption offence, “the possible subjects of this offence have been broadened, and those non-state personnel who collaborate in bribery may also be punished”.¹⁷

Section 6 is a very significant innovation for the operation of the criminal sanction in the PRC. It expands the categories of offender deserving of punishment from the individual to “enterprises, undertakings, institutions and organisations owned by the whole people”. It is provided that where such bodies are involved “in serious cases of soliciting or accepting bribes in return for special advantages” they will be fined, and “responsible officials and others directly involved will be sentenced to not more than 5 years imprisonment or detention”. This section should be considered in conjunction with section 9 which provides fines for similar bodies which “seek improper advantages by offering bribes, or giving rebates or service fees. . . All bribes which have thus turned into (*sic*) *private ownership* shall be dealt with in the manner stipulated by paragraph 8 of these Supplementary Rules”.

Several other of these Provisions have created a framework for the legal regulation of corrupt practices which is in many important respects not dissimilar to the comparable laws in the PRC’s closest common law neighbour, Hong Kong. For example, section 11 declares that “State functionaries whose wealth or expenditure far exceed their legal incomes may be required to account for the reasons for such differences. If no explanation can be made, the difference will be deemed to have derived from illegal sources. The person concerned is liable to not more than five years imprisonment or penal servitude, together with forfeiture of the difference, or simply forfeiture of the difference”. This creates the same form of status offence and associated confiscation powers that exist in section 10 of the Prevention of Bribery Ordinance, except that the latter affords the accused the potential to advance a “satisfactory explanation” to a court as a defence whereas the PRC provision presents the lack of explanation as an element of the offence.

Enforcement of the anti-corruption initiatives

Alison Conner in her review of the recent provisions in the PRC designed to control and punish corruption, concludes by asking whether these provisions can or will be enforced. In answer to her own rhetorical query she suggests:

Perhaps the problems addressed by this legislation are not simply new, but also worse than in the past: thus the revisions show concern that more types of offenders . . . are involved in these offences, that organised gangs with

ringleaders are a particular problem . . . and that the funds or products obtained are being used to pursue further illegal activities. And what makes these offences so damaging makes them equally difficult to curb . . .¹⁸

As it is the case that China is presently flirting with corporate capitalism as a means towards economic development, so too it now confronts the realisation that the opportunities for, styles of, and participants in corrupt behaviour have altered along similar lines. The traditional problems confounding attempts to control corruption in China are now complicated and exaggerated by the push towards private/corporate business restructuring. Having said this it is not simply the advent in China of special economic zones, municipal autonomy, joint ventures, semi-private business enterprises and the like which have necessarily lead to a greater incidence and variety of graft. The basic contradictions on which the “new economic order” in China is being established allow for conditions which can encourage individual and corporate entrepreneurial enterprise where the line of legitimacy may be far from clear. These conditions and their consequences for corruption in China should pose a significant challenge for the development and implementation of control measures. Apparent political will, and its manifestation through legislative change and administrative initiatives are not in themselves novel in the PRC. What is unique at this time is the public recognition that there is a connection between government administration, party structure, individual greed, and economic development, which is supportive of corruption, and that this needs to be exposed and regulated at the highest levels for the sake of the financial and political security of the state.

A public law enforcement agency with its focus on corruption in the PRC faces obvious operational difficulties. Article 13 of the Law of Criminal Procedure of the PRC stipulates that:

cases involving crimes of corruption, violation of the democratic rights of citizens, and dereliction of duty, and other cases that the people’s procuratorates consider necessary directly to accept themselves, are to be filed and investigated by the people’s procuratorates, which are to decide whether or not to initiate a public prosecution.

This procuratorial body has the multiple powers of investigation and prosecution when it comes to questions of public corruption. The Organisational Law of the People’s Procuratorates of the PRC highlights the following characteristics of these functions:

- The nationalisation of anti-corruption supervision
- The universal application of anti-corruption regulations
- The specialisation of anti-corruption law enforcement

– The assurance of enforceability when it comes to anti-corruption laws
Despite the further declarations that the exercise of power by the Procuratorates is independent, universal, law-centred, and considerate of popular expectations¹⁹, the process of law enforcement in other respects throughout such a massive and diverse jurisdiction as the PRC would raise doubts about whether a criminal justice response to corruption in China has real prospects of success.

Conclusion

As this article indicates, China is presently endeavouring to tighten the economic activities of trading organisations in the mainland and outside its borders, especially in Hong Kong. Under these readjustment measures as advanced by the PRC, it is intended that only those well organised and reputable companies will survive. At the same time commercial and organisational power is being concentrated on a small and declining group of political and business leaders. In this respect it is hoped that corruption may be the province of an identifiable few, rather than permeating throughout all levels of both public and private sector middle management.

This is also a recognition that styles of corruption in China are becoming more sophisticated, collective and dispersed. Therefore it is the government's intention that steps should be taken to limit this potential burgeoning of corruption by regulating the opportunities for graft. No doubt it is appreciated that as well as being better able to ensure accountability and responsibility for corruption by limiting it at source, the government is better able to disguise its existence if its operation remains in the hands of a few identifiable officials.

It would be wrong to view the Chinese concern with corruption as simply being a cultural phenomenon or something which is a natural by-product of a certain style of economic development. With power comes corruption. In the case of the PRC that power has for a long time been centralised and regionalised. Add to this the reality that methods of corruption in the past have been limited by wage structures, financial organisation, and the framework of authority and decision making in the public life of China, and a unique agenda for corruption will obviously emerge. For example, a somewhat conspiratorial relationship has developed between the special economic zones and the rest of China when it comes to apportioning opportunities to find work in a SEZ. A senior official responsible for trade and commerce in Beijing may gain certain personal and commercial advantages by having his son employed by a business enterprise in a SEZ. However this arrangement may see the official in a position of obligation to the operators of that business in the SEZ. To discharge his duty in this regard, the official may endeavour to secure trading

opportunities for that business, which may directly or indirectly benefit his son. In this example there develops a process where the exchange of favours for advantage arises out of the economic imbalances which are a consequence of the SEZ system. Naturally there are considerable grievances harboured by the masses of Chinese citizens who are unable to share in the easier living standards that they see in the SEZ's, either through legitimate or illegitimate means. The higher salaries and living subsidies, as well as the radically lower rate of inflation enjoyed by those in the SEZ's²⁰, is an obvious source of general public discontent, and a motivation to endeavouring to get a "slice of the pie" through any means which present themselves. In addition, the population outside the SEZ's may take to corruption as a method of compensating for the imbalances in lifestyle which they see as being promoted by the new economic order.

The recent actions taken by the central government of the PRC, to regulate economic corruption will in no way eradicate the problem. They are not intended to. Rather they are expected to bring about the following consequences:

- Corruption will be confined to a group of very senior officials and offices, and will be taken away from the lower levels of commercial enterprise.
- As a result, those cases of corruption which will be prosecuted by the state will involve a smaller and perhaps more influential class of people rather than the present widespread of defendants. It may be also that due to the nature of the "corruptors", and the fact that public sensitivity about corruption should diminish, fewer cases of corruption will be reported.
- With corruption moving more into the control of a political and economic "elite", its presence will be easier to seal off and disguise.
- Anti-corruption agencies will be a priority if for no other reason than the government has publicly identified corruption as a challenge to national economic advancement, and therefore organised attempts at its control must assume a high domestic and international profile.
- Due to the tight government control over the news media in the PRC, the apparent reduction in the incidence and danger of graft can be as well orchestrated through the press as appears to have been the official candour and concern for its existence, and finally
- The division between corrupt practices and legitimate influence will become even more indistinct. For example, who will be able to distinguish between benevolence and graft when the son or daughter of a senior official is given a scholarship from a friendly private-sector foundation, to study abroad?

Speculation about the future face of economic corruption in China is of limited value when one is interested in questions of regulation and control. As the definition, indication and interpretation of corruption is a political process

which may pay little regard to realistic indicators, so too the creation of control initiatives may not be dependent on predictions of actual developments in graft. We have endeavoured to show that recent regulatory programmes in the PRC themselves indicate much about the commercial contradictions that underly the new economic order, as well as evidencing the socio-legal dilemmas inherent in anti-corruption official discourse.

Notes

1. *South China Morning Post* (SCMP) 16 Oct. 1988 (1).
2. See SCMP 5 Oct 1988, (1,9) New China Car Racket Exposed.
3. *ibid.* 5 Oct. 1988 (26).
4. *ibid.* 5 Oct. 1988 (12).
5. See, SCMP 11 Oct. 1988: 1,8) Province Leaders Warned by Deng.
6. See, SCMP 4 Oct. 1988 (1) Deng Cracks the Whip on Corruption.
7. Tequ Dang De Sheng Huo. 1988. *Life of the Communist Party in the Special Economic Zones*. Vol.2: 31.
8. *ibid.* p. 29.
9. SCMP 22 Oct. 1988 (1) Screw Tightens on Corrupt Firms.
10. *ibid.* 23 Oct. 1988 (13) Worried Leadership Seeks New Ideology for the Future.
11. *ibid.* 23 Oct. 1988 (1) Inflation Riot Squads Formed.
12. See SCMP 7 Nov. 1988 (4) Shenzhen to Pay 20pc of Foreign Cash to Beijing.
13. *State Council Gazette*, Feb. 20, vol. 3, 1988: 78–79.
14. SCMP 28 Oct. 1988:1 Seven Joint Ventures in China Axed.
15. SCMP 10 Oct. 1988: 19, Graft – the Fight is on.
16. SCMP 24 Oct. 1988: 8, Corruption “Still Rife at the Top”.
17. Conner A.E.W., 1988. Commentary: Supplementary Provisions of the Standing Committee of the National People’s Congress Regarding the Punishment of Corruption and Bribery. “*Hong Kong Law Journal*” 2: 272.
18. *ibid.* p. 275.
19. Xie Baoghui. 1987. The Function of (the) Chinese Procuratorial Organ in Combat(ing) Against Corruption. Paper presented to the Third International Corruption Conference, Hong Kong.
20. 0.5 percent in September 1988 as compared with a figure of 49 percent for the rest of China – China Monthly Statistics Report October 1988.

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