

CORRUPTION AND ANTI-CORRUPTION POLICY IN TODAY'S CHINA

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I. *What is the current situation?*

“Corruption” is a very vague expression. However, in formal documents of the Chinese Government it usually means an official's pursuit of personal financial gain by abusing their public power or position. This definition specifically includes four kinds of crimes: embezzlement of public property, bribe-taking, illegally using public money, and other financial crimes committed by officials (for example, smuggling).

According to the Supreme People's Court of the People's Republic of China, some 83,308 offenders were found guilty of committing crimes of corruption in the five calendar years from 1998 to 2002.

Corruption is clearly becoming one of the most serious social problems faced by China today.

II. *What causes corruption?*

The study of corruption has a long history and there are many academic doctrines explaining the causes of corruption throughout the world today. However, I believe my method is the most rational and effective one to analyze Chinese corruption. It can be described as follows:

A social phenomenon is basically determined by two factors. One is something I call a “social structural system” and the other is a “social cultural character”. The social structural system is the external part of a society that represents the changeability of a society and the commonality between different societies. On the other hand, the social cultural character is the internal part of a society that represents the unchangeability of a society and the uncommon-

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ality between different societies. The social cultural character is more important than the social structural system in determining a social phenomenon.

So what is the social cultural character of Chinese society? I would like to describe it as “A State Power-oriented Society”. By that I mean state power is the only core of and supreme force in Chinese society, and all other fields of Chinese society (such as economics, culture and law) are based on that state power and are determined to a great extent by it.

What is the social cultural character of Chinese state power? I would like to define it as “A Personality Bureaucracy”. That means the Chinese bureaucracy as the exercising subject of Chinese state power is taking personality as a basic principle at its normative, structural and active levels. The personalities of individual officials and the personal relationships between them or with society assume great importance and enable certain officials always to obtain and exercise great discretionary power.

During the era of Mao’s socialism, a political ideology called the “Class-struggle Theory” was held as the basic principle of the Chinese social structural system. Under that ideology, the greatest mission of Chinese society as a whole was considered to be the elimination of all private ownership and reform of the upper classes. In order to achieve this goal, absolute state or joint group ownership and a strict system of economic planning and management were carried out and countless political mass movements were launched every day. As a result of this, only the public sphere and a political ideology praising to excess the public character of Chinese society and condemning the private character of it remained. In such a situation, the Chinese social structural system demonstrated great compatibility with the Chinese cultural character, the supremacy of state power and the discretionary privileges of bureaucrats were both satisfied and restricted effectively by the integration of the social structural system and the social cultural character, and there was less freedom (necessity and opportunity) to be corrupt. In fact, there was less corruption during that era than there is today. However, in return for less corruption, there were countless victims of political oppression, continuing social chaos and long-term economic depression, causing significantly greater damage to Chinese society than corruption could ever have achieved.

From the 1980s, China adopted a new policy known as “Reform and Openness” and the era of Deng, Jiang and Hu began. During this era, the economic notion of doing the best to develop the Chinese economy replaced the political ideology of the “Class-struggle Theory” and became the basic tenet of the Chinese social structural system. Under this new principle, individual ownership and the market economy have been recognized and encouraged by the Chinese Communist Party and Government themselves. Striving to gain a personal fortune or become rich has been deemed to be the most glorious goal not only by Chinese social culture, but also by the political ideology. With this new situation, both the traditional supremacy of state power and the former discretionary privilege of officials have been challenged. On the one hand, the supremacy of state power cannot automatically be satisfied by the social structural system as it was before and there is now a greater necessity for state power to recover its loss of supremacy by new methods. On the other hand, the discretionary privilege of the officials cannot be restricted as effectively as before and there is now greater scope for them to be corrupt. We can say that the corruption in today’s China reveals an allergy of traditional Chinese social cultural character to its new social structural system (especially the market economy). In fact, more and more corrupt behavior is appearing in China today. However, by virtue of that greater level of corruption, the Chinese economy is developing rapidly, Chinese

people are enjoying greater freedom, and Chinese society is becoming strong and affluent. None of these existed before.

III. *How corruption is dealt with in today's China?*

The Chinese government has been taking many measures to deal with corruption. For example, one of the goals of the many economic, administrative or political reforms that have been carried out in recent years has been to prevent official corruption. The main countermeasure in China today is the punishment of corrupt officials. There are the following three kinds of punishment:

① Political punishment

The Discipline Inspection Committee of the Chinese Communist Party (CCP) regulates and punishes corrupt party members. This committee is given great authority to make rules, investigate cases of corruption, and punish corrupt members by expelling them from the Party.

② Administrative punishment

The Administrative Inspection Agency of the Chinese Government also regulates and punishes its members. This agency is given great authority to make administrative rules, investigate cases of corruption, and to impose administrative sanctions on corrupt officials.

③ Criminal punishment

Criminal punishment is the most important countermeasure in China today. Most forms of corruption are classified as serious crimes in the Chinese Substantive Criminal Law. Even the death penalty can be applied in some circumstances and indeed every year some offenders are executed for corruption. In the Chinese procedural laws, there are some special provisions only to be used in cases of corruption. For example, the investigation of corruption cases is conducted by the public prosecutors directly and there is a system called "Ju Bao Zhi" (People's Reporting System) to encourage citizens to report corruption to the authorities. There is also a system called "Shuang Gui" (It means to order the suspect official to confess his or her crime at the time and the place specified by the party or the government without any criminal procedural law's warrant.)

IV. *Conclusion: The necessity of formulating an Asian-style anti-corruption policy*

The Chinese Government has adopted a very strict attitude towards corruption and the Chinese criminal justice system (i.e. the police, prosecutors and judges) has been doing a very good job in preventing and punishing corruption, as have the systems of many other Asian countries as well. However, it is difficult to judge whether they have achieved their goals and citizens are satisfied with their performance. It is also difficult to predict whether they will achieve their goals and people will be satisfied with their performance in the future. Why?

"Crime" usually consists of two factors: one is some action to do something wrong, the other is some reaction making the action a crime. The situation or scope of crime in a country depends not only on actions, but also the reactions to them. The same applies to corruption:

people have perceptions or feelings about what constitutes corruption and the situation of corruption is (more or less) determined not only by the actual commission of the corrupt act, but also by how people or society react to it. In classic criminology there is a concept called the “black number”, which means the number of criminal cases that have occurred, but not been recognized by the criminal justice system. However, I believe we need another concept, which I call the “false number”, meaning cases that have never actually occurred, but people think or feel have occurred. Especially when studying corruption, what we have to realize is not just the action, but also the reaction. This is very important for the criminal justice system to deal with corruption effectively.

What is characteristic of Chinese (even Asian) people’s reactions to corruption?

Firstly, Asian people consider corruption from a “moral probity standard”. They believe that officials should be as absolutely pure and clean as a perfect parent or God is, and corrupt behavior by officials betrays that beautiful image. Thus, what they expect of an anti-corruption policy or criminal justice is not only to eradicate corruption itself, but also to reform and maintain every official as something akin to a perfect parent or God. Such expectations are very idealistic and virtually unrealizable in the real world. By contrast, Westerners consider corruption from a “free market standard”. They believe that the government and market should be separated strictly and officials’ corrupt behavior destroys such separation. Thus, what they expect of an anti-corruption policy or criminal justice is merely to recover such separation. Such an expectation is very realistic and easily satisfied. (For example, the “protected legal interest” is explained as a “clean duty” or “public trust” in Asian countries and the “separation of government and market” or “dependency of market” in Western countries. Moreover, the definition and scope of corruption also differ between Asia and the West).

Secondly, there is less access to governments by people in Asian countries. Even those who feel dissatisfied and wish to criticize the government are unable to do so without hesitation. They generally lack the chance to do so and must consciously choose to object or seek an opportunity to criticize. Corruption is the most universal objection and the most absolute opportunity to criticize. As all governments recognize that corruption is bad, every government must allow criticism of corruption officially whether they like such criticism or not. Thus, Asian people tend to air their complaints of corruption and direct all their criticisms toward corruption. In other words, criticism of corruption in Asia is apt to become a substitute for all social criticism.

Thirdly, the most important social value for Asian people is equality rather than freedom or efficiency. They believe that the government’s first mission is to make society equal and are apt to define “corruption” from the “equality value” and perceive inequality as meaning corruption. This is very different from the situation in Western countries.

Fourthly, to many Asian people, “responsibility for corruption” mainly means criminal responsibility. They do not accept administrative or political responsibility as “responsibility” and place all their hopes on a criminal charge.

With the above background, it is very difficult for Asian criminal justice systems to make people and society satisfied with their countermeasures against corruption. It is, therefore, necessary to formulate an Asian anti-corruption policy.

① Asian criminal justice systems should realize their limitations in their struggle against

corruption and appreciate that criminal charges are only part of an effective anti-corruption policy. As most crimes of corruption are “victimless crimes”, it is more difficult to find evidence and prove such crimes. Criminal charges must nonetheless follow some constitutional rules, such as the presumption of innocence. It is true to say that the laying of criminal charges is not the most appropriate way to impose liability on corrupt officials.

② Asian criminal justice systems should be accountable to their people and societies, explain their limitations, and direct their people and societies to observe the problem of corruption rationally. This is very important for Asian criminal justice systems if they are to maintain their authority.

③ Asian societies and people should realize their own responsibility in the struggle against corruption. As Asian corruption is based on a social cultural character, they should try to build up an anti-corruption culture by themselves.

④ As Asian corruption is, in some respects, the cost of social transition, people and societies should not take anti-corruption as an absolute value, but should have some passion to fight corruption if they are aiming for some higher value.

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