

## Issues in Corruption Control in Post-Mao China

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*This article examines two issues in corruption control in post-Mao China: a double standard of criminal justice and the politicized pattern of anti-corruption enforcement in the criminal justice system. The author makes two arguments: First, despite the widely publicized principle that officials, as communist party members, are held to a higher standard of conduct than ordinary citizens, the criminal justice system has still punished corrupt officials less harshly than ordinary citizens who commit similar crimes. Second, anti-corruption enforcement has followed patterns of intensive campaigns that reflect shifts in political attention at the top of the system. These two features have undoubtedly contributed to public cynicism about the official effort to control corruption and have, in turn, hampered that effort.*

**Keywords:** China; corruption; corruption control; anti-corruption campaigns; criminal law

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Although Chinese communist authorities have been fighting official corruption since the early 1950s, there is much anecdotal evidence and some scholarly argument to suggest that corruption has increased in volume and severity in the 1980s and 1990s. This article examines two

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issues in corruption control in post-Mao China: a double standard of criminal justice and the politicized pattern of anti-corruption enforcement in the criminal justice system. In one form or another, these problems are already acknowledged in a growing literature on corruption in China.<sup>1</sup> At the risk of elaborating the obvious, my aim here is simply to strengthen the empirical status of such knowledge. For the purposes of this article, I adopt a very straightforward formal-legal conception of corruption: the abuse of public office to pursue private gain in ways that violate formal rules.<sup>2</sup> My focus is on violations of law.

### A Double Standard of Criminal Justice

Chinese law and other sorts of formal rules assigning criminal punishment are harsh toward officials who abuse public office to pursue private gain, particularly when crimes involve relatively large monetary amounts or serious circumstances. Yet, both the rules and actual practice of criminal justice have been more tolerant of official crime than of ordinary crime. On the one hand, as described below, the criminal justice system has punished

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<sup>1</sup>See, for example, discussions in Anita Chan and Jonathan Unger, "Grey and Black: The Hidden Economy of Rural China," *Pacific Affairs* 55, no. 3 (1982): 452-71; Keith Forster, "The 1982 Campaign Against Economic Crime in China," *Australian Journal of Chinese Affairs*, no. 14 (1985): 1-19; Ting Gong, *The Politics of Corruption in Contemporary China: An Analysis of Policy Outcomes* (Westport, Conn.: Praeger, 1994); Helena Kolenda, "One Party, Two Systems: Corruption in the People's Republic of China and Attempts to Control It," *Journal of Chinese Law* 4, no. 2 (1990): 187-232; Peter Nan-shong Lee, "Bureaucratic Corruption During the Deng Xiaoping Era," *Corruption and Reform* 5, no. 5 (1990): 29-47; Alan P.L. Liu, "The Politics of Corruption in the People's Republic of China," *American Political Science Review* 77, no. 3 (1983): 602-23; Carlos Wing-hung Lo, *China's Legal Awakening: Legal Theory and Criminal Justice in Deng's Era* (Hong Kong: Hong Kong University Press, 1995); Clemens Stubbe Ostergaard, "Explaining China's Recent Political Corruption," *Corruption and Reform* 1, no. 1 (1986): 209-33; Jean-Louis Rocca, "Corruption and Its Shadow: An Anthropological View of Corruption in China," *The China Quarterly*, no. 130 (1992): 402-16; James D. Seymour, "Cadre Accountability to the Law," *Australian Journal of Chinese Affairs*, no. 21 (1989): 1-27; Deborah E. Townsend, "The Concept of Law in Post-Mao China: A Case Study of Economic Crime," *Stanford Journal of International Law* 24, no. 1 (1987): 227-58.

<sup>2</sup>This is not to imply that such a definition is always unproblematic, only that it provides a good point of departure for making the key points in this study. On definitional issues, see especially John A. Gardiner, "Defining Corruption," *Corruption and Reform* 7, no. 2 (1992): 111-24.

corrupt officials less harshly than ordinary citizens who commit similar crimes. On the other, the ostensibly higher standard for officials has served routinely to keep official crime out of the criminal justice system. This is worth documenting in the Chinese case mainly because of the widely publicized principle that officials, the overwhelming majority of whom are also communist party members, are held to a higher standard of conduct than ordinary citizens. The reversal of this standard in practice is viewed as important by Chinese scholars, who see it as an issue of legal inconsistency. Moreover, the inconsistency promotes understandable public cynicism about official efforts to control corruption and, in turn, thus hampers those efforts.

A number of Chinese legal scholars and practitioners have argued that the spirit of the 1979 Criminal Law holds officials to a higher standard than it does ordinary citizens, but that this relationship was completely reversed in actual practice through the various rules giving concrete meaning to descriptive categories in the law.<sup>3</sup> This change is most clearly reflected in a virtual reversal of disproportionate punishments for similar crimes and can be best illustrated by a comparison of the law and other rules on two similar crimes: ordinary theft (of public or private property) and corruption (theft of public property by a state functionary who exploits public office).

### *Punishments for Theft and Corruption*

The 1979 Criminal Law does appear to consider the crime of corruption as essentially more serious than ordinary theft.<sup>4</sup> This view is suggested

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<sup>3</sup>See, for example, Sun Qian, *Jiancha lilun yanjiu zongshu 1979-1989* (A summary of theoretical studies on procuratorial work 1979-1989) (Beijing: Zhongguo jianchá chubanshe, 1990), 27-28; Wei Pingxiong and Wang Ranji, eds., *Tanwu huilu zui de rending yu duice* (Determining and countering the crimes of corruption and bribery) (Beijing: Qunzhong chubanshe, 1992), 184-91; Wen Shengtang, "The Anti-Corruption Effort in China in 1995," in *1995-1996 nian Zhongguo shehui xingshi fenxi yu yuce* (Chinese society in 1995-96: Analysis of the situation and predictions), ed. Jiang Liu, Lu Xueyi, and Shan Tianlun (Beijing: Zhongguo shehui kexue chubanshe, 1996), 97-111.

<sup>4</sup>See Arts. 151 and 155 of "The Criminal Law of the People's Republic of China" (Fifth National People's Congress, Second Session, July 1, 1979), in *The Criminal Law and the Criminal Procedure Law of the People's Republic of China* (Beijing: Foreign Languages Press, 1984), 65-109. I note that the principle is nowhere presented explicitly or generally as such in the 1979 Criminal Law, although Art. 119 on smuggling and profiteering states that officials who exploit public office to commit these crimes are to be punished more harshly.

in the law's specification of minimum, maximum, and supplementary punishments. The minimum punishment for corruption is criminal detention; the minimum punishment for theft is control.<sup>5</sup> The maximum punishment for corruption is the death penalty; the maximum punishment for theft is life imprisonment. Supplementary criminal punishments (such as confiscation of property and payment of compensation) can be attached to corruption quite routinely. No such punishments are attached to theft unless the circumstances of the crime are "particularly serious."

Punishment for a crime takes into account the value of property affected by the crime (where relevant) and the seriousness of the circumstances of the crime. The 1979 Criminal Law does not associate punishments with specific monetary values for any crime. Instead, punishments are assigned to descriptive categories: a crime involving a "particularly huge" or "huge" amount of money is assigned harsher punishment than the same crime where the amount is only "relatively large," for example. For both theft and corruption, the 1979 Criminal Law specifies punishment of up to five years imprisonment or criminal detention (or, for theft, control) where the crime involves a "relatively large" amount (that is, an amount sufficiently large to merit criminal punishment). Other categories are not strictly comparable because circumstances specified in the law differ for the two crimes.

If the intent behind the 1979 Criminal Law was to hold officials to a higher standard than ordinary citizens, this principle was implicitly repudiated in rules introduced after 1979. Taken in their entirety, these rules view theft more harshly than corruption. This view is expressed in specifications of monetary values associated with the descriptive categories employed in the law. In 1982 the Chinese Communist Party (CCP) Central Committee General Office specified monetary values for the crime of corruption.<sup>6</sup>

<sup>5</sup>Criminal detention constitutes a deprivation of freedom, as it takes place in a center administered by the local public security agency. An individual sentenced to control continues to work as usual (although under the "supervision" of the public security agency and "the masses") and reports periodically to the local public security agency.

<sup>6</sup>CCP Central Committee General Office, "Supplementary Provisions on Punishment for the Crimes of Corruption and Accepting Bribes (Draft) (Excerpts)" (August 13, 1982), in *Lianzheng shouce* (Handbook on clean government) (Beijing: Zhongguo renmin gonggan daxue chubanshe, 1989), 531-32.

Six years later, the legislature issued provisions which basically restated those in the 1982 party document.<sup>7</sup> Both documents set two thousand *yuan* as the "relatively large" amount that defines an act of corruption as a crime (meriting criminal punishment) and ten to fifty thousand *yuan* as the minimum standard for corruption involving a "huge" amount. In both documents, corruption involving amounts less than two thousand *yuan* does not merit criminal punishment unless the circumstances are "relatively serious." By contrast, the Supreme People's Court and Supreme People's Procuratorate set two to three hundred *yuan* as the "relatively large" amount defining a theft as a crime and two to three thousand *yuan* as the minimum standard for theft of a "huge" amount. In 1992 these amounts were raised to three to five hundred *yuan* and three to five thousand *yuan* respectively.<sup>8</sup>

These specifications effectively reversed the double standard implied in the 1979 Criminal Law: the imputed standard of conduct for officials became *lower* than that for ordinary citizens. By these rules, theft of five hundred *yuan* was punishable by up to five years imprisonment, but corruption involving any amount under two thousand *yuan* was not normally subject to criminal punishment at all. With the exception of changes in effect for a brief period during the 1989 anti-corruption campaign—which offered amnesty or leniency to officials who gave themselves up—the rules issued in the 1980s remained essentially in force until 1997.

In 1997 the legislature passed a revised Criminal Law.<sup>9</sup> The 1997 Criminal Law associates specific monetary values with punishments for

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<sup>7</sup>Standing Committee of the Sixth National People's Congress, Twenty-fourth Session, "Supplementary Provisions on Punishment for the Crimes of Corruption and Bribery" (January 21, 1988), in *Chachu "guandao" anjian shiyong fagui shouce* (Handbook of regulations and laws on investigation and punishment in cases of "official profiteering") (Beijing: Falü chubanshe, 1989), 34-37.

<sup>8</sup>Supreme People's Court and Supreme People's Procuratorate, "Explanation of Certain Issues in Application of the Law in Handling Cases of Theft" (December 11, 1992), in *Chachu jingji weifa fanzui zhengce fagui shouce* (Handbook of policies, regulations, and laws on investigation and punishment in cases of economic crimes), comp. Supreme People's Procuratorate General Office (Beijing: Falü chubanshe, 1996), 164-71.

<sup>9</sup>*Zhonghua renmin gongheguo xingfa* (Criminal law of the People's Republic of China), Eighth National People's Congress, Fifth Session, March 14, 1997 (Beijing: Falü chubanshe, 1997).

some crimes, including corruption but not theft.<sup>10</sup> The law raises the minimum standard defining an act of corruption as a crime from two thousand *yuan* to five thousand *yuan*. It raises the minimum standard for corruption involving a "huge" amount from the previous ten to fifty thousand *yuan* to the much higher fifty to one hundred thousand *yuan*. At the same time, the law reduces punishments in most categories of theft, but adds the death penalty in a new category. It reduces punishment for theft of a "relatively large" amount from five or fewer years imprisonment, criminal detention, or control to three or fewer years. The new standards also permit imposition of a fine as an additional or exclusive punishment and reduce punishment for theft of a "huge" amount (or theft with "serious" circumstances) from five to ten years imprisonment to three to ten years imprisonment. Theft of a "particularly huge" amount or where the circumstances of the crime are "particularly serious" is punishable by longer periods of imprisonment, including life imprisonment. Theft of a "particularly huge" amount from a financial institution or theft of precious cultural artifacts where the circumstances of the crime are "serious" is punishable by the death penalty or life imprisonment.

Comparing the view of corruption and theft in the 1997 Criminal Law and taking into account the specific definitions in the 1992 Supreme People's Court and Supreme People's Procuratorate document, there can be no doubt that the rules on criminal punishment implicitly view ordinary theft more harshly than corruption. As many Chinese critics have argued, this double standard is not a new situation. It can no longer, however, be considered as a conflict between "law" and "policy," as critics asserted before passage of the 1997 Criminal Law.<sup>11</sup>

In redefining standards for corruption in 1997, Chinese authorities were likely more concerned about how corruption was actually being handled in the criminal justice system than about any contradiction between

<sup>10</sup>See Arts. 264, 382, and 383. Other crimes for which the 1997 Criminal Law states monetary values are: bribery, smuggling, tax evasion, resistance of tax payment, manufacture or sale of fake or shoddy goods, and certain crimes involving illegal drugs.

<sup>11</sup>Considering the specification of minimum, maximum, and supplementary punishments for the two crimes, the 1997 Criminal Law certainly does not view corruption as essentially more serious than ordinary theft.

the widely professed higher standard of conduct for officials and the relationship in criminal law of disproportionate punishments for similar crimes of officials and ordinary citizens. The 1997 standards were intended to demonstrate a new realism and serious willingness to prosecute criminal corruption, not an official tolerance of higher levels of the crime. This entailed redefining standards in ways that seem to reflect an increased tolerance of corruption, bribery, and other economic crimes of officials—but previous standards had been routinely breached for some years. A good example is the 1982 redefinition of standards, which increased the minimum standard defining a crime of corruption from one thousand *yuan* (the 1952 standard) to two thousand *yuan*. The change was explained as follows:

It seems lenient, but actually we are being harsh. For many years now the one-thousand-*yuan* standard in the [1952] "Regulations on Punishing Corruption" has not been strictly implemented. In quite a number of instances of corruption in amounts of several thousand *yuan*, even ten or twenty thousand *yuan*, [individuals] either have not been prosecuted for a crime or have had criminal punishment waived.<sup>12</sup>

Similarly in the 1980s and 1990s, for crimes involving the abuse of public office to pursue private gain, the Chinese criminal justice system appears to have regularly practiced greater leniency than the rules permitted. Wen Shengtang of the Procuratorial Bureau Against Corruption and Bribery of the Supreme People's Procuratorate complained: "The criminal justice system is excessively lenient in some cases of corruption, to the extent of rashly allowing individuals to go free."<sup>13</sup> Leniency has apparently sometimes taken the form of prosecuting officials for other crimes with lesser punishments. For example, according to Wei Pingxiong and Wang Ranji, the relatively less harsh view of corruption and bribery in the rules introduced in the 1980s was accompanied by a tendency in practice to prosecute as corruption or bribery crimes that were in fact theft or swindling by officials. The practice was but a logical extension of the unequal treatment

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<sup>12</sup> CCP Central Committee General Office, "Supplementary Provisions on Punishment for the Crimes of Corruption and Accepting Bribes (Draft) (Excerpts)," 533.

<sup>13</sup> Wen, "The Anti-Corruption Effort in China in 1995," 109.

reflected in the rules:

The criminals in these cases are officials. It has been considered necessary to prevent a struggle against all [officials], to punish a minority, to educate and admonish the majority, to make the greatest possible effort at redemption, and to assign the least possible criminal responsibility. In our view, this orientation clearly violates the principle of equality before the law.<sup>14</sup>

### *Exemptions from Prosecution*

The degree to which the criminal justice system has routinely extended greater leniency toward officials is suggested in figures on exemption from prosecution. From the perspective of procuratorates, a case filed and investigated concludes in one of three ways: the case is dropped for lack of sufficient grounds to prosecute, the case is prosecuted, or the case is exempted from prosecution. With an exemption from prosecution, procuratorates conclude a case entirely within the procuratorial system, without the need to go to court.<sup>15</sup> They report the decision to the procuratorate at the level directly above them. According to both the 1979 and 1996 versions of the Criminal Procedure Law, exemption from prosecution is granted only when the circumstances are minor, the harm not great, and, therefore, the act considered not serious enough to constitute a crime meriting crimi-

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<sup>14</sup>Wei and Wang, *Tanwu huilu zui de rending yu duice*, 187. There is also an organizational incentive that may have led procuratorates to prosecute as corruption or bribery crimes of ordinary theft or swindling. Under the 1979 Criminal Procedure Law, cases of corruption and bribery are investigated exclusively by procuratorates, but cases of ordinary theft and swindling are normally investigated by public security agencies. The Criminal Procedure Law permits investigation by procuratorates of any cases "considered necessary"; the procuratorate can take any case involving an official rather than an ordinary citizen. Nonetheless, the distinction in the law itself, which assigns some sorts of cases more routinely to one agency than another, may have contributed to the purposeful categorization of cases of ordinary theft or swindling as cases of corruption or bribery. See Art. 13 of "The Criminal Procedure Law of the People's Republic of China" (Fifth National People's Congress, Second Session, July 1, 1979), in *The Criminal Law and the Criminal Procedure Law*, 111-214. This basic division of labor was not altered in the revised Criminal Procedure Law, although procuratorates now require approval by a procuratorate at or above the provincial level to investigate cases outside the categories specified in the law. See Art. 18 of *Zhonghua renmin gongheguo xingshi susong fa* (Criminal procedure law of the People's Republic of China), Eighth National People's Congress, Fourth Session, March 17, 1996 (Beijing: Falu chubanshe, 1996).

<sup>15</sup>Exemption from criminal prosecution is different from exemption from criminal punishment. The latter is a decision taken by the court, which occurs after the procuratorial decision to prosecute.



nal punishment.<sup>16</sup> Procuratorates generally recommend the substitution of disciplinary action for criminal punishment.

Figures on exemption from prosecution are interpretable as procuratorial leniency toward officials in light of characteristic features of the Chinese legal system. The criminal justice system is generally identified with serious crime and severe punishment. Criminal law is often described as a "weapon," which is most appropriately used to handle "antagonistic contradictions" in the exercise of the "people's democratic dictatorship." Although Chinese criminal law acknowledges crimes that are minor, these violations are typically punished outside the criminal justice system with milder party or administrative disciplinary actions.<sup>17</sup> Not considered serious enough to merit criminal punishment, such violations do not constitute crimes. Secondly, the common outcome of criminal prosecution is criminal punishment of some sort. In short, exemption from prosecution usually represents a procuratorial decision to substitute relatively mild disciplinary action for harsher criminal punishment.<sup>18</sup>

In this light, it is instructive to compare the use of exemption from prosecution in cases of similar crimes committed by public officials and ordinary citizens. Table 1 presents figures on exemption from prosecution in cases of criminal violation of property for 1987-95 (the years for which such figures are available). This comprises all cases of theft, swindling, extortion, forcible seizure, and corruption. The figures represent only cases resulting either in prosecution or exemption from prosecution; they are not comparable to all cases investigated by public security agencies or procuratorates.<sup>19</sup> The table compares exemption from prosecution in two cate-

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<sup>16</sup>*Zhonghua renmin gongheguo xingshi susong fa*, July 1, 1979 and March 17, 1996, Arts. 11 and 15, respectively.

<sup>17</sup>See especially the discussion in "Concepts of Law in the Chinese Anti-Crime Campaign" (Note), *Harvard Law Review* 98, no. 8 (1985): 1890-1908.

<sup>18</sup>Exceptions are cases of political dissidents, who are often subjected to reeducation through labor, an administrative sanction distinguished from reform through labor (a criminal punishment) almost solely by the principle that individuals undergoing reeducation are to be paid for their labor. See Lawyers Committee for Human Rights, *Justice with Chinese Characteristics: China's Criminal Process and Violations of Human Rights* (New York: Lawyers Committee for Human Rights, 1993), 66-76.

<sup>19</sup>The proportion of cases dropped can be roughly estimated by comparing the figures presented in column five of table 1 with figures on all cases of corruption filed and investigated

Table 1

**Cases of Criminal Violation of Property Resulting in Prosecution or Exemption from Prosecution, 1987-95: Comparison of Cases Investigated by Public Security Agencies and Cases Investigated by Procuratorates\***

Year	Investigated by public security	Exempted from prosecution	As % of cases investigated	Investigated by procuratorates <sup>#</sup>	Exempted from prosecution	As % of cases investigated
1987	125,279	5,171	4%	19,767	8,300	42%
1988	147,671	5,992	4%	16,248	7,673	47%
1989	211,179	9,443	4%	24,445	13,318	54%
1990	235,527	10,189	4%	24,503	12,055	49%
1991	200,849	8,831	4%	21,886	7,901	36%
1992	189,075	10,225	5%	27,502	13,554	49%
1993	188,341	10,012	5%	20,913	9,214	44%
1994	233,953	10,154	4%	16,762	3,974	24%
1995	237,445	9,807	4%	23,248	7,326	32%
Average	196,591	8,869	5%	21,697	9,257	43%

\*Criminal property violation comprises crimes of theft, swindling, extortion, forcible seizure, and corruption.

<sup>#</sup>Includes all cases of the crime of corruption, which is under the exclusive investigatory purview of procuratorates.

Sources: *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1988-96 issues (Beijing: Zhongguo jiancha chubanshe, 1989-97).

gories of cases—those investigated by public security agencies and those investigated exclusively by procuratorates. This distinction is roughly equivalent to that between cases involving ordinary citizens and those involving public officials.<sup>20</sup> Most crimes of property violation are ordinary

in the same years. Obviously, imprecision is introduced as the differences between the two sets of figures include cases filed, investigated, and ultimately dropped in the same year and cases carried over from the previous year (i.e., filed and investigated in one year, but prosecuted or exempted from prosecution in a later year). The latter sort of situation is probably not uncommon, but if we sum up the differences over the nine-year period, the year-to-year variation probably averages out. By this calculation, an estimated 9 percent of cases of corruption are dropped, with 91 percent prosecuted or exempted from prosecution.

<sup>20</sup>Procuratorates may conduct their own investigation of cases in the former category if they consider it necessary. Public security agencies conduct initial investigations and transfer these cases to procuratorates with recommendations to prosecute or exempt from prosecution. After reviewing the investigations, procuratorates may decide to transfer the case back to public security agencies for further investigation or conduct their own further investigation. Typically, however, cases are not investigated further but are prosecuted or exempted from prosecution. Occasionally, procuratorates decide to drop cases transferred to them by public security agencies.

crimes, investigated by public security agencies. In these cases, exemption from prosecution as a percentage of cases investigated for such crimes averages about 5 percent and is quite stable over the years. Cases investigated by procuratorates provide a stark contrast, however. Exemption from prosecution as a percentage of cases investigated is much higher (43 percent on average) and exhibits more variation over the years (ranging from a low of 24 percent in 1994 to a high of 54 percent in 1989, the year of the biggest anti-corruption campaign in the post-Mao period).<sup>21</sup>

The difference in average proportions exempted from prosecution—43 percent compared to 5 percent—is huge. Obviously, it largely reflects the routine application of more permissive standards for officials. Simply put, if corrupt officials and ordinary thieves stole public property worth under two thousand *yuan* in similar proportions over the years, a much higher proportion of officials would be exempted from prosecution according to the rules in force.<sup>22</sup> For exemption from prosecution in the two categories to approach similar proportions, cases of theft of about two to three hundred *yuan* or less (after 1992, three to five hundred *yuan* or less) would have to equal roughly, as a proportion of all theft, cases of corruption involving amounts of about two thousand *yuan* or less. Petty corruption likely accounts for a higher proportion of corruption than does petty theft as a

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<sup>21</sup> Exemption from prosecution in cases of bribery (which, by legal definition, involves public officials) is similarly high and exhibits similar volatility. As a proportion of cases investigated (i.e., by procuratorates, which have exclusive investigatory jurisdiction over this crime) in 1987-95, exemptions averaged 50 percent, ranging from a low of 15 percent in 1994 to a high of 67 percent in 1989.

<sup>22</sup> Even before passage of the 1997 Criminal Law, exemption from prosecution could also be granted in cases of corruption involving more than two thousand *yuan*, even in non-campaign periods. The Supreme People's Procuratorate introduced measures permitting exemption from prosecution in cases of corruption or bribery involving amounts of up to five thousand *yuan* if officials guilty of the violation turned themselves in, offered assistance to the authorities or otherwise demonstrated remorse, and took the initiative to return the illegally obtained property. Normally, however, cases involving more than two thousand *yuan* were to be prosecuted. Supreme People's Procuratorate, "Some Opinions on the Correct Application of Exemption from Prosecution for Cases of Corruption, Bribery, and Other Economic Crimes (Revised Draft)" (December 25, 1982), in *Lianzheng shouce*, 487-89, and "Provisions on Exemption from Prosecution in Cases of Corruption and Accepting a Bribe" (December 26, 1991), in *Fan fubai zhengce fagui shouce* (Handbook of policies, regulations, and laws to counter corruption), comp. CCP Central Discipline Inspection Commission, Office of Regulation and Law and Office for Coordination of Supervisory Work (Beijing: Zhongguo fangzheng chubanshe, 1994), 185-91.

proportion of theft. The proportion would have to be enormously higher, however, to produce differences of the magnitude shown in table 1. Alternatively, procuratorial investigation of corruption would have to be relatively disproportionately focused on petty corruption. A procuratorial investigatory bias toward cases of petty corruption is a most implausible explanation. Indeed, the bias has been in the opposite direction, with a tendency for less serious crimes of officials to be handled outside the criminal justice system altogether. The magnitude of the differences shown in table 1, therefore, almost certainly reflects greater leniency toward officials, compared to ordinary citizens, in the application of (already more lenient) rules in the criminal justice system.

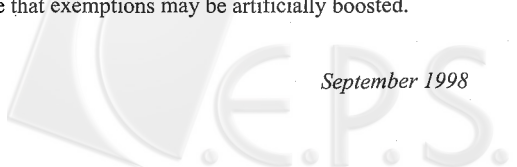
The volatility of exemption from prosecution in cases investigated by procuratorates, compared to the relative stability of exemption in cases investigated by public security agencies, reflects the responsiveness of corruption control to shifts in attention to the issue at the top of the political system. At times, pressure from the top to exempt more officials from prosecution has been expressed in changes of rules. For example, although exemption from prosecution is normally supposed to be granted only when the circumstances of the crime are minor, exceptions were permissible in a much wider range of circumstances during the clemency period of the 1989 anti-corruption campaign.<sup>23</sup>

### **The Political Pattern of Enforcement**

By Chinese accounts, corruption increased continuously in the 1980s and 1990s. Yet, although voicing their alarm about the problem as early as 1982, top Chinese leaders did not address the growth of corruption with a consistent level of concern over the years. The pattern of anti-corruption

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<sup>23</sup>Periods of intensive enforcement, which this author calls "anti-corruption campaigns," can result in additional exemptions not only because of clemency periods that precede them (as in 1982 and 1989), but also because exemptions are a way to "complete" cases in a shorter period of time than is involved in going through the court system. To the extent that procuratorates are under pressure to complete cases in anti-corruption campaigns (i.e., as a measure of performance), it is possible that exemptions may be artificially boosted.



enforcement reflects this variation in attention at the top of the political system. Fluctuations in the salience of corruption were transformed into fluctuations in enforcement outcomes through anti-corruption campaigns.<sup>24</sup> For most of the post-Mao period, leaders at the top of party and government hierarchies have evaluated generalist leaders and organizations below mainly on the basis of economic performance. Five times in the twenty years since 1978, however, top party leaders clearly signaled a shift in their attention to the issue of corruption by instructing subordinate party committees to produce immediate and substantial outcomes specified explicitly in terms of cases processed in the criminal justice system. Anti-corruption campaigns of a few months to about a year took place in 1982, 1986, 1989, 1993-94, and 1995-96. Campaign outcomes are measurable and significant. This section describes the pattern of enforcement explained by the campaigns.

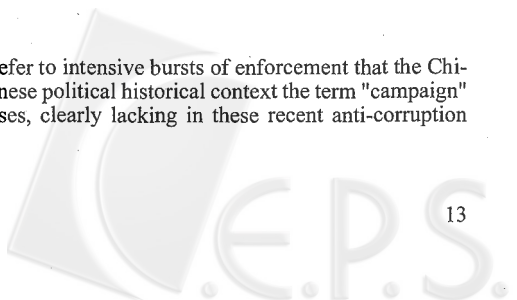
### *Corruption and Economic Crime*

Generally, economic crime is not a good measure of corruption in post-Mao China, but most economic crime investigated by procuratorates is indeed corruption in one form or another. This mainly reflects the division of labor between procuratorates and public security agencies. Apart from this, overlap in categories reflects the continued influential role of the state in the Chinese economy and the opportunities for corruption this presents.

Most varieties of economic crime, such as theft, swindling, smuggling, and (to a lesser extent) even speculation and profiteering, may be committed by public officials or ordinary citizens. In cases that mainly or exclusively involve ordinary citizens, public security agencies conduct their own criminal investigations. Procuratorates review the work, once the investigation is completed. Most economic crimes are "ordinary crimes" in this sense and, as such, are not independently investigated by

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<sup>24</sup>The term "campaign" is used here to refer to intensive bursts of enforcement that the Chinese usually term "battles." In the Chinese political historical context the term "campaign" involves the mobilization of the masses, clearly lacking in these recent anti-corruption campaigns.



procuratorates.<sup>25</sup> The 1979 Criminal Procedure Law and a number of subsequent regulations assigned the investigation of more than two dozen crimes exclusively to procuratorates, however, without involvement of the public security agencies.<sup>26</sup> These are typically crimes committed by public officials. They include all crimes that are appropriately considered as corruption in the sense of criminal abuse of public office to pursue private gain: corruption as a specific crime, bribery, and misappropriation of public funds. By legal definition all these are crimes that can be committed by public officials only. Procuratorates are also authorized to investigate "as necessary" crimes other than those particularly specified as being in their exclusive investigatory jurisdiction.<sup>27</sup> As the authority to investigate public officials for violations of law is vested in procuratorates (not public security agencies) as part of their basic function in the legal system, public security agencies generally transfer to procuratorates for independent investigation cases in which criminal suspects are public officials.<sup>28</sup> Economic crimes investigated by procuratorates are economic crimes committed by public officials. Not surprisingly, many involve the abuse of public office for private gain.

Table 2 shows cases of corruption, bribery, and misappropriation of public funds as a percentage of cases of economic crime filed and investi-

<sup>25</sup>For example, by summing up the figures for 1987-95 in columns two and five of table 1 above, it is evident that in these years more than 90 percent of crimes of property violation (which includes theft, swindling, extortion, forcible seizure, and corruption) were ordinary crimes investigated by public security agencies. Procuratorates investigated fewer than 10 percent of such cases, which presumably includes all cases of corruption as well as crimes of theft, swindling, extortion, and forcible seizure committed by public officials.

<sup>26</sup>*Zhonghua renmin gongheguo xingshi susong fa* (July 1, 1979), Art. 13. See also Sun, *Jiancha lilun yanjiu zongshu*.

<sup>27</sup>The revised Criminal Procedure Law reduced the scope of procuratorial authority somewhat by removing procuratorial responsibility for investigating tax evasion and resistance of tax payment. More significantly, it replaced procuratorial authority to investigate additional crimes "as necessary" with a requirement for approval of a procuratorate at or above the provincial level for expansion (i.e., beyond the categories of crimes specified in the law) of procuratorial investigatory authority in specific cases. Authority to investigate crimes of corruption, bribery, and misappropriation of public funds remains unaffected by these changes, however. See *Zhonghua renmin gongheguo xingshi susong fa* (March 17, 1996), Art. 18.

<sup>28</sup>Sun, *Jiancha lilun yanjiu zongshu*, 212-13; Dong Chunjiang and Ding Muying, "The Work of Directly Accepting and Investigating Cases Must Not Be Eliminated," *Renmin jiancha* (People's Procuratorate), no. 7 (1993): 57-58.

**Table 2**  
**Cases of Corruption, Bribery, and Misappropriation of Public Funds as a Percentage of Cases of Economic Crime Filed and Investigated by Procuratorates, 1980-96**

Year	As % of all economic crime	As % of big economic crime*	As % of important economic crime <sup>#</sup>
1980	85%	NA	NA
1981	63%	NA	NA
1982	77%	NA	NA
1983	73%	NA	NA
1984	77%	NA	NA
1985	77%	NA	NA
1986	NA	NA	NA
1987	74%	NA	NA
1988	66%	NA	NA
1989	78%	NA	NA
1990	86%	81%	97%
1991	84%	78%	99%
1992	77%	74%	97%
1993	79%	81%	95%
1994	83%	84%	97%
1995	80%	91%	96%
1996	76%	89%	87%
Average	77%	83%	95%

\*Cases involving money and properties valued at ten thousand *yuan* or more for corruption or bribery (fifty thousand *yuan* for misappropriation of public funds).

<sup>#</sup>Cases involving officials at the county level and higher, measured in number of officials, not cases.

**Sources:** Gong Xiaobing, *Tanwu huilu fazui duice lun* (A study of measures to handle crimes of corruption and bribery) (Beijing: Falü chubanshe, 1991); He Jiahong with Jon R. Waltz, *Criminal Prosecution in the People's Republic of China and the United States of America: A Comparative Study* (Beijing: China Procuratorial Press, 1995); Supreme People's Procuratorate, Chief Procurator Liu Fuzhi, "Report on the Work of the Supreme People's Procuratorate" (March 29, 1989 and March 29, 1990), in *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1990 and 1991 issues (Beijing: Zhongguo jiancha chubanshe, 1991 and 1992), 13-20 and 7-15; Supreme People's Procuratorate, Chief Procurator Zhang Siqing, "Report on the Work of the Supreme People's Procuratorate" (March 10, 1998), *Xinhua*, Beijing, March 28, 1998, in Foreign Broadcast Information Service, *Daily Report: China*, March 28, 1998; *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1988-96 issues (Beijing: Zhongguo jiancha chubanshe, 1989-97).

gated by procuratorates in 1980-96.<sup>29</sup> This subset is large, accounting on average for 77 percent of economic crime. Of the three sorts of cases in the subset, the largest proportion is cases of corruption. In 1987-96, corruption accounted for an average of 42 percent of all cases of economic crime filed and investigated; bribery and misappropriation of public funds accounted for 23 and 15 percent respectively.<sup>30</sup>

Corruption, in the broader sense of the term, is even more preponderant in cases of economic crime involving large amounts of money ("big cases") or senior officials ("important cases"). I found no figures separating big and important cases of economic crime on an annual basis before 1990, but there can be no doubt that big cases dominate in all years, accounting for about 95 percent of the category of big and important cases.<sup>31</sup>

<sup>29</sup>When a procuratorate receives information about a crime, it conducts a preliminary review to verify basic facts and the likelihood that the matter is indeed in the nature of a crime. A case is filed and investigated only if the review process indicates that the facts of a crime are reasonably clear and that the matter concerns a violation of law. Thus the decision to file and investigate a case signifies that a report or accusation has sufficient merit to pursue a more specialized investigation of a crime, normally leading to prosecution or exemption from prosecution. As discussed above, it appears that many cases investigated by procuratorates are exempted from prosecution (see table 1), but this is due mainly to the tolerance of official misconduct reflected in the definition of acts legally punishable as crimes. Thus figures on cases filed and investigated include official misconduct investigated as crimes by procuratorates, although not necessarily punished as such. This inclusiveness is useful, especially considering the bias against routine transfer of cases to the criminal justice system by party discipline inspection committees. Finally, a focus on cases filed and investigated is more useful than cases accepted or cases concluded. This is because the figures on cases accepted include those that are ultimately not pursued (including cases that lack foundation) and the figures on cases concluded contain a greater time lag than do figures on those filed and investigated.

<sup>30</sup>The next largest category is tax evasion and resistance of tax payment, accounting for an average of 12 percent of economic crime investigated by procuratorates in 1987-96. The author found no breakdown for these categories for 1980-86.

<sup>31</sup>Figures presented in a summary of procuratorial work in 1983-87 permit a calculation that 95 percent of big and important cases of economic crime in those years were big cases; figures in procuratorial yearbooks and the 1997 report on procuratorial work, which separate big and important cases in 1990-96, permit a calculation that, on average, 94 percent of big and important cases filed and investigated in those years were big cases. See Supreme People's Procuratorate, Chief Procurator Yang Yichen, "Report on the Work of the Supreme People's Procuratorate" (April 1, 1988), in *Zhongguo jiancha nianjian 1989* (Procuratorial yearbook of China 1989) (Beijing: Zhongguo jiancha chubanshe, 1991), 21-27; Supreme People's Procuratorate, Chief Procurator Zhang Siqing, "Report on the Work of the Supreme People's Procuratorate" (March 11, 1997), *Zhonghua renmin gongheguo zuigao renmin jianchayuan gongbao* (Gazette of the PRC Supreme People's Procuratorate), 1997, no. 2:52-59; *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1991-96 issues (Beijing: Zhongguo jiancha chubanshe, 1992-97).



As shown in table 2, on average, big cases of corruption, bribery, and misappropriation of public funds account for 83 percent of big cases of economic crime and 95 percent of important cases of economic crime filed and investigated by procuratorates in 1990-96.

In sum, of cases investigated by procuratorates, corruption in some form accounts for most economic crime. This includes most cases involving big amounts of money and practically all cases involving senior officials.<sup>32</sup> As to absolute numbers, cases of economic crime filed and investigated by procuratorates rose from fewer than ten thousand in 1980 to more than sixty thousand by the mid-1990s, increasing on average by 25 percent yearly. At an average yearly rate of 88 percent, cases of big and important economic crime increased even more rapidly, representing by the mid-1990s more than half of all cases of economic crime filed and investigated by procuratorates.<sup>33</sup> Accepting that these figures conflate corruption and anti-corruption enforcement, what can be concluded about the pattern of enforcement?

#### *Responsiveness to Shifts in Political Attention*

Figure 1 attempts to answer this question by detrending figures on cases of corruption, bribery, and misappropriation of public funds filed and investigated by procuratorates in 1980-97. Obviously, a main problem in sorting out the pattern of enforcement is the practically unmeasurable incidence of corruption. If, however, the objective is to chart changes over time, the figures charted here suffice—when combined with an assumption of a linear relationship between incidence of corruption (or economic crime by officials) and resources for anti-corruption enforcement.

Detrending plots the unstandardized residuals from a linear regres-

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<sup>32</sup>This preponderance of corruption is well reflected in a change of name: in 1989 the Procuratorial Bureau Against Economic Crime became the Procuratorial Bureau Against Corruption and Bribery.

<sup>33</sup>The average annual percentage increases reported here are based on percentage changes from 1981 through 1996. I take 1980 as the baseline year (thereby excluding the huge increases from 1979 to 1980) because the responsibilities of procuratorates were not well established until passage of the Criminal Law and Criminal Procedure Law in mid-1979. Even in 1980, the main focus of procuratorial work was on reviewing cases from the Cultural Revolution period of the 1960s and 1970s, not on current cases of economic crime.

sion model that treats cases of corruption, bribery, and misappropriation of public funds filed and investigated by procuratorates as the dependent variable and time as the independent variable. The assumption of linearity is consistent with a number of specific substantive relationships: corruption may be growing at a more or less constant rate while resources for enforcement remain relatively flat, or vice versa; alternatively, both corruption and resources for anti-corruption enforcement may be growing at more or less constant (although not necessarily the same) rates. This latter relationship especially is plausible as a basis for exploring the pattern of enforcement. If the relationship were perfectly linear, the trend line would have a slope and value of zero. Observations somewhat above and below this line are to be expected, but big deviations require explanation. In figure 1, such deviations appear as peaks of enforcement in 1982, 1986, and especially 1989-91. Beginning in about 1993, anti-corruption enforcement appears to decline. Results of a similar exercise plotting only big and important cases of economic crime are shown on figure 2.<sup>34</sup> These residuals present a very different picture: the peaks of enforcement in the 1980s more or less disappear, and the apparent decline in enforcement in the 1990s is replaced by a fairly steady increase.

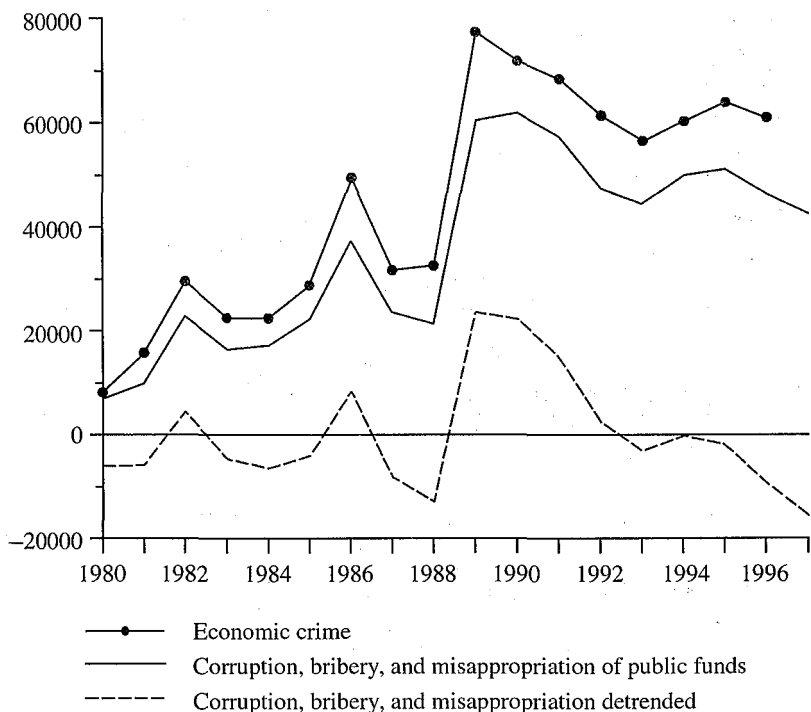
To sum up, detrending suggests two sorts of perturbations to routine anti-corruption enforcement outcomes in the criminal justice system. In the 1980s, enforcement against economic crime by officials intensified in 1982, 1986, and 1989-91. In the 1990s, enforcement against economic crime involving big amounts of money or senior officials began to intensify in about 1994.<sup>35</sup> These perturbations are explained by shifts in political at-

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<sup>34</sup>Big cases certainly swamp important cases. While a separate plotting of the two categories would be useful, there are too few observations for the exercise to be meaningful.

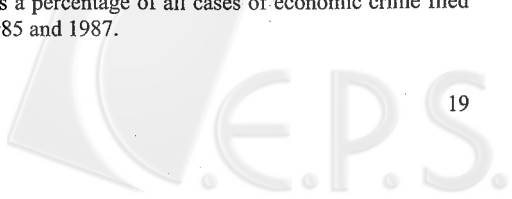
<sup>35</sup>In 1993-94 the senior officials targeted were above the county level, while in 1995-96 the campaign extended enforcement targeting down to leaders at the county and township levels. See Chang Yanyan, "Results in This Stage Strengthens Our Confidence in the Struggle Against Corruption," *Neibu wengao* (Internal Manuscripts), no. 21 (1995): 1-3. The difference in campaign focus may partly explain the results in figure 2, which suggests a lack of intensive enforcement in 1993 compared to 1994, 1995, and 1996. Not only was the pool of leaders targeted in the first campaign smaller, but obstacles to enforcement have been typically greater when officials are more senior. Obviously, cases involving senior officials are only a small proportion of big and important cases. Nonetheless, to the extent that cases of corruption involving leaders below the county level (which are not recorded

**Figure 1**  
**Cases Filed and Investigated by Procuratorates, 1980-97**

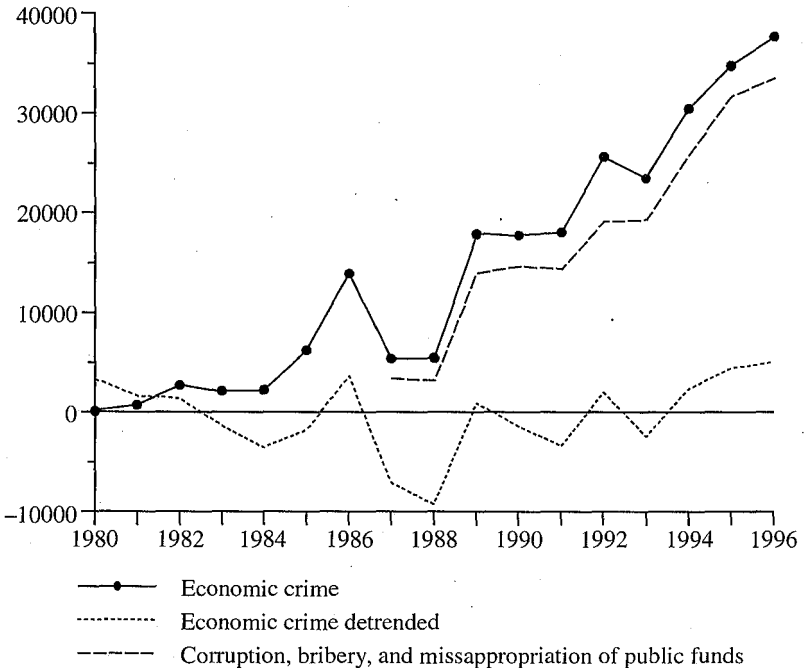


**Sources:** Gong Xiaobing, *Tanwu huilu fazui duice lun* (A study of measures to handle crimes of corruption and bribery) (Beijing: Falü chubanshe, 1991); He Jiahong with Jon R. Waltz, *Criminal Prosecution in the People's Republic of China and the United States of America: A Comparative Study* (Beijing: China Procuratorial Press, 1995); Supreme People's Procuratorate, Chief Procurator Yang Yichen, "Report on the Work of the Supreme People's Procuratorate" (April 3, 1985 and April 6, 1987), *Renmin ribao* (People's Daily), April 16, 1985, 2 and in *Zhongguo jiancha nianjian 1988* (Procuratorial yearbook of China 1988) (Beijing: Zhongguo jiancha chubanshe, 1989), 21-26; Supreme People's Procuratorate, Chief Procurator Zhang Siqing, "Report on the Work of the Supreme People's Procuratorate" (March 10, 1998), *Xinhua*, Beijing, March 23, 1998, in Foreign Broadcast Information Service, *Daily Report: China*, March 28, 1998; Wei Pingxiong and Wang Ranji, eds., *Tanwu huilu zui de rending yu duice* (Determining and countering the crimes of corruption and bribery) (Beijing: Qunzhong chubanshe, 1992); *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1988-96 issues (Beijing: Zhongguo jiancha chubanshe, 1989-1997).

**Note:** The 1986 figure on corruption, bribery, and misappropriation of public funds is an estimate, computed by applying to all cases of economic crime filed and investigated by procuratorates in 1986 the mean of the 1985 and 1987 figures on corruption, bribery, and misappropriation of public funds expressed as a percentage of all cases of economic crime filed and investigated by procuratorates in 1985 and 1987.



**Figure 2**  
**Big\* and Important# Cases Filed and Investigated by Procuratorates, 1980-96**



\*Cases involving money and properties valued at ten thousand *yuan* or more for corruption and bribery (fifty thousand *yuan* for misappropriation of public funds).

#Cases involving officials at the county level and higher, measured in number of officials, not cases.

**Sources:** Gong Xiaobing, *Tanwu huilu fanzui duice lun* (A study of measures to handle crimes of corruption and bribery) (Beijing: Falü chubanshe, 1991); He Jiahong with Jon R. Waltz, *Criminal Prosecution in the People's Republic of China and the United States of America: A Comparative Study* (Beijing: China Procuratorial Press, 1995); Supreme People's Procuratorate, Chief Procurator Yang Yichen, "Report on the Work of the Supreme People's Procuratorate" (April 3, 1985 and April 6, 1987), *Renmin ribao*, April 16, 1985, 2 and in *Zhongguo jiancha nianjian 1988* (Procuratorial yearbook of China 1988) (Beijing: Zhongguo jiancha chubanshe, 1989), 21-26; Supreme People's Procuratorate, Chief Procurator Liu Fuzhi, "Report on the Work of the Supreme People's Procuratorate" (March 29, 1989 and March 29, 1990), in *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1990 and 1991 issues (Beijing: Zhongguo jiancha chubanshe, 1991 and 1992), 13-20 and 7-15; Wei Pingxiong and Wang Ranji, eds., *Tanwu huilu zui de rending yu duice* (Determining and countering the crimes of corruption and bribery) (Beijing: Qunzhong chubanshe, 1992); *Zhongguo jiancha nianjian* (Procuratorial yearbook of China), 1988-96 issues (Beijing: Zhongguo jiancha chubanshe, 1989-97).

tention and the launching of anti-corruption campaigns.

### **Conclusion**

The problems documented above constitute two features of corruption control that have undoubtedly contributed to general cynicism about the post-Mao effort. The first, a double standard of criminal justice, constitutes a salient flaw in corruption control within the criminal justice system itself. The second, the politicized pattern of anti-corruption enforcement in the criminal justice system, reflects the weakness of that system as it operates in the larger political environment. To be sure, these are not the only problems the regime faces in reducing and preventing official corruption. Yet, to the extent that reforms to enhance "rule by law" in the 1980s and 1990s create optimism about the future of corruption control efforts, the evidence presented here serves as a cautionary note.

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as "important" cases) also involved big amounts, enforcement in 1995-96 could hit two sorts of campaign targets at the same time with comparative ease. A Chief Procurator report from the early 1990s suggests that nearly half of all corruption and bribery investigated by procuratorates occurs in collective enterprises and other basic-level workplaces. See Supreme People's Procuratorate, Chief Procurator Liu Fuzhi, "Report on the Work of the Supreme People's Procuratorate" (March 28, 1992), in *Zhongguo jiancha nianjian 1993* (Procuratorial yearbook of China 1993) (Beijing: Zhongguo jiancha chubanshe, 1994), 6-11. In the current Chinese political economy, this implies cases involving officials below the county level.