

Readings in comparative sociology of law

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READINGS IN THE SOCIOLOGY OF LAW/LAW AND DEVELOPMENT (1)
CHAPTER XIWHY DO PEOPLE OBEY THE LAW? A THEORY AND A CASE STUDY IN THE
CONTROL OF CORRUPTION

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INTRODUCTION

Law performs many functions: settling disputes, authoritatively allocating power prescribing procedures, symbolizing worth, legitimizing rule. In these readings we mainly focus upon the instrumental function of law, that is, its function in channelling behaviour, a matter we discussed in Chapter II. That is almost the sole purpose of most regulatory law. The Environmental protection Law, for example, has as its objective changing people's behaviour so as to protect the environment. The instrumental function contrasts with law's symbolic function (see Chapter I, p. --), in which what motivates the enactment of a law is not the behaviour it will induce, but the symbolism of enacting the law itself. For example, in Kenya, at a time when some women were asserting themselves against traditional male-dominated folkways that suppressed women, enacted a law to prohibit women from wearing mini-skirts, a very short dress then much in fashion among non-traditionally minded women. Nobody really expected that the law would significantly change what women wore, nor did it. The very enactment of the law, however, symbolized male supremacy and the impropriety of women acting in non-traditional ways. Finally, law frequently has a salvage function. Various social messes come to pass -- a broken marriage, for example, with problems of children and property to sort out, or a failed business, in which creditors'

rights and the ability of the former businessman to continue to live free of the crushing burden of debt call for remedy. In these cases, the law aims to salvage the social mess, not coerce to new behaviour. A criminal law against assault is mainly instrumental in its effect; it seeks to prevent assaults. A divorce law has a mainly salvage function. Nobody expects husbands or wives to change their behaviour in marriage very much for fear of the way a divorce court might deal with them. The question of adjusting property rights in a divorce may look like a rule designed to change behaviour (just as the rule providing for a court-imposed sanction for assault operates), but it has a different function.

In this Chapter we concern ourselves with law's instrumental function. Almost all law has some instrumental aspects -- that is, almost all law aims to affect behaviour. A fair amount of it misses the mark. How to affect an addressee's behaviour depends, of course, upon the explanation for behaviour in the face of a rule of law. This chapter examines that question. We discuss, first, general sociological theories about why people obey the law. We then examine corruption by officials as a case study in behaviour in the face of a rule of law.

A preliminary question always arises: Exactly whose behaviour should the legislation aim at changing? For example, whose behaviour does the Patent Law aim to change? The Law on Chinese-Foreign Joint Ventures?

Having determined whose behavior the legislation aims to affect, what instrumentalities does the legislature have available to bring about change? That depends upon one's explanation for the relationship between law and behavior. For example, if one takes the position that all behavior is determined by "values and attitudes", unless by its won force the law can change those "values and attitudes" (which seems unlikely), the enterprise seems already lost. This chapter first explores general theories purporting to explain why people obey the law.

WHY DO PEOPLE OBEY THE LAW? A THEORY AND A CASE STUDY:
LAW AND THE CONTROL OF CORRUPTION.

As we have seen, government ineluctably seeks to effectuate development policy through the law. The limits of law become also limits on policy. By the "limits of law" we mean the limits on the legal order's capacity to change behaviour. For example, the legal order cannot change behaviour unless it communicates the law's command to the addressee (in the model set out in Chapter III, the "role occupant"). The legal order's capacity to communicate law depends upon its communication system. That system therefore becomes a limit of law -- and hence a limit on development policy.

The limits of law therefore become explanations for why people behave as they do with respect to a rule of law. In this Chapter we first explain why we formulate the question in terms not of deviance but of obedience to law. Secondly, we put forward an heuristic model that purports to explain why people obey the law. Third, we investigate the issue of conformity-inducing measures ("sanctions"). Finally, we examine the problem of high-level bribery in the Third World as a case study of why people obey the law.

A. THE DIFFICULTY: OBEDIENCE TO LAW

The question, why do people behave as they do in the face of a rule of law, suggests two alternative formulations of the difficulty. Here, we ask why people obey the law. Most sociologists have not asked that question. Mainstream sociology focussed on the issue of *deviance* -- that is, behaviour inconsistent with socially derived and socially improved norms. In development, however, government proposed to induce new behaviour through positive law. That new behaviour frequently differed sharply from existing behaviour, and the associated domain assumptions ("values") that explained and justified it. In conditions of development governments sought to *induce* deviance -- that is, to induce people to behave in ways that violated older customary norms. Not deviance from custom, but obedience to new law became the difficulty that called for explanation. Therefore, as Malinowski said, "questions about the limits of legislative action, about its ability to create new types of

man and new types of culture are as practically cogent as they are theoretically illuminating."

Sociological models commonly made four assumptions. First, they assumed that most people obeyed socially approved norms; only the rare deviant disobeyed. Second, like sociology's very antithesis, analytical jurisprudence, sociological models ignored the question of efficacy. They assumed that in general law matched social norms, thus assuming away the issue of obedience to law. Analytical jurisprudence defined the common law as the "custom of the country". It assumed that the judges determined the law by observing how most people behaved over very long periods -- that defined a "custom". Sociologists reached the same conclusion, denoting law the "reinstitutionalization" of a custom. Even today, most writers in the sociological tradition tend to deny law's independent capacity to change behaviour. Third, deviance theories relied on a consensus version of society. Finally, those theories assumed that people do not reason whether or not to obey the law. They act pursuant to programmed values and instincts. Given those four assumptions, obedience to law can never become problematic. Everyone will obey law that matches the consensus, and disobey law that does not. *Deviance* becomes key: Why do the values and attitudes of a few individuals differ from everyone else's? Sociologists tended to explain this in terms of psychology and idiosyncratic socialization, not institutions.

Legal tradition favoured a contrary model. "A person weighs the benefits to him of the prohibited conduct against all the costs and chances that he will have to pay those costs."

Some sociologists denied that proposition. They argued that the ordinary functioning of society shows that we do not make conscious choices to obey or disobey every law. Most people go to their jobs, return to their family, engage in their everyday activities without

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consciously "choosing" to do so. I do not calculate my advantage by (6) the minute. Even criminals frequently do not do so.

That objection correctly described obedience to some law. Any society becomes a *society* because of its repetitive patterns of behaviour. However well it responds to social claims and demands, at whatever level it functions, still, it does function, because the total set of norms, roles, statuses, value sets, rewards and penalties, in short, the entire culture, form a more or less integrated whole. If they did not, the society would become anarchic. Laws more or less consistent with the existing social order need not rely upon the constant threat of legal sanction to induce obedience. The surrounding institutional matrix structures rewards and punishments, constraints and resources so that the role-occupant usually makes a personally advantageous decision-- at least in the short run -- when she chooses to conform. So obvious is the choice, that likely she does not make it consciously -- that is, her behaviour has become institutionalized.

In many situations, however, even in highly institutionalized societies, choice does occur. Businesses calculate the consequences of tax and anti-trust law. My decision about where to park my car frequently depends upon the chances of getting a ticket. As Lemert puts it, "the captured positions of individuals in modern, pluralistic society sheds light on the choice of ends and means. One general consequence of this position is the increase in calculational behaviour and a heightened awareness of alternatives, a necessary willingness to consider a wide variety of values and norms as functional alternatives to ends."

Laws concerned with development usually conflict with institutionalized ways of doing things. They look to *change* present behaviour. They require the role-occupant to choose between norms, a condition that Durkheim referred to as "anomie". That calls for calculational behaviour. A farmer does not lightly change to a new cash crop from the subsistence crop that has for generations nurtured his family. He calculates. Developmental rules require whole sets of actions done "on purpose". Reality falsifies the proposition that *all* behaviour depends on calculation. But, laws looking to change behaviour do induce calculated responses.

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The sociologist's model provides no useful guides for law and development. If both law and behaviour merely reflect values and attitudes, then neither will change until values and attitudes change first, at best a slow process. Development runs afoul of the "common paradox" of the sociologists: "If a law is not supported by the mores of the community, it is ineffectual; if it is, the law is unnecessary." That governments to seek to use the law to induce change falsifies that proposition. Do they all act in vain? Ought they be told to abandon their efforts to improve man's lot?

A Theory of Obedience to Law.

If the law reflects our common values, deviance becomes a surprising event. If law seeks to induce new behaviour, however, it seems odd that anyone should obey it at all. Obedience becomes the even requiring explanation. What are the necessary and sufficient explanations of obedience to new law? In the first place, a person who obeys a law must have occasion to do so. Second, she must perceive that to obey supports her interests. That thrusts a dual task upon lawmakers. They must accurately predict that the role-occupant will confront the necessity of choice, whether or not to obey, and that she will choose conformity. They must ask the anthropologist's question: How would a person in that culture respond?

We can unpack these two requirements. Before a role-occupant has to choose to obey or not, she must know what the law requires of her. That calls first, for a *rule* or policy that defines and prescribes the required activity. If rule or policy wallows in ambiguity or vagueness, its addressee must behave as she thinks best -- that is, ambiguity amplifies the influence of factors personal to the role-occupant.

Secondly, the role-occupant must receive notice of the rule in a way that will spark her obedient behaviour -- that is, government must *communicate* it to her.

Third and fourth, the role-occupant must have *opportunity* and *capacity* to obey the law. " 'Ought' presupposes 'can' " Unless one *can* obey the law, she *will* not. Thus, physical impossibility to conform to the law provides a complete excuse for otherwise criminal behaviour. Want of opportunity or capacity also prevents

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obedience to non-criminal rules. For example, the Prisons Ordinance of Ghana since 1886 required that wardens keep prisoners separate and apart by night. The prisons officials disobeyed the law every night since its enactment -- Ghanaian prisons always had many more prisoners than cells.

Opportunity and capacity sometimes depend upon factors that others should supply. A farmer cannot comply with a policy to grow a new crop unless someone supplies seed, credit, fertilizer and extensions services. An hierarchical decision-making body likely lacks capacity to make change-oriented decisions. Increased opportunity and capacity to disobey also breeds nonconformity. Bankers commit embezzlement more often than bricklayers.

Besides creating the necessity for choice, law-makers must ensure that role-occupants will choose to obey. To do that, addressees must perceive the desired behaviour as in their interest, taking into account not only the legal sanctions but also the rewards and punishments the role-occupant will earn as a result of obedience or disobedience. Three elements bear upon that perception: (1) the role-occupants actual *interest* -- that is, the rewards and punishments (both societal and legal) the role-occupant will earn as a result of obedience and disobedience; (2) the *process* by which role-occupants decide to obey; and (3) the way in which the domain (value) assumptions of role occupants -- their *ideology* -- filter reality.

Conclusion

The legal order necessarily commands its targets to do what otherwise they might not do. Especially in conditions of development, it prescribes behaviour that goes against existing patterns and the domain assumptions that support them. The critical question is, Why do people obey a new law? I propose the following hypothesis: People will obey a law requiring them to change their present behaviour if, but only if, it meets the following conditions:

1. The *rule* precisely prescribes the new behaviour;
2. its addressees have *opportunity* to obey it
3. they have capacity to obey it;
4. the rule or policy is *communicated* to them;
5. it is in their *interest* to conform;
6. the *process* by which they come to decide, whether to conform, conduces towards conformity; and
7. their *ideology* conduces towards obedience.

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1. In English, the mnemonic "ROCCIPI" may help remember the categories advanced in the reading: Rule, Opportunity, Capacity, Communication, Interest, Process, Ideology.

2. The law and economics and institutionalists models offer different answers to the question: Why

people obey (or disobey) the law? Upon what explanatory variable

the law and economics model focus? Some "sociological" models

focus on subjective factors (for example national character - the Volksgeist; "values and attitudes," ;² "custom;"³ the contradiction

between the ends for behavior inculcated by the culture, and the opportunities

means available to the individual - "anomie"⁴; and a host of others.

How might one critique these mono-causal theories? How would the use of ROCCIPI different results?

3. Can individual motivation (self-interest, values and attitudes, etc.) alone explain behavior?

" . . . [M]oral and other norms very often leave alternatives open to the individual, and hence opportunities to maximize his own material, social, and psychological self-interest. Awareness of social norms, however it may be acquired, allows the individual to estimate the social rewards and costs attached to different courses of behavior. Similarly, awareness of legal rules and the ways they are likely to apply in practice will influence behavior in contexts where they are seen to be relevant. Motives then become closely tied to competence. The individual needs to know what the law is, what the chances of sanctions are and what the sanctions may be, what excuses and justifications will work, and what other costs and benefits may be involved in, say, using the courts. The outcomes that can be achieved depend also on skill in handling the relevant moral and legal concepts and working the system generally." S.M.A. Lloyd-Bostock, "Explaining Compliance with Imposed Law," in S. B. Burman and B-E Harrell-Bond (eds), The Imposition of Law (New York: Academic Press, 1979), 9, 19.

von Savigny
Friedman, "The Legal Culture"

4. Does "competence" plus motivation (as mentioned in the preceding quotation) provide an adequate set of categories (i.e.m, vocabulary or concepts) with which to do research on why people behave a particular law? How does ROCCIPI take the question of "competence" into account?

5. Contrast the categories mentioned in ROCCIPI with those mentioned by Harry W. Jones, The Efficacy of Law (1968):

. at least five patterns
or categories of inefficacy ^{of law} emerge plainly from a survey of various and sundry legal precepts, in all fields of legal regulation, which have remained "law in the books" and never quite or really made it as "law in action." Let us . . . characterize these five categories of inefficacy as follows: (1) failures of communication; (2) failures to enlist supportive action; (3) failures to forestall avoidance; (4) failures of enforcement; and (5) failures of obligation. Doubtless there are other patterns of inefficacy that will appear to the discerning eye . . ."

By failure to enlist supportive action Jones means a failure to generate support among non-official groups - for example, by encouraging lawyers to take cases by offering them a percentage of the recovery of the entire class (in the USA, in actions by shareholders against a corporation, for example)

OC attorney's fees (in the USA, for example) ~~as~~ in Equal Employment Opportunity Act actions). By failure to forestall avoidance, Jones means no more than a failure to plug loopholes. By failure of obligation Jones means "the inner sanctions of moral obligation, feelings of fidelity to law" which have "even greater influence than coercive sanctions have on the law-observant behavior of most people."

Critique Jones's explanation for legal inefficacy in light of the criteria for an adequate explanation earlier suggested.

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7. Many theories have a "residual category". A residual category constitutes a concept so loosely defined that one can stuff anything left over into it. When that is so, it becomes impossible to falsify the theory. If any fact inconveniently seems to deny the theory, one can save the theory by merely stuffing the inconvenient fact into the residual category.

ROCCIPI frankly constitutes not a theory in a rigorous sense, but a set of useful categories for guiding research into behaviour in the face of a rule of law. What constitutes its residual category?

8. The central thrust of the "b sociological" and legal culture schools consists of the claim that the only category that determines behaviour consists of the values and attitudes of the role-occupant. That leads to the question: Why do some rules of law become "internalized", that is, part of the values of the role-occupants, and some do not? Professor Evans offered a theory to respond to that question (from Applied Sociology-- Opportunities and Problems, (Gouldner and Miller, eds.):

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Contrasting Conceptions of the Function of Law

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Law emerges not only to codify existing customs, morals, or mores, but also to modify the behavior and the values presently existing in a particular society.

As an instrument of social change, law entails two interrelated processes: the institutionalization and the internalization of patterns of behavior. In this context, institutionalization of a pattern of behavior means the establishment of a norm with provisions for its enforcement,² and internalization of a pattern of behavior means the incorporation of the value or values implicit in a law.³ Law, as has been noted by others, can affect behavior directly only through the process of institutionalization: if, however, the institutionalization process is successful, it, in turn, facilitates the internalization of attitudes or beliefs.⁴

A CONTINUUM OF RESISTANCE TO LAW

These opposing views of the function of law suggest a hypothetical continuum of the amount of potential resistance to the enactment of a new law. When there is likely to be zero per cent resistance to a law, one would obviously question the need for it, since complete agreement between the behavior required by the law and the existing customs or morals apparently exists. In this situation, there would be no need to codify the mores into law. At the other extreme, when there is likely to be 100 per cent resistance to a law, one would expect the law to be totally ineffective, because nobody would enforce it and the authority of the lawmaker would be undermined.⁵ . . .

Whenever a law is enacted in the face of any appreciable resistance, that is to say, whenever it falls somewhere in the middle of our hypothetical continuum, the legal system becomes involved in an educational as well as in a social control task. If the educational task is not accomplished, a situation exists in which individuals are obligated to obey a law at the threat of punishment, while, in fact, not believing in it. This situation produces what Festinger calls "forced compliance", viz, a discrepancy between public behavior and private belief.⁶ So long as behavior involves forced compliance, there is no internalization of the values implicit or explicit in a new law. The resulting tension may lead to disobedience of the law, depending on the nature of the sanctions and the consistency and efficiency of enforcement. If law is to perform an educational function, it is necessary to convert forced compliance into voluntary compliance.

Under what conditions can law succeed, not only in institutionalizing a new pattern of conduct, but also in generating the internalization of new attitudes implicit in the conduct required by the new law? The failure to specify these conditions leaves the theoretical problems of the relation of law to social change unanswered. It also leaves unsolved the administrative problems of the conscious use of law as an agent of social change. As a first approximation to an answer to this problem, we shall consider seven necessary, though perhaps not sufficient, conditions for law to perform an educational function.

Conclusion

(i.e. Evans)

In short, we are suggesting that law can potentially act as an educational force in changing people's behavior, even in the presence of appreciable opposition to the projected change implied by the law, if it meets the following seven conditions:

1. The source of the law is perceived to be authoritative and prestigious;
2. The rationale for the new law is articulated in terms of legal, as well as historical and cultural continuity and compatibility;
3. Pragmatic models for compliance are identified;
4. A relevant use of time is made to overcome potential resistance;
5. The enforcement agencies are themselves committed to the behavior required by the law, at least to the extent of according it legitimacy if not to the extent of internalizing the values implicit in it;
6. Positive, as well as negative, sanctions are employed to buttress the law; and
7. Effective protection is provided for the rights of those persons who would suffer from evasion or violation of the law.

In our large and heterogeneous society, laws are designed with an educational as well as a social control function. The existence of many organized groups devoting considerable resources to promoting or obstructing new laws means that an appreciable portion of the population will resist a new law if it conflicts with their interests and values.¹⁷ Hence, of necessity, laws of this character must have built-in provisions for performing the educational function which we have been concerned with in this paper. In other words, it is necessary to institutionalize a new pattern of conduct so as to maximize the chances for the internalization of values implicit in it . . .

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Ask the same questions concerning Evans's article as the Notes asked concerning ^{the} Jones and Seldman article. Which of these ^{various} sets of categories - Seldman's, Lloyd-Bostock's, Jones's or Evans's - seems to you most useful for our purposes?

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PART II
THE PROBLEM OF CORRUPTION AND ITS CONTROL THROUGH LAW:
A CASE STUDY ON THE USE OF THE ROCCIPI CATEGORIES

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A. THE DIFFICULTY

SEIDMAN, "A NOTE ON THE POLITICAL ECONOMY OF CORRUPTION"
Jilin University Journal of Modern Law, forthcoming

Frequently, the problem of law and corruption appears as a problem of criminology, that is, why officials disobey the criminal laws against corruption. Without denigrating the importance of that question, this brief Note argues that corruption raises broader issues. Those issues appear if we consider the political economy of corruption, that is, the social functions of corruption. I argue that outside of China in the Third World corruption had three essential consequences: (1) by its enrichment of the official class, corruption generally became an important source of primitive accumulation and hence of the creation of a new capitalist class, a "bureaucratic bourgeoisie"; (2) bribery nullified democratic control over the administration, violating the concept of legality, and setting at naught the substantive statute granting power to the official; (3) bribery constituted an important device by which the administration became a tool of the capitalist class. Whether these tendencies also exist in China requires empirical research upon the problem here. Corruption's consequences in China may not ape those elsewhere. Experience elsewhere in the world does warn, however, that these areas merit special research attention. This Note discusses each of these three issues in turn. I begin with a

brief definition of "corruption".

Corruption generally means the use of public power for private-viewing considerations. It takes a variety of forms, of which I here list five:

(1) Bribery: Paying value in exchange for an official exercising discretion in favour of the payor, whether or not the official exercised the discretion within the scope of granted powers;

(2) Embezzlement: Taking value from a fund entrusted to the official;

(3) Speculation: Using official position to buy goods cheaply and to sell them dear.

(4) Patronage and nepotism: Using official position to provide employment for persons for the benefit of the official, not for the benefit of the employing organization.

(5) Conflict of Interest: Making a decision within official discretion for reasons of personal, material interest in the outcomes, rather than for lawful reasons.

The laws addressing each of these forms of corruption differ. The reasons for their violation differ, both as between the different sorts of corruption, and the different considerations affecting the several varieties of each form. For reasons of space, I omit discussion of patronage, nepotism, and conflict of interest, and focus attention only on high-level bribery, embezzlement and speculation.

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CORRUPTION AND THE CREATION OF A NEW CAPITALIST CLASS

China today arguably has only a tiny capitalist class, and surely it does not constitute a ruling class. At Independence, almost no black capitalists existed in sub-Saharan Africa. The laws of the colonialists had forbidden it -- for example, in colonial Kenya and colonial Zambia, the laws made it a crime to lend money to an African without approval of a government official -- and without credit, capitalists cannot function. In colonial Rhodesia (now Zimbabwe), blacks could not own land in the fertile areas of the country. In Kenya and Zimbabwe, the Government Marketing Board paid lower prices for African-grown produce than white-grown produce, making it difficult for Africans to enter the market economy. Within a few short years after Independence, however, a whole class of black capitalists had spawned. How did that come about? That required capital, and institutions that made it relatively easy for some people to become entrepreneurs.

Capitalists require both capital and opportunities to act as capitalists. A debate exists in the literature about the sources of the capital funds of the earliest entrepreneurs, that is, primitive accumulation. One school, epitomized by Max Weber [2] holds that the original capitalists acquired their capital out of frugal habits and hard work. Another, of which Karl Marx is the

2 Weber, Religion and the Rise of Capitalism

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originator [3], holds that primitive accumulation came from illegal, violent activity -- slave trading, privateering, outright buccaneering. The current history of Africa provides some proof in support of Marx's analysis, for a great deal of the primitive accumulation that has spawned a whole new class of black African capitalists has come from political corruption.

Independent Africa inherited from its former imperial masters a colonial capitalist economic system, and the legal order to support it. A capitalist economic and legal order holds out invitations to those with capital to become capitalists. They provide the corporate forms, the banking powers, the property and contract rights, and so forth, that embody capitalist power.

Where did those who became the new order of black capitalists acquire their original capital? A surprisingly high proportion of these new capitalists came from the ranks of the official class -- what in China are called "cadre". They accumulated the necessary capital by utilizing the powers they had as public officials for their personal gain -- sometimes legally, but frequently through bribery, embezzlement and speculation. They became what some denpted the "bureaucratic bourgeoisie".

In Africa, the official class came to power with a rhetoric of socialism and development. It quickly became a bureaucratic bourgeoisie. Capitalist classes notoriously do not strive to improve the position of the mass of the population. Instead, they

strive to create more opportunities for entrepreneurs to make money. Africa's bureaucratic bourgeoisie used state power to strengthen their own position both as the rulers of the country, and as capitalists. Quickly, the socialist rhetoric became only rhetoric, and in time that too died away.

All the different forms of corruption help to enrich the bureaucratic class and thus pave the way for a bureaucratic bourgeoisie. Of them, however, bribery has a special function, both in negating the Rule of Law and socialist legality alike, and making the capitalist class a ruling class.

II

BRIBERY: THE DENIAL OF THE RULE OF LAW

Bribery of high-level officials constitutes part of the sociology of power. It transfers effective decision-making power from the public official to the briber. That has the immediate consequences of denying the Rule of Law and socialist legality alike, and negating the substantive command to violate which the briber offered the bribe. That makes socialism -- which more even than capitalism for functioning requires strict adherence to the law -- impossible.

Presumably, the legislature granted the power to make the decision concerning which the briber offered the bribe because because it wanted the official to make decisions in light of the public interest. When because of a bribe the official decides in favour of a private individual, the decision has its grounding in a private interest. That denies the statutory command.

That by definition also denies both the Rule of Law and

socialist legality. Both of those doctrines require that officials obey the law; bribery ensures that officials do not obey the law.

Without legality (in the sense that officials obey the law) democracy's hopes remain a chimera. The democratic vision requires government by the people. The people, however, govern through laws implemented by bureaucrats. The enacted laws represent the people's will. To the extent that officials set them aside in reponse to bribes, democracy dies.

The denial of the statutory command with respect to laws relating to the economy (the usual case everywhere) has special significance in the developing world. By definition, "development" implies the use of law and state power to overcome the causes of poverty and powerlessness. The use of bribery to deny those laws thus negates the nation's development efforts. That has especially serious consequences for Third World nations embarked on a course of socialist reconstruction, whose entire economy depends upon strict observance of the laws relating to economic affairs. For example, because the socialist countries did not demand hard currency in payment for exports, during Nkrumah's regime Ghana's government sought to shift external trade to those countries. The Minister of Trade, however, took bribes in return for the grant of import licenses. The socialist trade organizations did not pay bribes; the capitalist exporters did do so. Contrary to government policy, the Minister of Trade granted import licenses mainly for the import of goods from the

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capitalist, not the socialist world. That wasted hard currency, and undermined the government's efforts to reduce dependence on the capitalist world market.

Bribery not only denies the Rule of Law and Socialist legality, hopes for democracy, and for development as well. It also has significant implications for class control over government.

II BRIBERY AND CLASS CONTROL OVER GOVERNMENT

Where a capitalist class exists, bribery constitutes a means by which the capitalist class makes government its tool. The world around, big bribes come from wealthy people -- mainly capitalists. Bribes transfer power from officials to capitalists. Where bribery becomes endemic, this constitutes a transfer of power not to a set of individuals, but to the capitalist class as a whole.

In most Third World countries, the major representatives of the world capitalist class were the managers of the great transnational corporations. To operate in Third World countries, these needed government favours of various sorts: Government contracts for roads or schoolbooks, prospecting licenses for oil companies, investment permission for others. Not accidentally, in most of the Third World transnational firms constituted the major group of bribe-payers. The transfer of power to them that results from bribery became an important form of neo-colonialism.

CONCLUSION

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Corruption violates a variety of criminal laws. It raises in the first instance a question of criminology: Why do these individual officials break those laws? The consequences, however, go far beyond those of the usual crime: It makes inevitable the creation of a new, bureaucratic bourgeoisie, denies both the Rule of Law and socialist legality, destroys the potential for development, makes socialism impossible, and ensures the importance of transnational corporate interests in Third World decision-making -- to the inevitable detriment of the interests of the mass of the population.

In the Third World, corruption creates probably the most important source of primitive accumulation. It becomes the necessary condition for the creation of a new capitalist class. This new capitalist class, however, does not become that because of their hard work, entrepreneurial qualities, or risk-taking. They become that because, as officials, they have positions that enable them to acquire great wealth through corruption. The new capitalist class becomes a bureaucratic bourgeoisie.

Every act of bribery also negates legality. It ensures that the substantive law granting power will not induce the behaviour it aimed to induce. If sufficiently widespread, bribery ensures that development and especially socialism cannot succeed, and that the new bureaucratic bourgeoisie will become the masters not only of the government but of the economy, and that the

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transnational corporations will become the paymasters of government.

Does this apply to China? That this occurred elsewhere in the Third World of course does not mean that it necessarily applies to China. China must "learn truth from facts". That means from the facts of the Chinese circumstance. The experience elsewhere in the Third World, however, does suggest some areas which might repay research -- the uses of bribery to suspend the substantive statute, its denial of economic planning, its function in enhancing the power of the capitalist class and especially foreign firms, and the general use of corruption for primitive accumulation and the consequent formation of a new bureaucratic bourgeoisie.

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1. Seidman, *The State, Law and Development* (supra):

Corruption festers outside as well as within the developing world. Every edition of the *New York Times* reports some incident of corruption in the United States. The sorts of corruption, their explanations and consequences, however, vary with time and place. . . .

The modern notion of bribery arises out of our property rules, which grant owners power to make decisions concerning it.⁴ In an earlier era, public office was a property right. The lord of the manor governed the manor because he owned it, just as today a private corporation governs a company town because it owns it. Bribery had no relevance, for the owner of property might make decisions about it for any reason.

The earlier structures of colonial government followed this model. The Dutch East India Company for a time governed through a system under which officials did not receive a salary. They paid an annual fee to the Company for the prerogatives of office. The Company expected them to grab what they could.⁵ In Africa, King Leopold's authority to rule the Congo came from his personal ownership. The chartered companies in East, Central and South Africa ruled because they owned the charters that authorized them to do so. If the British South Africa Company governed in Northern Rhodesia solely in consideration of private gain, it did not act corruptly; it profit-maximized.

The rise of bureaucratic government accompanied a formal divorce between office holding and property in the office.⁶ The personal property interests of the office holder now lying outside the office, the office holder supposedly made decisions not in consideration of private advantage, but to serve public purposes.⁷ For example, in Ghana during the Nkrumah regime, the collection officers of the Cocoa Marketing Board openly robbed the till, usually demanding and receiving 10 per cent of the farmer's crop as an illegal 'commission' for performing their public duty to buy the crop. After the 1966 *coup*, an investigating commission heard many suggestions that government delegate collections to private businesses.⁸ These firms would profit from the collections just as the bureaucrats did from bribes. The bribes were illegal, but not the profits, although both involved farmers' payments to the collecting agency. The one involved public office, the other private property.

2. Nepotism -- the use of political power to give jobs or favorable wealth-generating opportunities to one's relatives-- has a special function in class formation. A group with common characteristics -- a group of entrepreneurs, for example-- becomes a true class in part because their position passes to their children. Nepotism plainly plays a function in doing that.

NOTES AND QUESTIONS

1. At least by 1989, China recongized that corruption had become a serious difficulty. It was reported that during the second half of 1988, more than 24,000 Party and government officials, including 17 at ministerial and provincial levels, had been reported for committing crimes. [32 Beijing Rev. 4:9].

Xiaobing, "China's Battles Against Corruption", 32 Beijing Rev. 3:16 (1989) :
Yang

The existence of corrupt officials in government organs has become one of the major topics of discussion among the Chinese people. According to Wei Jianxing, minister of supervision, corruption among government employees includes abusing positions of power for personal gain, extortion and blackmail, graft and bribery, squandering public money and indulging in luxury and extravagance.

Although these problems involve an extremely small number of people, their negative influence can not be neglected: they do not simply concern the personal moral character of these officials, but seriously harm the reputation of the Party and government and disrupt economic construction and the reform and open policy.

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The most serious problem is graft and bribery. According to a survey conducted by the Ministry of Supervision, this accounts for more than 50 percent of all economic crimes; and more officials above the county level are punished for graft and bribery than for any other crime. Moreover, this

tendency is currently on the rise.

Some graft and bribery cases have been extremely serious, occasionally involving large numbers of people. For example, a report in *Renmin Ribao* (People's Daily) described a case in Shenzhen, directly across the border from Hong Kong, in which 20 customs officials were involved. One of them accepted 500,000 yuan and HK\$500,000 in bribes for turning a blind eye to some ~~smuggling~~ smuggling.

Besides bribery

2. China had other sorts of corruption, mainly speculation by government officials. [31 Beijing Rev. 31:61 (1988)]

Official Profiteering Erodes Economy

More government organizations and officials are taking advantage of their positions and taking up illegal profiteering.

In Henan, five Soviet-made cars were sold at 36,900 yuan each by the Mid-South Car Trading Centre. They were bought by the Production Materials Service Company of the Goods and Materials Administration in Xinhui County, Guangdong Province in February, 1987.

The Company, without taking the cars out of a depository in Pingdingshan, a city in the province, sold, not the cars, but the bills at a higher price to the

Goods and Materials Trading Centre of Jiangdu County, Jiangsu Province. The trading centre then sold the bills back to the Production Materials Service Company in Pingdingshan where the cars were stored.

At this point the price had gone up to 69,500 yuan each. The Pingdingshan company, also without picking up the cars, is now selling them at 75,000 yuan each.

A supply station of the Production Materials Service Company in Luoyang, Henan Province bought 353 tons of rubber at 3,900 yuan a ton from the Jinzhou Oil Refinery in Northeast China on the pretence of developing industrial production. But the supply station sold half the rubber at a higher price to a trading company in the city of Jinzhou where the rubber had been bought not long before.

The trading company sold the rubber to the city's two other trading companies which sold it to yet another trading company in Changzhou, Jiangsu Province.

After all this changing of hands the price of the rubber reached 5,730 yuan a ton, and the trading companies made more than 570,000 yuan in profits, even though the traded rubber remained in storage in Jinzhou all the time.

People's Daily said in a commentary that government organizations engaged in illegal buying and selling have seriously damaged China's commodity production and the image of the Party and the government. Their activities have a negative effect on the current economic reform.

Some businesses, said the paper, were established by officials who have left office. They try to make money under the pretence of contributing their "remaining energy." But in fact they are making use of their "remaining power."

Companies set up by Party and government departments have been strongly emerging. In one province alone this year, 56 such companies were reportedly being set up. And in one small city, 106 companies were established in one year. More applications are submitted every day.

Making use of their authority and the difference between state-set and market prices, employees and officials of these organizations have become rich through unfair means.

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B. EXPLANATIONS

It seems that in China the difficulty in connection with official corruption that calls for attention includes much more than high level bribery. We must examine more generally the tendency of officials to use their official positions as a springboard to wealth, principally by way of (a) bribery, (b) embezzlement (that is, the use of official funds or property for personal gain), and (c) speculation, (that is, the use of official position to buy and sell goods for personal profit).

To generate explanations for these phenomena, we follow the research agenda embodied in ROCCIPI: Rule, Opportunity and Capacity, Communication, Interest, Process and Ideology. We begin with the rules. The first reading, drawn from the Third World experience elsewhere, deals only with rules relating to bribery. The next readings provide materials about China's laws concerning not only bribery but embezzlement and speculation as well. We discuss, first, the rules prohibiting bribery, outside of China, and then the Chinese law; and then other explanations. 1. The Rules

a. Outside China

SEIDMAN, THE STATE, LAW AND DEVELOPMENT (SUPRA)

II Legal Prohibitions

The former colonies entered the development period with penal codes that defined bribery relatively narrowly. As it grew into a major obstacle to development, the statutes broadened their scope. Today, every country in the developing world owns a broad panoply of statutes, frequently ambiguous, overlapping and vague, reaching every sort of official bribery. I examine some of these statutes with respect to the persons they cover, what acts they prohibit, mental element, proof and sanctions.

A. Who is Covered

Coverage concerned two distinct issues. First, which state officers came under the statute? Second, did it forbid giving as well as receiving bribes?

1. *Which officials?* The principal disputed question concerned the inclusion of parastatal officers. Penal statutes usually originated before the post-independence flood of public corporations.²¹ The formula used in the East African Penal Codes, for example,²² outlawed bribery by or to 'any person . . . being employed in the public service.'²³ 'The public service' did not include officers of parastatals.²⁴ They, however, fell under another section, prohibiting kickbacks to employees anywhere.²⁵ The gists of the two crimes differed only marginally. Malawi simply listed covered organizations in a Schedule, which changed from time to time.²⁶ Tanzania's bribery statute since 1971 reached employees of the government, the East African Community and its institutions, local authorities, TANU and its affiliates, trade unions, and public and private corporations in which one of these owned a majority interest.²⁷

2. *Corruptors as well as corruptees?* Most statutes reached those who offered as well as those who received a bribe.²⁸ Even those jurisdictions that did not expressly outlaw offering or giving a bribe-giver as solicitor, aider or abettor.²⁹

B. Actus Reus

Statutes often defined official bribery overbroadly.³⁰ Ghana defined it as 'bribery, willful oppression and extortion, or any other act contrary to the public order or prejudicial to the economic or financial interest of the Republic'.³¹ This Act seemingly snared the driver of a government lorry who negligently smashed it.

C. The Mental Element

A requirement of specific criminal intent can cut down an overbroad statute's potential for mischief to the innocent.³² Innocent action, otherwise within the apparent statutory ambit, will thus unlikely be trapped. Corruption statutes more frequently than not lacked even this minimal potential stumbling-block to conviction. The British Colonial Office Penal Code of the 1930s, widely in force throughout the Empire, covered only bribes received or given 'corruptly'. The Court of Appeals for Eastern Africa read this with its dictionary meaning: 'perverted from uprightness and fidelity in the discharge of a duty; influenced by bribery and the like; venal'.³³ So construed, the payment itself became proof of the state of mind. In Kenya, the statute created a rebuttable

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presumption that any person in public employment who received private money did so corruptly.³⁴

D. Proof of Guilt

Some people argued that the law of evidence, the presumption of innocence, and the requirement of proof beyond reasonable doubt, shackled bribery prosecutions. In fact, corruption statutes frequently created presumptions adverse to the defence, or otherwise relaxed the requirements of criminal procedure favouring of the prosecution. One such device allowed as proof of bribe-taking evidence that the accused had assets unexplained by his legal sources of income.

The Home Secretary of India said in the debates leading to the passage of the Indian Prevention of Corruption Act, 1947, that its sec. 5

... intended to deal with that kind of misdemeanour in which Government servants or public officers with no ostensible means of support or inadequate support are living obviously above their income and are in a position to invest in property which it appears on the face of it to be impossible that they should have had the money to acquire, or at any rate that they should have got those resources honestly. It is particularly difficult to pin it down because in cases of that kind the only thing that Government or the police can find is that there is a man who has no ostensible sources which can be accounted for as the basis of extravagant expenditures, although no specific action can be alleged against him or proved in the way of accepting a bribe or obtaining money by corrupt means; and the object of this section is that it shall be possible for Government to detect and punish officers who have managed to evade detection in that way.³⁵

Section 5 of the Indian Act forbade 'habitually' accepting bribes. Proof that the accused person, or any other person on his behalf, was 'in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income . . . proved habitual corruption'. The accused could rebut the presumptions by accounting for the assets. The statute both reversed the presumption of innocence, and permitted conviction for the unwritten crime of unexplained assets under a bribery indictment. Similar provisions were found in some African Codes.³⁶ Some statutes went even further. Ghana provided that the findings of a statutory

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Commission of Enquiry, obtained under the loosest rules of evidence, could become *prima facie* proof of corruption in any subsequent criminal trial. It thus allowed the prosecution to prove its case under the vaguest procedural rules, but required the accused to disprove it under the strict rules of criminal evidence.³⁷

E. Sanctions

Every country had broad provisions to snare corrupt officials. They differed most widely, however, in their statutory sanctions. Zambia exemplified the wide disparity in maximum sentences. A conviction for bribery and corruption by officials carried a maximum punishment of three years.³⁸ A conviction under the secret commissions section³⁹ had a maximum penalty of two years. If the secret commission dealt with a transaction with government, a local authority 'or a public body having the power to impose rates or entrusted with the expenditure of government funds or grants' the punishment might reach five years, although the same act could also be bribery and corruption by an official (three years). A member of a business corporation with majority government ownership apparently would ordinarily incur only a two-year penalty.

Sanctions differed widely between jurisdictions. A misdemeanour in Zambia with a maximum penalty of five years in Kenya became a felony and subject to a shs. 10,000 fine and/or imprisonment for seven years. If the matter concerned a government contract it carried a maximum sentence of 10 years.⁴⁰ Some governments, obviously at their wit's end over corruption, adopted more draconian sanctions. In Tanzania, between 1963 and 1974, the Minimum Sentences Act required a *minimum* imprisonment of two years and twenty-four strokes of the cane.⁴¹ Nkrumah's Ghana imposed a maximum sentence of twenty-five years.⁴² Other non-African countries have imposed the death penalty.

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b. THE CRIMINAL LAW AND OTHER RULES RELATING TO BRIBERY,
EMBEZZLEMENT AND SPECULATION IN CHINA.

(1). Bribery:

Criminal Law of the PRC, 1980:

"Article 185 Any state functionary who takes advantage of his office to accept bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. The funds or articles that he received as bribes shall be recovered.

"Whoever commits the crime mentioned in the preceding paragraph and causes the interests of the states or citizens to suffer serious losses shall be sentenced to fixed-term imprisonment of not less than five years.

"Whoever offers or introduces a bribe to a state functionary shall be sentenced to fixed-term imprisonment of not less than three years or criminal detention."

"Article 192 Any state functionary who commits a crime mentioned in this Chapter, if the circumstances are minor, may be given an administrative sanction by the competent department in light of the circumstances."

"Article 83 'State functionaries' as mentioned in this Law refers to all personnel of state organs, enterprises and institutions and other personnel who are engaged in public service according to law."

"Article 79 Crimes that are not expressly defined in the Specific Provisions of this Law may be determined and punished in accordance to whichever article in the Specific Provisions of this law that covers the most closely analogous crime, but the judgment shall be submitted to the Supreme People's Court for approval."

"Article 11. An intentional crime refers to a crime committed by a person who clearly knows that his act will produce socially dangerous consequences but who wishes or allows such consequences to occur.

"Criminal responsibility shall be borne for intentional crimes."

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NOTES AND QUESTIONS

1. Which officials does the criminal law cover? Does it cover a teacher at Peking University who takes a bribe to give a student a high grade in a course? Does it cover the Director of a State-owned enterprise who takes a bribe to have the enterprise employ a particular person as its lawyer? Does it cover the same transaction in a collective enterprise? A private enterprise? A foreign-Chinese Joint Venture?

2. China Daily, 29 March, 1989, p. 3:

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"SHANGHAI -- The Municipal Intermediate People's Court yesterday sentenced an official of a local construction company to life imprisonment on a charge of bribery. . . .

"Dong Fujin, 55, was deputy general manager of Shen Gang Construction Co., Ltd. The court found that he took advantage of his position to extort and accept bribery worth more than 100,000 yuan (about \$27,000) from construction contractors during late 1986 and October 1988."

a. Assume that the company was state owned. Under what provision of the law do you think Dong was convicted?

b. Assume that the company was collectively owned. Under what provision of the law do you think Dong was convicted?

c. Assume that the company was privately owned. Under what provision of the law do you think Dong was convicted?

(Chinese)

3. Critique the criminal law provisions concerning bribery.

(2) Embezzlement

The Criminal Law:

"Article 155 Any state functionary who takes advantage of his office to embezzle public property shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the amount involved is huge and the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years; if the circumstances are especially serious, he shall be sentenced to life imprisonment or death.

"For the crime mentioned in the previous paragraphs, the offender shall be sentenced concurrently to confiscation of property or ordered to make restitution or compensation.

"If any person entrusted by state organs, enterprises, institutions or people's organizations to perform public duties commits the crime mentioned in the first paragraph of this Article, he shall be punished in accordance with the provisions of the two preceding paragraphs."

"Article 81 'Public property' as mentioned in this law refers to the following:

- (1) property owned by the whole people; and
- (2) property owned collectively by working people.

Private property that is being managed, used or transported by the state, people's communes, cooperatives, joint ventures and people's organizations shall be treated

as public property."

(3). Speculation

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Criminal Law of the PRC, 1980:

"Article 117. Whoever engages in speculation in violation of the laws and regulations on the control of monetary affairs, foreign exchange, gold and silver, or on the administration of industrial and commercial affairs, if the circumstances are serious,, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention, or he may be concurrently or exclusively sentenced to a fine or confiscation of property.

"Article 118. Whoever makes a regular business of smuggling or illicit speculation, smuggles or aspeculates in huge amounts or is the eringleader of a group that smuggles or engfages in illicit speculation shall be sentenced to a fixed-term imprisonment of not less than three years and not more than ten years, and may concurrently be sentenced to confiscation of property.

"Article 119. Any state functionbary who takes advantage of his office to commit the crime of smuggling or speculation shall be given a heavier punishment."

Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals who Seriously Sabotage the Econom, 1982:

[See Preamble, and statement about State functionaries, quoted above].

(1) With respect to the crimes of . . . speculation for exportant profits mentioned in Article 118 of the Criminal Law . . . penalties are . . .supplemented or revised revised as follows: When the circumstances are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death,, and he may in addition be sentenced to confiscation of property."

[NOTE; WE NEED TO INCLUDE HERE WHATEVER RULES THERE ARE IN THE ECONOMIC LEGISLATION DEFINING SPECULATION -- ESPECIALLY, RULES PROHIBITING BUYING AT THE CONTROLLED PRICE AND SELLING AT THE MARKET PRICE]

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NOTES AND QUESTIONS.

1. Critique these provisions. Do they provide rules adequate to catch the sorts of activities described above in the articles describing the perceived difficulties?

2. What constitutes "embezzlement"? "Speculation"

PROBLEMS

1. Wang, Zhou and Jiang are, respectively, Director and Vice-Directors of the Wangguo Machine Tool Factory, a state-owned enterprise.

a. Wang has access to the enterprise's cashbox. It contains Reminbi, FEC and (illegally) some US dollars that the enterprise had received in an export transaction. Wang secretly removes the US\$10,000 and uses it to purchase a large Toyota car which he registers in his own name. Has Wang committed a crime?

b. Wang, Zhou and Jiang, acting in concert, cause the enterprise to borrow funds from the local branch of the Industrial and Commercial Bank. They cause the enterprise to use those funds to purchase three large Toyota automobiles. The automobiles are registered in the name of the enterprise. Enterprise employees drive them. One automobile is assigned to Wang, one to Zhou, and one to Jiang. They use it indiscriminately for private and for enterprise purposes. They use it to go to meetings required by their posts in the enterprise; their wives use it to go shopping; their children use it to go to school.

You are a cadre in the office of the local Procurator. A citizen calls on the "hot line" and tells you of these facts. Further investigation persuades you that these facts are true. Have Wang, Zhou and Jiang committed a crime for which they can be tried and convicted?

2. Wang, Zhou and Jiang hold the same posts in the Wangguo Machine Tool Factory as above.

a. The enterprise has acquired ten tons of steel at the (low) state-controlled price. Wang causes the enterprise to sell the steel to another enterprise at the free market price, making a large profit for the enterprise (probably a higher profit than the enterprise might have made if it had used the steel in its own manufacturing processes). Has Wang committed a crime?

b. Using their personal funds, Wang, Zhou and Jiang create a small privately-owned enterprise, The Wangguo Trading Company. They cause the enterprise to sell it ten tons of steel purchased at the low state-controlled price at the state-controlled price. The Trading Company then resells the steel at the higher, free-market price, and pockets the difference.

A citizen on the "hot line" advises you, a cadre in the Procurator's office, of these facts. After ascertaining they are true, would you charge these three with a crime?

2. USING ROCCIPI TO SUGGEST OTHER EXPLANATIONS

ROCCIPI identifies categories which a researcher ought to think about in the course of generating hypotheses -- that is, educated guesses -- to explain the behaviour that constitutes the difficulty. We have already discussed the rules of law that define bribery, embezzlement and speculation. In this section we explore other possible explanations for corruption, using the ROCCIPI categories as a guide.

- a. IN THE THIRD WORLD OUTSIDE OF CHINA
- SEIDMAN, STATE, LAW AND DEVELOPMENT

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III Explanations

How can one explain the widespread bribery of high-level officials in the face of this seemingly impregnable wall of legal prohibitions? To generate explanations, I look to the general theory of obedience advanced earlier. I assume officials knew that bribery is illegal.

A. *High Public Officials: The Receivers of Bribes*

1. *Opportunity to Obey.* Self-evidently, no individual official disobeys the law because he could not do otherwise. Why, however, did so many high officials in so many countries accept bribes? Vast opportunities to disobey ordinances outlawing widely desired gratifications inevitably breed disobedience, for example, laws against gambling, prostitution, marijuana or alcohol. Corruption, too, flourished in a rich feedbed. Lincoln Steffens gave a simple explanation for corruption in the United States: Given opportunity, he said, ordinary men will act corruptly.⁴³ 'Men steal when there is a lot of money lying around loose and no one is watching.'⁴⁴ Throughout the world, officials engaged in bribery when they had a limited amount of rich goodies to distribute, and potential recipients anxious to pay for them.

Development everywhere generated rules permitting government to dispense favours. India needed its Prevention of Corruption Act (1947) because:

The scope for bribery and corruption of public servants has been enormously increased by war conditions and though the war is now over, opportunities for corrupt practices will remain for a considerable time to come. Contracts are being terminated; large amounts of Government surplus stores are being disposed of; there will for some years be shortages of various kinds requiring the impositions of con-

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trols, and extensive schemes for post-war reconstruction, involving the disbursement of very large sums of Government money, have been and are being elaborated. All these activities offer wide scope for corrupt practices and the seriousness of the evil and the possibility of its continuance or extension in the future are such as to justify immediate and drastic action to stamp it out.⁴⁵

What was true of India was true of Africa.

The statutes or legislative instruments creating power to distribute governmental largesse and working rules of the applicable government departments created the opportunities for bribery. Four conditions predominated: broad and uncontinued discretion; minimal procedures for accountability; secrecy; and the very existence of the private sector.

By granting very broad discretion to responsible officers or Ministers in the authoritarian Colonial tradition, the law itself raised the port-cullis to bribery. The Control of Goods Act of Zambia⁴⁶ permitted the President to impose wholesale or retail price control 'whenever it appears to him necessary or expedient'. Pursuant to this power, he promulgated Regulations⁴⁷ that empowered the Minister to fix maximum and minimum prices for goods; to prohibit 'any person, any specified person or any person of a specified class or group' to increase prices for any commodity above the official ceiling; to fix 'the maximum, minimum or specified price of any commodity irrespective of the cost to the seller', and to control the quality and quantity of goods sold. Not a whistle limited this unbounded discretion. Speaking of Southeast Asia, Myrdal observed that governmental policies to control private enterprise became 'individualized and discretionary . . . Partly out of necessity, but partly by predilection and choice, government policies become implemented less by general rules than detailed, individualized, discretionary, administrative choices . . . The wholesale resort to discretionary administrative controls . . . increased the demands on administration. Such controls breed corruption; the spread of corruption, in turn, gives corrupt politicians and dishonest officials a vested interest in retaining and increasing controls of this type.'⁴⁸

Extensive discretion in parastatal management became the rule. Executive officers and directors made large purchases and let substantial contracts without significant guidelines. A substantial number seized the moment to exchange corporate favour for private gain.⁴⁹ Procedures created further opportunities for bribery. These enabled officials to award government favours without adequate study, reports by trained staff, comments by interested parties, or public discussion.⁵⁰

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They allowed high officials to give favours with few requirements to account. That, too, enlarged discretion. In short, corruption did not (as many believe) necessarily reflect vast concentrations of governmental power. The contrary existed in Africa. It reflected the weakness of control by the centre over its agents.

Secrecy led to the same result. The British tradition of governmental secrecy, perhaps the most stringent in the world,⁵¹ continued in her former colonies. Secrecy shielded decisions from scrutiny. Governmental secrecy drew reinforcement from the British tradition that held business affairs almost inviolate from government inquiry, let alone public exposure. In 1964, for example, no researcher could see the oil exploration licences issued by the Nigerian Government to private firms. Until the *coup* in Ghana in 1966, import licensing operated in deepest secrecy. The Zambia Pioneer Industries (Relief from Income Tax) Act, 1965, provided substantial income tax relief to any company that the Minister certified as a Pioneer Industry. The application for the certificate, however, had to remain secret 'except at the instance of such company'.⁵² Finally, the very existence of the private sector offered extraordinary opportunities for high-level bribery. Given expatriate and local private businessmen in competition for government favours, and a private sector in which to invest ill-gotten gains, the itch of high-level bribery intensified.

Development through an authoritarian state structure generates unaccountable power. Africa crawled with opportunities for high-level bribes. The more opportunities to bribe, the more the bribery.

2. *Capacity to Obey.* Scholars sometimes argued that very low salaries induced corruption.⁵³ That did not explain high-level corruption, for political elites fell into the highest income class in Africa. Nor did the claims of the extended family on political elites explain bribery.⁵⁴ That might explain some nepotism in public affairs. It hardly explained official corruption that built legendary Swiss bank accounts in millions, and fur-lined luxury for the officials involved. Few high-level officials truly lacked capacity to resist bribery.

3. *Interest.* Bribery, of course, had enormous economic rewards. Other costs and benefits included:

a. *Political Rewards.* Politicians care about power as well as with money. Much high-level bribery, especially in West Africa, came about to provide funds for political purposes, just as did much corruption in

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the United States. In most of Africa, the political parties originally followed the British example, acting as private clubs whose managers competed for political power. As private clubs, they received their funds from private contributions. In theory, these came from party adherents. In fact, of course, most political financing came from wealthy individuals or business seeking political favours, in Africa as in the United States. In parts of Africa, officials skimmed government contracts for that purpose.

The root of the matter is that political parties need money, and the small subscription from the average man is not available. The large subscription from the man of influence must, therefore, take its place and the accession of certain large sums to the party funds represents something not reprehensible, but notably self-sacrificial, on the part of those who are the channels of this communication. An unofficial percentage on a contract (and there are some big contracts), the compulsory purchase of land (i.e. condemnation under right of eminent domain) at unorthodox prices, a little wise direction in the development of real estate — these must not be too hastily condemned.⁵⁵

The 'commission' on government contracts in Ghana became institutionalized. The party created a corporation, NADECO. The Cabinet formally passed a resolution creaming off 10 per cent of every government contract to NADECO for Party financing.⁵⁶ (Although Ghana was a *de facto* one-party state from about 1960 and a *de jure* one-party state after 1964, it continued British forms of party financing.) In fact large portions of the commissions stuck to private hands. Moreover, once the miasma of corruption crept in, it overwhelmed most levels of government. Import licences went up for grabs; so did exchange control permissions, taxes, government land, and government contracts. Western Nigeria had a similar history.⁵⁷ 'Commissions', originally finding excuses as political financing, became a device to personally enrich members of the political elite.

b. *Criminal Sanctions*. The inducements of wealth and power weighed in against bribery's potential costs. Existing criminal statutes threatened enormous penalties. In making the cost-benefit calculus, however, high-level officials inevitably discounted the amount of paper sanction by its probability. Difficulties of detection, likelihood of prosecution and lenient sentencing practice combined to make that very low.

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Bribery cannot easily be uncovered. Like prostitution, gambling or drug offences, bribery has no specific victim. Lacking a victim, no individual called attention to the crime. No corpus delicti existed upon which a policeman might stumble. Nor did enforcement officials in the usual course vigorously expose bribery. Lower-level officials did not ordinarily police their political and administrative superiors. Even where the Constitution declared their posts independent of political control,⁵⁸ realities played hob with the legal fiction of prosecutorial independence. Finally, the draconian punishments set out in criminal statutes were rarely imposed. In 1973, Zambia convicted a former Permanent Secretary for receiving bribes to procure citizenship for Asian businessmen who feared measures requiring Zambian ownership of small enterprises. The crimes carried a maximum sentence of five years' imprisonment on each count, or twenty-five years in all. The official paid a fine of some \$9,500 to avoid nine months in prison. The courts hit petty thieves harder.

Tap-on-the-wrist sentences for high-level corruption cases arose because of the punishment paradox. Penological theory holds that punishment has several purposes: general and special deterrence; the satisfaction of public feeling; restraint; and rehabilitation. When a 'respectable' person was convicted, these purposes frequently conflicted. In the case of the Permanent Secretary mentioned above, retribution and general deterrence spoke to a long prison term; a Permanent Secretary, however, obviously seems an excellent risk against recidivism. Special deterrence and requirements of rehabilitation, therefore, argued for no punishment at all. For the best of reasons, high status criminals everywhere receive gentle treatment.

c. Reference Groups. Departments or even whole Ministries tolerated and even encouraged bribery.⁵⁹ Chinua Achebe's great novel of Nigeria, *Things Fall Apart*, vividly portrayed the subculture of corruption. In many cases it became a taught disobedience.

If an individual's reference group fails to reinforce the law with informal sanctions for deviant behaviour the law loses a strong buttress.

We were all living in a country in West Africa where corruption was a very normal part of the scene and the assumption of corruption was part of everyone's equipment for his daily business.

Such a climate of corruption is in itself an important factor. There is a constant interaction between the willingness to pay bribes and the willingness of officials to receive them. People normally

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behave in a way that the people they live with behave. In a society with a high level of corruption, hardly any citizen can carry out his business, avoid trouble with the government, and generally get through life comfortably, without acquiescing to some extent at least in the prevailing corruption.⁶⁰

4. *Internalized Deviant Norms.* If society expect 'big men' to be corrupt, they will in time believe that they can legitimately take bribes. Krobo Edusei, a long-time Minister in Nkrumah's Ghana, spoke passionately: 'The sweetness of the pudding is the eating thereof!'⁶¹

5. *Domain Assumptions.* Our unexamined domain assumptions derive from the ambient culture. Some claimed that Third World politicians held three domain assumptions that justified corruption. Many had campaigned in the anti-colonial wars. They perceived government as the very prize for which they fought. Having won, they thought themselves entitled to feast at its table.⁶² Secondly, during the freedom movement, they believed that government was 'theirs', not 'ours' and that cheating expressed anti-colonialism. These cheating hearts beat on after independence.⁶³ Thirdly, the 'idea of the national interest is weak because the nation is new'.⁶⁴ Being new, its citizens and officials lacked a strong sense of nationhood. They confused public with private property. One cannot easily test these explanations. At any rate, they can at best explain corruption by the first-generation independent elite. Some corrupt officials today were children during the anti-colonialist struggle.

6. *Anomie Theory.* Some say that in many of the new states get-rich-quick became the dominating goal of the newly educated classes who manned the senior posts of government. 'Politicians in West Africa do not come from an established patrician class. Most of them are "new men" and have therefore had no opportunity to develop standards different from the rest of society . . .'⁶⁵ Myrdal writes that the exodus of colonial officials 'left South Asia with few competent administrators with the stricter Western mores [sic]'.⁶⁶

This explanation, as so often with explanations from anomie theory, fails for non-falsifiability. It purports to explain the self-aggrandizement of elites in terms of acculturated goals of material enrichment. The evidence of those goals becomes the very behaviour to be explained.

7. *Role-self Theory.* Many ministers and other officials lived on a

conspicuously opulent scale. Ministers in pre-coup Nigeria drove down the Marina in Lagos in Mercedes, followed by girl friends in a second Mercedes, and assorted body guards and hangers on in a third. A high official in a parastatal organization in Nkrumah's Ghana boasted of six Mercedes.⁶⁷ The 'big man' occupied a well-defined role not only in indigenous society⁶⁸ but in colonial society as well. The lowly assistant district officer in the Colonial Service had a small bungalow with a single bedroom; as a District Officer he might move to a two-bedroom house; by the time he became a Regional Commissioner he would have three bedrooms and a study. The Colonial Secretary had a mansion; and the Governor lived in the State House with innumerable rooms, a gaggle of flunkies and servants, and a huge motorcycle escort to clear the roads for the big man whenever he drove about. Some Africans learned from their former masters. They used their political position to gain the wealth necessary to act out the big man role.

8. *The Decision to Disobey.* The decision to disobey the law invariably occurred secretly, where the official needed to discuss the matter only with his corrupter. Officials negotiated government contracts privately rather than taking publicly bids. They made decisions to grant or reject an application for an import license privately. Social pressures against bribery had no chance to function.

B. Businessmen: The Givers of Bribes

Why did businessmen offer bribes, although often expatriate bribers had sterling reputations for probity in their own countries? For example, a general contracting firm with an excellent character in England obtained several large Ghana government contracts through bribery.⁶⁹ Assuming its behaviour in England warranted its reputation there, why the double standard?

High-level bribery inevitably followed a sort of Gresham's Law. Government favours (for example, import licenses) came in short supply. If one businessman paid a bribe, every businessman had to meet the competition or bow out. Once bribery began, the businessman believed he must bribe or perish; as he saw it, the public official used his power to extort payments from innocents. However, officials depended for bribes upon the class of businessmen. If no businessman bribed, bribery would disappear. Bribery like the tango required two partners.

This also occurred elsewhere. The United Kingdom proclaimed itself to enjoy a bribery-free public sector. How soon they forget! Before the middle of the nineteenth century, British public life was a cess pool.⁷⁰

If the incidence of corruption lessened, some body with political clout must have demanded it, probably business itself.⁷¹ Individual businessmen bribe because they see that it is in their interest. Plainly, however, bribery defeats the interests of entrepreneurs as a class, because it denies predictability. In this view, the relative level of corruption in different economies reflected mainly the relative cohesiveness of the entrepreneurial class in those countries.

The business community in every African polity differed from that in most developed countries. In the metropolitan countries, executives of long-enduring stable firms worked together in Chambers of Commerce, and played together in social clubs. In the LDCs, those ties hardly existed. In Zambia, for example, government contracts were awarded to Italian, British, American, West German, Japanese, Chinese, South African and Yugoslavian firms. In the UK, businessmen found their reference group among other English businessmen. Bribery defeated their collective interest. A briber violated group norms and would be sanctioned. Zambia had no similar reference group to maintain group probity.

Moreover, many firms doing business in Africa made racist assumptions that African officials inherently behaved dishonestly. Racist slanders abounded specifically on the honesty of African officials. These slanders became self-fulfilling prophecies. Once a businessman believed he must pay a bribe, he sometimes offered one. Once enough businessmen offered bribes some officials took the bait.

Finally, the acculturated goals and self-image of businessmen emphasized that their interest lay only in profits. English and American businessmen justified doing business in South Africa despite its *apartheid* policies, for example, on the ground that they cared only for profits, not politics and that so seemingly amoral a search for profits nevertheless did not lack its own morality. Businessmen took the same amoral attitudes with respect to bribing. A prominent New York law firm filled out a long check list before advising a client on entering a foreign market: taxes, import-export licensing, personnel localization laws, exchange control. The lawyer had to investigate the 'prevalence and amount of corruption'. Another researcher reported that prospective foreign investors tended to balance high tax rates against corruptibility in a perfectly amoral temper: bribery could cancel out paper taxes. US multinationals caught bribing officials around the world justified their shocking behaviour by invoking the maxim about copying the Romans.

b.USING ROCCIPI TO GENERATE HYPOTHESES TO EXPLAIN
CORRUPTION IN CHINA

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Our concern here lies only secondarily in corruption; our principal pedagogical interest lies in teaching the reader to use the ROCCIPI categories as a device to develop hypotheses explaining behaviour in the face of a law. Here, the behaviour that calls for explanation consists of bribery, embezzlement and speculation in China. The rules, if less than perfect, clearly identify much of the behaviour at issue as criminal. Here we first quote from a few articles that have appeared in the Beijing Review (an English-language weekly published by the Chinese Government) that offered explanations for corruption. What hypotheses based on the ROCCIPI categories can you generate from these articles? What further research do those hypotheses suggest?

YIANG XIADBING, "CHINA'S BATTLE AGAINST CORRUPTION", supra.

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From July 1987 onwards, the Ministry of Supervision has been checking economic contracts signed by the 60 or so ministries, commissions, bureaus and corporations under the State Council. And during 1988, supervisory departments have been established in the majority of China's provinces, municipalities and autonomous regions. According to the latest statistics available, more than 1.7 million economic contracts involving a total sum of more than US\$158 billion had been checked by the end of September 1988. Problems had been found in 5,500 of these contracts, and 523 cases of graft, bribery or malfeasance dealt with.

For instance, the Bureau of Supervision in Shenzhen investigated and dealt with the case of Huang Zhiqiang and Chen Fujin, the board chairman and deputy general manager of one of the city's trade companies. For several years, the company had been incurring serious losses and its accounts were in great disorder. The investigation revealed that Chen, taking advantage of his responsibility for production, the purchase of raw materials and marketing, illegally extorted more than 18,000 yuan for himself. Further investigation confirmed that both Huang and Chen had worked hand in glove with a Hong Kong businessman to

write 1,029 fraudulent invoices involving more than 20 million yuan. The Bureau of Supervision has now passed the case on to the courts for trial.

Other cases discovered include:

Ye Qi, former manager of the Guangdong Branch of the China National Non-ferrous Metals Import and Export Corporation, who collaborated with several Hong Kong busi-

nesspeople to draw up contracts for high-priced imports and low-priced exports. For this, he received bribes totalling HK\$223,000. While leading a business delegation to Thailand, he transferred US\$500,000 from one of his companies overseas offices to Hong Kong and Macao in an attempt to embezzle the money.

Liu Weigang, a staff in the China National Offshore Oil Company, embezzled and extorted US\$267,000 in foreign exchange by forging supplementary documents for contracts and altering dispatch lists.

Shi Lixin, deputy chief engineer of a factory under the Ministry of Railways, leaked economic information concerning China's equipment imports to foreign businessmen on the condition that the latter send his son to study in Japan.

A leader of the CPC Central Commission for Discipline Inspection recently warned that China's reform and construction would probably be seriously threatened if Party discipline was not strengthened.

The improvement of the economic environment now under way in China is aimed mainly at reducing total social demand, curbing inflation and rectifying the economic order. That is to say, comprehensively deepening China's reforms by eliminating the confusion which has emerged as the old economic structure is replaced with a new one. At this juncture, it is particularly necessary to strengthen discipline.

Since China initiated the reform and open policy, it has made dramatic achievements in all fields. Some Party members and leading cadres, however, have failed to withstand the temptations offered by China's new economic circumstances. They have violated both the law and Party discipline and engaged in malpractices for personal gain — the phenomena of corruption.

Proceeding from their local interests, leading cadres (who are also Party members) in some work units have implemented only those regulations of the Party Central Committee and the State Council which were to their liking. They thus neglected the overall national interests, often adopting measures to counter directly central policies. They likened central government prohibitions to traffic lights, saying they aimed "to jump the red light whenever they encountered it."

For example, it has been stipulated that certain industrial raw materials such as cotton and

silkworm cocoons can only be purchased through the unified state plan. Some work units, however, have vied with each other to buy these materials without authorization. To cool the overheated economy, repeated injunctions to reduce the scale of major building projects have been issued, especially of auditoriums, halls, hotels and hostels. But some departments have continued all-out construction. Despite strict orders to control group purchasing power, it has continued to exceed the set quotas. Many work units have rushed to buy imported luxury limousines and other high-grade articles. In the first nine months of 1988, institutions purchased 48.7 billion yuan's worth of consumer goods, comfortably exceeding the 42.2 billion yuan sum set by the State Council for the whole year. Additionally, illegal practices such as banquets paid for by public funds, unauthorized price rises, unreasonable charges, "bureaucrat racketeering," and the indiscriminate issue of bonuses have not been halted.

In a handful of instances, Party members and cadres have collaborated with criminals and illegally bought materials and equipment in short supply. They have then resold them, reaping exorbitant profits. Other leading cadres responsible for the management of projects, funds, materials and equipment, have abused their power to engage in bribery, blackmail and extortion.

The nature of the situation can be judged by the fact that in 1987, of the 149,379 Party members punished for disciplinary violations, 19,869 (13.3 percent) were guilty of corruption or bribery.

Clearly it is urgent to ensure that all Party organizations and government institutions rid them-

selves of the faintest taint of corruption.

History shows that when the development of a country's commodity economy reaches a certain stage, and when its legal system, regulations and orders have not been fully established, the emergence of corruption in state organizations is often unavoidable. But as China is a socialist country, the Party and government should be able to control their members and employees, ensuring that they are law-abiding and that the government is clean. Corrupt phenomena should be minimal, and never be allowed to spread unchecked. Communist Party members must pass a number of severe tests to qualify as fit for membership of the ruling party. These include forgoing the opportunities for easy self-advancement thrown up by China's reforms and opening to the outside world, and maintaining a clean government.

Profiteering in China

"GONGREN RIBAO"

(Workers' Daily)

Bureaucrat profiteering has become a pollution to the social environment in China in recent years that should be rooted out as soon as possible. After changing sign boards, setting off firecrackers and cutting the ribbons, some Party, government and public organizations have become "corporations" overnight with profits pouring in from all sides. By now, there are over 400,000 such "corporations" in the country. The majority are non-productive units. Of all the corporation officers, quite a few are active leading officials, and some are prestigious retirees. Taking advantage of their positions and influence, they can get greatly demanded goods and then resell them at higher prices, cheating the state and people.

It is incomprehensible that profiteering by officials continues despite the Party Central Committee's repeated injunctions. Why do bureaucrat profiteers flourish? Previously, private profiteers roused public indignation, but investigations conducted by government departments concerned were cut in half. The reason is that dishonest officials are backing them.

According to statistics, many of the registered companies that engage in profiteering are run by the central commissions and ministries. This has set a bad example for their subordinates and local government organizations and public units. As a result, setting-up companies for unreasonable profit has become wide-spread, and the prices of high-demanded commodities have soared.

Another reason for the increase of bureaucrat profiteers has to do with the political structure. In China, business has been traditionally run by government departments. Now some people advocate official business as being advantageous to the reinvigoration of the economy and the development of the commodity economy. In addition, under the current system, access to political power, materials and property are closely linked. The existing "double-track" price system provides an opportunity for companies run by official organizations to make profits. The conjunction of government and enterprises leads to the increase of bureaucrat profiteers.

In China, the Party, government and public organizations have more hands than needed. This has also contributed to the racketeering problem. Various companies emerged when redundant staff members were displaced with efforts to streamline government institutions.

People always associate the phenomenon of bureaucrat profiteers with influence. Of course, retired officials should be encouraged to make further contributions for the country's modernization drive. The heart of the matter is that some retirees still hold influence. They make connections to get precious goods by discreet notes and phone calls. Relying on their parents' prestige, the children of high-ranking officials also can get items for their companies. No one dares to displease them.

speculation

"Crack Down on Grey Crimes", 32 Beijing Rev. 15:5 (1989)

"The SPC [Supreme People's Court] last year convicted 111 embezzlers and bribe-takers to death or life imprisonment, and 5,642 to prison terms. Of the 5,642, more than half -- 3,754 -- were Party members.

"A main effort should be the campaign against embezzlement and bribery" he said. . . .

"Meanwhile, Liu Fuzhi, procurator-in-chief of the Supreme People's procurate (SPP) said that the courts have already been flooded with convictions in its stepped up campaign against cases of embezzlement and bribery cases.

"Liu reported a large increase in the amount of money involved in these cases. Last year, 122 cases that were handled involved from 100,000 to 500,000 yuan each, 22 cases involved from 500,000 to 1,000,000 yuan, and 15 cases exceeded the 1,000,000 yuan mark.

"He said that most of the crimes occurred in work units engaged in banking, construction and material distribution. Nearly 70 per cent of the embezzlers and bribe-takers were enterprise managers, factory directors, purchasing agents or persons in charge of financial affairs.

"Economic criminals are employing more sophisticated means and more cases have been reported in Sino-foreign economic activities," he reported.

* * * *

"Last year, procuratorial officers examined more than 66,300

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economic crimes, and 11 per cent increase over the 1987 figure. Of these, 65 per cent involved embezzlement and bribe-taking."

NOTES AND QUESTIONS

1. ROCCIPI requires that we examine Rule, Opportunity, Capacity, Communication, Interest, Process and Ideology. Here we consider each of these in turn. We have very little information on which to posit explanations. Rather, we suggest only plausible lines of inquiry. In Notes 2-6 we consider high officials as the role occupant. In Note 7 we consider the police as role-occupants. We have examined China's laws against corruption above. Here we consider, therefore, the other elements of ROCCIPI.

2. Opportunity. Like all of the ROCCIPI elements, Opportunity to receive bribes, embezzle or speculate depends upon many factors.

a. Many rules defining the power of administrators grant great discretion. The greater the discretion granted an administrator, the greater the opportunity to make a decision one way or another without anybody have the ability to call the official to account. It becomes easy to make a decision based on a bribe, without anyone noticing it.

b. As the articles above suggest, bribery and embezzlement particularly depend upon the official having a position which permits him or her to make decisions about others with serious financial implications, or to take property belonging to a work unit (embezzlement). (70 percent of bribers and embezzlers last year were "enterprise managers, factory directors, purchaing

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agent or persons in charge of financial affairs.")

(i) Where would one more likely find officials engaged in bribery: In the Customs Service, or in the Weather Service?

(ii) Where would one more likely find embezzlement: In the Bank of China, or among agricultural extension officers?

(iii) Where would one more likely find officials engaged in speculation: In the Fisheries Department, or in a large industrial firm?

c. Why do so many of the cases seem to concern foreign firms?

d. In what way does China's two-track pricing system offer opportunity to some officials to engage in speculation?

e. A practice arose some time ago of enterprises making "institutional purchases" -- that is, purchases by the firm of goods for distribution to workers in kind, as a sort of bonus. This gave highly placed officials opportunity to make institutional purchases, but to distribute the goodies to themselves. As indicated above, whether these constituted "embezzlement" within the penal law seems at best doubtful.

3. Capacity: Officials of course had the capacity to obey the law. They also had exceptional capacity to engage in bribery, embezzlement and speculation.

a. Embezzlement becomes easy when accounting systems within the enterprise are lax. In many parts of the world, enterprises engage outside-certified accountants to make periodic surveys of the accounts. It is believed that outside accountants more likely than inside accountants will give a truthful statement of

the corporation's affairs.

b. Large bribes come from rich people, concerned with economic transactions in which large amounts of money are at stake, and where a great deal turns on an official decision. Suggest some areas where bribery would seem especially likely to arrive. Does this help explain why so many corruption cases seem to center upon firms involved with foreign enterprise?

c. Corruption, like most crime, obviously cannot afford to be seen. It flourishes in secrecy. Without secrecy, the opportunity and capacity for corruption hardly exists. The more that government agencies make their decisions after public hearings, with the decisions publicly announced and with reasons for the decision publicly given, the more difficult does corruption become. Does this explain why corruption appears in some areas of government and not in others?

d. Speculation requires working capital. It requires access to cheap goods -- in China, very frequently goods bought at the controlled price, and sold to a market with high prices, or else luxury goods in very short supply (for example, foreign automobiles). It frequently requires some sort of an entity (a private enterprise, for example) through which the speculator can operate -- especially if the speculator is a public official who wishes to conceal his or her connection with the enterprise.

4. Interest. That the role-occupant's perceived interest drives them to engage in these crimes seems self-evident. The category, "Interest", also includes the impact of sanctions or the threat of sanctions. In China, how real is that threat? It is

of course a commonplace that not the paper sanction provided in the law counts, but the actual behaviour of the implementing agencies. We consider this problem in Note 7.

5. Process. Reread Li Ning, "Tightening Party & Government Discipline", p. -- above. Does the suggested process seem likely to help reduce corruption?

6. Ideology. How much does the ideology of "to get rich is glorious" explain official corruption?

7. The category "Interest" (the fifth of the ROCCIPI categories) includes the sanctions imposed by law-implementing officials. The role-occupant, however, in his or her calculus takes into account not the paper sanction, but the actual possibility of the implementing institutions catching the individual, and the actual chance of sanctions if caught. As the numerous cases of corruption indicate -- some of which under Chinese law merit and have received highly publicized death sentences -- their perpetrators tend to discount the possibility of being caught or punished. Here we undertake to suggest some possible hypotheses to suggest why this remains so in almost every country in the world.

Where the criminal law contains the principal rules against corruption, unless the law creates other, additional implementing institutions to combat corruption, only the ordinary institutions of the criminal justice system will address the issue. No place in the world do ordinary police systems address the issues of official corruption, for several reasons. As a result, in many parts of the world corruption becomes quite brazen, as if the

officials involved consider themselves immune from prosecution-- that is to say (as the Institutional model suggests), they take into account not the paper sanctions of the laws against bribery, embezzlement and speculation, but what their experience teaches them to expect from the implementing agencies. What is the basis for general police inaction with respect of corruption? Here we suggest some hypotheses generated by considering police behaviour in light of the ROCCIPI categories and extensive studies concerning the police elsewhere than in China:

(1). Rule. The only rule that ordinarily addresses the police duty to catch corrupt officials is their general duty to enforce the law. That leaves great discretion to the police to allocate resources where they deem it necessary. In exercising that discretion, they more frequently than not fail to allocate resources to the systematic pursuit of corruption.

(2). Opportunity and Capacity.

(a). Catching corruption frequently calls for sophisticated accounting and financial skills. Most police do not have those skills.

(b). Consider also the remarks about secrecy above in connection with the police's capacity to catch corrupt officials.

(c). Even where the police actively try to uncover corruption, they nevertheless remain very dependent upon "whistle-blowers", that is, (in American slang), officials who (like the referee in a basketball match) blows a whistle to call attention to foul play. In cases of corruption, these frequently

come very infrequently. Why? Consider the following:

a. Constitution, PRC:

"Article 41. Citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication of facts for purpose or libel or false recrimination is prohibited.

The state organ concerned must deal with complaints, charges or exposures made by citizens in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures or retaliate against the citizens making them.

"Citizens who have suffered losses as the result of infringement of their civic rights by any state organ or functionary have the right to compensation in accordance with the law."

b. The Criminal Code:

"Article 138. It shall be strictly forbidden to use any method or means to implicate cadres or people on false charges. Whoever fabricates facts to implicate another person (including a criminal) on false charges shall be given a criminal sanction in the light of the nature, circumstances, consequences and sentencing standards of the

crime that he falsely accused the other person of committing. A state functionary who commits the crime of false accusation shall be given a heavier punishment.

"Where it is not a case of intentional false accusation but rather a case of mistaken complaint or unsubstantiated accusation, the provisions of the preceding paragraph shall apply."

PROBLEM: Zhou comes to you, an attorney, and tells you the following story: Zhou is a low-level accountant in the Customs Service. He has learned that the top official in his division took a bribe of Y7,000,000 to permit a number of luxury Toyota cars to be imported illegally. He asks you: "If I bring the charge of bribery to the police, and I am disbelieved, what could happen to me?" In light of the Constitution and the Criminal Law, advise Zhou.

(3). Interest. What is the interest of the law-implementing agencies in catching high officials

(a). In China, as elsewhere, the police will fear that some officials use their power to retaliate against a member of the police who tries to enforce the law against the official. The policeman or policewoman's career interest instructs him or her not to pursue corruption cases against high officials.

(b). Politicians have power to allocate resources to the police bureaucracy. The police's power as bureaucrats, like all bureaucrats' power, depends upon sufficient resources. It becomes an interest not only of the individual policeman or policewoman, but of the police as a whole, to dampen efforts to

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catch powerful politicians in corruption.

(c). The power of politicians to affect police acareers and their resources extends beyond the power of the individual politician. Politicians live a world ij which one politician's power depends in large part upon relation ships of mutual support with other powerful individuals. Consider the following:

account:

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Yang Xiaobing, "China's Battle Against Corruption,"
32 Beijing Rev. 2:16 (1989)

An official from the Yunnan Province's supervisory department said, while investigating and dealing with cases of legal and disciplinary violations, it was imperative to put the interests of the state and the people in first place, which often meant withstanding pressure to call investigations off and penetrating "networks of social connection."

A case in point was how an official tried to avoid detection. Jiang Ziwen, deputy director of the Yunnan provincial tourist bureau, who was found guilty of collaborating with unlicensed cigarette pedlars in the trafficking of famous brand cigarettes for exorbitant profits. Taking advantage of his position, Jiang had attempted to construct a widespread protective web of influential people. When first exposed, he colluded with an official of an industrial and commercial department and a deputy chief editor of a newspaper, so as to evade punishment. They arranged between them Jiang would be fined a small sum and the press would not disclose his case.

The provincial supervisory and auditing departments, however, organized a joint investigation, freezing accounts so as to be able to conduct their work more thoroughly. Seeing that events were turning against him, Jiang took advantage of his social connec-

tions to have a newspaper report published that the industrial and commercial department had fined illegal cigarette pedlars, hoping this would halt the investigation by suggesting the case had been concluded.

When the supervisory department insisted on continuing, he strove to stir up differences between the two departments and leading officials, and asked others to plead on his behalf. Not to be deterred, the supervisory department and some other units promptly reported the case to the province's governor and gained his support. At the same time, through a combination of persuasion and criticism, they revealed Jiang's crimes to those who came to plead for him, blocking all his escape routes. With the facts now out in the open, Jiang's guilt was clear. However, because his illegal gains were not large enough to merit his case being handled by the procuratorate, it was suggested that Jiang be removed from office according to government disciplinary regulations.

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(4). Ideology. Police generally define themselves as engaged in a battle with "real" criminals. By that, they usually mean people who commit traditional crimes, usually associated with violence -- rape, murder, armed robbery, arson. They give priority to those crimes, and tend to neglect the crimes committed by businessmen and officials -- what some have called "white-collar" crime, because the people who have opportunity to commit them usually occupy elite positions for which a white collar and a tie make up part of the usually daily dress.

7. Consider the explanation for high-level bribery that Seidman suggests in the excerpt from his book. Would you think that the same hypothesis might explain high level bribery in China? Does it explain embezzlement in China? Speculation?

8. State concisely the hypotheses you might want to consider to explain official corruption in China.

C. PROPOSALS FOR SOLUTION

1. IN GENERAL

SEIDMAN, STATE, LAW AND DEVELOPMENT (supra)

IV Solutions

Pervasive, structural causes, conformity-inducing measures consisting only of punishments, and impotent enforcement mechanisms: no wonder that bribery sometimes overwhelmed African governments.

Solutions existed. None of them included any bold, over-arching ~~spectacular~~ that purported to eradicate bribery with a single statutory blow. The wide range of possible causes teaches that government must nibble at specific areas separately. Lessening high-level bribery in road construction contracts may differ from reducing it in school contracts, not to speak of import licensing, oil leasing or exchange control. Each has its own particular explanations and solutions. Here I merely suggest some general categories of possible solutions.

A. *Reduction in Opportunity*

One reason for high-level bribery lies in its ample opportunities. The solution for opportunity to commit crime lies in reducing the opportunity, a roundabout measure.⁷² In Africa those opportunities arose from discretionary, secret, governmental favours to the private sector without institutional checks. Although market-oriented theorists frequently urged that course, one cannot abandon government intervention without abandoning development itself. Government favours will persist. Policy-makers must consider the probability of bribery when assessing the potential costs of any programme granting discretionary power to award them.

Overbroad discretion, however, need not persist. I discuss below ways to structure and make it accountable.⁷³ Committees can review contracts and their amendments, and publicize their findings. Many countries have Central Tenders Board to perform this function. Chartered accountants can devise better techniques for handling public and parastatal funds. Carefully selected clerks-of-the-works, quantity surveyors and inspection by independent architects and engineers may help prevent poor performance on building contracts.

All these are ameliorative. Structural change would reduce the size of the private sector, and reduce the authoritarianism that makes discretion possible. Transferring functions from the private to the public sector obviously raises whole new sets of problems, including sharp increases in opportunities for other sorts of corruption than bribery. The more funds that pass through the hands of officials, the more they can and probably will steal. The more power in lower-level bureaucrats to grant or withhold minor permits, the greater the potential for low-level extortion. The more employed by public enterprise, the greater

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the potential for nepotism. The same behaviours occur in the private sector, but they are not then labelled corruption. Employees steal from employers, minor clerks extort small bribes from customers, owners of business employ their relatives. Whether such activities will increase if enterprise moves into the public sector is problematical. That transfer, however, will necessarily reduce the incidence of high-level bribery.

B. Economic and Other Interests of Officials

1. *Direct Sanctions: Enforcement Institutions.* Most countries have a surfeit of criminal laws punishing bribery. The problem lies in detection and punishment.

Bribery has no particular victim to alert the police. The state must develop some device to persuade one of the two parties to the bribe to denounce the other. Standing offers of clemency and an informer's share might help. A number of countries have attempted to develop new investigative institutions for corruption. The Ombudsman and the procurators of the Eastern European states have become widely known.⁷⁴ Some police forces have special anti-corruption units. Without allocating resources to ferret out corruption, ordinary law-enforcement agencies will hardly make special efforts to do so. Most police forces have special traffic control units. Corruption control has at least as high a priority claim.

Amount of Punishment. Punishment alone will not reduce bribery. It fosters evasion, not compliance; it comes after the fact; it raises difficult enforcement problems. On the other hand, most high-level bribery occurs in a milieu in which officials calculate. Bribery is an instrumental activity, committed only rarely by people devoted to it as a way of life. For what they may be worth, direct negative measures obviously require vigorous enforcement.

The United States recently permitted a Vice-President to resign from office and pay a fine for tax evasion, rather than trying him for bribery. The Attorney-General, justifying the administrative decision not to prosecute, and to agree to a fine rather than a prison sentence, argued that the loss of office provided punishment enough. Americans could fairly infer that sufficiently high officials would never receive a prison sentence for bribery. If prosecutors adopt the Attorney-General's argument, the severe penalties supposedly attendant upon high-level bribery become merely theoretical. High-level bribery requires a statutory minimum sentence which a judge lacks discretion to reduce.

Andeneas has suggested that punishment serves not so much to deter

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potential offenders, but to impress the citizenry with the seriousness of the offence.⁷⁵ To rap a corrupt Permanent Secretary so lightly as did the judge in the Zambian case earlier noted, may sensibly treat the particular human problem before the judge. It taught all Zambia, rightly or wrongly, that government viewed bribery in high places as a mere peccadillo.

2. *Roundabout Sanctions.* Officials accept bribes because they can easily make use of their gains. Leadership Codes that prohibit political leaders from owning income property,⁷⁶ increased egalitarianism in living conditions, and dismantling of the private sector can reduce incentives to high-level corruption. Plugging the leaks in foreign exchange procedures might also help. Since financing political parties has so often caused corruption, some method for the public financing of the political parties might help. One-party states can do that easily. Even in the multi-party states, the costs of campaigning could become a public expense. Campaign financing, as Americans know too well, easily becomes the primrose path to bribery.

C. *Decision-Making*

The official accepts his bribe in secret. Publicizing the decisions involved (a roundabout measure) might help. The chamber of horrors of the Ghanaian import licence system appears to have rapidly improved after the 1966 *coup*, when authorities began publishing every import license, and formulated standards for granting them. Ventilating government contracts, too, might help, so that newspapers or disappointed bidders could investigate them. The International Commission of Jurists said that 'To inspire confidence and to reduce the possibility of maladministration especially in regard to capital investment in public development projects, it is recommended that full accounts on such projects be the subject of independent and expert examination, and that reports thereon be regularly submitted to the legislature.'⁷⁷

The principal institutional devices that maintained secrecy included the Official Secrets Act and the General Orders of the Civil Service.⁷⁸ Secrecy classifications, nominally in the interests of state security, frequently cloak corruption the world around. High-level bribery, after all, expresses the worst sort of authoritarianism, for the official who takes a bribe on his own authority decides to negate public policy and law. Secrecy stands ally to authoritarianism, constraining participation and reducing corruption. A widespread subculture of corruption com-

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plicated the issue. If an entire parastatal board was on the take, requiring the Board to make decisions rather than the General Manager alone would not likely reduce bribery, although it might affect the share-out.

The state must devise institutions requiring decisions with potentials for high-level bribery to be made in the presence of people outside the subculture of corruption, and requiring those decisions to be justified to them. How best to do that varies from case to case, depending on the strength of the party, and its relative freedom from corruption, the sorts of decisions involved, the potential for mass participation in the decision-making process, and the possibilities to require and publish justifications and their publication. If parastatal management must justify every high-level contract to its workers (presumably too numerous to share in any graft), perhaps bribery might decline.

D. Subjective Factors

Subjective variables lend themselves to control through direct measures, if at all, or change by educative and deliberative ones. Precisely because these prizings and ways of looking at things change slowly, strategy to reduce bribery in the short run must centre on the sorts of institutional changes I suggested above.

In the long run, high-level bribery can be eliminated by creating high-level leaders, possessed by an ideology which teaches that the cause of poverty and oppression lies in the institutions of the society itself. Elsewhere in this book I discuss institutions likely to promote development: ones looking towards greater egalitarianism between leaders and the mass, better feedback devices from the poor, a participatory style of work, and others. An institution works only when people obey the rules that define it. To install development institutions requires changing high-level behaviour. But officials, like all of us, learn through doing. Engaging in participatory egalitarian institutions must generate self-images of service to the mass, not personal aggrandizement. That consciousness will, I believe, internalize an ideology to make large-scale bribery impossible. That plan, it is said, has worked in the People's Republic of China.

E. Sanctions for the Payers of Bribes

To the extent that high-level bribery results from opportunity, reducing opportunity will constrain the payor as well as the recipient of bribes. Precisely because the expatriate entrepreneur is expatriate, however, the host government cannot easily restructure his environment to affect his

choices regarding bribery.

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Conclusion

Corruption is not unique to Africa, nor to the LDCs. Everywhere it has its own explanations. African countries emerged from a colonial past. They tried to meet the claims of development by buying it like so much soap powder from the private sector, especially from the great foreign corporations. Governments had enormous favours to dispense. But they had scant real powers. They had no institutional devices to make sensible decisions by regular, public, *institutionalized* processes. Instead, they relied upon the largely uncontrolled, secret, unaccountable discretion of officials. In such a seed bed, bribery thrived. Thus did the very processes of development through the private sector induce high level bribery, which in turn conspired to defeat development and foster dependency.

Following this explanation, the long-run solutions for bribery require radical institutional changes. Not development through a private sector, but through production controlled from the beginning in the public interest; not authoritarian decision-making, but participation; not official secrecy, but open decisions and public accountability: These are the indispensable minima to eradicate high-level bribery. Short of these, a number of specific reforms seem urgent, each aimed at particular situations. To the extent that high-level bribery has structural causes, however, any effective solution must address those causes. Throat lozenges rarely cure cancer.

A developing society with public ownership of the means of production, economic independence from the great multinational firms, and open, participatory decision-making must of course become both democratic and socialist. If the solution for high-level bribery lies in democratic socialism, its causes must lie in capitalism or at least, the particular form that capitalism takes in the developing world.

Notes

1. A.J. Heidenheimer (ed.), *Political Corruption: Readings in Comparative Analysis* (New York: Holt, Rinehart and Winston, 1970), pp. 4 *et seq.*
2. See below, Chap. 20.
3. Cf. Heidenheimer, *Political Corruption*, pp. 4 *et seq.*; J.C. Scott, *Comparative Political Corruption* (Englewood Cliffs, N.J.: Prentice-Hall, 1972), p. 4.
4. K. Renner, *The Institutions of Private Law and Their Social Functions*, O. Kahn-Freud, ed. and tr. (London: Routledge & Kegan Paul, 1949); W.J. Samuels, 'The Economy as a System of Power and its Legal Causes: the Legal Economics of Robert Lee Hale', *U. Miami L. Rev.*, 27, 261 (1973).

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2. PROPOSALS FOR SOLUTION: CHINA

Consider the various explanations advanced for bribery, corruption and embezzlement in China. Do they reach the level of specificity required for drafting laws adequate to address the problem?

In fact, China has addressed the problem in a series of recent laws.

a. New definitions of illegal behaviour

TEMPORARY REGULATIONS ON ADMINISTRATIVE SANCTIONS FOR EMBEZZLEMENT AND BRIBERY OF FUNCTIONARIES IN STATE ADMINISTRATIVE ORGANIZATIONS (1988)

"Article 5 If a functionary in a state organization accepts a gift in connection with a foreign transaction, concerning which regulation require him to had the gift over to the state, and he does not, he shall be punished by an administrative sanction.

"Article 8 If a functionary in a state administrative organization violates state provisioopns and accepts various kinds of kickback or service charges, and puts it in his own pocket, he shall be punished. . . .

"Article 10. If a state administrative organization offers offers a bribe in order to seek unjust interests, or violates state provisions and offers an individual kickback or service charge, or extorts property from others. . .the person in charge of and the person directly responsible shall be given a sanction . . .

b. Increased penalties

Decision of the Standing Committee of the NPC Regarding the Severe Punishment of Criminals who Seriously Sabotage the Economy:

"In view of the fact that currently criminal activities in the economic field, such as smuggling, arbitrage and speculation for exorbitant profits, theft of public property, . . . and extortion and acceptance of bribes are rampant, seriously jeopardizing the cause of the country's socialist construction and the interests of the people, and in order to deal firm blows to such criminal activities and severely punish the criminals and those state functionaries who have participated in, shielded or connived at these criminal activities, it is necessary to appropriately supplement or amend some relevant provisions of the Criminal Law of the People's Republic of China. It is therefore decided as follows:

"1. The following supplementations and amendments shall be made with regard to the relevant provisions of the Criminal Law:

"(1) * * * *

"State functionaries referred to in this Decision include personnel working in state organs of power at all levels, administrative organs at all levels, judicial organs at all levels, the armed forces, state enterprises and state institutional organizations, and other personnel of all types who are engaged in public service according to law."

"(2) With respect to the crime of acceptance of bribes mentioned in Paragraphs 1 and 2, Article 185 of the Criminal Law, the following revisions are made: Any state functionary who extorts or accepts bribes shall be punished as for the crime of embezzlement mentioned in Article 155 of the Criminal Law [1]; when the circumstances are especially serious, he shall be sentenced to life imprisonment or death."

TEMPORARY REGULATIONS ON ADMINISTRATIVE SANCTIONS FOR EMBEZZLEMENT [ETC] (1988) (supra)

"Article_2 Any functionary in a state administrative organization, who takes advantages of his office to embezzle public property, misappropriate public funds, accept bribes, offer or introduce bribes, shall be given an administrative sanction in accordance with these provisions.

The administrative sanctions are: disciplinary warning, recording a demerit, recording a big demerit, reducing to a lower rank, reducing to a lower post, discharging from post, expelling but continuing to employ under watch, expelling.

"Article_3 . [If a functionary is convicted of the crime of embezzlement, misappropriation of public funds, or bribery], he shall receive a sanction from discharge from post to being expelled."

In general, the amount of the punishment depends upon the amount taken illegally. Articles 4, 6, 7, 8.

The following merit heavier punishments:

"(1) A person who takes the main responsibility in a joint embezzlement;

"(2) A person who refuses to mend his ways despite admonition;

"(3) A person who extors or accepts a bribe in a foreign transaction;'

"(4) A person who embezzles or misappropriates funds and materials allocated for disaster relief, emergencies, flood control, care of disabled servicemen and the families

of revolutionary martyrs and servicemen, social relief, and epidemic prevention;

"(5) A person who causes the interests of the state to suffer great losses;

"(7) commits other illegal acts in the course of committing the embezzlement, misappropriation or bribery.

Compare the sanction levied on Jiang Ziwen, in the case reported in the Beijing Review (supra, p. xx) (removal from office suggested rather than criminal proceedings "because his illegal gains were not large enough to merit his case being handled by the procurate"). Consider also the following (CHINA DAILY 17 April 1989, p. 4 :

Public outcry over grain ticket fraud

The people of northeastern Jilin Province are outraged by a local government's handling of the case of a city official caught selling grain tickets intended for disaster relief.

Wang Xuezheng, a Party member and head of the Civil Affairs Bureau of Da'an city, made 71,617 yuan selling tickets worth 389,000 kilograms of grain which were donated by people in the province and allotted to the city by provincial and regional civil affairs departments in 1987.

China Youth News reported over the weekend that the local government and its disciplinary inspection commission decided only to record an administrative demerit against Wang last month, and issue him a warning from the Party.

When Jilin Daily publicized the case, it received many letters and telephone calls from local people protesting the light punishment.

"We don't want this kind of Party member freed of charges," said one letter from a group of Party members.

"It is people like Wang who have greatly damaged the reputation of our Party. Power is more powerful than the law and officials protect each other. We wonder how our leaders feel after hearing the case," the letter said.

Da'an city is frequently hit by disasters and receives large donations of money, supplies and grain tickets every year from the State.

According to China Youth News, 1,700 yuan in grain tickets was diverted by Wang into the bureau's "small treasury" and spent freely on dinners and banquets.

Another 23,000 yuan was diverted to a shop where most of the assistants were children of the bureau's employees, the report said.

The remaining 36,917 yuan was given to a social welfare factory employing handicapped people, also under the Civil Affairs Bureau, according to the report.

In addition, the bureau diverted 11,800 yuan allotted by the State as disaster relief, the report said, adding that Wang himself borrowed 3,100 yuan to buy a colour TV set for a relative. (CD News)

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C. Improving inputs into the criminal justice system.

The criminal justice system does not usually start itself. With few exceptions, it waits for a complaint from a citizen. It seems especially difficult when the crime does not have a victim who will likely report. Neither party to an act of prostitution will likely report it; or an act of gambling; or an act involving the sale of illegal drugs. That is true also of some sorts of corruption, especially bribery. Embezzlement and speculation, however, has victims and sometimes witnesses. China has devised a useful device to encourage these to report instances of corruption to the procurators.

(Li Li)

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Public Tip-Offs Aid Drive Against Corruption

38 Beijing Review 46:4

Since China's first corruption report centre was opened by the Shenzhen Municipal People's Procuratorate in Guangdong earlier this year, another 200 have sprung up across the country. Acting on tip-offs from the public, they have already handled more than 40,000 cases of corruption, embezzlement, bribery and other crimes. In addition to clamping down on illegal activities, their very effectiveness has played a positive role in the supervision of officials and the promotion of clean government.

* * * *

The corruption reporting system has been one of the country's responses to the problem, along with measures to strengthen China's legal system, oversee the strict enforcement of laws and impose Party and administrative discipline. To ensure the system works effectively, the government,

the Party and the judiciary have acted in unison. On June 29 the Supreme People's Procuratorate opened its anti-corruption telephone hotlines, and the chief and deputy chief procurators demanded daily reports on progress. On August 4, the Ministry of Supervision established a series of corruption report centres to handle information and charges of administrative breaches of the law or discipline.

* * * *

The public have proved enthusiastic participants in the crime reporting system. When the Guangzhou Municipal People's Procuratorate opened its centre on June 1, people queued up outside the gate to pass on information before it started work. The Shanghai Procuratorate's centre handled 1,937 cases within its first 48 days, and the Ministry of

Supervision's hotline received an average of 44 calls a day in its first 13 days of operation.

Among the many problems exposed have been: official abuse of power for personal gain, acceptance of bribes, bureaucratism, dereliction of duty, the protection and cover-up of corrupt officials, and infringements on citizens' rights. The guilty have included leading officials, Party members and legal personnel.

The overwhelming majority of the information has come from cadres, workers, sales clerks and residents, but perhaps the most significant tips have been provided by accountants, treasurers, entrance guards and drivers — many of whom gave eyewitness reports of illegal acts. Most of the informants supplied their names, work units and addresses, and said that in protecting the interests of the state they were not afraid of retaliation.

To process the information provided by the public, China's procuratorial bodies have organized special teams. The Supreme People's Procuratorate issued a special circular in October urging procuratorial bodies to handle cases based on public information. This has raised the public's confidence in the system — as have some of the major cases that

have been uncovered and prosecuted. Between June and September, the Linfen Municipal Procuratorate in Shanxi Province recovered around 50,000 yuan by pursuing reports of 22 economic crimes. Acting on a series of tip-offs, Wuxi Municipal Procuratorate in Jiangsu Province uncovered one case of embezzlement involving 500,000 yuan of public funds.

Between March and August, Shenzhen, Guangzhou and Shantou in Guangdong Province

investigated 183 reports of malfeasance. Although 30 have been placed on file for further investigation, already several hundred thousand yuan's worth of goods have been recovered and activities costing the state 7 million yuan have been stopped.

Following this opening round of success, the problem facing China's anti-corruption drive is how to maintain momentum. A national corruption reporting work conference held in Shanghai in mid-October both summarized major achievements of the past year and drew up some guidelines for future development. Various suggestions were made, including adjustments in procuratorial bodies, strengthening the quality of their personnel, new methods of handling cases and processing information, the protection of informants' rights and the prevention and punishment of frame-ups.

If these measures cannot be satisfactorily incorporated into the work of China's corruption report centres, popular confidence and enthusiasm is likely to be dampened. To avoid this, the Supreme People's Procuratorate is currently drawing up a set of regulations on the People's Procuratorate's corruption reporting work aimed at standardizing investigatory procedures across the country.

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TEMPORARY REGULATIONS ON ADMINISTRATIVE SANCTIONS FOR
EMBEZZLEMENT [ETC.], (supra)

"Article___12 Lighter punishment, mitigated
punishment or exemption from punishment may be given under
any of the following circumstances:

* * * *

(2) If the accused voluntarily confesses his act of
embezzlement, misappropriation or bribery, and returns the
funds and articles that he gained through embezzlement,
misappropriation or bribery and other illegal means;

"(3) if after offering a bribe, he voluntarily
confesses it before the crime is exposed;

"(4) if he exposes or reports another person's act of
embezzlement, misappropriation or bribery, and reflects the
true facts.

"Article_17 If a person contributes to the denouncing
or exposing of the act of embezzlement or bribery, he
shall be praised or given a material reward by the Ministry
of Supervision or a competent authority."

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d. ~~4~~. Preventing official retaliation for reporting corruption. (a) The Party "Regulations on Handling Reports, Accustations and Appeals" provided in part as follows:

"People outside the Party have rights to institute reports and accusations against party members or party organizations, and Party members have rights to file appeals within the Party, and these rights should be protected. The documents embodying these reports and accustations should not be given to the accused person for processing. The person who instituted the report or accustaion or appeal shall not be obstructed or stifled. Persons who retaliate against the person initiating a report or accusation shall be dealt with seriously."

The procurator announced on several occasions that a person could use the "hot line" anonomously.

TEMPORARY REGULATIONS ON ADMINISTRATIVE SANCTIONS FOR EMBEZZLEMENT [ETC].

"Article 11. Heavier punishment shall be given under any of the following circumstances:

* * * *

"(6) To a person who falsifies, destroys evidence or impedes another to confess his crime or who retaliates against reporters, accusers, witnesses and persons handling the case; . . . "

e. New Implementation Institutions: The Ministry of Supervision.

30 Beijing Rev. 39:8 (1987) New Ministry Fights Corruption

China's Ministry of Supervision, which was abolished in 1959, has been restored. Its mandate is to combat corruption, bribery, dereliction of duty and the leaking of confidential economic information to foreigners.

The supervision will begin in central government departments and big enterprises, particularly those with frequent contacts with foreign companies.

* * * *

Wei said inspections by the ministry will focus on contracts signed

between Chinese and foreign companies which are "obviously unfavourable to China."

People who commit embezzlement or bribery or betray confidential information to foreigners will be severely punished, no matter who they are, the minister said.

The ministry plans to draft an anti-corruption law, an administrative law and provisional regulations regarding rewards for government employees who expose malpractice and penalties for those who abuse their authority. Currently, Yang said, it is hard to distinguish the purview of the ministry from that of the Ministry of Justice or the Party's Central Disciplinary Inspection Commission. He said his ministry will co-operate with the other two in investigating violations of the constitution, administrative regulations or Party discipline.

The Ministry of Supervision will monitor government officials, leading cadres and employees in ministries, administrative departments and enterprises, as well as leaders in provincial governments. Chinese managers and employees working for joint ventures will also be included, Wei said.

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Li Li, "China's Battle Against Corruption" 39 Beijing Rev. 2:16 (1989)

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In the current efforts to clean up government work, supervisory departments have become an important force. The Ministry of Supervision was originally formed in the early 1950s, only to be abolished towards the end of the decade when the CPC's centralized leadership over government affairs was emphasized.

During the process of reform over the past decade, there has been growing agreement that the Party should exercise less of a role in government administration. As a result, the need to re-establish the Ministry of Supervision became ever more evident, until it was set up again in July 1987. Its goal is to ensure clean government, prevent corruption, improve and strengthen administrative work and raise the efficiency of administrative organs.

As a result, its main tasks involve exercising supervision over administrative departments, leaders of enterprises and institutions under state administrative organs in the implementation of state policies, laws and decrees, as well as investigating and handling legal and disciplinary violations. It also is responsible for checking economic contracts signed with other countries, and handling breaches of the law involving corruption in China's overseas dealings.

f. Making prosecution easier:

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TEMPORARY REGULATIONS ON ADMINISTRATIVE SANCTIONS FOR
EMBEZZLEMENT [ETC]

"Article 13 If the property or expenditures of a
functionary in a state administrative organization is
obviously in excess of his legal income and the difference
is large, he may be ordered to explain its sources. If he
cannot show that its sources are legal, the excess portion
shall be regarded as illegal income and he shall be given an
administrative sanction by the unit to which he belongs or
the senior competent authority, and that excess portion
shall be confiscated.

"The money a functionary in a state organization
deposits outside the country shall be declared in accordance
with the regulations. If he hides the facts of the deposit
but the amount is not large and the circumstances mitigate
the offence, he shall be given an administrative sanction by
the unit to which he belongs or the senior competent
authority, according to the circumstances."

g. Roundabout measures: Curbing official speculation. (18)

31 Beijing Rev 31:7(1988)

In a bid to curb the practice of profiteering in an official way, the General Office of the Party Central Committee and the State Council jointly issued on July 21 a circular calling for the disbanding of government office-backed, profiteering-oriented companies.

The circular said Party and government institutions and public officials are strictly forbidden from engaging in business.

A clear distinction must also be made between corporations designated to perform certain administrative functions from those of a purely business nature, according to the circular.

Party and government institutions will be banned from drawing funds from corporations or enterprises to supplement their own expenditures.

Apart from joint ventures and private undertakings, the establishment of new corporations will be suspended, the circular said. ■

31 Beijing Rev ~~44~~: 28

It is no use trying to bring bureaucrat profiteering under control by merely issuing a document or order. This only causes a few small companies to be stopped as an example. Solution of the entire problem calls for

reform of the economic and political structure. Enterprises must be separated from the government. At the same time, the economic order must be based on the rule by law rather than "rule by man."

(August 5, 1988)

e. Miscellaneous measures.

* * * *

The people's government of the Shenzhen Special Economic Zone decided that from July leading government officials should regularly make public their assets, incomes and expenditures to allow supervision by the people. Government officials whose private property obviously surpasses their legal incomes will be investigated and dealt with seriously if no reasonable explanations can be furnished.

[The Shanghai]

municipal government also laid down eight stipulations on improving the government's style of work. The stipulations include the standard for banquets given in honour of Guests which should be kept simple with four dishes and one soup, the number of personnel accompanying the guests should be strictly controlled. Dinner parties for ordinary foreign guests should also follow this form in accordance with foreign affairs regulations. Leading cadres inspecting work or conducting investigations at the grass-roots level should take visitors' meal at the canteen and pay for them; the standard meal is limited to one dish and one soup. While participating in activities or attending meetings, they should neither offer nor accept gifts; they should neither accept nor offer samples and gifts in the name of trying out, appraising or testing a product. When at meetings held by municipal government organization, no officials are allowed to present gifts to participants; when it is difficult to reject the gifts, officials may accept them and then hand them over to the units concerned. Gifts presented in the course of foreign affairs activities should be handled according to relevant foreign affairs regulations.

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The industrial, commercial, taxation, housing management and electricity supply departments under the local government of Fuyang Prefecture in Anhui Province indiscriminately imposed taxes and charges on the masses engaging in industry and commerce, under various pretexts, in violation of state tax laws. Refusal to pay met with random fining. The money collected went into the small treasury of

departments concerned and lined the pockets of a few individuals. Very little was handed over to state treasury. After a clean-up and reorganization, standard values of conduct have been applied to the government departments; taxes and charges are now collected by the industrial and commercial administrative departments according to unified rules and regulations. The people are more satisfied with the reasonable burden now placed on them and the state has increased its tax revenue through the elimination of loopholes.

* * * *

There are three ways for China to maintain clean government; (1) By establishing necessary rules and regulations. (2) By overseeing through legal means, Party and government disciplines and supervision. (3) By strengthening education and raising the ideological qualities of cadres. Perseverance with these approaches will produce fruitful results.

QUESTIONS

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How adequate are the measures that China has initiated to curb corruption? What other measures would you recommend? To answer those questions, you should consider

(1) the explanations for bribery, embezzlement and speculation, both generally and concerning China; and

(2) the various techniques tried elsewhere in the world.