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CHINA'S WAR ON GRAFT: POLITICO-LEGAL CAMPAIGNS AGAINST CORRUPTION IN CHINA AND THEIR SIMILARITIES TO THE LEGAL REACTIONS TO CRISIS IN THE U.S.

Benjamin van Rooij[†]

Abstract: In the last two decades, China organized political campaigns to fight corruption. Such campaigns led to an increased prosecution of high-profile cases involving high-level officials. Perceived corruption in China, however, has not decreased as a result, because the campaigns failed to address widespread lower-level incidents. China's political campaigns against corruption—the politico-legal campaigns—are an example of the use of political methods to enhance the legal system. China has organized several politico-legal campaigns to promote public awareness of legal issues and combat crimes, including illegal drug trade, copyright infringements, and environmental violations. The Chinese politico-legal campaigns show that China needs its effective laws to support government policies. A comparative analysis shows that there is a similar need for effective laws in the United States, especially in times of crises. Such effective laws usually come at the cost of sacrificing the formal-rational legal limits on governmental actions. Now that China is trying to establish the rule of law and the U.S. still faces crises related to drugs, crime, and terrorism, both countries face similar challenges in balancing their effective laws with the rule of law principle, and may learn from each other's experience.

I. INTRODUCTION

A man explains how he stole a rubber eraser when he was ten years old: "It was white and soft with the smell of an apple." As the camera zooms out, we now see a man sitting on a bench with a sign indicating that he is the accused. He goes on to explain how ashamed he felt when his father discovered the theft and punished him with a yard-stick. The camera zooms out to wide-angle and we now see the man sitting in court while judges are listening to his testimony. He explains that he is charged with accepting two million RMB, equivalent to approximately two hundred thousand U.S. dollars, in bribes. "Two million," he sighs, "such a huge amount . . . that is what I took with my own hands. Never once did I think it was something extraordinary or something I shouldn't do. It gave me nothing near the excitement and stress of stealing the eraser when I was ten." The man continues to explain that, as the former head of the municipal finance department, he has nothing to add except that he cannot believe how he could have changed so much from the ten-year-old kid who was greatly embarrassed for stealing an eraser. He confesses: "If

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the two million was an eraser, then I can admit to you that I stole it.” The scene ends with his wife bursting into the courtroom as the man is sentenced to death for corruption-related crimes.¹

This was the first scene of China’s popular television drama *Da Faguan* (Big Judge). This drama, co-produced by the Supreme People’s Court, served as a tool for propagating the rule of law in China. It is no coincidence that the first issue the series dealt with was corruption. Corruption has not only threatened the development of the legal system, it has posed a challenge to the legitimacy of the Chinese Communist Party (“CCP”). Since 1979, under the leadership of Deng Xiaoping and Jiang Zemin, the pillars of legitimacy were economic development and social stability, which were closely connected to the fight against corruption. With the recent power transition from Jiang Zemin to Hu Jintao on September 19, 2004, the new leader seems even more determined than his predecessors to emphasize the corruption problem. As an editorial in the *New York Times* put it: “Broadly speaking, Mr. Hu is seen as embracing the idea that China needs to focus more on populist social problems, like corruption, health care, income inequality and environmental pollution, while Mr. Jiang has often spoken about the importance of maintaining a high rate of economic growth as the first priority.”²

Over the years, the message has been clear: those who take bribes will be punished and may even lose their lives. It is the same message that Chinese media conveys regularly when it reports on the progression of the ongoing anti-corruption campaigns. In these campaigns, officials found guilty of corruption-related crimes receive harsh sentences. Harsh punishment and, in some cases, execution of well known or high-ranking officials and businessmen are handed down in an attempt to cure the country’s corruption problem. This Article looks at these anti-corruption campaigns as one of the methods used in China to fight corruption.

This Article begins in Part II with an introduction to the concept of corruption, especially as it is used in China. Part III introduces the campaigns against corruption and analyzes their trends in relation to national policies. Then in Part IV, the Article compares such campaigns with other politico-legal campaigns in China to shed some light on the roles political pressure and legitimacy play in the development of law. Finally, Part V reviews several cases in which law has been used as a political tool to deal with national crises in the U.S. They will help us

¹ Based on Episode One of *Da Faguan*, a dramatized television show broadcast by Chinese Central TV in 1999. For a later book based on this television show, see HONGSEN ZHANG, *DA FAGUAN [BIG JUDGE]* 1-4 (2000).

² Joseph Kahn, *China’s 2 Top Leaders Square Off in Contest to Run Policy*, N.Y. TIMES, Sept. 2, 2004, at A3.

understand the influence of politics on law and the relationship between the rule of law and the need for effective law.

II. CORRUPTION IN CHINA: DEFINITIONS, TRENDS AND CAUSES

Since the reform period, the saying "to get rich is glorious" has come to replace Mao's communist utopia for many Chinese.³ The dark side of China's rush for gold has been the rampant corruption.⁴ As one Chinese writer commented cynically, "[t]he religion of the Chinese today is cheating, deceit, blackmail, and theft . . . We think any honest, humble gentleman as a fool and regard any good person who works hard and demands little in return an idiot."⁵ One analyst described China's corruption using an analogy of Mao's comment that "revolution is not a dinner party."⁶ He writes that "for the rich and corrupt officials, the reform has literally been a 'dinner party.'"⁷ A survey reveals that in 1992 alone about US \$18 billion of public funds was spent on dinner parties.⁸

One could ask whether spending public money on dinner parties is corruption. Any discussion of corruption will generate this kind of question. It is therefore important to take a closer look at how corruption is defined. Chinese official terminology essentially defines corruption as "the use of public authority and public resources for private interests."⁹ This is very broad and can be read to include all sorts of activities. In China's 1997 Criminal Code we find further detail on the types of corruption. First there is the general definition of graft which the code defines as "State personnel who take advantage of their office to misappropriate, steal, swindle or use other illegal means to acquire state properties."¹⁰ The Code then further details several types of graft; first is embezzlement (*tanwu*). Embezzlement occurs when "State personnel take advantage of their office and misappropriate public funds for personal use or illegal activities or misappropriate large amounts of

³ Cheng Li, *Revolution Is No Dinner Party But China's Reform Is, Officials Grow Rich at Public Expense*, CNN.COM, at <http://edition.cnn.com/specials/1999/china.50/red.giant/communism> (last visited Apr. 17, 2005).

⁴ Zengke He, *Corruption and Anti-corruption in Reform China*, 33 COMMUNIST AND POST-COMMUNIST STUDIES 243 (2000).

⁵ GEREMIE R. BARMÉ, IN THE RED: ON CONTEMPORARY CHINESE CULTURE 265-66 (1999) (quoting Xin He, *Gudu yu Tiaozhan—wode fendou yu sikao [Loneliness and Challenge—My Struggle and Reflection]*, 10 ZIXUE ZAZHI (1988)).

⁶ Li, *supra* note 3.

⁷ *Id.*

⁸ *Id.*

⁹ He, *supra* note 4, at 244.

¹⁰ ZHONGHUA RENMIN GONGHEGUO XINGFA HUIBIAN [CRIMINAL CODE OF THE PEOPLE'S REPUBLIC OF CHINA] art. 382 (1997) [hereinafter CHINESE CRIMINAL CODE]. An English translation of China's 1997 Criminal Code is available at <http://www.qis.net/chinalaw/prclaw60.htm#Chapter%20VIII2> (last visited Apr. 17, 2005).

public funds without returning the money within three months.”¹¹ The second is accepting bribes (*shouhui*), which occurs when “State personnel take advantage of their office to demand money or things from other people or if they illegally accept money or things from other people in return of favors.”¹² Accepting bribes also includes activities where “State personnel in their economic operation accept various kinds of kickback and handling fees for their personal use in violation of state provisions.”¹³ Finally, the Criminal Code provides that the crime of offering bribes (*huilu*) occurs when a person “gives state functionaries articles of property in order to seek illegitimate gains.”¹⁴

China’s definition of corruption as misuse of public authority for private interests is very similar to the definition used by Transparency International, the global corruption watchdog. This organization has been monitoring corruption worldwide using its Corruption Perceptions Index (“CPI”). This index is based on surveys carried out by a number of independent institutions throughout the world. The CPI ranks countries “in terms of the degree to which corruption is perceived to exist among public officials and politicians.”¹⁵ The CPI defines corruption as “the abuse of public office for private gain.”¹⁶ This Article uses the Chinese and the CPI definitions for corruption as working definitions.

Because the definition used in the CPI is very similar to the one used by the Chinese government, the CPI is especially useful in analyzing corruption in China. Table 1 contains the CPI data on China for approximately the last twenty years.¹⁷ In the CPI index, the lower the score, the higher the amount of perceived corruption.

¹¹ *Id.* art. 384.

¹² *Id.* art. 385.

¹³ *Id.* art. 385(2).

¹⁴ *Id.* art. 389.

¹⁵ TRANSPARENCY INT’L, FREQUENTLY ASKED QUESTIONS: TI CORRUPTION PERCEPTIONS INDEX (CPI 2004), available at http://www.transparency.org/cpi/2004/cpi2004_faq.en.html (last visited Apr. 17, 2005).

¹⁶ Johann Graf Lambsdorff, 2002 *Corruption Perceptions Index*, in TRANSPARENCY INT’L, GLOBAL CORRUPTION REPORT 2003 at 262 (2003), available at <http://www.globalcorruptionreport.org/gcr2003.html#download> (last visited Apr. 17, 2005).

¹⁷ He, *supra* note 4, at 246; Lambsdorff, *supra* note 16, at 264-65; TRANSPARENCY INT’L, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2003, available at <http://www.transparency.org/cpi/2003/cpi2003.en.html> (last visited Apr. 17, 2005); TRANSPARENCY INT’L, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2002, available at http://www.transparency.org/pressreleases_archive/2002/2002.08.28.cpi.en.html (last visited Apr. 17, 2005); TRANSPARENCY INT’L, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2001, available at <http://www.transparency.org/cpi/2001/cpi2001.html> (last visited Apr. 17, 2005); TRANSPARENCY INT’L, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 2000, available at <http://www.transparency.org/cpi/2000/cpi2000.html> (last visited Apr. 17, 2005); TRANSPARENCY INT’L, TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEX 1999, available at <http://www.transparency.org/cpi/1999/cpi1999.html> (last visited Apr. 17, 2005).

Table 1: Corruption Perception Index of China 1980-2003¹⁸

	1980-1985	1988-1992	1995	1996	1997	1998	1999	2000	2001	2002	2003
Score	5.13	4.73	2.16	2.43	2.88	3.5	3.4	3.1	3.5	3.5	3.4
Rank	n.a.	n.a.	40	50	41	52	58	63	57	59	66
Survey No.	1	3	4	9	6	10	11	11	10	11	13
Total Countries	n.a.	n.a.	41	54	51	85	99	90	91	102	133

Table 1 illustrates the historical development of China's CPI scores. These scores illustrate a slight increase in perceived corruption after 1985 and especially since 1992. Then from 1995 to 1998, there is a slight decline in corruption followed by a relatively stable period between 1998 and 2003 with relatively little fluctuation in perceived corruption.

These data are in line with other findings on China's corruption. Most inquiries into this issue show that corruption has spread since the reform period.¹⁹ Some authors try to determine the origin of this development.²⁰ Their findings indicate a linkage between corruption and the development of market economy.²¹ Examples show that this created a dual price mechanism that differentiated the high market prices of the private sector from the low prices of the public sector.²² Other examples indicate that China's market reform led to an influx of foreign investment which created graft opportunities.²³ The second cause of corruption that has been identified is the relatively slow increase in public officials' incomes as compared to those of managers in state-owned or private enterprises.²⁴ The third cause is the weak regulatory system that allowed corruption to grow.²⁵ Part of the problem within the regulatory system was the factional conflict at the top and the increase of local autonomy throughout the regulatory system.²⁶ The fourth cause is the incomplete political reform that resulted in a lack of checks and balances, lack of independence of anti-corruption agencies, and lack of societal actions against corruption.²⁷ This is partially related to the rapid increase of administrative expenditure—around 474% between 1980 and 1990. As officials gained more discretion and controlled more resources, they were

¹⁸ *Id.*

¹⁹ Of course pre-reform China also knew corruption. For a good analysis of this subject, see XIAOBO LÜ, *CADRES AND CORRUPTION, THE ORGANIZATIONAL INVOLUTION OF THE CHINESE COMMUNIST PARTY* (2000).

²⁰ He, *supra* note 4, at 243-270; LÜ, *supra* note 18, at 154-257; Kin-man Chan, *Corruption in China: A Principle-Agent Perspective*, in *HANDBOOK OF COMPARATIVE ADMINISTRATION IN THE ASIA-PACIFIC BASIN* 299-324 (Hoi-kwok Wong & Hon S. Chan eds., 1999).

²¹ He, *supra* note 4, at 248-51; LÜ, *supra* note 18, at 190; Chan, *supra* note 19, at 308.

²² He, *supra* note 4, at 248-51; Chan, *supra* note 19, at 310.

²³ Chan, *supra* note 19, at 308.

²⁴ He, *supra* note 4, at 251.

²⁵ *Id.* at 251-53.

²⁶ Chan, *supra* note 19, at 311-14.

²⁷ LÜ, *supra* note 18, at 156-57; He, *supra* note 4, at 253-54.

exposed to an increasing number of corruptive opportunities.²⁸ The fifth cause is a lack of ethics against corruption due to the changes in ideology (from class struggle to economic development), the failure to ethically educate the officials, and the lack of “commercial morality in economic life.”²⁹ This means that old ethics linked to communist ideology have become obsolete, while new market-related ethics have yet to develop in society.³⁰ Finally, some authors have linked post-Mao corruption to the Chinese culture: a tradition of absolutist personal rule on the one hand, and the importance of personal networks, reciprocity, and gift giving on the other.³¹ Lü emphasizes that corruption in China is unique because it is more organized and less individual. He writes:

Rent-seeking and graft exist in many societies. What characterizes such activities in contemporary China under reform is the widespread rent-seeking activities by government agencies and public units. It is not uncommon for a policeman in the United States to be found guilty of extortion or of accepting bribes. What is rare is for police departments to run their own businesses (some of which involve prostitution and drugs) and to extort payments as a unit. Corruption in the post-Mao reform has become more pervasive, as evidenced in the fact that official corruption takes place both at the individual level and the organizational level—that is, illicit actions are taken not by single individuals or by collusion among individuals, but by a public agency to achieve material gains for the agency as a whole through the use of its power.³²

Scholars and writers outside of China have also studied the cause of corruption, mostly in order to find out ways to fight against it. The most famous study on the causes and methods of fighting corruption was done by Klitgaard based on the experiences of an anti-corruption program in the Philippines.³³ Klitgaard developed a “stylized” formula to describe some of the main causes of corruption and to help find solutions:

Corruption = Monopoly + Discretion – Accountability³⁴

²⁸ Chan, *supra* note 19, at 309.

²⁹ Lü, *supra* note 18, at 162-64; He, *supra* note 4, at 254-55.

³⁰ Lü, *supra* note 18, at 162-64; He, *supra* note 4, at 254-55.

³¹ Lü, *supra* note 18, at 175-88; He, *supra* note 4, at 255-56.

³² Lü, *supra* note 18, at 201.

³³ ROBERT KLITGAARD, CONTROLLING CORRUPTION (1988).

³⁴ *Id.* at 75.

This formula implies that corruption results from excessive monopoly and discretion and too little accountability in the public sector.³⁵ In order to fight corruption, therefore, the accountability needs to be enhanced while monopoly and discretion are reduced.³⁶ The formula can be used to design anti-corruption strategies.³⁷ Fighting corruption entails structural reforms of the public service, which will lead to less monopoly and discretion, and more accountability. It also means that the fight against corruption needs law enforcement to improve its accountability and subject its discretionary powers not just to formal rules—by, for example, clarifying the relevant laws—but also to actual limitations by implementing such laws within the administrative structure.³⁸ A United Nations Development Programme report summarizing the experiences of global efforts against corruption found that anti-corruption strategies combine three components: “enforcement of law, prevention through institutional reforms, and mobilisation of the population.”³⁹ States may implement such strategies in a variety of ways including structural changes.⁴⁰ Changing the public service system (to allow for job rotation, higher salaries, and evaluations), initiating reforms that will allow the public to participate in the decision-making process, legalizing the freedom of the press, setting up independent anti-corruption institutions, and training the public servants are some of the examples of anti-corruption measures.⁴¹ States also employ curative measures mainly in the form of anti-corruption campaigns as part of their efforts to fight against corruption.⁴² In China, this last method—fighting against corruption through anti-corruption campaigns—has been an important aspect of the anti-corruption strategy.

³⁵ *Id.*

³⁶ *Id.*

³⁷ ROBERT KLITGAARD ET AL., *CORRUPT CITIES: A PRACTICAL GUIDE TO CURE AND PREVENTION* 26-28 (2000).

³⁸ This is “real discretion” based on Davis’s definition of a public official’s discretion as a situation in which “the effective limits on his power leave him free to make a choice among possible courses of action or inaction.” K.C. DAVIS, *DISCRETIONARY JUSTICE: A PRELIMINARY ENQUIRY* 4 (1969).

³⁹ Sahr K. Kpundeh & Irene Hors, *Overview*, in *CORRUPTION & INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES* 11-12 (United Nations Development Programme (UNDP) & OECD Development Centre eds., 1998).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Daniel Kaufmann, *Revisiting Anti-Corruption Strategies: Tilt Towards Incentive-Driven Approaches?*, in *CORRUPTION & INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES*, *supra* note 38, at 63-64.

III. CHINESE ANTI-CORRUPTION CAMPAIGNS REVEAL THE STRATEGY OF PROSECUTING HIGH-PROFILE CASES WHILE NEGLECTING MINOR ONES

The Chinese media's rapidly growing coverage on corruption since the 1990s shows a trend of stricter sentences as well as an increase in the level of the officials prosecuted through the campaigns. Data provided by the Supreme People's Procurate in their annual report to the National People's Congress ("NPC") indicate, however, that the total number of prosecuted cases has fluctuated, even though prosecution of major cases has continuously increased during the same period. These trends reveal that there has been a political choice to direct both media attention and anti-corruption efforts toward highly visible major cases, while decreasing efforts against widespread corruptive practices on the lower levels. Consequently, the perceived level of corruption did not decrease.

A. *Two Hands: Corruption Campaigns in the 1980s Were the First Start in the Fight Against Graft*

In the 1980s, the central leadership of China understood the growing urgency of the corruption problem and initiated a program against it. In 1982, Deng said: "We have two hands, one to uphold our policy of opening up to the outside and stimulating the economy, and the other to uphold our crackdown on economic crimes."⁴³ Subsequently, in March 1982, the Standing Committee of the National People's Congress ("SCNPC") launched a campaign to impose severe punishments (*yanzheng*) on serious economic crimes. In 1988, the SCNPC issued a special statute on corruption-related crimes and for the first time⁴⁴ in the 1980s, the words "corruption" and "bribery" were used in the campaigns instead of the catch-all concept "economic crimes" that is more neutral and less politically sensitive.⁴⁵ The new SCNPC statute⁴⁶ provided the

⁴³ Supreme People's Court, *Zuigao Renminfayuan he Zuigao Jianchayuan Fezeren Jiu Fabu Guanyu Tanwu Shouhui Toujidaoba deng Fanzuifenzi Bixu zai Xianqinei Zishou Tanbaide Tonggao Da Xinghuashe Jiazhe Wen* [Responsible Persons of the Supreme People's Court and Procurate Answer Questions to Xinhua News Agency on the Issuing of the Notice that Criminals Who Engage in Crimes Such as Corruption, Accepting Bribes and Speculation and Profiteering Must Voluntarily Surrender and Confess Within a Limited Time], 19 GAZETTE OF THE SUPREME PEOPLE'S COURT 5 (1989).

⁴⁴ In the 1950s, there were several anti-corruption campaigns. See Ye Feng, *The Chinese Procurates and the Anti-Corruption Campaigns in the People's Republic of China*, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA 113-17 (2002).

⁴⁵ See Supplementary Regulations on Suppression of Corruption and Bribery, Standing Committee of the National People's Congress (Jan. 21, 1988) [hereinafter Supplementary Regulations]. The present Criminal Code, which was revised in 1997, has two sections related to corruption: Chapters VIII and IX of Part Two of the Code. Arts. 382-396 concern crimes of embezzlement and bribery, while arts. 397-419 concern crimes of dereliction of duty. CHINESE CRIMINAL CODE, *supra* note 10.

definitions of corruption-related crimes and the scope of relevant punishments. It specified the general regulations on corruption laid down in the old criminal code by defining the specific types of corruption and prescribing punishments for each type. In 1989, the Supreme People's Court ("SPC") and the Supreme People's Procurate ("SPP") initiated their first campaign against corruption, which set a time limit of two and a half months for individuals guilty of corruption to come clean and confess. Those who did so would get lighter punishments for their crimes.⁴⁷ During this short campaign, courts, procurates, police, and supervisory departments cooperated with each other and coordinated their activities. They organized internal study sessions to enhance their awareness of corruption issues and cooperated closely with local party leaders in order to strengthen the campaign. Efforts were made to involve the public through the use of public media and propaganda. Courts published model decisions through the media. Courtrooms became open to the public.⁴⁸

This campaign was the result of the Fourth Plenum of the Thirteenth Chinese Communist Party ("CCP") Congress, which was mainly dedicated to the Tiananmen Student Protests. Chinese leadership realized that corruption was one of the main issues that sparked the protests and that needed to be resolved. The Congress made the fight against corruption "an important task."⁴⁹ Jiang Zemin, the head of State at that time, declared:

Our fight against economic crime and corruption is not only a rigorous economic fight, it is also a political struggle involving the life and death of our country⁵⁰ . . . This is a long, hard and difficult struggle . . . We should make full use of the people's courts and make those courts pay close attention to their long-term task of cracking down on economic crimes.⁵¹

⁴⁶ Supplementary Regulations, *supra* note 44.

⁴⁷ Supreme People's Court, *Zuigao Renminfayuan Zuigao Jianchayuan Guanyu Tanwu Shouhui Toujidaoba deng Fanzuifenzi Bixu zai Xianqinei Zishou Tanbaide Tonggao* [Supreme People's Court and Supreme People's Procurate Notice That Criminals Who Engage in Crimes Such as Corruption, Accepting Bribes and Speculation and Profiteering Must Voluntarily Surrender and Confess Within a Limited Time], 19 GAZETTE OF THE SUPREME PEOPLE'S COURT 3 (1989).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Jiang repeated this phrase in a later speech in 1997 in which he said that if corruption could not be tackled the party would lose the trust and support of the masses. See ZEMIN JIANG, LUN YOU ZHONGGUO TESI SHEHUI ZHUYI [ON SOCIALISM WITH CHINESE CHARACTERISTICS] 428 (2002).

⁵¹ Jianxin Ren, *Guanyu renminfayuan Guanche Zhixing Liangyuan "Tonggao" de Qingkuang Baogao* [Report on the People's Courts Implementation of the SPC and PPC "Notice"], 20 GAZETTE OF THE SUPREME PEOPLE'S COURT 8 (1989).

In total, the campaign dealt with 5167 cases and punished 7913 people. In order to show the people the seriousness of this campaign, it focused on large cases involving more than 10,000 RMB. Courts and procurates paid special attention to building factually sound cases and producing sufficient evidence of the crimes. At the end of this campaign, the SPC and the SPP produced a report of the progress they had made and the lessons they learned from it.⁵² Even though results were said to be good, the success of the campaign was not uniform throughout the nation—the report stated that some localities made far less efforts than others in fighting against corruption.

B. Executing Figureheads: Campaigns in the 1990s and the New Millennium Focused on High-Profile Cases

In 1995, Jiang Zemin initiated a new anti-corruption drive urging people to fight corruption. This served as a boost to the fight against corruption. A crackdown on corruption in the Jilin Province illustrates this point at the provincial level.⁵³ In one year, the provincial authorities handled a total of 1018 major cases of bribery involving over ten thousand RMB and of embezzlement of over fifty thousand RMB. Fifteen of the cases involved amounts over one million RMB. According to the Report, the public participated by providing complaints and reports on corruption incidents that led to a total of 13,994 investigations. The focus of the crackdown, however, was on the major cases. A comparison with the earlier campaigns demonstrates that, even at the provincial level, the amount required for a corruption case to qualify as a major one made a giant leap—from ten thousand to one million RMB.

Around the time of the Fifteenth Party Congress in 1997, anti-corruption fighting shifted to the next gear. By that time the levels of involved officials, the amounts of bribes, and the sentence periods imposed upon those guilty of corruption crimes had increased dramatically. In September 1997, the former mayor and party secretary of Beijing, Chen Xitong, who was also a Politburo member, became the subject of investigations on corruption-related charges. An internal party investigation found that he had “accepted and embezzled a large number of valuable items, and had squandered a large amount of public funds to support a corrupt and decadent life.”⁵⁴ His prosecution and later sentence

⁵² *Id.* at 8.

⁵³ *Annual Statistics from Jilin Provincial Procurate*, BBC SUMMARY OF WORLD BROADCASTS: ASIA PACIFIC, FE/2645 S1/1 (June 22, 1996) (referring to ‘Excerpts’ of *Jilin Provincial People’s Procurate Work Report Given by Chief Procurator Li Xiangwu at the Fourth Session of the Eighth Provincial People’s Congress on 4th February, JILIN RIBAO*, Feb. 18, 1996).

⁵⁴ *The Corrupt Comrade*, BBC NEWS, July 31, 1998, available at <http://news.bbc.co.uk/2/hi/asia-pacific/143163.stm> (last visited Apr. 17, 2005).

of sixteen years caused quite a shock. He was the highest ranking official to be prosecuted in court since the Gang of Four in 1976.⁵⁵ Even though lower level officials had received death sentences in similar cases before, many did not consider the death penalty an option because of Chen's seniority. On the other hand, there were arguments for a heavy penalty to appease the general public.⁵⁶

Chen Xitong's case was the first in a series of prosecutions brought against high-ranking officials on corruption charges. Whereas Chen was sentenced to just sixteen years in prison, those who followed him received more severe treatment from the courts. In March 2000, the former deputy governor of Jiangxi Province and former senior official of the State Council, Hu Changqing, was executed on corruption-related charges. He was said to have taken bribes of about US \$660,000 and received US \$200,000 worth of property in exchange for business licenses and travel permits to Hong Kong.⁵⁷ He was further accused of bribing others to improve his career path.⁵⁸ At the time, Hu was the highest-ranking government official ever to be sentenced to death on corruption-related charges⁵⁹—a record soon to be broken. Around the time of Hu Changqing's execution, corruption charges were brought against another high level official: Cheng Kejie, vice chairman of the NPC.⁶⁰ His corrupt activities came to light when an anti-corruption investigation team investigating a case involving the deputy-mayor in Guangxi Province received a telephone call by a senior Guangxi leader requesting to call off further investigations. Instead of following this request, the investigating team managed to get the Supreme People's Procurate in Beijing to send its own team to the Province to continue the investigation. Their work brought forward proof of how Guangxi Province had become one of China's most corrupt provinces under Cheng Kejie's leadership involving not only the former governor himself, but many other senior officials.⁶¹ Cheng himself allegedly received US\$ 41 million in bribes and illegal kickbacks.⁶²

At the same time, China's Premier, Zhu Rongji, made an urgent call to crack down on corruption while addressing the NPC. He said:

⁵⁵ *Chinese Court Dismisses Corruption Appeal*, BBC NEWS, Aug. 20, 1998, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/154608.stm> (last visited Apr. 17, 2005).

⁵⁶ *The Corrupt Comrade*, *supra* note 53.

⁵⁷ Duncan Hewitt, *Top Chinese Official Executed*, BBC NEWS, Mar. 8, 2000, available at <http://news.bbc.co.uk/2/hi/asia-pacific/669917.stm> (last visited Apr. 17, 2005).

⁵⁸ *Chinese Official Sentenced to Death*, BBC NEWS, Feb. 15, 2000, available at <http://news.bbc.co.uk/2/hi/asia-pacific/643607.stm> (last visited Apr. 17, 2005).

⁵⁹ *Id.*

⁶⁰ Editorial, *Warning Signal*, SOUTH CHINA MORNING POST, Aug. 1, 2000, available at LEXIS, Nexis Library, ALLNWS file.

⁶¹ Mark O'Neil, *How Cheng Built China's Most Corrupt Province*, SOUTH CHINA MORNING POST, Aug. 1, 2000.

⁶² *Id.*

“We still fall far short of what the central authorities require of us and what the people expect of us and [China] must take more effective measures and make unremitting efforts to fight corruption and build a clean and honest government.”⁶³ Nearly half a year later, Cheng Kejie’s punishment was changed from a suspension to the death penalty. He was executed shortly afterwards.⁶⁴ Xinhua News Agency reported:

The crimes he committed as a senior official seriously damaged the normal working order of government institutions, tarnished the clean and honest image of government workers and discredited the fine reputation of government officials, and thus should be harshly dealt with by law.⁶⁵

The presiding judge at Cheng’s trial was quoted in Xinhua as saying, “the death penalty was justified because it served as a full demonstration of the principle ‘all are equal before the law,’ as stated in the Constitution.”⁶⁶ Cheng Kejie’s mistress, who conspired in her lover’s corrupted activities, received a life sentence. She escaped the death penalty by helping the prosecution against Cheng Kejie and helping the state to recover public funds.⁶⁷

In 2000, another big case involving high level leadership shocked the country. In Xiamen, a port city in China, the Yuanhua trade group, led by Lai Chengxing, allegedly smuggled goods with a total value of US \$6.83 billion, evading US \$3.6 billion in taxes between 1996 and 1999. They were able to do so by bribing a large number of officials of key departments, including the customs and the port office. Several high level officials were implicated, the highest of whom was Li Jizhou, the former Vice-Minister of Public Security.⁶⁸ The People’s Daily wrote: “Li . . . had a daughter in the United States. Lai immediately mailed US \$500,000 to Li’s daughter and offered one million RMB to Li’s wife when he learned her plans to start a business.”⁶⁹ The first round of trials started in September 2000. At least two hundred suspects were brought

⁶³ *Chinese Premier Urges Crackdown on Corruption: Deputy Governor To Be Executed*, CNN.COM, Mar. 5, 2000, available at <http://edition.cnn.com/2000/ASIANOW/east/03/04/china.politics.03> (last visited Apr. 17, 2005).

⁶⁴ Yan Meng, *Prosecutors "To Step Up Corruption Fight,"* CHINA DAILY, Mar. 12, 2003, available at http://www.chinadaily.com.cn/en/doc/2003-03/12/content_157606.htm (last visited Apr. 17, 2005).

⁶⁵ O’Neil, *supra* note 60.

⁶⁶ *Id.*

⁶⁷ Vivien Pik-Kwan Chan & Willy Wo-Lap Lam, *Mistress of Disgraced Top Cadre Gets Life*, S. CHINA MORNING POST, Aug. 10, 2000, at 8.

⁶⁸ *Details of Xiamen Smuggling Case Exposed*, PEOPLE’S DAILY, July 26, 2001, available at http://english.people.com.cn/english/200107/25/eng20010725_75780.html (last visited Apr. 17, 2005).

⁶⁹ *Id.*

before judges in five cities in Fujian. By November, the courts sentenced fourteen officials to death for accepting bribes. The officials sentenced to death included high-level cadres such as Xiamen customs chief Yang Qianxian, Xiamen deputy mayor Lan Fu, and deputy police chief of Southern Fujian Province, Zhuang Rushun.⁷⁰ In December 2000, a second round of trials brought almost a hundred new suspects before the judges of five Fujian courts. On October 22, 2001, Li Jizhou, former Deputy Minister of Public Security, received a death sentence with a two year suspension by a Beijing court.⁷¹

While the courts and the prosecutors actively pushed for rigid punishments for high-level officials, state authorities outside the judiciary system made use of popular media and mass mobilization techniques to strengthen the campaign's effectiveness. In August 2000, Chinese officials at all levels were ordered to go to the cinema to see "Life and Death Choice." This was a new movie "depicting the battle of an honest mayor against corruption in the Communist party including his own wife and one of his best friends." According to reports, viewers in Beijing spontaneously applauded during a preview screening.⁷² Another example of the mass mobilization efforts were corruption exhibitions. In August 21, 2000, for example, just after Cheng Kejie was sentenced to death and while he was still appealing his sentence, the Beijing Military Museum organized an exhibition called "Beijing City Strikes Hard and Guards Against Economic Crimes." During this exhibition, the museum showed corruption-related materials such as seized evidence, video footage of illegal activities, court proceedings, propaganda posters, and legal documents. There was also a special display for Cheng Kejie's case.⁷³ A similar exhibition was organized in Xiamen in relation to its smuggling case.⁷⁴ It was even reported that several travel agencies had been organizing an "anti-corruption tour" to visit the Xiamen exhibition.⁷⁵

⁷⁰ *China Sentences 14 Officials to Death in Graft Case*, CNN.COM, Nov. 9, 2000, available at <http://edition.cnn.com/2000/ASIANOW/east/11/08/china.corruption/index.html> (last visited Apr. 17, 2005).

⁷¹ *Former Deputy Public Security Minister Sentenced to Death*, PEOPLE'S DAILY, Oct. 23, 2001, available at http://english.people.com.cn/english/200110/23/eng20011023_82949.html (last visited Apr. 17, 2005). Suspension means that the execution of the death penalty will be delayed two years, according to § 48 of the Chinese Criminal Code of 1997. See *supra* note 11.

⁷² Duncan Hewitt, *Chinese Cinema Mobilised Against Corruption*, BBC NEWS, Aug. 19, 2000, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/887210.stm> (last visited Apr. 17, 2005).

⁷³ *Hundreds Flock to Witness Crime Exhibition*, SOUTH CHINA MORNING POST, Aug. 21, 2000, at 8.

⁷⁴ *Investigation into Biggest Smuggling Case Put on Display*, PEOPLE'S DAILY, Aug. 28, 2001, available at http://english.people.com.cn/english/200108/28/eng20010828_78545.html (last visited Apr. 17, 2005).

⁷⁵ Rose Tang, *China Turns Corruption into Tourist Attraction*, CNN.COM, Aug. 27, 2001, available at <http://edition.cnn.com/2001/WORLD/asiapcf/east/08/27/china.tourism> (last visited Apr. 17, 2005).

In July 2001, Jiang Zemin, when addressing the party to celebrate its 80th anniversary, called for a stronger effort against corruption. "Party organisations and leading cadres at all levels must take a stand to oppose corruption," he said.⁷⁶ In March 2001, China's top legislator, Li Peng, followed suit when he also vowed to step up the fight against corruption months after the execution of the NPC's vice-chairman Cheng Kejie.⁷⁷ According to China Daily, in 2001 alone, the people's procurates throughout the country investigated more than 36,000 corruption cases and recovered US \$495 million worth of economic losses. There were 1319 cases involving more than one million RMB. Among the officials detained, there were 2670 officials at the county or higher levels, including six provincial or ministerial level officials.⁷⁸

The high profile cases reported by the media in 2001 included: Li Jizhou's involvement in the Xiamen smuggling; Wang Leyi, deputy director of the General Customs Administration, who was prosecuted for embezzlement and bribery;⁷⁹ Cong Fukui, former deputy-governor of Hebei Province, who was also prosecuted for bribery and, in 2003, sentenced to death with a two-year suspension;⁸⁰ Mu Suixin, Shenyang city's former mayor, who was sentenced to death with a two year suspension along with his deputy Ma Xiangdong;⁸¹ Wang Huaizhong, Anhui's deputy governor, who was prosecuted for graft-related crimes;⁸² and finally, Jiang Yanping, a former vice director of the Hunan Construction Engineering Co., who was sentenced to death for sexually seducing officials to advance her career and receiving bribery for a total amount of five million RMB. The verdict stated: "Not only was the amount of money involved in the corruption extremely large, the methods used were very cunning."⁸³ The decision further indicated: "Her crimes are indeed serious and justify severe punishment according to law."⁸⁴

⁷⁶ Fong Tak-ho, *Jiang Plan to Combat Corruption Questioned*, S. CHINA MORNING POST, July 2, 2001, at 4.

⁷⁷ Vivien Pik-Kwan Chan, *Li Peng Vows to Step Up Graft War: Chairman Warns Failure to Stamp Out Corruption Could Destroy Both Party and State*, S. CHINA MORNING POST, Mar. 10, 2001, at 7.

⁷⁸ *War on Corruption Continues*, CHINA DAILY, Mar. 12, 2002, available at <http://www.china.org.cn/english/archiven/28609.htm> (last visited Apr. 17, 2005).

⁷⁹ *GAC Vice Director Charged on Graft*, PEOPLE'S DAILY, Apr. 27, 2001, available at http://english.people.com.cn/english/200104/27/eng20010427_68766.html (last visited Apr. 17, 2005).

⁸⁰ *Week in Brief*, SHANGHAI STAR, May 1, 2003, available at <http://app1.chinadaily.com.cn/star/2003/0501/bz11.html> (last visited Apr. 17, 2005).

⁸¹ *Two Officials Sentenced to Death for Corruption Amid China's Resolve to Eliminate Fraud*, PEOPLE'S DAILY, Oct. 11, 2001, available at http://english.people.com.cn/english/200110/11/cng20011011_81999.html (last visited Apr. 17, 2005).

⁸² *China Strengthens Anti-Corruption Campaign in 2001*, PEOPLE'S DAILY, Dec. 31, 2001, available at http://english.people.com.cn/200112/31/eng20011231_87821.shtml (last visited Apr. 17, 2005).

⁸³ Clara Li, *Seductress to Die for Graft Crimes*, S. CHINA MORNING POST, July 25, 2001, at 7.

⁸⁴ *Id.*

While the anti-corruption campaign's prosecution of high-level officials made newspaper headlines in 2001, Chinese leaders continued to emphasize their commitment to the "anti-graft struggle." In 2002, the press reported that the Supreme People's Procurate issued a notice calling for a period of six months of concentrated effort on corruption-related crimes, which would be directed specifically towards verifying the decisions to prosecute cases. The prosecutors who had been lax in carrying out their duties (related to corruption) or, even worse, had aided corruption-related criminals were to receive criminal punishment.⁸⁵ In October 2002, weeks before the Sixteenth CCP Party Congress, the CCP "hailed the success of its ongoing anti-corruption campaign." It looked back upon the last five years and claimed that it had purged 780,000 cadres and reclaimed thirty billion RMB of stolen public funds.⁸⁶ The cadres were jailed, executed, or internally disciplined. Of the convicted cadres, approximately ten thousand were from division levels, seven hundred were departmental directors, and twenty-one were provincial or ministerial heads.⁸⁷ In February 2003, Wu Guanzheng, chairman of the CCP Central Commission for Discipline Inspection and member of the Politburo, urged members of his committee to work harder against corruption. His call came a month after the Politburo had decided that "officials at all levels should submit to public supervision." Mr. Wu is quoted as telling his committee members: "We must adhere to the rule of honesty and self-discipline," "harshly punish corrupt officials," and "deepen anti-corruption work within organizations and enterprises."⁸⁸

High-level corruption cases have continued to appear on the headlines ever since. For example, in 2002, Wang Xuebing, former head of the Bank of China, was expelled from the CCP on charges of accepting bribes and embezzlement.⁸⁹ Another prominent case involved Li Jiating, former governor of Yunnan Province. In May 2003, the Second Intermediate Court in Beijing sentenced him to death with a two-year suspension for abusing his public office and taking bribes amounting to over eighteen million RMB.⁹⁰

⁸⁵ Huanqing Wu, *Zuigao Renmin Jianchayuan Fachu Tongzhi Yaoqiu Yenli Daji Jingji Fanzui* [*The Supreme People's Procurate Issues a Decree on Striking Hard Against Economic Crimes*], XINHUA NET, Mar. 5, 2002.

⁸⁶ Vivien Pik-Kwan Chan, *Crackdown on Corrupt Cadres Hailed as Big Success*, S. CHINA MORNING POST, Oct. 15, 2002, at 11.

⁸⁷ *Id.*

⁸⁸ *Chinese Official Vows to End Corruption*, BBC NEWS, Feb. 18, 2003, available at <http://news.bbc.co.uk/2/hi/asia-pacific/2775771.stm> (last visited Apr. 17, 2005).

⁸⁹ *Senior Banker Expelled from Communist Party*, PEOPLE'S DAILY, Nov. 6, 2002, available at http://english.people.com.cn/200211/06/eng20021106_106322.shtml (last visited Apr. 17, 2005).

⁹⁰ *Yunnan Sheng Yuan Shengzhang Li Jiating Shouhui An Yi Shen Bei Pan Sihuan* [*The Former Governor of Yunnan Provinces Is Sentenced to Death With a Two-Year Reprieve for Accepting Bribes*], XINHUA NET, May 9, 2003, available at http://www.yn.xinhuanet.com/ynnews/zl/2003/szdl/xlym/news_001.htm (last visited Apr. 17, 2005).

C. *Anti-Corruption Campaign Data Show the Trend of Pursuing High-Profile Cases and Neglecting Minor Cases*

So far, this Article has examined the media coverage of the ongoing campaigns. The media portray the war on corruption as a successful way to fight corruption through extremely harsh punishment of high level officials. However, because the media mainly focus on the leadership's anti-corruption rhetoric and, more importantly, controversial cases involving the downfall of major officials, it may only provide a limited description of the anti-corruption campaigns. To provide a more valid overview, we need to discuss a number of other sources. This section analyzes the data on the development of anti-corruption campaigns provided by the Supreme People's Procurate's annual work reports to the NPC. While such data should be used with caution, it can provide useful insights on the overall implementation of the campaigns, including aspects overlooked by the media, as well as their historical developments. The data show an increase in the number of high-profile cases involving amounts over one million RMB, as well as cases involving county or higher officials. However, while the overall number of prosecuted cases grew at first, it has been dropping since 1997. Considered with the media coverage described *supra*, there seems to be a policy decision to prosecute more high-profile cases and fewer minor corruption offenses.

Table 2 below presents an overview of the available data analyzed in this article. It contains annual data on the campaigns as well as data published every five years at the end of the NPC's term.

Table 2: Anti-Corruption Campaign Data, 1988-2003⁹¹

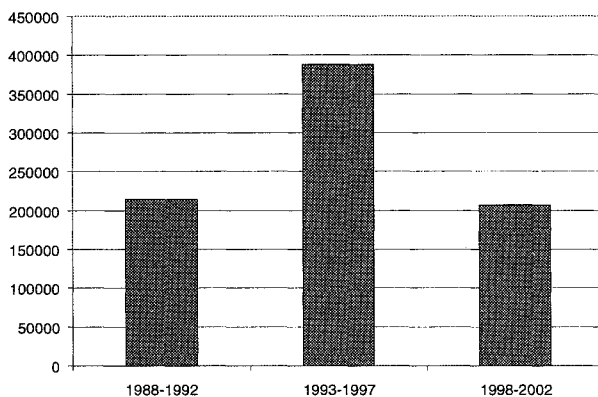
	1988-1992	1996	1993-1997	1998	1999	2000	2001	1998-2002
Cases Total	214,318	61,099	387,352	35,084	38,382	45,113	36,447	207,103
Major Cases	81	156	617	n.a.	n.a.	1,335	1,319	5,541
Officials County+	4,629	2,699	3,175	1,820	2,200	2,680	2,670	12,830
Officials Provincial	5	5	7	3	3	7	6	19
Money Recovered	2.6	6.8	23	4.4	4.1	4.7	4.1	22

The table presents the history of corruption cases prosecuted by the procurates. Figure 2 offers a graphic representation of the history including the three Five-Year Plan periods. The table indicates that during the five-year periods from 1988-1992 and 1993-1997, there have

⁹¹ The data presented in Table 2 is derived from the annual Work Reports of the Supreme People's Procurate (SPP) for the years 1989-2003. These reports are available in Chinese online and may be downloaded at <http://www.spp.gov.cn/baogao/> (last visited Apr. 17, 2005).

been considerable increases in the number of prosecuted cases.⁹² They seem to indicate that Jiang Zemin's repeated calls against corruption in the mid-1990s had an effect.⁹³ Another important factor in this period is the number of cases based on citizen complaints. The Supreme People's Procurate's annual reports provide information on the amount of public participation in the campaigns. According to the 1998 report, citizens made over 1.8 million reports on corruption related crimes between 1993 and 1998. More than 600,000 cases were investigated and approximately 268,710 of them were prosecuted.⁹⁴ That means nearly seventy percent of the prosecuted cases were initiated by citizen complaints. Reports on later years, unfortunately, do not provide data on citizen complaints.⁹⁵

Figure 1: Corruption Cases Prosecuted, 1988-2003⁹⁶



After 1997, a steep decline occurred in the number of prosecuted cases.⁹⁷ During the 1998-1992 period, the number of prosecuted cases decreased below those prosecuted during the 1988-1992 period. This seems to be contrary to the increased emphasis on fighting corruption expressed so often by the Chinese leadership in the media—as discussed above. To understand how an increased emphasis on fighting corruption can lead to a decrease in the number of cases handled, one must look at other data in Table 2.

Figure 2 provides more information and a possible explanation to the decline. It displays the data on the number of major cases, that is,

⁹² *Id.*

⁹³ *Id.*

⁹⁴ SIQING ZHANG, ZUIGAO RENMIN JIANCHAYUAN GONGZUO BAOGAO [SUPREME PEOPLE'S PROCURATE WORK REPORT], Mar. 10, 1998, available at <http://www.spp.gov.cn/webscripts/ReportRead.asp?ContentNumber=0&ReportDate=19980310> (last visited Apr. 17, 2005).

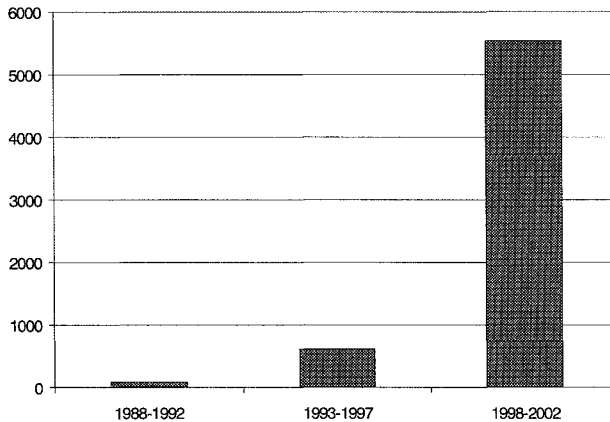
⁹⁵ See Work Reports of the Supreme People's Procurate, *supra* note 90.

⁹⁶ *Id.*

⁹⁷ *Id.*

those involving more than 100 million RMB. This figure shows that there has been a tremendous increase in prosecution of cases of that size. While the procurates scarcely dealt with such high-profile cases during the first period, they increased prosecutions during the second period. The real explosion in the prosecution of cases involving more than one million RMB, however, came after 1997.⁹⁸ This data, unfortunately, does not tell us whether the increased number of prosecutions implies a concomitant increase in the number of large corruption cases. It may indicate, however, the stronger political will to prosecute such large cases. It may be inferred from the development of anti-corruption politics that the top-level leadership, after realizing the urgency, had decided in the mid-1990s to pursue the prosecution of large cases and higher officials. Figures 3 and 4 provide further information that illustrates this shift. Figure 3 demonstrates that, following a decline in 1993-1997 and since 1998, there has been a sharp increase in cases involving cadre at county or higher levels. This trend is even more prominent for provincial level officials who were sparingly prosecuted before 1998.

Figure 2: Cases of Over 1 Million RMB Prosecuted⁹⁹



⁹⁸ *Id.*

⁹⁹ *Id.*

Figure 3: Officials at County Level or Above Prosecuted

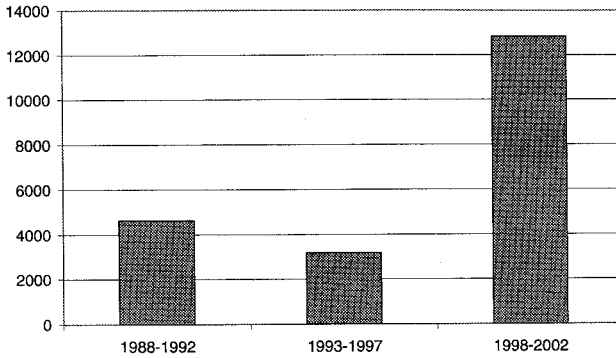
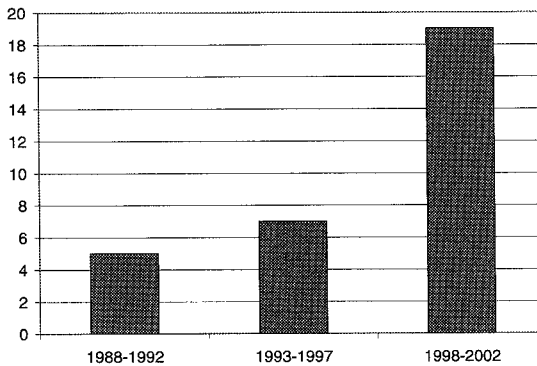
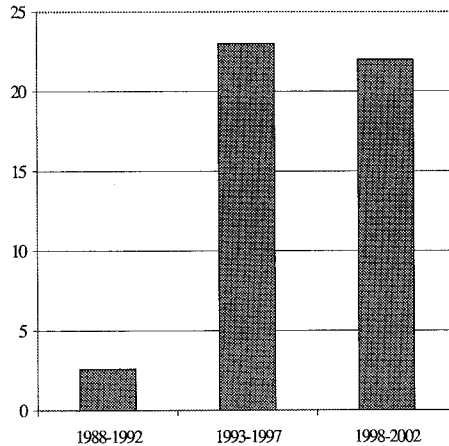


Figure 4: Officials at Provincial Level Prosecuted¹⁰⁰



Finally, Figure 5 shows that even though there have been fewer cases in the last five years than in the preceding period, the amount of money recovered by the campaigns declined only slightly.

¹⁰⁰ See Work Reports of the Supreme People's Procurate, *supra* note 90.

Figure 5: Total Amount of Public Funds Recovered (in billions RMB)¹⁰¹

In short, there has been a decrease in the total number of prosecuted cases, but an increase in the number of large cases involving higher level officials. The difficulty with further analysis lies in the fact that so far we do not know the nature of the link between prosecution and corruption. To understand the issue better, one must go back to the presentation of Transparency International's data in Table 1. Table 1 shows a sharp increase in perceived corruption after 1992. Then from 1995 to 1998, there is a slight decline in perceived corruption followed by a relatively stable period from 1998 to 2002.¹⁰² The CPI data can shed some light on the anti-corruption campaigns described above. First, there is some overlap between the decrease of perceived corruption during the 1995-1998 period and the increase in corruption cases prosecuted in the 1993-1997 period.¹⁰³ This means that the number of prosecuted cases may lead to a decrease in perceived corruption. However, as explained above, the strategy of prosecuting corruption cases changed. Since 1997, the strategy has been to prosecute fewer cases, focusing on cases involving large amounts and higher level officials. This change in strategy, which led to the prosecution of more cases involving 100 million RMB or more or high-level officials, does not seem to have led to a decrease in perceived corruption. Since 1997, perceived corruption slightly increased, only to return back to its 1997 level in 2001 and 2002.

¹⁰¹ *Id.*

¹⁰² See TRANSPARENCY INTERNATIONAL CORRUPTION PERCEPTIONS INDEXES, *supra* note 17.

¹⁰³ *Id.*

IV. ANTI-CORRUPTION EFFORTS ARE POLITICO-LEGAL CAMPAIGNS TO ENHANCE IMPLEMENTATION OF LAW

In this section we look how anti-corruption campaigns share many characteristics with other political campaigns aimed at enhancing the legal system. The analysis will demonstrate that short-term political pressure is the only way to achieve implementation of law in China, which has a system severely challenged by a high degree of autonomy exercised by local and functional power holders. It will also demonstrate that China's political legal campaigns can be a starting point for reevaluating the relationship between law and politics in general—even in more developed countries.

A. *Local Autonomy Poses Challenges to Law-Making and Implementation of Law in China*

As discussed *supra*, the Chinese national leadership used the legal system to organize anti-corruption campaigns. This is a good example of the use of the legal system as an instrument for achieving political goals.¹⁰⁴ One author points out that China's leadership recognised the need to strengthen the legal system in order to effectively fight corruption.¹⁰⁵ Anti-corruption campaigns, therefore, are also examples of a phenomenon which has not yet been comprehensively studied in China: the use of political methods and pressure to enhance implementation of law. To understand this phenomenon let us first take a brief look at the development of law in China since 1978 and how local and departmental autonomy poses challenges to it.

In 1978, China initiated a reform program. The development or redevelopment of the legal system constituted a central part of the reform. Whereas in the pre-reform PRC the most important normative systems were formed by CCP policy norms,¹⁰⁶ after 1978 national and local laws and regulations came to substitute and/or complement CCP and State policies. Legal reconstruction required legal institutions, including courts and the legal profession, to be developed and reinforced.¹⁰⁷ Reform has

¹⁰⁴ For analysis of the relationship between anti-corruption efforts and legitimacy, see Carolyn L. Hsu, *Political Narratives and the Production of Legitimacy: The Case of Corruption in Post-Mao China*, 24 *QUALITATIVE SOCIOLOGY* 25 (2001). Chen has emphasized the instrumental conception of law in China when describing China's legal development. See J. CHEN, *CHINESE LAW, TOWARDS AN UNDERSTANDING OF CHINESE LAW, ITS NATURE AND DEVELOPMENT* 41, 356-358 (1999).

¹⁰⁵ Yufan Hao, *From Rule of Man to Rule of Law: An Unintended Consequence of Corruption in China in the 1990s*, 8 *JOURNAL OF CONTEMPORARY CHINA* 402-425 (1999).

¹⁰⁶ Perry Keller, *Sources of Order in Chinese Law*, 42 *AM. J. COMP. LAW* 711, 719 (1994).

¹⁰⁷ For an overview of some of the problems of rebuilding such institutions, see William P. Alford, *Tasseled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers*, in *CHINA'S LEGAL REFORMS* 22 (Stanley B. Lubman ed., 1995); Donald C. Clarke,

been directed at enhancing the legal consciousness of the people in general. To achieve this, campaigns were organized to educate the people about their basic rights.¹⁰⁸ The culmination of legal reform was reached when Jiang Zemin, in his 1997 speech for the Fifteenth CCP Congress, announced his policy to govern the country based on law (*yifa zhiguo*), a notion which was subsequently codified in Art. 5 of the Chinese Constitution in the 1999 amendments.¹⁰⁹ What this notion and its codification will mean for China's legal development remains an important question. China's legal development has been problematic in several aspects. The Chinese legislation has been criticised for being too vague, inconsistent, and inadequate.¹¹⁰ Furthermore, several interrelated factors continue to hamper implementation of legislation: improving but still underdeveloped legal professionals¹¹¹ and legal education system;¹¹² weak judicial institutions lacking well-qualified staff,¹¹³ independence¹¹⁴ and integrity;¹¹⁵ a preference for extra-legal methods over litigation among the general public;¹¹⁶ and administrative institutions that lack rule of law consciousness and mix law, policy and political power.¹¹⁷ While

Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments, 10 COLUM. J. ASIAN L. 1 (1996); STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* (1999); RANDALL PEERENBOOM, *CHINA'S LONG MARCH TOWARD THE RULE OF LAW* (2002) [hereinafter PEERENBOOM, *LONG MARCH*]; Randall Peerenboom, *Law Enforcement and the Legal Profession in China, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA*, *supra* note 43, at 125 [hereinafter Peerenboom, *Legal Profession*].

¹⁰⁸ Mechthild Exner, *Convergence of Ideology and the Law: The Functions of the Legal Education Campaign in Building a Chinese Legal System*, ISSUES & STUDIES 68 (1995); Ronald J. Troyer, *Publicizing the New Laws: The Public Legal Education Campaign, in SOCIAL CONTROL IN THE PEOPLE'S REPUBLIC OF CHINA 70* (Ronald J. Troyer et al. eds., 1989).

¹⁰⁹ Jiang Zemin, LUN "SANGE DAIBIAO" [ON "THE THREE REPRESENTATIONS"] 326-29 (Beijing: Zhongyang Wenxian Chubanshe 2001).

¹¹⁰ Keller, *supra* note 105, at 711; PETER HOWARD CORNE, *FOREIGN INVESTMENT IN CHINA: THE ADMINISTRATIVE LEGAL SYSTEM* 95 (1997); Benjamin van Rooij, *The Enforceability of Chinese Water Pollution Regulations: What Room for Improvement?*, 43 CHINA PERSP. 40, 50 (2002); Peerenboom, *Legal Profession*, *supra* note 106, at 240; LUBMAN, *supra* note 106, at 149; TOWARD A GOVERNMENT BY LAW, THEORETIC STUDIES AND EMPIRICAL RESEARCH ON THE ADMINISTRATIVE RULE OF LAW 190 (ZOU XIANG FAZHI ZHENGFU, YIFA XINGZHENG LILUN YANJIU YU SHIZHENG DIAOCHA) (S. Ying & S. Yuan eds., 2001); William P. Alford & Benjamin L. Liebman, *Clean Air, Clean Processes? The Struggle over Air Pollution Law in the People's Republic of China*, 52 HASTINGS L.J. 703 (2001); Jan Michiel Otto & Yuwen Li, *An Overview of Law-Making in China, in LAW-MAKING IN THE PEOPLE'S REPUBLIC OF CHINA 1, 16-17* (Jan Michiel Otto et al. eds., 2000).

¹¹¹ Alford, *supra* note 106; PEERENBOOM, *LONG MARCH*, *supra* note 106, at 164-75.

¹¹² LUBMAN, *supra* note 106, at 151-52.

¹¹³ PEERENBOOM, *LONG MARCH*, *supra* note 106, at 281, 288-93.

¹¹⁴ *Id.* at 286, 294, 305, 306-7, 310-12, 318-19; LUBMAN, *supra* note 106, at 307.

¹¹⁵ PEERENBOOM, *LONG MARCH*, *supra* note 106, at 295.

¹¹⁶ LUBMAN, *supra* note 106, at 307.

¹¹⁷ YING & YUAN, *supra* note 109, at 482; Hongjun Gao, *Zhongguo Gongmin Quanli Yishi de Yanjin [The Awakening of Rights Consciousness Among Chinese Citizens]*, in ZOU XIANG QUANLI DE SHIDAI, ZHONGGUO GONGMIN QUANLI FAZHAN YANJIU [TOWARDS A SOCIETY OF RIGHTS: RESEARCH IN THE DEVELOPMENT OF CITIZEN'S RIGHTS IN CHINA] 105-6 (Yong Xia ed., 2000); Yuwen Li, *Court Reform in China: Problems, Progress and Prospects, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA*, *supra* note 43, at 57-69; Ethan Michelson, *Jufen Yu Falü Xuqiu: Yi Beijing de*

the law has penetrated many layers of the social life in China in which it previously had little or no impact, at the grass-roots level, the penetration has remained superficial.¹¹⁸

One of the major factors behind the problems of the legal system was the high level of local and departmental¹¹⁹ autonomy. In the early 1970s, after the chaotic period of the Cultural Revolution (1966-1969), local governments initiated a gradual process of change.¹²⁰ In 1978 the state's new leadership took over the process and turned it into a reform program.¹²¹ This introduced a number of changes to China's governance structure, which increased the autonomy of governmental actors at all administrative levels. First, economic reforms allowed the private sector to develop under close supervision of the local governments.¹²² This created local sources of production and revenue outside of the centrally controlled public sector.¹²³ Second, a change in the fiscal system effectively decentralized tax revenue, shifting "powers away from central government agencies to those at lower levels."¹²⁴ Third, the administrative entities went through a number of changes such as downsizing of the central state bureaucracy,¹²⁵ partial separation of the party and the state,¹²⁶ development of a professional and less ideological civil service system,¹²⁷ and decentralization of leadership appointments.¹²⁸ The professionalization of the bureaucracy, the decrease in ideology-based appointments, and the increase of local appointments¹²⁹ have decreased the vertical CCP party cohesion throughout different

Diaocha Wei Li [*Disputes and Legal Demand: Taking a Beijing Survey as a Case*], JIANGSU SHEHUI KEXUE [JIANGSU SOCIAL SCIENCE] 72-80 (2003).

¹¹⁸ H.L. Fu, *Shifting Landscape of Dispute Resolution in Rural China*, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 43, at 179-80.

¹¹⁹ "Local" here refers to geographical relative locality, such as a county in relation to a province, while "departmental" refers to a functional locality, such as different governmental departments at the provincial level.

¹²⁰ TONY SAICH, GOVERNANCE AND POLITICS OF CHINA 52-56 (2001); 1 LYNN T. WHITE III, UNSTATELY POWER: LOCAL CAUSES OF CHINA'S ECONOMIC REFORMS 13 (1998).

¹²¹ 1 WHITE, *supra* note 119, at 13.

¹²² SHIPING ZHENG, PARTY VS. STATE IN POST-1949 CHINA: THE INSTITUTIONAL DILEMMA 216 (1997).

¹²³ SAICH, *supra* note 119, at 52-54.

¹²⁴ *Id.* at 152. See also ZHENG, *supra* note 121, at 216.

¹²⁵ PEERENBOOM, LONG MARCH, *supra* note 106, at 205.

¹²⁶ ZHENG, *supra* note 121, at 212-15.

¹²⁷ Hong Yung Lee, *China's New Bureaucracy*, in STATE AND SOCIETY IN CHINA: THE CONSEQUENCES OF REFORM 56 (Arthur Lewis Rosenbaum ed., 1992); Caroline Haiyan Tong et al, *Civil Service Reform in the People's Republic of China: Case Studies of Early Implementation*, 19 PUB. ADMIN. & DEV. 193, 194 (1999); 2 LYNN T. WHITE III, UNSTATELY POWER: LOCAL CAUSES OF CHINA'S INTELLECTUAL, LEGAL AND GOVERNMENTAL REFORMS 485 (1998).

¹²⁸ Cheng Li & David Bachman, *Localism, Elitism, and Immobility: Elite Formation and Social Change in Post-Mao China*, 42 WORLD POLITICS 64, 87 (1989); John P. Burns, *China's Nomenklatura System*, PROBLEMS OF COMMUNISM 36, 37-38 & 40-41 (1987).

¹²⁹ Li & Bachman, *supra* note 127, at 86.

levels of administration, creating local and departmental autonomy.¹³⁰ Fourth, the central government set up a system of self-government at the rural grassroots level in 1987.¹³¹ During the 1990s, the officers at the self-government were increasingly elected democratically. In 1998 the new Organic Law on Village Committees further strengthened democratic elections at the village level. Even though the CCP party organization has remained central in village leadership, the system of self-government has led to a near autonomous grassroots structure of up to 900,000 villages.¹³² In the past, governments at the township level had direct vertical control over the village-level. Now villagers themselves choose their own leaders, and, as a result, villages are less vertically controlled.

These changes fragmented government power over different local governments and bureaus (fragmented authoritarianism),¹³³ creating a certain degree of local and departmental autonomy. Recent research, however, revealed some exceptions: for high-priority policies, including population control, economic development, and social stability, the vertical and horizontal relationships were strengthened through CCP party-responsibility systems and leadership bonus structures.¹³⁴ These systems motivate local leadership to achieve priority policy goals through job-performance-based incentives and sanctions.¹³⁵

Local and departmental autonomy had a dramatic impact on the legal system. First, it hampered national law making by bestowing bargaining power on various highly autonomous, influential provincial governments and central departments.¹³⁶ Second, autonomous local governments promulgated laws that conflicted with other (including

¹³⁰ 2 WHITE, *supra* note 126, at 510-11.

¹³¹ For an overview of this process, see Kevin J. O'Brien, *Villagers' Committees: Implementing Political Reform in China's Villages*, 32 AUSTL. J. OF CHINESE AFF. 33 (1994); Kevin J. O'Brien & Lianjiang Li, *Accommodating "Democracy" in a One-Party State: Introducing Village Elections in China*, 162 CHINA Q. 465 (2000); Tianjian Shi, *Village Committee Elections in China: Institutional Tactics for Democracy*, 51 WORLD POL. 385 (1999); Melanie Manion, *The Electoral Connection in the Chinese Countryside*, 90 THE AM. POL. SCI. REV. 736 (1996); Xu Wang, *Mutual Empowerment of State and Peasantry: Grassroots Democracy in Rural China*, 25 WORLD DEV. 1431 (1997); Liu Yawei, *Consequences of Villager Committee Elections in China: Better Local Governance or More Consolidation of State Power*, 31 CHINA PERSP. 19 (2000).

¹³² O'Brien & Li, *supra* note 130, at 472; Liu, *supra* note 130, at 19.

¹³³ Kenneth G. Lieberthal, *Introduction: The "Fragmented Authoritarianism" Model and Its Limitations*, in BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA 1, 6-12 (Kenneth G. Lieberthal & David M. Lampton eds., 1992).

¹³⁴ See Maria Edin, *State Capacity and Local Agent Control in China: CCP Cadre Management From a Township Perspective*, 173 CHINA Q. 35-52 (2003); Yasheng Huang, *Central-Local Relations in China During the Reform Era: The Economic and Institutional Dimensions*, 24 WORLD DEV. 655 (1996).

¹³⁵ Edin, *supra* note 133, at 35; Huang, *supra* note 133, at 24.

¹³⁶ For an interesting case study that shows this for the field of environmental law, see Alford & Liebman, *supra* note 109. For another case in which local interests and possible conflicts influenced the lawmaking towards more vagueness, see Peter Ho, *Who Owns China's Land? Policies, Property Rights and Deliberate Institutional Ambiguity*, 166 CHINA Q. 394 (2001).

higher) legislation.¹³⁷ According to Keller, "the expansion of legislative powers to so many central and regional state bodies has in effect brought the rivalries and disorder in the Chinese bureaucracy into the legislative structure."¹³⁸

Local autonomy also had an impact on the implementation of law.¹³⁹ Legal institutions such as the court and the procurate are funded and controlled by local governments, which are relatively autonomous from higher level governments.¹⁴⁰ This made the courts reluctant to implement laws that are unfavorable to their local governments' interests.¹⁴¹ Proof of this can be found in the fact that citizens who appeal local government decisions in court have a very slight chance of winning.¹⁴² Furthermore, for many regulation type pieces of legislation, it is not the courts, but the administrative agencies that act as implementing authorities. Because of this broad local autonomy, different parts of the bureaucracy have followed their own interests, and in some cases have chosen not to implement the law in question, but only pretend that they do so. Environmental law is a good example of an area in which local governments shirk implementing the law by using their relatively strong autonomy in order to protect their local interests.¹⁴³

B. *Politico-Legal Campaigns Are Organized to Overcome Problems in the Legal System*

Since the beginning of the post-Mao legal reform program, China's leadership has made use of political pressure to enhance its legal system, which is increasingly troubled by local autonomy. These political campaigns overcame local resistance and achieved unusual success in implementing the law. For instance, in 2001 the police of Sichuan, China's largest province with nearly one hundred million residents,

¹³⁷ PEERENBOOM, LONG MARCH, *supra* note 106, at 256-57; Keller, *supra* note 105, at 733.

¹³⁸ PEERENBOOM, LONG MARCH, *supra* note 106, at 256-57.

¹³⁹ Clarke, *supra* note 106, at 41-9; LUBMAN, *supra* note 106, at 302-4.

¹⁴⁰ For an overview of the literature on court independence, see PEERENBOOM, LONG MARCH, *supra* note 106, at 298-318.

¹⁴¹ See *id.* at 314-15.

¹⁴² Minxin Pei, *Citizens v. Mandarins: Administrative Litigation in China*, 152 CHINA Q. 832 (1997).

¹⁴³ Benjamin Van Rooij, *Implementing Chinese Environmental Law through Enforcement: The Shiwu Xiao and Shuangge Dabiao Campaigns*, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 43, at 149 [hereinafter Van Rooij, *Implementing Law Through Enforcement*]; Benjamin Van Rooij, *Environmental Law Enforcement In Sichuan: Organization and Procedure in Comparative Perspective*, 17 CHINA INFO. 36 (2003) [hereinafter Van Rooij, *Environmental Law Enforcement*]; Benjamin Van Rooij, *Implementation of Chinese Environmental Law: Regular Enforcement, Political Campaigns and Insights for Law and Development*, in DEVELOPMENT AND CHANGE 4 (forthcoming 2005) (manuscript on file with author) [hereinafter Van Rooij, *Implementation of Environmental Law*].

solved 6706 crimes and apprehended 19,446 people, in just six days.¹⁴⁴ Furthermore, between 1986 and 1990, approximately 640 million people in China received education on its ten basic laws, including the constitution, criminal law, civil law, marriage law, and succession law.¹⁴⁵ On August 13, 2003, forty-two million pirated CDs were destroyed throughout China.¹⁴⁶ In the summer of 1996, China closed down around 60,000 heavily polluting small enterprises.¹⁴⁷ On June 26, 1996, the International Day against Drug Abuse and Illicit Trafficking designated by the United Nations General Assembly, it was reported that around 1.75 million people attended public rallies organized by the courts that convicted 1725 criminals for drug-related crimes.¹⁴⁸ These seemingly unrelated events share common characteristics. They are all short-term political campaigns aimed at enhancing the effectiveness of the law—politico-legal campaigns.

There have basically been two types of campaigns. The first type is aimed at enhancing law enforcement through command and control type methods. The most famous examples were the Strike Hard campaigns¹⁴⁹ that imposed severe punishments upon criminals. These campaigns attracted international attention because of the large number of death penalties they brought—especially the last one in 2001.¹⁵⁰ So far there have been three large-scale Strike Hard campaigns—the first in 1983, the second in 1996, and the third that started in 2001. These campaigns focused on harsh punishment of severe crimes. At the same time there have been many smaller Strike Hard campaigns against specific types of crimes, such as drug-related crimes in 1991, illegal border-crossing in 1993, and car theft in 1998.¹⁵¹ There have also been

¹⁴⁴ AMNESTY INT'L, CHINA: 'STRIKING HARDER' THAN EVER BEFORE, July 6, 2001, available at <http://web.amnesty.org/library/index/ENGASA170222001> (last visited Apr. 17, 2005).

¹⁴⁵ Cheng Cai, *Dui 'Guanyu Shenru Kaizhan Fazhi Xuanchuan Jiaoyu de Jueyi (Caoan)' de Shuoming [Explanation to the (Draft) Opinion on Deepening and Developing Legal System Propaganda and Education]*, 645 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [GAZETTE OF THE PRC STATE COUNCIL] 195 (1991).

¹⁴⁶ Liu Weifeng, *Huge Haul of Discs Destroyed*, CHINA DAILY, Aug. 13, 2003, at 1.

¹⁴⁷ Van Rooij, *Implementing Law Through Enforcement*, supra note 142, at 171.

¹⁴⁸ *Over One Million Attend Anti-drugs Rallies*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, June 28, 1996 (translating a June 26, 1996 report by Xinhua News Agency).

¹⁴⁹ For an overview of the earlier strike hard campaigns, see generally HAROLD M. TANNER, *STRIKE HARD! ANTI-CRIME CAMPAIGNS AND CHINESE CRIMINAL JUSTICE 1979-1985* (1999).

¹⁵⁰ AMNESTY INT'L, ONE THOUSAND EXECUTED IN "STRIKE HARD" CAMPAIGN AGAINST CRIME, July 2, 1996, available at <http://www.amnesty.it/news/1996/31707196.htm> (last visited Apr. 17, 2005); AMNESTY INT'L, CHINA: "STRIKE HARD" ANTI-CRIME CAMPAIGN INTENSIFIES, July 23, 2002, available at <http://web.amnesty.org/library/Index/ENGASA170292002?open&of=ENG-CHN> (last visited Apr. 17, 2005); AMNESTY INT'L, supra note 143; AMNESTY INT'L, PEOPLE'S REPUBLIC OF CHINA: SERIOUS HUMAN RIGHTS VIOLATIONS AND THE CRACKDOWN ON DISSENT CONTINUE, Sept. 1, 2002, available at <http://web.amnesty.org/library/index/ENGASA170472002> (last visited Apr. 17, 2005).

¹⁵¹ Supreme People's Court, *Zuigao Renminfayuan Guanyu Yangde Zhixing (Quanguo Renmin Daibiao da Hui Changwu Weiyuanhui Guanyu Jindu de Jueding) Yanzheng Dupin Fanzui Fenzi de Tongzhi [Supreme People's Court Notice on Strictly Implementing the SCNPC Decision on Banning Drugs and Strictly Punishing Drug Related Criminals]*, 25 GAZETTE OF THE SUPREME PEOPLE'S COURT

campaigns similar to the Strike Hard campaigns, but directed towards other violations of law, that is, those that did not fall under ordinary crimes. For example, there were campaigns against the Falun Gong,¹⁵² copyright violation campaigns,¹⁵³ campaigns against illegal internet cafés (after the explosion of an internet bar in 2002),¹⁵⁴ and, finally, campaigns against environmental law violations.¹⁵⁵

The second type of politico-legal campaigns are campaigns directed towards either enhancing the legal system as a whole, or just the implementation of a single law through dissemination of legal knowledge and raising people's awareness. The most important campaign of this sort is the *Pufa* (legal dissemination) campaign, which aimed to educate the Chinese public about various laws. This five-year campaign has been organized four times since 1986.¹⁵⁶ It provided basic legal education to most Chinese. As early as 1989, one author noted that "[j]ust about every Chinese citizen has been involved with or exposed to this campaign."¹⁵⁷ A special type of legal education and awareness campaign, the *Pufa* campaign implemented the 1987 Organic Law on Village Committees (OLVC, amended in 1998). During several rounds of the campaign, the Ministry of Civil Affairs publicized this law and used public pressure to overcome the local cadres' resistance to its implementation.¹⁵⁸

10 (1991); Supreme People's Court, *Zuigao Renminfayuan Guanyu Yanlidaji Toudu Fanzui Huodong de Tongzhi* [Supreme People's Court Notice on Striking Hard Against Illegal Border Crossing], 36 GAZETTE OF THE SUPREME PEOPLE'S COURT 147 (1993); Supreme People's Court et al., *Zuigao Renmin Fayuan Zuigao Jianchayuan Gonganbu Guojia Gongshang Xingzheng Guanliju Guanyu Yinfa (Guanyu Yifa Chachu Daoqie Qiangjie Jidongche Anjian de Guiding) de Tongzhi* [SPC, SPP, PSB and SBIC Notice on the Issuing of the Regulation on the Robbery and Theft of Motor Vehicles], 55 GAZETTE OF THE SUPREME PEOPLE'S COURT (1998).

¹⁵² HUMAN RIGHTS WATCH, DANGEROUS MEDITATION: CHINA'S CAMPAIGN AGAINST FALUNGONG 21, 27-28, 34, 36, 40 (2002).

¹⁵³ *Campaign Against Software Piracy*, CHINA DAILY, Oct. 18, 2001, available at http://www.chinadaily.com.cn/en/doc/2001-10/18/content_89092.htm (last visited Apr. 17, 2005); *Authorities Taking "Stern Action" Against Copyright Pirates*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, May 12, 1996 (translating a May 11, 1996 report by Xinhua News Agency); *Beijing Police Make "Largest-ever" Illegal CD Seizure*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, May 12, 1996 (translating a May 9, 1996 report by Xinhua News Agency); *Police Ordered to Crack Down on Piracy of Copyrights*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, May 24, 1996 (translating a May 24, 1996 report by Xinhua News Agency) [hereinafter *Police Ordered to Crack Down*]; *USA, China Avert Trade War Over Copyright*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, June 17, 1996 (translating a June 17, 1996 report by Xinhua News Agency); Wang Ying, *Campaign Against Pirated Products Intensifies*, CHINA DAILY, Aug. 17, 2001; Jamila Zhou, *Anti-counterfeit Move Threatens Silk Alley*, S. CHINA MORNING POST, May 11, 2001.

¹⁵⁴ Lokman Tsui, *The Panopticon as the Antithesis of a Space of Freedom: Control and Regulation of the Internet in China*, 17 CHINA INFO. 65, 71 (2003).

¹⁵⁵ Van Rooij, *Implementing Law Through Enforcement*, supra note 142, at 169-177; Van Rooij, *Implementation of Environmental Law*, supra note 142, at 7-9.

¹⁵⁶ For an overview of the earlier campaigns, see Troyer, supra note 107, at 70-83; Exner, supra note 107, at 68-102.

¹⁵⁷ Troyer, supra note 107, at 70.

¹⁵⁸ Jinchi Gu, *Yifa Zuohao Cunweihui Huanjie Xuanju (Tanyuan yu Sikao)* [Implementing the Next Round of Village Committee Elections Based on Law (Causes and Ideas)], PEOPLE'S DAILY, Apr. 10, 2002; MINISTRY OF CIVIL AFFAIRS, XINBAN "ZHONGHUARENMIN GONGHEGUO CUNMIN

C. *Anti-Corruption Campaigns Are a Type of Politico-Legal Campaign*

China's politico-legal campaigns share common characteristics. First, political power starts to support the law during the campaigns.¹⁵⁹ Whereas in certain cases bureaucratic or local resistance would normally make implementation of the law impossible, the political pressure of the campaign ensures results, at least temporarily.¹⁶⁰ It is not yet entirely clear how this works, but it is plausible to assume that the aims of the campaign (such as implementation of certain laws and regulations) become part of the policy priorities that form the basis on which bureaucratic leadership gets evaluated, rewarded and disciplined through the cadre responsibility and the civil service systems.¹⁶¹

Second, in some cases, political power holders start the campaign by changing the existing legislation to allow for stricter enforcement.¹⁶² For example, during the first Strike Hard campaign in 1983, the Criminal Code was amended to allow for more "severe punishments, including the death sentence, on offenders who cause grave harm to public order."¹⁶³

WEIYUANHUI XUANJU GUIZHANG" JINRI CHUBAN [TODAY WE PUBLISH A NEW EDITION OF THE "PRC MEASURES ON VILLAGE COMMITTEE ELECTIONS"], available at http://news.xinhuanet.com/zhengfu/2001-11/29/content_139360.htm (last visited Apr. 17, 2005). For an overview of the literature on earlier campaigns and elections, see O'Brien, *supra* note 130, at 33-59; O'Brien & Li, *supra* note 130; Shi, *supra* note 130; Manion, *supra* note 130; Xu, *supra* note 130; Liu, *supra* note 130.

¹⁵⁹ XIAOPING DENG, DENG XIAOPING WENXUAN DISAN JUAN [SELECTED WORKS OF DENG XIAOPING, VOLUME 3] 33 (1993); Meng Yan, *Criminal Gangs Targeted in Strikes*, CHINA DAILY, Nov. 24, 2001; O'Brien & Li, *supra* note 130; *Public Security Minister Urges Learning from Guangdong on Serious Crime Cases*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, May 30, 1996 (translating Chou Lang-jo, *Tao Siju Urges Various Localities to Learn from Guangdong's Experiences in Swiftly Striking Heavy Blows at Major Cases*, WEN WEI PO); *Luo Urges Continuation of "Strike-Hard" Campaign*, CHINA DAILY, July 20, 2003, available at http://www.chinadaily.com.cn/en/doc/2003-07/20/content_246461.htm (last visited Apr. 17, 2005); *President Hu Calls for Efforts in "Strike-Hard" Campaign*, Xinhua News Agency, June 28, 2003, available at <http://test.china.org.cn/english/China/68372.htm> (last visited Apr. 17, 2005); Gu, *supra* note 157; State Council, *Guowuyuan guanyu Huanjing Baohu ruogan Wenti de Jueding* [State Council Decision on Several Problems Concerning Environmental Protection], ENVIRONMENTAL WORK NEWS REPORT (1996); *Police Ordered to Crack Down*, *supra* note 152; *Politburo Member Hu Jintao Calls for Broad Participation in Crime Crackdown*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, May 6, 1996 (translating a report by Xinhua News Agency); Ying, *supra* note 152; Van Rooij, *Implementing Law Through Enforcement*, *supra* note 142, at 170; Van Rooij, *Implementation of Environmental Law*, *supra* note 142, at 7; Troyer, *supra* note 107, at 73.

¹⁶⁰ For the clearest example, see Van Rooij, *Implementing Law Through Enforcement*, *supra* note 142, at 170-77; Van Rooij, *Implementation of Environmental Law*, *supra* note 142, at 7-9.

¹⁶¹ This assumption is based on the author's interviews with environmental enforcement agents conducted in Kunming in 2004. See also Edin, *supra* note 133, at 35, 52.

¹⁶² Zhiguo An, *On Capital Punishment*, 45 BEIJING REV. 4 (1983), quoted in *Beijing Review Article Explains Capital Punishment*, BBC SUMMARY OF WORLD BROADCASTS: ASIA-PACIFIC, Nov. 15, 1983, at K1; BARRETT L. MCCORMICK, *POLITICAL REFORM IN POST-MAO CHINA: DEMOCRACY AND BUREAUCRACY IN A LENINIST STATE* 108-109 (1990); Pitman B. Potter, *Belief in Control: Regulation of Religion in China*, 174 CHINA Q. 317, 331 (2003).

¹⁶³ An, *supra* note 161, at 4.

Another 1983 Strike Hard amendment was the suspension of the right to appeal a death sentence to the Supreme People's Court.¹⁶⁴

Third, national policymakers choose which laws and which aspects of the laws are to be the focus of the campaign.¹⁶⁵ Campaigns thus provide political choices on how to allocate the limited implementation resources. After making these choices, the central political leadership communicates and implements it uniformly throughout the campaign's target area.

The fourth aspect is that the campaigns provide a standard working procedure. Most campaigns begin by selecting their participants and preparing the main policy documents.¹⁶⁶ At the beginning of some campaigns, local officials evaluate the relevant local issues, and central level policymakers turn the issues into solution proposals on the basis of these evaluations.¹⁶⁷ Governmental officials involved in the campaign then initiate implementation throughout China. Finally, at every level of implementation, officials have to evaluate the progress and report to the higher level, and are sometimes inspected.¹⁶⁸ Some campaigns focus on learning from the best local practices.¹⁶⁹ They can be either major

¹⁶⁴ MCCORMICK, *supra* note 161, at 108-109.

¹⁶⁵ Yan, *supra* note 158; Supreme People's Court, *Zuigao Renminfayuan Bangongting Zhuanfa Guojia Shangjianju Gonganbu (Guanyu Yanli Daji Bufafenzi Weizao Bianzao Maimai Shangjian Danzheng Xingwei de Tongzhi) de Tongzhi* [Supreme People's Court Office Notice Transmitting the State Commodities Bureau and Public Security Bureau Notice on Striking Hard Against Illegal Forging, Alteration or Sale of Commodity Documents], 14 GAZETTE OF THE SUPREME PEOPLE'S COURT 17 (1988); Van Rooij, *Implementation Through Enforcement*, *supra* note 142, at 170-77; Van Rooij, *Implementing Environmental Law*, *supra* note 142, at 7-9.

¹⁶⁶ MCCORMICK, *supra* note 161, at 106; Gu, *supra* note 157; CCP CC BUREAU & STATE COUNCIL BUREAU, ZHONGGONG ZHONGYANG BANGONGTING GUOWUYUAN BANGONGTING FAZHU TONGZHI JIN YIBU ZUOHAO CUNMIN WEIYUANHUI HUANJIE XUANJU GONGZUO [THE CCP CENTRAL COMMITTEE BUREAU AND STATE COUNCIL BUREAU ISSUE A NOTICE ON STRENGTHENING THE IMPLEMENTATION OF THE UPCOMING ROUND OF VILLAGE COMMITTEE ELECTIONS], available at http://news.xinhuanet.com/zhengfu/2002-08/19/content_529523.htm (last visited Apr. 17, 2005); Van Rooij, *Implementing Environmental Law*, *supra* note 142, at 7-9; Hansheng Shi, *Quanguo "Er Wu" Pufa Jingyan Jiaoliu Huiyi* [Conference to Exchange Experiences With Regard to the National Second Five-Year Legal Dissemination Campaign], 1994 LAW YEARBOOK 163 (1994).

¹⁶⁷ See, e.g., Van Rooij, *Implementing Environmental Law*, *supra* note 142, at 7-9.

¹⁶⁸ Wang Ying, *Capital Succeeds in Crackdown on Crimes*, CHINA DAILY, Dec. 1, 2001. Van Rooij, *Implementation Through Enforcement*, *supra* note 142, at 175; Van Rooij, *Implementing Environmental Law*, *supra* note 142, at 7-9; Ministry of Civil Affairs, *Guanyu Choubei Zhaokai Quanguo Cunweihui Xuanju Qingkuang Fenxihui de Tongzhi* [Decision on Preparing for Convening a Meeting on the Circumstances of Village Committee Elections], available at <http://www.china.village.org/readnews.asp?newsid={FEB8B028-BAF3-11D6-A7FA-009027DDFA1E}> (last visited Apr. 17, 2005); Fan Yang, *Destroying 800,000 Illegal CDs*, W. CHINA CITY NEWS, Dec. 3, 2001; Zhenhuai Yao, *Quanguo Renda Changweihui Jiancha "Er Wu" Pufa Jueyi Zhixing Qingkuang* [SCNPC Inspects the Implementation of Opinion on the Second Five Year Legal Dissemination], 1996 LAW YEARBOOK 181 (1996).

¹⁶⁹ O'Brien, *supra* note 130, at 41; *Public Security Minister Urges Learning from Guangdong on Serious Crime Cases*, *supra* note 158; Troyer, *supra* note 107, at 74; Yu Zou, *Guanyu 1986 Nian Guanche Shishi Quanguo Renda Changweihui (Zai Gongminzhong Jiben Puji Falü Changshi de Jueyi) Qingkuang de Baogao* [Report on the Circumstances of Implementation in 1986 of the SCNPC Opinion on the Basic Dissemination of Legal Knowledge Among the People], 1988 LAW YEARBOOK 675 (1987). For environmental enforcement campaigns, a local practice from Zhejiang province to involve local

violation cases in enforcement type campaigns, or exemplary cases in education and propaganda campaigns. An additional issue is public involvement. Most campaigns make use of the mass population to enhance their effectiveness.¹⁷⁰ They do this either directly through education or indirectly through telephone hotlines, which allow citizens to voice complaints about violations, as well as through the reports on campaign progress and publication of model cases.

In sum, anti-corruption campaigns are politico-legal campaigns because they share these characteristics. As speeches by Jiang Zemin and other top leaders demonstrate, anti-corruption campaigns have been supported by political pressure. The anti-corruption campaigns have introduced specific legislation to enhance the law's effectiveness. Political choices to go after the high-profile corruption crimes have led to the prosecution of cases involving large amounts of money and high level officials while decreasing the total number of cases. Finally, the campaigns have involved the general public, through the constant media coverage of leadership speeches and major cases.

D. Politico-Legal Campaigns Share Characteristics with Maoist Mass Movements

The anti-corruption campaign is a typical form of politico-legal campaign in China. At first blush, politico-legal campaigns seem to be a phenomenon characteristic of communist China. In fact, they share many characteristics with the mass movements (*Yundong*) organized under Mao.¹⁷¹ Mao's movements were also organized to achieve certain goals within a limited amount of time in certain localities. For this purpose, the central goals and tasks of the movement were drawn up. Just as in contemporary politico-legal campaigns, Mao first established the key points (*zhong dian*), activists (*jiji fenzi*), and backbone elements (*gugan fenzi*)¹⁷² of the movement. Next, the tasks and key points were assigned

farmers as inspection agents was propagated as a preferred method in the 2002 campaign. Based on the author's personal correspondence with an anonymous official at the State Environmental Protection Agency (SEPA), Beijing, 2002.

¹⁷⁰ O'Brien & Li, *supra* note 130, at 482-483; AMNESTY INT'L, *supra* note 143; China 'Outstrips World' on Executions, BBC NEWS, July 6, 2001, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/1425570.stm> (last visited Apr. 17, 2005); *150 Heroic Citizens Rewarded*, CHINA DAILY, Oct. 27, 2001; Van Rooij, *Implementation of Environmental Law*, *supra* note 142, at 8; CCP CC BUREAU & STATE COUNCIL BUREAU, *supra* note 165; Hansheng Shi, *Siwu Pufa Yinianjian [The Fourth Five-Year Legal Dissemination Campaign's First Year]*, available at <http://www.legalinfo.gov.cn/joa/shifadong tai/sfdt2002050901.htm> (last visited Apr. 17, 2005).

¹⁷¹ See GORDON A. BENNET, *YUNDONG: MASS CAMPAIGNS IN CHINESE COMMUNIST LEADERSHIP* (1976); CHARLES P. CELL, *REVOLUTION AT WORK: MOBILIZATION CAMPAIGNS IN CHINA* (1977).

¹⁷² Activists are those who have proved their worth in political work or previous campaigns and are selected to incite the masses to participate in the present campaign. Backbone elements are selected by the campaign leadership to form the bridge between them and the activists. They are selected from among the best cadres. See Bennet, *supra* note 171, at 41-42.

top-down throughout the designated locality. In this manner, movements initiated at the highest level of leadership spread downward until they reached the lowest levels.

Also similar to politico-legal campaigns, Mao's movements had a certain work program to implement their agenda. During the movements, local units studied the movement's main tasks with publications made for this purpose. The next step at the local level was recruiting activists and leaders to stimulate and manage the movement. Afterwards, the local unit would continue to collect data on how local problems relate to the movement. The subsequent step was less peaceful than today's politico-legal campaigns. The movement participants engaged in public censures, and in some cases, violence (*douzheng*). However, the utilized methods—public participation and mass mobilization—were similar. Finally, the movements ended with summarized reports of the movement. Central leadership evaluated the movement's success and rewarded successful activists.¹⁷³

Despite these similarities, there are also differences between Mao's movements and today's politico-legal campaigns. In the pre-reform period, movements were highly ideological and politicized. The higher aim of the movements was class struggle and revolution. The frequent use of these large-scale mass mobilization movements, implemented through public censures and violent struggles, left a profound impact on Chinese society. As one author writes, "mass campaigns turned the whole nation against itself."¹⁷⁴

Because of their similarities with Mao's mass mobilization movements, one may be inclined to think that politico-legal campaigns are unique to the PRC. The following Part, however, reveals that similar phenomena exist outside of China.

V. SIMILARITIES EXIST BETWEEN THE POLITICO-LEGAL CAMPAIGNS IN CHINA AND LEGAL REACTIONS TO CRISES IN THE UNITED STATES

A broader analysis shows that the need for an effective legal system brings political power into the legal realm. In the West, this usually happens when there is a sense of crisis that is either related to the law itself or requires the law for its resolution. When a crisis occurs, political power holders push for stricter legislation and tougher enforcement. They introduce new enforcement priorities, allocate extra resources for the enforcement, and sometimes mobilize the general public. Several examples of this phenomenon from the United States show that,

¹⁷³ See *id.* at 38-45.

¹⁷⁴ ZHENG, *supra* note 121, at 156.

in times of crisis, a need for effective law suppresses civil liberties, including the principles of due process and freedom of speech.

A. *The Prohibition Is an Example of the Use of Law in Times of Crisis*

The first example of the use of political power for crisis resolution in the United States is the national prohibition on drinking mandated by the Eighteenth Amendment in 1917, and later repealed in 1933. The Prohibition is a story of the use of law as an instrument to deal with a social crisis involving conflicting moral values, and to promote a stronger and more progressive federal government. It demonstrates how the social crisis led to strict legislation and attempts at strict enforcement that were doomed to fail because of their lack of legitimacy. The Prohibition set a model of criminalizing certain behavior based on the moral values of one social group. It juxtaposed the majority of law-abiding citizens against the minority of criminal elements.

In the nineteenth century, many Americans, especially rural, small-town Protestants, believed that "Demon Rum explained almost all of society's ills, from poverty and unemployment to prostitution, wife beating, and murder."¹⁷⁵ This personal belief turned into a patriotic value when Irish and German drinking immigrants started to arrive in the 1850s.¹⁷⁶ After the turn of the century, the U.S. witnessed the rise of a new generation of progressive leaders seeking to increase government power in the face of social ills including insobriety.¹⁷⁷ Under the pressure of national lobby groups such as the Anti-Saloon League and "the hyper patriotic fervor of the first world war,"¹⁷⁸ state laws prohibiting alcohol spread until they culminated in the Eighteenth Amendment in 1917.¹⁷⁹ In 1919, the National Prohibition Act¹⁸⁰ banned drinks with more than 0.5 percent alcohol. Prohibition, however, did not have support throughout the country and its implementation was difficult.¹⁸¹ Still, year after year, presidents pushed for strict enforcement and called on the public for support. In 1925, for example, President Calvin Coolidge, in his third annual address stated:

Under the orderly processes of our fundamental institutions
the Constitution was lately amended providing for national

¹⁷⁵ W.J. Rorabaugh, *Reexamining the Prohibition Amendment*, 8 YALE J.L. & HUMAN. 285, 288 (1996).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 286-7.

¹⁷⁸ HARRY G. LEVINE & CRAIG REINARMAN, *ALCOHOL PROHIBITION AND DRUG PROHIBITION: LESSONS FROM ALCOHOL POLICY FOR DRUG POLICY 2* (2004).

¹⁷⁹ Rorabaugh, *supra* note 174, at 291-93.

¹⁸⁰ 41 Stat. 305 (1919).

¹⁸¹ Rorabaugh, *supra* note 174, at 293.

prohibition. The Congress passed an act for its enforcement, and similar acts have been provided by most of the States. It is the law of the land. It is the duty of all who come under its jurisdiction to observe the spirit of that law, and it is the duty of the Department of Justice and the Treasury Department to enforce it . . . I request of the people observance, of the public officers continuing efforts for enforcement, and of the Congress favorable action on the budget recommendation for the prosecution of this work.¹⁸²

The federal government made the enforcement of Prohibition a priority, spending millions of dollars on it, while losing over a billion dollars in tax revenue from foregone taxation of spirits.¹⁸³ However, the Prohibition lacked legitimacy with America's urban and immigrant population and was violated everywhere. Enforcement was not only impossible, but encouraged the development of black markets and organized crime.¹⁸⁴ In hindsight, it is surprising that it took sixteen years before the Eighteenth Amendment was repealed in 1933.¹⁸⁵ Still, Prohibition remains a model of the interaction between law and politics in a time of crisis.

B. The Red Scare Resulted in an Initial Suppression of the Freedom of Speech But Also in the Development of Justice

After the end of World War II, the swift spread of communism in Eastern Europe and Asia and evidence of communist espionage activities at home "generated a full-blown Red Scare" in the U.S.¹⁸⁶ Because the Cold War stand-off soon precluded direct actions against communism abroad, attention turned to communists in the United States.¹⁸⁷

The American leadership reacted to this sense of crisis by introducing strict anti-communist legislation and limiting the rights of minority groups in order to soothe the fears of the majority. First, there was the 1947 Executive Order 9835¹⁸⁸ that "subjected all present and prospective federal employees in each department and agency of the

¹⁸² President Calvin Coolidge, Third Annual Message (Dec. 8, 1925), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=29566&st=locarno&st1> (last visited Apr. 17, 2005).

¹⁸³ Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 SUFFOLK U. L. REV. 235, 239 (2000).

¹⁸⁴ *Id.* at 239-40.

¹⁸⁵ U.S. CONST. Amend. XXI, § 1.

¹⁸⁶ Michael E. Parrish, *A Lawyer in Crisis Times: Joseph L. Rauh, Jr., the Loyalty-Security Program, and the Defense of Civil Liberties in the Early Cold War*, 82 N.C. L. REV. 1799, 1806 (2004).

¹⁸⁷ *Id.* at 1807.

¹⁸⁸ Exec. Order No. 9,835, 3 C.F.R. 129 (Supp. 1947), reprinted as amended in 5 U.S.C. § 3301, 7301 (2005).

executive branch to the potential investigation by the F[ederal] B[ureau of] I[n]vestigation] to determine whether evidence existed such that ‘reasonable grounds exist for belief that the person . . . is disloyal to the Government of the United States.’”¹⁸⁹ Congress also amended the National Labor Relations Act to “eliminate Communists from labor union leadership positions” in 1947.¹⁹⁰ In 1950, Congress adopted the Internal Security Act¹⁹¹ requiring certain types of communist organizations, as defined in the Act, to register with the Attorney General—with serious penalties for failure to do so.¹⁹² Because of the 1950 Act, federal immigration law was amended to ban communist aliens.¹⁹³ The new legislation failed to dispel the national fear of communism and soon there was pressure to do more.¹⁹⁴ This led to a bill proposing to make membership in the communist party a crime, which passed the Senate, but did not make it through the House of Representatives.¹⁹⁵ In 1954, Congress enacted the Communist Control Act¹⁹⁶ that “categorized the Communist Party of the United States as an ‘instrumentality of a conspiracy to overthrow the Government of the United States,’ and declared that ‘its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States.’”¹⁹⁷ The new Act revoked the special rights, privileges and immunities enjoyed by the Communist Party as a political party.

The new legislation opened the path for enforcement actions against suspected communists or communist-sympathizers. The new laws gave anti-communist enforcers unprecedented powers to invade the professional and personal lives of U.S. citizens. The Red Scare crisis also led to an increased enforcement of existing legislation. The Smith Act of 1940¹⁹⁸ provided punishments of up to twenty years in prison for those who advocated the overthrowing of the U.S. government.¹⁹⁹ Prosecutions under this Act started in 1948—during the Red Scare crisis—when the first indictment under the Act was filed in New York.²⁰⁰ During the early

¹⁸⁹ Parrish, *supra* note 185, at 1807 (quoting Exec. Order 9,835, 3 C.F.R. 627, 630 (1943-1948)).

¹⁹⁰ Marc Rohr, *Communists and the First Amendment: The Shaping of Freedom of Advocacy in the Cold War Era*, 28 SAN DIEGO L. REV. 1, 13 (1991).

¹⁹¹ Internal Security Act of 1950, Pub. L. No. 81-831, 64 Stat. 987 (1950) (formerly codified in scattered sections of 50 U.S.C.) (repealed).

¹⁹² Rohr, *supra* note 189, at 14.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 15.

¹⁹⁵ *Id.*

¹⁹⁶ 69 Stat. 775 (1954).

¹⁹⁷ Alan I. Bigel, *The First Amendment and National Security: The Court Responds to Governmental Harassment of Alleged Communist Sympathizers*, 19 OHIO N.U. L. REV. 885, 904-05 (1993) (quoting 50 U.S.C. § 841 (1955 Supp.)).

¹⁹⁸ 54 Stat. 670, *codified at* 18 U.S.C. § 2385 (1994).

¹⁹⁹ Rohr, *supra* note 189, at 11-12.

²⁰⁰ *Id.* at 18.

and mid-1950s, a number of prosecutions took place throughout the country and many ended in convictions.²⁰¹

The liberal society soon felt the effects of the new laws and the Red Scare enforcement activities. At first, constitutional challenges of the new laws were often unsuccessful because the Red Scare seemed to have affected the bench as well. For example, when the question of whether the 1940 Smith Act violated the First Amendment arose, the Supreme Court of the United States initially held it did not. In *Dennis v. United States*, Justice Hugo Black portrayed the situation as follows:

Public opinion being what it now is, few will protest the conviction of these Communist petitioners. There is hope, however, that in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society.²⁰²

It was not until 1957 in *Yates v. United States* that the Supreme Court brought a first halt to the Red Scare prosecutions by overturning fourteen Smith Act convictions.²⁰³ Subsequent cases in the 1960s made Red Scare-related prosecutions increasingly difficult.²⁰⁴ The fear finally subsided in the late 1960s and communism-related legislation and legal actions left the center stage of law and politics.

C. *The War on Drugs Changed Legislation and Law Enforcement and Even Influenced the Courts*

In the late 1960s another crisis emerged in the United States: the increased use of drugs that, according to President Richard Nixon, had grown "into a serious national threat to the personal health and safety of millions of Americans."²⁰⁵ In 1969, Nixon delivered a special message to Congress and urged an increase in the national awareness of the gravity of the situation.²⁰⁶

The Nixon administration started a "War on Drugs," criminalizing drug related activities with tougher legislation. The path of the war on drugs followed the prohibition model by defining drug use as a moral and

²⁰¹ *Id.* at 19-20.

²⁰² *Dennis v. United States*, 341 U.S. 494, 581 (1951) (Black, J., dissenting).

²⁰³ See Rohr, *supra* note 189, at 20-21.

²⁰⁴ *Id.* at 91-96

²⁰⁵ President Richard Nixon, 266 Special Message to the Congress on Control of Narcotics and Dangerous Drugs, July 14, 1969, available at <http://www.presidency.ucsb.edu/ws/index.php?pid=2126&st=drugs&st1=enforcement> (last visited Apr. 17, 2005).

²⁰⁶ *Id.*

criminal problem and aiming at ending it through legal methods.²⁰⁷ All administrations since Nixon continued the fight. Since the 1980s in particular, there has been an increase in mandatory federal and state legislation prescribing harsh penalties for relatively minor offenses.²⁰⁸

The prohibition model also required investing enormous amounts of financial resources into law enforcement. The Nixon Administration, for instance, established the Drug Enforcement Agency (“DEA”).²⁰⁹ The war on drugs led to more enforcement efforts in the 1970s and 1980s, and intensified even further since the late 1980s.²¹⁰ By 1998, the war on drugs devoured over US \$68 billion.²¹¹ In 1999 alone, the Clinton administration’s budget included nearly US \$18 billion on drug enforcement activities; this number did not include the costs of incarcerating inmates that amounted to nearly US \$20.3 billion—more than US \$32,000 per inmate—in 1990.²¹²

The perceived drug crisis and the resulting war on drugs, just as the Red Scare, tested the constitutional limits of law enforcement. There has been “a growing tendency in the courts to create a ‘drug war exception’ to the Bill of Rights.”²¹³ Courts have allowed enforcement actions while “narrowing constitutional guarantees against unreasonable searches and seizures, condoning warrantless searches and the use of racially charged drug courier profiles, and countenancing draconian civil forfeiture provisions in ever more severe drug laws.”²¹⁴ The sense of a national crisis around drug-abuse and the demand for effective legal action have strained the ordinary formal-rational limits on governmental action laid down in the rule of law doctrines and in the U.S. Constitution.

Drugs are still rampant and drug-trafficking remains a big business. Most scholars now agree that the War on Drugs was a failure.²¹⁵ Scholars point out the “profit paradox” (enforcement inflates the drug price) that shows how increased enforcement actually makes drug trafficking more profitable.²¹⁶ Another problem is the “hydra effect” or “push down/pop-up” phenomenon, which suggests that strict enforcement only spreads the problem from one place to another.²¹⁷ The War on Drugs still continues,

²⁰⁷ See Kevin F. Ryan, *Clinging to Failure: The Rise and Continued Life of the U.S. Drug Policy*, 32 LAW & SOC’Y REV. 221, 222 (1998).

²⁰⁸ Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 SUFFOLK U. L. REV. 235, 247-48 (2000).

²⁰⁹ Jonathan M. Barnett, *The Rational Underenforcement of Vice Laws*, 54 RUTGERS L. REV. 423, 476 (2002).

²¹⁰ See *id.*

²¹¹ Ryan, *supra* note 207, at 223.

²¹² Whitebread, *supra* note 208, at 246-47.

²¹³ Ryan, *supra* note 207, at 226-27.

²¹⁴ *Id.* at 227.

²¹⁵ For an overview of the literature, see *id.* at 224.

²¹⁶ *Id.*

²¹⁷ *Id.*

and it has been argued that it will not end until the political debate over drug control and drug usage changes.²¹⁸

D. "Broken Windows" and Community Policing Give the Police a Large Amount of Discretion and Cause Unequal Enforcement

The crisis of drug-related crimes and inner-city crimes in the U.S. led to a new approach to law enforcement: Zero Tolerance. This new approach was based on the so-called "Broken-Windows" theory that links disorder with crime. According to the theory, preventing crime starts with eliminating signs of disorder.²¹⁹ Translated into a criminal enforcement context, this implies emphasizing harsh punishments for minor transgressions.

Rudolph Giuliani, as the new mayor of the City of New York, was among the first to use this new law enforcement strategy to put an end to the crime spiral that had plagued the city for years. He introduced the "quality of life initiative" as an enforcement program. The city "increased its law enforcement budget, hired a slew of new police officers, and began to aggressively prosecute minor misdemeanors such as turnstile jumping and public drinking."²²⁰ The city's new political leadership changed the enforcement priorities by utilizing its political powers and financial resources.

Many were happy to see New York's crime rates decline so rapidly. Only two years after the initiative had started, the murder rate dropped forty percent, robberies over thirty percent, and burglaries twenty-five percent.²²¹ Others, however, questioned whether Zero Tolerance strategies were the true cause of the rapid decline of crime rates in New York.²²²

There was also criticism concerning the constitutionality of the Zero Tolerance policies that focused on the amount of discretion given to enforcement agents. Such discretion, one scholar argued, eroded due process requirements such as probable cause and reasonable suspicion as predicates for detentions and searches.²²³ Critics also claimed that the

²¹⁸ See Aaron Clemens, *Removing the Market for Lying Snitches: Reforms to Prevent Unjust Convictions*, 23 QUINNIPIAC L. REV. 151, 152-156 (2004).

²¹⁹ Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 302 (1998) (quoting James Q. Wilson & George L. Kelling, *Broken Windows*, ATLANTIC MONTHLY, Mar. 1982, at 29).

²²⁰ Ernesto Palomo, "The Sheriff Knows Who the Troublemakers Are. Just Let Him Round Them Up": *Chicago's New Gang Loitering Ordinance*, 2002 U. ILL. L. REV. 729, 738-39 (2002).

²²¹ *Id.* at 739.

²²² Jefferey Fagan et al., *Declining Homicide in New York City: A Tale of Two Trends*, 88 J. CRIM. L. & CRIMINOLOGY 1277, 1319 (1998).

²²³ Philip B. Heymann, *The New Policing*, 28 FORDHAM URBAN L. J. 441 (2000).

application of the Zero Tolerance policy was discriminatory because it was “not about disorderly places, nor about improving the quality of life, but about policing poor people in poor places.”²²⁴ African American citizens especially carried the risk of being targeted by Zero Tolerance enforcement.²²⁵ Again, the pressure to solve a crisis through the law imperiled formal legal constraints on the legal action.

E. School Shootings Led to New Legislation and Mandatory Expulsions in Tension with Due Process

The second example of the zero tolerance strategy is where it was adopted to resolve the crisis related to public school violence that plagued the U.S. throughout the 1990s. A series of high school shootings involving teenage shooters and victims²²⁶ shocked the nation and threatened its basic sense of security because they involved a presumed haven from mortal violence—the school. On September 11, 1999, President Bill Clinton declared in a national radio address that:

It's . . . a time of concern—concern that when our children walk through the schoolhouse door they won't be safe from the threat of violence . . . We know the vast majority of our schools are safe, but we can't forget the communities in cities, suburbs, and rural areas that do have a serious problem with school violence. And we can't forget that even one incident of school violence is one too many. The tragic shootings of the past 2 years were a wakeup call, an urgent reminder that to protect our children from violence, we need nothing less than a national campaign that draws on all our resources and demands all our commitment, with all of us taking responsibility.²²⁷

Scholars predicting that the problem will worsen further fueled the sense of crisis. One scholar, John DiIulio, described the youth crime as a “time bomb [that] cannot be defused . . . forty million kids ten years old

²²⁴ Jeffrey Fagan & Garth Davies, *Street Shops and Broken Windows: Terry, Race, and Disorder in New York City*, 28 FORDHAM URB. L.J. 457 (2000).

²²⁵ *Id.*

²²⁶ Kevin P. Brady, *Zero Tolerance or (In)Tolerance Policies? Weaponless School Violence, Due Process, and the Law of Student Suspensions and Expulsions: An Examination of Fuller v. Decator Public School Board of Education School District*, 2002 B.Y.U. EDUC. & L.J. 159, 159-60 (2002).

²²⁷ William J. Clinton, *The President's Radio Address*, PUB. PAPERS 1519 (1999).

and under [growing up] fatherless, godless and jobless."²²⁸ He claimed that such kids would soon become "super-predators."²²⁹

To deal with this ongoing crisis, Congress enacted a new law—the Revised 1994 Gun-Free Schools Act. Under this Act, "each State . . . shall have in effect a State law requiring local educational agencies to expel from school for a period of not less than one year a student who is determined to have brought a weapon to school."²³⁰ States soon enacted their own legislation prohibiting "weapons," as defined in the 1994 Act, in schools.²³¹ As the crisis continued with more accidents occurring in the second half of the 1990s, an increasing number of school districts and their boards adopted stricter zero tolerance policies. In order to reassure parents, these new policies "mandated that students be excluded from school, often for up to a full calendar year, for bringing weapons to school, or committing certain other acts, leaving little or no discretion to those assigning disciplinary consequences."²³² School districts and boards soon expanded the mandatory expulsions to include non-weapon related behavior such as the possession of drugs, alcohol, tobacco,²³³ "and a host of other student behaviors that many would argue cause no threats or safety concerns to schools."²³⁴ By 1998, seventy-nine percent of public schools had adopted zero tolerance policies for tobacco, eighty-seven percent for alcohol, and eighty-eight percent for drugs.²³⁵ The school violence crisis also influenced the criminal justice system. During the 1990s, a number of states changed their criminal procedure laws to make it easier to prosecute juveniles under the procedure for adult criminals.²³⁶ One scholar writes: "these youthful offenders might now receive both a criminal record and a prison sentence, producing the severe and long-lasting impact on life prospects that the juvenile system was assigned to avoid."²³⁷

As a consequence of the policy, school boards suspended and expelled a surprising number of students. In 1998, for example, more than 3.1 million students were suspended and 87,000 students expelled.

²²⁸ Eric Blumenson & Eva S. Nilson, *One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education*, 81 WASH. U. L.Q. 65 (2002) (quoting John J. Dilulio Jr., *Rule of Law: Why Violent Crime Rates Have Dropped*, WALL ST. J., Sept. 6, 1995, at A19).

²²⁹ John J. Dilulio, *The Coming of the Super-Predators*, THE WEEKLY STANDARD, Nov. 27, 1995, at 23, available at <http://www.mcsm.org/predator.html> (last visited Mar. 4, 2005).

²³⁰ 20 U.S.C. § 8921 (b)(1) (repealed 2002).

²³¹ J. Kevin Jenkins & John Dayton, *Students, Weapons, and Due Process: An Analysis of Zero Tolerance Policies in Public Schools*, 171 ED. L. REP. 13, 19 (2003).

²³² *Id.*

²³³ Ruth Zweifler & Julia De Beers, *The Children Left Behind: How Zero Tolerance Impacts Our Most Vulnerable Youth*, 8 MICHIGAN J. RACE & L. 191, 194 (2002).

²³⁴ Brady, *supra* note 226, at 163.

²³⁵ Blumenson & Nilson, *supra* note 228, at 70.

²³⁶ *Id.* at 74.

²³⁷ *Id.* at 74-75.

While twenty-six states require that school districts provide alternative education for expelled students, in eighteen states such alternative education is not mandatory.²³⁸ The number of suspensions and expulsions resonates well with the incapacitation rationale of the policies, aimed at providing “a second line of defense” if deterrence fails.²³⁹ In most cases, schools use harsh punishments even for minor infractions of a non-violent nature such as smoking tobacco and skipping classes. Other cases include minor offenses such as “possession of such ‘weapons’ as key chains, staplers, and geometry compasses; and such ‘drugs’ as lemon drops, asthma inhalers, Midol and Advil.”²⁴⁰ To effectively implement the zero tolerance policies, schools have increasingly made use of investigative techniques, including mandatory random drug testing, random locker searches, video surveillance, and making “records identifying potential troublemakers.”²⁴¹ Such techniques were in part made possible by a series of U.S. Supreme Court decisions that weakened the Fourth Amendment rights of students.²⁴² The use of these techniques, combined with mandatory reporting of certain delinquents to law enforcement officials, has dramatically increased criminal prosecutions of students.²⁴³

The zero tolerance policies received strong criticism. Some scholars have questioned the policies’ necessity and proportionality. They argued that media coverage of high-profile incidents has led people to believe that there is a general school violence crisis when, in fact, “ninety percent of our schools are free from serious crime”²⁴⁴ and “school deaths are rare occurrences.”²⁴⁵ Between 1997 and 1998, 2752 children were murdered in the U.S., but “just over one percent were school-associated” incidents.²⁴⁶

Others have questioned the effectiveness of the schools’ zero tolerance policies. They maintain that the zero tolerance policies in schools have not been able to control school violence.²⁴⁷ During the 1990s, while schools harshly punished minor offenses, “the number of students threatened or injured with a weapon remained constant.”²⁴⁸ Scholars also argued that there is little or no evidence that harsh zero

²³⁸ *Id.* at 71.

²³⁹ *Id.* at 81.

²⁴⁰ *Id.* at 72.

²⁴¹ Blumenson & Nilson, *supra* note 228, at 73.

²⁴² For an overview of such cases, see *id.* at 72-73.

²⁴³ *Id.* at 74.

²⁴⁴ Zweifler & De Beers, *supra* note 230, at 193.

²⁴⁵ *Id.*

²⁴⁶ *Id.*; Brady, *supra* note 226, at 165-66.

²⁴⁷ Blumenson & Nilson, *supra* note 228, at 76.

²⁴⁸ *Id.*

tolerance sanctions had a positive effect on decreasing school violence.²⁴⁹ According to some of them, strict zero tolerance schools may actually be less safe than schools with more lenient policies.²⁵⁰

Finally, scholars questioned the constitutionality of the zero tolerance policies. First, the Zero Tolerance school policies may violate substantive due process requirements of the Fourteenth Amendment.²⁵¹ For example, the mandatory punishment guidelines may preclude the students' rights to be heard before being expelled.²⁵² Furthermore, the mandatory punishment guidelines make schools unwilling to allow exceptions and to use discretion based on a full set of facts.²⁵³ This results in unreasonably harsh punishments for transgressions that should have otherwise been excepted from punishment. According to a study, "often the administrators fail to investigate the incident, and expel the child based upon accusations and dubious evidence. This mindset allows for any kind of allegation to be considered for punishment."²⁵⁴ Students challenging school expulsion or suspension decisions based on substantive due process requirements have often failed because courts have interpreted substantive due process violations narrowly, allowing schools considerable discretion on how to punish such violations.²⁵⁵

F. The American War on Terrorism Demonstrates that, in Times of Crisis, Legal Systems Not Civil Liberties Evolve to Increase the Effectiveness of Law Enforcement

The September 11, 2001, terrorist attacks created an unprecedented shock both nationally and internationally. The incident led to a crisis; terrorism had demolished the sense of safety Americans had previously enjoyed at home. People demanded the leadership to aggressively deal with the crisis, to apprehend and punish those responsible for the atrocities, and to institute measures of prevention of future attacks. This led to two major international military interventions in Afghanistan and Iraq. Back at home, post-September 11 security concerns produced policy responses designed to foster homeland security. As in the earlier crises of the Prohibition, the Red Scare, the War on Drugs, and School Violence, the legal system played a central role in the domestic "War on Terror." This war again used a "prohibition model" strategy of criminalizing a minority of "terrorists" to make a majority of the "law

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ U.S. CONST. amend. XIV, §1.

²⁵² Zweifler & De Beers, *supra* note 233, at 207.

²⁵³ *Id.* at 208.

²⁵⁴ *Id.*

²⁵⁵ Brady, *supra* note 226, at 177.

abiding citizens” feel safe. As before, the sense of crisis produced an urgent need for an effective government and efficient legal system, both of which were at tension with the procedural formal-rational aspects of the law. In order to protect the majority, the rights of the minorities suspected of connections to terrorism suspects were curtailed.

As in the previous crises, the government’s first reaction was to enact stricter legislation. The first terrorism-related pieces of legislation, the Antiterrorism and Effective Death Penalty Act²⁵⁶ (“AEDPA”) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996,²⁵⁷ followed the bombing of a federal building in Oklahoma City in 1995. It is noteworthy that, while both convicted Oklahoma bombers were “white, native-born U.S. citizens,”²⁵⁸ the two new laws focused on “non-citizen offenders.”²⁵⁹ The AEDPA, for example, “includes provisions that deny entry visas to members and representatives of designated foreign terrorist organizations, prohibit foreign terrorist fundraising, reform habeas corpus, and expedite asylum procedures.”²⁶⁰ The new legislation thus “juxtaposed non-citizen terrorists and criminals on the one hand with law-abiding citizens on the other.”²⁶¹ The momentum created by the public outcry after the Oklahoma city bombing enabled conservative legislators to enact strict legislation that severely limited certain civil rights.²⁶²

After September 11, the Bush Administration called for new and tougher counter-terrorism legislations. In a hearing before the Judiciary Committee of the Congress, Attorney General John Ashcroft said:

First, our laws fail to make defeating terrorism a national priority. Indeed, we have tougher laws against organized crime and drug trafficking than against terrorism. Second, technology has dramatically outpaced our statutes. Law enforcement tools created decades ago were crafted for rotary telephones—not email, the internet, mobile communications and voice mail. Every day that passes with outdated statutes and old rules of engagement is a day that terrorists have a competitive advantage. Until Congress makes these changes, we are fighting an unnecessarily uphill

²⁵⁶ Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of 18 U.S.C. and 28 U.S.C. (1996)).

²⁵⁷ Pub. L. No. 104-208, 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C. (1996)).

²⁵⁸ Nora V. Demleitner, *Immigration Threats and Rewards: Effective Law Enforcement Tools in the “War” on Terrorism?*, 51 EMORY L.J. 1059, 1061-62 (2002).

²⁵⁹ *Id.*; Alfredo Simon, *The World Trade Center and “The Republic for Which It [Stood],”* 55 RUTGERS L. REV. 1305, 1306-07 (2003).

²⁶⁰ Simon, *supra* note 259, at 1306.

²⁶¹ Demleitner, *supra* note 258, at 1062.

²⁶² See Simon, *supra* note 259, at 1320.

battle. Members of the Committee, I regret to inform you that we are today sending our troops into the modern field of battle with antique weapons.²⁶³

In response, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA Patriot Act").²⁶⁴ The new Act's main goal was to "allocate to law enforcement and financial regulators more realistic weapons and user-friendly laws to fight terrorists and terrorist funding."²⁶⁵ The methods used to achieve this goal were threefold. First, the Act enhanced domestic law enforcement efforts by providing more lenient standards on "computer privacy, electronic surveillance, warrants to trap and trace, no-knock searches, and extraterritorial search warrants." Second, the Act attempted to keep terrorists out of the country with stricter rules on immigration and border-crossing.²⁶⁶ Third, the Act attacked terrorists by targeting their financial assets with new regulations on banking and monetary transfers.²⁶⁷

September 11 changed the domestic law enforcement practice as well—fighting terror became a top priority. Domestic anti-terrorism law enforcement following the September 11 attack clearly focused on foreign nationals from Muslim countries.²⁶⁸ During the days following the attack, U.S. security personnel placed more than 1200 persons, mostly of Arabic or South Asian origin, in "preventive detention."²⁶⁹ Many have been deported to their home countries, while a number of them were detained for a longer period.²⁷⁰ In some cases preventive detention took place under total secrecy with "no visitors, no family, no press."²⁷¹ The USA Patriot Act provided a legal basis for such preventive detention, especially in cases where deportation was impossible.²⁷² It also authorized registration requirements and special security measures for foreign students as enforcement measures.²⁷³ In 2002 and 2003, U.S. authorities carried out registration drives during which more than two thousand foreign nationals from Muslim countries were arrested when

²⁶³ Simon, *supra* note 259, at 1316-17, n. 59 (quoting Homeland Defense Hearing Before the S. Comm. on the Judiciary, 107th Cong. 8 (2001) (statement of John Ashcroft, U.S. Attorney Gen.)).

²⁶⁴ Pub. L. No. 107-56 (2001).

²⁶⁵ Fletcher N. Baldwin Jr., *The Rule of Law, Terrorism and Countermeasures Including the USA Patriot Act of 2001*, 16 FLA. J. INT'L L. 43, 52 (2003).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Braml, *Rule of Law or Dictates by Fear: A German Perspective on American Civil Liberties in the War against Terrorism*, 27 FLETCHER FORUM OF WORLD AFFAIRS 125-29 (2003).

²⁶⁹ *Id.* at 125.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.* at 128.

they failed to register with the authorities.²⁷⁴ After these mass arrests, several organizations initiated class action suits against the relevant authorities.²⁷⁵

As in the earlier crises, September 11-inspired policies posed challenges to civil rights and subordinated the rule of law and due process.²⁷⁶ As Attorney General Ashcroft stated before the Senate Judiciary Committee in December 2001:

We are at war with an enemy who abuses individual rights as it abuses jet airliners: as weapons with which to kill Americans. We have responded by redefining the mission of the Department of Justice. Defending our nation and its citizens against terrorist attacks is now our first and overriding priority.²⁷⁷

Ashcroft even “put criticism of the restriction of civil liberties in the same league as treason.”²⁷⁸ When civil liberties advocates challenged the country’s new “arrest policy”²⁷⁹ in court, the judges ruled in their favor calling for a restoration of the rule of law restraints to government action and labeling preventive detention practices as “odious to democratic society.”²⁸⁰ Perhaps as a sign of the severity of the current crisis, the Bush administration condemned the decision and emphasized their instrumental approach to the law and even the Constitution:²⁸¹

We are standing firm in our commitment to protect American lives We’re removing suspected terrorists who violate the law from our streets to prevent further terrorist attack. [sic] We believe we have al Qaeda membership in custody, and we will use every constitutional tool to keep suspected terrorists locked up.²⁸²

Now that several years have passed and the need for state action against terrorism is less urgent, there may be more room for the voices of

²⁷⁴ Braml, *supra* note 268, at 128-29.

²⁷⁵ *Id.* at 129.

²⁷⁶ *Id.* at 125.

²⁷⁷ *Id.* (quoting Testimony of Attorney-General John Ashcroft, Senate Committee on the Judiciary, Dec. 6, 2001).

²⁷⁸ *Id.* at 131 (analyzing Testimony of Attorney-General John Ashcroft, Senate Committee on the Judiciary).

²⁷⁹ *Id.* at 126.

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² Attorney-General Ashcroft, Press Statement, Attorney General Ashcroft Provides Total Number of Criminal Charges and INS Detainees, Nov. 27, 2001, available at http://www.usdoj.gov/archive/ag/speeches/2001/agcrisisremarks11_27.htm (last visited Apr. 17, 2005).

those advocating civil liberties and the rights of the minorities. Perhaps, as in the Red Scare example, the present period of crisis will end, reestablishing the role of courts in finding balance between the country's need for safety and the individuals' need for their rights.

G. In Times of Crisis Perceptions of Justice Change and the Law Becomes a Tool for the Government in Both China and the U.S.

The analyses of the politico-legal campaigns of China and the legal reactions to crises in the U.S. reveal a number of similarities. In both instances, the leadership used law as a tool of achieving its goal. The leadership procured tough legislation and focused on better enforcement. Further, the law's enhanced effectiveness came at the cost of restrictions on procedural fairness.

Crises create windows of opportunity for change. Those who get to define the crisis and its causes gain the power to initiate change. If they choose to do so by using the law as a tool, ordinary procedural formal-rational restrictions such as due process requirements will be minimized in a crisis situation. Crises can therefore become opportunities to change the law. A sense of crisis can overshadow the law. That is, in a crisis situation, the "effective law" that protects the rights of the majority law-abiders becomes more important than formal-rational, procedural rule of law requirements that protect procedural rights of minority offenders. The analysis of the law in times of crisis in the U.S. is a reminder of the politico-legal reality of the West, sometimes too easily forgotten when studying a legal system such as China. It shows that there are multiple dimensions to the law. First, there is the rule of law dimension that emphasizes the formal-rational legal limits on government actions.²⁸³ There is, however, also the need for effective government action through the use of law—what I have called the goal-oriented dimension or the effective law.²⁸⁴

While China has traditionally emphasized the instrumental role of law since the reform period, more recently the formal-rational rule of law idea has gradually gained importance.²⁸⁵ In the U.S., it appears that, in times of crises, there have been clear shifts towards an effective legal system that is similar to China's perception of the role of law—"rule by

²⁸³ LON FULLER, *THE MORALITY OF LAW* 38-44 (1976).

²⁸⁴ Over the last decade the term "effective law" is increasingly used in American law journals to describe law's reaction to crisis. See Lisa Patrice Taylor, *Illinois v. Perkins: Balancing the Need for Effective Law Enforcement Against A Suspect's Constitutional Rights*, 1991 WIS. L.REV. 989, 1025-29 (1991); Roundtable, *Law and Disorder: Is Effective Law Enforcement Inconsistent with Good Police-Community Relations?*, 28 FORDHAM URB. L.J. 363, 363-64 (2000).

²⁸⁵ PEERENBOOM, LONG MARCH, *supra* note 106, at 558.

fear” as one scholar called it.²⁸⁶ Like the international human rights organizations’ criticism of China’s human rights violations and harsh punishments in the Strike Hard campaigns or the Falun Gong crack-downs,²⁸⁷ legal scholarship in the U.S. has been critical about the restrictions on civil liberties imposed by tough legislation and enforcement in national crises.

It is important to note that China and the West, the U.S. in particular, share common dilemmas. Even though the political contexts are completely different, one may draw lessons from the other’s experience in balancing the rule of law with effective law. While law and politics obviously go hand-in-hand in China, a sense of crisis can create a similar match in a rule-of-law-based country like the U.S. Recognition of this shared dilemma will lead to a real dialogue, instead of an unrealistic exchange of idealistic representations of how well the law functions in one country and how poorly it does in the other. Another lesson is that justice is often realized in reaction to the crises. A crisis may well be a litmus test for testing the boundaries of law. Legal justice expands to its maximum after such a crisis. In the U.S., the Red Scare crisis in the 1950s and 1960s, for example, produced important doctrines on the First Amendment’s freedom of expression. In China, unfortunately, the political-legal set-up that lacks separation of powers largely precludes such justice-promoting legal developments.

VI. CONCLUSION

In China corruption has a close relationship with the law. This is not only because corruption has an adverse impact on the country’s reemerging legal system, which many would expect, but also because law is employed as a tool to fight corruption. The struggle against corruption has become a struggle of life and death for the CCP.

Because a large part of this struggle takes place in the legal arena, the legal system as a whole has become more important. This may enable the law to function more effectively in China.²⁸⁸ In other words, because of the law’s importance in the struggle against corruption, those in power will try to make the legal system more effective. They have so far achieved this goal by intervening into the everyday operation of the legal system, making it focus on certain kinds of corruption violations, and ensuring publicity through the press. The legal system has reacted by providing harsh punishments for major cases and high-level officials. A

²⁸⁶ Braml, *supra* note 268, at 129.

²⁸⁷ AMNESTY INT’L, PEOPLE’S REPUBLIC OF CHINA: SERIOUS HUMAN RIGHTS VIOLATIONS AND THE CRACKDOWN ON DISSENT CONTINUE, *supra* note 149; HUMAN RIGHTS WATCH, *supra* note 151.

²⁸⁸ Yufan Hao, *From Rule of Man to Rule of Law: An Unintended Consequence of Corruption in China in the 1990s*, 8 J. CONTEMP. CHINA 405, 405-06 (1999).

question, however, remains whether such an effective legal system is a good one. A legal system that is effective because it follows the directions of politics, which will change over time, may not be a just and fair system leading to legal stability. As indicated above, China is not alone in its political pressure on the legal system. Many legal systems seem to share this characteristic to some extent. However, while this phenomenon is obvious in China and often criticized, it remains less recognized outside China.

Another question is whether the politico-legal campaigns have been successful in fighting corruption. In this regard, it is important to note that while this Article analyzed only the anti-corruption campaigns, Chinese government also made other efforts in its fight against the problem. A recent example is a structural reform to enhance internal accountability within the state party. In the beginning of 2002, the Seventh Meeting of the CCP Central Commission for Disciplinary Inspection decided to conduct an experiment in three central level ministries. CCP Disciplinary Inspection committees in the central ministries are normally governed by both the ministry in which they reside and the CCP Central Commission on Disciplinary Inspection. The experiment was to give CCP Central Disciplinary Commission exclusive control over the ministerial disciplinary inspection organs. It thus provided the Commission with independent watchdogs within the ministries. As a result, the Commission, instead of the ministries, held the right to directly appoint the leaders of the internal inspection organs. In March 2003, this experiment reached its next stage. Later that year, discussions were conducted on whether and how to apply this system at the provincial level. In order to do so, a change in the party constitution was required, because it originally stipulated that provincial-level party disciplinary inspection bodies could be governed only at the provincial level.²⁸⁹ Another new measure that began in 2003 was the deployment of special central-level envoys who evaluate and monitor provincial leaders' performance over a period of four years. This new strategy is rooted in the Chinese imperial tradition of checking on provincial officials that resided far away from the capital.²⁹⁰

Because anti-corruption campaigns are not the only efforts made to resolve the corruption problem, it is difficult to measure the exact impact they had. Another problem is that the CPI is the only reliable data on corruption and even it presents only perceived, instead of actual,

²⁸⁹ Nan Li, *Zhongyang Fanfu Pin Chuzhao Zhongji Wei "Tongyi Guanli" Fanfubai Zhanxian? [Will the Central Anti-Corruption Again Enroll the Central Disciplinary Commission's "Unified Management" at the Anti-Corruption Battlefield?]*, PEOPLE'S DAILY, Sept. 24, 2003.

²⁹⁰ Xiangwei Wang, *Imperial Tactics Enlisted in Anti-graft Fight*, S. CHINA MORNING POST, Aug. 27, 2003.

corruption. Despite these limitations, however, there are analyses that can shed some light on this issue. In a 2000 survey, twelve percent of those questioned were highly confident in the government's anti-corruption campaigns, while forty percent thought it was ineffective or a waste of time. As one editorial opined at the time, "one reason [for these results] is the widespread perception that the government's anti-corruption campaign is aimed solely at lower-level officials and that those at high levels, or with good connections to the central government, are largely immune."²⁹¹ Bao Tong, former secretary to the ex-party chief Zhao Ziyang, has remained outspoken to this ongoing issue of the fight against corruption. When Jiang Zemin unfolded yet another round of crackdown on corruption-related crimes, Bao said that "Mr. Jiang only paid lip service to fighting graft and democracy was the most effective tool to stamp it out."²⁹²

It appears that the CCP leadership has followed a risky approach of openly combating corruption of higher-level officials. Chinese leaders recognized, in accordance with the results of the above-cited survey, that in order to convince the people of their earnest efforts, they would have to focus on higher level officials. They accomplished this by changing their strategy and implementing high-profile corruption prosecutions through politico-legal campaigns. There is an inherent danger, however, to this approach. The media attention the big cases draw will maintain the perception of corruption at a high level. As long as high-profile officials get executed, people will feel as if the government is actively eradicating corruption, but at the same time will experience the pervasive effects of corruption at lower levels. This latter sense may be reinforced because the strategy of prosecuting high-level officials has been interpreted to indicate that lower-level officials will be left undisturbed.

²⁹¹ Rupert Wingfield-Hayes, *China to Execute Corrupt Boss*, BBC NEWS, Dec. 21, 2000, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/1081199.stm> (last visited Apr. 17, 2005).

²⁹² Fong Tak-ho, *Jiang Plan to Combat Corruption Questioned*, S. CHINA MORNING POST, July 2, 2001, available at <http://special.scmp.com/commpartyat80/news/ZZZZVSCXJOC.html> (last visited Apr. 17, 2005).