



Loud thunder with tiny raindrops? A literature review of China's anticorruption measures

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This literature review, supplemented by interviews with Chinese scholars, follows the evolution of thinking in the Chinese Communist Party (CCP) about corruption, from the toleration of corruption among the outstanding national leaders at the time of the establishment of the People's Republic of China to understanding corruption as a force de-legitimising the CCP. The main reform measures are described, together with current criticism of them.

Introduction

Scholars in China are fully aware of the rationale behind tolerating corruption in the early age of PRC's establishment in 1949. The majority of national leaders who, although corrupted, were also outstanding founding ministers who had significantly

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contributed to the victory of the Chinese Communist Party (CCP) and the founding of the modern China. Their behavior has received a high degree of tolerance. However, the corruption cases in the last decade have little to do with those outstanding founding leaders and has delegitimized the CCP from the perspective of the general public. Current corruption has also contributed the creation of new factions within the state machine, which “decentralizes” the highly centralized party system. For the CCP, this is an unwelcome spread of power, because a “cartel-like” political system, which involves intensive competition between groups and factions, often leads to incoherent national policy. While a centralized authoritarian one party system might not be perfect, its policy making mechanism often enables a unified and less self-defeating outcome.

Scholars acknowledge that China has taken a wide variety of actions to fight corruption, including reforming the audit and budget surveillance systems, establishing new anticorruption task forces, enhancing the accountability system, and setting new laws. These measures are effective to a certain extent, but as most international corruption indicators show, China's anticorruption measures still have a long way to go. China's anticorruption policies face some fundamental barriers, including the party insisting on the holding of authority to determine the fate of corrupted official, rather than transferring the power of the party to the judicial sector. Corruption is also so widespread that a genuine zero-tolerance policy becomes unrealistic if implemented. The functioning of the state would be paralyzed if all suspects were being removed from office, and China does not have enough personnel to meet such a demanding judicial requirement.

An evaluation of the effectiveness of China's anticorruption initiatives depends on one's perspective. From a legal justice point of view, China's policy has made many improvements but remains insufficient. From a political point of view focused on the survivability of the state, if China's selective anti-corruption measures could rebuild its legitimacy and prevent the formation of opposing factions, then the current ‘soft-boiled’ anti-corruption measures could be justified.

This paper makes no normative argument, either for or against China's rationale of its recent anti-corruption policies. This paper is not a position paper, but a literature review that aims at introducing China's contemporary anti-corruption initiatives, along with some of its domestic criticisms. Whilst the criticisms note the need to weigh more on legal justice, they also acknowledge the political reality that decentralization of the party's power could be destabilizing and therefore unwelcome to the CCP.²

² From interview with scholars from Beijing & Shanghai, China. (2018).

Methodology

This literature review consists of two main sources. The first is a total of 5 hours interviews with 5 scholars from China's leading universities. All five are either assistant professors, professors, or dean of their respective department (one from the law school, one from the sociology department, and three from the international relations department). These scholars had introduced the domestic debate within China in terms of interpreting the state's anti-corruption initiatives. They also suggested several reading materials in Chinese, which form the second source of this literature review. These readings include collection of essays that were presented and discussed in academic conferences. Authors of those essays are often less famous in China, but they have specialized in the sphere of judicial institution making. Most of these essays are published by top publishers in China, such as Tsinghua University Press and Shanghai Joint Publishing, which serves as an indirect proof of authority. English readings were also examined.

Context

The economic reform led by Vice-Chairman Deng in the 1980s had unintentionally introduced opportunities and incentives for lower-ranked officials from the Chinese Central Party (CCP) to accept bribes and kickbacks. A significant amount of the new riches in the post-Mao era have been made not by economic entrepreneurship, but by exchanging official power over scarce state resources for rents³.

At an institutional level, China has not been valuing the importance of audit and budget management, and the lack of supervision of the balance sheet at both provincial and city level had reduced the barriers for conducting corruption. Moreover, China was, and still a developing country which puts economic growth higher than the integrity of rule of law in terms of priority⁴. Whilst some, such as Dali Yang, argue that some corruption is useful and offers convenience in terms of "oiling" the machinery of economic growth⁵, the government is often not able to minimize the downside corruption. For instance, Chinese government allows the use of false names in making bank deposits to encourage domestic savings⁶. The government also permitted the use

³ Yang, D. (2004). *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*. California: Stanford University Press. Page: 218.

⁴ From interview with scholars from Shanghai, China. (2018).

⁵ Yang, D. (2004). *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*. California: Stanford University Press. Page: 220,221.

⁶ *Ibid.* Page: 228-230.

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of false name in opening brokerage accounts to urge domestic investments⁷. However, these economic policies had made the ownership of multiple accounts under different names – but in fact are controlled by the same person – possible, and thus offer a safe heaven for dirty money.

At a more general level, quite a few of the anticorruption crackdowns appear to be politically driven, in which the government punished the lesser offenders in order to achieve a subtle balance between promoting the image of an accountable party, and the prevention of violating the interests of those who corrupted but are nevertheless with powerful backings. In some specific contexts, higher-ranked officials were pulled down because of a current political struggle. For instance, Chen Xitong (former committee of Politburo of the Communist Party of China, former mayor of Beijing, and former state councilor), who was arrested and jailed in 1998 was widely acknowledged to be a victim of political competition with Jiang Zemin, the former Chairman of the Central Military Commission of PRC.

In the last two decades, CCP has gradually understood the essence of corruption in China differently, acknowledging that a corrupted public sector undermines the central party's legitimacy. CCP also started to realize that if the degree of corruption was not better controlled by the party, new factions that might potentially challenge the central party can be formed⁸. Thus, China has been taking more serious measures which will be introduced in the latter sections of this paper. However, it is noteworthy that most of the more restrictive measures are aimed at promoting the regime integrity of the central party, while not necessarily with genuine respect to the spirit of law.

The Problem

According to Chinese scholars, they see corruption in China as a serious issue which undermines both society and the government's legal infrastructure. First, the amount of corruption is extraordinarily high. PRC's People Procuratorate at various levels investigate fifty-thousand cases each year⁹, and it has been acknowledged that the number of criminal cases is very high.

Second, an increasing number of cases were conducted by well-organised groups of officials. In contrast to criminals who were more "independent" in the 1980s, criminals

⁷ Sui-Quing, Y. & Lee, Y. (2018). *Corruption Risk and Comprehensive Governance Based on Criminal Law*. Shanghai: Joint Press. Page: 221-237.

⁸ From interview with scholars from Beijing, China. (2018).

⁹ Sui-Quing, Y. & Lee, Y. (2018). *Corruption Risk and Comprehensive Governance Based on Criminal Law*. Shanghai: Joint Press. Page: 5-11.

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in the 21st century are increasingly organized. In some resource-rich provinces such as Shanxi and Liaoning, the majority of governors were connected and jointed in order to instrumentalized their authority to gain non-public advantages. Around a hundred government officials were found implicit in the shocking “Mu-Ma Case” which happened in 2002. The central party faced a dilemma when dealing with this case. If all of the relevant stakeholders were punished, the normal running of the entire province might be paralyzed¹⁰. Conversely, if those corrupted governors were not prosecuted properly, the authority and legitimacy of the party would be undermined.

Third, the proportion of high-ranked corrupt officials is increasing, whereas much of the corruption in the early years of reform was conducted by lower-ranked officials. Higher-ranked officials' corrupt acts are arguably more destructive as they are able to use their seniority to gain higher rental return. The amount of personal gain is found positively correlated with the position of the offender. These corrupted senior officials might gain illicitly from privatizing public assets, for example during the process of public enterprise reform, and weaken the accountability of the state machine. Industrial accidents and infrastructure failure are also found to be connected with corrupted key officials who have the duty to supervise the safety standard and quality of infrastructures¹¹.

Corrupt behaviors by higher officials are also destructive because of their demonstrative effect. These officials and their family members might live a life with dense hedonistic and individualistic features, such as gambling and prostitution. The image of an accountable, responsible and sincere party system is then harmed. More importantly, some of these higher-ranked corrupted officials are mobilizing their followers and interest-groups in order to penetrate their influence into the central party's top power circle. In contrast to corruption's “external” challenge to the central party because of the harming the party's legitimacy from the Chinese people, the “internal” challenge of corruption in the form of breeding new fraction is a more immediate threat to the stability of the CCP.

Anticorruption Measures

With the awareness of harm caused by systematic corruption, China has taken the initiative to tackle the problem from both institutional and legal levels. First, China had noticed that the local discipline inspection committees had faced difficulties when

¹⁰ Ibid. Page: 21-23.

¹¹ Bein-Zhi, Chau. A Few Important and Realistic Issue of China's Anticorruption Penal Rule of Law. In *Journal of Legal Criticism*. 2014, Vol. 4.

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investigating key corruption cases which touches on an entire web of local governors. In response to such problems, the Supreme People's Procuratorate (SPP), the Central Discipline Inspection Commission (CDIC), and the Ministry of Supervision established the Command Center for Corruption Investigation (CCCI) in 2002. The CCCI is a special task force with their inspection agents empowered with the authority to handle corruption cases without seeking approval from leaders in the host ministry. Moreover, the heads of provincial-level discipline inspection commissions have been made Deputy Secretaries¹². This act was aimed at ensuring these officials would have more political clout in the central party's anticorruption initiative.

The government has also enforced the use of real names in terms of using financial services, such as opening new banking accounts and the purchase of treasury bonds in 2000¹³. This measure is important because officials are occasionally required to publicize their financial status. However, it would be meaningless if the governors have multiple accounts in fake names which could hide their dirty money.

The third institutional measure of fighting corruption refers to extension of the accountability system. Higher-ranked officials were traditionally required to play an exemplary role by being self-disciplined during their term. These officials now have an additional duty to ensure that their relatives and fellow colleagues are all clean. If corruption is found to be widespread in the region under the high-ranked official's sphere of surveillance, or if serious industrial accidents broke out due to misconduct on safety standard maintenance, the respective officials would either not be promoted or even removed¹⁴.

As a supplement to the accountability system, the government has promoted the conflict-of-interest rules for officials ranked at the provincial and prefecture level. These rules have the objective to ensure that the relatives of higher officials cannot participate in business that are regulated by the respective officials, including land development, real-estate, and services establishments such as clubs and massage parlors. Some of the ministries have to follow conflict-of-interest laws that are tailored-made in order to suit their specialties. For instance, the Ministry of Public Security (MPS) has banned its higher positioned officials' relatives from engaging in the manufacturing of firefighters' uniform and other relevant procurement¹⁵.

¹² Yang, D. (2004). *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*. California: Stanford University Press. Page: 224-227.

¹³ Men, L. "The Judicial Suitability and Legislative Improvement on the Property Crimes of Unknown Origin". In *Journal of the School of Prosecuting Attorney*. 2013, Vol 6.

¹⁴ From interview with scholars from Beijing, China. (2018).

¹⁵ Yang, D. (2004). *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in*

The government has also emphasized the role of audit and budget surveillance. For instance, the state had enforced the end-of-term audit rule, in which all officials have to undergo financial audit before they leave their positions¹⁶. Officials face the pressure to rationalize and justify their wealth and ownership of properties that are suspicious. This measure was especially effective in terms of tackling the corrupt behaviors of low-to-middle ranked officials who have less capabilities to resist and alter the investigation process¹⁷. Higher-ranked officials are less likely to be arrested merely because of the end-of-term audit, but the new policy had made the officials' corrupt acts more inconvenient.

China has also reformed the government budgeting system. The Budgetary Work Committee which works for the National People's Congress aims to ensure that government budget-making would include all incomes and expenditures in the budget, and to be extremely precise in justifying extra-budget slush funds (which is a main source of corruption). Claimants have to offer a rationale for most of the items in the budget. The strengthening of auditing institutions has enhanced the government's monitoring capabilities. In 1994, former Vice-Premier Zhu Rongji compared the audits prepared by the People's Bank of China with audits drafted by the National Audit Office. The latter's version of audits revealed significantly higher level of unauthorized short-term loans¹⁸. In addition, some ministries were found to be misusing funds for private purposes. For instance, the Ministry of Water Resources in 1994, when the country was facing major flood control problems, was discovered using 116 million yuan (which was originally initiated for water conservancy projects) for private ends such as building luxurious offices, purchasing apartments for staff, and making investment in the stock market¹⁹. By enforcing the government budgeting system which enhances operational transparency, officials are checked in order to ensure that public funds are properly used for civil objectives.

The government's budget reform was also improved by separating the powers of revenue collection and spending in fields such as fines management, fees handling, and tax collection. Originally, various departments were able to collect fines, fees and levies and have these "revenue" deposited in the department's own bank account. The

China. California: Stanford University Press. Page: 232-233.

¹⁶ Ibid. Page: 235-257, 278-286.

¹⁷ Chiu-Chuen, C. "New Thinking on China's Government Post Crime". In *Journal of East China University of Political Science and Law*. 2013. Vol 4.

¹⁸ Yang, D. (2004). *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*. California: Stanford University Press. Page: 239, 240.

¹⁹ Ibid. Page: 285, 286.

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department could use these funds under the name of “routine operations” without effective external supervision, and quite a proportion of these expenditure are in fact serving private needs²⁰. For instance, some police units had made their staff generate revenue by collecting fines. This “pressure” on front-line practitioners had contributed to capricious behaviors in the enforcement of traffic rules and urban management regulations²¹. As the power of revenue collection and expenditure are institutionally separated, incentives for maximizing revenue through irresponsible measures are reduced. China also centralized the government accounting service (while the central government appointed accountants are checked by a three-year rotation rule) and expenditure management in order to enhance the effectiveness of the above measures²².

In terms of legal measures, China made the controversial change of guilty threshold through the “Criminal Law Amendatory Acts 9” in 2015. The guilty threshold of corruption was originally determined by the value of assets that has been used in bribery. The new guilty threshold refers to a combination of the value of goods used in bribery (quantitative component), plus the seriousness of act of corruption (qualitative component), which is determined by the exact social consequences of the act of corruption (for example, has it caused an industrial accident) and context variables (such as the will of the suspect when and after he/ she committed the crime)²³. More importantly, the qualitative component of guilty threshold was only five-thousand yuan in 1997 till 2016, when the “Criminal Law Amendatory Acts 9” in 2015 raised it to thirty-thousand yuen. The obvious reason is because substantial economic growth has been achieved in the recent decades²⁴, GDP per capita of Chinese citizens in 2014 being 6.5 times higher than in 1997. In 2015, average income of citizens living in urban cities refer to 31,195 yuen²⁵, thus it was argued that a rise of quantitative guilty threshold from five-thousand to thirty-thousand is a responsive measure to China's social reality and as a respect to the principal of modesty.

This legal reconstruction is extremely controversial in domestic China, and scholars have criticized such policy as a tolerance to corruption. We will further explore these criticisms in the next section, but it is also important to be reminded that China's institutional infrastructure, experience, personnel and funds are very limited in the field

²⁰ From interview with scholars from Beijing, China. (2018).

²¹ Yang, D. (2004). *Remaking the Chinese Leviathan: Market Transition and the Politics of Governance in China*. California: Stanford University Press. Page: 239-245.

²² Ibid.

²³ Ben-Chi, C. (2017). *The Judicial Explanation of Corruption and Bribery*. Beijing: Tsinghua University Press. Page: 111-124.

²⁴ Hing-Leng, C. “The Interpretation of Quantitative Guilty Threshold of Corruption”. In *News of the People's Court*. 2016-04-19 (002).

²⁵ Chiun, V. & Gie, X. “The Evaluation of Standard in Dealing with Corruption and Bribery”. In *Daily News of Procuratorial Work*. 2016-05-23.

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of legal justice. In contrast with making idealistic legal promises that are unachievable, China makes more compromised promises which are more realistic politically-speaking.

Criticisms

In response to the 2015's "Criminal Law Amending Acts 9", a number of Chinese scholars had stressed that legally speaking, economic growth is not an appropriate justification for increasing the quantitative guilty threshold. Second, China is a country experiencing serious imbalance growth. Families who work in the coastal regions often enjoy a higher income, while those who work in the land in the west are often very poor. The uplifting of the guilty threshold nation-wide might match with the social reality in the coastal region, but such blunt policy would simultaneously introduce wider legal gaps for the officials in the west²⁶. Thus, some Chinese scholars have argued that the appeal to economic growth is neither completely true, nor an appropriate justification.

Chinese scholars had further criticized the rising of quantitative guilty threshold by pointing that the guilty threshold of stealing and robbery is 10 times lower than corruption²⁷. Scholars are highly dissatisfied with such discrepancies. Although these scholars acknowledged that stealing is very different from corruption and both criminal acts might not be horizontally compared, they insisted that under most circumstances, corruption is a more serious crime than stealing. They stress that the major difference between corruption and stealing is that the former requires the abuse of authority for private ends. They also emphasize that corruption causes harm on both the right of property (more often public property) and the holiness of public position, while stealing only offended the right of property (more often private). Given that corrupted officials cause harm on both objects (property & integrity of the state system), while stealing only harms one object (property), and since an official is expected to be more responsible and accountable because of his/ her entitled authority due to the trust of the People's Republic of China, the guilty threshold of corruption shouldn't be lower than stealing.

Scholars who specialize in criminology have noted that most of the corrupted officials were clean in the early stages of their career²⁸. A lower quantitative threshold would ensure that those early-career officials would be alarmed if they attempt to corrupt in a smaller degree. These scholars demonstrated that, according to the theory of "Broken-

²⁶ From interview with scholars from Shanghai, China. (2018).

²⁷ Ben-Chi, C. (2017). *The Judicial Explanation of Corruption and Bribery*. Beijing: Tsinghua University Press. Page: 138-140.

²⁸ Guao-Xuen, S. "The Pros and Cons on the 2016 Amendment on Bribery". In *the Journal of Philosophy and Social Science by the South East University*. 2016 (3).

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Window” and the notion of “Second-Deviance”, a lower guilty threshold would be much more effective in terms of preventing the further growth of population of sophisticated corrupted official²⁹.

Quite a proportion of scholars conclude that China's anticorruption philosophy is “Nominally Restrictive, but Tolerant in Reality”³⁰. They argue that the new laws such as “Property Crimes of Unknown Origin” were badly drafted. For instance, the judge “could require the suspect to explain the origin of property”, but scholars pointed that the term “could” isn't determined enough³¹. The legal conditions to frame a suspect up in such criminal act is ambiguous and hard to operate. Part of the reason that explains the uselessness of this law is that officials often own multiple accounts. The enforcement of real-name policy introduced in above sections remains largely ineffective on higher officials who have more resources to hide their real financial status. In addition, scholars have identified a few unintentional drawbacks of the law of “Property Crimes of Unknown Origin”. Due to the lack of motivation for relevant personnel to fight corruption, the property crimes of unknown origin have become an easy way to end cases. Judicial personnel could still make the suspect guilty by using this law, while charging an official with corruption requires a more intensive burden of proof. Some corrupted officials are well aware of the inertness of the judicial department and respond by admitting minor criminal acts but hiding those which are more serious. The property crime of unknown origins had become an exit for corrupted officials to minimize punishment and protect other corrupted officials.

The flaws of the property crimes of unknown origin leads to two other issues: The resources for fighting corruption are extremely scarce and the responsibilities for tackling it are overlapping and unclear. The Discipline Committee, the Administrative Inspection Department, and the Procurator's Office are the three departments which have the authority to fight and investigate corruption. However, the division of labor between the three is unclear, offering the opportunity for the three to avoid responsibility³². The current party system in China also sets boundaries on these three agents in their practice of anticorruption policy. Notably, the Procuratorate has few independent voices and is largely guided by the party in terms of fighting corruption. If the procuratorate's decision to investigate hasn't been approved by a senior member from the party, the procuratorate cannot begin.

²⁹ Tao, G. “The Reconstruction of the “Broken-Window” Theory and Criminal Behavior Pattern”. In *the Journal of the National Academy of Court Prosecutor*. 2016 (1).

³⁰ From interview with scholars from Beijing, China. (2018).

³¹ From interview with scholars from Beijing, China. (2018).

³² Ben-Chi, C. (2017). *The Judicial Explanation of Corruption and Bribery*. Beijing: Tsinghua University Press. Page: 9-43, 50-68.

Further, most of the agents working for the judicial sector have been offered limited motives to investigate. Too much investigation would increase workload without proportionally rise of salary. The agent's initiative might make the seniors official lose face and even pose a negative impact on their promotion (because senior officials would be blamed by the Central Party if serious corruption is discovered in his/ her sphere of control). The potential dissatisfaction often discourages judicial agents' initiatives.

"Loud Thunder with Tiny Raindrops" is the phrase often used to describe the current anticorruption measures in China³³. For instance, 69.7% of the corrupted officials who were found guilty were able to have their sentence commuted, suspendedtence, or even exempted from punishment³⁴. As mentioned, judicial authorities are already satisfied when the case has entered into penal procedures, and have little intention to investigate in a complete manner. To some extent, corrupt officials are laundered by facing the minimal punishment. Many of the corrupted officials had been able to run cultural relics business after finishing their sentencing³⁵. Their family members are also able to live a luxurious lifestyle, because a large proportion of their accumulated wealth through corruption hasn't been properly confiscated because of China's soft-boiled anticorruption policy. Even for figures such as Chen Xitong, who was a victim of political struggle arrested under the name of corruption, was able to live a prisoner's life with higher material benefits³⁶.

There are other criticisms on China's anticorruption measures. For instance, the court puts more legal responsibility on the bribed and less on the briber. Chinese scholars indicated that China has treated the two unequally in tradition. Penal law in 1979 stated that the highest punishment for the bribed refers to life imprisonment, while the briber is only three years of fixed-term imprisonment. In 1988, the briber could be jailed for a lifelong sentence, but the offenders were often tolerated if he/ she confessed. Scholars expressed that they understand that there is a need to treat the briber and the bribed separately in order to minimize the two's willingness to cooperate in order to protect other corrupted members³⁷. However, they worry that the current gap of imbalance is too big.

Second, there is a lack of guiding principals when dealing with trials in other provinces.

³³ From interview with scholars from Beijing, China. (2018).

³⁴ Sui-Quing, Y. & Lee, Y. (2018). *Corruption Risk and Comprehensive Governance Based on Criminal Law*. Shanghai: Joint Press. Page: 20-23.

³⁵ Ibid. Page: 16-21.

³⁶ From interview with scholars from Shanghai, China. (2018).

³⁷ Ibid.

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In recent years, corrupt officials have been sent to trial in another province, the objective being to prevent local officials who have developed special relationship with the suspect to alter the legal procedures. Nominally speaking, this act would enhance the effectiveness of anticorruption measures and ensure its fairness. However, the burden of investigation is heavier when judicial personnel have to collect evidence across provincial boundaries. Moreover, this 'abroad' trial policy sometimes has not been fairly executed. For instance, senior officials (including the vice governor of province) working in Anhui province were found to be corrupt and were put on trial in Shandong province. But, 'coincidentally' those officials who received stays of execution were all born in Shandong³⁸. Scholars have stressed the need to outline the guidelines and principals to determine which abroad trial is most appropriate for any given case, rather than running a black-box mechanism.

Enhancing the efficiency of pursuit of tax evasion overseas and collecting corrupted assets that have transferred to foreign countries is another area which Chinese scholars shed light on. Different reports note that after China's reform, around five-thousand billion of assets had been transferred to foreign countries by corrupt officials³⁹. The inability of the Chinese government to pursuit evasion overseas indirectly encourages officials to abuse their authority. Scholars suggest that China should cultivate positive bilateral relationships with other countries and enhance its judicial reputation in order to ensure a smoother extradition⁴⁰. China could also consider establishing a confiscated asset sharing mechanism with foreign countries in order to motivate officials in foreign countries to help dealing with China's affairs. A share of responsibility should be accompanied by a share of return⁴¹.

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³⁸ Wei, S. "The Increasing Use of Aboard Trial and Explanation". In *Journal of Governmentality and Rule of Law*. 2007 (2).

³⁹ A report from China's "*Southern Weekend*" stated that more than 4000 officials had transferred fifty billion of USD out of China after reform in the 1980s. The Chinese Academy of Social Science (CASS) noted that since the 1990s, more than 16,000 – 18,000 officials were found missing, and escaped to foreign countries, while also transferred a hundred billion of USD away from China. See: Sui-Quing, Y. & Lee, Y. (2018). *Corruption Risk and Comprehensive Governance Based on Criminal Law*. Shanghai: Joint Press. Page: 71-74.

⁴⁰ Ibid. Page:77, 78.

⁴¹ From interview with scholars from Shanghai, China. (2018).

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