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Introduction

1.1 Corruption and anti-corruption

Although corruption in the public sector in countries and regions such as Sweden, New Zealand, Singapore, and Hong Kong is not a major social concern, it is still not unusual to read of corruption scandals in those countries. In China, corruption is still a major social concern. On 23 October 2014, China's president, Xi Jinping pointed out at the Second Meeting of the Third Plenary Session of the 18th Central Committee of the CCP, that the work of fighting corruption still faces a complicated and difficult situation: corruption in some areas is still prevalent; in some cases, corruption hits a whole entity or a whole region; and some officials are even committing more aggravated offences.[1] In 2014 alone, according to the statistics of the Supreme People's Procuratorate, more than 55,101 officials, 7.4 per cent higher than 2013, were prosecuted for corruption. Of them, there are 4,040 county/department level officials, 589 bureau level officials and 28 officials at or above ministry/province level.[2]

The consequences of corruption are great. Research has shown that corruption can distort the market,[3] undermine the government's ability to deliver security and order,[4] and negatively influence investment and economic growth.[5] Corruption in some specific sectors, such as in the

[1] 'Xi Jinping's Speech at the Second Meeting of the Third Plenary Session of the 18th Central Committee of the CCP: the work of fighting corruption still faces a complicated and difficult situation', available at www.ccdi.gov.cn/special/xilun/zyls/201501/t20150111_49941.html (last visited on 19 May 2015).

[2] 'Annual Work Report of the Supreme People's Procuratorate 2014', available at www.spp.gov.cn/gzbg/201503/t20150324_93812.shtml (last visited on 1 June 2015).

[3] Alexandra Addison Wrage, *Bribery and Extortion: Undermining Business, Governments, and Security* (Westport, CT and London: Praeger Security International, 2007), p. 27.

[4] Ibid.

[5] Paolo Mauro, 'Why worry about corruption?' *IMF Economic Issues*, 6, 24 (February 1997), available at www.imf.org/external/pubs/ft/issues6/index.htm (last visited on 23 September 2009).

judiciary,[6] could be more detrimental than others, since judicial corruption may be the cause of other sorts of corruption.[7] Recent corruption scandals in China vividly demonstrate the detrimental consequences of corruption. One case to illustrate this is of Zheng Xiaoyu. Zheng was the former head of the National Bureau of Food and Drug Administration of China. He received bribes worth RMB 6.5 million and in return approved six fake drugs.[8] It is difficult to imagine how many people were actually victims of these fake drugs, but the number would not be small.

In 2008, Norad (Norwegian Agency for Development Cooperation) conducted a literature review of studies on the prevention of corruption which surveyed about 150 studies covering both academic sources and publicly available documents by organizations such as the World Bank and United Nations agencies.[9] It identified anti-corruption efforts as belonging to six groups: political structure reform; rule of law (control and prosecution of corruption); public administration and system reforms; addressing specific sector corruption (some sector corruption should be understood best as a function of the sector itself); measures focusing on the civil society; and capacity building of anti-corruption agencies.

These approaches focus mainly on the corruption itself; this is largely 'rooting out the bad apples' thinking. Another philosophy of fighting corruption is focused on the opposite side of corruption: the integrity of the government officials. One of the most well-known integrity-building theories is the National Integrity System (NIS), first put forward by Jeremy Pope, which is a framework composed of twelve key institutional pillars: an elected legislature, the role of the executive, an independent judicial system, the auditor general, the ombudsman, independent anti-corruption agencies, public services to serve the public, local government, an independent and free media, civil society, the private corporate sector,

[6] Ting Gong, 'Dependent judiciary and unaccountable judges: judicial corruption in contemporary China', *China Review*, 4, 2 (Fall 2004), pp. 33–54.

[7] Zou Keyuan asserted 'the negative impact of judicial corruption on society is more damaging than corruption in other government agencies due to the nature and functions of the judiciary'. Keyuan Zou, 'Judicial reform versus judicial corruption: recent developments in China', *Criminal Law Forum*, 11, 3 (2000), p. 323.

[8] 'China executes former food and drug safety chief', *New Scientist* (10 July 2007), available at www.newscientist.com/article/dn12230-china-executes-former-food-and-drug-safety-chief.html (last visited on 21 September 2009).

[9] Norad, 'Anti-corruption approaches: a literature review' (2008), available at www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=119213 (last visited on 12 April 2010).

and international actors and mechanisms.[10] However, the result is not satisfactory if only a single pillar of the system is addressed in isolation to other pillars.[11]

1.2 Regulating government ethics

Recent research on government integrity tends to centre on regulations/rules governing integrity, especially their development. For example, Ian Scott 's article 'Promoting integrity in a changing environment: Hong Kong's public sector after 1997', explores the development of regulations and rules against the environment change mainly due to Hong Kong's transition to Chinese sovereignty.[12] Ting Gong examined the emergence of rules on asset declaration in three cities in China in her article 'An "institutional turn" toward rule-based integrity management in China'.[13] Christopher Hood et al.'s book *Regulation Inside Government* systematically examined regulation activities inside governments.[14] Regulation in this book referred not to norms and rules but to the various activities that governments do to regulate themselves in order to make the government behave better.

Regulation, as used in its common context, generally refers to the state regulating the private sector such as the business and financial sectors. However, there is no generic word to describe the sum of activities inside the government in the same way as regulation is used for the private sector. Hence, Hood et al. extends the scope of regulation into situations where government shapes its own behaviour.[15] The central idea of regulation inside government is that the ethics of the government should be guided, monitored, and administrated. Broadly speaking, a regulatory

[10] Jeremy Pope, *Confronting Corruption: The Elements of A National Integrity System* (Berlin: Transparency International, 2000), available at http://info.worldbank.org/etools/docs/library/18416/00.pdf (last visited on 17 October 2012).
[11] Ibid.
[12] Ian Scott, 'Promoting integrity in a changing environment: Hong Kong's public sector after 1997', Collaborative Governance and Integrity Management Conference, Centre of Anti-corruption Studies of the ICAC, Hong Kong, 2010.
[13] Ting Gong, 'An "institutional turn" toward rule-based integrity management in China', Collaborative Governance and Integrity Management Conference, Centre of Anti-corruption Studies of the ICAC, Hong Kong, 2010.
[14] Christopher Hood, Colin Scott, Oliver James, George Jones, and Tony Travers, *Regulation Inside Government: Waste-Watchers, Quality Police, and Sleaze-Busters* (New York: Oxford University Press, 1999).
[15] Ibid., especially p. 8.

enforcement system against public corruption mainly regulates public ethics (or public integrity). Public corruption is mainly generated in situations where organizational dysfunction exists, and where public bureaucracies can intervene in the transfer of a large amount of capital.[16]

Criminal law and administrative law mainly focus on traditional corruption such as embezzlement, bribery, and fraud. Although serious acts of corruption in the form of abuses of public power for private gain have been criminalized, many undesired ethical behaviours actually arise from maladministration and/or misconduct and/or poor internal regulations. As Australia's Public Sector Standards Commissioner stated, 'integrity refers to the application of good values, principles, and standards by public officials in the daily operations of public sector organizations'.[17] Integrity means to act honestly and transparently, using power responsibly and behaving in a way which earns and sustains public trust.[18] Maladministration, misconduct and corruption are the opposite of integrity. Thus, integrity regulation can, to a large extent, address the problem of public corruption. Rules governing public ethics, regulators and the regulatory enforcement process are the main aspects of the regulatory system of public ethics. Earlier research mainly covered rules and some isolated best practices of regulatory enforcement and regulators. Since the 1960s, rules governing public ethics and regulatory bodies experienced rapid development in countries and regions such as the United States, the United Kingdom and Hong Kong.

After a short review of literature on public ethics regulation in the United States, the United Kingdom, and Hong Kong, some observations can be identified. First, the war on corruption has been extended from traditional corruption offences to broad public ethics regulation. Second, the regulation of public ethics is reflected mainly in two aspects: making and revising public ethics rules and regulations, and setting up regulatory bodies. Third, the scope of regulated behaviour is broad, but it mainly lies in four aspects: conflicts of interest, appearance of corruption, financial disclosure and outside employment regulation/activities. These four aspects are not mutually exclusive but overlap to some degree.

[16] Endrius Eliseo Cocciolo, 'Checking the integrity of government', Droit Administratif Compare, europeen et global seminar paper, Paris, 2008.
[17] Public Sector Standards Commissioner (Victoria, Australia), 'Review of Victoria's integrity and anti-corruption system' (2010), available at www.vic.ipaa.org.au/sb_cache/professionaldevelopment/id/193/f/PSSC_Integrity_Review.pdf (last visited on 17 April 2010).
[18] Ibid.

Unlike the United Kingdom and the United States, where government ethics regulation was developed earlier in the twentieth century and became more systematic from the 1970s, in China, the regulation of public ethics has, at best, only just begun to emerge. Even defined by traditional criminal corruption, China still has a long way to go. The authorities have to first deal with serious criminal corruption and leave government ethics (considered minor in nature compared with criminal corruption) unchecked, or at least under-checked.

Some scholars argue that China has begun to follow a more rule-guided integrity management style over the past decade.[19] It is true that the Communist Party and the government have made a large body of rules relevant to government ethics. However, that does not mean a government ethics regulatory system has been established in China. First, many public ethics regulations are made in a very abstract way so their enforceability is very weak. As observed by Li Chengyan, in China, the overall plan of civil servants' honesty management at the national level has not been made, and the basic regulations governing civil servant honesty is missing.[20] The existing regulations are abstract, scattered and unenforceable.[21]

Second, many regulations on conflicts of interest and the appearance of corruption regulations are almost nonexistent. For example, assisting a third party by an official in this third party's dealing with the government is not prohibited by law. Further, the need to avoid an appearance of corruption is almost a foreign notion in China's fight against corruption.

Third, many existing rules regulating government ethics is actually not the counterpart of public ethics regulation in the United Kingdom, the United States, or Hong Kong. Many behaviours governed by government ethics rules in China are considered serious acts of criminal corruption in the United Kingdom, the United States, and Hong Kong. For example, taking a bribe of less than RMB 5,000 in China usually does not amount to criminal corruption.[22] However, a small bribe (say several hundred) will be subject to criminal punishment in the United States, the United

[19] Gong, 'An "institutional turn"'; Ting Gong and Stephen K. Ma (eds.), *Preventing Corruption in Asia: Institutional Design and Policy Capacity* (London: Routledge, 2009).

[20] Chengyan Li, 'Government honesty building up and civil servant honesty management', ICAC Integrity Management Conference paper, Hong Kong, 2010.

[21] Ibid.

[22] Article 386 of the Criminal Law of the People's Republic of China (1997) states that '[w]hoever commits the crime of accepting bribes is to be punished on the basis of Article 383 of this law according to the amount of bribes and the circumstances. A heavier

Kingdom, and Hong Kong. In the three selected jurisdictions, the government ethics rule system mainly regulates conflicts of interest, appearance of corruption, financial disclosure, and outside employment; these rules are inherently more preventative than criminal corruption laws as the former focus mainly on various corruption risks and potential.

Finally, in practice, much maladministration and misconduct is not subject to any formal regulatory control in China even if the relevant rules are there. For example, using government cars for private business is prohibited by government and party rules. However, in reality officials violating this rule are seldom monitored; occasionally some officials may be punished as 'showcases' mainly because they are exposed by the media or Internet and have led to strong public resentment. Generally speaking, unethical conduct by civil servants in China is less likely to be challenged compared with those in the United States, the United Kingdom and Hong Kong.

The expression 'ethics' is frequently used throughout the book. In its philosophical meaning, ethics can refer to Aristotle's virtues determining human behaviour in a way that benefits both the person possessing the virtues and that person's society.[23] This is different from the meaning used in the context of 'government ethics' in this book. For the purpose of this book, government ethics refers to clean and honest conduct of government officials and employees.

1.3 Argument of the book

Researchers working on corruption and/or government ethics in China generally agree that the problem in fighting corruption mainly lies in the enforcement of existing anti-corruption legislation and not the weakness or absence of such laws. Lin Zhe, a law professor at Party

punishment shall be given to whoever demands a bribe.' Article 383 (4) of the Criminal Law of the People's Republic of China states that '[i]ndividuals who have engaged in graft with an amount of less than 5,000 yuan, with the situation being serious, are to be sentenced to less than two years of fixed-term imprisonment or criminal detention. In lighter cases, they will be given administrative action to be decided by the unit to which they belong or the higher administrative organ. Toward those who have committed repeated crimes of graft, all amounts of graft of unhandled cases are to be added in meting out punishment.'

[23] Oxford Dictionaries (online), available at www.oxforddictionaries.com/definition/english/ethics; see also Aristotle, *Nicomachean Ethics* (Chicago, IL: University of Chicago Press, 2011).

College of the Central Committee of China Communist Party (CCP) said to a journalist that:

> Though our country has made many rules on anti-corruption and integrity, these rules are mainly in the form of party rules and administrative rules. Now what we need to do is to integrate these rules into an Anti-corruption Law. It can be said that the promulgation of an Anti-Corruption Law is an important landmark for the establishment of an anti-corruption system. In this modern age, anti-corruption varies greatly from one country to another; however, no matter what anti-corruption method a country adopts, an *Anti-Corruption Law* is absolutely necessary.[24]

The logic behind Lin's proposal is that a national anti-corruption law will be better enforced than party rules and administrative rules. This is actually calling for transferring rules into more formal and perhaps stricter national laws rather than challenging the coverage of existing rules on unethical behaviour. Indeed, even if some countries have special anti-corruption statutes (such as the Prevention of Bribery Ordinance in Hong Kong and the Bribery Act in the United Kingdom) officials' conduct in these countries is not mainly addressed by these statutes. Codes of conduct and other regulations and guidelines set forth detailed requirements for government officials. An article in the *Beijing Times* commenting on Xi Jinping's speech about 'confining power into a cage of regulation' stated that China 'does not lack anti-corruption laws and regulations as well as institutions; what China lacks is the ability to enforce these anti-corruption laws and regulations'.[25] It is plausible at its first sight to argue that China does not lack anti-corruption rules. This illusion is mainly derived from the observation that China has large number of rules and regulations regulating the conduct of officials. However, having a large number of rules does not necessarily mean most undesired ethical behaviours have been regulated. For example, China has issued many circulars and documents regulating issues such as accepting club memberships, gifts, cash, securities, travel and special products. However, these specific prohibition rules omit many types of transfers of economic value from private

[24] Yonggang Li, 'Lin Zhe, Professor at Central Party Committee College, proposed that anti-corruption institutions shall be upgraded to anti-corruption statutes', *Huashang Daily*, available at http://sx.sina.com.cn/news/kuai/2012-03-14/18729.html (last visited on 25 May 2013).

[25] Qiao Wu, 'Legal measures against corruption: confining public power into the cage of regulation', *Beijing Times* (17 December 2012), p. A02.

sources to a government official as new forms of advantage that have not been prohibited can always be created.

Thus, the first research question is: to what extent are China's government ethics rules adequate (or inadequate) or comprehensive (or incomprehensive)? This question is important because different answers will suggest different anti-corruption responses. If it is found that China lacks rules on government ethics, a systematic rule-making response is required. In order to address this question, many other related questions must also be answered. These questions can be put into two groups. The first group includes questions about the general framework used to analyze government ethics rules: What are the key categories of government ethics rules? What are the major activities regulated? Why should these activities be regulated (in other words, how can these rules be justified)? Answers to these questions will provide a systematic skeleton to examine rules concerning government ethics. Further, rules on government ethics can cover a very broad range of activities as this concept is in itself vague; clear answers to these questions will help define the scope of this research.

The other group of questions concerns government ethics rules in three selected jurisdictions, the United States, the United Kingdom and Hong Kong: What are the patterns of government ethics rules in the three countries (jurisdictions)? To what extent do these patterns conform to the analytic frameworks developed for the questions in group one? Research on these questions can test whether the analytic frameworks are appropriate in analyzing real government ethics rules. Further, the patterns of rules in the three jurisdictions, together with the categories and key principles in general addressed in group one questions, will provide both a practical and a theoretical baseline for the research of government ethics in China.

The second group of key research questions are as follows: What is the state of government ethics enforcement in China and how do we evaluate the effectiveness of enforcement? To address these questions, many related sub-questions, which can be put into three groups, need to be answered. The first group is about analytic framework for government ethics enforcement: What are the key elements of government ethics enforcement? Can law enforcement knowledge in general be extended to government ethics enforcement? The second group is about government ethics enforcement in the three selected jurisdictions: Who are the government ethics enforcers in the three jurisdictions? What is the enforcement style adopted by these agencies? What powers and responsibilities have been given to these

agencies? What are the tools and techniques available to these agencies and how do they use these tools? In general, what are the patterns of government ethics enforcement in the three jurisdictions? The third group is about the enforcement in China: What are the enforcement patterns/features in China with respect to the agencies, enforcement styles, enforcement powers and responsibilities, enforcement tools and enforcement resources? What types of actions are regulated in everyday life?

The third key group of research questions are: What implications regarding government ethics rule reform and enforcement policies can be generated? Are these proposed changes practical in the sense of being feasible given the existence of the one-party political environment in China? In other words, to what extent may these proposed reforms be adopted by the top authority of China?

This book addresses these questions through both doctrinal and empirical approaches. These questions mainly involve two aspects, government ethics rules and their enforcement. Discussion of the rules was addressed by desktop research – specifically speaking, by rule searching and rule analysis methods. First, literature on government ethics principles and categories in general was examined to figure out the appropriate frameworks to analyze government ethics rules and their enforcement. Second, government ethics rules in three selected jurisdictions (the United States, the United Kingdom, and Hong Kong) were systematically examined (the reasons for choosing these three jurisdictions will be discussed at the end of this section). The features and patterns of the government ethics rules in the three countries provide a standard to examine China's rules. Finally, government ethics rules in China were searched and then analyzed. As enforcement is about how to maintain adherence to the rules in reality, it is not enough to examine this based solely on academic literature, especially for China where existing research on this area is limited. Thus, fieldwork (specifically, interviews, internal documents review [archive study] and questionnaires) was carried out on government ethics enforcement in China (see Appendix A for a more detailed description of the research methods).

This book argues that government ethics rules in China are problematic in four ways. First, existing rules have not yet regulated much of the unethical behaviour of government officials (such as representing a third party in dealing with government, and the appearance of using official influence for private purposes). Second, some unethical behaviour in China is subject to narrower regulation compared with that in the three selected jurisdictions. For example, the scope of the items for financial

disclosure is narrower than that in the United States, the United Kingdom, and Hong Kong. For another example, regarding transfer of economic value from a private source to a government official, China mainly restricts transfers connected to the official's official duties and leaves the transfer made in the official's private capacity unregulated, whereas the three jurisdictions prohibit both. Third, the rules are technically poorly made. China has more than seventy government ethics rules, but they are scattered, repeated, and ambiguous. Finally, certain rules cannot be justified because these rules play only a marginal role (or even no role) in achieving the expected results and at the same time impose a more than necessary burden on the regulated officials. Take rules prohibiting the spouse and children of covered officials from running a business as an example. These rules cannot effectively prevent officials from abusing power for private gains as they can still benefit private businesses controlled by their other relatives or close friends. On the other hand, officials' spouses and children are burdened more than is necessary as it is not wrong for them to run a business as long as they do not profit from official power. Thus, it is argued that these rules shall be repealed and the problem of abusing power for private gain should be addressed by criminal corruption law and government ethics rules (especially conflicts of interest rules and appearance of corruption rules).

Further, the book argues that China's government ethics enforcement suffers from the lack of separation of criminal corruption enforcement and government ethics enforcement. Both criminal corruption and government ethics are enforced by Discipline Inspection Committees (DICs). DICs' attention focuses on criminal enforcement. They seldom regularly enforce many existing government ethics rules (such as using government cars for private use). Their enforcement style and tools are shaped by their criminal enforcement. The DICs do not distinguish government ethics enforcement from criminal corruption enforcement. Nor do they realize the systematic difference between the two systems. They enforce government ethics rules in the same manner as they enforce criminal corruption: their style is deterrence oriented in contrast to being compliance oriented. For example, the DICs' power mainly involve investigation and punishment, and they seldom conduct department audits, review financial disclosure forms or require register of conflicts of interest, which are typical compliance enforcement methods. However, government ethics regulation requires a completely different enforcement style: compliance oriented enforcement style. Thus, it is argued that China should first establish a separate government ethics