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## Combatting Corruption in the “Era of Xi Jinping”: A Law and Economics Perspective

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## **Combatting Corruption in the “Era of Xi Jinping”: A Law and Economics Perspective**

MIRON MUSHKAT\* AND RODA MUSHKAT\*\*

### **Abstract**

Pervasive graft, widely observed throughout Chinese history but deprived of proper outlets and suppressed in the years following the Communist Revolution, resurfaced on massive scale when partial marketization of the economy was embraced in 1978 and beyond. The authorities had endeavored to alleviate the problem, but in an uneven and less than determined fashion. The battle against corruption has greatly intensified after Xi Jinping ascended to power in 2012. The multiyear antigraft campaign that has unfolded has been carried out in an ironfisted and relentless fashion. It has yielded some tangible benefits, yet the negative side of the ledger is heavily loaded. Absent broad-based institutional reengineering, the ambitious and costly program’s long-term future may not be assured.

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## I. Introduction

With few, often ideologically driven exceptions,<sup>1</sup> post-1949 revolutionary-era China has been critically portrayed, and harshly so, by academic researchers and policy analysts.<sup>2</sup> The new regime's institutional foundations and politico-economic strategies have been subjected to relentlessly unfavorable scrutiny.<sup>3</sup> The brutalities and human costs of the 1958-62 Great Leap Forward and the 1966-76 Cultural Revolution have been highlighted in particularly strident terms.<sup>4</sup> The mixture of organizational fragility and personal excesses, perhaps even turpitude, accounting for such transgressions have been copiously documented and unreservedly pilloried.<sup>5</sup>

This firmly entrenched and normatively well-underpinned trend came to an abrupt end in 1978, two years following the death in 1976 of Mao Zedong, who had cast a long shadow over the Chinese scene since the founding of the People's Republic of China (PRC). His reformist successors, spearheaded by paramount leader Deng Xiaoping, have embraced the "Open Door Policy" and have proceeded to implement a series of measures designed to integrate the Chinese economy with that of the rest of the (essentially capitalist) world.<sup>6</sup> Partial economic liberalization has coincided with a degree of political relaxation, or a shift from "hard authoritarianism" to a more palatable version depicted as either "pragmatic" or "soft."<sup>7</sup>

The opening up of the economy, coupled with corresponding domestic restructuring in a less oppressive and more stable and transparent policy setting, has yielded substantial dividends in the form of rapid economic growth over a long period of time, perhaps remarkable for such a populous country.<sup>8</sup> This, in turn, has given rise to a voluminous literature on China's spectacular rise, the Chinese miracle, and the unmistakable emergence of a

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1. See, e.g., WAS MAO REALLY A MONSTER? THE ACADEMIC RESPONSE TO CHANG AND HALLIDAY'S MAO: THE UNKNOWN STORY (Gregory Benton & Lin Chun eds., 2010).

2. See, e.g., JUNG CHANG & JON HALLIDAY, MAO: THE UNKNOWN STORY (2006).

3. See, e.g., *id.*

4. See, e.g., *id.*

5. See, e.g., *id.*

6. See generally KEVIN B. BUCKNALL, CHINA AND THE OPEN DOOR POLICY (1990).

7. See generally Minxin Pei, *China's Evolution Toward Soft Authoritarianism*, in WHAT IF CHINA DOES NOT DEMOCRATIZE? IMPLICATIONS FOR WAR AND PEACE 75 (Edward Friedman & Barrett L. McCormick eds., 2000); HONGYI LAI, CHINA'S GOVERNANCE MODEL: FLEXIBILITY AND DURABILITY OF PRAGMATIC AUTHORITARIANISM (2016).

8. See generally LINDA YUEH, CHINA'S GROWTH: THE MAKING OF AN ECONOMIC SUPERPOWER (2013).

new superpower.<sup>9</sup> A recurring theme in this body of work has been that a salient feature of this extraordinary structural transformation has been its peaceful nature,<sup>10</sup> entailing the reconfiguration of China from a revisionist to a status quo power.<sup>11</sup> The Chinese “harmonious world” blueprint<sup>12</sup> and “good neighbor” strategy<sup>13</sup> have been invoked to pinpoint concrete manifestations of this salutary pattern.

Such construction, while not inaccurate, has notable limitations stemming from its oversimplification of complex realities. First, the robustness of data relied upon in this context is seldom called into question.<sup>14</sup> Second, China’s meteoric rise may have been due to one-time special conditions which may not repeat themselves.<sup>15</sup> Third, even if this has not been a decisive element of the developmental equation, and the key explanation, conventional<sup>16</sup> or unconventional,<sup>17</sup> lies in the institutional domain, it is appropriate to employ counterfactual logic<sup>18</sup> and pose the

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9. See, e.g., WILLIAM H. OVERHOLT, *THE RISE OF CHINA: HOW ECONOMIC REFORM IS CREATING A NEW SUPERPOWER* (1994).

10. See, e.g., OVERHOLT, *supra* note 9; YUEH, *supra* note 8.

11. See generally Lye Liang Fook, *China in World Politics: Is China a Status Quo Power?*, 15 *CHINA: AN INT’L. J.* 1, 3 (2017).

12. See generally HARMONIOUS WORLD AND CHINA’S NEW FOREIGN POLICY (Sujian Guo & Jean-Marc F. Blanchard eds., Lexington Books 2010); ROSITA DELIOS & R. JAMES FERGUSON, *CHINA’S QUEST FOR GLOBAL ORDER: FROM PEACEFUL RISE TO HARMONIOUS WORLD* (2013); ASTRID H. M. NORDIN, *CHINA’S INTERNATIONAL RELATIONS AND HARMONIOUS WORLD* (2016).

13. See generally CHIEN-PENG CHUNG, *CHINA’S MULTILATERAL COOPERATION IN ASIA AND THE PACIFIC: INSTITUTIONALIZING BEIJING’S “GOOD NEIGHBOR POLICY”* (2010); STEVEN F. JACKSON, *CHINA’S REGIONAL RELATIONS IN COMPARATIVE PERSPECTIVE: FROM HARMONIOUS NEIGHBORS TO STRATEGIC PARTNERS* (2018).

14. See Michael T. Owyang & Hannah G. Shell, *China’s Economic Data: An Accurate Reflection, or Just Smoke and Mirrors?*, 25 *REGIONAL ECONOMIST* 6, 12 (2017).

15. See generally Wing Thye Woo, *The Real Reasons for China’s Growth*, 41 *CHINA J.* 115 (1999); DWIGHT H. PERKINS, *THE ECONOMIC TRANSFORMATION OF CHINA* (World Scientific 2015).

16. See generally JUSTIN YIFU LIN, *ECONOMIC DEVELOPMENT AND TRANSITION: THOUGHT, STRATEGY, AND VIABILITY* (2009); JUSTIN YIFU LIN, *DEMISTIFYING THE CHINESE ECONOMY* (2012); *GOVERNING RAPID GROWTH IN CHINA: EQUITY AND INSTITUTIONS* (Ravi Kanbur & Xiaobo Zhang eds., 2013); YUEN YUEN ANG, *HOW CHINA ESCAPED THE POVERTY TRAP* (2016); SEBASTIAN HEILMANN, *RED SWAN: HOW UNORTHODOX POLICY MAKING FACILITATED CHINA’S RISE* (2018).

17. See generally Chenggang Xu, *The Fundamental Institutions of China’s Reforms and Development*, 49 *J. ECON. LITERATURE* 1076 (2011).

18. See generally Roda Mushkat, *Counterfactual Reasoning: An Effective Component of the International Law Methodological Armor?*, 18 *GERMAN L.J.* 59 (2017).

question whether under alternative institutional scenarios (e.g., Hong Kong, Singaporean, or Taiwanese-style regime) overall performance would have not been even better. Fourth, institutions that had served the country effectively during industrialization may be ill-suited for a consumption-led, knowledge-based, and service-propelled economy.<sup>19</sup>

Fifth, as the preceding argument elucidates, the pitfalls of mechanically extrapolating from the past should not be overlooked.<sup>20</sup> As the example of the once dynamic but now static Japanese economic system vividly illustrates, historical evolution is not devoid of unexpected twists and turns.<sup>21</sup> It is reasonable to assume that China's future is shrouded in uncertainty. Indeed, there are legitimate concerns about the Chinese juggernaut losing its supposed vibrancy and being caught in the notorious "middle-income trap."<sup>22</sup> By the same token, China's rise, if sustained, need not necessarily remain peaceful. The truth of the matter is that there are indications that the "harmonious society" vision and the "good neighbor" posture may have been relegated to the backburner.<sup>23</sup> The comforting image of a "status quo power"

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19. See generally SUSAN L. SHIRK, *CHINA: FRAGILE POWER* (2008); DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2012); KUI-WAI LI, *ECONOMIC FREEDOM: LESSONS OF HONG KONG* (2012); DAVID SHAMBAUGH, *CHINA GOES GLOBAL: THE PARTIAL POWER* (2013); MINXIN PEI, *CHINA'S CRONY CAPITALISM: THE DYNAMICS OF REGIME DECAY* (2016); DAVID SHAMBAUGH, *CHINA'S FUTURE* (2016); Stephen G. Brooks & William C. Wohlforth, *The Once and Future Superpower: Why China Won't Overtake the United States*, *FOREIGN AFFAIRS* (May/June 2016), <https://www.foreignaffairs.com/articles/united-states/2016-04-13/once-and-future-superpower> (last visited Aug. 31, 2019); Roger Bootle, *China's Attempt to Overtake US as World's Biggest Economy May Fail*, *TELEGRAPH* (Mar. 4, 2018, 8:50 PM), <https://www.telegraph.co.uk/business/2018/03/04/chinas-attempt-overtake-us-worlds-biggest-economy-may-fail/> (last visited Aug. 31, 2019); Heritage Foundation, *Societies Thrive as Economic Freedom Grows*, <https://www.heritage.org/index/book/chapter-2> (last visited Aug. 31, 2019); *ECONOMIST*, *Economics and the Rule of Law: Order in the Jungle*, <http://www.economist.com/node/10849115> (last visited Aug. 31, 2019).

20. See generally Charles F. Duran, *Why Forecasts Fail: The Limits and Potential of Forecasting in International Relations and Economics*, 1 *INT'L STUDIES REV.* 11 (1999).

21. See generally *JAPAN'S LOST DECADE: ORIGINS, CONSEQUENCES, AND PROSPECTS FOR RECOVERY* (Gary R. Saxonhouse & Robert M. Stern eds., 2004).

22. See generally *A NEW ECONOMIC GROWTH ENGINE FOR CHINA: ESCAPING THE MIDDLE-INCOME TRAP BY NOT DOING MORE OF THE SAME* (Wing Thye Woo et al. eds., 2012); *ASIA AND THE MIDDLE-INCOME TRAP* (Francis E. Hutchison & Sanchita Basu Das eds., 2016); *CHINA'S INNOVATION CHALLENGE: OVERCOMING THE MIDDLE-INCOME TRAP* (Arie Y. Lewin, Martin Kenney, & Johann P. Murmann eds., 2016); *AVOIDING THE MIDDLE-INCOME TRAP IN ASIA: THE ROLE OF MANUFACTURING, TRADE, AND FINANCE* (Naoyuki Yoshino et al. eds., 2018).

23. See generally Suisheng Zhao, *Rethinking the Chinese World Order: The Imperial Cycle and the Rise of China* 24 *J. OF CONTEMP. CHINA* 961 (2015); Chris Buckley, *Xi of Two*

has accordingly given way to the less reassuring picture of an “assertive status quo power.”<sup>24</sup>

Sixth, the writings on the Chinese miracle obscure the “dark side” of the historical record. China’s economic growth has consumed vast resources and has involved a massive misallocation of capital.<sup>25</sup> The economy has been plagued by enormous distortions.<sup>26</sup> Regional disparities<sup>27</sup> and social inequality<sup>28</sup> have escalated dramatically.<sup>29</sup> Large-scale poverty has continued to rear its ugly head.<sup>30</sup> The regime has failed to deliver adequate education<sup>31</sup> and healthcare<sup>32</sup> to its people. The regulation of risk has been a shambles.<sup>33</sup> The one-child policy has sown the seeds of demographic stagnation.<sup>34</sup> The needs of aging population have not been properly

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*Minds: To Be Good Neighbor or Assert China’s Power?*, NEW YORK TIMES: SINOSPHERE (June 12, 2014), <https://sinosphere.blogs.nytimes.com/2014/06/12/xi-of-two-minds-be-a-good-neighbor-or-assert-chinas-power/?mtrref=www.google.com.hk&gwh=42DC74657B69E056A78697E19A6971F4&gwt=pay>; Zhu Feng, *The Limits of Power: Why China Is a Bad Neighbor*, FIRSTPOST (Nov. 1, 2011), <http://www.firstpost.com/world/the-limits-of-power-why-china-is-a-bad-neighbour-120299.html>; Yang Hengjun, *Why Are China’s Neighbors So Afraid of Her?*, DIPLOMAT (May 23, 2014), <https://thediplomat.com/2014/05/why-are-chinas-neighbors-so-afraid-of-her/>.

24. See generally Robert Farley, *China Might Be Just an Assertive Status Quo Power*, DIPLOMAT (Aug. 29, 2014), <http://thediplomat.com/2014/08/china-might-just-be-an-assertive-status-quo-power/> (last visited Aug. 31, 2019).

25. See generally Damien Cubizol, *Transition and Capital Misallocation: The Chinese Case*, 81 J. OF INT’L MONEY & FIN. 88 (2018).

26. See generally CHINA’S NEW ROLE IN THE WORLD ECONOMY (Yiping Huang & Miaojie Yu eds., 2013).

27. See generally YANQING JIANG, OPENNESS, ECONOMIC GROWTH, AND REGIONAL DISPARITIES: THE CASE OF CHINA (2013).

28. See generally UNDERSTANDING INEQUALITY AND POVERTY IN CHINA: METHODS AND APPLICATIONS (Guanghua Wan ed., 2008).

29. See generally *id.*

30. See generally *id.*

31. See generally YONG ZHAO, WHO’S AFRAID OF THE BIG BAD DRAGON? WHY CHINA HAS THE BEST (AND WORST) EDUCATION SYSTEM IN THE WORLD (2014).

32. See generally GUANQI ZHOU, THE REGULATORY REGIME OF FOOD SAFETY IN CHINA: GOVERNANCE AND SEGMENTATION (2017).

33. See generally ROBERT STOWE ENGLAND, AGING CHINA: THE DEMOGRAPHIC CHALLENGE TO CHINA’S ECONOMIC PROSPECTS (2005).

34. See generally Robert C. Pozen, *Tackling the Chinese Pension System*, BROOKINGS, <https://www.brookings.edu/wp-content/uploads/2016/06/31-reforming-chinese-pension-system-pozen.pdf> (last visited Aug. 31, 2019).

addressed.<sup>35</sup> Environmental degradation has reached mammoth proportions.<sup>36</sup> Financial fragility has significantly intensified.<sup>37</sup>

Seventh, the entire network of interpersonal exchanges—economic, political, and social—has been literally drowning in corruption.<sup>38</sup> Because of lack of opportunities, it may have lurked below the surface during the prereform era, but it has forcefully burst into the open shortly thereafter.<sup>39</sup> Rather paradoxically, unlike in other similar historical cases, rampant Chinese corruption has mushroomed, rather than moderated, as prosperity has spread and the standard of living has climbed.<sup>40</sup> While thus far it has not exacted a heavy economic toll and has not materially undermined political stability, there is empirical evidence to suggest that it may have the potential to inflict such damage.<sup>41</sup>

The post-1978 regime has not been oblivious to the breadth, depth, and pernicious consequences of the problem.<sup>42</sup> Some general initiatives—such

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35. See generally Robert C. Pozen, *Tackling the Chinese Pension System*, BROOKINGS (July 2013), <https://www.brookings.edu/wp-content/uploads/2016/06/31-reforming-chinese-pension-system-pozen.pdf> (last visited Aug. 31, 2019).

36. See generally CARL WALTER & FRASE J. T. HOWIE, RED CAPITALISM: THE FRAGILE FINANCIAL FOUNDATION OF CHINA'S EXTRAORDINARY RISE (2012); DINNY MCMAHON, CHINA'S GREAT WALL OF DEBT: SHADOW BANKING, GHOST CITIES, MASSIVE LOANS, AND THE END OF THE CHINESE MIRACLE (2018); Economist, *China's Financial System: The Coming Debt Bust*, ECONOMIST (May 7, 2016), <https://www.economist.com/news/leaders/21698240-it-question-when-not-if-real-trouble-will-hit-china-coming-debt-bust> (last visited Aug. 31, 2019).

37. See generally CARL E. WALTER & FRASE J. T. HOWIE, RED CAPITALISM: THE FRAGILE FINANCIAL FOUNDATION OF CHINA'S EXTRAORDINARY RISE (2012); DINNY MCMAHON, CHINA'S GREAT WALL OF DEBT: SHADOW BANKING, GHOST CITIES, MASSIVE LOANS, AND THE END OF THE CHINESE MIRACLE (2018); Economist, *China's Financial System: The Coming Debt Bust*, ECONOMIST (May 7, 2016), <https://www.economist.com/news/leaders/21698240-it-question-when-not-if-real-trouble-will-hit-china-coming-debt-bust> (last visited Aug. 31, 2019).

38. See generally PEI, *supra* note 19; Zengke He, *Corruption and Anti-Corruption in Reform China*, 33 COMMUNIST & POST-COMMUNIST STUD. 243 (2000); Andrew Wedeman, *The Intensification of Corruption in China*, 180 CHINA Q. 895 (2004); Yong Guo, *Corruption in Transitional China: An Empirical Analysis*, 194 CHINA Q. 349 (2008); Andrew Wedeman, *Corruption and Collective Protest in China*, in ROUTLEDGE HANDBOOK OF CORRUPTION IN CHINA 179 (Ting Gong & Ian Scott eds., 2017).

39. See generally PEI, *supra* note 19; Guo, *supra* note 38; He, *supra* note 38; Wedeman, *Corruption and Collective Protest in China*, *supra* note 38.

40. See generally Yukon Huang, *The Truth about Chinese Corruption*, DIPLOMAT (May 29, 2015), <https://thediplomat.com/2015/05/the-truth-about-chinese-corruption/> (last visited Aug. 31, 2019).

41. See generally *id.*

42. See generally He, *supra* note 38.

as modest loosening of authoritarian controls, possibly qualifying as limited democratization,<sup>43</sup> and revamping of the bureaucratic apparatus, with a view to enhancing its responsiveness<sup>44</sup>—have reflected mounting concerns about the corrosive nature of widespread corruption and attempts to contain it indirectly.<sup>45</sup> A number of anticorruption campaigns have also been periodically conducted, targeting the phenomenon directly<sup>46</sup> and seeking to reinforce the pressures exerted by the fledgling agencies established to confront the issue on an ongoing basis.<sup>47</sup> Moral education has been resorted to as well, in an effort to formulate and pursue a well-rounded strategy.<sup>48</sup>

The effectiveness of this multipronged—but ultimately half-hearted, scattered, shallow, and uneven—strategy has proved negligible, however.<sup>49</sup> The current anticorruption campaign—the longest, most ferocious, and without parallel in its unremitting flow—has vastly surpassed any top-down mobilization endeavors witnessed since the Cultural Revolution.<sup>50</sup> For better or for worse, it has also produced some tangible results, even if their impact beyond the medium-term horizon remains uncertain.<sup>51</sup> The aim of this article is to assess, from a law and economics perspective, which is particularly pertinent for that purpose, the appropriateness and effectiveness of the anticorruption drive presently waged by the Chinese authorities.

The survey focuses, in this order, on the characterization of corruption in China, its manifestations, its origins, highlights of the economic approach to corruption, essential features of the “Xi Jinping era,” fundamental nature of the anticorruption campaign, and its systematic evaluation. The campaign is the brainchild of President and General Secretary of the Chinese Communist Party (CCP), Xi Jinping, and his close associates, and is presented as such. It is intimately intertwined with his name, personality, and policies. It is the single most important domestic strategic undertaking by Xi and his inner circle and easily overshadows all their other major policy initiatives. Indeed, the current anticorruption drive could be said to define

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43. *See id.* at 265.

44. *See id.* at 265-266.

45. *See id.*

46. *See id.* at 267-268.

47. *See id.* at 266-267.

48. *See id.* at 268-269.

49. *See generally id.*

50. *See generally* Guilhem Fabre, *Xi Jinping’s Challenge: What Is Behind China’s Anti-Corruption Campaign?*, 5 J. OF SELF-GOVERNANCE & MANAGEMENT ECON. 7 (2017).

51. *See generally id.*

the regime. This accounts for the linkage between the campaign and the Xi Jinping era.

## II. Chinese Conceptions of Corruption

In grappling with intricate behavioral patterns, academic researchers typically strive to strike a balance between satisfactorily capturing diversity and realizing a meaningful degree of uniformity.<sup>52</sup> This posture is reflected in the exploration of corruption in China. The examination of the subject commonly begins by laying a definitional foundation that is consistent with international practices, rather than geared to local conditions.<sup>53</sup> Modest adjustments may be contemplated, but they normally do not amount to substantial departures from widely accepted standards.<sup>54</sup> This is generally followed by an attempt to accommodate country-specific nuances.<sup>55</sup>

Context-free attributions of meaning range from compact to elaborate. At the most basic level, corruption is equated in the Chinese setting with the "misuse of public authority for private gain."<sup>56</sup> This conceptualization is predicated on a clear distinction between the public and private domains, which may be blurred in China,<sup>57</sup> but it has nevertheless proved workable in theoretically-inspired and empirical inquiries.<sup>58</sup> It should be noted, however, that it does not encompass categories of corruption that surface outside the public realm and that it may thus be necessary to incorporate into the definition forms of private corruption such as those observed in the corporate sector and relating to issues of fiduciary responsibility.<sup>59</sup>

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52. See, e.g., Robert Wisner, *Uniformity, Diversity, and Provincial Extraterritoriality: Hunt v. T&N plc*, 40 MCGILL L.J. 759 (1995).

53. See, e.g., He, *supra* note 38. See also Kilkon Ko & Cuifen Weng, *Critical Review of Conceptual Definitions of Chinese Corruption: A Formal-Legal Perspective*, 20 J. OF CONTEMP. CHINA 359 (2011); Xizi Lu, *A Literature Review on the Definition of Corruption and Factors Affecting the Risk of Corruption*, 4 OPEN J. SOC. SCI. 171 (2016).

54. See, e.g., He, *supra* note 38.

55. See, e.g., Yan Sun, *The Politics of Conceptualizing Corruption in Reform China*, in 4 CRITICAL READINGS ON THE CHINESE COMMUNIST PARTY 1215 (Kjeld E. Brodsgaard ed., 2017).

56. Andrew Wedeman, *The Challenge of Commercial Bribery and Organized Crime in China*, 22 J. OF CONTEMP. CHINA 18 (2013).

57. See JULIA KWONG, *THE POLITICAL ECONOMY OF CORRUPTION IN CHINA* (1997).

58. See, e.g., ANDREW WEDEMAN, *DOUBLE PARADOX: RAPID GROWTH AND RISING CORRUPTION IN CHINA* (2012).

59. See generally Wedeman, *supra* note 56.

The interplay between the public and private ingredients is at the core of efforts to distil the essence of Chinese-style “crony capitalism” and the corrupt practices it begets.<sup>60</sup> This is assumed to be an institutional setting “in which capitalists gain valuable rents from politicians”<sup>61</sup> or, to express it in a more nuanced fashion, “an instrumental union between capitalists and politicians designed to acquire wealth, legally or otherwise, and the latter to seek and retain power.”<sup>62</sup> Putin’s Russia is also said to serve as a fertile ground for the spread of crony capitalism and the corrupt excesses it abundantly breeds.<sup>63</sup>

In daily discourse, the emphasis is loosely placed on the public aspects or the generic phenomenon.<sup>64</sup> *Yichuan mou shi* and *jia gong ji si* therefore denote, respectively, “using one’s power or authority for private ends” and “us[ing] public resources to manufacture private ones.”<sup>65</sup> Alternatively, any symptoms of corruption may be identified with *tanwu* (greed and dirt), *fuhua* (being rotten and decomposed), *fubai* (rottenness associated with poor performance), and *bu zheng zhi feng* (engaging in wrong and devious behavior).<sup>66</sup> The propensity to freely cross the boundary between the public and private spheres may be ascribed to the fact that, in the Chinese milieu, the former often encroaches on the latter.<sup>67</sup>

The public side of the images floated has had three notable characteristics.<sup>68</sup> First, stress has traditionally been laid on the use of power or authority for private ends and the use of public resources to manufacture private ones rather than the abuse or misuse inevitably manifesting itself in the course of such pursuits.<sup>69</sup> This broad-based portrayal has both advantages and disadvantages.<sup>70</sup> On the one hand, it allows the widening of the net when targeting corrupt practices and thus can be said to introduce an inherently strict test for assessing potential transgressions.<sup>71</sup> On the other hand, the

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60. See generally PEI, *supra* note 19.

61. *Id.* at 7.

62. *Id.*

63. See generally KAREN DAWISHA, PUTIN’S KLEPTOCRACY: WHO OWNS RUSSIA? (2014).

64. See KWONG, *supra*, note 57, at 3-5.

65. See *id.* at 3.

66. See *id.*

67. See *id.* at 3-5.

68. See He, *supra*, note 38, at 244.

69. See *id.*

70. See *id.*

71. See *id.*

ambiguity pervading the depictions paves the way for possible manipulation by officials in a position to exploit the terminological elasticity.<sup>72</sup>

Second, similar fuzziness has marked the notion of “private interest.”<sup>73</sup> Again, this may be attributed to China’s collectivist or socialist legacy, which has led to a convergence of and overlapping between the public and private domains, with the former typically emitting stronger impulses and exerting greater influence over policy outcomes.<sup>74</sup> Private in this unconventional, if viewed from a narrow Western or liberal perspective,<sup>75</sup> institutional context extends well beyond the sector of social life generally unimpeded by interventions from governmental and other public organizations in that it includes various collective entities as well, both small (e.g., work unit) and large (e.g., entire province).<sup>76</sup>

Third, the inclination to paint the picture with a broad brush has been noted with regard to the delineation of the specific source or subject of corruption.<sup>77</sup> A wide range of scenarios may be conjured up.<sup>78</sup> In the public realm, an official, whether serving or retired, may be zeroed in on but so may be her/his relatives, or even a whole public body and its leaders, to cite just the most obvious examples.<sup>79</sup> Once more, this may be looked at from a favorable or unfavorable angle.<sup>80</sup> Those charged with combating corruption enjoy considerable leeway in executing their task, but they may readily abuse their authority.<sup>81</sup>

Ideational opaqueness is amply observed at grassroots level, a pattern evocatively mirrored in the popular literature.<sup>82</sup> In daily parlance, corruption, as grasped by Chinese people, is thus equated “not just [with] particular codifiable transgressions, but also to broad, even metaphoric perceived deficiencies of character, society, and history.”<sup>83</sup> This stands in marked contrast to “social science approaches [which] generally detail behaviors

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72. *See id.*

73. *See id.*

74. *See* KWONG, *supra* note 57, at 3-5.

75. *See generally* RAYMOND GEUSS, PUBLIC GOODS, PRIVATE GOODS (2003).

76. *See* He, *supra*, note 38, at 244.

77. *See id.*

78. *See id.*

79. *See id.*

80. *See id.*

81. *See id.*

82. *See generally* JEFFREY C. KINKLEY, CORRUPTION AND SOCIALISM IN LATE SOCIALIST CHINA: THE RETURN OF THE POLITICAL NOVEL (2007).

83. *Id.* at 171.

considered corrupt, the norms (laws, rules, or simply expectations) these behaviors defy, and how and why this defiance persists.”<sup>84</sup> The prevailing tendency is to address corruption in nonutilitarian terms, as “an evil in itself”.<sup>85</sup> “Unfairness, injustice, and the slowing of economic growth may be immanent with corruption, but corruption is not to be condemned simply because of its consequences.”<sup>86</sup>

Interestingly, while corrupt practices are regarded at this level as an elastic and evolving phenomenon, rather than a readily codifiable set of transgressions,<sup>87</sup> and one possessing a dynamic quality which renders it mutable,<sup>88</sup> cognitive reorientations across space and over time are not random but engendered by sociopolitical transformations.<sup>89</sup> A notable aspect of the process is the heightened sensitivity to the concentration of power.<sup>90</sup> Consequently, although “[o]utright calls for democracy are few and far between, ... ‘excessive’ power is coming to be seen as ‘corruption.’”<sup>91</sup> The inference tentatively drawn is that this “may someday threaten the Communist Party.”<sup>92</sup>

At the elite level, deemed paramount for fruitful investigation of Chinese corruption, the focus is on inappropriate dealings between resource holders in the public and private sectors, which underlie a system of crony capitalism.<sup>93</sup> A salient feature of corruption in China thus is a deeply ingrained “collusion among elites.”<sup>94</sup> The emphasis placed on this characterization stems from the fact that “such collusion, both legal and illicit, lies at the heart of crony capitalism in all societies regardless of the nature of their political regimes.”<sup>95</sup> Such attribution of relative importance does not necessarily imply that “petty corruption,” consisting “primarily of the small bribes and informal fees incurred by individual citizens as they go

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84. *Id.* at 170.

85. *Id.* at 171.

86. *Id.*

87. *See id.* at 3.

88. *See id.* at 3, 171-172.

89. *See id.*

90. *See id.* at 3.

91. *Id.*

92. *Id.*

93. *See generally* PEI, *supra* note 19.

94. *Id.* at 7.

95. *Id.*

about their normal activities,”<sup>96</sup> is a marginal phenomenon lacking serious ramifications.<sup>97</sup>

The distinction between collusive corruption and its petty counterpart is not trivial, however. The former is “more destructive than [the latter] because such behavior destroys the organizational and normative fabric of the [S]tate, increases the difficulty of detection, and produces greater financial gains for perpetrators.”<sup>98</sup> Additionally, “[d]ue to the greater predatory capabilities possessed by elites engaged in collusive corruption, local governments penetrated by these elites unavoidably experience degradation in their capacity for providing public goods.”<sup>99</sup> Indeed, the impact of cross-sector elite collusion may be so profoundly corrosive that “corruption networks, consisting of officials, businessmen, and gangsters, [may] seize control of these jurisdictions and turn them into local mafia [S]tates.”<sup>100</sup>

Another pernicious by-product of collusive corruption is believed to be friction between State and society.<sup>101</sup> Where collusive elites are perceived to blatantly, persistently, and widely abuse their power, grassroots resentment may build up and boil over.<sup>102</sup> The absence of institutional channels to facilitate an orderly and productive expression of such sentiment may exacerbate the sense of alienation and frustration, culminating in acts of violence and unruly protest.<sup>103</sup> China’s State machinery has proved capable of containing bottom-up threats to its rule, but they potentially sow the seeds of social instability and undermine effective governance.<sup>104</sup>

Collusive corruption is not an exclusive Chinese behavioral pattern. In Asia, it has commonly taken the form of “developmental corruption.”<sup>105</sup> The latter, in turn, has constituted an integral part of an institutional constellation referred to as the “developmental State,” which has played a pivotal role in the industrialization of the Japanese, Korean, and Taiwanese economies.<sup>106</sup>

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96. JONATHAN R. STROMSETH ET AL., CHINA’S GOVERNANCE PUZZLE: ENABLING TRANSPARENCY AND PARTICIPATION IN A SINGLE-PARTY STATE 64 (2017).

97. *See id.*

98. PEI, *supra* note 19, at 9.

99. *Id.*

100. *Id.*

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.*

105. *See Wedemen, supra* note 58, at 15-51.

106. *See id.*

These three remarkable transformational experiences have “rested on a foundation of old-fashioned machine politics.”<sup>107</sup> Collusion between resource holders in the public and private sectors at similar historical junctures has of course been a nearly universal phenomenon,<sup>108</sup> but in Asia it has exhibited its own distinct attributes:

Business provided the political resources (mostly money) that allowed conservative, pro-business political leaders to build stable political coalitions by binding together what would otherwise have been a series of rival and often hostile factions, each more interested in power than policy per se. Using funds obtained from the business sector, the “big bosses” provided factional leaders with a monetary buy-in. The factional bosses, in turn, doled out funds to rank-and-file politicians who used the money to fund local “constituent organizations,” pay community organizers to mobilize voters, and ultimately, if necessary, to buy the votes needed to win elections and thereby ensure conservative control of government. Control of government enabled the ruling coalition to harness [S]tate policies to the goal of consolidating its grip on power and repaying its business supporters with a combination of “public goods” in the form of broadly pro-business macroeconomic policies; ‘private goods’ in the form of government subsidies, tax breaks, government contracts, and rents; and pork-barrel spending aimed toward its supporters at large. The new result was a pro-business system of redistributive politics that drew its sustenance from both business profits and government revenues.<sup>109</sup>

The Chinese configuration of collusive corruption poses an analytical challenge in that it does not neatly fit into this institutional model,<sup>110</sup> which has transactive (consisting of inter-sectoral exchanges) and redistributive (entailing the deployment and allocation of resources for political purposes) elements inherently attractive to the two sides to the deal: Politicians benefit by holding onto power and business groups enjoy a healthy stream of

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107. *Id.* at 17.

108. *See, e.g.*, TERRY GOLWAY, MACHINE MADE: TAMMANY HALL AND THE CREATION OF MODERN AMERICAN POLITICS (2014).

109. *Id.*

110. *See id.* at 52-79.

profits.<sup>111</sup> This Faustian bargain with the devil of corruption takes its toll on third parties, notably the consuming public, and may reasonably be regarded as a type of organized crime “wherein the political mafioso extort a percentage of the profits of legitimate—and illegitimate—businesses in exchange for enacting pro-business policy ... regimes.”<sup>112</sup> Yet, it lends stability to the system and stimulates economic growth.<sup>113</sup> China, on the other hand, appears to have been plagued by a “degenerative” variant of corruption, which:

more closely resembles a mugging or a liquor store stickup because it involves much higher levels of what has been termed, awkwardly perhaps, “auto-corruption” and one way flow of “plunder.” Developmental corruption is thus parasitical in that the political machine sucks its sustenance from an economy but does not necessarily intend to kill its economic host. Degenerative corruption, by contrast, is predatory in that it feeds directly on an economy and its vitals. Both may do considerable harm, but degenerative corruption is much more likely to prove fatal and manifest its worse effects more quickly.<sup>114</sup>

Elite-level collusion, even if exhibiting manifestations of symptomatic degeneration, is not necessarily associated with cognitive coherence, let alone cohesive and friction-free action.<sup>115</sup> An interesting distinction in the Chinese context is that between the attitudes toward corruption of liberals and conservatives.<sup>116</sup> The former are inclined to adopt a narrower perspective, somewhat closer to the definitions found in Western academic literature, but the latter tend to range more widely in their search for meaning and equate corrupt practices with those that violate the moral conventions of the community-at-large.<sup>117</sup> The abuse of public office is thus not confined to

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111. *See id.* at 52-53.

112. *Id.* at 53.

113. *See id.*

114. *Id.*

115. *See generally* JING HUANG, *FACTIONALISM IN CHINESE POLITICS* (2006); Jiangnan Zhu & Dong Zhan, *Weapons of the Powerful: Authoritarian Elite Competition and Politicized Anticorruption in China*, 50 *COMP. POL. STUD.* 1186 (2017).

116. *See generally* Yun Sun, *The Politics of Conceptualizing Corruption in Reform China*, 35 *CRIM. L. & SOC. CHANGE* 245 (2001).

117. *See id.* at 248.

public office holders’ pursuit of private gain and entails undermining the general interests of society (*zhengge shehui liyi*).<sup>118</sup>

It should be noted that such perceptual divergences are not ineluctably reflected in prevailing sociopolitical realities.<sup>119</sup> Indeed, there is empirical evidence to suggest that China’s more liberal regions have embraced a more progressive stance toward corruption than conservative ones and have enjoyed greater success in tackling the problem.<sup>120</sup> An interesting contrast in this respect is that between the “Guangdong” and “Chongqing models.”<sup>121</sup> The market-oriented and outward-looking southern province of Guangdong has fared far better in grappling with corruption than the collectivistically inspired and inward-looking megacity of Chongqing and the adjacent Sichuan province.<sup>122</sup>

Reform-era Chinese grasp of corrupt practices thus displays partial convergence with Western academic conceptions at the fundamental academic level, sufficiently so for undertaking systematic comparisons and endeavoring to construct a unified theoretical framework.<sup>123</sup> This crossing of analytical pathways, however, promptly gives way to pronounced divergences for cultural and structural reasons. Ambiguity, blurring of the boundary between the public and private spheres, elasticity, fluidity, and incongruities between the cognitive and behavioral components of the attitudinal fabric pervade daily and policy discourse. Degenerative features of corruption are witnessed on a scale seldom observed elsewhere, partly accounting for the overarching priority accorded to the campaign presently waged to alleviate them.

### III. Variety of Chinese Corrupt Practices

A complex phenomenon observed in a diverse sociopolitical setting, such as corruption in a country of China’s size and multifaceted character, inevitably encompasses a broad range of activities, in this case nefarious in nature. As indicated previously, juxtaposition of elite-level corrupt practices

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118. *See id.*

119. *See generally* STROMSETH ET AL., *supra* note 96; Bin Gong & Benno Torgler, *Causes of Corruption: Evidences from China* (Center for Research in Economics, Management and the Arts, Working Paper No. 2010-07), <http://www.crema-research.ch/papers/2010-07.pdf>.

120. *See* Gong & Torgler, *supra* note 119.

121. *See* STROMSETH ET AL., *supra* note 96, at 97.

122. *See id.*

123. *See generally* Gong & Scott eds., *supra* note 38; Leslie Holmes, *Combating Corruption in China: The Role of the State and Other Agencies in Comparative Perspective*, 3 *ECON. & POL. STUD.* 42 (2015).

with those seen at grassroots level paves the way for a fruitful distinction between collusive corruption and its petty counterpart. Besides enhancing conceptual clarity, such a dichotomy possesses considerable practical value because it may serve as a basis for allocating scarce resources to a behavioral pattern that has more pernicious consequences. Different strategies may also be resorted to in confronting the two problems.

A simple typology cannot capture, however, the intricacies of Chinese corrupt activities. For this reason, other classificatory schemes, often more nuanced, have been proposed.<sup>124</sup> Some authors confine themselves to merely specifying the forms of corruption witnessed in China. The following detailed list belongs to this category: taking bribes or embezzling State funds and properties; obtaining benefits for dependents, relatives, and friends in processes related to recruitment, school admission, job assignment, determining cadre status, securing an exit permit, and admission to the CCP; neglecting one's duties and thereby causing economic damage; facilitating access to key official positions for trusted followers; underperforming at work, dodging responsibility, and blaming others; behaving arbitrarily, retaliating, and fabricating evidence against others; producing false reports, being boastful, and tending to exaggerate; using public funds for gift-giving and paying for banquets; operating businesses and profiteering; taking advantage of one's authority to build or occupy property; living extravagantly; entering into inappropriate sexual relationships; forming cliques to further one's interests; gambling and paying for sex; spending lavishly on marriage and funeral ceremonies; giving expression to superstitious beliefs; participating in smuggling; and selling State secrets.<sup>125</sup>

Such mechanically compiled listings have been superseded by analytically underpinned classificatory schemes, either comprehensive or selective in scope.<sup>126</sup> Among the former, Sun's phenomenology of reform-era corruption stands out.<sup>127</sup> It includes ten types of cadre corruption—embezzlement (*tanwu*), bribe taking (*shouhui*), misappropriation (*nuoyong*), squandering (*huihuo langfei*), privilege seeking (*yiquan mousi*), illegal earnings (*feifa shouru*), negligence (*duzhi*), illegal profiteering (*touji daoba*), violation of accounting procedures (*weifan caijing jilu*), and moral

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124. See in particular TING GONG, THE POLITICS OF CORRUPTION IN CONTEMPORARY CHINA: AN ANALYSIS OF POLICY OUTCOMES 7-11 (1994); MELANIE MANION, CORRUPTION BY DESIGN 96-110 (2004); YAN SUN, CORRUPTION AND MARKET IN CONTEMPORARY CHINA 26-42, 53-191 (2004).

125. See GONG, *supra* note 124, at 9.

126. See MANION, *supra* note 124; SUN, *supra* note 124.

127. See SUN, *supra* note 124, at 26-42.

decadence (*daode duohuo*)—and four other types of misconduct—violation of family planning policies, violation of diplomatic codes, disclosure of classified information, and deserting overseas posts.<sup>128</sup>

Some of these categories are subdivided further: negligence into theft through contract, theft through payment fraud, theft through receipt fraud, theft through managerial fraud, and theft through property transfer; bribe taking into commission payments, salaries and bonuses, loans, purchase, reimbursements, product trials; and special occasion gifts; misappropriation into loans for commercial use, either legal (business, stocks, and other uses) or illegal (smuggling, drug trafficking, substandard manufacturing, unlicensed business, and the like), and diversion of designated funds; squandering into feasting, gift giving, sightseeing, and luxury amenities; privilege seeking into allocating regulated goods to relatives and friends and paying private tuition; negligence into that observed in business ventures and deals and that seen in supervision and regulation; illegal profiteering into that involving State-regulated goods, State-regulated permits, and illegal products and schemes; violation of accounting procedures into retention of revenues due to the State; cheating the State out of financial allocation, subsidies, and other allowances; illicit use and extraction of public funds; changing the nature of State assets, price hiking, and illegitimate increase of wages, bonuses, and subsidies; and moral decadence into patronizing prostitutes and sheltering mistresses.<sup>129</sup>

While this careful and detailed account is not devoid of ambiguities, reflecting the elasticity and fluidity of daily and policy discourse, it is marked by a reasonable degree of notional precision and structural coherence. These qualities are enhanced by constructing a four-dimensional typology and locating the corrupt practices identified within that framework.<sup>130</sup> The dimensions consist of the nature of the actor (organizational versus individual) and three categories of activities: essential/non-public, nonessential/public, and mixed/mixed.<sup>131</sup> For instance, bribery offenses may be committed by either an organization or an individual and are classified as essential/nonpublic; accounting violations originate in the organizational realm and are deemed nonessential/public; embezzlement falls into the individual and nonessential/public space; illegal income may be earned by either an organization or an individual and is considered mixed/mixed; and

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128. *See id.* at 27.

129. *See id.* at 27-33.

130. *See id.* at 36.

131. *See id.*

moral decadence is a product of individual behavior possessing mixed/mixed attributes.<sup>132</sup>

Sun has also followed the selective route by focusing on corrupt practices as either two-way exchanges or transactions between concrete individuals or institutions and nonexchanges or nontransactions where the interactive element is absent.<sup>133</sup> A quintessentially transactional-style corruption thus involves individuals such as officials and citizens.<sup>134</sup> In the institutional sphere, the players participating in the quasi-exchanges or quasi-transactions are the State and localities and the State and officials.<sup>135</sup> A fundamentally nonexchange or nontransactional type of corrupt practices is that featuring officials and the public coffer.<sup>136</sup> This is a narrow-based classificatory scheme, but it can comfortably accommodate the several micro-level behavioral patterns pinpointed above.<sup>137</sup>

Another context-sensitive selective taxonomy of corruption has been proposed by Mannon.<sup>138</sup> She has opted to single out bureaucratic commerce, which “refers to the business activities of companies created by the party and government departments, including law enforcement agencies, in the 1980s and early 1990s for the purpose of generating profits”;<sup>139</sup> predatory exactions, which “refers to excessive compulsory and irregular tax charges exacted mainly from peasants by county and township governments, local government agencies, and village authorities in the wake of decollectivization in the 1980s”;<sup>140</sup> corrupt exchanges, equated with and “often prosecuted as bribery or illegal commissions”;<sup>141</sup> public funds as private capital, a form of financial corruption, entailing “the misappropriation of public funds as interest-free capital for private investment”;<sup>142</sup> and illegal privatization of State-enterprise assets.<sup>143</sup>

Besides such attempts to impose a modicum of structure on the plethora of Chinese corrupt practices sprouting in the public domain, there have been

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132. *See id.*

133. *See id.* at 158-159.

134. *See id.* at 68.

135. *See id.* at 120.

136. *See id.* at 87.

137. *See id.* at 53-191.

138. *See* MANION, *supra* note 124.

139. *Id.* at 97.

140. *Id.* at 101.

141. *Id.* at 103.

142. *Id.* at 106.

143. *See id.* at 107-110.

efforts to identify and capture the essence of private sector corruption.<sup>144</sup> The studies exploring this side of the picture have shed meaningful light on system-wide constellations and dynamics, as well as specific corrupt activities and their ramifications. The volume and diversity have not been sufficiently large, however, to enable proper aggregation and differentiation. Valuable insights have been produced at the macro and micro levels, but without laying a foundation for constructing a composite portrait.

As outlined above, the public sector has been subjected to a more elaborate and richer examination in the process of seeking classificatory order. The definitional ambiguity pinpointed in the previous section has been reduced rather than eliminated. By the same token, the categories indicated at times overlap and are not readily amenable to operationalization. Nevertheless, a nuanced understanding emerges of an intricate phenomenon in a country where the public sector continues to overshadow its private

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144. See, e.g., Linfen J. Hwang & Robin S. Snell, *Turnaround, Corruption, and Mediocrity: Leadership and Governance in Three State-Owned Enterprises in Mainland China*, 43 J. OF BUS. ETHICS 111 (2003); Yuanyuan Wang & Jing Yu, *Corruption and Firm Growth: Evidence from China*, 23 CHINA ECON. REV. 415 (2012); Li Dang & Ruilong Yang, *Anti-Corruption, Marketisation and Firm Behaviours: Evidence from Firm Innovation in China*, 4 ECON. & POL. STUD. 39 (2016); CHEN LIN ET AL., ANTI-CORRUPTION CAMPAIGNS AND SHAREHOLDER VALUATIONS: EVENT STUDY EVIDENCE FROM CHINA (2016); Melanie Manion, *Taking China's Anticorruption Campaign Seriously*, 4 J. OF ECON. & POL. STUD. 3 (2016); Huihua Nie, Chen Li, & Chaofan Ma, *Why Chinese Anti-Corruption Has Not Yet Promoted Growth*, 5 J. OF SOCIALOMICS 1 (2016); HUIHUA NIE, COLLUSION, LOCAL GOVERNMENTS AND DEVELOPMENT IN CHINA (2017); Haoyuan Ding ET AL., *Equilibrium Consequences of Corruption on Firms: Evidence from China's Anti-Corruption Campaign* (July 25, 2017) (unpublished manuscript), [https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/3/517/files/2018/11/Draft\\_July\\_25\\_2017-1jfifzg.pdf](https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/3/517/files/2018/11/Draft_July_25_2017-1jfifzg.pdf); Bin Dong & Benno Torgler, *The Consequences of Corruption: Evidences from China*, (FEEM, Working Paper No. 73.2010), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1628567](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628567); Mariassunta Giannitti & Xiaoyun Yu, *The Impact of Xi Jinping's Anti-Corruption Campaign on Small and Incumbent Firms in China*, GLOBAL BUSINESS OUTLOOK, <http://www.globalbusinessoutlook.com/the-impact-of-xi-jinpings-anti-corruption-campaign-on-small-and-incumbent-firms-in-china/> (last visited Feb. 3, 2020); Bo Li, Zhengwei Wang, & Hao Zhou, *China's Corruption Campaign and Credit Reallocation to Non-SOEs* (Aug. 2017), <http://gcfp.mit.edu/wp-content/uploads/2017/09/Li-Wang-Zhou.pdf>; Jianwei Shi et al., *Moving towards a Better Path? A Mixed-Method Examination of China's Reforms to Remedy Medical Corruption from Pharmaceutical Firms*, BMJ JOURNALS (Feb. 8, 2018), <http://bmjopen.bmj.com/content/8/2/e018513>; Andrew Wedeman, *Growth and Corruption in China*, CHINA RESEARCH CENTER (Dec. 30, 2012), [https://www.chinacenter.net/2012/china\\_currents/11-2/growth-and-corrupti-on-in-china/](https://www.chinacenter.net/2012/china_currents/11-2/growth-and-corrupti-on-in-china/); Joe Zhang, *Private Sector Corruption with Chinese Characteristics*, FINANCIAL TIMES, <https://www.ft.com/content/ec7d6c62-2147-11e4-a958-00144feabdc0>.

sector counterpart in many crucial respects, and increasingly so, despite possible expectations to the contrary.<sup>145</sup>

#### IV. Roots of Chinese Corruption

The dominant view of the origins of present-day corrupt practices in China revolves around the partial post-1978 marketization of the economy, an incomplete process characterized by twists and turns, but which has progressed sufficiently to substantially reshape the sociopolitical landscape.<sup>146</sup> A notable by-product of the “halfway house”-style institutional configuration that has resulted from the hesitant shift from State to market has been a dual structure liberally accommodating elements of both pre- and post-reform era organizational legacies and initiatives.<sup>147</sup> Within this strewn-with-contradictions façade, State-controlled and market-driven entities have been provided with ample space to comfortably but problematically coexist.<sup>148</sup>

A conspicuous example had been dual-track pricing, which had long featured State-determined and market-shaped prices of commodities, interest rates charged on bank loans, import duties, and land lease fees.<sup>149</sup> Another similar pattern had persistently involved reliance on a dual system of State-influenced and market-propelled distribution of resources, paving the way for “preferential” fiscal, monetary, and regulatory treatment of certain

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145. See Nectar Gan, *Xi Jinping Thought—The Communist Party’s Tighter Grip on China’s in 16 Characters*, SOUTH CHINA MORNING POST (Oct. 25, 2017), <http://www.scmp.com/news/china/policies-politics/article/2116836/xi-jinping-thought-communist-party-tighter-grip-china>.

146. See generally KWONG, *supra* note 57; GONG, *supra* note 124; MANION, *supra* note 124; SUN, *supra* note 124; Wedeman, *supra* note 58; PEI, *supra* note 19; Jiangnan Zhu, *Corruption Networks in China: An Institutional Analysis*, in Gong and Scott eds., *supra* note 38, 27; Alan P. L. Liu, *The Politics of Corruption in the People’s Republic of China*, 77 AM. POL. SCI. REV. 602 (1983); XIAOBO LU, *CADRES AND CORRUPTION: THE ORGANIZATIONAL INVOLUTION OF THE CHINESE COMMUNIST PARTY* (2000); Wenhao Cheng, *An Empirical Study of Corruption within China’s State-owned Enterprises*, 4 CHINA REV. 55 (2004); Xin Chen, *The Reform Discourse and China’s War on Corruption*, in *CORRUPTION AND GOVERNANCE IN ASIA* 39 (Nicholas Tarling ed., 2005); Jon S. T. Quah, *Minimizing Corruption in China: Is This an Impossible Dream?*, 4 MD. SERIES IN CONTEMP. ASIAN STUD. 1 (2013); Weijia Li, Gerard Roland, & Yang Xie, *Crony Capitalism, the Party-State, and Political Boundaries of Corruption* (May 15, 2018), [http://cesi.econ.cuhk.edu.hk/wp-content/uploads/Xie-Yang\\_Crony-Capitalism-the-Party-State-and-Political-Boundaries-of-Corruption.pdf](http://cesi.econ.cuhk.edu.hk/wp-content/uploads/Xie-Yang_Crony-Capitalism-the-Party-State-and-Political-Boundaries-of-Corruption.pdf).

147. See Chen, *supra* note 146, at 42.

148. See *id.*

149. See *id.*

regions, industries, and individual enterprises.<sup>150</sup> This bipolar institutional constellation is thought to have offered considerable scope for government agencies and public officeholders to trade their allocation power over State controls for private benefits by taking advantage of the premium paid for goods and services, over prices prevailing in the State-managed segment of the economy, by players operating in the free marketplace.<sup>151</sup>

Other key pockets of activity within this two-dimensional hybrid organizational structure replete with opportunities to derive “economic rents” have included the administrative examination and approval machinery, oversight of public investment funds, and government spending.<sup>152</sup> The first of these procedural mechanisms pertains to a host of overly elaborate approval processes employed by central ministries and/or their subnational branches in evaluating project proposals originating in various sectors and industries.<sup>153</sup> Their complex nature, coupled with poor transparency, has turned them into a breeding ground for corruption.<sup>154</sup> By the same token, public investment and government spending decisions have tended to assume the form of administrative fiat, furnishing “rent-seekers” with an abundant room “to cut kick-back deals with those competing for shares of the ‘pork barrel,’ which are usually lucrative and risk-free.”<sup>155</sup>

“Rent-seeking” in the highly sensitive judicial and law enforcement realm has had particularly deleterious effects because of the high likelihood of it gradually but irrevocably mutating into pernicious and stubborn crime and the heavy financial costs foisted on the State.<sup>156</sup> Examples commonly invoked to illustrate the gravity of corrupt practices in this specific sphere highlight the socioeconomic harm wrought by customs officers, policemen, and tax collectors who work with criminals in money laundering, drug trafficking, smuggling, prostitution, producing and selling forgeries, or cooking the books for tax or import duty evasions.<sup>157</sup>

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150. *See id.*

151. *See id.*

152. *See id.*

153. *See id.*

154. *See id.* *See also* Quah, *supra* note 146, at 47-50.

155. Chen, *supra* note 146; *see also* RENT SEEKING IN CHINA (Tak-Wing Ngo & Yongping Wu eds., 2009).

156. *See* Chen, *supra* note 146, at 41.

157. *Id.* *See also* Ting Gong, *Dependent Judiciary and Unaccountable Judges: Judicial Corruption in Contemporary China*, 4 CHINA REV. 33 (2004); Elaine Jeffrey, *Exposing Police Corruption and Malfeasance: China’s Virgin Prostitute Cases*, 63 CHINA J. 127 (2010); Ling Li, *The ‘Production’ of Corruption in China’s Courts—The Politics of Judicial Decision-*

Manifestations of economic dualism, and ensuing corrupt practices, have abounded at the subnational level, especially in intricate township milieus.<sup>158</sup> Townships have been small cities whose vibrancy has enabled them to absorb a substantial portion of the surplus labor that has migrated from the countryside to urban areas following the dissolution of rural communes in the early 1980s.<sup>159</sup> Township and village enterprises (TVEs) have been the most robust segment of the Chinese economy during much of the reform era, a source of positive impulses facilitating economic advancement throughout the entire system.<sup>160</sup> While formally defined as “collectives,” TVEs have been the creation of the township governments, who have exercised close control over their financial, human resource, marketing, and planning activities.<sup>161</sup>

Consequently, strategically positioned public officeholders have doubled as dedicated entrepreneurs.<sup>162</sup> There has also ineluctably been extensive government interference in all business domains, with enterprises deprived of property rights necessary to shield them from exogenous intrusions.<sup>163</sup> The officials-cum-entrepreneurs have unequivocally embraced the goals of their commercial counterparts, which could be best pursued by relentlessly seeking high-octane economic growth.<sup>164</sup> The inevitable upshot of this unique variant of “local corporatism” has been the cartelization and capture by private interests of public institutions, including those performing regulatory functions, driving the economy forward but fueling corruption.<sup>165</sup>

The heavy concentration of power in a geographically and functionally fragmented authoritarian governance regime has aggravated the problem.<sup>166</sup> On the one hand, the politico-bureaucratic elite has continued to play a pivotal role in guiding the transition from State to market, maintaining control over the commanding heights of the bipolar economic structure and converting its access to vast pool of resources into a vehicle for gaining

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*Making and Its Consequences in a One-Party State*, 37 L. & SOC. INQUIRY 848 (2012); Yuhua Wang, *Court Funding and Judicial Corruption in China*, 69 CHINA J. 43 (2013).

158. See generally Peter Ping Li, *The Puzzle of China's Township-Village Enterprises: The Paradox of Local Corporatism and Dual-Track Economic Transition*, 1 MANAGEMENT & ORG. REV. 197 (2005).

159. See *id.* at 199.

160. See *id.*

161. See *id.* at 200-201.

162. See *id.* at 198.

163. See *id.* at 202-203.

164. See *id.* at 206.

165. See *id.* at 206-209.

166. See Zhu, *supra* note 146, at 32-34.

personal advantage.<sup>167</sup> On the other hand, the overall governance architecture has become increasingly fractured, allowing subnational units, particularly in relatively affluent coastal regions, to operate freely: “With such wide-ranging responsibilities, little oversight and lack of accountability in an authoritarian [S]tate deeply influenced by cultural ideas such as *guanxi*, provincial leaders and those close to them can more easily use their positions to develop large corruption networks.”<sup>168</sup>

Command over massive resources should not be equated with adequate official compensation. Indeed, poor pay, in addition to eroding employee morale and motivation, as well as sustaining a steady exodus to the private sector, is believed to have contributed to the proliferation of corrupt practices in China, in the past and at present.<sup>169</sup> Public employees’ salaries have gradually been increased, both in nominal and real terms, but not to a point of alleviating the problem.<sup>170</sup> The material benefits potentially obtained by means of untoward activities exceed them by a large margin. The improved compensation has thus been derided as “nothing compared to what officials can put in their pockets through corruption,”<sup>171</sup> falling far short of what might be needed “to stop them.”<sup>172</sup>

Corrupt activities, of course, do not necessarily go unpunished, inflicting a possible cost on those who engage in them and serving as a likely deterrent.<sup>173</sup> The effectiveness of harsh responses to this type of crime has been firmly demonstrated in the Hong Kong and Singapore context.<sup>174</sup> By the same token, the adverse implications of a lackadaisical policy stance in this respect have been vividly witnessed in India, Indonesia, and the Philippines.<sup>175</sup> For the most part, the Chinese experience has been consistent with patterns observed in these three industrializing and populous Asian countries.<sup>176</sup> The probability of detection and punishment has been

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167. *See id.* at 33-34.

168. *Id.* at 33.

169. *See Quah, supra* note 146, at 41-47.

170. *See id.* at 45-46.

171. *Id.*

172. *Id.* at 46.

173. *See id.* at 50-52.

174. *See id.* at 50-51.

175. *See id.*

176. *See id.*

traditionally low.<sup>177</sup> Moreover, those actually exposed have seldom paid a hefty price for their transgressions.<sup>178</sup>

Institutional accounts, often grounded in economic logic, may convey the impression that rampant corruption in China is a contemporary phenomenon, neatly traced to the opening up of a previously hermetically closed and static economy, which has not undergone wholesale restructuring over a lengthy period and which is consequently saddled with imbalances rendering it vulnerable to an array of corrupt practices. Alternatively, if a longer time horizon is adopted for this purpose, that Chinese corruption is the sole product of organizational patterns, and corresponding incentive configurations, underlying an evolving governance regime. Cultural heritage has been invoked to complement this possibly narrow perspective.<sup>179</sup>

The influence of *guanxi* and the tradition of gift-giving have featured prominently in explanatory schemes laying emphasis on this factor, because of their indisputable role in conditioning individuals to give and receive bribes.<sup>180</sup> It has thus been noted that “[a]part from promoting reciprocity in social relations, gift-giving also encourages bribery among civil servants, who accept gifts provided by businessmen wishing to cut red tape or to obtain licenses or permits improperly.”<sup>181</sup> Six commonly observed potential bases for *guanxi* have been identified: “locality or dialect; fictive kinship (persons with the same surname); kinship; workplace; trade associations or social clubs; and friendship.”<sup>182</sup>

The prevalence of informal politics, another variable in the corruption equation, may also be attributed to cultural legacy.<sup>183</sup> Specifically, “[i]n China today as in the past, neither a legal system, nor a moral order can fully regulate the behavior of officials.”<sup>184</sup> The corollary is that “informal politics becomes a convenient tool for political elites to secure power and gain

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177. *See id.* at 50-52.

178. *See id.*

179. *See* Chen, *supra* note 146, 41; Quah, *supra* note 146, at 56-58; Zhu, *supra* note 146, at 34-36. *See also* Winnie Tong, *Analysis of Corruption from Sociocultural Perspectives*, 5 INT'L J. OF BUS. & SOC. SCI. 9 (2014); Peng Wang, *Military Corruption in China: The Role of Guanxi in the Buying and Selling of Military Positions*, 228 CHINA Q. 970 (2016); Tony C. Lee, *Pernicious Custom? Corruption, Culture, and the Efficacy of Anti-Corruption Campaigning in China*, 70 CRIME L. & SOC. CHANGE 349 (2018).

180. *See* Quah, *supra* note 146, at 56.

181. *Id.*

182. *Id.* at 56-57.

183. *See* Zhu, *supra* note 146, at 34-36.

184. *Id.* at 34.

protection.”<sup>185</sup> It stands in contrast to formal politics, “which adheres to bureaucratic procedure and policies based on institutional interests and policy preferences, [by virtue of entailing] loyalty towards individuals, while fixed procedures and policies are usually absent.”<sup>186</sup> The ineluctable inference is that “informal politics is naturally conducive to corruption.”<sup>187</sup>

The impulses originating in this space are assumed to be transmitted via three interrelated channels.<sup>188</sup> First, deeply entrenched factionalism “permits groups to emerge, bound by shared background, intertwined careers and bureaucratic responsibilities, and loyalties to their leaders, [and then] seek ... benefits for their members.”<sup>189</sup> Second, due to the persistence and resilience of informal power structures, “corruption networks can be extended as the faction itself expands.”<sup>190</sup> Third, given the ubiquity of informal politics, “family members of government officials often become involved in a leader’s political network, leading to the privatization of public power.”<sup>191</sup>

A number of additional factors are believed to have contributed to the pervasiveness of corrupt activities in Chinese society throughout history.<sup>192</sup> The sheer size of the country, climatic variations experienced, harsh terrain, inadequate communication and transportation infrastructure, linguistic diversity, and interethnic animosity have detracted from the effectiveness and anticorruption endeavors, whatever their form.<sup>193</sup> Susceptibility to natural disasters has compounded the problem by throwing up plentiful opportunities for private gain for public officials engaged in implementation of humanitarian relief operations during and after the physical disruption.<sup>194</sup> To complicate matters, financially intensive infrastructure enhancements, ripe for exploitation, have been handled, subject to few constraints, by government officials and related parties.<sup>195</sup>

Some of these analytical accounts have been enriched with theoretical insights. Notably, the modernization paradigm, also known as “revisionist”

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185. *Id.*

186. *Id.*

187. *Id.*

188. *See id.* at 34-36.

189. *Id.* at 34.

190. *Id.* at 35.

191. *Id.*

192. *See Quah, supra* note 146, at 10-12.

193. *See id.* at 10-11.

194. *See id.* at 10.

195. *See id.* at 12.

and “structural-functionalist,” has been resorted to in order to strip corruption of its moral connotations and place it in an appropriate developmental context.<sup>196</sup> Within this conceptual framework, corrupt practices are the inevitable by-product of the modernization process, and vanish or, more correctly, diminish when economic development enters a mature phase, characterized by a high degree of institutional deepening and strong rule of law.<sup>197</sup> It is further and controversially asserted that corruption may even perform certain positive functions while modernization progresses by filling gaps in the fragile politico-bureaucratic façade.<sup>198</sup>

Closely aligned with this developmental perspective, but less time dependent, is the theoretical notion that corrupt activities are sustained by innate bureaucratic pathologies.<sup>199</sup> The underlying lofty vision may suggest otherwise, but in practice, due to a fundamentally skewed incentive structure, public organizations, although not devoid of channels for the expression of altruistic motives, serve as convenient platforms for the pursuit of self-interest.<sup>200</sup> It is thus common for civil servants “to create informational networks of friends, favor recipients, contracts, and communication links based upon primarily personal, rather than official relationships with others.”<sup>201</sup> The extent to which such behavioral propensities exert palpable influence hinges on the nature of institutional setting, which often reflects evolutionary dynamics and remaking of the incentive structure.<sup>202</sup>

The rational choice model, while rooted in philosophy of economic individualism, does not in fact diverge markedly from the above two analytical schemes.<sup>203</sup> The basic premise here is that corruption is the result of deliberate choice—rather than, for example, unavoidable cultural proclivity—whereby rational individuals weigh the advantages and disadvantages of deviating from a prescribed path in an environment akin to the marketplace.<sup>204</sup> Two variables determine the outcome of the careful deliberations: “a monopolistic condition on the side of the bureaucracy, and a black market to benefit the profiteering activities of the bureaucracy.”<sup>205</sup>

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196. See Gong, *supra* note 124, at 15-17.

197. See *id.*

198. See *id.*

199. See *id.* at 18-19.

200. See *id.*

201. *Id.* at 19.

202. See *id.*

203. See *id.* at 17-18.

204. See *id.* at 17.

205. *Id.*

The two elements are not necessarily in balance and, “[w]hen demand outpaces supply, a black market in government services may surface.”<sup>206</sup>

In such circumstances, “market”-induced corrupt practices (largely inspired by who pays the most) may override those of the “parochial” variety (primarily motivated by family ties, group identity, personal feelings, and the like) and are best designated as “rent-seeking.”<sup>207</sup> Specific Malaysian experience is relied upon in support of this proposition.<sup>208</sup> It entails the use of bureaucratic authority to allocate shares to Malay individuals.<sup>209</sup> The officials enjoying this power have been receiving a percentage of the unearned rent in exchange for allotting the shares and deriving substantial benefits in the process, partly passed on to members of their inner circle.<sup>210</sup>

The widespread incidence of corruption in China is thus attributed to multiple causes, some structurally determined and some time-honored, shaped by long waves of history and mostly independent of prevailing institutional patterns and incentive constellations. Theoretical insights selectively underpin the reasoning employed to enhance the validity of the explanatory accounts offered, revealing a certain degree of complementarity, rather than fundamentally irreconcilable differences, although this issue is not comprehensively explored. The relative weight to be accorded to the various causes in well-defined settings and the relationship between them and strategies to eradicate corrupt activities is also left largely untouched.

## V. Law and Economics Angle

The academic examination of legal phenomena, including those with policy ramifications, which is typically the case, has evolved significantly in the past seven decades.<sup>211</sup> The doctrinal approach, which has traditionally been the dominant investigative mode, has by no means been relegated to

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206. *Id.*

207. *See id.* at 17-18.

208. *See id.* at 18.

209. *See id.*

210. *See id.*

211. *See generally* Jonathan R. Macey, *Law and Social Sciences*, 21 HARV. J.L. & PUB. POL’Y 171 (1997); Jeremy A. Blumenthal, *Law and Social Science in the Twenty-First Century*, 12 S. CAL. INTERDISC. L.J. (2002).

the analytical periphery.<sup>212</sup> Interchangeably referred to as the “black-letter-law” method, it continues to enjoy intellectual prominence, for the most part overshadowing competing or complementary paradigms.<sup>213</sup> Constructing legal arguments with reference to statute law and judicial precedent remains the principal pathway to legal discovery, particularly in the common law context.<sup>214</sup>

The doctrinal approach derives its vitality from the unquestionably strong connection with legal practice or the fact that it posits that scholarship in the field emanates from the law itself.<sup>215</sup> Researchers who follow this route thus aim to elucidate, organize, and refine legal ideas and policies by applying that logic to authoritative texts encompassing both primary and secondary sources.<sup>216</sup> The intimate relationship with the law as it is confronted and managed in daily life means that the black-letter-method is unlikely to be dethroned in the foreseeable future as the primary pedagogical legal tool and perhaps even not as a crucial vehicle for ongoing knowledge accumulation.<sup>217</sup>

That said, the academic law space has increasingly become inhabited by contrasting approaches falling under the rubric of “socio-legal studies.”<sup>218</sup> These methodological schemes have been impelled by a range of influences, but a key role has been played by the growing perception that—if narrowly conceived and solely relied upon—the doctrinal system may prove an overly inflexible and restrictive way of dissecting the law and the operations of the institutional machinery sustaining it.<sup>219</sup> The broad set of socio-legal perspectives shares the common goal of placing the entire law underpinned governance regime in a multifaceted economic, political, and social context and exploring it within a robust conceptual and empirical framework embraced by positivistically inclined behavioral scientists.<sup>220</sup>

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212. See generally Terry Hutchinson & Nigel J. Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 DEAKIN L. REV. 83 (2012).

213. See generally *id.*

214. See generally *id.*

215. See generally *id.*

216. See generally *id.*

217. See generally *id.*

218. See generally Macey, *supra* note 211; Blumenthal, *supra* note 211.

219. See generally Macey, *supra* note 211; Blumenthal, *supra* note 211.

220. See generally Macey, *supra* note 211; Blumenthal, *supra* note 211.

Law and economics (LE), or economic analysis of law (EAL), occupies a distinct segment of that space.<sup>221</sup> It consists of the application of models employed by scholars in the field of economics to issues predominantly concerning students of law.<sup>222</sup> The origins of LE lie in the Chicago School of microeconomics.<sup>223</sup> The bias toward microeconomic theory and method continues to the present day, but it is less pronounced than in the past.<sup>224</sup> Notably, institutional (including organizational) economists and their behavioral counterparts have entered the realm of LE, pursuing divergent paths from researchers drawing their inspiration exclusively from microeconomics, particularly the neoclassical variant.<sup>225</sup>

Corrupt activities have been subjected to a systematic LE-style examination since the late 1970s.<sup>226</sup> As indicated previously, while this is not

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221. See generally STEVEN SHAVELL, FOUNDATIONS OF ECONOMIC ANALYSIS OF LAW (2004); A. MITCHELL POLINSKY, AN INTRODUCTION TO LAW AND ECONOMICS (4th ed. 2011); ROBERT D. COOTER & THOMAS ULEN, LAW AND ECONOMICS (6th ed. 2012); THOMAS J. MICELLI, THE ECONOMIC APPROACH TO LAW (3d ed. 2017).

222. See generally SHAVELL, *supra* note 221; POLINSKY, *supra* note 221; COOTER & ULEN, *supra* note 221; MICELLI, *supra* note 221.

223. See generally Ronald Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960); Guido Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 YALE L.J. 499 (1961).

224. See generally Anita Bernstein, *Whatever Happened to Law and Economics?*, 64 MD. L. REV. 303 (2005).

225. See generally Richard A. Posner, *The New Institutional Economics Meets Law and Economics*, 149 J. OF INSTITUTIONAL & THEORETICAL ECON. 73 (1993); A. Alan Schmid, *Institutional Law and Economics*, 1 EUROPEAN J.L. & ECON. 33 (1994); Christine Jolls, Cass R. Sunstein, & Richard H. Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471 (1998); BEHAVIORAL LAW AND ECONOMICS (Cass R. Sunstein ed., 2000); Geoffrey M. Hodgson & Shuxia Jiang, *The Economics of Corruption and the Corruption of Economics: An Institutional Perspective*, 41 J. ECON. ISSUES 1043 (2007); CHRISTINE JOLLS, BEHAVIORAL LAW AND ECONOMICS (2007); Rudolf Richter, *The Role of Law in the New Institutional Economics*, 26 WASH. U. J.L. & PUB. POL’Y 13 (2008); Richard A. Posner, *From the New Institutional Economics to Organization Economics: With Applications to Corporate Governance, Government Agencies, and Legal Institutions*, 6 J. INSTITUTIONAL ECON. (2010); Wouter Ebben & Albert de Vaal, *Institutions and the Relation between Corruption and Economic Growth*, 15 REV. DEV. ECON. 108 (2011); Jeffrey J. Rachlinski, *The Psychological Foundations of Behavioral Law and Economics*, U. ILL. L. REV. 1675 (2011); David Jancsics, *Interdisciplinary Perspectives on Corruption*, 8 SOCIOLOGY COMPASS 358 (2014); OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND THE LAW (Eyal Zamir & Doron Teichman eds., 2014).

226. See generally Gong & Scott eds., *supra* note 38; SUSAN ROSE-ACKERMAN, CORRUPTION: A STUDY IN POLITICAL ECONOMY (1978); ROBIN THEOBALD, CORRUPTION, DEVELOPMENT, AND UNDERDEVELOPMENT (1990); Alberto Ades & Rafael Di Tella, *The New Economics of Corruption: A Survey and Some New Results*, XLV POL. STUD. 496; MARK ROBINSON, CORRUPTION AND DEVELOPMENT (1998); GOVERNANCE CORRUPTION AND

the sole analytical perspective that may be fruitfully brought to bear on that complex phenomenon, in general and in specific sociopolitical milieus, it possesses certain tangible advantages. Above all, whereas other conceptual paradigms often focus on uncontrollable factors (e.g., climate, culture, ethnic divisions, historical legacy, linguistic nuances, local identity, topography, and the like) which policy makers cannot manipulate in the short-term and even medium-term, LE is heavily geared toward the controllable side of the problem management equation.<sup>227</sup> Provided it exhibits awareness of contextual intricacies shaping human behavior and does not follow mechanically the neoclassical microeconomic route, it may productively inform anticorruption strategies.

While rigid adherence to the rational choice model, firmly grounded in neoclassical microeconomics, may unduly narrow the field of intellectual vision, its theoretical and practical merits, accounting for its lingering analytical appeal and only marginally diminished status as the foundation stone of LE, should not be overlooked. It is disapprovingly claimed that, in its basic form, the model reduces corrupt practices to the product of interaction between atomized individuals who seek to maximize utility when

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ECONOMIC PERFORMANCE (George T. Abed & Sanjeev Gupta eds., 2002); THE NEW INSTITUTIONAL ECONOMICS OF CORRUPTION (Johann Graf Lambsdorff, Mark Taube & Matthias Schramm eds., 2004); CORRUPTION AND DEVELOPMENT: THE ANTI-CORRUPTION CAMPAIGNS (Sarah Bracking ed., 2007); JOHANN GRAF LAMBSDORFF, THE INSTITUTIONAL ECONOMICS OF CORRUPTION AND REFORM: THEORY, EVIDENCE AND POLICY (2007); JORGE MARTINEZ-VASQUEZ, JAVIER ARZE DEL GRANDO, & JAMES BOEX, FIGHTING CORRUPTION IN THE PUBLIC SECTOR (2007); LORENZO PELLEGRINI, CORRUPTION, DEVELOPMENT AND THE ENVIRONMENT (2011); Benjamin A. Olken & Rohini Pande, *Corruption in Developing Countries*, 4 ANNUAL REV. ECON. 479 (2012); NEW ADVANCES IN EXPERIMENTAL RESEARCH ON CORRUPTION (Danila Serra & Leonard Wantchekon eds., 2012); MARCO ARNONE & LEONARDO S. BORLINI, CORRUPTION: ECONOMIC ANALYSIS AND INTERNATIONAL LAW (2014); TINA SOREIDE & ALED WILLIAMS, CORRUPTION, GRABBING, AND DEVELOPMENT: REAL WORLD CHALLENGES (2014); ROUTLEDGE HANDBOOK OF POLITICAL CORRUPTION (Paul M. Heywood ed., 2015); CORRUPTION AND ECONOMIC DEVELOPMENT (Jayasri Dutta & Toke S. Aidt eds., 2016); SUSAN ROSE-ACKERMAN & BONNIE J. PALFIKA, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM (2d ed. 2016); VIKRAM VASHISHT, CASH, CORRUPTION AND DEVELOPMENT (2017); Johann Graf Lambsdorff, *Preventing Corruption by Promoting Trust—Insights from the Behavioral Science*, [https://www.researchgate.net/profile/Johann\\_Lambsdorff/publication/286441815\\_Preventing\\_Corruption\\_by\\_Promoting\\_Trust\\_-\\_Insights\\_from\\_Behavioral\\_Science/links/5669477108ac7dc22ad45197/Preventing-Corruption-by-Promoting-Trust-Insights-from-Behavioral-Science.pdf](https://www.researchgate.net/profile/Johann_Lambsdorff/publication/286441815_Preventing_Corruption_by_Promoting_Trust_-_Insights_from_Behavioral_Science/links/5669477108ac7dc22ad45197/Preventing-Corruption-by-Promoting-Trust-Insights-from-Behavioral-Science.pdf) (last visited Aug. 31, 2019).

227. See generally Silvia Popescu, *Controllable and Uncontrollable Variables in the Study of Entrepreneurship, in Small and Medium Business*, 3 INT'L REV. MANAGEMENT & BUS. RESEARCH 762 (2014).

engaged in exchanges under conditions of scarcity.<sup>228</sup> Becoming embroiled in corruption is thus a conscious process featuring careful weighing of costs and benefits, ultimately culminating in corrupt behavior since it is consistent with maximization of personal profit.<sup>229</sup> This circumscribed approach is said to conceptualize parties to an exchange as “atomized or ‘undersocialized’ actors who are minimally affected by social relations.”<sup>230</sup> To put it differently, corruption is akin to a two-player game, where an agent and client operate in splendid isolation, with “their identities and past relations ... typically [deemed] neglected factors because they are thought to be unimportant.”<sup>231</sup>

This is an outdated and overly simplistic characterization of the rational choice model. It is now commonly acknowledged by the scheme’s advocates that agents obtain utility from process as well as outcome.<sup>232</sup> Moreover, the traditional notion of a profit maximizing and self-oriented *homo economicus* is increasingly complemented by constructs such as *homo communicans* (who “engages in a search for the substantive ‘right’ by offering arguments in public and by entering into a dialogue with other parties whose preferences he/[she] hopes to alter through superior reasoning”),<sup>233</sup> *homo equalis* (who “is eager to reduce inequality”),<sup>234</sup> *homo parochius* (who “consistently splits the world into insiders and outsiders”),<sup>235</sup> and *homo reciprocans* (who “displays a propensity to cooperate and share with others who exhibit such tendencies—even at a personal cost—and a willingness to take punitive action against those who violate cooperative and complementary social norms, even if this has adverse personal consequences”).<sup>236</sup>

As important is the relaxation of the assumption that seemingly unfettered and omniscient agents possess full knowledge of the problems they address and proceed to meticulously dissect them.<sup>237</sup> To place the restrictive proposition on a wider footing, adaptation-centered theories of decision making, rooted in evolutionary biology and evolutionary

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228. See Jancsics, *supra* note 225, at 359.

229. *See id.*

230. *Id.*

231. *Id.*

232. See Roda Mushkat, *International Legal Compliance as a Rational Act: Theoretical Extensions and Chinese Realities*, 20 *TRANSNAT’L L. & CONTEMP. PROBS.* 633, 640 (2012).

233. *Id.* at 640-641.

234. *Id.* at 641.

235. *Id.*

236. *Id.*

237. *See id.* at 644-649.

psychology, disciplines that ascribe human physical and behavioral configurations to cumulative responses to challenges facing humankind over time, have been embraced.<sup>238</sup> Neoclassical rationality has thus been compelled to share the limelight with its bounded or ecological counterpart.<sup>239</sup> The latter is often associated with incrementalism, or path dependence, and typically entails marginal rather than substantial departures from the prevailing state of affairs, the corollary being that merely a handful of options are explored at any juncture and selectively to boot.<sup>240</sup>

Behaviorally inclined LE scholars who focus on corruption are particularly intrigued by the prevalence of manifestations of *homo reciprocans* spirit and their policy ramifications.<sup>241</sup> These patterns are, *inter alia*, amply observed and strongly supported by scientific evidence generated in sociopsychological experimental milieus, where it has been shown that reciprocity plays a pivotal role in public goods and ultimatum games.<sup>242</sup> The inference drawn is that trust may be a potent force in enduring social relationships, although not invariably and at times in the negative sense of the term.<sup>243</sup> For instance, on the positive side, social researchers have demonstrated that trust may encourage cooperation in games in which the Nash equilibrium is defection.<sup>244</sup> In such situations, it is apparently customary for participants to forgo the gains of (sudden) defection if there is sufficient trust in the other actors' willingness to cooperate.<sup>245</sup>

Interestingly, behaviorally oriented LE scholars have chosen to highlight the negative aspects.<sup>246</sup> Their empirically underpinned contention is that the smooth execution of corrupt transactions hinges on maintenance of a high degree of trust.<sup>247</sup> The reason lies in the fact that corruption is an intricate and potentially risky undertaking, which may easily unravel due to betrayal and treachery.<sup>248</sup> Those who become embroiled "in this business

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238. *See id.* at 645-646.

239. *See id.* at 646-649.

240. *See id.* at 646.

241. *See generally* Johann Graff Lambsdorff, *Behavioural and Institutional Economics as an Inspiration to Anti-Corruption: Some Counterintuitive Findings*, in Paul M. Heywood ed., *supra* note 226, 299.

242. *See* Mushkat, *supra* note 232, at 641.

243. *See id.*

244. *See id.*

245. *See id.*

246. *See id.*

247. *See generally* Lambsdorff, *supra* note 241.

248. *See id.* at 301.

delve into a criminal sphere in which networks are as important as mutual trust.”<sup>249</sup> Paradoxically, the implication presumably is that “[l]ack of trust, luckily, can deter corruption.”<sup>250</sup>

This leads to the suggestion that the frequency of bribes and similar transgressions “can be reduced by rendering reciprocity uncertain, by undermining the stability of corrupt transactions.”<sup>251</sup> The objective is to induce those involved in corruption “to cheat each other.”<sup>252</sup> Two possible strategies illustrate the underlying logic.<sup>253</sup> One approach “would be to grant leniency to any perpetrator, the briber or the bribe-taker, who can prove to have cheated their counterpart.”<sup>254</sup> Another option “would be to penalize bribe-giving but not bribe taking [—the favorable consequence being] that bribe-takers are free to cheat bribers, without fears of reprisals.”<sup>255</sup>

Such behaviorally derived insights have not relegated *homo economicus* to the analytical periphery.<sup>256</sup> The pursuit of material advantage and self-interest remain a key element of the decision making equation, softened at the edges by situational constraints and the type of preferences exhibited by *homo communicans*, *homo equalis*, *homo parochius*, and *homo reciprocans*, as well as agents’ capacity to reveal their other-regarding side or propensity toward social rationality (“if a socially rational agent can perform an action whose joint benefit—i.e., the benefits to the whole group—is greater than its joint loss, [he or she] may select that action”).<sup>257</sup> A somewhat shackled and tempered *homo economicus* may no longer be perceived as an unbridled utility maximizer, but he/she is postulated to be behaving reasonably from a microeconomic angle.<sup>258</sup>

The implication is that purely cognitive, or sociologically framed, accounts of agent conduct are regarded as inconsistent with empirical evidence because they are based on the premise that “[h]umans are not evaluators any more than ants, bees, or termites are evaluators”<sup>259</sup> and that

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249. *See id.*

250. *Id.*

251. *Id.* at 303.

252. *Id.* at 305.

253. *See id.* at 306.

254. *Id.*

255. *Id.*

256. *See* Mushkat, *supra* note 232, at 651.

257. *Id.*

258. *See id.*

259. MICHAEL C. JENSEN, FOUNDATIONS OF ORGANIZATIONAL STRATEGY 22 (2001). *See also* Michael C. Jensen & William H. Meckling, *The Nature of Man*, 7 J. APPLIED CORP. FIN.

people “are conventional and conformist, and their behavior is [solely] determined by the taboos, customs, mores, and traditions of the society in which they are born and raised.”<sup>260</sup> Such essentially backward-looking explanatory schemes are also deemed to be at variance with the principles of the rule of law, which stipulate that agents should be held accountable for their actions.<sup>261</sup>

There is thus good, albeit qualified, statistical support for rational choice models of crime and, by extension, corrupt practices.<sup>262</sup> The data generally, although not uniformly, validate the time-honored assumption that economic motives are a key determinant of participation in crime.<sup>263</sup> The picture conveyed is that, to a considerable extent, individuals do indeed decide whether to engage in crime by performing something akin to cost-benefit calculation under uncertainty.<sup>264</sup> In the process, they assess, not necessarily explicitly and formally, whether the anticipated benefits from crime (netting out the probability of being caught) outweigh the anticipated costs (normally expressed in terms of opportunity costs).<sup>265</sup>

Two factors are posited to exert meaningful influence in this context by furnishing conflicting material incentives to agents.<sup>266</sup> First, alternatives to crime are believed to affect the likelihood of committing an unlawful act.<sup>267</sup> The principal source of competing pressures is a person’s job, which

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4 (1994); Michael C. Jensen, *Self-Interest, Altruism, Incentives and Agency*, 7 J. APPLIED CORP. FIN. 40 (1994).

260. See JENSEN, FOUNDATIONS OF ORGANIZATIONAL STRATEGY, *supra* note 259. See also Jensen & Meckling, *supra* note 259; Jensen, *Self-Interest, Altruism, Incentives and Agency*, *supra* note 259.

261. See Roda Mushkat, *Greater China Constitutes Fertile Ground for ‘Building’ and ‘Testing’ Positive International Legal Theory*, 20 UCLA J. INT’L L. & FOREIGN AFF. 354, 385 (2016).

262. See generally Steven D. Levitt & Thomas J. Miles, *Empirical Study of Criminal Punishment*, in 1 HANDBOOK OF LAW AND ECONOMICS 453 (A. Mitchell Polinsky & Steven Shavell eds., 2007); Mirko Draca & Stephen Machin, *Crime and Economic Incentives*, 7 ANNUAL REV. ECON. 398 (2015); Aaron Chaplin & Justin McCray, *Criminal Deterrence: A Review of the Literature*, 55 J. ECON. LITERATURE 5 (2017).

263. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

264. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

265. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

266. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

267. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

provides him/her with a certainty equivalent payoff from wages.<sup>268</sup> It follows that, if the wage available in the formal labor market is boosted, and all else stays constant, participation in crime should decline.<sup>269</sup> Second, returns to crime are thought to pull agents in the opposite direction.<sup>270</sup> Specifically, if profits from crime are greater, or are perceived to be greater, then, again all else being equal, participation in crime should rise.<sup>271</sup>

Both these pathways entail a direct impact of material incentives on crime, including of the corrupt variety.<sup>272</sup> The other transmission mechanism which looms large in standard microeconomic models of crime is the influence brought to bear on criminal behavior in the form of the indirect incentive effect generated via the deterrence and incapacitation strategies of the criminal justice system.<sup>273</sup> Absent the presence of countervailing forces, an increase in criminal sanctions and enhancement, qualitative as well as quantitative, of criminal justice system capabilities should thus dampen incentives to commit unlawful acts, and vice versa.<sup>274</sup>

In sum, rational choice models of crime (and corruption) postulate that, *ceteris paribus*, participation in these types of activities (excluding categories such as violent criminal behavior) is determined by a combination of incentives and deterrence.<sup>275</sup> To express it more elaborately, the fundamental proposition is that increases in criminal earnings raise crime and increases in legal wages, the probability of being caught (a function of criminal justice system effectiveness), and the magnitude of sanction if caught lower crime.<sup>276</sup> The models can be refined by abandoning the restrictive notion that the choice is binary, between legal work and its illicit

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268. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

269. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

270. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

271. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

272. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

273. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

274. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

275. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

276. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

counterpart, and turning this into a time-allocation problem, whereby the two competing activities consume portions of time without being mutually exclusive.<sup>277</sup>

The clause *ceteris paribus* implies that some relevant variables (e.g., education and its impact on crime/corrupt practices) are omitted.<sup>278</sup> Moreover, the models are static, overlooking the fact that many criminals are prolific offenders accumulating criminal human capital over a lengthy career.<sup>279</sup> This pattern is captured by analytical schemes which highlight the dynamics of crime perpetrated by individuals over a life cycle (featuring the idea of crime onset, specialization, and desistance).<sup>280</sup> Such limitations notwithstanding, even without conversion into complex multivariable structures, rational choice models of crime (and corruption) possess considerable explanatory power, predictability, and policy usefulness.<sup>281</sup>

Attempts by LE researchers to rigorously grapple with the nature and containment of corrupt activities from a neoclassical microeconomic perspective have been questioned on grounds other than the putative preoccupation with narrow-centered utility maximization. Critics have asserted that the emphatic differentiation between the private and public domains, laying stress on the symptoms of dysfunctionality rife in the latter, and insistence that it furnishes a unique habitat where corruption may freely mushroom all constitute a misplaced intellectual endeavor.<sup>282</sup> To lend credence to this expression of disapproval, they point to the experience of Northern European and Scandinavian countries, which have relatively large and regulation-minded governments, but boast a low level of corruption.<sup>283</sup>

Again, this is an outdated and overly simplistic portrayal of the underpinnings of the rational choice conceptual façade. The Northern European and Scandinavian patterns may satisfactorily (albeit not fully) be

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277. See generally Lance Lochner, *Education, Work and Crime: A Human Capital Approach*, 45 INT'L ECON. REV. 811 (2004); Lance Lochner, *Non-Production Benefits of Education: Crime, Health, and Good Citizenship*, in 4 HANDBOOK OF THE ECONOMICS OF EDUCATION 183 (Eric A. Hanushek, Stephen Machin, & Ludger Woessmann eds. 2011).

278. See generally Lochner, *Education, Work and Crime*, *supra* note 277; Lochner, *Non-Production Benefits of Education: Crime, Health, and Good Citizenship*, *supra* note 277.

279. See generally Stephen Machin and Olivier Marie, *Reducing Crime by Targeting Prolific Offenders*, [https://www.researchgate.net/publication/267411939\\_Reducing\\_Crime\\_by\\_Targeting\\_Prolific\\_Offenders](https://www.researchgate.net/publication/267411939_Reducing_Crime_by_Targeting_Prolific_Offenders) (last visited Aug. 31, 2019).

280. See generally Lochner, *Education, Work and Crime*, *supra* note 277.

281. See generally Levitt & Miles, *supra* note 262; Draca & Machin, *supra* note 262; Chaplin & McCray, *supra* note 262.

282. See Jancsics, *supra* note 225, at 359-360.

283. See *id.* at 360.

explained with recourse to traditional (e.g., high standard of living, coupled with substantial benefits, monetary and nonmonetary, enjoyed by public sector employees) and augmented (e.g., education) microeconomic formulations.<sup>284</sup> More importantly, rational choice models—including those focused on corrupt practices—liberally acknowledge market failures such as excessive concentration of economic power (monopoly and its offshoots), public goods, externalities, and asymmetric information, to mention just the most glaring examples of departure from perfect competition.<sup>285</sup>

Critics counter, in a contrarian fashion, that a highly competitive market environment is not a panacea because intense competition may prompt agents to try to maximize opportunities and minimize threats by resorting to rent-seeking.<sup>286</sup> Still, it is recognized that the empirical evidence is ambiguous in this respect.<sup>287</sup> Notably, players in a fiercely competitive market setting, characterized by diffusion of organizational power and institutional fragmentation, may lack the necessary resources to effectively pursue regulatory capture.<sup>288</sup> Indeed, it is government failure, both substantive and procedural, which may sow the seeds of market failure and pave the way for the proliferation of corrupt activities.<sup>289</sup>

It is noteworthy that one of the most ubiquitous applications of rational choice theory to corruption—the principal-agent model—is firmly rooted in market failure territory or, to be more precise, its asymmetric information

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284. See generally Theobald, *supra* note 226; Robinson, *supra* note 226; Bracking ed., *supra* note 226; Pellegrini, *supra* note 226; Soreide & Williams note 226; Dutta & Aidt, *supra* note 226; Vashisht, *supra* note 226; Salvador Contreras, *An Alternative View to the Cause of Market Failures: A Dynamic Approach*, 4 THEORETICAL ECON. LETTERS 548 (2014).

285. See ROSE-ACKERMAN, *supra* note 226, at 189-209; PELLEGRINI, *supra* note 226, 13-27; Daron Acemoglu & Thierry Verdier, *The Choice between Market Failures and Corruption* 90 AM. ECON. REV. 194 (2000); BERNARD SALANIE, MICROECONOMICS OF MARKET FAILURES (2000); Roberto Burguet, Juan-Jose Ganuza, & Jose G. Montalvo, *The Microeconomics of Corruption. A Review of Thirty Years of Research*, <https://econpapers.repec.org/paper/upfupfgen/1525.htm> (last visited Aug. 31, 2019).

286. See Jancsics, *supra* note 225, at 363.

287. See *id.*; GRAF LAMBSORFF, THE INSTITUTIONAL ECONOMICS OF CORRUPTION AND REFORM: THEORY, EVIDENCE, AND POLICY, *supra* note 226, at 11-15.

288. See generally Sudarshan Jayaraman, S. P Kothari, & Karthik Ramanna, *Capture and Competition: The Role of Product Competition in Reallocating Rents from Regulatory Capture*, [https://editorialexpress.com/cgi-bin/conference/download.cgi?db\\_name=NTA2017&paper\\_id=69](https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=NTA2017&paper_id=69) (last visited Aug. 31, 2019).

289. See generally Acemoglu & Verdier, *supra* note 285; PELLEGRINI, *supra* note 226, at 13-27; William R. Keech & Michael C. Munger, *The Anatomy of Government Failure*, 164 PUB. CHOICE 1 (2015); William R. Keech, Michael C. Munger, & Carl Simon, *Market Failure and Government Failure*, <http://michaelmunger.com/papers/keechmungersimon.pdf> (last visited Aug. 31, 2019).

segment.<sup>290</sup> A principal-agent problem emerges in situations where one or more actors (individuals, group, organizations, or another collective entity)—the “agents”—are entrusted with authority to act on behalf of some other individual or collective entity (the “principal”).<sup>291</sup> Depending on the context, the principal might be a specific identifiable actor or set of actors (like a bureaucratic supervisor or the shareholders of a corporation).<sup>292</sup> Alternatively, the “principal” might be characterized as “society,” to reflect the idea that certain agents (like political leaders and public servants) are supposed to act in the best interests of the community.<sup>293</sup> However, due to information asymmetry favoring the agent(s), the principal(s) often cannot perfectly monitor and control delegates, which gives rise to the risk that the agent(s) may act in his/her/its/their own interest, rather than that of the principal(s).<sup>294</sup>

The quintessential neoclassical solution to the problem is through proper incentive and punishment mechanisms.<sup>295</sup> Quantitative data are thus adduced to evince that high public sector salaries depress corrupt practices.<sup>296</sup> Statistical findings also suggest that the principal(s) should drive

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290. See generally ROSE-ACKERMAN, CORRUPTION: A STUDY IN POLITICAL ECONOMY, *supra* note 226; Martinez-Vasquez, del Granado, & Boex, *supra* note 226, at 19-24; ROBERT KLITGAARD, CONTROLLING CORRUPTION (1988); Nico Groenendijk, *A Principal-Agent Model of Corruption* 27 CRIME L. & SOC. CHANGE 207 (1997); JONG-SUNG YOU, DEMOCRACY, INEQUALITY AND CORRUPTION: KOREA, TAIWAN AND THE PHILIPPINES COMPARED (2015); JESPER JOHNSON, ANTI-CORRUPTION STRATEGIES IN FRAGILE STATES: THEORY AND PRACTICE IN AID AGENCIES (2016); Luca Di Donato, *A Behavioral Principal-Agent Theory to Study Corruption and Tax Evasion*, [http://sog.luiss.it/sites/sog.luiss.it/files/Luca\\_def\\_SOG%20Working%20Papers%20WP34-2016%20Di%20Donato.pdf](http://sog.luiss.it/sites/sog.luiss.it/files/Luca_def_SOG%20Working%20Papers%20WP34-2016%20Di%20Donato.pdf) (last visited Aug. 31, 2019).

291. See generally KLITGAARD, *supra* note 290; Groenendijk, *supra* note 290; JOHNSON, *supra* note 290; Di Donato, *supra* note 290.

292. See generally KLITGAARD, *supra* note 290; Groenendijk, *supra* note 290; JOHNSON, *supra* note 290; Di Donato, *supra* note 290.

293. See generally KLITGAARD, *supra* note 290; Groenendijk, *supra* note 290; JOHNSON, *supra* note 290; Di Donato, *supra* note 290.

294. See generally KLITGAARD, *supra* note 290; Groenendijk, *supra* note 290; JOHNSON, *supra* note 290; Di Donato, *supra* note 290.

295. See generally Gary S. Becker & George J. Stigler, *Law Enforcement, Malfeasance, and Compensation of Enforcers*, 3 J. LEGAL STUD. 1 (1974); Susan Rose-Ackerman, *Reforming Public Bureaucracy through Economic Incentives*, 2 J.L. ECON. & ORG. 131 (1986); Pranab Bardhan, *The Economist's Approach to the Problem of Corruption*, 34 WORLD DEV. 341 (2006).

296. See generally Caroline Van Rijckeghem & Beatrice Weder, *Bureaucratic Corruption and the Rate of Temptation: Do Wages in the Civil Service Affect Corruption, and by How Much?*, 65 J. DEV. ECON. 307 (2001); Omar Azfar & William R. Nelson, *Transparency, Wages, and the Separation of Powers: An Experimental Analysis of Corruption*, 130 PUB. CHOICE 471 (2007).

up the costs of corruption for the agent(s) embroiled in unlawful activities.<sup>297</sup> The empirical findings include those generated in laboratory-like experiments, lending support to the view that increased detection and heavy sanctions discourage agents from engaging in corrupt practices.<sup>298</sup> Ideas have also been put forward as to how to minimize monitoring and control costs for principals and further push up transaction costs for agents through various innovative schemes.<sup>299</sup> On their part, behaviorally inclined LE researchers have shown that unlawful agent conduct may be the product of cognitive biases stemming from the misperception of contexts, risks, and other relevant variables impinging on the individual and collective decision process.<sup>300</sup>

A thorny challenge is confronted, acutely so in the public realm, when both the principal(s) (generally politician[s] but even entire societies) and the agent(s) (typically bureaucrat[s] but can be politicians as well) are corrupt, with the community facing a collective action problem.<sup>301</sup> While principal-agent theory can be said to lie at the interface between neoclassical economics and its institutional counterpart, in that it acknowledges that corruption may be an organizational as well as individual issue (“bad barrel” versus “bad apple”) and incorporates elements of property rights and transaction costs, it is not sufficiently broad-based to address this challenge in a wide-ranging manner. Such conceptual and practical difficulties ineluctably lead LE scholars concerned with corrupt activities into the sphere of institutional economics (encompassing the fast growing constitutional ingredient).<sup>302</sup>

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297. See generally Klaus Abbink, *Laboratory Experiments on Corruption*, in INTERNATIONAL HANDBOOK ON THE ECONOMICS OF CORRUPTION 418 (Susan Rose-Ackerman ed., 2006).

298. See generally *id.*

299. See generally Groenendijk, *supra* note 290.

300. See generally Di Donato, *supra* note 290.

301. See generally BO ROTHSTEIN, THE QUALITY OF GOVERNMENT: CORRUPTION, SOCIAL TRUST, AND INEQUALITY IN SOCIAL PERSPECTIVE (2011); Anna Persson, Bo Rothstein & Jan Teorell, *Why Anticorruption Reforms Fail—Systematic Corruption as a Collective Action Problem*, 26 GOVERNANCE 449 (2013).

302. See generally ROSE-ACKERMAN, *supra* note 226; Groenendijk, *supra* note 290; Abed & Gupta, *supra* note 226; Graf Lambsdorff, Taube & Schramm, *supra* note 226; GRAF LAMBSDORFF, THE INSTITUTIONAL ECONOMICS OF CORRUPTION AND REFORM: THEORY, EVIDENCE AND POLICY, *supra* note 226; PELLEGRINI, *supra* note 226; ROSE-ACKERMAN & PALFIKA, *supra* note 226; Jeffrey Sachs, Wing Thye Woo, & Xiaokai Yang, *Economic Reforms and Constitutional Transition*, [http://www.earth.columbia.edu/sitefiles/file/Sachs%20Writing/2000/EconomicReformsandConstitutionalTransition\\_2000.pdf](http://www.earth.columbia.edu/sitefiles/file/Sachs%20Writing/2000/EconomicReformsandConstitutionalTransition_2000.pdf) (last visited Aug. 31, 2019).

This paradigm does not negate the significance of incentives.<sup>303</sup> It places strong emphasis, however, on the normative and institutional structures, formal and informal, in which illegal transactions are embedded.<sup>304</sup> Individuals and collective entities are believed to regard these exogenous structural configurations, or constraints, as given and are thought to navigate accordingly, whether in an optimal or a satisficing fashion.<sup>305</sup> Therein is found the difference between institutional economics and economic sociology. The latter lays equal stress on norms, institutions, and social embedding as forces shaping human behavior, but it downplays the importance of goal-oriented maneuvering, whether optimal or satisficing in nature.<sup>306</sup> Institutional economists also proceed on the assumption that, for better or worse, people possess the capacity to construct social norms and institutions, whereas economic sociologists do not accord much weight to this proposition.<sup>307</sup>

The institutional economic agenda thus centers on the inadequacies of the normative underpinnings of the legal, political, and administrative edifice and its structural flaws.<sup>308</sup> The need has been firmly underlined for credible system-wide accountability, elevated transparency, viable information disclosure coupled with easy access to its sources, organizational checks-and-balances, rule of law, judicial independence, well-delineated and readily enforceable property rights, robust procedures for minimizing opportunities for regulatory cartelization and capture, freedom of the media, fostering societal trust (with the exception of that permeating corrupt networks), impairing governance mechanisms underlying the entrenchment/path dependency of corruption, containing transaction costs, eroding the foundations of corrupt relational contracting, eliminating or at least seriously handicapping intermediaries facilitating corruption, streamlining government acquisition and provision of goods and services, recalibrating bureaucratic entry (recruitment and selection), mitigating conflicts of interest, pursuing strategies designed to promote ethical conduct, forging

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303. See Johann Graff Lambsdorff, Markus Taube & Matthias Schramm, *Corrupt Contracting: Exploring the Analytical Capacity of New Institutional Economics and New Economic Sociology*, in Graf Lambsdorff, Taube & Schramm eds., *supra* note 226, at 1, 2.

304. See *id.* at 2.

305. See *id.*; J. Neil Bearden & Terry Connolly, *Optimal Satisficing*, [https://www.researchgate.net/publication/229005787\\_Optimal\\_satisficing](https://www.researchgate.net/publication/229005787_Optimal_satisficing) (last visited Aug. 31, 2019).

306. See Graff Lambsdorff, Taube & Schramm, *supra* note 303, at 2, 3-7.

307. See *id.*

308. See generally *id.*; GRAFF LAMBSDORFF, THE INSTITUTIONAL ECONOMICS OF CORRUPTION AND REFORM: THEORY, EVIDENCE AND POLICY, *supra* note 226.

multilateral policy cooperation, and embracing a holistic approach that considers the normative-institutional fabric in its entirety.<sup>309</sup>

A key issue which has long vexed institutional economists is the relationship between the structure of government, particularly the degree of political centralization/decentralization, and corruption.<sup>310</sup> Drawing on insights derived from conventional industrial organization theory, LE researchers have tended to posit that decentralization is likely to spur corrupt activities, without necessarily implying that centralization is invariably a dependable remedy for the problem.<sup>311</sup> Both in their decentralized and centralized incarnation, corrupt practices exert pernicious influence but, on balance, the former structural constellation appears to be more conducive to corruption, although the fact that a highly centralized government may be saddled with a markedly decentralized system of corruption complicates the picture.<sup>312</sup>

This line of reasoning has been challenged by scholars identified with the new institutional economics (NIE).<sup>313</sup> They have advocated reforms featuring devolution of service delivery, contracting out, purchaser-provider split, and greater competition on the grounds that, in such an environment, accountability is enhanced by the exercise of exit and voice by citizens and subnational governments’ ability to adapt strategies to local needs.<sup>314</sup> It has been argued that some of the positive effects engendered in the process may dissipate, however, because decentralization inevitably lowers *ex ante* and *ex post* transaction costs for corrupt agents as the number of bureaucratic layers is reduced, leading to potentially higher levels of corruption.<sup>315</sup>

LE researchers of all persuasions pay close attention to the economic consequences of corrupt activities.<sup>316</sup> The earlier view was that corruption should not be regarded as a cost but the ineluctable product of structural impediments to growth and, as such, an element in the developmental

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309. See generally Graf Lambsdorff, Taube & Shramm, *supra* note 303; GRAFF LAMBSDORFF, *supra* note 226; Olken, *supra* note 226; ROSE-ACKERMAN & PALFIKA, *supra* note 226.

310. See Martinez-Vasquez, del Granado, & Boex, *supra* 226, at 15-18.

311. See *id.*

312. See *id.*

313. See *id.* at 17-18.

314. See *id.* at 17.

315. See *id.* at 17.

316. See generally THEOBALD, *supra* note 226; Robinson ed., *supra* note 226; Abed & Gupta eds., *supra* note 226; Bracking ed., *supra* note 226; PELLEGRINI, *supra* note 226; Olken & Pande, *supra* note 226; Søreide & Williams eds., *supra* note 226; Dutta & Aidt eds., *supra* note 226; VASHISHT, *supra* note 226.

dynamics capable of boosting efficiency by “greasing the wheels of the economy.”<sup>317</sup> Generally speaking, however, this unorthodox position no longer finds meaningful support in the academic literature on the subject.<sup>318</sup> Rather, the consensus opinion currently reflects the belief that corrupt practices are the source of a host of distortions and inefficiencies, and thus a hindrance to socioeconomic progress.<sup>319</sup>

It is true that, in certain circumstances, corruption may augment the income of low-paid public employees, but it more often transfers resources to the rich and privileged.<sup>320</sup> Moreover, gains from corrupt activities are unlikely to be invested in the productive sector of the economy.<sup>321</sup> To make matters worse, proceeds from such pursuits, when undertaken on a large scale, tend to be channeled to foreign bank accounts, resulting in a leakage of domestic capital without any ensuing resource distribution.<sup>322</sup> On the fiscal side, the harmful effects of corruption manifest themselves in declining efficiency and rising prices of public services.<sup>323</sup> The private sector is not immune to the malaise because the upward pressure on costs stifles

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317. See generally Nathaniel H. Leff, *Economic Development through Bureaucratic Corruption*, 8 AMERICAN BEHAVIORAL SCIENTIST 8 (1964); SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* (1968); Pranab Bardhan, *Corruption and Development: A Review of Issues*, 35 J. ECON. LITERATURE 1320 (1997).

318. See generally THEOBALD, *supra* note 226; Robinson ed., *supra* note 226; Abed & Gupta eds., *supra* note 226; Bracking ed., *supra* note 226; PELLEGRINI, *supra* note 226; Olken & Pande, *supra* note 226; Søreide & Williams eds., *supra* note 226; Dutta & Ait ed., *supra* note 226; VASHISHT, *supra* note 226.

319. See generally THEOBALD, *supra* note 226; Robinson ed., *supra* note 226; Abed & Gupta eds., *supra* note 226; Bracking ed., *supra* note 226; PELLEGRINI, *supra* note 226; Olken & Pande, *supra* note 226; Søreide & Williams eds., *supra* note 226; Dutta & Ait ed., *supra* note 226; VASHISHT, *supra* note 226.

320. See generally Sanjeev Gupta, Hamid Davoodi, & Rosa Alonso-Terme, *Does Corruption Affect Income Inequality and Poverty?*, INT'L MONETARY FUND, (1998), <https://www.imf.org/en/Publications/WP/Issues/2016/12/30/Does-Corruption-Affect-Income-Inequality-and-Poverty-2629>.

321. See generally David J. Gould & Jose A. Amaro-Reyes, *The Effects of Corruption on Administrative Performance: Illustrations from Developing Countries*, 7 (The World Bank Staff Working Papers, Paper No. 580, 1983).

322. See generally *id.*

323. See generally *id.*

productivity.<sup>324</sup> On a more general level, flagrant corruption may undermine economic stability, government legitimacy, and the rule of law.<sup>325</sup>

A recent study questions some elements of the consensus view regarding the relationship between corrupt practices and economic performance.<sup>326</sup> Specifically, the empirical findings offered therein suggest that institutions may play the role of an intervening or mediating variable in determining the outcome of the interaction between these two factors.<sup>327</sup> Thus, in fragile States where an institutional vacuum prevails, however disagreeable this may sound, a modicum of corruption may indeed “grease the wheels of the economy,” by providing the necessary “lubricant.”<sup>328</sup> The institutional dynamics, if any, may also impinge on the interplay between corrupt activities and economic growth, which is the principal focus of the survey.<sup>329</sup>

The growing academic LE literature on corruption hence continues to highlight, in a neoclassical (“reward-and-punishment”) fashion, the importance of material incentives and criminal justice system effectiveness in influencing the propensity to engage in corrupt practices, but no longer to the exclusion of other relevant variables. Institutional and behavioral economics have come to the fore and have stretched, at least at the margin, the boundaries of this policy-centered field of scientific inquiry. A more diverse picture, perhaps less clear-cut but to a greater extent in tune with intricate socioeconomic realities, has consequently emerged, with implications for both the exploration of the roots of corruption and strategies to combat its symptoms.

## VI. The Era of Xi Jinping

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324. See generally Geeta Batra, Daniel Kaufman, & Andrew H. W. Stone, *The Firms Speak: What the World Business Environment Survey Tells Us about Constraints on Private Sector Development*, (Oct. 2003), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=541388](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=541388).

325. See generally ROSE-ACKERMAN, *supra* note 226; ROSE-ACKERMAN & PALFIKA, *supra* note 226.

326. See generally de Vaal & Ebben, *supra* note 225.

327. See generally *id.*

328. See generally *id.*

329. See generally *id.* See also Jan Hanousek & Evžen Kočenda, *Public Investment and Fiscal Performance in the New EU Member States*, 32 FISCAL STUD. 43 (2011); Jan Hanousek & Anna Kochanová, *Bribery Environment and Firm Performance: Evidence from Central and Eastern European Countries* (Ctr. for Econ. Policy Research, Discussion Paper No. DP10499, 2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2584017](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2584017).

Since its founding, the PRC has had two transformative leaders: Mao Zedong and Deng Xiaoping.<sup>330</sup> The former fundamentally altered the bourgeois-like political landscape while keeping the country in a state of permanent turmoil and isolated from the outside world, whereas the latter recommercialized the sagging revolutionary facade and restored stability by, *inter alia*, promoting rule-based governance (not to be equated with the rule of law) and economic opening.<sup>331</sup> Deng was succeeded by two non-path-breaking leaders, Jiang Zemin and Hu Jintao, who faithfully adhered to his policy agenda without broadening and deepening it substantially.<sup>332</sup> Hu, in particular, has been singled out for becoming hamstrung by the complexities of collective decision-making and succumbing to institutional inertia.<sup>333</sup>

It is a moot point whether this constitutes an entirely fair assessment.<sup>334</sup> Hu and his *de facto* partner, Premier Wen Jiabao, were able to sustain economic growth and minimize vulnerability to exogenous shocks in the wake of the 2008/09 global financial crisis.<sup>335</sup> The two leaders, especially Hu, were also instrumental in dramatically improving relations with Taiwan, perhaps their greatest achievement.<sup>336</sup> Moreover, while it is now fashionable and possibly politically expedient to present this as a sign of weakness, Hu and Wen were, by CCP standards, genuine consensus-builders, to a degree apparently unlikely to be seen for the foreseeable future.<sup>337</sup>

After serving two five-year terms, both Hu and Wen retired in 2012, in accordance with the leadership succession norms and rules promulgated by Deng Xiaoping,<sup>338</sup> with the former giving up his positions as General Secretary of the CCP, President of the PRC, and Chairman of the Central Military Commission (as well as the elusive “Paramount Leader” status).<sup>339</sup>

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330. See generally EZRA F. VOGEL, *DENG XIAOPING AND THE TRANSFORMATION OF CHINA* (2013).

331. See generally *id.*

332. See generally WILLY W. L. LAM, *THE ERA OF JIANG ZEMIN* (1999); WILLY W. L. LAM, *CHINESE POLITICS IN THE HU JINTAO ERA: NEW LEADERS, NEW CHALLENGES* (2006).

333. See generally LAM, *CHINESE POLITICS IN THE HU JINTAO ERA: NEW LEADERS, NEW CHALLENGES*, *supra* note 332.

334. See generally Kerry Brown, *What Did Hu Jintao and Wen Jiabao Do for China?*, BBC NEWS (Mar. 14, 2013), <http://www.bbc.com/news/world-asia-china-21669780>.

335. See *id.*

336. See *id.*

337. See *id.*

338. See generally Zhengxu Wang & Anastas Vangeli, *The Rules and Norms of Leadership Succession in China: From Deng Xiaoping to Xi Jinping and Beyond*, 76 CHINA J. 24 (2016).

339. See generally *id.*

They were replaced in an orderly fashion by Xi Jinping and Li Keqiang, with no indications that the Deng-prescribed delicate balancing act, consisting of a measure of separation between party and State (Xi’s and Li’s putative spheres of influence, respectively) in a finely calibrated (again, by CCP standards) system of potentially divergent forces would not persist for a long time to come.<sup>340</sup>

The expectation of path dependency on the leadership front may have been wholly realistic, given the experience of the previous four decades, but it has not materialized.<sup>341</sup> Rather uncharacteristically, China has witnessed a marked departure from the well-entrenched pattern of incremental adaptation<sup>342</sup>—a dramatic u-turn akin to “punctuated equilibrium.”<sup>343</sup> While Xi’s reformist credentials are significantly overstated,<sup>344</sup> there can be little doubt that he has substantially reconfigured the Deng-inspired Chinese governance regime and the vision underlying it, subject to the qualification that mean reversion and even sharp swings of the political pendulum in the opposite direction can never be ruled out in China.<sup>345</sup>

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340. See generally *id.*

341. See generally CHINA ENTERING THE XI JINPING ERA (Yongnian Zheng & Lance P. Gore eds., 2014); WILLY W. L. LAM, CHINESE POLITICS IN THE ERA OF XI JINPING: RENAISSANCE, REFORM, OR RETROGRESSION? (2015); ROBERT ROSS & JO I. BEKKEVOLD, CHINA IN THE ERA OF XI JINPING: DOMESTIC AND FOREIGN POLICY CHALLENGES (2016); CHINA IN THE XI JINPING ERA (Steve Tsang & Honghua Men eds., 2016); Robert D. Blackwill & Kurt M. Campbell, *Xi Jinping on the Global Stage: Chinese Foreign Policy under a Powerful but Exposed Leader*, COUNCIL ON FOREIGN RELATIONS, Feb. 2016, Council Special Report No. 74, <https://www.cfr.org/report/xi-jinping-global-stage>.

342. See generally CHINA’S ECONOMIC REFORMS: THE COSTS AND BENEFITS OF INCREMENTALISM (Peter Nolan & Qimiao Fan eds., 1994); Yongnian Zheng, *Political Incrementalism: Political Lessons from China’s 20 Years of Reform*, 20 THIRD WORLD Q. 1157 (1999); Yijia Jing, *Creative Incrementalism: Governance Reforms in China Since 1978*, 2 CHINESE POL. SCI. REV. 56 (2017).

343. See generally Weixing Hu, *Explaining Change and Stability in Cross-Strait Relations: A Punctuated Equilibrium Model*, 21 J. CONTEMP. CHINA 933 (2012); Kwan Nok Chan & Shuang Zhao, *Punctuated Equilibrium and the Information Disadvantage of Authoritarianism: Evidence from the People’s Republic of China*, 44 POL’Y STUD. J. 134 (2016).

344. See generally Jonathan Fenby, *Xi Jinping Is Not a Reformer but China’s Most Authoritarian Leader Since Mao*, SPECTATOR (Oct. 21, 2017), <https://www.spectator.co.uk/2017/10/xi-jinping-is-not-a-reformer-but-chinas-most-authoritarian-leader-since-mao/> (last visited Aug. 31, 2019).

345. See generally Jonathan Fenby, *Xi Jinping Is Not a Reformer but China’s Most Authoritarian Leader Since Mao*, SPECTATOR (Oct. 21, 2017), <https://www.spectator.co.uk/2017/10/xi-jinping-is-not-a-reformer-but-chinas-most-authoritarian-leader-since-mao/> (last visited Aug. 31, 2019).

Deng is best remembered for revitalizing the long-moribund Chinese economy through a two-pronged strategy of domestic marketization and external opening.<sup>346</sup> He also embarked on far-reaching institutional reengineering, however, to avert reemergence of Mao Zedong's so-called "one-voice chamber."<sup>347</sup> The underlying rationale was that, to prevent the re-occurrence of traumatic experiences such as the Great Leap Forward and Cultural Revolution, it was essential to substitute the rule of law, coupled with the primacy of institutions, for the "rule of personality."<sup>348</sup> Accordingly, he instituted a collective form of leadership, with the CCP General Secretary operating as at most "first among equals"; pursued the separation of party and State; implemented the principle of "five lakes and four seas," or delegation of authority to subnational units; jettisoned the reliance on large-scale campaigns/mass movements to achieve ideological goals; and took concrete steps to depoliticize/professionalize the military.<sup>349</sup>

Xi has persistently and systematically overturned the first four pillars of this multifaceted blueprint and has selectively but crucially impaired the fifth.<sup>350</sup> The notion of collective leadership was quickly consigned to oblivion: "Almost from day one, the new supreme leader started a power grab that [was] as stunning as it [was] inimical to Deng's ideals about putting institutions ahead of individuals."<sup>351</sup> Over time, a series of shrewd political and structural maneuvers, the latest allowing the President to hold indefinitely the reins of power,<sup>352</sup> has enabled Xi to "ride roughshod over the entire Party-military establishment."<sup>353</sup> Consequently, "[t]he theory and practice of ... collective leadership have been dealt a body blow."<sup>354</sup> This drastic shift has been given official recognition with the designation of Xi as the country's "core leader" and the addition to the party's constitution of his "thought on socialism with Chinese characteristics for a new era."<sup>355</sup>

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346. See generally VOGEL, *supra* note 330.

347. See LAM, *supra* note 341, at xii.

348. See *id.*

349. See *id.*

350. See *id.* at xii-xiv.

351. *Id.* at xiii.

352. See generally Choi Chi-yuk, Jun Mai & Matt Ho, *China Will Scrap Limit on Presidential Terms, Meaning Xi Jinping Can Stay On*, SOUTH CHINA MORNING POST (Feb. 25, 2018, 4:15 PM), <http://www.scmp.com/news/china/policies-politics/article/2134624/china-will-scrap-limit-presidents-term-meaning-xi>.

353. LAM, *supra* note 341, at xiii.

354. *Id.*

355. See generally Lance P. Gore, *Elevating Xi Jinping to the "Core" of Chinese Leadership*, 8 EAST ASIAN POL'Y 5 (2016); Shi Jiangtao, *Congress Concludes with President*

Xi has also sharply deviated from three of Deng’s strategic tenets relating to the *modus operandi* of the governance regime.<sup>356</sup> First, he has greatly tightened the CCP’s grip on all aspects of sociopolitical life, private and public, with the separation between party and State becoming a thing of the past<sup>357</sup> and the CCP reverting to its above-the-law status (i.e., rule of law mutating into rule by law and possibly rule of man).<sup>358</sup> Second, he has reembraced factionalism, an anathema to Deng, on a scale exceeding that of his two predecessors by crashing rival networks and surrounding himself with a coterie of trusted loyalists.<sup>359</sup> Third, he has adopted a “top-level institutional design,” reimposing firm central government control over subnational units.<sup>360</sup> Fourth, he has resurrected “Maoist political campaigns with a gusto.”<sup>361</sup>

Additionally, while selectively promoting professionalism in the military domain, Xi has reversed Deng’s practice of endeavoring to keep the generals at bay.<sup>362</sup> Specifically, he has significantly boosted the military budget and has brought generals into the epicenter of the political arena.<sup>363</sup> Having previously served as secretary to a defense minister, Xi has a penchant for military affairs and has spearheaded the transfer of a record number of former senior People’s Liberation Army (PLA) officers and defense industry officials to key party and government positions, proclaiming in his capacity as commander in chief that “I, too am a military man who has become a cadre [in civilian departments].”<sup>364</sup>

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*Xi Jinping as Undisputed “Core” Leader*, SOUTH CHINA MORNING POST (Oct. 24, 2017, 10:15 PM), <http://www.scmp.com/news/china/policies-politics/article/2116830/congress-concludes-xi-undisputed-core-leader>.

356. See LAM, *supra* note 341, at xiii-xiv.

357. See generally Lance P. Gore, *Rebuilding the Leninist Party Rule: Chinese Communist Party under Xi Jinping*, 8 EAST ASIAN POL’Y 5 (2017); Sabine Muscat & Matthias Stepan, *In Xi’s China, the Party Morphs into the State*, MERCATOR INSTITUTE FOR CHINA STUDIES (Mar. 7, 2018), <https://www.merics.org/en/blog/xis-china-party-morphs-state>.

358. See generally Gore, *supra* note 357; George G. Chen, *Le Droit, C’est Moi: Xi Jinping’s New Rule-by-Law Approach*, OXFORD HUMAN RIGHTS HUB (July 26, 2017), <http://ohrh.law.ox.ac.uk/le-droit-cest-moi-xi-jinpings-new-rule-by-law-approach>; Zachary Keck, *4th Plenum: Rule of Law with Chinese Characteristics*, DIPLOMAT (Oct. 20, 2014), <https://thediplomat.com/2014/10/4th-plenum-rule-of-law-with-chinese-characteristics/>.

359. See LAM, *supra* note 341 at xiii-xiv.

360. See *id.* at xiv.

361. *Id.*

362. See *id.*

363. See *id.*

364. *Id.*

A heavy concentration of power and its determined projection, coupled with inexorable top-down steering and vigorous suppression of autonomous bottom-up forces, have been the hallmarks of the Xi era strategic initiatives.<sup>365</sup> At home, the cult of personality has resurfaced in forms unseen since the late 1970s,<sup>366</sup> ideological indoctrination has been intensified,<sup>367</sup> nationalist sentiment has been whipped up,<sup>368</sup> access to information has been curtailed,<sup>369</sup> crackdown on civil society has been stepped up,<sup>370</sup> ethnic minority rights have been scaled back,<sup>371</sup> State capitalism has regained its upper hand over its market counterpart,<sup>372</sup> central planning has been revived,<sup>373</sup> industrial policy has been relaunched,<sup>374</sup> and the party has

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365. See *id.* at xiv-xvii. See also ELIZABETH C. ECONOMY, *THE THIRD REVOLUTION: XI JINPING AND THE NEW CHINESE STATE* (2018).

366. See generally Wang Xiangwei, *As Fears of Xi's Personality Cult Deepen, China Must Dial Down the Propaganda*, SOUTH CHINA MORNING POST (Mar. 24, 2018, 1:16 PM), <http://www.scmp.com/week-asia/opinion/article/2138481/fears-xis-personality-cult-deepen-china-must-dial-down-propaganda>.

367. See generally Mark C. Eades, *Chinese Nightmare: Education and Thought Control in Xi Jinping's China*, FOREIGN POLICY ASS'N (Apr. 5, 2016), <https://foreignpolicyblogs.com/2016/04/05/education-and-thought-control-in-xi-jinpings-china/>.

368. See LAM, *supra* note 341, at xiv-xvi; John R. Cookson, *The Real Threat of Chinese Nationalism*, NATIONAL INTEREST (Aug. 28, 2015), <http://nationalinterest.org/blog/the-buzz/the-real-threat-chinese-nationalism-13729>.

369. See generally Chang Ping et al., *Xi Jinping's Power Grab and China's Media Politics*, AL JAZEERA (Mar. 5, 2018, 11:06 AM), <https://www.aljazeera.com/programmes/listeningpost/2018/03/xi-jinping-power-grab-china-media-politics-180303110448732.html>; Beina Xu & Eleanor Albert, *Media Censorship in China*, COUNCIL ON FOREIGN RELATIONS (Feb. 17, 2017), <https://www.cfr.org/backgrounder/media-censorship-china>.

370. See generally HONG KONG FREE PRESS, *Cyberspace, Religion, Lawyers, Dissidents: China's Shrinking Civil Society under Xi Jinping's Crackdown* (Oct. 18, 2017, 11:29 AM), <https://www.hongkongfp.com/2017/10/18/cyberspace-religion-lawyers-dissidents-chinas-shrinking-civil-society-xi-jinpings-crackdown/>.

371. See generally Associated Press, *Human Rights in China under Xi Jinping "Worst since Tiananmen Crackdown": Amnesty*, SOUTH CHINA MORNING POST (Nov. 17, 2017, 11:15 AM), <http://www.scmp.com/news/china/policies-politics/article/2120318/human-rights-china-under-xi-jinping-worst-tiananmen>.

372. See generally Roland Rajah, *Xi Jinping's State Capitalism Is Here to Stay*, LOWY INSTITUTE (Oct. 31, 2017), <https://www.lowyinstitute.org/publications/xi-jinping-state-capitalism-here-stay>.

373. See generally Andrew Browne, *China Uses "Digital Leninism" to Manage Economy and Monitor Citizens: Xi Jinping Is Leading China into a Big-Data Dictatorship*, WALL ST. J. (Oct. 17, 2017, 6:57 AM), <https://www.wsj.com/articles/xi-jinping-leads-china-into-big-data-dictatorship-1508237820>.

374. See generally Mark Magnier, *China's Latest Industrial Policy Is a Waste and a Challenge, Business Group Says*, WALL ST. J. (Mar. 7, 2017, 12:12 PM), <https://blogs.wsj.com>.

expanded its tentacles into the far reaches of the sprawling economy.<sup>375</sup> Abroad, for all intents and purposes, Hu’s vision of a harmonious world<sup>376</sup> and good neighbor policy<sup>377</sup> been rendered null and void,<sup>378</sup> replaced with an ambitious drive to establish a subservient regional regime akin to the Imperial tributary system<sup>379</sup>—as evidenced by muscle flexing in the South China Sea,<sup>380</sup> pursuit of the One Belt-One Road scheme,<sup>381</sup> and quest to

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com/chinarealtime/2017/03/07/chinas-latest-industrial-policy-is-a-waste-and-a-challenge-business-group-says/.

375. See generally Keith Zhai, *China’s Xi to Tighten Communist Party Grip on Economic Life*, BLOOMBERG (Mar. 6, 2018, 5:47 AM), <https://www.bloomberg.com/news/articles/2018-03-06/china-s-xi-readies-sweeping-government-overhaul-to-empower-party>.

376. See generally JEAN-MARC F. BLANCHARD ET AL., “HARMONIOUS WORLD” AND CHINA’S NEW FOREIGN POLICY (Sujian Guo and Jean-Marc F. Blanchard eds., 2008); CHINA IN SEARCH OF HARMONIOUS SOCIETY (Sujian Guo & Baogang Guo eds., 2008); Liu Jianfei, *Sino-US Relations and Building a Harmonious World*, 18 J. CONTEMP. CHINA 479 (2009); ROSITA DELLIOS & R. JAMES FERGUSON, CHINA’S QUEST FOR GLOBAL ORDER: FROM PEACEFUL RISE TO HARMONIOUS WORLD (2013); CHIUNG-CHIU HUANG & CHIH-YU SHIH, HARMONIOUS INTERVENTION: CHINA’S QUEST FOR RELATIONAL SECURITY (2014); CHIH-YU SHIH, SINICIZING INTERNATIONAL RELATIONS: SELF, CIVILIZATION, AND INTELLECTUAL POLITICS IN SUBALTERN EAST ASIA (2013); Chih-Yu Shih & Jiwu Yin, *Between Core National Interest and a Harmonious World: Reconciling Self-Role Conceptions in Chinese Foreign Policy*, 6 CHINESE J. INT’L POL. 59 (2013); ASTRID H. M. NORDIN, CHINA’S INTERNATIONAL RELATIONS AND HARMONIOUS WORLD: TIME, SPACE, AND MULTIPLICITY IN WORLD POLITICS (Jeny Edkins and Nick Vaughan-Williams eds., 2016).

377. See generally Robert Sutter, *China’s Good Neighbor Policy and its Implications for Taiwan*, 13 J. CONTEMP. CHINA 717 (2004); Chien-peng Chung, *The “Good Neighbour Policy” in the Context of China’s Foreign Relations*, 7 CHINA: INT’L J. 107 (2009); CHIEN-PENG CHUNG, CHINA’S MULTILATERAL COOPERATION IN ASIA AND THE PACIFIC: INSTITUTIONALIZING BEIJING’S “GOOD NEIGHBOUR POLICY” (2010); Maria D. Cabras, *China’s Peaceful Rise and the Good Neighbor Policy*, EUROPEAN STRATEGIST (Dec. 11, 2011), <http://www.eurstrat.eu/chinas-peaceful-rise-and-the-good-neighbor-policy/>.

378. See generally Niall Duggan, *Harmonious World: It Seems It Was Only a Dream*, 19 INT’L STUD. REV. 328 (2017); Chris Buckley, *Xi of Two Minds: Be a Good Neighbor, or Assert China’s Power?*, NEW YORK TIMES: SINOSPHERE, DISPATCHES FROM CHINA (June 12, 2014, 1:49 AM), [https://sinosphere.blogs.nytimes.com/2014/06/12/xi-of-two-minds-be-a-good-neighbor-or-assert-chinas-power/?\\_r=0](https://sinosphere.blogs.nytimes.com/2014/06/12/xi-of-two-minds-be-a-good-neighbor-or-assert-chinas-power/?_r=0).

379. See generally John Garver, *China Rules the World?*, [https://www.chinacenter.net/2016/china\\_currents/15-2/china-rules-world/](https://www.chinacenter.net/2016/china_currents/15-2/china-rules-world/).

380. See generally BILL HAYTON, THE SOUTH CHINA SEA: THE STRUGGLE FOR POWER IN ASIA (2014); RICHARD Q. TURCSANYI, CHINESE ASSERTIVENESS IN THE SOUTH CHINA SEA: POWER SOURCES, DOMESTIC POLITICS, AND REACTIVE FOREIGN POLICY (2017).

381. See generally TAI WEI LIM, HENRY CHAN, KATHERINE TSENG & WEN XIN LIM, CHINA’S ONE BELT ONE ROAD INITIATIVE (2016).

breathe life into the Asian Infrastructure Investment Bank as an alternative to the United States/Japan-dominated Asian Development Bank.<sup>382</sup>

This policy thrust is the embodiment of a distinctly neo-authoritarian outlook,<sup>383</sup> in all likelihood reflecting not merely Xi's beliefs and concerns, but also his chosen leadership pathway and decision-making style.<sup>384</sup> Despite his high visibility, Xi remains something of a mystery<sup>385</sup> and, impressions to the contrary notwithstanding, he appears to be less predictable and to possess a more multidimensional personality than commonly assumed.<sup>386</sup> This renders it difficult to place his conduct as the head of State and the way he addresses challenges/problems within the framework of available taxonomies which, by their very nature, aim to abstract from reality and to reduce social phenomena to "ideal types."<sup>387</sup>

Despite such difficulties, a degree of clarity and coherence may be achieved by imposing a modicum of structure on a behavioral phenomenon characterized by a measure of haziness and intricacy. Political leadership has been studied extensively and several typologies have been developed in the process.<sup>388</sup> The ones most relevant in this context appear to be those devised

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382. See generally TANG SIEW MUN, *THE POLITICS OF THE ASIAN INFRASTRUCTURE INVESTMENT BANK (AIIB)* (2015); MING WAN, *THE ASIAN INFRASTRUCTURE INVESTMENT BANK: THE CONSTRUCTION OF POWER AND THE STRUGGLE FOR THE EAST ASIAN INTERNATIONAL ORDER* (Ming Wan & Natasha Hamilton-Hart eds., 2016).

383. See LAM, *supra* note 341, at xvi-xvii.

384. See generally *id.* at 34-150; Lance L. P. Gore, *What is Xi Jinping Made of: Xi in His Own Words*, 7 *EAST ASIAN POL'Y* 30 (2017); Wei Shan, *Xi Jinping's Policy Style*, 8 *EAST ASIAN POL'Y* 42 (2016); Jeffrey Hays, *Xi Jinping's Style, Leadership and Personality Cult: Xi Jinping as the Leader of China*, *FACTS AND DETAILS* (Sept. 2016), <http://factsanddetails.com/china/cat2/4sub5/entry-4302.html>; Richard McGregor, *Xi Jinping Moment*, *LOWY INSTITUTE* (Oct. 6, 2017), <https://www.lowyinstitute.org/publications/xi-jinping-moment>; Andrew Van Dam, *We Looked at Almost 100 Leaders Who Tried Xi Jinping-Style Power Grabs. Here's How They Turned Out*, *WASH. POST* (Mar. 15, 2018, 3:00 AM), <https://www.washingtonpost.com/news/wonk/wp/2018/03/15/a-brief-93-part-history-of-power-grabs-from-ferdinand-marcos-to-xi-jinping/>.

385. See generally Tom Plate, *Why Xi Jinping Remains an International Man of Mystery to Most in the US*, *SOUTH CHINA MORNING POST* (Jan. 4, 2016, 5:50 PM), <http://www.scmp.com/comment/insight-opinion/article/1897943/why-xi-jinping-remains-international-man-mystery-most-us>.

386. See generally Wei, *supra* note 384.

387. See generally Udo Kuckartz, *Ideal Types or Empirical Types: The Case of Max Weber's Empirical Research*, 31 *BULLETIN DE METHODOLOGIE SOCIOLOGIQUE* 44 (1991).

388. See generally THE ASHGATE RESEARCH COMPANION TO POLITICAL LEADERSHIP (Joseph Masciulli, Mikhail A. Molchanov & W. Andy Knight eds., 2009); OXFORD HANDBOOK OF POLITICAL LEADERSHIP (R. A. W. Rhodes & Paul T. Hart eds., 2014).

by Brown<sup>389</sup> and Deutsch.<sup>390</sup> The former has identified four categories, not necessarily mutually exclusive, in which political leaders may be placed: redefining, transformational, revolutionary, and totalitarian.<sup>391</sup> The redefining pattern constitutes a new addition to the analytical vocabulary and is equated with a tendency to reconfigure the parameters of politics by repositioning the regime in terms of what is desirable and feasible.<sup>392</sup> Deutsch, on the other hand, has chosen to adhere to the traditional distinction between strong and weak leadership modalities, but has combined it with the breadth/depth of support enjoyed by the leader and the fit between his/her strategies and the prevailing circumstances.<sup>393</sup>

The academic literature on political leaders’/policy styles is distinctly sparse, by comparison. The classical work of Richardson and his collaborators, published nearly four decades ago, remains virtually the sole meaningful contribution in this pivotal area of scientific inquiry.<sup>394</sup> After carefully surveying the Western European scene, his team concluded that a leader’s *modus operandi* could be located within a space occupied by two continuums ranging from a consensual relationship/style to one marked by coercion/imposition and from anticipatory/active problem-solving to reactive problem-solving.<sup>395</sup> While this classification is the product of an empirical encounter with region-specific, rather than worldwide, realities, it is sufficiently grounded in broad-based conceptual schemes to be deemed generally valuable.<sup>396</sup>

Given the picture presented in this section, it may confidently be argued that Xi is a strong head of State who has attained wide support or at least one who does not face any consequential opposition. Although some observers might be inclined to depict Xi’s actions as transformative, it is more appropriate to regard him as a redefining leader and, if not totalitarian, then as quasi-totalitarian in his orientation. It is premature to authoritatively assess the situational fitness of the entire package of Xi’s strategies,

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389. See generally ARCHIE BROWN, *THE MYTH OF THE STRONG LEADER: POLITICAL LEADERSHIP IN THE MODERN AGE* (2014).

390. See generally KARL W. DEUTSCH, *THE ANALYSIS OF INTERNATIONAL RELATIONS* (3d ed. 1988).

391. See BROWN, *supra* note 389, at 101-203.

392. See *id.* at 101-147.

393. See DEUTSCH, *supra* note 390, at 71-73.

394. See generally Jeremy Richardson, Gunnel Gustafson, & Grant Jordan, *The Concept of Policy Style*, in *POLICY STYLES IN WESTERN EUROPE 1* (Jeremy Richardson ed. 1982).

395. See *id.* at 10-14.

396. See *id.*

particularly from a long-term perspective but, the aura of invincibility projected notwithstanding, there is no compelling reason to assume that the vision pursued and the tactics employed will inevitably serve the country well overall, due to inadequate investment in social and institutional capital,<sup>397</sup> subject to the qualification that the emerging Chinese governance model could prove to be a historical outlier.<sup>398</sup> Xi's style is obviously coercive in nature, relying heavily on top-down imposition. Insofar as anticipation versus reaction is concerned, he can be said to be forward looking, yet when it comes to implementation, risk taking on the political front often gives way to risk aversion on the economic side.

A highly centralized and personalized regime, presided over by a "strongman," who is neither constrained by pockets of credible opposition nor hampered procedurally, and who is willing to selectively but forcefully redefine the status quo could either breed or stifle corruption. From a purely statistical perspective, the odds favor the former outcome.<sup>399</sup> This case may be different, however, in that combating corrupt activities synergistically serves both the opportunistic/personal and larger/strategic goals of the country's leadership. It may simultaneously be relied upon as a tool for suppressing resistance and consolidating power and as a vehicle for CCP revival and national rejuvenation. The ongoing battle against such socio-legal ills has thus ineluctably become perhaps the most prominent feature of the Xi era and inextricably intertwined with his heavily loaded political agenda.

## VII. The Current Anticorruption Campaign

As indicated previously, crusades against the abuse of power, public and private, particularly the former, have ample precedent in China. Indeed, they have deep historical roots.<sup>400</sup> Notably, in the early years of the Ming dynasty (1368-1644), Chinese emperors were profoundly troubled by the breadth and severity of corrupt practices and literally obsessed with

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397. See generally DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* (2013).

398. See generally Bonnie S. Glaser, *Is China Proselytizing its Path to Success*, <http://www.eastasiaforum.org/2018/01/11/is-china-proselytizing-its-path-to-success/> (last visited Aug. 31, 2019). But see Eric C. Hendricks, *The China Model Is Failing*, <http://quillette.com/2018/04/10/china-model-failing/> (last visited Aug. 31, 2019).

399. See generally Van Dam, *supra* note 384.

400. See generally Jamil Anderlini, *Xi Jinping's Anti-Corruption Drive Mimics a Ming Obsession*, *FINANCIAL TIMES*, <https://www.ft.com/content/39860d76-d9b3-11e7-a039-c64b1c09b482> (last visited Aug. 31, 2019).

unearthing and suppressing them.<sup>401</sup> An elaborate network of “touring inspectors” was established and relied upon to spot instances of graft.<sup>402</sup> Parties presumed to be guilty of such transgressions were harshly dealt with: “Bribe-taking officials were flayed before execution and their skin attached to mannequins in ‘scarecrow temples’ to serve as warnings to others. In more serious cases entire clans were put to death.”<sup>403</sup>

This strategy did not prove successful, because of its inherent flaws and loss of momentum.<sup>404</sup> Despite the wide scope and great intensity of the initial drive, the Ming dynasty unraveled under the weight of its corrupt bureaucracy and was consigned to the dustbin of history by the invading Manchu armies.<sup>405</sup> Nevertheless, in addition to bringing into focus the potential threat to the regime the prevalence of graft poses, with the imperial “Mandate of Heaven” inevitably surrendered due to the pervasiveness of graft, this episode serves as a useful reminder of the historical undercurrents shaping the anticorruption campaigns in China, their marked symbolic connotations, and ultimately their strategic prominence.<sup>406</sup>

The early Ming dynasty years saw ambitious policy initiatives on other fronts as well. Above all, its rulers aspired to revive Chinese culture and tradition.<sup>407</sup> In parallel, they sought to modernize the economy, specifically its mainstay: the sprawling agricultural sector.<sup>408</sup> These efforts were also conceptually and structurally suboptimal<sup>409</sup> but, in conjunction with the vigorous drive to eradicate corrupt activities, they helped to keep the riven with contradictions and fundamentally vulnerable empire alive for as long as 276 years, a no mean achievement, given the circumstances.<sup>410</sup> The historical lesson here is that fighting graft is a multifaceted enterprise.<sup>411</sup>

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401. *See id.*

402. *See id.*

403. *Id.*

404. *See id.*

405. *See id.*

406. *See id.*

407. *See generally* TIMOTHY BROOK, *THE CONFUSIONS OF PLEASURES: COMMERCE AND CULTURE IN MING CHINA* (1999).

408. *See generally* Dwight H. Perkins, *AGRICULTURAL DEVELOPMENT IN CHINA, 1368-1968* (Routledge, 2013).

409. *See generally* TIMOTHY BROOK, *THE TROUBLED EMPIRE: CHINA IN THE YUAN AND MING DYNASTIES* (2013).

410. *See generally* JOHN W. DARDESS, *MING CHINA, 1368-1644: A CONCISE HISTORY OF A RESILIENT EMPIRE* (2012).

411. *See generally* Anderlini, *supra* note 400.

This lesson has apparently been heeded by China's present leadership whose anticorruption campaign bears strategic, as well as operational, similarities to the early Ming dynasty thrust.<sup>412</sup> It is thus an integral part of the vision, realistic or otherwise, and not without politically derived tactical underpinnings, to realize the "Chinese dream" by erasing the lingering memories of the "Century of Humiliation"/"Hundred Years of National Humiliation" (1839-1939) and transforming the country, in the most comprehensive sense of the term, into a global superpower by 2049, the year coinciding with the 100th anniversary of the founding of the PRC.<sup>413</sup>

The drive to quell corrupt practices has also been accompanied by the launch of a number of bold economic and national security schemes designed to position China robustly in the regional and global arenas. In the economic realm, the Asian Infrastructure Investment Bank and the One Belt-One Road mega project, referred to earlier, have been particularly noteworthy in this respect. In the national security sphere, the aforementioned military build-up and muscle flexing in the South China Sea have been equally striking.<sup>414</sup> It should be reiterated, however, that the external economic initiatives have not been matched by major revitalization programs on the domestic front, with policy primarily geared toward maintaining stability through deleveraging/debt reduction<sup>415</sup> and containing downward cyclical pressures.<sup>416</sup>

At the outset of the Xi Jinping era, an inference might have been drawn that the multipronged strategy to pursue the Chinese dream, with the anticorruption campaign at its epicenter, would feature steady progress toward the rule of law,<sup>417</sup> even if in a diluted form envisioned by some middle-of-the-road reformist thinkers.<sup>418</sup> This blueprint, grounded in China's legalist tradition, was expected to consist of a six-pillar structure including

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412. *See id.*

413. *See generally Xi Jinping and the Chinese Dream*, DW, <https://www.dw.com/en/xi-jinping-and-the-chinese-dream/a-43685630> (last visited Aug. 31, 2019).

414. *See generally* Hayton, *supra* note 380; Turcsanyi, *supra* note 380.

415. *See generally China Economic Growth to Support Deep Financial Deleveraging Reform*, ING, <https://think.ing.com/articles/chinas-economic-growth-to-support-deep-dive-financial-deleveraging-reform/> (last visited Aug. 31, 2019).

416. *See generally* Andy Mukherjee, *Goodbye China, Deleveraging. Onward Belt and Road?*, BLOOMBERG, <https://www.bloomberg.com/view/articles/2018-07-24/goodbye-china-deleveraging-onward-belt-and-road> (last visited Aug. 31, 2019).

417. *See generally* Jacques deLisle, *The Rule of Law with Xi-Era Characteristics: Law for Economic Reform, Anticorruption, and Illiberal Politics*, 20 ASIA POL'Y 23 (2015).

418. *See generally* Wei Pan, *Toward a Consultative Rule of Law Regime in China*, 12 J. CONTEMP. CHINA 3 (2003).

meaningful civil liberties (the freedoms of assembly, association, press, and speech being the most salient), an autonomous judiciary, an independent antigraft body, a powerful audit unit, a neutral civil service, and extensive social consultation procedures.<sup>419</sup> It has become abundantly clear that most elements of this semiliberal roadmap no longer loom large on the CCP policy agenda.<sup>420</sup>

Initial, mildly positive, expectations regarding evolution of the rule of law reflected policy rhetoric that seemed to depart from the reverse pattern observed in the preceding years.<sup>421</sup> Specifically, at CCP’s Fourth Plenum, held in fall of 2014, the new leadership decided to abandon the official attitude toward the rule of law that emerged around 2005.<sup>422</sup> The latter posture, a reaction to rising but unwelcome bottom-up legal and quasi-legal advocacy of a seemingly liberal nature,<sup>423</sup> as well as the product of fears of escalating social unrest,<sup>424</sup> constituted a discernible move away from the steps gradually taken to further the rule of law in the previous two decades.<sup>425</sup> The principal components of that negative stance were:

[1] A shift away from late 20th-century efforts to promote judicial activism, coupled with a revival of late 1950s Maoist-era ideals of judicial populism. [2] A revived focus on mediation, rather than court trials, as a preferred mechanism for resolving conflict between citizens as well as between citizens and the [S]tate. [3] A new [S]tate narrative depicting the law as cold and unresponsive to citizen needs. [4] A stress on the courts as an undifferentiated cog within the [S]tate for stability maintenance (*weiwen*). [5] A steady reduction in tolerance for the activities of

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419. *See id.*

420. *See generally* Jeffrey Wasserstrom & Kate Merkel-Hess, *Xi Jinping’s Authoritarianism Does a Diservice to China’s Nuanced Political Tradition*, 33 NPQ: NEW PERSPECTIVES Q. 15 (2016); Sam Crane, <https://chinachannel.org/2018/06/29/legalism/> (last visited Aug. 31, 2019); Isaac Stone Fish, *The Myth of a Kinder, Gentler Xi Jinping*, ATLANTIC, <https://www.theatlantic.com/international/archive/2018/02/xi-jinping-authoritarianism-china/554375/> (last visited Aug. 31, 2019); Francis Fukuyama, *China’s ‘Bad Emperor’ Returns*, WASH. POST <https://www.washingtonpost.com/news/theworldpost/wp/2018/03/06/xi/> (last visited Aug. 31, 2019).

421. *See generally* Carl Minzer, *Legal Reform in the Xi Jinping Era*, 20 ASIA POL’Y 4 (2015).

422. *See id.* at 4.

423. *See id.* at 5.

424. *See id.* at 5-6.

425. *See id.* at 4-6.

public interest (*weiquan*) lawyers. [6] A new political campaign reiterating party supremacy over the constitution, law, and courts. [7] The charging of local officials with the priority task of containing citizen disputes, conflicts, and petitions at all costs.<sup>426</sup>

Almost immediately after being catapulted into the political frontline, Xi Jinping signaled his intention to navigate the ship of State in the opposite direction.<sup>427</sup> The CCP's Fourth Plenum served as the most visible and effective platform for forcefully communicating the essence of the latest strategic turnabout.<sup>428</sup> It was not, however, the sole vehicle for conveying the aim of resolutely pursuing legal reform.<sup>429</sup> Importantly, the policy rhetoric was reinforced with the announcement of a series of concrete measures whose purpose was to convert the vision into reality.<sup>430</sup> The resumed march toward the rule of law was expected to revolve around the following initiatives:

[1] [Putting forward] [a]ssertions of legal and judicial reform as a central priority of Xi's administration. [2] Attempts to centralize control over the judicial system and limit the influence of local officials. [3] A return to concepts of judicial professionalism. [4] Efforts to steer citizen disputes back to the courts. [5] Revived emphasis on adjudication and trials at the center of court work. [6] A renewed focus on the distinctions between the roles of judges and other [S]tate employees.<sup>431</sup>

It has soon become amply evident, however, that the strategic readjustment has amounted to a structural rather than substantive reconfiguration.<sup>432</sup> The managerial approach, and organizational foundation underpinning it, has been revamped, but the relationship between law, politics, and society has not been meaningfully redefined.<sup>433</sup> A more formalistic and institutionally calibrated policy has been embraced without a corresponding ideational repositioning: "The top-down vision of legal

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426. *Id.* at 4-5.

427. *See id.* at 6.

428. *See id.*

429. *See id.*

430. *See id.*

431. *Id.*

432. *See id.* at 6-9.

433. *See id.*

reform developing under Xi Jinping’s administration may have more in common with current trends in the party disciplinary apparatus or historical ones in the imperial Chinese censorate than it does with Western rule-of-law norms.”<sup>434</sup>

As matters stand, significant legal outcomes continue to be shaped by the interplay between the “rule of the party” and the “rule of law.”<sup>435</sup> An alignment between the two does occur, but misalignment is common.<sup>436</sup> Such conflicts have always been resolved in favor of the former, but the institutional machinery erected by the present regime and its strategic thrust has rendered the asymmetry even more pronounced.<sup>437</sup> Structural enhancements notwithstanding,<sup>438</sup> this remains a major impediment to progress, prompting a seasoned observer of China’s legal scene to note that “[t]here is a Chinese saying that refers to Western medicine as a procedure that only treats the symptom, whereas Chinese medicine treats the root cause, [yet] [t]he Fourth Plenum initiative seems, ironically, very much like a strong dose of Western-style medicine, as far as the metaphor goes.”<sup>439</sup>

This is not necessarily the product of risk aversion or the result of endogenously, let alone exogenously, derived constraints.<sup>440</sup> The pro-rule-of-law rhetoric, and the selective utilization of legal tools to promote a specific political agenda, and at the same time subversion of the principles underlying this institutional architecture are part of a coherent national strategy.<sup>441</sup> Thus, while “[t]hroughout the Deng Xiaoping, Jiang Zemin, and Hu Jintao periods, law came to be expected to perform—and to some extent did perform—supporting functions for the regime’s core agenda: providing frameworks for market-oriented, internationally open development strategies; checking potentially development subverting misbehavior, much of it by party-[S]tate or [S]tate-linked actors; and preempting pressures for democratic reform ... [i]ncipient and likely nontransformative changes in law’s mandate under Xi point toward a legal order that is still reformist and developmentalist (in its notion of the rule of law in the economy), more

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434. *Id.* at 4.

435. See Ling Li, *Chinese Characteristics of the “Socialist Rule of Law”*: Will the Fourth Plenum Cure the Problems of the Chinese Judicial System?, 20 ASIA POL’Y, 17, 18 (2015).

436. See *id.* at 18-20.

437. See *id.*

438. See generally Donald Clarke, *China’s Legal System and the Fourth Plenum*, 20 ASIA POL’Y 10 (2015).

439. Li, *supra* note 435, at 22.

440. See generally deLisle, *supra* note 417.

441. See *id.*

legalist (that is, giving law a larger role in some, but not all, areas), and more Leninist (in the sense of being less liberal, more top-down, and more narrowly instrumentalist).<sup>442</sup>

The ongoing antigraft campaign, launched following the conclusion of the 18th National Congress of the CCP, held in 2012, in an unmistakably forceful but seemingly indeterminate fashion,<sup>443</sup> is an integral component of this strategic blueprint.<sup>444</sup> Its essence was conveyed in the form of an “eight-point code” designed to govern official conduct (*baxiang guiding*).<sup>445</sup> The rules laid out required public sector employees “to reconnect with the masses, banned the use of luxury cars, eliminated lavish gifts, and reduced pomp, banquets, ceremony, bureaucratic visits, and meetings.”<sup>446</sup> A memorable phrase—four dishes and a soup (*sicai yitang*)—often invoked by CCP leaders to foster a spirit of frugality, was reembraced in order to infuse the austerity regime with symbolic virtue.<sup>447</sup>

The time-honored and potent weapons of criticism and self-criticism, traditionally relied upon to sow fear and mistrust, were expected to be “well-wielded with some spice to make every party official blush and sweat a

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442. *Id.* at 24.

443. See generally Jon S. T. Quah, *Hunting the Corrupt “Tigers” and “Flies” in China: An Evaluation of Xi Jinping’s Anti-Corruption Campaign*, MD. SERIES CONTEMP. ASIAN STUD. 1 (2015); Jinghao Zhou, *Will the Communist Party of China Be Able to Win the Anticorruption Battle?* 2 CONTEMP. CHINESE POL. ECON. AND STRATEGIC RELATIONS: AN INT’L J. 1007 (2016); Kerry Brown, *The Anti-Corruption Struggle in Xi Jinping’s China: An Alternative Political Narrative* 49 ASIAN AFF. 1 (2018); Congressional-Executive Commission on China, *Combating Corruption in China: Advances and Problems and Suppression of Advocates*, <https://www.cecc.gov/publications/commission-analysis/combating-corruption-in-china-advances-and-problems-and-suppression> (last visited Aug. 31, 2019); Guilhem Fabre, *The Lion’s Share, Act 2. What Behind China’s Anti-Corruption Campaign?*, <https://halshs.archives-ouvertes.fr/halshs-01143800/document> (last visited Aug. 31, 2019); Andrew Wedeman, *Four Years On: Where Is Xi Jinping’s Anti-Corruption Drive Headed?*, <http://theasiadialogue.com/2016/09/19/four-years-on-where-is-xi-jinpings-anti-corruption-drive-headed/> (last visited Aug. 31, 2019); Samson Yuen, *Disciplining the Party: Xi Jinping Anti-Corruption Campaign and Its Limits*, [www.cefc.com.hk/download.php?file=dc7e38333eca4f4e9bbe446fc95b63b&id](http://www.cefc.com.hk/download.php?file=dc7e38333eca4f4e9bbe446fc95b63b&id) (last visited Aug. 31, 2019); Yuxin Zhang, *Why Xi Jinping’s Anti-Corruption Campaign Won’t Legitimize the CCP*, DIPLOMAT, <https://thediplomat.com/2014/08/why-xi-jinpings-anti-corruption-campaign-wont-legitimize-the-ccp/> (last visited Aug. 31, 2019).

444. See generally deLisle, *supra* note 417.

445. See Yuen, *supra* note 443, at 41.

446. See *id.*

447. See *id.* at 41-42.

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little.”<sup>448</sup> More specifically and systematically, a “thorough cleanup”<sup>449</sup> was to be undertaken of four objectionable work styles (*sifeng*): “formalism, bureaucratism, hedonism, and extravagance [...] in reference to the three ill winds—subjectivism, sectarianism, and stereotyped Party writing—that Mao Zedong cited during the Yan’an Rectification Movement in the 1940s.”<sup>450</sup> In other words, it was devised as a top-down, suitably hazy, relentless, open-ended, and divisive (for better or for worse, in this particular context) social mobilization scheme.

Formal legal mechanisms were identified by the post-2012 (“fifth-generation”) controllers of politico-bureaucratic apparatus, as their policy agenda fully crystallized and began to be earnestly implemented, as a proper vehicle for tackling corrupt practices.<sup>451</sup> Moreover, such tools have been selectively but repeatedly resorted to for this manifestly crucial purpose, as evidenced by the “criminal prosecution of several high-ranking ‘tigers’ (including Chongqing party chief and one-time aspirant to top leadership positions Bo Xilai and public security head Zhou Yongkang) and many more lower-ranked-’flies.’”<sup>452</sup>

This has coincided, however, with the return of illiberal politics in its ultra-harsh incarnation, depriving the sweeping antigraft project of authentic rule-of-law underpinnings and rendering it a potential instrument for a widespread misuse of power.<sup>453</sup> For instance,

[a]ffiliates of civil society organizations that seek to promote legal change or to protect civil rights—such as the HIV and hepatitis B advocacy organization Yirenping or the five “feminists” on issues of domestic violence—have been subjected to police detention[, charged with] “picking quarrels and provoking troubles” (one of the so-called pocket offenses that have long been a much-criticized feature of Chinese criminal law), [and] prosecut[ed] for “illegal business operations” (which NGOs are often unable to escape because of registering lawfully as an NGO), “disturbing social order” (for small-scale protest or street theater), or tax evasion (including in connection with receiving funds from foreign sources).<sup>454</sup>

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448. *Id.* at 42.

449. *Id.*

450. *Id.*

451. *See de Lisle, supra* note 417, at 26.

452. *Id.*

453. *Id.* at 28.

454. *Id.*

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Such arbitrary and oppressive steps have been taken against the backdrop of broader legislative initiatives “to regulate the activities of foreign foundations, restrict funding for Chinese NGOs, and authorize measures to enhance [S]tate security—the last of these particularly reflecting concerns about ethno-nationalist unrest among Uyghurs.”<sup>455</sup>

These actions have been pursued against the backdrop of a putatively academic but in practice intensely managed debate about “constitutionalism,” evoking in a sharper form Hu Jintao-era repudiation of finely balanced Western-style politico-legal institutional constellations and the underlying tenets of “limited government, separation of power, and liberal rights—advocated by jailed Nobel laureate Liu Xiaobo, among others.”<sup>456</sup> In the same spirit, the fifth generation leadership has sought to curb “discussion of seven pernicious ideas, including Western constitutional democracy, universal values, civil society, neoliberalism, and Western views of journalism.”<sup>457</sup> The defensively restrictive climate that has emerged has proved a breeding ground for voices calling for materially limiting access to Western-type education, including in the field of law, to Chinese students.<sup>458</sup>

Fragmentation and lack of check-and-balances within the anticorruption institutional machinery is another characteristic of the system within which the battle against graft is being waged, consisting of the Central Commission for Discipline Inspection (CCDI), whose origins may be traced to the creation, in a quest to bolster party authority and consistency, of the CCP’s Discipline Supervision Commissions (DSCs) at the central and provincial levels in 1927; the Supreme People’s Procuratorate (SPP), established in 1949 with the aim of ensuring that government activities comply with the law and investigating and prosecuting serious crimes perpetrated by public officials; the Ministry of Supervision (MOS), formed in 1954, dissolved in 1959, and restored in 1986 for the purpose of curtailing corruption in the civil service; and the National Corruption Prevention Bureau (NCPB), launched in 2007 to primarily fill a gap stemming from the unavailability of organizational vehicles to address prevention and graft in the private sector.<sup>459</sup>

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455. *Id.*

456. *Id.*

457. *Id.*

458. *See id.*

459. *See* Quah, *supra* note 146, at 62-66; Quah, *supra* note 443, at 23-33.

The mission of these entities is broadly defined and their operational domains partly overlap.<sup>460</sup> The consequent institutional ambiguity and incoherence is not as pronounced as might have otherwise been the case due to the dominance of the CCDI<sup>461</sup> and it is expected to diminish further when the new super anticorruption agency (National Supervisory Commission, NSC, set up in 2018) becomes fully functional.<sup>462</sup> That said, organizational agendas and their implementation continue to be marked by a high degree of fuzziness and crisscrossing of institutional boundaries.<sup>463</sup> Moreover, this remains an inordinately politicized edifice at all levels, not subject to any meaningful independent scrutiny, judicial or other.<sup>464</sup>

The creation of the NSC, coupled with the introduction of the Supervision Law designed to govern its operations, while possibly holding the promise of better top-down steering and horizontal coordination, may well result in greater politicization, weaker accountability, and widespread abuse of power exceeding levels presently observed.<sup>465</sup> Ostensibly, the underlying logic is to base the ongoing antigraft campaign on a juridically sound foundation and refrain from reliance on CCDI’s internal and extra-legal mechanisms.<sup>466</sup> This potent organization—effectively a fourth branch of the government, nominally coequal with the State Council (SC), Supreme People’s Court (SPC), and SPP, and granted an extraordinary mandate and

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460. See Quah, *Minimizing Corruption in China: Is This an Impossible Dream?*, *supra* note 146; Quah, *Hunting the Corrupt “Tigers” and “Flies” in China: An Evaluation of Xi Jinping’s Anti-Corruption Campaign (November 2012 to March 2015)*, *supra* note 443.

461. See generally Xuezhong Guo, *Controlling Corruption in the Party: China’s Central Discipline Commission*, 219 CHINA Q. 597 (2014).

462. See generally *China Ramps Up Anti-Corruption Campaign with New Super Agency*, HONG KONG LAWYER <http://www.hk-lawyer.org/content/china-ramps-anti-corruption-campaign-new-super-agency> (last visited Aug. 31, 2019).

463. See Quah, *Minimizing Corruption in China: Is This an Impossible Dream?*, *supra* note 146, at 62-66; Quah, *Hunting the Corrupt “Tigers” and “Flies” in China: An Evaluation of Xi Jinping’s Anti-Corruption Campaign (November 2012 to March 2015)*, *supra* note 443, at 23-33.

464. See generally Guo, *supra* note 461; Anderlini, *supra* note 400; Daniel C. K. Chow, *How China’s Crackdown on Corruption Has Led to Less Transparency in the Enforcement of China’s Anti-Bribery Laws*, 49 U.C. DAVIS L. REV. 685 (2015); Lyric Chen, *Who Enforces China’s Anti-Corruption Laws? Recent Reforms of China’s Criminal Prosecution Agencies and the Chinese Communist Party’s Quest for Control*, 40 LOY. L.A. INT’L & COMP. L. REV. 139 (2017).

465. See generally Jamie P. Horsley, *What So Controversial about China’s New Anti-Corruption Body?*, DIPLOMAT, <https://thediplomat.com/2018/05/whats-so-controversial-about-chinas-new-anti-corruption-body/> (last visited Aug. 31, 2019).

466. See *id.*

mighty investigative tools to boot—is to come under the purview of the CCP alone.<sup>467</sup>

It is important to note that, whatever their merits and demerits, the political, rule-of-law, and structural underpinnings of the anticorruption program dovetail with the cardinal attributes of the current regime and its leaders' *modus operandi*, as outlined above. Such friction-minimizing “fit” is, *ceteris paribus*, conducive to smooth implementation, or at least helps to dampen centrifugal forces.<sup>468</sup> By the same token, there can be no doubt about the campaign's breadth, durability, ferociousness, and severity. Parts of the picture, which is still evolving, defy quantification but, as matters stand, a vast number of cadres—mostly flies, yet in a historically unprecedented fashion, also some tigers—have been targeted and harshly dealt with,<sup>469</sup> at times in a manner exceeding prevailing, and progressively tighter, legal standards.<sup>470</sup>

### VIII. Evaluation

The prevailing view is that, at the turn of the second decade of the 21<sup>st</sup> century, pernicious forms of graft pervaded virtually every layer of Chinese society.<sup>471</sup> The analytically inspired portrayals reflecting this reading of the

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467. *See id.*

468. *See* Miron Mushkat & Roda Mushkat, *Assessing the Effectiveness of Environmental Governance Regimes: Remaining Gaps*, 12 INTERDISC. ENV. REV. 166 (2011).

469. *See generally* Quah, *supra* note 443; Manion, *supra* note 144; Brown, *supra* note 443; Yuen, *supra* note 443; Andrew Wedeman, *Xi Jinping's Tiger Hunt: Anti-Corruption Campaign or Factional Purge?*, 24 MODERN CHINA STUD. 35 (2017); Jingyu Gao, *The Impact of China's Anti-Corruption Campaign: Have “Tigers” Harbored More “Flies?”* (Apr. 1, 2017) (unpublished M.P.P. thesis, Georgetown University) (on file with the Georgetown University Institutional Repository); John Griffin, Clark Liu, & Tao Shu, *Is the Chinese Corporate Anti-Corruption Campaign Genuine?*, 29th Annual Conference on Financial Economics & Accounting 2018; Paris December 2018 Finance Meeting EUROFIDAI - AFFI; Finance Down Under 2019 Building on the Best from the Cellars of Finance, [https://wpcarey.asu.edu/sites/default/files/clark\\_yue\\_liu\\_seminar\\_march\\_27\\_2018.pdf](https://wpcarey.asu.edu/sites/default/files/clark_yue_liu_seminar_march_27_2018.pdf); Shujie Leng & David Wertime, *China's Anti-Corruption Campaign Ensnares Tens of Thousands More*, FOREIGN POLICY (Jan 9, 2015), <https://foreignpolicy.com/2015/01/09/chinas-anti-corruption-campaign-ensnares-tens-of-thousands-more/>; Topic: *Xi Jinping's Anti-Corruption Campaign*, SOUTH CHINA MORNING POST, <https://www.scmp.com/topics/xi-jinpings-anti-corruption-campaign>.

470. *See* Bribery & Corruption/China, GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/bribery-and-corruption-laws-and-regulations/china>; Kareena Teh & Philip Kwok, *The Anti-Bribery and Anti-Corruption Review—China*, THE LAW REVIEWS, <https://thelawreviews.co.uk/edition/the-anti-bribery-and-anti-corruption-review-edition-6/1151846/china>.

471. *See* Wedeman, *supra* note 58; PEI, *supra* note 19.

situation<sup>472</sup> are consistent with collective action-style accounts of the etiology and dynamics of corruption.<sup>473</sup> Such explanatory schemes emphasize that, when graft is endemic, no one, even those imbued with a transcendent sense of virtue, can escape its clutches because the costs of engaging in principled behavior (e.g., financial impairment, loss of employment, ostracism, physical harm, ridicule, retribution, and stigmatization) significantly outweigh the benefits.<sup>474</sup>

An inference has thus been drawn that the CCP, presiding over this sordid state of affairs and deeply embroiled in the cauldron of corruption, its apparent role in dramatically and persistently lifting living standards over three decades notwithstanding, was confronting a serious crisis of legitimacy, in all likelihood of the existential variety, as China entered the 21st century.<sup>475</sup> The massive, steadfast, and unflagging post-2012 antigraft drive has been depicted as a commensurate response to this enormous challenge<sup>476</sup> and Xi Jinping, its ingenious and venerable architect, as the party’s and the country’s savior.<sup>477</sup> The image and its forceful projection have enabled Xi to amass official power on a scale unseen during the reform era.<sup>478</sup>

This construction, however, has not been universally embraced.<sup>479</sup> Notably, some scholars have argued and demonstrated that the CCP has been able to maintain and, in fact, strengthen its legitimacy in the face of mounting evidence of corruption, perhaps due to the presence of countervailing influences.<sup>480</sup> Without minimizing the economic and sociopolitical costs of graft, and refraining from hypothesizing about its long-term repercussions,

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472. See Wedeman, *supra* note 58; PEI, *supra* note 19.

473. See DAN HOUGH, ANALYSING CORRUPTION 83-87 (2017).

474. See *id.*

475. See Ho-Fung Hung, *When Will China’s Government Collapse?*, FOREIGN POLICY, Mar. 13, 2015, [https://foreignpolicy.com/2015/03/13/china\\_communist\\_party\\_collapse\\_downfall/](https://foreignpolicy.com/2015/03/13/china_communist_party_collapse_downfall/).

476. See Ben Blanchard, *China’s Communist Party Thinks a Corruption Crisis Is Its Biggest Threat to Power*, BUSINESS INSIDER (Sept. 8, 2015), <https://www.businessinsider.com/chinas-communist-party-thinks-a-corruption-crisis-is-its-biggest-threat-to-power-2015-9>.

477. See Rowan Callick, *Communist Party Acclaims Xi Jinping as China’s Saviour*, AUSTRALIAN (Oct. 23, 2017), <https://www.theaustralian.com.au/news/world/communist-party-acclaims-xi-jinping-as-chinas-saviour/news-story/157bec57c51ff351485e7>.

478. See *Analysis: China’s Xi Jinping Amasses Power in Huge Anti-Corruption Crackdown*, NBC (Jan. 1, 2015), <https://www.nbcnews.com/storyline/2014-year-in-review/analysis-chinas-xi-jinping-amasses-power-huge-corruption-crackdown-n270001>.

479. See BROWN, *supra* note 443; Carolyn L. Hsu, *Political Narratives and the Production of Legitimacy: The Case of Corruption in Post-Mao China*, 24 QUAL. SOCIOLOG. 25 (2001).

480. See Hsu, *supra* note 478.

they have claimed and shown that the causal relationship between this variable and CCP standing has been surprisingly tenuous.<sup>481</sup> Rather than a threat to the regime, let alone an existential one, corruption has been opportunistically manipulated in the context of an unfolding political narrative.<sup>482</sup>

Another empirically supported contrarian assertion put forward by researchers questioning the mainstream Xi-era antigraft picture pertains to the efforts of his predecessors.<sup>483</sup> The specific contention here is that they had not necessarily and recklessly turned a blind eye to corruption.<sup>484</sup> Indeed, some institutionally meaningful progress had been made in the shape of antigraft regulation and enforcement, competition-promoting economic deregulation, fiscal consolidation, more effective monitoring of local government activities, a move toward a merit-based civil service, and revamping of nontransparent and unwieldy budgeting and auditing procedures.<sup>485</sup> The overall level of corruption may have not declined, but its structure may have fundamentally shifted from internal administrative processes (embezzlement and misappropriation of public funds) to bribery.<sup>486</sup>

Given this backdrop, there has been a tendency to assess the current antigraft campaign in terms of its motives: an expression of a genuine policy concern about corruption and its corrosive socioeconomic impacts, an eagerness to safeguard parochial party interests (including its legitimacy), or a self-serving desire to solidify Xi Jinping's power base by providing him with a blunt instrument to marginalize his rivals.<sup>487</sup> The evidence generated

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481. *See id.*

482. *See id.*

483. *See* Kilkon Ko & Cuifen Weng, *Structural Changes in Chinese Corruption*, 211 CHINA Q. 718 (2012).

484. *See id.*

485. *See id.*

486. *See id.*

487. *See generally* BROWN, *supra* note 443; Fabre, *supra* note 50; Manion, *supra* note 144; Wedeman, *supra* note 469; Griffin, Liu, & Shue, *supra* note 469; Li, Roland, & Xie, *supra* note 146; Robert Daly, *The Mixed Rationales and Mixed Results of Xi Jinping's Anticorruption Campaign*, WILSON CENTER (May 11, 2016), <https://www.wilsoncenter.org/article/the-mixed-rationales-and-mixed-results-xi-jinpings-anticorruption-campaign>; Anthony Kuhn, *Behind China's Antigraft Campaign, A Drive to Crush Rivals*, NPR (Oct. 25, 2016), <https://www.npr.org/sections/parallels/2016/10/25/499206804/behind-china-s-antigraft-campaign-a-drive-to-crush-rivals>; Peter Lorentzen & Xi Lu, *Personal Ties, Meritocracy, and China's Anti-Corruption Campaign*, presented at the 'Political Selection and Intra-Party Conflicts in China' paper session for the American Economic Association, Jan. 4, 2019, available at <https://www.aeaweb.org/conference/2019/preliminary/668?q=>

in this respect is somewhat mixed in that the data lend tentative support for all three dispositional alternatives.<sup>488</sup> The possibility of the entire set being relevant cannot be ruled out, with the balance difficult to quantify and potentially shifting according to circumstances.

This has prompted some observers to question the effectiveness of the ongoing antigraft program.<sup>489</sup> Attention has focused on its political and, by implication, unavoidably arbitrary and selective nature (intensity, large scale, and perseverance do not ineluctably translate into consistency, orderliness, and universal application).<sup>490</sup> It is believed that this has undermined the credibility, legitimacy, and robustness of the multiyear onslaught on corruption, detracting from its usefulness and potentially reducing the likelihood of an ultimately successful outcome.<sup>491</sup> The fact that China’s anticorruption credentials, as gauged by the Transparency

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eNqrVipOLS7OzM8LqSxIVbKqhnGVrAxrawGICArI; Shannon Tiezzi, *What’s Behind Xi’s Anti-Corruption Campaign?*, DIPLOMAT, Apr. 17, 2014, <https://thediplomat.com/2014/04/whats-behind-xis-anti-corruption-campaign/>; Deng Yuwen, *The Three Groups of Untouchables in China’s Corruption Crackdown*, SOUTH CHINA MORNING POST (May 5, 2017), <https://www.scmp.com/comment/insight-opinion/article/2093109/three-groups-untouchables-chinas-corruption-crackdown>.

488. See generally BROWN, *supra* note 443; Manion, *supra* note 144; Fabre, *supra* note 150; Wedeman, *supra* note 469; Daly, *supra* note 487; Griffin, Liu, and Shu, *supra* note 487; Kuhn, *supra* note 487; Li, Roland, & Xie, *supra* note 487; Tiezzi, *supra* note 487; Yuwen, *supra* note 487.

489. See *supra* note 443; Yan Sun & Baishun Yuan, *Does Xi Jinping’s Anticorruption Campaign Improve Regime Legitimacy?*, 24 MODERN CHINA STUD. 14 (2017); Guoguang Wu, *Xi’s Anti-Corruption Campaign and the Increasing Uncertainty of Chinese Politics: A Framework of Analysis*, 24 MODERN ASIAN STUD. 95 (2017); John Osburg, *Making Business Personal: Corruption, Anti-Corruption, and Elite Networks in Post-Mao China*, 59 CURR. ANTHROPOL. S149 (2018); Dan Hough, *Why Has China’s Anti-Corruption Rating Barely Budged Despite Thousands of Arrests?*, SOUTH CHINA MORNING POST, Feb. 23, 2018, <https://www.scmp.com/comment/insight-opinion/article/2134265/why-has-chinas-anti-corruption-rating-barely-budged-despite>; Jun Mai, *Swept Up in China’s Anti-Corruption Campaign, and Forsaken by a Secretive, Suspect Legal System*, SOUTH CHINA MORNING POST (July 25, 2018), <https://www.scmp.com/news/china/policies-politics/article/2156620/swept-chinas-anti-corruption-campaign-and-forsaken>; Duan Youzhou, *Anti-Corruption in China and CCP’s Legitimacy*, International Conference on Economics, Social Sciences and Languages (ICESL’14) May 14-15, 2014, Singapore, <https://icehm.org/upload/5611ED0514027.pdf>.

490. See generally Sun & Yuan, *supra* note 489; Wu, *supra* note 489; Osburg, *supra* note 489; Hough, *supra* note 489; Mai, *supra* note 489; Youzhou, *supra* note 489; Yuen, *supra* note 443; Zhang, *supra* note 443.

491. See generally Sun & Yuan, *supra* note 489; Wu, *supra* note 489; Osburg, *supra* note 489; Hough, *supra* note 489; Mai, *supra* note 489; Youzhou, *supra* note 489; Yuen, *supra* note 443; Zhang, *supra* note 443.

International indices, have barely budged during this long period has been invoked in support of such a critical appraisal.<sup>492</sup>

The picture painted and the underlying reasoning are both valid, but partially so and the mapping exercise overlooks some crucial elements, negative as well as positive, because of its unidimensional character. For instance, mixed-motives, and even self-centered ones, may yield some societal benefits, whether intended or unintended. To illustrate, there is empirical evidence to suggest that provinces previously headed by prosecuted tigers, possibly targeted by Xi Jinping for personal reasons, have intensified their antigraft efforts, either due to a politically favorable change of leadership or in order to fend off further pressures from Beijing, or a combination of the two factors.<sup>493</sup> This, in turn, appears to have contributed to the decline in corrupt practices, at least during the period covered by the study.<sup>494</sup> Such seemingly unexpected patterns may be unearthed when socio-legal phenomena are examined from a multidimensional perspective and in a manner acknowledging their inherent complexity. LE offers a practical and viable pathway, albeit without providing a fully integrated and wholly interdisciplinary analytical framework.

On the positive side, it is evident that the disincentives against succumbing to corruption have increased exponentially. The data speak for themselves.<sup>495</sup> The figures may well be partly inflated due to the selectively political nature of the antigraft campaign, but no suggestions have been made that the possible distortion is sufficiently significant to materially detract from the representativeness of the picture painted. There can be little doubt that the probability of being caught has risen substantially because of the high priority accorded to combating corrupt activities, vast resources allocated to the mission, and its generally ruthless implementation. Clearly, the targeting of tigers and the heavy punishment meted out to them has also enhanced deterrence, even though this may be the most politically salient component of the program.<sup>496</sup>

As indicated, it is not merely a matter of a greater probability of being caught. The importance of the increased severity of punishment should not

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492. See Hough *supra* note 489.

493. See Gao, *supra* note 469.

494. See *id.*

495. See Leng & Wertime, *supra* note 469; Yuen, *supra* note 443.

496. See generally Quah, *supra* note 463; Fabre, *supra* note 50; Sun & Yuen, *supra* note 489; Wu, *supra* note 489; Osburg, *supra* note 489; Fabre *supra* note 443; Gao, *supra* note 469; *Charting China's "Great Purge" under Xi*, BBC (Oct. 23, 2017), <https://www.bbc.com/news/world-asia-china-41670162>.

be overlooked either.<sup>497</sup> It is true that China has long had strong antigraft laws, as attested by the relevant provisions of Criminal Law of the People’s Republic of China, which came into effect in 1980, and their modernization and rejuvenation, undertaken in 1997.<sup>498</sup> This legal façade has been markedly revitalized, however, since Xi Jinping’s ascent to power.<sup>499</sup> Perhaps more significantly, enforcement has been dramatically boosted,<sup>500</sup> inevitably magnifying the deterrent effect of the higher probability of being caught and heavier legal sanctions.<sup>501</sup>

By the same token, a sense of fear and suspicion has pervaded the fabric of post-2012 Chinese society.<sup>502</sup> This may be attributable to the authoritarian oppression that has characterized Xi’s rule.<sup>503</sup> The battle stridently and unremittingly waged against corrupt practices has been a central element of this equation.<sup>504</sup> As pointed out earlier, whatever the broad ramifications of the climate of mistrust that has abruptly emerged and rapidly spread, exploiting interpersonal fear and suspicion in the war against graft is consistent with the theoretical assumptions and empirical findings of behaviorally inclined LE scholars. It may be a tactic that is particularly suitable for social conditions such as those prevailing in China, where corrupt activities have traditionally been channeled through close-knit and resilient interpersonal networks.<sup>505</sup>

LE researchers have written sparingly about the internal organization of anticorruption agencies (ACAs). The issue of the relative merits of

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497. See GLOBAL LEGAL INSIGHTS, *supra* note 470; Teh & Kwok, *supra* note 470.

498. See generally Global Legal Insights, *supra* note 470.

499. See *id.*

500. See *id.*

501. See Liu Jincheng, *China’s Anti-Corruption Fight on Road to Success*, CHINA DAILY (Oct. 27, 2017), [http://europe.chinadaily.com.cn/epaper/2017-10/27/content\\_33761883.htm](http://europe.chinadaily.com.cn/epaper/2017-10/27/content_33761883.htm).

502. See Robert Daly, *Xi Jinping, “Rule by Fear”*, WILSON CENTER (Feb. 22, 2016), <https://www.wilsoncenter.org/article/xi-jinping-rule-fear>.

503. See Charlie Campbell, *Five Ways China Has Become More Repressive under Xi Jinping*, TIME (Oct. 6, 2016), <http://time.com/4519160/china-xi-jinping-cecc-human-rights-rule-of-law/>.

504. See David Lague, Benjamin Kang Lim, & Charlie Zhu, *Fear and Retribution in Xi’s Corruption Purge*, REUTERS (Dec. 23, 2014), <https://www.reuters.com/article/us-china-corruption-purge-specialreport-idUSKBN0K200320141224>.

505. See Zhu, *supra* note 146; Zheng Chang, *Understanding the Corruption Networks Revealed in the Current Chinese Anti-Corruption Campaign: A Social Network Approach* 27 J. CONTEMP. CHINA 735 (2018).

centralized and decentralized structures remains largely unresolved.<sup>506</sup> It appears that the balance of advantages and disadvantages depends of a host of situational factors.<sup>507</sup> In the particular Chinese context, the organizational consolidation underway, leading to the creation of a super ACA, the NSC, may legitimately be regarded as a step forward, if looked at strictly in terms of operational efficiency, simply because it paves the way for better coordination and resource utilization.<sup>508</sup> Indeed, it may be seen as a reflection of a wider trend, even if not yet fulfilled, to revamp regulatory bodies with a view to minimizing bureaucratic inefficiencies and overlapping responsibilities.<sup>509</sup>

On the negative side, civil service reforms have resulted in some improvements on the pay front but not of the magnitude to meaningfully diminish the appeal of alternative sources of income (other than those of the legitimate non-wage variety).<sup>510</sup> The total package, including fringe benefits and subsidies, notably those related to housing, is considerably more attractive<sup>511</sup> yet, both in absolute and relative terms, not to the extent of materially blunting the incentive to seek avenues for generating

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506. See *Centralized versus Decentralized Anti-Corruption Institutions*, Anti-Corruption Resource Centre & Transparency International (Mar. 16, 2012), <https://www.u4.no/publications/centralised-versus-decentralised-anti-corruption-institutions.pdf>.

507. See *id.*

508. See generally Jinting Deng, *The National Supervision Commission: A New Anti-Corruption Model in China*, 52 INT'L J.L., CRIME & JUSTICE 58 (2018); Chen Gang, *Reinforcing Leninist Means of Corruption Control in China: Centralization, Regulatory Changes and Party-State Integration*, 35(2) CPH. J. ASIAN STUD. 30 (2017), available at <https://rauli.cbs/index.php/cjas/article/download/5445/6005>; Amos Wittenberg, *A Complete Victory over Corruption? Understanding China's National Supervision Commission*, KYC360 (Jan. 29, 2018), <https://www.linkedin.com/pulse/complete-victory-over-corruption-understanding-chinas-amos-wittenberg>.

509. See Brunswick Group, 2018 Two Sessions: The Future of China 2 (2018), <https://www.brunswickgroup.com/media/4124/brunswick-china-analysis-npc-2018-2018-03-22.pdf>.

510. See generally Hon S. Chan & Jun Ma, *How Are They Paid? A Study of Civil Service Pay in China*, 77 INT. REV. ADM. SCI. 294 (2011); ALFRED M. WU, *GOVERNING CIVIL SERVICE PAY IN CHINA* (NIAS Press 2014); Stephen Chen & Mimi Lau, *Pay Rises for China's Civil Servants "Good Move to Fight Corruption"*, SOUTH CHINA MORNING POST (Jan. 19, 2015), <https://www.scmp.com/news/china/article/1681756/pay-rises-chinas-civil-service-good-move-fight-corruption>; *Who Wants to Be a Mandarin?*, ECONOMIST (June 6, 2015), <https://www.economist.com/china/2015/06/06/who-wants-to-be-a-mandarin>; Alexa Olesen, *Running China on \$1833 a Month*, FOREIGN POLICY (Jan. 21, 2015), <https://foreignpolicy.com/2015/01/21/running-china-on-1833-a-month-xi-jinping-salary/>; Wang Xiangwei, *Raising Civil Servant Pay Will Help Reduce Corruption*, SOUTH CHINA MORNING POST (May 26, 2014), <https://www.scmp.com/news/china/article/1519564/raising-civil-servant-pay-will-help-reduce-corruption>.

511. See Chan & Ma, *supra* note 510; Wu, *supra* note 510.

supplementary income.<sup>512</sup> Interestingly, executives at China’s notoriously inefficient, but susceptible to graft, State-owned enterprises (SOEs) have experienced no pay rises.<sup>513</sup> As pointed out previously, economic reforms geared toward injecting dynamism into the system and boosting income growth across the workforce have been conspicuous by their absence in the Xi Jinping era.

Additionally, the present anticorruption drive is seriously beset by intractable principal-agent problems. The constant invocation of the lofty ideal expressed in the notion of the “people” (e.g., equating the regime with the “People’s Republic”) notwithstanding, it is obvious that today, more than at any other juncture in past four decades, the CCP considers itself as the principal in the Chinese body politic and operates as such. The “core leadership” and the elaborate organizational apparatus upon which it relies on are, for all intents and purposes, unaccountable to any other institutional entity. Nothing illustrates this better than the overwhelming support (2958 National People’s Congress/NPC members in favor, two dissenters, sixteen absentees, and one invalid ballot) for the momentous constitutional change entailing the removal of term limits to enable Xi Jinping to serve as president beyond 2023 (practically indefinitely).<sup>514</sup>

There is thus sufficient evidence to indicate that, while not devoid of “public interest” elements, and not lacking some unintended positive consequences, the antigraft campaign has been mostly inspired by a mixture of offensive and defensive elite-level goals, of the personal as well as collective type.<sup>515</sup> The selective nature of the tiger pursuit lends credence to

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512. See Chen & Lau, *supra* note 510; ECONOMIST, *supra* note 510; Olesen, *supra* note 510; Wang, *supra* note 510.

513. See Koh Gui Qing, *China Raises Wages for Government Workers at Least 31 Percent: Document*, REUTERS (Jan. 20, 2015), <https://www.reuters.com/article/us-china-economy-wages-idUSKBN0KT0NS20150120>.

514. See Nectar Gan, *Xi Jinping Cleared to Stay On as China’s President with Just Two Dissenters among 2,964 Votes*, SOUTH CHINA MORNING POST (Mar. 11, 2018), <https://www.scmp.com/news/china/policies-politics/article/2136719/xi-jinping-cleared-stay-president-chinas-political>.

515. See generally Fabre, *supra* note 50; Sun & Yuan, *supra* note 489; Wu, *supra* note 489; Osburg, *supra* note 489; Daly, *supra* note 487; Fabre, *supra* note 443; Griffin, Liu, & Shu, *supra* note 469; Kuhn, *supra* note 487; Li, Roland, & Xie, *supra* note 146; Tiezzi, *supra* note 487; Yuen, *Disciplining the Party: Xi Jinping Anti-Corruption Campaign and Its Limits*, *supra* note 443; Yuen, *The Three Groups of Untouchables in China’s Corruption Crackdown*, *supra* note 487; Alexandra Fiol-Mahon, *Xi Jinping’s Anti-Corruption Campaign: The Hidden Motives of a Modern-Day Mao*, FOREIGN POLICY RESEARCH INSTITUTE (Aug. 17, 2018), <https://www.fpri.org/article/2018/08/xi-jinpings-anti-corruption-campaign-the-hidden-motives-of-a-modern-day-mao/>.

this argument.<sup>516</sup> Indeed, it could be reasonably asserted that the regime's top priority should be unhealthy and destabilizing manifestations of unbalanced growth and socioeconomic disparities, coupled with a quest for a new developmental model, rather than the eradication of corrupt activities, with the latter program configured accordingly.<sup>517</sup>

The personal-cum-political dimension of the antigraft drive has ineluctably limited its scope and, by extension, operational efficiency. This fundamental deficiency has been compounded by what LE scholars portray as "adverse selection"<sup>518</sup> and "moral hazard."<sup>519</sup> The former pattern has materialized when privileged agents have gained access to scarce resources by virtue of their connections rather than capabilities (i.e., have been "adversely selected").<sup>520</sup> The latter situation has occurred when the advantages/safety guarantees explicitly or implicitly granted to such agents have led to excessive risk-taking (i.e., morally induced hazardous circumstances), perpetuating corrupt behavior in the process; a carefully dissected pre-2012 example, which remains relevant, is China's insurance industry heavily dependent on informal networks of power brokers within the CCP organizational pyramid and plagued by issues of dubious agent credibility.<sup>521</sup>

The politicization of the antigraft campaign has diminished its efficacy.<sup>522</sup> This may be demonstrated by examining the impact of this

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516. See generally Fabre, *Xi Jinping's Challenge: What Is Behind China's Anti-Corruption Campaign?*, *supra* note 50; Sun & Yuan, *supra* note 489; Daly, *supra* note 487; Fabre, *The Lion's Share, Act 2. What Behind China's Anti-Corruption Campaign?*, *supra* note 443; Kuhn, *supra* note 487; Yuen, *Disciplining the Party: Xi Jinping Corruption Campaign Anti- and Its Limits*, *supra* note 443; Yuen, *The Three Groups of Untouchables in China's Corruption Crackdown*, *supra* note 487; Quah, *supra* note 443; Manion, *supra* note 144; BBC, *supra* note 496; Gao, *supra* note 469; Wedeman, *supra* note 443.

517. See generally Fabre, *Xi Jinping's Challenge: What Is Behind China's Anti-Corruption Campaign?*, *supra* note 50; Fabre, *The Lion's Share, Act 2. What Behind China's Anti-Corruption Campaign?*, *supra* note 443; Sun & Yuan, *supra* note 489.

518. See Lijian Qin et al., *Adverse Selection in China's New Rural Cooperative Scheme*, 4 CHINA AGRIC. ECON. REV. 69 (2012).

519. See Dayong Zhang et al., *Non-Performing Loans, Moral Hazard and Regulation of the Chinese Commercial Banking System*, 63 J. BANK. FINANC. 48 (2016).

520. See, e.g., Griffin, Liu & Shu, *supra* note 469.

521. See Hilton Root, *Corruption in China: Has It Become Systemic?*, 36 ASIAN SURV. 741 (1996). See also Charlotte Gao, *IMF Warns China of 3 Financial Stability Risks*, DIPLOMAT (Dec. 8, 2017), <https://thediplomat.com/2017/12/imf-warns-china-of-3-financial-stability-risks/>.

522. See Wu, *supra* note 489.

gigantic endeavor at the leadership, elite, and grassroots levels.<sup>523</sup> The picture that emerges shows that the gains progressively shrink as the focus shifts to lower layers of the social structure.<sup>524</sup> The same pattern is observed when the question of legitimacy is addressed.<sup>525</sup> Since legitimacy or lack thereof may impinge on the ultimate success or failure of policy,<sup>526</sup> the limited acknowledgement of the virtues of the program by ordinary people and the perception that it has not tangibly enhanced the quality of their daily lives may reasonably give rise to concerns about its long-term viability.

The challenge is compounded by the fact that the normative and ethical side of corruption prevention has been accorded little systematic attention, other than at the rhetorical and ideological level, despite a rich historical experience of dealing with the issue from that specific angle.<sup>527</sup> This has been carefully documented with reference to the current antigraft drive.<sup>528</sup> Needless to say, political education in the Xi Jinping era has intensified rather than slackened.<sup>529</sup> It has largely been confined, however, to ideological indoctrination and thought control.<sup>530</sup> Doubts have been expressed about the enduring effect of such schemes, which often deepen the sense of alienation and cynicism among those targeted.<sup>531</sup>

Perhaps the most egregious disregard for the tenets derived from the principal-agent model—for all intents and purposes, turning it upside-

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523. *See id.*

524. *See id.*

525. *See Sun & Yuan, supra note 489.*

526. *See Jennifer Wallner, Legitimacy and Public Policy: Seeing Beyond Effectiveness, Efficiency, and Performance, 36 POL’Y STUD. J. 421 (2008).*

527. *See generally Song Ling, Construction of Anti-Corruption Institutions and Culture in Traditional China and Its Implications for Modern China 32 SOC. SCI. CHINA 162 (2011); CHONGHAO WU, REGULATING GOVERNMENT ETHICS: AN UNDERUSED WEAPON IN CHINA’S ANTI-CORRUPTION CAMPAIGN (Cambridge Univ. Press 2016); Olga Yurievna Adams, Institutional Approach to Anti-Corruption Efforts in Taiwan, Hong Kong, and Mainland China: Improving the Norms, Strengthening the Ethics, 3 CONTEMP. CHINESE POL. ECON. STRATEG. RELAT. 247 (2017).*

528. *See Wu, supra note 527.*

529. *See JINGHAN ZENG, THE CHINESE COMMUNIST PARTY’S CAPACITY TO RULE: IDEOLOGY, LEGITIMACY, AND PARTY COHESION 115-152 (PALGRAVE MACMILLIAN UK 2016); Suisheng Zhao, The Ideological Campaign in Xi’s China, 56 ASIAN SURV. 1168 (2016).*

530. *See Eades, supra note 367; HU PING, THE THOUGHT-REMODELING CAMPAIGN OF THE CHINESE COMMUNIST PARTY-STATE (Paul van der Velde ed., Philip F. Williams & Yenna Wu trans., Amsterdam Univ. Press 2012), available at <https://www.open.org/download?type=document&docid=425212>.*

531. *See Barry Sautman, Politicization, Hyperpoliticization, and Depoliticization of Chinese Education, 35 COMP. EDUC. REV. 669 (1991).*

down—is seen in the enormous power vested in the NSC in an institutional setting devoid of any genuine checks-and-balances. As noted previously, such a structural constellation opens the way for a flagrant abuse of power. In this context, it should be additionally pointed out that this Leninist-style system may well contain the seeds of its own destruction because of the risks inherent in having unconstrained agents masquerading as principals.<sup>532</sup> The situation is reminiscent of that which prevailed during the Ming dynasty.<sup>533</sup> The then corruption inspectors enjoyed great powers without being subject to any meaningful supervision, other than the ethereal imperatives of Confucian morality.<sup>534</sup> Unsurprisingly, they quickly became heavily embroiled in corruption themselves.<sup>535</sup>

As highlighted earlier, there is no firm consensus among LE researchers about the direction of the relationship between graft and economic performance, although the distribution of opinion is skewed toward the negative side. One of the difficulties in this respect lies in the fact that the role played by intervening/mediating variables is seldom properly taken into account. A highly compelling explanation of the dynamism exhibited by China's economy is institutional in nature and revolves around decentralization as an intervening/mediating force unleashing latent entrepreneurial energy in a bottom-up fashion.<sup>536</sup> To the extent that heavy-handed recentralization strategies in the Xi Jinping era are aimed at stifling this force, they may aggravate the country's economic predicament. It would be logical to assume that the battle against corruption, which has adverse implications for the performance of the national economy and its component parts at the best of times, might conceivably be put on the back burner in such a testing economic environment and subsequently resurface in a different form.

## IX. Conclusion

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532. See generally Gang, *supra* note 508. See also Minxin Pei, *Without an Independent Judiciary China Cannot Win Its War on Corruption*, HUFFINGTON POST (Feb. 10, 2017), [https://www.huffingtonpost.com/entry/china-war-on-corruption-judiciary\\_us\\_589b5cf0e4b04061313adfeb](https://www.huffingtonpost.com/entry/china-war-on-corruption-judiciary_us_589b5cf0e4b04061313adfeb); Jeremy Rhee, *The Art of Discipline: The Unintended Consequences of Xi's Antigraft Campaign*, BROWN POLITICAL REVIEW (Mar. 7, 2017), <http://www.brownpoliticalreview.org/2017/03/art-discipline-unintended-consequences-xis-antigraft-campaign/>.

533. See Anderlini, *supra* note 400.

534. See *id.*

535. See *id.*

536. See Xu, *supra* note 17.

Chinese manifestations of graft are not a unique phenomenon and, as evidenced by Transparency International indices,<sup>537</sup> China is not necessarily the most corrupt country in the world. It is undoubtedly burdened with a decidedly high incidence of graft, but it actually marginally outranks India and Indonesia, the two other heavily populated Asian countries,<sup>538</sup> which are dealing with the problem in a different and less ironfisted manner.<sup>539</sup> The special features in these extensively reported circumstances are thus the underlying motives, framing of the issue, its presentation, strategy pursued in confronting it, and implementation mechanics.

Understandably, these distinct characteristics have loomed large in media, policy, and scholarly discourse. The purposes of the post-2012 anticorruption drive, conceptualization and communication of the problem it seeks to rectify, and the campaign’s nature and evolution have been elaborately depicted. The accounts offered have been mostly descriptive, but they have not been devoid of normative underpinnings. The latter have displayed a binary pattern, with the regime and its sympathizers lavishly extolling the merits of the program and liberally minded commentators voicing profound concerns about actual and potential abuses of power. Assessment has also centered, possibly primarily so, on the uncertain motives behind the mammoth scheme.

Broader forays into evaluative territory have been few and far between. They have typically also lacked a firm analytical foundation and have not been undertaken within a cogently integrated conceptual framework. The LE paradigm applied in this article is neither all-embracing nor a theoretical panacea, but it provides an appropriately wide perspective that it is coherently ordered. Graft and its origins are best looked at from an economic angle, without dogmatically crowding out complementary approaches. As demonstrated here—whatever China’s cultural, historical, political, and

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537. See Transparency International, *Corruption Perceptions Index 2016*, (Jan. 25, 2017), [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2016?gclid=Cj0KCQjw0dHdBRDEARIsAHjZYYCu5Pio6ef0hUevkclNbgq](https://www.transparency.org/news/feature/corruption_perceptions_index_2016?gclid=Cj0KCQjw0dHdBRDEARIsAHjZYYCu5Pio6ef0hUevkclNbgq).

538. See *id.*

539. See Jeffrey Hutton, *How this Agency Is Waging War Against Corruption in Indonesia and Winning*, SOUTH CHINA MORNING POST (July 22, 2017), <https://www.scmp.com/week-asia/politics/article/2103395/how-agency-waging-war-against-corruption-indonesia-and-winning>; Lina Vyas & Alfred M. Wu, *Why India’s Anti-Corruption Drive May Be a Better Model for Others than China’s Campaign*, SOUTH CHINA MORNING POST (May 7, 2018), <https://www.scmp.com/comment/insight-opinion/article/2145021/why-indias-anti-corruption-drive-may-be-better-model-others>.

social peculiarities—it is by no means an extreme outlier whose existence calls into question the validity of this proposition.

An LE-inspired analysis possesses the added advantage of showing that there two sides to the large-scale, long, and multilevel war waged by Xi Jinping and his allies against a host of corrupt practices that have mushroomed in post-1978 Chinese society. First, however much one may aspire for a softer and potentially more fruitful Indian/Indonesian strategy for tackling graft, it ought to be acknowledged that, as matters stand, this is an unrealistic yearning and that, by being consistent with Xi's leadership style and overall policy thrust, the anticorruption drive is moving forward in a less muddled fashion than might have otherwise been expected. Second, the program has produced some benefits in the form of boosted deterrence, greater operational efficiency, and structural enhancements, even if at times of the unintended variety.

At the same time, it is apparent that these selective gains have been overshadowed by the campaign's drawbacks and negative repercussions. The asymmetries besetting the balance of pecuniary incentives and disincentives faced by public sector employees have not been earnestly addressed. Above all, the antigraft campaign has been plagued by principal-agent problems of such magnitude that they may not be amenable to Xi Jinping-era-style remedies. Barring a fundamental reorientation across the entire policy spectrum, amounting to regime reengineering, the battle against corruption may have to be carried on indefinitely, consuming vast resources and extinguishing economic vitality in the process, without making far-reaching headway on the antigraft front and without substantially bolstering CCP legitimacy.

China has experienced recurring cycles of centralization and decentralization in both the revolutionary and reform eras.<sup>540</sup> They have typically entailed administrative tightening and relaxation, with the government shunning away from genuine marketization of the economy.<sup>541</sup> The costs have been enormous and limited long-lasting benefits have been generated while pressing on in either direction.<sup>542</sup> The current centralization phase may have been implemented more tenaciously than its predecessors

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540. See JINGLIAN WU, UNDERSTANDING AND INTERPRETING CHINESE ECONOMIC REFORM 35-83 (2d ed. 2015); Justin Y. Lin, Ran Tao, & Mingxing Liu, *Decentralization, Deregulation and Economic Transition in China* in LAW AND ECONOMICS WITH CHINESE CHARACTERISTICS: INSTITUTIONS FOR PROMOTING DEVELOPMENT IN THE TWENTY-FIRST CENTURY 466-490 (David Kennedy & Joseph E. Stiglitz eds., Oxford Univ. Press 2013), available at <http://sticerd.lse.ac.uk/dps/decentralisation/china.pdf>.

541. See Wu, *supra* note 540; Lin, Tao, & Liu, *supra* note 540.

542. See Wu, *supra* note 540; Lin, Tao, & Liu, *supra* note 540.

and may sustain its momentum for some time, but there is no reason to believe that the results will be materially different than in the past. Indeed, undisciplined pursuit of the Chinese dream may culminate in “imperial overreach,”<sup>543</sup> unleashing disruptive forces whose impact may be difficult to predict. The ultimate fate of the ongoing anticorruption drive hinges on how the immense tension between the centrifugal and centripetal pressures is resolved.

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543. See Minxin Pei, *Two Lessons for China on How to Avoid a Soviet-Style Collapse in its New Cold War with the US*, SOUTH CHINA MORNING POST (Sept. 8, 2018), <https://www.scmp.com/comment/insight-opinion/united-states/article/2163200/two-lessons-china-how-a-void-soviet-style>; Jonathan Tepperman, *China’s Great Leap Backward*, FOREIGN POLICY (Oct. 15, 2018), <https://foreignpolicy.com/2018/10/15/chinas-great-leap-backward-xi-jinping/>; David Zweig, *Not Just “Containment”: America’s Main Goal May Be to Undermine China’s Communist Party*, SOUTH CHINA MORNING POST (Oct. 20, 2018), <https://www.scmp.com/comment/insight-opinion/united-states/article/2169277/not-just-containment-americas-real-goal-may-be>.

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