Economic Crimes in the People's Republic of China: A Swinging Door Policy

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ECONOMIC CRIMES IN THE PEOPLE'S REPUBLIC OF CHINA: A SWINGING DOOR POLICY

Cynthia B. Schultz*

INTRODUCTION

Recent changes in the economic and trade position of the People's Republic of China (China or PRC) in relation to the international community have resulted in an increased focus on China's domestic criminal justice system. In 1978, China launched the "open-door" policy, providing foreigners with access to Chinese markets. In the same year, China also adopted the "four modernizations" program that called for reforms in the areas of agriculture, industry, national defense, and science and technology.

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2. See Horsley, The Regulation of China's Foreign Trade, in FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA 5 (M. Moser 2d ed. 1987) (discussing various Chinese regulations on foreign trade). A goal of the open-door policy was to relax central administrative controls, thereby promoting more independence in local enterprises and individuals. Id. at 5. One of the effects of the open-door policy is an increase in trade. Id.; Guocang Huan, China's Open Door Policy, 39 J. INT'L AFF. 1 (1986) (discussing the political and economic background of the open-door policy). At the macroeconomic level, Deng's reforms involved decentralizing the central planning system, introducing price reform, and promoting development of private sectors. Id. At the microeconomic level, the Party advocated a more independent management system. Id.

3. See XUE MUQIAO, CHINA'S SOCIALIST ECONOMY 234-65 (1981) (providing a historical basis for China's need to modernize). Zhou Enlai originally proposed the "four modernizations" at the Third National People's Congress (NPC). Id. at 234. China concentrated on agriculture, industry, national defense, and science and technology because it dramatically lagged behind capitalist countries in these areas. Id. at 235. In an effort to increase labor productivity, the Chinese government concentrated on the development of industry to assist the agricultural sector. Id. at 236. The government needed the four modernizations program to provide security to strengthen socialist modernization. Id. at 241; see also Lussenburg, Joint Venture Investment in the People's Republic of China: A Continuing Challenge, 63 CAN. B. REV. 545, 545-46 (1986) (discussing the four modernizations).

4. See XUE MUQIAO, supra note 3, at 241, 244-53 (recognizing agriculture as the
New systemic features have emerged since the open-door policy. For example, central administrative control, as practiced during the Maoist period, began to weaken markedly in the mid-1980s. This led to a greater fragmentation of central power as the Communist party of China (Party) began to relinquish part of its control to local governments. The resultant increase in local autonomy created more opportu-

most significant sector in the national economy); see also The People's Republic of China: A Documentary History of Revolutionary Change 214-25, 339-40 (M. Selden ed. 1979) (discussing the formation of agrarian law and rural cooperatives); Zhan Wu & Liu Wenpau, Agriculture, in China's Socialist Modernization 219-246 (G. Yu ed. 1984) (arguing for the retention of collective farming as opposed to individual farming with household ownership and land contracts); Khan & Ng Gek-boo, Achievements and Incentives in Communal Agriculture: The Case of China, in Agrarian Systems & Rural Development 262-73 (D. Ghai ed. 1979) (providing analysis on individual incentives such as rewards and demerits, and collective incentives such as agricultural taxation). But see Landy, Agricultural Reforms in China, 39 J. INT'L AFF. 91, 99-104 (1986) (discussing the negative aspects of the decollectivization policy). The rural responsibility system is also known as the decollectivization policy. Id. This system allows individual families to contract for a period of three to fifty years for the private use of a piece of land in return for certain obligations to the collective. Id. This combination of private investment and socialist ownership results in disparities in income distribution and may lead to disharmony in rural areas. Id. at 100. Decollectivization will have a detrimental impact on rural social services. Id. at 101.

5. See Xue Muqiao, supra note 3, at 253-65 (noting that industrial modernization requires advanced technology and effective management); Solinger, Industrial Reform: Decentralization, Differentiation, and the Difficulties, 39 J. INT'L AFF. 105 (1986) (providing an analysis of the pre-1979 industrial system through the major industrial reforms of the mid-1980s).

6. See Xue Muqiao, supra note 3, at 203-33 (discussing the Maoist system of economic management). Central management set commodity and production targets that local authorities had to follow. Id. at 204. In addition, central management controlled all revenue and expenditures and allocated funding to the provincial and local governments. Id.; see also Hong, The Implications of Reform for Ideology, State and Society in China, 39 J. INT'L AFF. 77 (1986) (noting Maoist philosophy on central control).

7. See Hong, supra note 6, at 78-80 (discussing the retreat of the state's role in society); Lee, Foreign Trade Decentralization: Its Origin and Future, 4 CHINA TRADE 66 (1981) (discussing the authority given to local, provincial, and autonomous governments to control the export and import of locally produced goods). Relaxing central economic management by relinquishing direct trading power to local governments creates a higher dependency on foreign imports. Id. at 5; You Chunmei, Current Administrative Reform in China, 52 INT'L REV. ADMIN. SCI. 123, 126 (1986) (providing a detailed study on the administrative reform of central provincial and local government bureaucracies).

8. See Xue Muqiao, supra note 3, at 210-33 (discussing the process of the management of state enterprises and the national economy involving reforms in financial administration and hierarchial structural power).

For laws addressing the transfer of power over domestic matters to local levels, see Resolution of the Second Session of the Fifth National People's Congress Revising Several Provisions of the Constitution of the People's Republic of China (promulgated on July 1, 1979, and effective on Jan. 1, 1980), reprinted in The LAWS of the People's Republic of China 1979-1982 162 (1987) [hereinafter PRC LAWS, 1979-1982] (amending the Resolution to empower local governments with lead-
nity for personal and institutional corruption.\textsuperscript{9}

In addition, with the decentralization of control, the Party lost much of its moral authority.\textsuperscript{10} During the tenure of Communist Party Chairman Mao Tsetung, the Party relied on various rectification campaigns to impose elements of fear on the Chinese people.\textsuperscript{11} Although, the...
Party under Deng Xiaoping has imposed similar campaigns against crime and corruption, albeit to a lesser degree, attempts to instill fear have failed.\textsuperscript{12} Moreover, the Party recently established a two-tiered pricing system,\textsuperscript{13} which created its own array of economic crimes such as speculation and arbitrage.\textsuperscript{14}

Both the open-door policy and the four modernizations brought an increase in economic crimes such as speculative arbitrage, speculation, extortion, bribery, and embezzlement.\textsuperscript{16} To combat the deleterious ef-

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\textsuperscript{12} See Fenwick, \textit{supra} note 10, at 187 (noting that a change of focus from political ideology under Mao, to a legal-rational authority promoted by Deng, is responsible for lawless behavior). \textit{But see id.} (noting that anticorruption campaigns in the 1980s have had a deterrent effect on crime); \textit{see also} Hong, \textit{supra} note 6, at 81 (noting the decline in the importance of ideology "demoralized" many government officials who spent much of their lives promoting Maoist ideology). Deng Xiaoping, after his accession to leadership of the Communist party in 1977, instituted drastic changes in economic and administrative reform. \textit{Id.} at 82-84. Deng's bureaucratic reforms encouraged private business and created a "new elite." \textit{Id.} at 84-89.

\textsuperscript{13} See Xue Muqiao, \textit{supra} note 3, at 135-62 (providing background material on the law of value, price policy, and the reform of the Chinese price control system). Xue Muqiao, a distinguished Chinese economist, advocates a degree of independence when setting prices at the local level and for individual enterprises. \textit{Id.} at 156.

\textsuperscript{14} \textit{Economists Discuss Economic Results}, Xinhua [in Chinese], June 8, 1983, \textit{trans. in} FOREIGN BROADCAST INFORMATION SERVICE, DAILY REPORT: PEOPLE'S REPUBLIC OF CHINA [hereinafter F.B.I.S.-CHI], June 9, 1983, at K10 (noting that the long-practiced system of the state setting prices distorted the market because the prices failed to reflect real value). In 1987 the State Council on Regulations identified three forms of pricing: state-fixed, state-approved, and market-determined prices. \textit{Speculation, Corruption Hampers China's Price Reform}, Investor's Daily (Los Angeles), Nov. 2, 1987, at 10 [hereinafter \textit{Speculation}] (noting that state-fixed prices usually govern important raw materials, state-approved prices govern consumer goods, and market-determined prices are allowed for vegetables and light consumer products). One of the inherent problems with different price-controlling mechanisms is known as "double-tracking," where both state and market prices are allowed. \textit{Id.} Doubletracking creates price differentials, making it economically profitable to buy at lower state prices and sell at higher market demand prices. \textit{Id.} Those most responsible for price increases are the state-owned enterprises. \textit{Group to Trace 'Backstage Boss,'} China Daily, Sept. 4, 1987, at 1. Those state-owned enterprises most guilty of imposing price increases produce rolled steel, timber, cement, chemical fertilizers, electric power, and petroleum. \textit{Id.} Price subsidies in 1986 reached U.S. $56 billion, one-fourth of state revenues. \textit{Id.} Doubletracking also creates income disparities between state-supervised wages and private sector earnings. \textit{Id.}

fects of these crimes on China's social and economic development, the Chinese government enacted the Criminal Law Code\textsuperscript{16} and Criminal Procedure Code.\textsuperscript{17} These codes aid in the ongoing transition from an imported bourgeois ideology and way of life responsible for the increase in crime; Everyone Should Give Publicity To and Help Implement the Important Resolution to Defend the Socialist System, Xinhua [in Chinese], Mar. 9, 1982, trans. in F.B.I.S.—CHI, Mar. 10, 1982, at K4, K10 [hereinafter 1982 Editorial on Punishing Criminals] (discussing how the increase in economic crime became a major problem in China because of its distinct increase in foreign trade since the open-door policy); Bonavia, Open Door to Disorder?, Far E. Econ. Rev., Sept. 29, 1983, at 38 (noting that high level officials criticized Deng Xiaoping's open-door policy for its direct causation of crime); Weisskopf, China Stalks Urban Crime, Wash. Post, Aug. 22, 1983, at A13 (noting that the conservative contingent in Chinese leadership complained about the corrupting effect of bourgeois decadent influences on socialist ideology). In 1987, this conservative contingent curbed many of Deng's reforms. Id.; Drozdiak, Pace of Reforms Falters in China as Opposition Campaign Advances, Wash. Post, Mar. 8, 1987, at A3 (relating a power struggle in 1987 that challenged Deng's economic reforms and ability to rule); Tyson, Beijing Lashes Out at Liberal Intellectuals, Christian Sci. Monitor, Mar. 6, 1989, at 4 (noting that Communist Party General Secretary Zhao Ziyang condemned liberal intellectuals who advocate a more capitalist approach to democracy). The Party issued a circular to officials warning them of social unrest. Id. Zhao blamed the social unrest on the spreading of the "evils of capitalism." Id. Zhao associated the social turmoil with concepts of Western democracy instead of socialist democracy. Id.; see also Penwick, supra note 10, at 181 (noting modernization as a variable contributing to the increase in the conventional crime rate since 1976); Johnson, supra note 14, at 455 (discussing the increase of criminal cases in the 1980s); Comment, The 1986 Provisions to Encourage Foreign Investment in China: Further Evolution in Chinese Investment Laws, 2 Am. U.J. Int'l L. & Pol'y 579, 580 n.1 (1987) (discussing the change of power of top Party officials and their internal battle over economic reform).

16. See ZHONGHUA RENMIN GONGHEGUO XING FA (CRIMINAL LAW CODE OF THE PEOPLE'S REPUBLIC OF CHINA), trans. in 25 China, American Series of Foreign Penal Codes (Rothman & Co. 1982) [hereinafter CRIMINAL LAW CODE] (dividing the 192 articles of the Chinese Criminal Law Code into two parts: the general provisions, arts. 1-89 and specific provisions, arts. 90-192). The general provisions deal with the fundamental principles of Chinese criminal law. The specific provisions define crimes, prescribe their penalties, and set out the range of discretion allowed in sentencing. Id. Under the general provisions, the definition of crime, id. art. 10, the elements of foreseeability and negligence in a crime, id. art. 12, as well as criminal punishment, id. art. 28-32, and its application, id. art. 61, have basically retained their status as Mao first proposed. Seven distinct categories of crime are enumerated under the specific provisions. In the forefront are counterrevolutionary crimes. Id. arts. 90-104. This is followed by crimes endangering the public security. Id. arts. 105-15. Third are the crimes against the socialist economic order. Id. arts. 116-30. Fourth are the crimes against the citizen's right of person and democratic rights. Id. arts. 131-49. This category of crime is the only significant divergence from Maoist thought and is a byproduct of the negative effects and injustices of the Cultural Revolution. The last four crimes are, encroachment of property, id. arts. 150-56, crimes against the societal management and order, id. arts. 157-78, crimes against marriage and family, id. arts. 179-84, and crimes of misconduct in office, id. arts. 185-92. See generally Donovan, supra note 1, at 249-58 (comparing the Chinese Criminal Law Code with the Soviet and several Western Criminal Law Codes).

17. See ZHONGHUA RENMIN GONGHEGUO XINGSHI SUSONG FA (CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA), trans. in 26 China, American
inefficient state-controlled economy to experimentation with a market-oriented economy.

In addition, the government periodically announced major anticrime and anticorruption campaigns throughout the 1980s. Government campaigns imposed significant reforms on a criminal justice system that had been virtually nonexistent since the Cultural Revolution. The rapid increase in foreign investment in China, coupled with domestic efforts, contributed to a more integrated legal system. This movement towards modernization has been a significant development in China's legal history.

SERIES OF FOREIGN PENAL CODES (Rothman & Co. 1985) [hereinafter CRIMINAL PROCEDURE CODE] (delineating the Criminal Procedure Code into four parts). Part one addresses issues such as jurisdiction, defense, evidence, and time periods. Part two handles the filing of a case and the investigation and initiation of public prosecution. Part three involves trial procedure. Part four deals with the execution and enforcement of judgments. The public security organs carry out the investigation along with the procuratorial organs. If the procuratorate determines that there is sufficient evidence, then it will issue an indictment. Thereafter, the basic, intermediate or higher people's court conducts a trial which is divided into four stages: investigation, debate, appraisal by the bench, and judgment.

Compared to other countries, many differences in Chinese criminal procedure exist, but they are not examined in this Comment. For a more detailed discussion on Chinese Criminal Procedure Law, see Shao-Chuan Leng, supra note 1, at 214-35 (discussing pretrial proceedings, right to counsel, presumption of innocence, judicial independence, equality before the law, and issues of appeal and review); Epp, The New Code of Criminal Procedure in the People's Republic of China: Protection, Problems, and Predictions, 8 INT'L J. COMP. & APP. CRIM. JUST. 43 (1984) (addressing issues and problems exclusive to Chinese criminal procedure law). Usually, by the time a defendant appears at trial, the court has already found him or her guilty. At 45. No equivalent U.S. constitutional fifth amendment right to remain silent exists, and the right to counsel first attaches at trial level. At 46. No hearsay rule exists and the defendant has a right to only one appeal. At 49; see also Qiwu Zhu, General Aspects of the Chinese Criminal Code and the Code of Criminal Procedure, 2 UCLA PAC. BASIN L.J. 65 (1983) (providing a brief overview of Chinese criminal law and criminal procedure).


19. Shao-Chuan Leng, supra note 1, at 206.

20. See Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Sabotage the Economy (adopted Mar. 8, 1982), reprinted in PRC LAWS, 1979-1982, supra note 8, at 345 (providing an example of one such campaign). In March 1982, the Standing Committee of the NPC issued a statement recognizing the serious effects that economic crime had on social and economic development. At 46. The Committee identified crimes such as speculative arbitrage, speculation, extortion, bribery, and embezzlement and proposed strict measures to punish offenders. At 49; see also infra notes 206-36 and accompanying text (discussing the anticorruption campaigns from 1979-1988). On October 1, 1988, the Chinese Communist Party, issued a communique imposing significant economic reforms to combat the surge of inflation and corruption in China.

21. Peng Zhen, supra note 1, at 8 (discussing the first laws to be drafted since China's shift to socialist modernization in 1979).

22. ZHONGHUA RENMIN GONGHEGUO XIANFA (THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA) (adopted on Dec. 4, 1982), reprinted in PRC LAWS,
mestic structural market changes such as independent managerial responsibility, collective ownership, and the introduction of private enterprise have been a significant impetus in China's anticrime campaigns.

In October 1988 after ten years of unimpeded efforts to replace China's central economic planning mechanisms with more flexible market mechanisms, the Central Committee officially recognized the two most inherent problems with economic reforms, namely, inflation and corruption. As a result, the Party announced its decision to temper economic reforms in an attempt to decrease inflation and restrain corruption. Accordingly, the Party introduced significant reform mea-

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23. Jiang Zhenyun, supra note 18, at 48-50 (discussing the changes in the 1982 PRC Constitution that impact the liberalization of economic reform).

24. Vigorously Promote and Properly Administer Market Trade in Towns and Countryside, Jingji Ribao [in Chinese], Feb. 24, 1983. trans. in J.P.R.S.-CHI No. 83174, Apr. 1, 1983, at 85 [hereinafter Rules of Management and Market Trade]. In 1983, the State Council issued Rules of Management and Market Trade in Towns and Countryside. Id. These rules are the first to provide legal structure to market trade in China since 1949. Id. Two important underlying principles of the rules are mutual competition and joint development. Id. at 86. Before units and individuals may participate in market trade, however, they must fulfill the state quotas. Id.; see infra notes 184-86 and accompanying text (discussing the economic responsibility system).

25. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 8 (1982). Article eight provides encouragement for collective ownership in urban and rural areas. Id. The 1982 Constitution recognized economic collectives in rural areas, yet permitted them to engage in limited aspects of agricultural production for their private use. Id.

26. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 11 (1982). Individual economy in urban and rural areas is permitted but subject to restrictions. Id. The state has the duty of protecting the lawful rights and interests of the individual economy as well as the task of supervising them through administrative control. Id.

27. See Jones, Asia's Success-Story Nations Learning How to Consume, Wall St. J., Nov. 1, 1988, at A24 (reporting China as the only country with moderate inflationary problems in the Asia-Pacific region); Southerland, China Presses New Anticorruption Drive, Wash. Post, Oct. 21, 1988, at A26 (naming inflation as one of the causes of the 1988 anticorruption campaign); China Squeezes Credit, Orders Financial Probe, Wall St. J., Oct. 17, 1988, at A18 (announcing measures to freeze loans for investment projects not covered by the state plan and to investigate finance companies in an effort to combat inflation and stabilize prices).

28. See Ignatius, China to Postpone Some Joint Ventures With Foreigners in Bid
sures to control corruption, profiteering, and price-gouging.29 These measures, however, may prove to have an adverse effect on foreign investment in China by restricting desperately needed capital investment projects.30

China is an important developing country struggling to restructure its economy from a largely archaic centrally planned system to that of a market-oriented system. Its efforts are only ten years old. Other developing socialist countries are focusing their attention on the successes and failures of China's economic modernization plan.31 Although it is

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ECONOMIC CRIMES IN THE PRC

too early to predict how many countries will follow China's lead, it appears that the trend to liberalize state-controlled economies through the implementation of market-oriented economic mechanisms will continue. This comment will analyze how effectively the new Criminal Law Code controls economic crimes. Its purpose is to identify and analyze the very serious trend of increasing economic crime that could present an earnest threat to ongoing foreign trade. Generally, legal regulation becomes a powerful policing mechanism when a developing country implements free market measures of economic reform. China, as a developing communist country, must confront the antagonism of an internal socialist economic system attempting to merge with foreign capitalist trade policies.²²

Part I of this Comment will discuss the nature of criminal law in China during the pre-Mao, Mao, and post-Mao periods. Part II will discuss the Party's attempt to curb increased economic crime, focusing on specific crimes that have resulted from China's shift toward economic development. Finally, Part III will evaluate the impact of the Criminal Law Code on China's new economic policy in both the domestic and international arenas.

I. HISTORICAL PERSPECTIVE

A. PRIOR TO THE FOUNDING OF THE PRC

In the centuries before Mao Tsetung the Chinese government achieved social order not through the concept of criminal law, but rather from the ideology of two opposing schools of thought—the Confucians and the Legalists.³² The Confucians employed the ethical

of April 1, 1989, Soviet companies were scheduled to begin trading directly with foreign companies; Seib & Ignatious, U.S.-China-Soviet Links Enter New Phase, Wall St. J., Feb. 23, 1989, at A12 (noting that the Soviet Union and China are placing emphasis on economic cooperation). China needs the Soviet Union to rehabilitate its Marxist-Leninist-Maoist ideology base among the Chinese people. Id. The Soviets need the Chinese to restructure their internal economy. Id.

32. CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 24 (1982) (requiring the State to conduct education “among the people in patriotism and collectivism, in internationalism and communism and in dialectical and historical materialism, to combat capitalist, feudal and other decadent ideas.” (emphasis added)).

33. See MacCormack, Law and Punishment in the Earliest Chinese Thought, 20 IR. JURIST 334 (1985) (discussing the inherent conflicts in the prevalent philosophies followed in Chinese culture); Schwartz, On Attitudes Toward Law in China, in KATZ, GOVERNMENT UNDER LAW AND THE INDIVIDUAL 27-39 (1957) (noting that in period of economic turmoil li, an ethical concept of virtue and balance, is not influential). Thus, when li is ineffective, fa is implemented to maintain social order. Id. The mechanism fa employed to maintain social order is penal in nature. Id.; Bodde, Basic Concepts of Chinese Law, in D. BODDE & C. MORRIS, LAW IN IMPERIAL CHINA 3-11, 29-51 (1967) (noting that in premodern China, law was penal in nature applied against
concept of li (virtue and balance) as a means of persuading Chinese citizens to live moral and crime-free lives.\textsuperscript{34} As a result of the concept of li, however, the Chinese nurtured a strong belief in the rules of conduct. This belief forced the individual to conform to accepted behavior because of a moral persuasive rather than a fear of punishment.\textsuperscript{35} Punishment under li, therefore, emphasized repentance and rehabilitation of the offender and not revenge or retribution.\textsuperscript{36}

Conversely, the Legalists subscribed to the theory of fa, which used punishment as its tool of control.\textsuperscript{37} Where li encouraged harmony in a nonlitigious atmosphere\textsuperscript{38} and emphasized virtue within the individual,\textsuperscript{39} fa used penal and administrative rules, incentives of reward, and fear to reform men.\textsuperscript{40} Ultimately, the Legalist ideology prevailed, resulting in the establishment of fa as law. Thus, law and legal institutions enhanced the power of the state by becoming "weapons of law"\textsuperscript{41} and effectively coerced the people to adhere to state policies.\textsuperscript{42} Although the Party continues to promote the concept of fa, its recent ma-

\begin{itemize}
\item \textsuperscript{34} See V. Li, Law Without Lawyers: A Comparative View of Law in China and the United States 13 (1978) (discussing traditional Chinese society's emphasis on virtue instead of law).
\item \textsuperscript{35} Allen, Where Are We Going in Criminal Justice? Some Insights from the Chinese Criminal Justice System, 31 INT'L J. OFFENDER THERAPY & COMP. CRIM. 101, 103, 107-08 (1987); see MacCormack, supra note 33, at 334 (discussing various ancient, historical, and traditional interpretations of the meaning of punishment).
\item \textsuperscript{36} Shao-Chuan Leng, Crime and Punishment in Post-Mao China, 2 CHINA L. REP. 5 (1982); see Johnson, supra note 11, at 449 (stating that the employed methodology of rehabilitation and preventative measures are weakening in the PRC); Qiwu Zhu, supra note 16, at 68 (addressing the issue of rehabilitation).
\item \textsuperscript{37} Bodde, supra note 33, at 6-15 (distinguishing the concepts of fa and li).
\item \textsuperscript{39} Cohen, The Criminal Process, supra note 38, at 64.
\item \textsuperscript{40} Schwartz, supra note 33, at 67; see China's Socialist Legal System, BEIJING REV., Jan. 12, 1979, at 25, 30 (stating that law is an essential element in the development of productive forces in China and must be drafted and refined to meet that task); MacCormack, supra note 33, at 42 (revealing that fa has meant "rule established by Heaven").
\item \textsuperscript{41} Use the Weapon of Law to Crack Down on Criminal Activities, supra note 15, at K2 (describing the "weapon of law" as a concept that Mao coined, and it refers to the law of the country). Under Mao, the meaning of the phrase differed from its current use because the laws were subject to arbitrary interpretation. Id. The new administration retained the phrase. Id. During the anticrime campaign in 1981, the phrase was used to "strike blows at the enemy, punish offenders, and protect the people." Id.
\item \textsuperscript{42} Cohen, The Criminal Process, supra note 38, at 7.
\end{itemize}
ECONOMIC CRIMES IN THE PRC

1989]

JOR policy changes frustrate the acceptance of the concept of *fa* as a guiding philosophy among the Chinese.

B. MAO PERIOD

When the Party, led by Mao Tsetung, wrested control of China from the Nationalist party in 1949, it adopted a two-tiered system of criminal justice, which imposed different standards of conduct and levels of punishment for crimes according to the nature of the crime and the status of the offender. The first tier focused on serious crimes against the state. The second tier focused on less serious offenses. Corresponding to these qualitative differences, Mao labeled offenders of

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43. See M. BLECHER, CHINA: POLITICS, ECONOMICS AND SOCIETY 18-31 (1986) (discussing the history of the Chinese Revolution). The Party was founded in 1921. Id. at 18. Mao became a leader in the Communist movement in 1927. Id. at 19. Mao was also a great advocate of rectification campaigns to establish social order. Id. at 28. The essence of the campaigns was to utilize "criticism and self-criticism" rather than punitive action. Id. at 28; J. DOMES, THE GOVERNMENT AND POLITICS OF THE PRC: A TIME OF TRANSITION 68-85 (1985) (discussing the organizational structure and membership of the Party).


45. See COHEN, THE CRIMINAL PROCESS, supra note 38, at 91 (stating that under the law of dictatorship, the Party created three categories of criminals: (1) counterrevolutionaries who acted against the state, including those who engaged in less severe activities, but were still considered able to undermine the realization of the proletariat and the socialist good of society; (2) bad elements of society who repeatedly committed acts affecting an individual; and (3) the people who committed derelictions of duty, generally limited to one time crimes committed by ordinary people). Counterrevolutionary crimes consisted of such acts as "subversion of the state regime, armed rioting, organization of secret agents and spies, theft of state military and political secrets and intelligence, spreading poison, arson, and setting off explosions." Id. The crimes of the recidivists were hooliganism, rape, stealing, and swindling that coordinated directly with counterrevolutionary sabotage. Id.; see also infra note 158-207 (discussing economic crimes); CRIMINAL LAW CODE arts. 185-92 (PRC) (listing crimes of dereliction of duty to include state functionaries engaged in bribery, divulgence of state secrets, and neglect of duty); Allen, supra note 36, at 106 (illustrating a court trial when a defendant is punished for dereliction of duty).

46. See COHEN, THE CRIMINAL PROCESS, at 92 (noting that second-tier offenders include the crimes of bigamy, mistreatment, interference with the freedom of marriage of others, infanticide, and crimes arising from traffic and transportation incidents that cause serious consequences).
serious crimes "enemies" and offenders of less serious crimes "people."  

1. Dictatorship v. Democracy

To justify its police state, the Party under Mao asserted that China's previous history of imperialism and bureaucratic exploitation had "poisoned" the people's consciousness into a feudal and bourgeois ideology. It used police courts and the weapon of law to combat serious offenses against the Communist government and punished offenders with death, imprisonment, or reform through labor. During this period, the criminal law process served as an "instrument of terror." The police were solely responsible for administering "justice" as they deemed appropriate. Serious crimes were prosecuted by "mass trial." Less serious offenses received informal administrative punish-

47. See id. at 79 (noting that counterrevolutionaries and criminals who committed crimes that seriously undermined the social order were termed "enemies" and punished by the imposition of "dictatorship"). The goals for imposing criminal punishment over administrative sanctions were threefold: punishment and rehabilitation of the offender, deterrence, and education and inspiration of the citizens to struggle against individuals prone to crime. Id. at 81.

48. Mao Tsetung, On the Correct Handling of Contradictions Among the People, in 5 Selected Works of Mao Tsetung 391 (1977). All nonenemies were considered members of the "people" class whose nonrevolutionary offenses were punished by what the Party referred to as "democracy." Id. This dichotomy is analogous to the United States criminal law classifications of felony and misdemeanor; see Cohen, Reflections on the Criminal Process in China, 68 U. J. CRIM. L. & CRIMINOLOGY 323, 337-39 (1977) (hereinafter Cohen, Reflections on the Criminal Process) (providing discussion and examples of both the people and enemy classes).


51. See Cohen, THE CRIMINAL PROCESS, supra note 38, at 10 (elaborating on the police use of violence against reactionaries and bad elements).

52. Id.

53. See Use the Weapon of Law to Crack Down on Criminal Activities, supra note 15, at K2-3 (noting that "mass trial" actually refers to a mass rally where the Party announces judgment on a criminal case to the public). The purpose of the mass rally is to provide "wide publicity [of] the legal system, display the might of the people's democratic dictatorship, enhance the morale of the masses and strike terror into criminals' hearts." Id.; Cohen, Reflections of the Criminal Process, supra note 48, at 342-43 (explaining the procedure of mass trials); see also Herbst, Criminal Procedure Under China's Newest Constitution, Asian Wall St. J., Jan. 19, 1983, at 6 (identifying the problem with mass trial convictions as the very short length of time between arrest, trial, appeal, and execution). In most capital cases appeal is not allowed. Id. Although the 1982 Constitution deleted the use of mass trials, the Party, Supreme People's
ECONOMIC CRIMES IN THE PRC

ments, such as criticism, fines, brief detentions, or rehabilitation through labor, suppr note 54, with no criminal liability. suppr note 55. Criminal law, as the Chinese learned, was reserved for serious offenses perpetrated by enemies of the state that were subject to harsher penalties.

2. Legislation for Punishment

The Party devised a system consisting of three legislative acts to enforce its criminal justice system and punish offenders: the Act of the PRC for the Punishment of Counterrevolutionaries (Counterrevolutionary Act), suppr note 56, the Act of the PRC for Punishment of Corruption (Corruption Act), suppr note 57, and the Security Administration Punishment Act of the PRC (SAPA). suppr note 58. The Party designed the Counterrevolutionary Act to
suppress counterrevolutionary activity,\textsuperscript{59} consolidate the people's democratic dictatorship,\textsuperscript{60} and punish counterrevolutionary criminals. To curb public corruption, the Party enacted the Corruption Act.\textsuperscript{61} The Party promulgated the SAPA to sanction minor criminal offenses.

The Party weighed the "social danger"\textsuperscript{62} of a criminal act to assess the appropriate degree of punishment.\textsuperscript{63} Among the people class, the Party imposed administrative punishment pursuant to SAPA for relatively minor infractions.\textsuperscript{64} SAPA authorized police, as opposed to courts, to impose less severe punishment for minor unlawful activities, such as acts that infringed upon individual interests, violated the morality of society, or other certain policies, laws, or decrees of state.\textsuperscript{65} SAPA did not impose criminal punishment such as reform through labor (analogous to hard labor camps), imprisonment, or death sentences; rather, it imposed administrative sanctions, such as nominal fines, three to ten day detentions, and criticism-education programs.\textsuperscript{66}

\begin{itemize}
\item 60. \textit{Criminal Law Code} art. 1 (PRC).
\item 61. \textit{See Cohen, The Criminal Process}, supra note 38, at 308 (listing acts of corruption). A major focus of the "three-anti movement" was the crusade against corruption which began in 1952. \textit{Id.} at 307. Corruption, waste, and bureaucratism comprise the "three evils." \textit{Id.} at 313. The movement sought to create a more conscientious bureaucracy and was connected with the "five-anti movement" to obtain complete authority over private business. \textit{Id.} at 307. The unlawful acts of bribery, tax evasion, stealing state property, cheating in workmanship and materials, and stealing state economic intelligence are known as the "five poisons". \textit{Id.}
\item 62. \textit{See id.} at 325-29 (stating that the social danger of an act is the most essential characteristic of a crime). The three criteria used to measure the degree of social danger are: (1) the nature of the act; (2) the existence and amount of damage; and (3) the factors involving the actor's subjective state, primarily whether the actor acted intentionally or negligently, or what his purpose was in committing a certain act. \textit{Id.} at 330-32.
\item 63. \textit{Id.} at 329. In order for a socially dangerous act to be subject to criminal punishment the actor must have committed the act either intentionally or negligently. \textit{Id.}
\item 64. \textit{See Note, Concept of Law in the Chinese Anticrime Campaign, supra note 50, at 1898-1901 (noting that administrative sanctions are typically punishments imposed by the police without the participation of other legal organs such as the procurate and the courts). The most important types of administrative sanctions are those of rehabilitation and punishment imposed under SAPA. \textit{Id.}}
\item 66. \textit{Id.}; see M. \textit{Blecher, supra} note 43, at 28 (discussing criticism-education). Criticism-education occurs when an accused party engages in self-criticism and repentance under the supervision of court officials. \textit{Id.} The courts employ various methods such as the admission of guilt to the community and work unit in which the accused lives and/or hours of repetitive writing admitting guilt, weakness, and promise to reform. \textit{Id.}
C. Post-Mao Period

The Party’s thirty-year lapse in the codification of the criminal law can be attributed to Mao’s bias against bureaucratization and his corresponding preference for the “mass line.” It also reflected the Party’s historical emphasis on the societal, as opposed to the jural, model of law. This societal approach, however, provided the Chinese people with virtually no understanding of, or experience with, the legal system.

In 1975, Deng Xiaoping became the leader of the Party. Through slow and arduous efforts, the Party attempted to promote and integrate the role of law and justice into Chinese society. In 1978, China embarked on a plan to spur economic growth, known as the open-door policy. The open-door policy simultaneously placed greater reliance on market forces and curbed government controls by encouraging private enterprise and individual initiative. To implement this policy the Chinese government developed a series of structural economic reforms, dubbed the four modernizations, and price reform. Although the

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67. See H. CHU & S. LENG, supra note 44, at 24-26 (discussing the theory behind the mass line); Epp, supra note 17, at 43 (noting that the true cause of the nonexistence of a criminal code may be attributed to the period of lawlessness during the Cultural Revolution).
68. Shua-Chuan Leng, supra note 1, at 205.
70. See supra note 12 (discussing Deng Xiaoping’s accession to Party leadership).
71. See H. CHU & S. LENG, supra note 44, at 35-121 (discussing the role of law and the legal system under Deng).
72. See supra note 15 and accompanying text (discussing the open-door policy).
74. See SELECTED WORKS OF DENG XIAOPING, 1975-1982 145-50 (1984) (addressing the role of the Chinese people in the four modernization’s program); see also supra note 3 and accompanying text (discussing the history of the four modernization’s program).
75. See Lubman, Policy and Administration Unclear in China’s Laws, Asian Wall St. J., Nov. 18, 1980, at 6, (noting that in 1980 the Chinese government launched
four modernizations and the open-door policy increased international trade and investment, it also resulted in a surge of economic crime.\textsuperscript{76}

In response to the increase in economic crimes, the Party enacted the Criminal Law Code and the Criminal Procedure Code in 1980 as two measures to promote foreign trade and deter domestic criminal activity.\textsuperscript{77} Through the enactment of the Codes, the Party intended to remedy the erosion of the legal system during the Cultural Revolution, when sham courts convicted innocent people of political transgressions.\textsuperscript{78} Thus, Chinese criminal law began to evolve from a tool under Mao that supported class struggle\textsuperscript{79} to an instrument under Deng Xiaoping that enhances economic modernization.\textsuperscript{80}

1. \textit{The Criminal Law Code and the Criminal Procedure Code}

Notwithstanding the Criminal Law Code's and Criminal Procedure reforms to bring greater autonomy to enterprises and localities. The government also experimented with its first price reforms. \textit{Id.; see also The Provisional Regulations Governing Price Control, Xinhua [in Chinese], Aug. 22, 1982, trans. in F.B.I.S.—CHI, Aug. 25, 1982, at K7} (finding that the State Council adopted three different price reforms: prices fixed by the state, prices fixed by the enterprise that are regulated by state agencies, and trade fair prices). State-fixed prices were the principal form. \textit{Id.}

\textsuperscript{76} \textit{See supra} note 12 and accompanying text (discussing the increase in economic crime); Bennett, \textit{Executions on Rise as China Battles Crime, Asian Wall St. J., Aug. 24, 1983, at 2} (noting that certain Chinese officials link the tremendous increase in economic crime to relaxation of economic controls and the importation of Western influence); \textit{see also} Reuter, \textit{Press Warns of Danger to Reforms, South China Morning Post, June 10, 1988, at 8} (quoting various Chinese newspapers denouncing the import of Western-style individualism).

\textsuperscript{77} Foster, \textit{Codification in Post-Mao China, 30 AM. J. COMP. L. 395, 410 (1982)}.

\textsuperscript{78} See 1980 \textit{REPORT, supra} note 50, at 43 (stating that the "Gang of Four . . . decided the nature of a case first, looked for data, willfully cooked up charges, and vigorously obtained confessions by compulsion and then gave them credence"). During the Cultural Revolution, all levels of the People's Courts were "smashed." \textit{Id.} During this period, the amount and level of criminal activity is difficult to ascertain because the court system was in disarray. \textit{Id.} The use of investigative methods and evidence was completely arbitrary. \textit{Id.; see also} Peng Zhen, \textit{supra} note 1, at 8 (stating that more than thirty drafts on the Criminal Law Code existed before the Cultural Revolution). The 33rd and final draft was put into force beginning on January 1, 1980. \textit{Id.}

\textsuperscript{79} See \textit{XUE MUQIAO, supra} note 3, at 267-88 (discussing class struggle and contradictions among the Chinese people under the rule of Mao Tsetung).

\textsuperscript{80} \textit{See COMMUNIQUE OF THE THIRD PLENARY SESSION OF THE 11TH CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF CHINA, Beijing Rev., Dec. 29, 1978, at 6, 10-11} (observing that the official focus is shifting from class struggle to economic modernization); Ching, \textit{Chinese Communist Party's New Charter Puts Economic Goals Above Class Struggle, Wall St. J., Sept. 9, 1982, at 30} (noting the 1982 Chinese Communist Party Constitution stated that "[t]he principal contradiction in Chinese society is that between the people's growing material and cultural needs and the backward level of our social production"); \textit{see also} Foster, \textit{supra} note 77, at 410 (arguing that one of the main functions of codes is to advance foreign economic relations).
Code's emphasis on economic modernization, their foundations are still derived from the Maoist concepts of counterrevolutionary crimes and crimes of corruption. The categories of criminal perpetrators under Mao, however, have changed. Before 1978, Mao categorized criminals who committed acts against the state as belonging to the enemy class and as the "dregs of society." Since 1978, however, the Supreme People's Court classifies the majority of criminals as "working people."

Four of the eight chapters of the Criminal Law Code discuss economic crimes. Chapter three, entitled Crimes of Undermining the Socialist Economic Order, addresses crimes such as speculation, smuggling, counterfeiting, and tax evasion. Embezzlement and

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82. Criminal Law Code arts. 116-30 (PRC) (defining crimes which "undermine the socialist economic order").


84. Id.

85. Id.

86. Criminal Law Code arts. 117-19 (PRC). It is a crime to speculate on the regulated areas of monetary affairs, foreign exchange, gold and silver, or the administration of industrial and commercial affairs. Id. art. 117.


State functionaries involved in the crimes of smuggling or speculation are subjected to heavier punishment which is not specified in the Code. Criminal Law Code art. 119 (amended 1982) (PRC). The amendment defines severe punishment for a state functionary as a minimum penalty of ten years with a maximum of life imprisonment or death. Id.


88. Id. arts. 120, 122-24. It is illegal to counterfeit or resell ration coupons for the purpose of profit, id. art. 120; to counterfeit or traffic in counterfeit national currency, id. art. 122; to counterfeit checks, share certificates, or other valuable securities, id. art. 123; to counterfeit tickets for transportation, postage stamps, tax stamps or invoices for profit, id. art. 124.

89. Id. art. 121. Persons evading or refusing to pay taxes in violation of the tax law and regulations commit a crime. Id.
extortion, considered to be crimes of property, are addressed in chapter five. Chapter six concerns crimes of obstructing the administration of public order, including such acts as forging, altering, stealing, or destroying official documents, certificates or seals of state organs, enterprises, institutions, or people's organizations. Finally, chapter eight covers crimes of dereliction of duty, primarily by state functionaries, making it illegal to accept or offer bribes, divulge state secrets, and neglect official duties.

The Criminal Law Code and Criminal Procedure Code proved inadequate at the outset. Ineffectual results arose from ambiguities in the Criminal Law Code concerning the definition of crimes of embezzlement, speculation, and bribery. In response, the Supreme People's Court and Supreme People's Procuratorate issued a joint circular defining acts and elements necessary to constitute an economic crime.

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90. *Id.* art. 155 (amended 1982). It is a crime to exploit a government position to embezzle public property. *Id.* Plundering "industrial or mining enterprises, banks, shops, warehouses, or other articles of public property" is also a counterrevolutionary crime. *Id.* art. 100(2).

91. *Id.* art. 154. Extortion of money or other public or private property by blackmail is a crime. *Id.*

92. *Id.* art. 100(2). Stealing state records is also a counterrevolutionary crime. *Id.*

93. *Id.* art. 167. Forgery or illegal use of state documents, seals, or certificates is a crime. *Id.*; see 15 Major Economic Swindling Cases Unearthed in Shenzhen Last Year, Ta Kung Pao [in Chinese] Jan. 15, 1986, trans. in F.B.I.S.—CHI, Jan. 17, 1986, at W3 (stating that the official Chinese seal of a company, also known as a chop, makes the contract binding).

94. **Criminal Law Code** art. 185 (amended 1982) (PRC). State functionaries who accept bribes shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. *Id.* The funds or articles received as bribes shall be confiscated, and public funds or articles shall be recovered. *Id.* More serious losses carry a sentence of fixed-term imprisonment of not less than five years. *Id.* Those offering or introducing bribes to state functionaries are subject to up to three years fixed-term imprisonment or criminal detention. *Id.* Under the amendment, state functionaries will be punished for bribery under article 155, and in serious cases, will receive life imprisonment or death. *Id.*

95. *Id.* art. 186. State functionaries who divulge important state secrets, in violation of state laws and regulations on the protection of secrets, are sentenced to fixed-term imprisonment of not more than seven years, criminal detention, or deprivation of political rights. *Id.* If a person who is not a state functionary commits the crime mentioned in the preceding paragraph, he shall be punished in light of the circumstances and in accordance with the provisions of the preceding paragraph. *Id.*

96. *Id.* art. 187 (amended 1982). State functionaries who neglectfully cause public property or the interests of the state and the people to suffer heavy losses are sentenced to fixed-term imprisonment of not more than five years or criminal detention. *Id.* The amendment calls for a minimum ten-year penalty and a maximum penalty of life imprisonment or the death penalty. *Id.*; see Heighten Our Vigilance and Strengthening the Work of Keeping Things Secret, Renmin Ribao, Apr. 11, 1980, trans. in F.B.I.S.—CHI, Apr. 11, 1980, at L8-9, L11 [hereinafter *Heighten Our Vigilance*] (stating that a form of negligence is found in not guarding party and state secrets).

addition, in reaction to a surge of criminal activity in 1981, the amendment, entitled Decision on the Question of Approval of the Death Sentence, imposed harsher sentences, including the death sentence, on criminal activity.\(^8\)

Similarly, in 1982, to combat the increase in corrupt activity, the National People's Congress (NPC) amended the Criminal Law Code by adopting two resolutions, the 1982 Resolution on Economic Crimes and the Resolution on Severely Punishing Criminals Who Gravely Endanger Public Security.\(^9\) These resolutions substantially increased criminal penalties for economic crimes. For example, whereas the maximum penalty for those convicted of committing economic crimes was a sentence of ten years, the new resolutions set the minimum penalty for economic crimes at ten years with a maximum of life imprisonment or even death for serious crimes of corruption.\(^10\) In contrast, the NPC

\(^8\) See Decision on the Question of Approval of the Death Sentence (adopted on June 10, 1981), reprinted in Renmin Ribao, June 11, 1981, at 1, trans. in F.B.I.S.—CHI, June 11, 1981, at K4 [hereinafter Death Sentence Decision] (stating that the Decision amended articles 144 and 145 of the Criminal Procedure Code). Prior to 1981, the Criminal Procedure Code required the Supreme People's Court to approve the death sentence. \(Id.\) The crimes that no longer needed Supreme Court approval from 1981 through 1983 were murder, robbery, rape or arson, the use of explosives or poisons, and tampering with means of transportation or electrical equipment. \(Id.;\) Report on the Work of the Supreme People's Court, 5th NPC, 4th Sess., (Dec. 7, 1981), reprinted in Xinhua [in Chinese], Dec. 15, 1981, trans. in F.B.I.S.—CHI, Dec. 21, 1981, at K1 [hereinafter 1981 Report] (noting that from October 1980 through September 1981, 39,000 cases of the above criminal offenses were tried and punished). Wang Hanbin on Law Revisions, Xinhua [in Chinese], Sept. 2, 1983, trans. in F.B.I.S.—CHI, Sept. 6, 1983, at K13 (clarifying the reasons behind the Death Sentence Decision). Wang Hanbin was Secretary General of the NPC Standing Committee and Vice Chairman of the Legislative Affairs Commission of the NPC Standing Committee. \(Id.\) One of the main reasons behind the Death Sentence Decision was the rapid increase in crimes such as murder, rape, and robbery which imperiled the security of Chinese society and threatened the public order. \(Id.\) The Decision was important because it directly allowed higher peoples courts of provinces, municipalities, and autonomous regions to impose the death penalty without prior approval of the Supreme People's Court. \(Id.\) But see Jochnowitz, Punishment Chinese-style: [Be]ware [sic] the [R]ed [C]hick [M]ark, CHRISTIAN SCI. MONITOR, June 25, 1986, at 14 (estimating that China has executed over 20,000 people for crimes since 1983). The author argues that the death sentence for economic crimes is too severe. \(Id.\)


\(^10\) See 1981 Report, supra note 98 (noting that crimes of corruption were specifically mentioned in the 1981 temporary revision, but remained subject to approval); Wren, Crime and Capital Punishment in China, N.Y. Times., Nov. 20, 1983, at E9 (discussing the use of capital punishment in the anticrime campaign). Embezzlers are also subject to the death penalty, \(Id.\) Chinese tradition emphasizes society over the individual; thus, Chinese are not disturbed by the death penalty. \(Id.\) Western sources
utilized an amnesty program and granted lighter sentences to criminals who surrendered themselves to the police by May 1, 1982, prior to the imposition of the new regulations.\textsuperscript{101} To punctuate the Party's zeal to strengthen criminal penalties, in 1986 it applied the amended death penalty sentence to Party members and their children who engaged in illegal activities for private gain.\textsuperscript{102}

These laws and statutory changes created a legal foundation for increased control of economic crime, albeit an unsettled foundation. For example, when the Party made the statutory changes in sanctioning and sentencing, it failed to specify the illegal act constituting a crime or a minor infraction of social order. To refine the law, the Party formulated policies through Maoist-type anticorruption campaigns.\textsuperscript{103} The policies of these political campaigns determined the degree of severity of the crimes and the level of punishment.\textsuperscript{104} Inherent conflicts between the Criminal Law Code and the anticorruption campaigns, however, surfaced in the areas of implementation and enforcement due to the absence of a legal system.

\hspace{1em} estimate over 5,000 executions in 1983. \textit{Id}; see also Herbst, \textit{A Legal Opinion}, CHINA TRADE REP., Dec. 1983, at 13 (warning of the emphasis placed on laws and the legal system in light of the true lawmakers—the Party). Although the courts approve the death sentence, the Party is the true driving force behind capital punishment and the execution of over 5,000 persons in 1983. \textit{Id.}

\hspace{1em} \textsuperscript{101} See 1982 \textbf{RESOLUTION ON ECONOMIC CRIMES}, supra note 87, at K2 (revealing the new regulations); \textbf{REPORT ON THE WORK OF THE SUPREME PEOPLE'S PROCURATORATES, 5th NPC, 5th Sess. (Dec. 6, 1982), reprinted in Renmin Ribao [in Chinese], Dec. 17, 1982, at 1, 3, trans. in F.B.I.S.—CHI, Dec. 23, 1982, at K21, K22 [hereinafter 1982 \textbf{CHIEF PROCURATOR REPORT}] (stating that 44,874 people voluntarily admitted to committing economic crimes); see infra notes 104-10 and accompanying text (discussing the 1982 anticrime campaign and NPC resolutions).

\hspace{1em} \textsuperscript{102} Southerland, \textit{China Warns on Economic Crime}, Wash. Post, Jan. 20, 1986, at A12. The state extended the death penalty to high officials shortly after a reignited anticorruption campaign. \textit{Id}. The effect was to signal the gravity of corruption by "kill[ing] one to warn a hundred." \textit{Id.}; see Hong, supra note 6, at 86-89 (blaming Deng's organizational approach for the corruption of high-ranking officials and their children). A new elite has emerged out of the period of modernization. \textit{Id.} at 87; \textit{Economic Criminals Executed in China}, J. Commerce, Jan. 24, 1986, at 5A (reporting the first executions of economic criminals after senior authorities officially applied the penalty to government officials). In January 1989, in Shanghai 10,000 people attended a mass trial of 30 criminals convicted of perpetrating an economic crime. \textit{Id.} Two received a death sentence and the others received heavy prison terms. \textit{Id.} The Shanghai court sentenced one person for embezzling "important industrial materials" without defining important. \textit{Id.} The other was sentenced for swindling $30,000 while misrepresenting himself as an overseas Chinese businessman. \textit{Id.}

\hspace{1em} \textsuperscript{103} See infra notes 206-36 and accompanying text (discussing anticorruption campaigns).

\hspace{1em} \textsuperscript{104} See Note, \textit{Concepts of Law in the Chinese Anticrime Campaign}, supra note 50, at 1902 (discussing law versus policy in the PRC).
2. Monitoring and Enforcement

From 1954 until 1980, Party committees tried cases and rendered decisions. In 1980, the Supreme People’s Court issued a report abolishing this practice. During the Cultural Revolution, state enterprises became disorganized. As a result, the Chinese people took an active role in the detection and reporting of illegal activities by writing letters to the Supreme People’s Procuratorate or making phone calls to corruption hotlines. In 1979, the central role of the Party in monitoring crime and enforcing criminal sanctions weakened as the Party appointed various agencies and created several systems to monitor and enforce criminal activity, specifically economic criminal activity.


107. See Cronin, *The Changing Face of Justice*, U.S.-CHINA REV., May-June 1980, at 12-13 (noting the assets of state organizations and collectives were not adequately protected and monitored). Signed contracts were not legally binding. Id.

108. See id. at 12 (noting the Supreme People’s Procuratorate, the highest organ of legal supervision in China, received over 15,000 letters monthly divulging wrongful or illegal activities).

109. *China Introduces Reporting Centers, Guidelines on Corruption*, CHINA INFORMATICS, Aug. 18, 1988, at 293 (announcing that the Ministry of Supervision (MOS) set up corruption reporting centers). The MOS provides a phone number (2025391) on a 24-hour basis for Chinese and foreigners wishing to report suspicions of graft, bribery, blackmail, extortion, or any other illegal activities committed by government officials. Id. The report also provides guidelines on when a government official may collect commissions or receive bonuses. Id. at 12-13.

110. See ZHONGHUA RENMIN GONGHEGUO FAYUAN ZUZHI FA (THE ORGANIC LAW OF THE PEOPLE’S COURTS OF THE PEOPLE’S REPUBLIC OF CHINA) (promulgated on July 5, 1979, and effective on Jan. 1, 1980), reprinted in Xinhua, July 5, 1979, trans. in Organic Law for People’s Courts, F.B.I.S.—CHI, July 20, 1979, at supp. 20 [hereinafter ORGANIC LAW OF THE PEOPLE’S COURTS] (stating that the court system is responsible for the trial and sentencing of criminals); ZHONGHUA RENMIN GONGHEGUO RENMIN JIANCHAYUAN ZUZHI FA (THE ORGANIC LAW OF THE PEOPLE’S PROCURATORATES OF THE PEOPLE’S REPUBLIC OF CHINA) (promulgated on July 5, 1979, and effective as of Jan. 1, 1980), reprinted in Xinhua, July 5, 1979, trans. in Organic Law for People’s Procuratorates, F.B.I.S.—CHI, July 27, 1979, at supp. 27 [hereinafter ORGANIC LAW OF THE PEOPLE’S PROCURATORATES] (dictating the procuratory system’s importance). The procuratory system is responsible for investigating criminal cases, supervising and monitoring the police, initiating prosecutions, reviewing trial procedures, carrying out judgments, and operating correctional facilities. Id.; Silk, *Economic Crime in China*, CHINA BUS. REV. Jan.-Feb. 1988, at 25 (discussing the major economic crimes and outlining the organizations which monitor and enforce economic crimes). For example, the public security apparatus is responsible for the uncov-
establishment of these new agencies has prompted an effort to create links between law and policy, a difficult feat considering the immense power given to Party committees.\textsuperscript{111}

In a further effort to balance the power between the Party and the judiciary, the revised 1982 Constitution provides for independent judicial power.\textsuperscript{112} In reality, however, the judicial branch exercises very little independent initiative because it is obligated to follow the Party's directives, issued through anticrime and anticorruption campaigns. Thus, the provision granting independent judicial power remains one of form and little substance.\textsuperscript{113}

3. The Role of Lawyers in the Legal System

Economic modernization and the subsequent development of the so-

\textsuperscript{111} Supreme Court President Discusses Legal System Reform, Xinhua, [in Chinese], Aug. 25, 1980, trans. in F.B.I.S.—CHI, Aug. 27, 1980, at L7. In 1980, the Supreme People's Court issued a report to abolish this practice of Party Committees trying cases and rendering decisions. \textit{Id.; see State Handles Over 2 Million Economic Violations}, Xinhua [in Chinese] Oct. 22, 1986, trans. in F.B.I.S.—CHI, Oct. 27, 1986, at K13 (noting that from 1984 to 1986, the Industry and Commerce Administration Department investigated and reported 2.09 million cases of speculation, manufacture and marketing of counterfeit commodities, and smuggling). This Department is an administrative body and any economic infractions are subject to penalties under SAPA. \textit{Id.}

\textsuperscript{112} CONST. OF THE PEOPLE'S REPUBLIC OF CHINA art. 126 (1982) (providing independent judicial power to the people's courts without state or individual interference).

\textsuperscript{113} See Lubman, \textit{China Lays Down the Law as Legal System Modernized}, CHRISTIAN SCI. MONITOR, Feb. 10, 1983, at 11 (stating that the courts in effect have little autonomy); Herbst, \textit{supra} note 53, at 6 (noting skepticism in the independent role awarded the courts under the 1982 Constitution).
ECONOMIC CRIMES IN THE PRC

1989

83

cialist legal system brought an increase in the importance of lawyers, a class the Party had castigated during the Cultural Revolution. In an effort to give the legal system credibility, the Party promoted the legal profession by making public statements urging its reestablishment. To achieve this goal, in 1982 the Party promulgated the Regulations on Lawyers, strengthening the legal system then composed of the people's courts, the prosecutorial organs, and the public security (police) system.

The new role assigned to lawyers, however, is confined to legal issues arising from foreign investment. Their role in the criminal justice system remains restricted. The NPC placed great emphasis on training


115. See Schatz & Silkenat, Signals from China's Legal System, NAT'L J., Feb. 18, 1980, at 35 (stating that those responsible for the implementation of the modernization policy seek reliance on laws to protect them from radical political shifts).

116. Gelhorn, China's Quest for Legal Modernity, 1 J. CHINESE L. 7 (1987); see Gelatt, Resurrecting China's Legal Institutions, Asian Wall St. J., Mar. 29, 1980, at 4 (stating that until 1957 there were approximately 3,000 lawyers practicing in China). With the onset of the "anti-rightist" movement in 1957 came the demise of the legal profession. Id. Most lawyers were sent to labor camps. Id.; Yu Xiangyang, Discussing the Lawyer System, Dazhong Ribao [in Chinese], Sept. 3, 1980, trans. in J.P.R.S.—CHI No. 76910, Dec. 1, 1980, at 63 (observing that the "Gang of Four" delivered the final blow to the legal system when it eliminated the public security organs, the procuratorial organs, and the people's courts); see also Vice Minister Wang of Ministry of Justice] Notes Shortage of Lawyers, Xinhua [in Chinese], Oct. 29, 1980, trans. in F.B.I.S.—CHI, Oct. 30, 1980, at L1 (stating that in 1980 China had only 2,000 lawyers). The goal of the Ministry of Justice was to have one lawyer per every 10,000 city dwellers and 50,000 peasants by 1985. Id.; The Role of Lawyers, BEIJING REV., Feb. 15, 1982, at 9 (noting that by 1982, China had 5,500 full-time and 1,300 part-time lawyers).


119. ORGANIC LAW OF THE PEOPLE'S COURTS, supra note 110, at supp. 20.

120. ORGANIC LAW OF THE PEOPLE'S PROCURATORATES, supra note 110, at supp. 27.

121. Legal Practitioners, supra note 114, at 325.
lawyers to practice in the field of business, particularly with respect to foreign investment. According to the Chinese government, the role of the lawyer is to promote corporate profitability and economic reforms. In civil cases or disputes, lawyers are responsible for drafting factory regulations, detecting problems in poorly drafted contracts, eliminating the effects of management deficiencies, exposing white-collar crime, and avoiding inequities in contract negotiations. Lawyers in China are also being trained to practice dispute resolution, legal interpretation of documents, and business planning.

Conversely, lawyers maintain a relatively weak role in the criminal system, limited to representing the interests of the state as opposed to representing the accused. When a lawyer is involved in a criminal trial, his or her sole function is to argue for mitigation of the offender's sentence; guilt is usually determined before the trial begins. Moreover, in the field of criminal law, police and courts still view lawyers with hostility—a hostility that is embedded in historical prejudices and which is likely to increase as more people are prosecuted for economic crimes.

122. Id. at 357-62.
123. Id. at 324. In 1988, more than 40,000 corporations had legal counsel. Id.
124. See id. at 324 (noting the role of lawyers is not, as in most Western countries, to safeguard the rights of the individual or to help maintain public order). The anticrime campaign in the early 1980s accelerated the hearing of criminals, thereby usurping control from the attorney. Id. at 386.
125. See 1981 REPORT, supra note 98, at K4 (stating that by 1981, economic courts had been established at all higher people's courts and at 293 intermediate courts to handle economic disputes). In the same year, 14,600 economic cases were tried. Id.
126. Legal Practitioners, supra note 114, at 367.
127. Id. at 369; see Yu Xiangyang, supra note 116, at 66 (emphasizing the major role of lawyers in settling economic disputes).
128. PRACTITIONERS' REGULATIONS, supra note 118, art. 1. "A Lawyer is the nation's legal practitioner . . . ." Id. at 255.
129. CRIMINAL PROCEDURE CODE art. 27 (PRC). Article 27 does not mandate the courts to appoint a defender. Id. With the absence of the right to counsel, the provision that the court must notify a defender no later than three days before trial severely hampers the attorney's ability to represent the defendant or accused. Id. art. 110. The problem is compounded further by the Public Security officials' right to incarcerate a suspect without formal arrest for up to a two month period before deciding whether to try the case. Id. art. 92.
130. Legal Practitioners, supra note 114, at 365; Schatz & Silkenat, supra note 115, at 13 (noting that if the defendant does not admit guilt, then the defense counsel is required to persuade him or her to do so). Immediate admission of guilt eliminates the need for a fact-finding process, thereby hindering the determination of the source of an economic crime. Id. The sources include financial status and market influences and pressures on the individual. Id.
131. Legal Practitioners, supra note 114, at 346-47.
132. Id. at 347. Moreover, the very system that the Chinese people already distrust is creating more opportunity for crime, while neglecting the Chinese institutions created to protect socialist ideology from bourgeois influence. Id.
II. ECONOMIC CRIMES

A. Geographical Location of Economic Crimes—Special Economic Zones

After launching the open-door policy in 1978, the Chinese government began to implement a plan that involved choosing certain regions in China as Special Economic Zones (SEZs or zones) for fostering foreign investment. On May 16, 1980, the government officially created four such zones. The regions are Shenzhen, Zhuhai, Shantou of Guangdong Province, and Xiamen of Fujian Province. Hainan Island became the fifth SEZ in 1987.

As the Chinese government created the SEZ, officials in Guangdong Province, where three of the five zones are located, simultaneously reported a surge of economic criminal activity. The anticorruption campaigns did not curb economic criminal activity; instead, crimes...
such as bribery, smuggling, speculation, and foreign exchange arbitrage became more widespread in these areas. To eliminate this corrupt activity, the procuratorial organs launched an awareness campaign emphasizing the negative effects of corruption on the economy. Government officials specifically emphasized that economic crimes threatened the four modernizations. Although it is difficult to ascertain the impact of such awareness campaigns, reports of economic criminal activity in the zones throughout the 1980s continued to increase three times faster than in non-SEZ areas.

The SEZs enacted legislation to curb the increase in the crime rate. For example, the Shenzhen Regulations stipulate that "illegal..."
business operations” will be penalized.\textsuperscript{142} The term illegal business operations, however, remains undefined.\textsuperscript{143} Similarly, if a foreign business or individual is found engaging in a “direct profit making” business, the penalties may carry a 20,000 yuan fine and the termination of the business operation.\textsuperscript{144} Unfortunately, because the law is vague with respect to the definition and elements of a direct profit making-business, it is extremely difficult for a foreigner to comprehend the nuances of the regulations.

\section*{B. TYPES OF SPECIFIC CRIMES}

Because reliable information and statistics on economic crimes are sparse and often incomplete, one must rely on the annual reports of the Supreme People’s Court and the Supreme People’s Procuratorates to trace changes in criminal activity in any one specific area.\textsuperscript{145} A review

\begin{itemize}
  \item \textsuperscript{142} Shenzhen Registration Regulations art. 13, para. 3. The penalty is either confiscation of the “illegal” income, or a fine of up to three times the amount of the losses incurred through the illegal activity. \textit{Id.}.
  \item \textsuperscript{143} Zheng, China’s SEZs, supra note 133, at 224. Illegal business operations can be illegal because either the activity extends beyond the scope of government allowed business or violated substantive law. \textit{Id.}
  \item \textsuperscript{144} Shenzhen Registration Regulation, supra note 142, art. 14.
  \item \textsuperscript{145} See supra notes 61-65 and accompanying text (discussing SAPA). Although this Comment covers only economic crimes, a range of other economic offenses remain, plauging China. \textit{Id.} These crimes fall under the jurisdiction of SAPA and, therefore receive administrative penalties. \textit{Id.}
\end{itemize}

Although commentators generally agree that China has had a significant increase in the level of economic crimes since the enactment of its open-door policy, reliable information and statistics are difficult to find and often incomplete. In addition, the lack of data collection and case reporting and documentation on economic crimes make it difficult to trace the level and changes in criminal activity in any one specific area. See 1980 Chief Procurator Report, supra note 117, at 44 (stressing the necessity of making the legal system strong). From January until September 1980, 43\% of the cases dealing with economic crimes were cases of corruption. \textit{Id.} at 47. There were 89 embezzlement cases involving more than 20,000 yuan. \textit{Id.} at 47; Work Report of the Supreme People’s Procuratorates, 5th NPC, 4th Sess., (Dec. 7, 1981), reprinted in New China News Agency (NCNA) [in Chinese], Dec. 14, 1981, trans. in F.E.—6914, Dec. 24, 1981, at C5, C7 [hereinafter 1981 Chief Procurator Report] (discussing that, for example, from January through September 1981, there were 31,000 criminal cases tried involving economic crimes and 16,000 criminal economic offenses against law and discipline).

of the Court and Procuracy indicates that the following economic crimes fall outside the jurisdiction of SAPA.

1. Government and Party Corruption

Under the Criminal Law Code, state functionaries, although not privileged, receive preferential treatment in certain circumstances that exempts them from criminal sanctioning. In early 1980, a "crisis of confidence" occurred within the Party and certain Central Committee officials expressed concern regarding whether implementation of the four modernizations could be successful. During this time, the Party revised its Constitution (CCP Constitution). In an effort to have the

each. \textit{Id.} From January through September 1982, 24,636 economic criminal cases were heard. \textit{Id.} Serious economic crimes rose to 32,605, in which 2,512 were classified as major, involving money over 10,000 yuan. \textit{Id.; see Moves Against Economic Crimes, AUSTRALASIAN CHINA REP., Mar. 1983, at 7 (reporting 164,000 economic crimes in Chinese press in 1982); Legal Issues, SINO-BRITISH TRADE REV. Mar. 1983, at 10 [hereinafter Legal Issues]. 86,000 of the 164,000 were heard and 30,000 offenders were sentenced. \textit{Id.; REPORT ON THE WORK OF STRIKING AT SERIOUS CRIMES IN THE ECONOMIC FIELD, CPC Central Committee Discipline Inspection Commission Report of July 25, 1983, reprinted in Xinhua [in Chinese], July 26, 1983, trans. in F.B.I.S.—CHI, Aug. 1, 1983, at K9 [hereinafter 1983 ECONOMIC CRIME REPORT] (assessing the development of economic criminal activity since the implementation of the 1982 Resolution on Striking at Serious Crimes in the Economic Field). During the first five months of 1983, 192,000 economic crimes were reported. \textit{Id.} 131,000 cases (71\%) were completed by April. \textit{Id.} at K9. 71,000 Party members participated in economic criminal activity. \textit{Id.} Of these, 8,500 were deprived Party membership. \textit{Id.} 170 people acquired illegal gains amounting to more than 100,000 yuan. \textit{Id.} 7,000 people had illegal incomes amounting to more than 10,000 yuan. \textit{Id.} The total amount of money and property recovered equalled more than 410 million yuan. \textit{Id.} Approximately 24,000 people turned themselves in for committing economic crimes. \textit{Id.} Thus, in 1982, there were 35,156 criminal cases. \textit{Id.} In 1983 there were 51,486 criminal cases—a 46.3\% increase. \textit{Id.; see also Zheng Tianxiang Speaks to NPC on Economic Crimes, Zhonghuo Xinwen She [in Chinese], Jan. 14, 1986, trans. in F.B.I.S.—CHI, Jan. 16, 1986, at K22 [hereinafter Zheng Tianxiang Speaks] (stating that in 1985 there were 48,400 economic criminal cases); Economic Crime Shows a Drop, China Daily, Dec. 31, 1987, at 3 (attributing the decrease in the rate of economic crimes to the effectiveness of the anticorruption campaigns). In 1986, the Supreme People's procuratorate announced a 40\% decrease in economic crimes over 1986, but noted that the crimes had become more serious in nature. \textit{Id.; Crackdown on Economic Crimes, 33 BEIJING REV. 7 (Aug. 15, 1983) (providing a summary of the 1983 Economic Crime Report).}

146. See \textit{CRIMINAL LAW CODE} art. 192 (PRC) (noting that state functionaries who fail to observe or uphold their official duty may receive an administrative sanction); \textit{see also} Maodi, \textit{Chinese Discipline Should not Replace State Law, Jiefang Ribao [in Chinese], Oct. 7, 1980, trans. in F.B.I.S.—CHI, Oct. 21, 1980, at L5 (noting that party members often punish high-ranking officials of the Party through Party discipline instead of state law). Leading Party officials are often ignorant of the law. \textit{Id.} at L6. It is very difficult to judge crimes committed by Party members because they are punished internally according to Party discipline. \textit{Id.}


148. See \textit{id.} (discussing the consideration of economic concerns in developing the
ECONOMIC CRIMES IN THE PRC

CCP Constitution reflect "equality for all before the law" and the non-existence of a privileged class and detect unauthorized or unlawful activity, the Party amended the draft revision of the CCP Constitution.149 The amendment upgraded and expanded the powers of the Commission for Inspecting Discipline and established the Guiding Principles Governing Inner-Party Political Life.150 The purpose of the Commission for Inspecting Discipline is to report any violations of Party discipline regulations to the appropriate agencies at the appropriate national governmental levels.151 At the same time, the Chief Procurator of the Supreme People's Procuratorate issued a statement calling for a concerted effort to fight unlawful activity by state functionaries.152

It was not until 1983, when the Commission for Inspecting Discipline released its report on economic crime, that the Party publicly recognized and chastised Party and government corruption.153 The Commission identified lack of morals and inefficient management of Chinese officials as the primary causes of corrupt activities.154 Some of the cases exposing government corruption included charges of smuggling,155 bribery,156 and embezzlement.157 The real exposure of government corrup-

149. Id.
151. See Punishment for Squanderers of Public Funds, BEIJING REV., Aug. 18, 1980, at 6 n.33 (stating that the Commission imposed fines and disciplinary measures on a deputy director of a local administration bureau for squandering 1,398 yuan of public funds for food and entertainment). The Commission also imposed fines on a cartons factory in Chongking for spending 1,430 yuan on food and entertainment for its customers, while including the expenditures as production costs. Id.; CCP Discipline Group Tackles Economic Crimes, Xinhua [in Chinese], July 22, 1982, trans. in F.B.I.S.—CHI, July 26, 1982 at K10 (noting that the Discipline Inspection Commission appointed its first 154 employees to aid municipalities in the detection of serious economic crimes).
153. 1983 ECONOMIC CRIME REPORT, supra note 145, at K10-18 (reporting that the most troubling concern for the Commission was the amount of government and Party corruption).
154. Id. at K12.
155. See Customs Administration to Stamp Out Smuggling Activities, F.B.I.S.—CHI, Apr. 16, 1980, at L6 (noting the state's goal is to stamp out smuggling in China). In 1979, there were 13,400 smuggling violations, a 41% increase over 1978. Id. The total value of the smuggled goods exceeded 7.3 million yuan, three times more than in 1978. Id.
156. See Bribe-Taking Communist Party Members Arrested, Xinhua [in Chinese],
tion, however, began in 1986 when high officials called for the death penalty for those senior cadres members and their children who engaged in serious economic criminal activity. The incentive for certain high officials to expose the economic crimes of their colleagues’ children originated in the ongoing power and ideological struggle between the conservative Marxists and the Reformists.

July 13, 1987, trans. in F.B.I.S.—CHI, July 14, 1987, at K3 (providing an example of bribery of a Chinese official by a Japanese merchant). In July 1987 the Central Discipline Inspection Commission issued a Decision which expelled all Chinese officials committing bribery from the Party. Id. From January to May 1987, 185 Chinese officials were arrested and expelled for committing bribery. Id.; Southerland, Foreigners See Rise in Bribes in China, Wash. Post, Apr. 23, 1987, at A1 & A26 (providing examples of the way bribery occurs in China). At one point, gifts were accepted as bribes in order to help the breakthrough of Chinese democracy. Id. With the influx of foreign investment in China, however, the Chinese became more selective in their options by demanding cash or cash deposits in foreign bank accounts. Id.

157. 1983 ECONOMIC CRIME REPORT, supra note 145, at K10-11. For example, a factory director was convicted of smuggling over 23 million yuan in goods. Id. at K10. A county director received the death penalty after misappropriating more than 60,000 yuan in bribes and smuggled goods. Id. A bank accountant embezzled 1.03 million yuan of bank money. Id. at K11. Certain state organs illegally traded over U.S. $1 billion in foreign exchange. Id. at K10; Cronin, supra note 107, at 13. A First Secretary of the Party Committee of Luda was convicted of embezzling funds to construct sixty-four extravagant clubs, hostels, and offices. Id. Similarly, a group of employees, working for the Xian County Fuel Company, embezzled 161,000 British pounds. Id.

158. See Southerland, supra note 102, at A12 (defining a senior cadre as “an official at the level of bureau director or above”).


160. See supra notes 98-102 and accompanying text (discussing the first occasion when the state imposed the death penalty for economic crimes).

161. See Luo Ping, Notes on a Northern Journey: Doubts as to Whether Tigers Are Butchered to Cover Up Things, Cheng Ming No. 103 [in Chinese], May 1, 1986, trans. in F.B.I.S.—CHI, May 14, 1986, at W1 (highlighting numerous cases where children of high officials were exposed and exploited for engaging in economic criminal activity). The purpose of this activity, known as pulling “pigtails,” was to expose the commercial criminal activities of children of officials. Id. The children of the officials are referred to as “tigers.” Id. One example was made of Hu Shiying, the son of Hu Qiaomu, a famous preacher of Marxism-Leninism. Id. at W2. A procuratorate sentenced Hi Shiying to prison for embezzling over several million yuan in tuition fees for a correspondence course in legal education. Id. Another example is of the son and daughter of Zhen, allegedly involved in the Wang Chun case. Id. at W3. Wang Chun, the former vice mayor of Beijing, was involved in a U.S. $300,000 bribery case and a dereliction of duty act for misappropriating U.S. $2 million from the city treasury to his son. Id. One of the first cases to receive nationwide publicity as well as to question the constitutional right of equality before the law is of Ye Zhifeng and Zhang Changsheng. Id. They were both arrested and convicted on charges of bribery and divulging state secrets for leaking information concerning the import of foreign automobiles. Id. On March 27, 1986, the Beijing’s Intermediate People’s Court sentenced Zhang, the son of a senior army officer, to death. Id. Ye, the alleged principal offender in the case and daughter of Ye Fei, a member of the Communist Party Central Committee and former Navy commander, was only sentenced to 17 years. Id. Certain political and
2. **Speculation**

The relaxing of price controls combined with the increase in market-oriented economic legislation during the early 1980s led to stark increases in speculative activities.\(^{162}\) Since 1949, state regulation of prices is common in China. The open door policy introduced a hybrid economic mechanism which resulted in both a state and market controlled pricing system. Subsequently, the applicable concepts of free market profit-making and profiteering, derived from this hybrid mechanism, have created disorder and misunderstanding among the Chinese.\(^{163}\)

In 1987, the State Council issued regulations concerning the manipulation of state-controlled prices.\(^{164}\) The purpose of the regulations is to increase control over speculative and profiteering activities.\(^{165}\) The regulations provide punishments ranging from fines to life imprisonment depending upon the seriousness of the crime.\(^{166}\)

3. **Contract Corruption**

Another source of economic criminal activity is corruption in the area of contracting.\(^{167}\) From 1949 until 1976 the government imposed strict administrative control over contracts entered into by state enterprises.\(^{168}\) After 1976, due to the Cultural Revolution, the lines between administrative control and regulation of commercial activities became obscured,\(^{169}\) considerably weakening the contract system and manage-
By the end of the Cultural Revolution the contract, as a legally binding document, was virtually nonexistent. In the early 1980s, the decentralization of government control and the increase of private enterprises brought an increase in contract negotiation. To revive the concept of legally binding contract as a commercial document, the government announced measures to implement an economic responsibility system for industrial production. This necessitated the creation of internal production management systems to reestablish order in commercial trade.

The paucity of economic legislation and appropriate administrative agencies to analyze the results of commercial projects, however, obstructed proper implementation of the economic responsibility system. By 1983, China had more than 200 laws regulating the economy, but only a weak enforcement structure. In recognition of this weakness, the government created the Ministry of Supervision (MOS), an individual state agency invested with the power to supervise and prevent contract corruption in commercial settings.

170. Id.
171. Id.
174. Id.
175. See Yang Xueqi, Economic Legislation Should Be Strictly Enforced in Adopting the System of Economic Responsibility Among Commercial Enterprises, 1 CAIJIN WENTI YANJIU (THE STUDY OF FINANCE AND ECONOMIC PROBLEMS) 33, 33-37 (1982) [in Chinese], trans. in J.P.R.S.—CHI No. 80512, Apr. 7, 1982, at 58 (stating that economic legislation must exist to determine which economic activities are legal); Shen Yiqing, The Scope of Capital Construction Must Be Controlled-Capital Construction Policymakers Should Also Implement a Responsibility System so as to Know Who Draws Circles and Who Takes Economic and Legal Responsibility in Case of Major Mistakes, Shijie Jingji Daobao [in Chinese], Mar. 21, 1983, trans. in J.P.R.S.—CHI No. 83504, May 19, 1983, at 1 (noting that a causal connection exists between mistakes in investment decisions which lead to poor capital investment opportunities and the failure to implement a responsible system among policymakers for their bad investments). Although departments and divisions responsible for investment distribution and financial supervision exists, a department does not exist to analyze the results of the investment when the project is completed. Id. at 1.
177. See supra note 110 (discussing the role of the Ministry of Supervision); see also Ministry of Supervision Helps Detect Corruption, Xinhua [in Chinese], June 9, 1988, trans. in F.B.I.S.—CHI No. 88111, June 9, 1988, at 34 (praising the Ministry of
4. State Secrets

Another economic crime that increased dramatically with the onset of the Cultural Revolution was the divulgence of state secrets, a crime rooted in the Chinese tradition of protecting the Party. In 1980, the government reinitiated previously ignored regulations designed to protect state secrets. The Party charged the general Chinese populace, government officials, and Party members with the responsibility of protecting state secrets.

The definition of a state secret is extremely broad, making it easy to violate the new regulations. To violate a state secret three elements must be met: the offender must work for the state, the act must violate a security regulation of the state, and the information disclosed must be of a serious nature. If a violation occurs, the appro-
priate agency or branch imposes either an administrative or criminal penalty depending upon the seriousness of the offense. For example, when state secrets are sold for profit the nature of the offense is criminal, resulting in the imposition of the more serious criminal punishment as opposed to an administrative sanction. Those engaged in selling or deliberately divulging state secrets to “enemies at home or abroad” or to “domestic and foreign profiteers” are subject to a comparatively severe punishment for counterrevolutionary crimes. If the effects of such violations are serious, even the death penalty may be imposed.

5. Tax Evasion

The recent imposition of taxes on Chinese people and businesses spawned the crime of tax evasion. Due to the relative immaturity of the tax system, the percentage of noncompliance is very high. Because of this noncompliance, China’s past efforts to implement fiscal reform by converting state-owned enterprises into tax-paying entities have been largely unsuccessful.

185. Id.
186. STATE SECRETS LAW, supra note 180, art. 13, at L11. The language of the regulations initially was not changed. Id. Terms such as counterrevolutionary and enemy could be interpreted as used during the Mao period, although the new Codes were already in effect. Id.; see supra notes 49-55 and accompanying text (discussing China’s history of dictatorship and democracy). Perhaps the purpose of retaining the old terms was to effect a means of stressing the importance of the regulations since the populace was still unfamiliar with and uninformed of the new Criminal Law Code.

187. CRIMINAL PROCEDURE CODE art. 103 (PRC).

189. See Tax Crime, China Daily, Aug. 22, 1988, at 2 (noting that 50% of China’s state and collective enterprises and 80% of private businesses evade paying taxes).

The most important factor enabling a high tax evasion rate is the government's deficient accounting practices. These practices lead to inaccurate or distorted reporting and high inventory losses at the plant level. In an attempt to address the problems of inventory losses and deficits in state-run industrial enterprises and commercial enterprises, the State Economic Commission issued a Circular on Eliminating Deficits to strengthen accounting practices.

The government's tax collection practices also facilitate tax evasion. All taxes are collected at the local government level for ultimate distribution to the national government. Thus, local government officials charged with collecting the business taxes generally own the businesses required to pay taxes. Usually these local government officials/owners have no difficulty finding "loopholes" to circumvent the taxes.

6. Application of Chinese Law to Foreigners

Because definitions of economic crime in the Criminal Law Code remain nebulous, the Code's potential sanctioning impact on foreign citizens is often unnoticed. Both the Criminal Law Code and the Criminal Procedure Code, however, apply to anyone, except diplomats, found committing a crime in China. 

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192. Id.

193. See id. (attributing inventory losses to theft for sale on the black market).


195. See supra notes 97-98 (describing problems with the Criminal Law Code).

196. Criminal Law Code art. 8 (PRC); Criminal Procedure Code art. 12 (PRC).

197. Criminal Law Code art. 3 (PRC); Criminal Procedure Code art. 12 (PRC): see Cohen, Reflections on the Criminal Process, supra note 48, at 324-27 (discussing history of Chinese treatment of foreigners who committed criminal acts in China); Vee Lee, Chinese-Style Justice Equals Chaos, Asian Wall St. J., July 25-26, 1986, at 6 (discussing how China handles Hong Kong Chinese as distinguished from foreigners who commit economic crimes). It is very difficult to obtain case law in China because of selective disclosure. Id. China does not keep statistics on the amount of foreign criminal activity. Id. Although Chinese laws apply to all foreigners, overseas Chinese from Hong Kong are the most severely punished—the severest penalty to date has been the death sentence. Id. China does not recognize Hong Kong Chinese as Brit-
Presently, the Criminal Law Code only makes persons and not corporations or other business entities criminal subjects. The intermediate people's courts have jurisdiction over criminal cases involving foreigners. If a foreigner is suspected of committing a crime within China, the intermediate courts have the option to deport, or to convict that person according to Chinese law.

Chinese law applies extraterritorially to foreign persons if the punishment for the crime includes a period of imprisonment exceeding three years. Before the 1982 Resolution on Economic Crimes, most of the economic crimes carried sentences of less than three years imprisonment or criminal detention. The 1982 Resolution, however, dramatically increased the penalties to include sentences of ten years to life imprisonment or death. Due to this increase in sentencing, most
laws and penalties concerning economic crimes now apply to foreigners.

C. POLITICAL MEASURES IMPOSED TO CURB INCREASES IN ECONOMIC CRIME—ANTICRIME AND ANTICORRUPTION CAMPAIGNS

Since the codification of the Criminal Law Code and the Criminal Procedure Code, the Party has launched many anticrime campaigns. Although the Codes have established a legal foundation to foster a more stable social order, the anticrime campaigns, coupled with economic reform, have provided the impetus required for remolding the social order. The campaigns and reforms also have served to police corrupt activities born of the open-door policy by both influencing public opinion against corruption and further defining the Criminal Law Codes and sanctions.

The government launched its first state-administered campaign against economic crime in 1982 after publicly acknowledging the significant increase in economic crimes. The NPC, the Party Central Committee, and the State Council adopted two resolutions defining economic crimes and imposing harsher sanctions. The first resolution, the 1982 Resolution on Striking at Serious Crimes in the Economic Field, defined smuggling, illegal peddling, corruption, bribery, speculation, deception, and theft of state and collective property as serious crimes.
which disrupted the economy. The second resolution, the 1982 Resolution on Economic Crimes Endangering Public Security imposed harsher sanctions than were originally imposed under the Criminal Law Code upon state functionaries and people who committed crimes, including persons who committed crimes involving large sums of money.

In these campaigns, the Chinese government expressly linked the increase in economic crimes with the injection of capitalist economic policies and ideology, a byproduct of the open-door policy. The government labelled the activity a "manifestation of class struggle." To strengthen sanctions against these crimes, the NPC allowed the death penalty for serious economic crimes and a minimum penalty of ten years for other economic offenses.

The Chinese government and the Party experienced difficulty implementing the new resolutions, however, because similar political mass campaigns had a negative impact on Chinese society during the Cultural Revolution. Thus, to implement the new crackdown on eco-

210. Id. at K2.
211. 1982 Report, supra note 145, at K10 (stating that Chinese courts have heard cases according to their seriousness and importance). Cases involving Party cadres and large sums of money were heard first. Id.
212. We Must Not Relax Our Struggle Against Serious Economic and Other Crimes, Jiefang Ribao [in Chinese], Oct. 7, 1982 at 1, trans. in J.P.R.S.—CHI No. 82405, Dec. 7, 1982, at 37 (discussing the importance of addressing economic crimes while preserving the open-door policy).
213. 1982 Chief Procurator Report, supra note 101, at K21, K23; see It Is Imperative to Severely and Expeditiously Punish Economic Criminals According to Law, Renmin Ribao [in Chinese], Sept. 15, 1983, trans. in F.B.I.S.—CHI, Sept. 20, 1983, at K4 (discussing reasons for continued crackdown on economic crimes). The class struggle is between socialist and capitalist ideologies. Id. at K5. One of the "poisons" of capitalist ideology, the Party asserts, is degenerate morality, which pollutes Party policy and social habits. Id. at K4; Government Calls for Crackdown on Economic Crime, trans. in F.B.I.S.—CHI, Feb. 22, 1982, at K8 (noting the results of economic crimes). Consequently, such activity has "inflicted serious losses on economic construction, the nation's economy and the people's livelihood, dampened the people's enthusiasm for strengthening socialism, damaged the Party's prestige, corrupted the Party's fine work style, and inflicted inestimable political losses." Id.
215. See Herbst, supra note 100, at 13 (noting that Mao used mass campaigns as devices to effectuate criminal order). Mass campaigning reached its zenith during the Cultural Revolution. Id. After the Cultural Revolution, the Party renounced the use of mass campaigns. Id. Consequently, the enactment of the Criminal Law Code and Criminal Procedure Code formalistically replaced mass campaigns. Id. In reality, how-
nomic crimes efficiently, the Central Committee Discipline Inspection Commission (Commission) issued several recommendations regarding compliance with and enforcement of the new resolutions. First, the Commission placed heavy burdens on both Party committees and all government officials, instructing them to abide by and enforce the new resolutions. Second, the Commission called for adherence to the Party line and for people to assist the State in enforcing the resolutions. Third, the Commission stressed the importance of publicity, using the newspaper, radio, and television media to announce the crackdown on economic crimes. Finally, the Commission called for strengthening of the public security, procuratorial, and judicial organs.

As the number of reported economic crimes increased throughout the mid-1980s, the President of the Supreme People's Court admitted in 1986 that the previous legislation enacted to combat economic crimes was largely ineffective and the Court's sentencing power too moderate. Consequently, in the following year, the government enacted two

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1989] ECONOMIC CRIMES IN THE PRC 199

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regulations, codified in 1988, imposing harsher sanctions against those suspected of smuggling, embezzlement and bribery. Similarly, a surge of legislation to control economic crimes, supplementing the Criminal Law Code and the 1982 Resolutions, erupted in the first quarter of 1988. In addition, the government empowered monitoring and enforcement agencies to play a stricter role in curtailing economic crime in the government sector, collective enterprises, and private industries.

By mid-1988, however, a backlash resulting from these economic reforms struck Beijing and the government began a slow retreat from

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223. Considers Smuggling Rules, Xinhua [in Chinese], Nov. 17, 1987, trans. in F.B.I.S.—CHI No. 87222, Nov. 18, 1987, at 22. People caught smuggling narcotics, weapons, ammunition, counterfeit money, gold, silver, or other precious metals, rare cultural relics, and any goods with a value in excess of one half a million yuan will receive the death sentence. Id.

224. Id. Any person convicted of embezzling more than 50,000 yuan will receive the death penalty. Id.

225. Id. Any person accepting a bribe in excess of 10,000 yuan will receive life imprisonment or the death sentence. Id.


227. See Economic. Criminal Cases Targeted, China Daily, Apr. 21, 1988, at 3 (discussing the heightened role of the Public Security Ministry in curbing economic crimes). The public Security Ministry is also slated to receive independent decision making authority in carrying out its tasks. Id.; Qu Yingpu, New Ministry Seeks Out Financial Corruption, China Daily, Jan. 13, 1988, at 2 (providing examples of cases investigated by the MOS). From September 1987 to December 1987, the MOS investigated 379 cases involving illegal activities between Chinese firms and foreign companies. Id.

In 1988 economic crime-reporting centers mushroomed in China. Chengdu Citizens Report Suspected Money Crimes, China Daily, Aug. 9, 1988, at 3 (noting, for example, that residents in Chengdu, a large city and capital of Sichuan Province, reported 390 cases of economic-related criminal activity in a one-month period).

its open-door policy. The effects of increased economic crime on Chinese society erupted in June 1988, when students of Beijing University held rallies condemning corruption by government officials and demanding rights to freer democracy.\textsuperscript{229} Government officials, fearing the threat of social instability,\textsuperscript{230} reacted by issuing warnings against impeding economic reforms and the open-door policy.\textsuperscript{231} The students reasserted their demands for democracy and an end to government corruption in demonstrations during the spring of 1989.\textsuperscript{232} The govern-

\begin{itemize}
  \item attributing inflation, corruption, and income disparities to relaxed Party controls and a reformed pricing system.
  \item Press Warns of Danger of Reforms, S. China Morning Post, June 10, 1988, at 8.
  \item Ignatius, Chinese Leaders Will Seek to Maintain Stability at Annual Parliament Session, Wall St. J., Mar. 20, 1989, at A11 (observing that the Party expected social unrest due to disparities in income levels and the high rate of inflation—over 30% in cities).
  \item Id.
  \item Ignatius, Death of Ex-Party Chief Hu Is Viewed as Blow to China's Liberal Reformers, Wall St. J., Apr. 17, 1989, at A9 (noting that the death of former Communist Party Chief Hu Yaobang stirred unrest among the Chinese students and intellectuals). Hu Yaobang was known for his strong advocacy of liberal reforms. Id. His death enabled conservative leadership to denounce liberal reforms and democracy. Id. Simultaneously, however, his death motivated students to loudly protest for democracy and against official corruption, which the students and intellectuals viewed as an obstacle to true economic reform. Holley, Students Protest in China, Wash. Post, Apr. 18, 1989, at A18. Several days later, the student protests broke into a 15,000 people demonstration denouncing official corruption. Southerland, Students Press Protest Rallies in Beijing, Wash. Post, Apr. 20, 1989, at A1. Protesters charged officials with squandering funds in foreign bank accounts and favoritism in placing relatives in government positions. Id. In addition, the student protesters submitted a list of demands to the government which included:
    \begin{itemize}
      \item free speech and free press, removal of restrictions on street demonstrations, rehabilitation of those victimized by two major antiblief campaigns of the past six years, public disclosure of national leaders’ income, more money for education, and a reassessment of Hu that would credit him for his contributions to democracy.
    \end{itemize}
    Holley, Chinese Students Demonstrate at Communist Party Compound, Wash. Post, Apr. 19, 1989, at A21. The demonstrations escalated to over 150,000 participants within one week, reflecting a sophisticated organizational leadership among the students. Southerland, 150,000 Chinese March to Demand Democracy, Wash. Post, Apr. 22, 1989, at A1. During the April 22 demonstration the students called for a nationwide boycott of classes. Southerland, Chinese Students Call for Boycott of Classes, Wash. Post, Apr. 23, 1989, at A25. The Party called for a halt to the demonstrations and labelled participants and activists “counterrevolutionary.” Southerland, Beijing Warns Students to Stop Protests, Wash. Post, Apr. 26, 1989, at A21. A government official agreed to a dialogue to respond to the demands proposed by the students, but the Party increased its statement that the demonstrations were a “planned conspiracy” against it. Southerland, 100,000 in Beijing Mount Defiant, Peaceful March, Wash. Post, Apr. 28, 1989, at A1. Government officials called off a major crackdown on the student demonstrators out of fear that such a crackdown would cause the demonstration to spread possibly through China. Southerland, Beijing Calls Off Crackdown on Student Protesters, Wash. Post, Apr. 29, 1989, at A1. Government officials met with
ment's imposition of martial law and the act of opening fire on the student demonstrators233 crippled the student demands for an end to government corruption, embarking on perhaps one of the strongest anticrime campaigns in Chinese history—the results of which remain unknown to date.


an attempt to curb economic reform, severely limited the number of financial institutions permitted to borrow foreign funds or issue bonds in the international capital market. As a result, only ten of the more than one hundred financial institutions in China are permitted to engage in those activities. The current atmosphere in China is still in a volatile state, thereby rendering it difficult to ascertain the level of adverse impact that the latest campaign will have on China.

III. LEGAL ANALYSIS

The Chinese are presently at a cross-road. They desire economic reforms, but the current pace of reforms appears to be progressing too rapidly to assimilate easily into existing Chinese society. Economic reforms outdistance the legal and economic policies implemented to regulate efficiently economic growth and political change. When the Party opened up the country's doors to the world ten years ago, it was ill prepared for the tremendous influx of foreign investment. In reaction to the amount of foreign trade activity and in an effort to appease foreign investors' concerns, the Party codified new laws. In the meantime, however, to stifle the increase in corruption, the Party reverted back to political mass campaigning—a signal of weakness in the legal structure.

When tracking the economic criminal events of the past ten years, the reasons for the economic slow down become more obvious. First, the Party appears unable to control the amount of criminal economic activity. Despite its major anticorruption campaigns, decisions, and res-
olutions enacting harsher sanctions, economic criminal activity continues to increase. Second, the concept of decentralized power and localism in their nascent stages have greatly impacted the structure of the Chinese government and society. At the outset of the open-door policy, the majority of economic criminal activity remained confined to the special economic zones. Now, increased regulatory power at the local level throughout China creates more opportunity for economic criminal activity.

The Party is also concerned with underlying changes in behavioral patterns because of economic reforms. As noted above, during the Maoist period the Party ruled by imposing fear and demanding that Chinese citizens behave in an altruistic manner for the benefit of the whole society. The demise of moral authority instigated rapacious behavior.

More importantly, the Chinese succeeded in masking the inherent problems of a developing economy by focusing on the results and consequences of economic reforms publicly, instead of creating a foundation to provide a transition from a state-controlled to a market-oriented economy. The Party chose to highlight economic crimes, while only haphazardly fashioning remedies to address the most significant problems of economic reform, namely, political reform, centralized authority, separation of powers, price reform, and inflation.

The Party claims corruption exists due to the influx of capitalistic influences and ideas through the open-door policy. It also, however, continues to identify causes that are endemic to developing socialist countries with centralized government authority. Political favoritism, poor data collection, lack of managerial responsibility, a two-tier pricing system, sparse and nebulous laws, and lack of independent judicial power breed corrupt activity. It appears that capitalist influences through foreign investment activities provide the opportunity for more

241. See supra notes 98-99, 164-66 and accompanying text (illustrating several resolutions that imposed harsher sanctions).


244. Chinese Officials See Rapid Growth Continuing in 1989, Wall St. J., Jan. 20, 1989, at A18 (stating that the 1988 official inflation rate in China was 18.5%).

245. See supra note 15 (discussing the correlation between the open-door policy and corruption).
substantial criminal activity. Opportunity, however, does not amount to causation.

Finally, despite the codification of the Criminal Law Code and the Criminal Procedure Code, compliance with these laws remain an obstacle to economic reform. It is difficult for the Chinese to rely on a legal system that is tainted by memories of the Maoist period and the Cultural Revolution. Legal education and understanding of the legal system have not advanced past their embryonic stages. To complicate matters, legal education trains lawyers not to protect individual's rights, but rather to protect Chinese interests in trade and negotiations with foreign countries.

Arguably, individuals who are not protected by a legal system, who have always believed that fa (law) is corrupt, and whose own beliefs are founded in Confucianism and the concept of virtue will not abide by the legal system's laws. The drafters wrote many of these laws to promote foreign investment in the spirit of the open-door policy to prove to foreigners that China could construct a sound legal base. Although it is not clear whether the Party achieved this, it is clear that the Party continues to impose severe punishment on the Chinese people for benefitting from the open-door policy—a double-edged sword.

CONCLUSION

The 1980s mark the decade for combatting crimes in China, particularly economic crimes. The Chinese commenced positive reforms with the implementation of the Criminal Law Code and Criminal Procedure

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246. See supra note 145 (sketching the rise in economic criminal activity).
247. China's Top Leaders Acknowledge Crisis in Education Policy, Wall St. J., Mar. 27, 1989, at A5D (stating that top Party leadership recognizes that education in China is in crisis). China gave low priority to education during the last ten years. Id. Approximately thirty-three percent of the Chinese attend elementary school and ten percent attend high school or college. Id. A twenty-five percent decrease in high school enrollment has occurred since 1979. Id.; RESOLUTION ON ACQUAINTING CITIZENS WITH BASIC KNOWLEDGE OF LAW (adopted Nov. 22, 1985), in PRC LAWS, 1983-1986, supra note 8, 203 (specifying measures enacted to familiarize Chinese citizens with the legal system). The Resolution includes all people. Id. Education of the law focuses on the Constitution and civil and criminal law. Id. Legal education is taught with ideological-political education at all levels. Id. at 204. The Resolution requires all levels of local governments to implement programs promoting education about Chinese law. Id.; see supra note 1, at 208 (noting that legal issues appear in popular media on a daily basis); Gelatt, China's Propaganda Machine Turns Attention to Legal Education, Asian Wall St. J., Mar. 4, 1980, at 6 (describing the Party's methods for "popularizing" the criminal code); see also Southerland, Chinese Police Execute 8 Criminals in One Day, Wash. Post, Sept. 15, 1987, at A17 (quoting Deng Xiaoping as a proponent of the use of mass executions as an instrument of education).
248. See supra notes 122 and 124 (emphasizing the lawyer's role in business and foreign investment matters).
Code. These codes provide a legal framework to regulate individual reactions to the economic reforms. The anticrime and anticorruption campaigns that the Party launched serve to regulate and protect the interests of Chinese society from corrupting influences. After ten years, however, the individual measures to curb economic crimes have resulted in few effective controls: mass campaigns and trials continue to be utilized to curb social ills, judicial independence and responsibility remain limited, class struggle is still prevalent, and capital influences are still being blamed for societal corruption. Widely divergent income disparities, stark price differentials for commodities, double-digit inflation, and lack of a strong political reform are some of the reasons for the current retraction of economic reforms.

The present government slowdown in economic reform may signal a period of reflection to winnow through the melange of developments over the past ten years and to reassess its policies and to harmonize its laws with political resolutions. The retraction, however, is undoubtedly a turn inward. While the door is not as widely opened as it was in the past, it recently swung westward toward the Soviet Union—movements worthy of tracking.

249. See Leung, Chinese Modernization Drive Flagging, Wall St. J., Aug. 14, 1989, at A8 (noting foreign leaders' concern that foreign sanctions against China due to the Tiananmen massacre could "drive China into the arms of the Soviet Union"); supra note 30 (discussing political developments between the Soviet Union and China).