



In China, Law Isn't Winning

Why more Chinese don't believe in the corruption crackdown.

By Xia Yeliang
October 21, 2014

From Oct. 20 to 23, China's Communist Party is meeting for a plenary session focused on so-called *fazhi*, or rule of law, and *yifa zhiguo*, or rule by law. What that actually means: the party will rule China using existing laws, maybe with minor modifications, to avoid responsibility for the party's own obvious and unscrupulous violation of the laws it wrote.

It's been a busy time for Chinese graft-busters. In the past several months, the Chinese Communist Party has punished several high ranking officials for corruption, including former Vice Chairman of the Central Military Commission Xu Caihou, former Vice-Chairman of the Chinese People's Political Consultative Conference Su Rong, and former member of the Politburo Standing Committee, [Zhou Yongkang](#). This is the much-anticipated campaign to eradicate the "tigers" (i.e. high-ranking officials) in the party for which many have been watching and waiting, one that President Xi Jinping announced January 2013. But it may not be enough.

The public, both in China and around the world, is aware that the campaign currently being carried out by the party's Central Commission for Discipline Inspection (CCDI) has a scope and a strength that hasn't been seen in Chinese anti-corruption efforts for 30 years. Yet the cheers for even more proverbial tigers to be felled cannot match the chorus of voices on the Chinese Internet expressing skepticism about the anti-corruption campaign. Even after China's leaders have granted the CCDI a proverbial license to kill -- with a pace of four corrupted officials being [sacked](#) each week -- netizens still lack faith in the campaign.

Ask an average citizen or a high official about China's prospects and you'll likely get a similar answer: the majority of Chinese share a sense of unease. With China's political and economic outlook increasingly uncertain, neither intellectuals nor businesspeople feel safe; meanwhile, laborers suffer from inflation and a thin social safety net. For their part, corrupt officials who lack a strong patron feel threatened, while those with official backing must always be aware of which direction the political winds blow, often leading to administrative timidity. Mid-ranking corrupt officials are aware that their future is uncertain, and so some might choose to give up their life of crime and seek absolution.

There's no possibility of open criticism of the anti-corruption campaign, as both the party and the state apparatus tightly control speech in the name of social stability. When netizens express their true opinions, they are forced to do so in a brief, roundabout manner. Even within the limited

space social media, cell phones, and mobile chat platforms like WeChat provide for voicing opinions, Chinese have widely acknowledged that the systemic corruption of our institutions has created serious harm to, and enmity among, the people. Popular online sayings hold that that "there's no such thing as an uncorrupt official." If you were to "line all of the country's officials up in front of a firing squad," goes [another](#), "not a single bullet would hit an innocent." Then there's [this one](#): "The real tigers are to be found in Zhongnanhai," the compound in central Beijing where China's top leaders reside. These sayings collectively reflect a populace that has lost its faith in both the party and the system as a whole.

The cure isn't as complicated as the party makes it out to be. As a matter of fact, everyone knows that outside supervision -- be it by the media, or via online public disclosure of wrongdoing -- is the most effective way to combat corruption. In China, non-official entities that aren't caught in a web of dependence on government are more efficacious and intimidating than the CCDI or other official anti-corruption measures. In the past several years, online activism has uncovered several notable cases of official corruption, leading to disciplinary action by the party. For example, in October 2012, Yang Dacai, a provincial safety official in central Shaanxi province [lost his job](#) after netizens collected together and republished multiple online photos showing him wearing watches that no honest official could afford.

In November 2012, Lei Zhengfu, a party apparatchik in the western city of Chongqing, was [sacked](#) within three days after an sex video showing him with a then-18 year-old woman went viral; he was later sentenced to prison for 13 years.

The problem is that the government refuses to admit and endorse grassroots methods for facing down corruption that are widely supported by the general public. The party would rather stick to the existing system, notwithstanding clear evidence that the people who work at the CCDI are very reluctant to investigate cadres of similar or higher rank. Even investigating a lower-ranking official is an arduous task owing to the thick network of patronage that exists in the system.

And so we have several questions we must ask about the recent campaign against the tigers: What is to happen to the assets and property seized during these investigations? Chinese aren't seeing evidence this property is being used to improve citizen welfare; in some cases it is even [taken](#) by other officials before it is delivered into the public till. Will their number and amount be announced to the Chinese people? Will the facts uncovered during the investigations be made public as well? Will we ever know the official standards for sentencing corrupt officials? Will the accused have access to legal counsel or otherwise the right to speak on their own behalf?

We know from long experience that relying on the party to cure its own internal corruption is a fruitless approach; what Chinese might call "negotiating with a tiger to obtain its hide." China's reliance on political campaigns to deal with issues such as corruption are likewise impotent, for they depend upon the choices and instincts of particular leaders, including their subjective judgments, as opposed to firm and clear guidelines. Many see these selective anti-corruption drives as a means to purge political dissidents or competing political factions. Struggles for power that are masked as anti-corruption drives may net some corrupt officials, but they are unable to improve the overall atmosphere of corruption. The Chinese people are disgusted with

this political gamesmanship; after authorities fell one bloated "tiger," a starving one with an even greater appetite is sure to emerge.

Today's anti-corruption measures are characterized by pragmatism and opportunism. Yet more importantly, the campaign relies on what Chinese people refer to as *renzhi*, or "rule by man," rather than *fazhi*, or "rule of law." At its most essential, it upholds that idea that power trumps the law. For example, in the past two decades, the party has utilized "*shuanggui*," a detention and interrogation system for dealing with violations by its members, in which they are [held](#) without legal representative for days or months. This practice is clearly a violation of the law.

The essence of the *shuanggui* system is the evasion of normal legal proceedings. Those officials under investigation avoid independent judicial scrutiny, as well as the attention and oversight of Chinese citizens. In practice, some of those under *shuanggui* will seek emergency assistance from a powerful backer who will intervene in the investigatory process. The possibility of these types of outside interventions are, of course, one additional way in which mere citizens and government officials receive unequal treatment.

Even if China cannot implement judicial independence and rule of law at this stage, I hope we are able to abolish the *shuanggui* system, along with other types of compulsory and illegal methods of interrogation. Fourteen years ago, I published an article [entitled](#) "The Economics of Anti-Corruption Policies: A Cost and Benefit Analysis." According to a comparative analysis of literature focusing on developed Western nations, I found that when corruption is prevalent in certain geographic areas or organizations, the use of conventional measures to punish corruption often comes at a great cost and with only a marginal benefit.

Laws and regulations are unlikely to be effective when the institutional environment surrounding them is not properly designed. Any organization or individual that enjoys a monopoly on power - - and is free from supervision or outside restrictions -- is wired for the creation of cliques, the abuse of power, and the ransacking of the public interest for private gain. For a society to produce and cultivate incorruptible government officials or public servants, it must create a meritocratic environment, alter the incentive structure among government officials, and increase transparency in order to banish corruption from public life. Together, it will make the cost of fighting corruption smaller than the cost of ignoring it -- a reversal of the current equation.

For China's policy makers and regulators, the most pressing issue at hand should be how to create open and institutionalized anti-corruption measures that are based on the rule of law and, as a result, likely to persist. Institutional and systemic corruption is clearly a sign of ineffective institutional constraints or serious deficiencies in the system, not shortcomings of private morality, as favored party [pronouncements](#) like *yide zhiguo* -- "rule China by morality" -- like to imply. After all, personal moral standards are often affected by one's education, personal experience, and the behavior of one's colleagues in their work environment. When facing temptation, even good people naturally calculate the probability and cost of punishment. The less effective the supervision, the more likely they will choose corruption. If the surrounding atmosphere is typified by corruption, individuals are gradually assimilated and therefore cannot rely on what the party calls "self-discipline."

Until the party takes fundamental, institutional measures to combat corruption, any crackdown, however ambitious, is likely to be unreliable and temporary. And an avowed emphasis on "rule by law" won't help either. Regardless of the political party or organization behind it, if an anticorruption drive works outside of an institutional framework, it is doomed to fail.

Xia Yeliang is a visiting fellow at the Cato Institute's Center for Global Liberty and Prosperity.