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# Corruption and Criminal Sentencing Dispositions in China

Qingting Hu

University of Nevada, Las Vegas, appleoi@126.com

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CORRUPTION AND CRIMINAL SENTENCING DISPOSITIONS IN CHINA

by

Qingting Hu

Bachelor of Arts  
Soochow University  
2003

A thesis submitted in partial fulfillment of  
the requirements for the

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Qingting Hu

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Department of Criminal Justice

Melissa Rorie, Ph.D.  
*Examination Committee Chair*

Kathryn Hausbeck Korgan, Ph.D.  
*Graduate College Interim Dean*

Hong Lu, Ph.D.  
*Examination Committee Member*

Tamara Madensen, Ph.D.  
*Examination Committee Member*

Anna Lukemeyer, Ph.D.  
*Graduate College Faculty Representative*

## ABSTRACT

### CORRUPTION AND CRIMINAL SENTENCING DISPOSITIONS IN CHINA

by

Qingting Hu

Dr. Melissa Rorie, Examination Committee Chair  
Professor of Criminal Justice  
University of Nevada, Las Vegas

Corruption is a prevalent crime worldwide. In China, it is drawing increased attention because the current administration is making intensified efforts to fight corruption. Despite its importance, empirical research on the characteristics and sentencing dispositions of corruption cases is rare. Based on 343 corruption cases, and using the focal concerns theory of sentencing as an interpretive framework, this study examines the main corruption offense and offender characteristics and the sentencing of corruption offenders. It also tests several specific hypotheses linked to the focal concerns theory: (1) If a case has characteristics indicating higher blameworthiness (e.g., higher amount of property involved), the sentence length will be greater. (2) If a case has characteristics indicating higher dangerousness (e.g., lack of confession), the sentence length will be greater. (3) Practical constraints and consequences (e.g., judicial reform) will impact sentence length as well. If the case was prosecuted after the judicial reform, then sentencing outcome would be more lenient.

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## CHAPTER 1

### INTRODUCTION

China's phenomenal economic growth over the past three decades has lifted hundreds of millions of people out of poverty. However, the prosperity comes at a price – the increased gap between the rich and the poor, environmental deterioration and increasing crime rates (Ghazi-Tehrani, Pushkarna, Shen, Geis, & Pontel, 2013). Among other crimes, official corruption is a serious problem, and is drawing tremendous attention from the general public.

The consequences of corruption are grave. It generates public dissatisfaction with government officials, undermines the legitimacy of the ruling Communist Party and threatens China's stability (Lu & Gunnison, 2003; Van Rooij, 2005; Wong, 2009). The current administration is acutely aware of the severity of the problem. Chinese President Xi Jinping pointed out in one of his speeches right after assuming office that corruption must be addressed to ensure the survival of the Communist Party of China (Xinhua News). Since then, his administration has waged a series of campaigns targeting both higher-level and lower-level government officials.

Other than being detrimental to political stability, corruption wastes resources and hampers economic growth. Studies indicate that corruption consumes a considerable proportion of China's GDP, and impairs public welfare and citizens' interests (Wong, 2009). In addition, bribe-offering individuals or entities gain unfair advantages, regulations are unenforced, the cost of government administration increases, and public safety, health and well-being may be compromised (Lyman, Fletcher, & Gardiner, 1978). Given its grave consequences, corruption is an important topic that warrants research.

#### Definitions of Corruption

Corruption is variously defined in Western literature, and most definitions include some variations of the misuse of official duty for private gain. According to Maingot (1994), “any definition of corruption has to incorporate, at a minimum, the notions of wrongly getting an advantage – pecuniary or otherwise – in violation of official duty and the rights of others” (p. 51).

Scholars study the definition of corruption in the Chinese setting as well. Wedeman (2004) maintains that corruption can refer to any form of improper behavior by a government official in China. It covers economic crimes such as embezzlement, bribe-taking, misappropriation of public funds, as well as other official misconduct such as having mistresses (He, 2000; Wedeman, 2004). The Chinese official definition of corruption is “the misuse of public authority for private interests” (Van Rooij, 2005, p. 292), which is very broad and could cover a wide range of activities. Corruption is a general term, but in the present study, it is used to refer to a very specific set of crimes. Because only three main categories of corruption, i.e., embezzlement, bribe-taking and misappropriation of public funds, are included in the data of this study, corruption is narrowly defined as actions of embezzlement, bribe-taking and misappropriation of public funds.

### The Global Corruption Map

Corruption, as a form of white-collar crime, is usually more widespread in developing and transitional countries (Bardhan, 1997; Yu, 2008; Zimring & Johnson, 2008), due to less effective legal systems and regulations and less satisfactory implementation of laws and regulations in these countries. According to Transparency International’s Worldwide Corruption Perception Index (CPI), in 2011, the majority of countries that are ranked on top (less corrupt) of the CPI are developed countries, whereas most of the developing countries are at the bottom of



this list.

China ranked 75<sup>th</sup> out of 182 countries, scoring 3.6 on a scale of 10. In comparison, the United States ranked 24<sup>th</sup> with scores of 7.1 (Transparency International, 2011). Scores of 8.0-10.0 indicates clean government, 5.0-8.0 suggests moderate corruption, 2.5-5.0 indicates very considerable corruption, and 0-2.5 shows extreme corruption. As such, China is considered a nation with very considerable corruption (Xiong, 2011).

In addition, due to the secretive nature of corruption, this crime is largely underreported, and accurate official statistics are hard to obtain. The underreporting could be a more serious problem in developing countries that lack an effective system of checks and balances (Deng, Zhang, & Leverentz, 2010). This is because in the absence of checks and balances in these nations, it would be difficult to detect and expose incidents of corruption.

Nevertheless, corruption is not something unique to developing countries. As long as potential corruption offenders believe the benefits outweigh costs for engage in corruption, a proportion of them will be enticed to engage in corruption. National or state features impact the magnitude of corruption because they influence the benefit and cost analysis (Glaeser & Saks, 2006).

### Purpose of the Research

Although corruption is an important subject, empirical and systematic research on the offender and offense attributes and sentencing dispositions of corruption cases is scarce, and offender and offense attributes and sentencing outcomes remain largely unknown (Deng et al., 2010; Guo, 2008; Lu & Gunnison, 2003). The present study attempts to fill the gap of knowledge on the offender and offense characteristics and sentencing outcomes of corruption in China.

Criminal sentencing is one of the most important formal social control decisions (Ulmer

& Johnson, 2004). The focal concerns theory of sentencing is a popular theory on sentencing decisions. It maintains that sentencing decisions are mainly based on three focal concerns—offender blameworthiness, offender dangerousness and practical constraints and consequences (Steffensmeier & Demuth, 2001; Steffensmeier, Kramer, & Streiger, 1993; Steffensmeier, Ulmer, & Kramer, 1998). Based on 343 corruption cases, and using Steffensmeier, Ulmer and Kramer’s “focal concerns” theory of sentencing as an interpretive framework, this study attempts to examine the criminal sentencing dispositions of corruption cases in China.

The rest of this study is organized as follows: Chapter 2 reviews the literature on white-collar crime in general and corruption offenses in specific, with a special focus on the sentencing of white-collar criminals and corruption offenders in the West and in China. Chapter 3 describes the methodology and data of the current study. Chapter 4 presents the findings and Chapter 5 provides a discussion and conclusion.

## CHAPTER 2

### LITERATURE REVIEW

Chapter 2 starts with an introduction of the focal concerns theory of sentencing. It then reviews the recent literature on white-collar offender and the sentencing of white-collar offenders, including the sentencing of corruption offenders in the West. After that, following a brief introduction of the current situation of corruption in China and its legal system and corruption statutes, it summarizes the recent literature on corruption offenders and the sentencing of corruption offenders in China.

#### The Focal Concerns Theory of Sentencing

Steffensmeier, Ulmer and Kramer's focal concerns theory of sentencing is one of the most popular theories on judicial decision making (Hartley, Maddan, & Spohn, 2007). It highlights the "particular kinds of substantive rationalities at work in sentencing decisions" (Ulmer & Johnson, 2004, p. 141). Steffensmeier et al. posit that three focal concerns impact sentencing outcomes: (1) the offender's blameworthiness, (2) the dangerousness of the offender or protection of the community and (3) practical constraints and consequences of sentencing decisions (Steffensmeier & Demuth, 2001; Steffensmeier, Kramer, & Streiger, 1993; Steffensmeier, Ulmer, & Kramer, 1998).

Blameworthiness is derived from the punishment philosophy of retribution. Sentencing research suggests that the severity of offense, which is measured by the culpability of the defendant and the damage caused by the offense, is usually the most important factor in sentencing (Steffensmeier et al., 1998). Besides offense severity, variables used to measure blameworthiness are mostly "biographical factors", including criminal history, prior

victimization by others and the offender's role in the offense (i.e., leader or not) (Steffensmeier et al., 1998, p.767).

Dangerousness, or protection of the community, is related to the punishment philosophy of incapacitation and general deterrence. It shares some common attributes with the first focal concern (i.e., blameworthiness), but is "conceptually distinct" and emphasizes the necessity to incapacitate the offenders or to deter future offenders (Steffensmeier et al., 1998, p.767).

According to Steffensmeier et al. (1998), judges are faced with the daunting challenges of protecting the community and deterring future offenders with limited information about the offenders. The dangerousness of the offender is thus predicted from the nature of the offense (e.g., violent or property), the criminal record of the offender, case information, the facts of the crime (e.g., use of a weapon), and also characteristics of the offender such as drug dependency, education, employment, or family history. It is here that the offenders' demographic characteristics fit into the focal concern framework.

Practical constraints and consequences refer to the organizational and individual concerns judges are likely to consider when meting out sentences. Organizational concerns include maintaining a working relationship with courtroom actors, case flow and considering prison capacity. Individual concerns include concerns about the offender's ability to survive prison, health conditions or family needs (Steffensmeier et al., 1998).

Because court actors are seldom provided with enough information about the offense and the offenders to make informed decisions, they rely on "perceptual shorthand" to assist their decision making "when faced with high uncertainty" (Steffensmeier et al., 1998, p. 767).

Although offense severity, type and criminal history are best predictors of sentencing dispositions, race, gender and age also have significant effects, especially when the three of them

are taken together. The interactive effects of race, gender and age produced the harshest sentence for young black males (Steffensmeier et al., 1998).

Most of the research conducted so far has lent at least partial support for the focal concern theory (Hartley et al., 2007). For example, Kramer and Ulmer (2002) found that the interactive effects of offense severity and criminal history decrease the chances of getting a downward departure. Perceived dangerousness and protection of community were important considerations when making downward departures. Moreover, blameworthiness was to some extent mitigated by the victim-offender relationship and practical constraints. Hartley, Maddan, and Spohn's (2007) study also provided support for this perspective on the whole.

Nevertheless, the focal concerns theory is still in need of thorough development as a theory, and some concepts such as practical constraints and consequences have not been fully explored (Hartley et al., 2007). As a matter of fact, Hartley et al. believe that the focal concerns theory is not much of a theory but more of a perspective. Nevertheless, it still remains a valid and effective way of assessing sentence outcomes (Hartley et al., 2007). Based on the focal concerns perspective, it is predicted that cases exhibiting higher blameworthiness (e.g., higher amount of property involved) and higher dangerousness (e.g., refused to confess) will be sentenced more harshly, and practical constraints (e.g., judicial reform) will impact sentencing as well.

#### White-collar Offenders in the West

The term “white-collar crime” was first coined by sociologist Edwin Sutherland, who defined it as “a crime committed by a person of respectability and high social status in the course of his occupation” (1940, p. 1). However, some argue that the definition of white-collar crime should be broader and should incorporate almost all non-violent deviance committed for economic gain, irrespective of social status (Brightman, 2009). White-collar crimes cover a wide

spectrum of crimes, including fraud, antitrust, tax evasion, embezzlement, bribery, inside trading, etc. This study focuses on the examination of corruption only, irrespective of the offender's social status.

Western scholars have studied white-collar crimes extensively. These studies have generated important findings regarding offender and case characteristics. Studies generally found that white-collar offenders in the United States, compared with street offenders, are more likely to be male, White, older, have higher educational attainment and hold high-status occupations (Wheeler, Weisburd, Waring, & Bodee, 1988). A typical white-collar offender is a 40-year-old White male, while the typical street offender is a 30-year-old Black male (Wheeler et al., 1988). White-collar offenders are also less likely to have a criminal record (Bibas, 2005; Podgor, 2007), more likely to be married and less likely to have a previous substance abuse diagnosis than street offenders (Ragatz, Fremouw, & Baker, 2012). This indicates that white-collar offenders have a relatively mainstream lifestyle (Gottschalk, 2013). They seldom require court-appointed attorneys, as they can afford to hire experienced private attorneys (Bibas, 2005; Podger, 2007). In fact, some argue the better representation white-collar offenders receive is one of the reasons that white-collar sentencing will never be as harsh as drug sentencing (Bibas, 2005). In addition, white-collar offenders generally are from better-off backgrounds and seem less likely to recidivate or endanger society (Bibas, 2005; Nagel & Hagan, 1982). Therefore, white-collar crime is not perceived as serious as violent or drug crime (Bibas, 2005). Linking this to the dangerousness component of the "focal concerns" theory of sentencing, it is not difficult to understand why judges tend to be soft on white-collar defendants (Bibas, 2005), as white-collar offenders are perceived as less dangerous to the community.

With regard to their attitude, white-collar offenders were found to be much less likely to

express remorse over their offense, believe that they deserve a prison sentence, or accept being labeled a criminal (Stadler & Benson, 2012), and many of them apply techniques of neutralization to justify their behavior (Siponen & Vance, 2010). For instance, they deny responsibility for the crime or find the law applied against them unjust. This can be tied back to blameworthiness, as white-collar offenders have been found to be better able to reduce their perceived blameworthiness through post-arrest “accounts” and justifications (Benson, 1985). The most common technique adopted by white-collar offenders is the denial of harm (Coleman, 1987, 1995). This is especially true for corruption offenders, because there is no direct victim in corruption cases. The above summarized the literature on white-collar offender characteristics in the West. In the following section, the sentencing of white-collar offenders will be addressed.

### The Sentencing of White-collar Offenders in the West

#### *Factors Associated with the Sentencing of White-collar Offenders*

The sentencing decision-making is a complex process. A multitude of studies have attempted to shed light on the judicial decision making process. Based on empirical research into presentence investigation reports (PSIs) and qualitative interviews with judges, Wheeler, Weisburd and Bode (1982) found that for white-collar crimes, the important determinants of the imprisonment decision were the seriousness of the offense (e.g., the dollar loss resulted from the offense, the degree of complexity or sophistication involved, the spread of harmfulness, the nature of the victim), the character of the offender (e.g., prior records, cooperation with the prosecution, show of remorse, role in the offense), legal process variables (e.g., the statutory category of the offense, source of conviction, nature of counsel), and extra-legal variables (e.g., gender, age, race, education of the offender, and the district of conviction).

Podger (2007) maintained that criminals were sentenced primarily based on the

seriousness of the offenses, with extra considerations given to being a skilled offender, being a leader or organizer, or obstructing investigation. Motive can also be a consideration at sentencing (Podger, 2007), as it may be a useful factor in differentiating the relative blameworthiness of offenders at sentencing (Hessick, 2006). Moreover, the severity of punishment also depends on whether the accused risks a trial. Individuals who go to trial but lose the case face draconian sentences, while those who accept a plea bargain receive significantly shorter sentences (Podger, 2007). In fact, the majority of them would not risk a trial. For instance, in a sample of white-collar crimes at the federal court level (N=1,094), only 18% went to trial (Wheeler et al., 1982).

#### *The traditionally lenient treatment of white-collar offenders*

Traditionally, the sanctions for white-collar offenders in the U.S. are more lenient than the punishments for street offenders (Bibas, 2005; Payne, Dabney, & Ekhomu, 2011; Van Slyke & Bales, 2012). Research suggests that compared with street offenders, white-collar offenders are much more likely to receive probation and, if they did get a prison sentence, their prison term is significantly shorter (Bibas, 2005; Richman, 2013). Another study reported that the average jail sentence in the U.S. was only 11 months in a sample of thousands of white-collar crimes (Schanzenbach & Yaeger, 2006).

The Yale white-collar crime studies in the late 1970s provided valuable insight on the rationale for the sentencing of white-collar criminals. In interviews, judges generally report some ambivalence in the sentencing of white-collar defendants. For one thing, white-collar offenders usually come from high status occupations and shoulder more social responsibilities. Therefore, they are expected to have a higher “moral responsibility to the system” (Wheeler et al., 1982, p. 645). The higher social position they enjoy, the more blameworthy they will be should they violate the trust bestowed on them. For another, these individuals typically boast of impeccable



records and some may have made considerable contributions to their communities. As such, judges are faced with the “paradox of leniency and severity” (Wheeler et al., 1982, p. 645).

In addition, the Yale studies reported significant difference in the way judges sentence white-collar crimes as opposed to street crime offenders. Specifically, judges tend to believe that the sufferings of a white-collar offender as he or she progresses through the system—from apprehension, indictment to conviction—suffice the need to punish (Mann, Wheeler, & Sarat, 1979). Therefore, judges prefer to use “economic sanctions” and other non-incarceration sentences (Mann et al., 1979, p. 96). Alternatively, some argue that judges prefer home confinement or probation because the White, educated offenders remind judges of themselves and appear to pose no danger to society (Bibas, 2005). Moreover, the characteristic of white-collar crimes also contributes to this perceived leniency in that there is no identifiable victim (Richman, 2013). The lack of identifiable victim may be considered less dangerous in the minds of judges.

#### *Recent Changes in Sentencing Practices*

In the early 1980s, “judicial inconsistency and perceived leniency” led the United States Congress to decide that it wanted tougher white-collar sentencing (Bibas, 2005, p. 740). In that spirit, the Sentencing Commission put forward sentencing guidelines, raising the sentencing ranges for white-collar crimes to be in line with larceny sentences (Bibas, 2005). Despite the Sentencing Guidelines, however, judges continue to mete out non-incarceration sentences to over 40% of embezzlement offenders (Bibas, 2005). Furthermore, there were downward departures from the Sentencing Guidelines made by judges who give probation to white-collar offenders instead of the prescribed prison terms (Bibas, 2005).

However, anecdotal evidence suggests increased punishment for white-collar offenders in

recent years (Podgor, 2007; Richman, 2013; Van Slyke & Bales, 2012). One study argues that white-collar offenders in the United States are now facing increasingly long prison terms as first-time offenders (Podgor, 2007). For example, Bernard Ebbers, former CEO of WorldCom, received a 25-year sentence in 2005. Jeffrey Skilling, former CEO of Enron, received a 24-year-and-four-month sentence in 2006. Bernard Madoff was sentenced to 150 years in prison in 2009 . These toughened sanctions against white-collar offenders may be partly attributed to the adoption of the United States Federal Sentencing Guidelines (Podgor, 2007).

The Supreme Court intervened in *United States v. Booker* in 2005 and declared the mandatory nature of Sentencing Guidelines unconstitutional (Richman, 2013). Therefore, the Sentencing Guidelines are no longer binding after the landmark case but became an advisory scheme (Bibas, 2005; Richman, 2013). The post-Booker era witnessed a remarkable return to leniency (Gazal-Ayal, 2013).

The sentencing of the criminally accused has been widely believed to be chaotic and problematic (Wheeler et al., 1982). The arbitrariness and capriciousness in sentencing is heavily criticized by the legal profession. For example, Federal Judge Marvin Frankel (1972) challenged the tremendous discretion enjoyed by sentencing judges and the lack of standards to guide judges. Sociologists, however, are more concerned about the “systematic bias and discrimination in sentencing” (Wheeler et al., 1982, p. 641), particularly the possibility of social class bias (Chambliss & Seidman, 1971; Lizotte, 1978).

Justice demands “the like treatment of like cases” (Nagel & Hagan, 1982, p. 1434). In practice, however, extra-legal factors, such as the defendants' race and social-economic status, impact case dispositions. For example, Thornberry (1979) studied the impact of the offender's social characteristics on the sentencing outcomes in the juvenile justice system. Although the

offense severity and the juvenile's prior record are most significantly related to disposition, the social characteristics of the offender also affect case outcomes. This is most obvious for the variable of race. When seriousness, prior record and social-economic status were held constant, Black Americans were significantly more likely than Whites to receive more severe sentences.

Social-economic status is another potential source of sentencing disparity. The study by Wheeler et al. (1982) on white-collar offenders in federal court revealed a strong and consistent positive relationship between the severity of the sentence and the social-economic status of the offender. Similarly, utilizing a sample of about 1,200 offenders who were employed in both high-status and low-status positions of health care professions, Payne, Dabney and Ekhomu (2011) found that high-status medical offenders (e.g., doctors and psychiatrists) were punished more severely than lower status offenders (e.g., aides and nurses).

#### *The Sentencing of Corruption Offenders*

The sentencing of corruption offenders has not been extensively studied in the United States. Ogren (1972) examined the sentencing of fraud and corruption cases in the United States and offered valuable insight into this matter. He commented that the sentencing of fraud and corruption cases was only used occasionally to set examples for potential fraud and corruption offenders. In the United States District Court for the District of Columbia, from 1970 to 1972, a total of 82 persons were sentenced in significant fraud or corruption felony cases. Among the 82, a little over half (43) received probation or suspended sentences, 9.8% (8) received prison sentences ranging from one week to six months, 15.9% (13) were sentenced to six months to three-year imprisonment, and 24% (20) were sentenced to more than three years of imprisonment, among which the longest prison term was 10 years. Five of these 20 sentences were eventually significantly reduced by the sentencing judges. In every case where the sentence

was longer than one year, the defendant was eligible for parole at the completion of one third of the sentence. Often the offender was parole eligible even earlier if the sentence was indeterminate or if there was a shorter minimum term to be served. No defendant with a more than one-year sentence served more than one third of his or her sentence. Each of these cases was prosecuted on a priority basis by a specialized staff of prosecutors and investigators, and many of the cases drew substantial media attention.

Based on media coverage between 2009 and 2012, Gottschalk (2013) studied the sentencing of 323 convicted white-collar offenders in Norway. He reported that all 323 convicted individuals received a jail sentence for a white-collar crime, which covers four main crime types – fraud, theft, manipulation (typically income tax misrepresentation) and corruption. The average jail term meted out for the 323 offenders was 2.2 years, while the range spanned from 15 days to nine years. The person who received the longest sentence (i.e., nine years) was convicted of bank fraud charges, involving US \$200 million. The sentences are modest, compared with high-profile U.S. white-collar crimes cases such as that of Madoff, but they are rather considerable in the Norwegian context (Gottschalk, 2013). Individuals convicted of fraud are sentenced more harshly than individuals convicted of corruption, partly because the amount involved in fraud usually exceeds the amount in corruption cases (Gottschalk, 2013).

The above summarized the characteristics and sentencing dispositions of white-collar offenders in the West. They will serve as reference points for the analysis on their Chinese counterparts as a comparison. Subsequently, the existing research on the characteristics and sentencing dispositions of Chinese white-collar offender and corruption offenders in particular, as well as China's unique research context, will be discussed.

#### The Changing Landscape of Corruption in China

Whereas the landscape of corruption in the United States is relatively stable, it kept changing in developing and transitioning China. From its establishment in 1949 to the 1970s, the Communist Party of China (CPC) allegedly rendered China a crime-free country (Ghazi-Tehrani, 2013). During this time, corruption was kept at a very low level because of tight ideological control, in particular Mao's continuing revolutionary ideology (Lu & Gunnison, 2003), frequent moral education and harsh punishment (Cheng & Ma, 2009). The impetus to achieve total equality in society, accompanied by poverty and frequent political campaigns made corruption a highly risky and even unthinkable option (Lu & Gunnison, 2003).

The economic reform at the end of the 1970s transformed Chinese economy from state-planned to market-driven. This shift from planned economy to market economy offered ample opportunities for corruption (He, 2000; White, 1996), which may be attributable to the relaxation of government control on citizens and a change of dominant ideology in society from class struggle to economic pursuit (He, 2000; Van Rooij, 2005). No longer seeing affluence as capitalistic and corrupt, people now view wealth as desirable. The materialist ideology of "getting rich is glorious" has replaced the communist ideology as the dominant ideology in the post-reform era (Lu & Gunnison, 2003, p. 33). Meanwhile, the gap between the rich and the poor kept increasing. These changes became breeding grounds for crimes. Official statistics reveals that there was a 340% increase in total crimes and a tenfold increase in serious crimes from 1979 to 1990. The crime rates were reportedly 55.9 per 100,000 in 1978 and 355.5 per 100,000 in 2005 (Zhang, Messner, & Liu, 2008). Along with other types of crimes, corruption also increased substantially.

In the 1980s, corrupt officials mainly engaged in "official speculation", which refers to government officials' money-making activities by taking advantage of the dual price system.

During that period, the socialist planned economy and the capitalist market-oriented economy coexisted, resulting in the peculiar phenomenon of two prices for one product (i.e., the state-controlled price and the market-decided price). As only high-level officials had access to goods at state-controlled prices, which were significantly lower, the dual economic system created opportunities for officials to make large fortunes (Lu & Gunnison, 2003).

In the 1990s, some officials employed their power to get insiders' information about financial institutions, including the burgeoning stock market. Some reassigned land-related property rights to their business favorites. Some colluded with smugglers to import goods without paying import taxes (Deng et al., 2010). By the end of the 1990s, corruption sprawled to virtually every public sector, particularly state-monopolized industries, such as land, transportation, banking and energy.

The number of prosecuted corrupt officials has increased exponentially since the economic reform in 1978, and especially after 1992 when the momentum of economic reform was augmented to an even higher level (Deng et al., 2010). The Supreme People's Procuratorate, the Supreme People's Court, and the Law Yearbook of China release and publish respectively official statistics on the prosecution of, among other crime types, corruption (Xiong, 2011). However, in China, crime statistics are rife with reliability issues, because they may be under political influences and may be manipulated for self-interested purposes (Deng et al., 2010; Ghazi-Tehrani et al., 2013; Wong, 2009; Yu, 2008). Though caution is generally advised when approaching these official data, they nevertheless provided valuable insight into the magnitude of the problem (Wong, 2009). Table 1 presents official statistics on corruption and dereliction of duty cases based on the annual reports of the People's Supreme Procuratorate.

Table 1

*Official Statistics on Corruption and Dereliction of Duty Cases*

Year	Cases investigated	Individuals investigated	Cases where the amount of property involved exceeds \$163,400 (1 million yuan)
2014	41,487	55,101	3,664
2013	37,551	51,306	2,581
2012	34,326	47,338	
2011	32,567	44,506	
2010	32,909	44,085	
2009	32,439	41,531	
2008	33,546	41,179	

It should be pointed out that these official figures did not differentiate cases of corruption from cases of dereliction of duty. Corruption refers to embezzlement, bribe-taking and misappropriation of public funds, while dereliction of duty refers to abuse of power or negligence of duty causing heavy losses to the State. Therefore, this data include a broader set of crimes compared to what the present study includes. Data before 2012 in the last column are missing because the numbers of cases where the amount of property involved exceeds \$163,400 (1 million yuan) were not disclosed. From table 1, a steadily increasing trend of cases and individuals investigated can be seen, and the annual figures of individuals investigated for corruption and abuse of power reasons stood at 40,000-60,000.

#### Detection of Corruption

The detection of corruption in China is fairly difficult, especially when high-level

officials are the offenders (Lu & Gunnison, 2003). Regular detection rates are low, due to the lack of checks and balances of powers. In addition, some corrupt officials collude with their business favorites to conceive sophisticated schemes to avoid detection. Such factors cause many corrupt officials to go unnoticed for years.

In the United States, the two common ways of detecting white-collar crimes are detection by a government agency, such as the Federal Trade Commission or the Federal Bureau of Investigation, and whistle-blowing (Lu & Gunnison, 2003). In contrast, the two main ways of detecting corruption in China are implication of other matters and whistle-blowing (Chen & Xu, 2010; Guo, 2008). The fact that fewer cases are discovered by anti-corruption agencies in China reflects the deficiency of institutional mechanisms to detect corruption.

Implication of other matters refers to the detection of one crime due to the exposure of another or due to factors such as political struggle. For example, the study by Guo (2008) showed that more than half of the sampled cases were brought to light through implication of other matters, such as investigation of another offense, or exposure of an affair. In his combined sample of 340 cases involving public officials at or above county or division level, 60% were discovered by implication of other matters, 30% by whistle-blowers, 5.9% by inspection and audit, and the remaining 4.1% by media and other means. Another study by Chen and Xu (2010) reported that among 91 high-level corruption cases where the ways of detection were traceable, 60.4% were investigated due to implication of other matters, 25.3% were reported by whistle-blowers, 4.4% involve abnormal circumstances such as disappearance or absconding, and the remaining 9.9% were discovered by other means including official anti-corruption efforts. Chen and Xu commented that implication of other matters has become an effective way of detecting corruption, and whistle-blowing is also an important method, whereas internal anti-corruption is



not as effective as citizen and external supervision.

Whistle-blowing, or reporting by informants, is extremely important for the detection and investigation of corruption offenses. An earlier study has shown that out of 1,649 corruption cases in Anhui Province, 80% were reported by citizens (Gong, 1993). Another study revealed that around 80% of corruption cases were reported to authorities by whistle-blowers or victims, rather than found by anti-corruption agencies (Sun, 2005).

In some cases involving senior officials, corruption charges increasingly became the weapons of political power struggle (Johnson, 2008). Corruption prosecution has replaced coups as the predominant way of getting rid of undesirable rivals in the political arena. For example, in the 1990s, Beijing Mayor Chen Xitong was brought down on corruption charges. His downfall was allegedly because he was viewed as a political threat by the central Party leadership (Johnson, 2008).

Another major tool in the war against corruption is the strike-hard campaigns (i.e., intensified efforts to crack down on certain crimes when authorities deemed necessary), which were popular from the 1980s well into the 2000s. Although detection rates double during strike-hard campaigns (Wedeman, 2005), they are not immune from criticism. First of all, most of these campaign efforts target low-level corruption and lower-level officials (Ghazi-Tehrani et al., 2013). Second, in order for a stable criminal justice system to function properly, it is crucial that law is enforced rationally and consistently (Cheng & Ma, 2009). Strike-hard campaigns, however, are only waged from time to time when authorities deem it necessary. Therefore, the arbitrary and whimsical nature of crackdown campaigns makes them inherently unfair and unjust. Strike-hard campaigns gradually lost momentum in the 2000s (Ghazi-Tehrani et al., 2013).

The strategies of anti-corruption are evolving with the passage of time to keep up with the changes in society. In recent years, major efforts have been made in auditing and the supervision of financial institutions and officials in key positions (Huang, 2001). The China National Auditing Office (CNAO) was established in 1982 to conduct centralized and independent financial audits for all government agencies and CPC Party organizations. Constitutionally, it was intended as an accounting and auditing office, but after 2000, it was increasingly used as “an all purpose clean government and integrity unit” whose responsibility includes fighting corruption (Wong, 2009, p. 123). To sum up, Chen and Xu (2010) concluded that after years of exploration, the Chinese anti-corruption model integrating CPC party discipline and administrative supervision from the Central Commission for Discipline Inspection and the Ministry of Supervision, the judicial supervision from the procuratorates, and the economic supervision from the auditing offices has been established, although more emphasis should be put on judicial supervision in the future.

#### The Chinese Court System

There are four court levels in China. From lower to higher level, they are base courts (at district level), intermediate courts (at city level), superior courts (at province level) and the Supreme Court. The Chinese courts have adopted a “second-instance as the final instance” system (2012 Criminal Procedure Law, Article 10), where cases usually go through two courts. Ordinary, less severe cases usually go through the base court and the intermediate court, while more severe and difficult cases go through the intermediate, superior and supreme courts (Lu & Kelly, 2008). Death penalty cases, due to their life-and-death importance and the obvious complexity involved, go through the intermediate and superior courts. In 2007, following the exposure of a couple of high-profile wrongful convictions in death penalty cases, the Supreme

Court took back its final review and approval power in death penalty cases. First instance courts shall conduct full trial, while second instance courts may or may not have a full trial. After having a review of case files and inquiring of persons concerned, if the collegiate panel deemed opening a court session unnecessary, it may make judicial decisions without a trial (2012 Criminal Procedure Law, Article 223).

Common law countries such as the United States generally use the adversarial system, which emphasizes due process and defendants' rights. Courts in the adversarial system assume the role of an impartial referee between the prosecution and the defense. On the contrary, civil law countries such as China typically adopt the inquisitorial system (Lu & Kelly, 2008), which highlights crime control and public safety, as opposed to defendants' rights. Courts in the inquisitorial system are active participants in the investigation of the facts of cases. In addition, the Chinese courts do not have exclusive judicial independence over some cases (Dicks, 1995). Judges are sometimes interfered with by authorities (e.g., the Central Commission of Disciplinary Inspection) who claim jurisdiction.

#### Statutes Governing Public Corruption

In the United States, several statutes provide the legal basis for federal prosecution of official corruption. The more general federal statutes include the Hobbs Act, the mail fraud and wire fraud statutes, the Travel Act, and the Racketeer Influenced and Corrupt Organizations Act (RICO). The statutes directly targeting public corruption are the federal official bribery and gratuity statute, the Foreign Corrupt Practices Act (FCPA), and the federal program bribery statute (Whitaker, 1992). These statutes differ in terms of the jurisdictions covered, the types of official actions, the mens rea required, whether non-public official defendants can be prosecuted, and the sentence prescribed. Hobbs Act, RICO, Travel Act, mail and wire fraud statutes, and the

program bribery statute are the most frequently used statutes to prosecute official corruption (Carey, Ellis, & Savage, 1991).

The current 2011 Chinese Criminal Law consists of ten broad crime types, and crimes of embezzlement and bribery are one of the ten broad crime types, signifying their importance in the statutes. They are explicitly stipulated in Chapter 8 of the 2011 Chinese Criminal Law, consisting of three major types of criminal acts: embezzlement, bribe-taking, and misappropriation of public funds. The three crime types are designed for state functionaries only—those who are employed or entrusted by the government, or state-owned enterprises and organizations. Separate statutes apply to non-state functionaries who are engaged in corruption-related offenses. Article 382 of China's Criminal Law defines *embezzlement* as follows: "Any State functionary who, by taking advantage of his office, appropriates, steals, swindles public money or property or by other means illegally take it into his own possession shall be guilty of embezzlement." The sentences for embezzlement range widely, from exemption of criminal punishment to the death penalty. The circumstances and corresponding sentences prescribed are provided in table 2.

Table 2

*Circumstances and Prescribed Sentences for Embezzlement and Bribe-taking in Chinese Criminal Law*

Circumstances	Prescribed sentences
≥100,000 yuan (\$16, 000)	≥10 years of imprisonment or life imprisonment and confiscation of property; death and confiscation of property if the circumstances are especially serious
50,000 - 100,000 yuan (\$8,000 – 16,000)	≥5 years of imprisonment and confiscation of property; life imprisonment and confiscation of property if the circumstances are especially serious
5,000 - 50,000 yuan (\$800 – 8,000)	1-7 years of imprisonment; ≥7 years of imprisonment if the circumstances are serious
5,000 - 10,000 yuan (\$800 - 1600), shows true repentance and gives up the embezzled money	May be given a mitigated punishment, or may be exempted from criminal punishment but shall be subjected to administrative sanctions
<5,000 yuan (\$800)	≤2 years of imprisonment or criminal detention if the circumstances are relatively serious; administrative sanctions if the circumstances are relatively minor

Article 385 defines *bribe-taking* as "Any State functionary who, by taking advantage of his position, extorts money or property from another person, or illegally accepts another person's money or property in return for securing benefits for the person shall be guilty of acceptance of bribes". The prescribed sentences for bribe-taking are the same with those of embezzlement and are also presented in table 2.

Article 384 defines *misappropriation of public funds* as "Any State functionary who, by

taking advantage of his position, misappropriates public funds for his own use or for conducting illegal activities, or misappropriates a relatively large amount of public funds for profit-making activities, or misappropriates a relatively large amount of public funds and fails to return it after the lapse of three months, shall be guilty of misappropriation of public funds". The sentences for this type of corruption range from criminal detention to life imprisonment, but less than five-year fixed-term imprisonment is the norm unless the circumstances are very serious (see table 3). Misappropriation of public funds as a crime type requires that the offender originally had the intention of returning the money to the public agency where the money was “borrowed”, instead of taking it as one’s own for good. In other words, it is an act of “borrowing”, rather than “stealing”. Therefore, it is considered less blameworthy and sentences for this crime type are lighter.

Table 3

*Circumstances and Prescribed Sentences for Misappropriation of Public Funds in Chinese Criminal Law*

Circumstances	Prescribed sentences
Misappropriates a relatively large amount of public funds	Fixed-term imprisonment of not more than 5 years of criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than 5 years.
Misappropriates a huge amount of public funds and fails to return it	Fixed-term imprisonment of not less than 10 years or life imprisonment.

As indicated by the prescribed sentences, corruption is considered a serious offense and is punishable by death. There used to be a total of 68 capital offenses in the 1997 Criminal Law, covering a wide range of violent, property, public security, and economic offenses. In 2011, the Eighth Amendment to the Criminal Law was passed, and 13 economic, non-violent capital offenses that have been rarely or never used, including smuggling of cultural relics, precious metals and wildlife products, etc. have been eliminated. Therefore, there are currently 55 capital offenses, among which more than 30 are non-violent, economic crimes (Martinez, Vertino, & Lu, 2013). Embezzlement and bribe-taking remain two of the 55 death-eligible crimes, suggesting how serious corruption offense is considered. In fact, in December 2010, there was a debate about abolishing capital punishment for embezzlement at the People's Congress, but the proposal was turned down (Ghazi-Tehrani et al., 2013).

#### Agencies Responsible for Corruption Cases

Whereas criminal cases of all other types are investigated by the police, corruption-related offenses are investigated by the procuratorates (Article 18, the 2012 Criminal Procedure Law). This is because the defendants of corruption cases are state functionaries who take advantage of their positions and abuse their powers, and the People's Procuratorates are the "legal supervisory organ" which is responsible for the supervision of state functionaries (Xiong, 2011, p. 181). The People's Procuratorates is directly supervised by the People's Congress for the prosecution of corruption offenses, and it fulfills a whole range of duties with regard to corruption cases, including "initial investigation assessment, collecting evidence and making inquiries, arrest and bail, and withdrawal of a case" (Xiong, 2011, p. 183).

Although the Procuratorate is an independent agency charged with the power of investigation and prosecution of corruption cases, in reality, however, two other agencies

function as “filters” before the legal intervention of the Procuratorate even begins (Deng et al., 2010, p. 83). Each agency has the power to decide whether they want to process these cases internally or hand them to the prosecutors (Sun, 2005). One of these agencies is the Communist Party of China (CPC)'s Central Commission for Discipline Inspection (CCDI) and its local offices. They handle cases where the officials involved are CPC members (Cheng & Ma, 2009; Pei, 2006; Yu, 2008). Since most high-level officials are CPC members, and the procedures of CCDI take precedence over that of the Procuratorate (Xiong, 2011), CCDI is a prominent actor in the realm of anti-corruption. The procedures taken by CCDI, popularly known as *shuanggui*, are special investigative measures and are compulsory in nature, as the person involved is required to give "explanations" for the case at designated time and places, and he or she usually has limited personal freedom (Xiong, 2011). The problem with *shuanggui* is that it is a compulsory measure initiated by the Party, instead of being stipulated by law, whereas Chinese law stipulates that compulsory measures may be imposed only in accordance with law (Xiong, 2011).

Another agency endowed with power in corruption matters is the Ministry of Supervision (MOS) and its local offices. They are responsible for corruption cases involving government agencies and employees (Pei, 2006; Yu, 2008). As most high level officials are also CPC Party members, the two agencies moved into the same buildings across the country in 1993 and have since then cooperated in anti-corruption endeavors, even though they have their own bureaucratic hierarchies and report to different authorities (Deng et al., 2010).

However, CCDI and the Procuratorates do not function as checks and balances for each other. Instead, the power of CCDI overwhelms that of the Procuratorates, so that the regional top Party leadership is almost untouchable by the judiciary (Cheng & Ma, 2009). The above



sections briefly summarized the characteristics of corruption, court system, statutes on corruption, criminal process for corruption cases in China. The characteristics of corruption offenders and the sentencing of corruption offenders will be addressed in the following sections.

### Corruption Offenders in China

As stated earlier, empirical research on Chinese corruption is rare (Ghazi-Tehrani, 2013). Most studies on Chinese corruption so far have been either pure theoretical arguments or qualitative case studies. Therefore, very little corruption offender and offense characteristics is known (Deng et al., 2010; Yu, 2008). It is not until recently that Chinese scholars began to look at the problem empirically (Deng et al., 2010).

Lu and Gunnison's empirical study (2003) is one of the first attempts to examine this issue. Citing 1554 summary criminal court case files in a municipality between 1986 and 2001 in China, including 195 corruption cases and 1359 street crime cases, Lu and Gunnison's empirical study (2003) confirmed the findings in western literature about white-collar offender characteristics. They find that Chinese corruption offenders, compared with street offenders, are older, more likely to be residents (as opposed to transients), and much less likely to have prior record. Only about half had legal representation, and most cases involve multiple offenders.

Wang, Chi and Sun (2008) conducted an empirical study on high-level corrupt officials. Using data obtained from the Ministry of Supervision with supplementary information from the news media, they analyzed the case files of a sample of 130 corrupt officials who ranked division or county chief and higher. All 130 corrupt officials were caught between 2003 and 2005. Wang et al. found that the majority of high-level corrupt officials were aged between 40 and 55 (72%) and were male (92%). There was an inverse relationship between education and the amount of money involved – the less educated the official was, the more money was likely to be involved.

This relationship may be spurious as multiple factors contribute to corruption. Ranks, however, have a positive relationship with the amount of money involved, because ranks have direct bearings on one's access to power and resources (Wang, Chi, & Sun, 2008).

Guo's (2008) study has shown that bribe-taking is the most common among the three corruption types (i.e., embezzlement, bribe-taking and misappropriation of public funds) in China. In a sample of 594 cases involving officials at or above county or division level, 83.7% involved bribe-taking. The same study also found that while a large amount of money was involved, the number of bribe providers was limited. For instance, among 39 senior official (vice-province or vice-ministry level) corruption cases where sources of bribes are known, only four cases involve over 10 bribe-providers, while the average number of bribe-providers in the other 35 cases is as low as 2.7 per case (Guo, 2008). The small number of bribe providers indicates that corruption offenders were careful when approaching corruption and tried to minimize risks and maximize benefits (Guo, 2008).

Chen and Xu (2010) conducted an empirical research on high-level corrupt officials who were brought into the criminal justice process between 1987 and 2010. Data of their study came from indictments, court verdicts, and official news released by the Supreme People's Procuratorate, the Supreme People's Court, Xinhua News Agency and People's Daily, etc. Their sample consists of 120 officials with positions at provincial or ministerial level. The oldest was 83 years old and the youngest was 48 at the time of the investigation. Almost half of these individuals aged between 60 and 69, the time span right before and after the retirement age. In a smaller sample of 50 cases where detailed adjudication documents are available, over 90% of corrupt officials engaged in bribe-taking, rendering bribe-taking the most common type of corruption offense. The highest value of bribe-taking in individual cases reached 200 million

yuan (\$32 million). Most of these officials are from ordinary families, and only a few are from high-level official families.

In sum, these studies found that most corruption offenders are older, male, have no prior records, engaged in bribery-taking and had limited bribe-providers. These findings are generally consistent with that of western literature. The next section focuses on the sentencing of corruption offenders.

### The Sentencing of Corruption Offenders in China

The current 2011 Chinese Criminal Law provides eight types of criminal penalties for convicted offenders, including five principle punishments: 1) public surveillance, which is the Chinese equivalent of probation, 2) criminal detention, 3) fixed-term imprisonment, 4) life imprisonment, 5) the death penalty, and three supplementary punishments: 1) fines, 2) deprivation of political rights, and 3) confiscation of property. The supplementary penalties may be imposed on top of the principle punishments or independently (Article 32-34).

A three-judge, five-judge, or seven-judge collegiate panel would preside over more complex cases, depending on the level of courts (primary, intermediate, higher or supreme) and instances (first instance or second instance), whereas one judge could preside over simple cases (2012 Criminal Procedure Law, Article 178). Simple cases are cases where the facts are clear and evidence sufficient, the defendant confesses to his crimes, does not oppose the charges against him, and agrees to use the summary procedures (2012 Criminal Procedure Law, Article 208).

When deliberating sentences, judges consider a whole range of legal, aggravating and mitigating factors (Lu & Kelly, 2008). Legal factors include facts, nature and circumstances of the crime, extent of harm caused, etc. Aggravating factors include having prior record, using cruel and unusual methods, being a leader or organizer, injuring multiple victims or causing

severe outcome, acting with evil intention, showing lack of remorse, being a police officer and so on. Mitigating factors include the victim sharing some blame, the offender having no intention or planning, surrendered voluntarily or helped investigation, being a minor, being not in a leading role, made compensation or obtained forgiveness, confessed to the crime, being mentally ill or physically challenged, having no prior record, attempted crime, etc.

In addition to their aforementioned findings regarding corruption offender characteristics, Lu and Gunnison (2003) found that corruption offenders, as compared with street offenders, were less likely to be involved with multiple offenders, much less likely to be subject to pretrial detention, more likely to plead guilty, and significantly more likely to receive bails and acquittals. Nevertheless, it is noteworthy that once convicted, corruption defendants had the same chance of going to prison as street offenders, and their prison time was significantly longer than that of street offenders. This may be explained by the underlying "moralistic concerns" (Lu & Gunnison, 2003, p. 36), in that officials violated public trust when they were supposed to serve people and behave as their role models.

Lu and Gunnison's study also shed light on the conviction rate of Chinese corruption offenses. While the conviction rate for non-corruption offenses was 84.5%, the number for corruption cases was 60.5%. Although conviction rate is not high, convicted corruption offenders receive much harsher sentences, as the majority of them (93.2%) go to prison, typically for longer than five years (Lu & Gunnison, 2003).

Chen and Xu's study (2010) found that among 50 cases of high-level official corruption where detailed judicial summary reports were available, up to 50% received fixed-term imprisonment sentences, 14% received life imprisonment, 26% was sentenced to the death penalty with a two-year suspension and about 10% was sentenced to death penalty with

immediate execution (including two officials who killed their mistress and wife respectively). In their larger sample of 120 high-level corruption cases where court case files were not available, 6 individuals (5%) were sentenced to death. Many high-level officials voluntarily confessed to their wrong doings and were therefore spared the death penalty. The rate of appeal among high-level officials was not high, and many of them started prison term right after first instance ruling.

Whether the offender confessed is a mitigating factor judges consider when delivering sentences. Criminal confession is impacted by the particular legal system and culture of each society (Lu & Miethe, 2003). The major legal concern for confession in individualistic societies like the United States is “individual rights and constitutional protection” of the defendant from coerced confession (Leo & Ofshe, 1998; Lu & Miethe, 2003, p. 551; McCann, 1998). In such societies, the accused have the constitutional right to remain silent. In communitarian societies like China, by contrast, confession is deemed the defendant’s moral awakening. Confession with sincere remorse is highly encouraged because it is believed to be a predictor of the offender’s rehabilitation (Hayley, 1995; Lu & Miethe, 2003). In addition, individuals are also expected to be submissive to the criminal justice system (Lu & Miethe, 2003).

Individuals who confess are generally treated more leniently while those who refuse to “talk” are handled more harshly. This may be because they are deemed more dangerous due to their apparent lack of repentance. In this sense, confession could be integrated into the dangerousness aspect of the focal concerns perspective. Based on 1,009 criminal court cases, Lu and Miethe’s study (2003) found that the majority of the accused confessed to their crimes, and that the rate of confession declined after the judicial reform of 1996. In addition, they found that confessors receive more lenient sanctions as compared to non-confessors.

In China, as in elsewhere, there are disparities in the sentencing of corruption offenders.

Through the analysis of a sample of high-level corrupt officials, Chen and Xu (2010) found that the amount of money is not the only determinant of sentencing, and there is a lack of consistency in sentencing. Several reasons contribute to these disparities. First of all, many provisions in the Criminal Law are vaguely worded, and terms such as light, serious and particularly serious are used (Cheng & Ma, 2009). For example, the 2011 Criminal Law provides that anyone who embezzles or takes a bribe of more than 100,000 yuan (\$16,340) will be sentenced to a prison term ranging from 10 years to life imprisonment. If the circumstances are “particularly serious”, then the death penalty could be imposed (Article 382). However, the law does not specify what circumstances qualify as “particularly serious”. Therefore, judges are left to make the sentencing decision based on their own experience and discretion.

Secondly, some extra-legal factors impact sentencing outcome. In the United States, gender, age, race and social-economic status are the major contributing factors to sentencing inequality (Wheeler et al., 1982). In China, where race is not a salient factor in sentencing decisions, social-economic status, connections (*guanxi*) and others factors such as residency status and public opinion may impact judicial decision-making.

Social-economic status is one of the major factors that are likely to impact sentencing outcomes. There are two competing views on white-collar status and sentencing (Lu & Gunnison, 2003). The first is that offenders who enjoy higher status generally get more lenient punishment, because they are in a better position to wield money and connections in their defense. The second view is that higher-status criminals are susceptible to harsher sentences because Chinese society is highly moralistic. Government officials are viewed to be similar to parental figures and held to higher moral standards. The act of corruption fails the moral expectation and violates public trust. Therefore, the Chinese expect harsher sentences for corruption offenders. Lu and Gunnison’s

(2003) study found that power and social-economic status work for the benefit of corruption offenders, as high status ones are more likely to receive bail, be acquitted and receive non-incarceration sentences than low status ones because of possible connections to or influences on courtroom actors. Besides social-economic status and connections, other factors may also impact sentencing. For instance, one research on theft cases finds that both legal factors (e.g., offense severity) and extra legal factors (e.g., residency status) influence sentencing decisions (Lu & Drass, 2002).

Due to the heavy penal emphasis of the Chinese judicial culture, harsh sanctions such as death penalty and life imprisonment have been frequently meted out for serious corruption offenders (Cheng & Ma, 2009). A cursory look at the case files of the current study also reveals that these severe sentences are not consistent across similarly situated offenders. For example, in 1990, defendant Mao Xuehua, an accountant of a small organization, embezzled 78,000 yuan (around \$12,500) between 1988 and 1989, and was sentenced to death and later executed on embezzlement charges. By contrast, defendant Chu Shijian, head of Yuxi Tobacco Factory, the nation's state-owned tobacco giant, embezzled 18,920,000 yuan (\$3,040,000) between 1993 and 1995 and was sentenced to life imprisonment in 1999. His two accomplices were sentenced to 14 years and five years imprisonment respectively. Although inflation and the judicial reform in the 1990s partly contributed to the disparity, the leniency in Chu's case and the harshness in Mao's case are still noticeable.

To ensure uniformity in sentencing and to combine punishment with leniency, the Supreme People's Court issued the *Guiding Opinions on the Sentencing of Common Crimes*, which went into effect on January 1, 2014. The *Guiding Opinions* set up sentencing benchmarks for 15 common crimes, such as traffic accident crime, intentional assault, rape, robbery, and

theft. The three types of crimes in the current study (i.e., embezzlement, bribe-taking and misappropriation of public funds) have not yet been included in the 15 common crimes.

### The Judicial Reform in China

In response to a rapidly changing Chinese society since it embarked on economic reform in the late 1970s, the Chinese legal system underwent major changes in the mid-1990s. In 1996, the Criminal Procedure Law was revised, in an effort to turn China's criminal procedures from an inquisitorial model to a more adversarial model (Lu & Miethe, 2003). Subsequently in 1997, the Criminal Law was revised. After the reform, judges are only expected to review the evidence briefly, without examining the evidence substantially in order to determine guilt or innocence. Before the reform, it was judges' responsibility to bring charges and present evidences. After the reform, it became the prosecutors' responsibility to do so. Moreover, defense attorneys are allowed earlier entry into the criminal proceedings to better safeguard defendants' due process rights (Lu & Kelly, 2008).

Importantly, in the 1979 Criminal Law (the criminal law preceding the 1997 Criminal Law), no demarcation and requirements on the amount of property involved and circumstances of corruption offenses were made for corresponding sentences (Zhao, 2013). This made sentencing of offenders difficult and capricious. In order to regulate sentencing practice and prevent the capriciousness in sentencing, the 1997 Criminal Law provided specific amount of property and circumstances required for each sentencing span. In addition, a chapter (Chapter 8) dedicated especially to embezzlement and bribery was created in the 1997 Criminal Law (Zhao, 2013).

The more general revisions made in the 1996 Criminal Procedure Law and the 1997 Criminal Law as well as the more detailed changes made with regard to corruption offenses



together may have had a tremendous impact on the Chinese criminal justice system in general and the sentencing of corruption offenders in particular. Therefore, it is one of the goals of this study to examine the impact of the judicial reform on sentencing outcome.

Having reviewed previous literature on sentencing theories, characteristics of corruption offense and offenders, the sentencing of corruption offenders in the West and in China, and the research context in China, methodology and results of the current study will be discussed in the next few chapters. Based on data drawn from 343 corruption cases in China, and adopting the focal concerns theory of sentencing as an interpretative framework, this study attempts to examine the main corruption offense and offender characteristics and the sentencing of corruption offenders. It also attempts to test several specific hypotheses linked to the focal concerns theory: (1) If a case has characteristics indicating higher blameworthiness (e.g., higher amount of property involved), the sentence length will be greater. (2) If a case has characteristics indicating higher dangerousness (e.g., lack of confession), the sentence length will be greater. (3) Practical constraints and consequences (e.g., judicial reform) will impact sentence length as well. If the case was prosecuted after the judicial reform, then sentencing outcome would be more lenient

CHAPTER 3  
THE CURRENT STUDY

Methods

*Data Source and Sample*

The 343 court cases in this study are retrieved from Beijing Law Information Center ([www.chinalawinfo.com](http://www.chinalawinfo.com), or [www.pkulaw.cn](http://www.pkulaw.cn)), which began compiling and publishing judicial judgment documents in 1985. It is one of the earliest and most comprehensive depositories of court case documents in China. Among the 343 corruption court cases, 157 cases were tried between 1990 and 2000, while the other 186 were tried between 2013 and 2014. All cases in these years have been selected. As Beijing Law Information Center relies on publicly available court documents, its collections during the 1980s and the 1990s contain far fewer cases than in the later decades (e.g., in the 2000s), particularly corruption related cases. This is why the pre-reform (before 1996) data cover a wider range of years but fewer cases, whereas the post-reform (after 1997) cases were drawn from only a few years. No case was selected between 2000 and 2012 because the number of cases in 2013 and 2014 suffice our needs for case analysis.

Of all 343 cases, 275 (80.2%) were adjudicated in developing regions and 68 (19.8%) were adjudicated in developed region. Based on net income per capita, only six provinces and municipalities (i.e., Beijing, Shanghai, Tianjin, Zhejiang, Jiangsu, and Guangdong) are categorized as developed regions, while the other 25 provinces and municipalities are categorized as developing regions. The small number of developed regions explains why there are much fewer cases from developed regions.

There is always a possibility of selection bias in the studies of white-collar offender sentencing, because less serious offenses and offenses committed by higher status offenders may

be channeled through administrative and civil proceedings and therefore may not go through criminal proceedings (Cheng & Ma, 2009). In addition, Chinese courts do not disclose all cases adjudicated, because some cases are considered sensitive and are not made public in non-democratic China. Depending on their gravity, some corruption cases may be deemed capable of tarnishing the image of the Chinese leadership. Therefore, the cases in our sample do not represent a random sample but rather a convenience sample. The finding of the present study thus may have limited generalizability. However, in light of the paucity of empirical research in Chinese corruption cases, the current study is still important and much needed. Three types of corruption cases were explored in this study: embezzlement, bribe-taking, and misappropriation of public funds. All three offenses are explicitly stipulated in the Chinese Criminal Law as corruption offenses.

#### *Variables and Measures*

In each judicial judgment document, a brief summary of the case is provided, including the offender's name, occupation, region of origin, whether a defense lawyer was employed, date of arrest, date of trials, case narratives, evidence produced, defendant's defense, attorney's defense opinions, grounds of sentencing, sentencing outcomes, and other information. However, because the court case documents in this study are summary judgments, which are the official records of judicial proceedings prepared by a presiding judge or a panel of judges after a case is closed (Lu & Miethe, 2003), very little demographic information such as age, gender, marital status, and education of the defendants is provided. Some factors omitted in the summary judgment but known to the sentencing judge may have an effect on sentencing decisions, but they are not analyzed in this study. This is problematic because focal concerns theory emphasizes the perceptions of the sentencing judge. Nevertheless, this study is still able to assess focal

concerns because many other important factors, such as offense severity, prior record, and offender's attitude are available.

In this study, the dependent variable is the sentencing outcome, which is measured by the actual years of imprisonment to which the defendant is sentenced. In order to keep the dependent variable as a continuous (ratio) variable and to avoid possible skewness of data, sentences involving life imprisonment were converted to 25-year sentences, whereas both suspended death sentence and death sentence were assigned a 30-year term<sup>1</sup> (U.S. Sentencing Commission, 2015a).

The major independent variables include measures of the offense (e.g., offense severity, crime type, co-offenders involved, leadership role, return of illicit property), case processing attributes (e.g., case outcome occurred before or after the judicial reform, regions in which the case is processed, legal representation) and offender characteristics (e.g., prior records, confession). All of these variables are dummy-coded, with the exception of offense severity (i.e., the amount of property involved), which is measured on a ratio scale ranging from 0 to 2,000,000 yuan (\$320,000). Actually, the largest amount of property involved in this sample is higher than 2,000,000 yuan, but in order to avoid possible skewness of data, 2,000,000 yuan, which is the 92.1 percentile on the range from 0 to the highest amount of property involved (39,215,956 yuan), is chosen to represent the highest amount of property<sup>2</sup> (Cook, 1979). Multiple dummy variables were used to code the various categories of crime type (i.e., embezzlement, bribe-taking, misappropriation of public funds).

In order to tie the major independent variables in this study to the focal concerns perspective, the independent variables and what they meant to measure are outlined in table 4.

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<sup>1</sup> The U.S. Sentencing Commission used 470 months as a proxy for life sentence. An analysis was conducted using the Sentencing Commission's coding method for the dependant variable but results did not change significantly.

<sup>2</sup> In the Cook (1979) study, outliers were deleted, while in this study, outliers are represented by a designated number.

Offense severity, as operationalized by the amount of property involved, measures blameworthiness. Crime types also measure blameworthiness. For instance, offenders involved in misappropriation of public funds are considered less blameworthy than those involved in embezzlement and bribe-taking. Whether a co-offender is involved determines the relative blameworthiness of offenders. Defendants with a leader role contribute more to the offense and thus are more blameworthy than those with a minor role (Wheeler et al., 1982). Return of illicit property by an offender suggests reduced blameworthiness. Confession measures dangerousness, because confession with sincere remorse is believed to be a predictor of the offender's rehabilitation (Hayley, 1995; Lu & Miethe, 2003). If the offender can be rehabilitated, he or she is much less dangerous. Legal representation, a process variable, does not seem to fit into the focal concerns framework directly, but it could be a proxy for the defendant's blameworthiness and dangerousness. The lawyers' advocacy and being able to afford representation may reduce perceived blameworthiness and dangerousness in the mind of judges.

Judicial reform, a proxy for the judicial process, is predicted to impact sentencing outcome. Region is a legitimate process variable because different regions possess "different normative climates" (e.g., different levels of sensitivity to corruption) (Wheeler et al., 1982, p. 646). Although the criminal law pertains to all 31 provinces and municipalities in China, whether it is applied and interpreted the same way across regions is unknown. Both judicial reform and region are proxies of the third focal concern (i.e., practical constraints and consequences), because they impact the process and constraints (e.g., case load, inquisitorial vs. adversarial model, local court norms) that judges are bound by when delivering sentences. The original theory did not necessarily discuss process changes or region in this manner, but the original theory may consider doing so and expand the construct of practical constraints and consequences

in order to be more applicable to other cultures and settings. With the exception of legal representation, judicial reform and region, which are legal process variables, all other variables examined in this study are legal variables. Extra-legal variables such as gender, age, education, and race are not included in the analysis due to data limitations. Offender's prior record was also examined. However, because of the low numbers of corruption offenders with a prior record in this sample (only 8 out of 343), it is hard for prior record to have a discernible impact on sentencing outcomes. Therefore, the variable of prior record is excluded from the analysis due to lack of variability. This result also echoes previous literature on white-collar offenders, which maintain that they are less like to have a prior record (Bibas, 2005; Lu & Gunnison, 2003; Podgor, 2007).

Table 4

*Independent Variables and What They Meant to Measure*

Independent variables	Meant to measure
Amount of property involved (offense severity)	Blameworthiness
Crime type (embezzlement, bribe-taking, and misappropriation of public funds)	Blameworthiness
Co-offender	Blameworthiness
Leader role	Blameworthiness
Return of illicit property	Blameworthiness
Confession	Dangerousness
Legal representation	Blameworthiness and dangerousness
Reform	Practical constraints and consequences
Region	Practical constraints and consequences

## Data Analysis

To answer the research questions and test the hypotheses, several statistical techniques were employed using SPSS. First, univariate descriptive statistics were presented to reveal corruption offender characteristics and their sentences. Second, bivariate correlation analysis was conducted to demonstrate the relationship between major independent variables and the dependent variable. Finally, multivariate linear regression analysis was conducted to look at the net effect of major independent variables on the dependent variable. Via bivariate and multivariate analysis, several hypotheses made based on the focal concerns theory were tested.

## CHAPTER 4

### RESULTS

#### Corruption Offenders and Their Sentences

Results of the univariate descriptive statistics shed light on the major corruption offenders' characteristics and their sentences in China. As shown in table 5, the majority of defendants in this sample were charged with embezzlement (72.6%), had co-offenders (65.9%), were processed in less developed regions (80.2%), had offenses coming to trial before the reform era (56.6%), retained private attorneys (71.1%), gave a voluntary confession or turned themselves in (66.5%), did not have a prior record (97.7%), and did not return the illegal property to the state (56.9%). Only 14.6% of defendants are clearly indicated as a leader in the crime. The average amount of property involved was 358,670 yuan (\$58,606). The average prison term for corruption offenders in the sample is 9.63 years.

Compared with what is known about Western white-collar crimes, the sentences averaging 9.63 years in this Chinese sample are much more severe. In the United States, the average sentence length was only 9 months in a sample of 144 embezzlement offenders and 24 months in a sample of 84 bribery offenders (U.S. Sentencing Commission, 2015b). In a different study, half of fraud and corruption offenders received probation or suspended sentences, and the longest prison term was 10 years in a sample of 82 offenders (Ogren, 1972). Similar with what is known from Western literature (Podgor, 2007), offenders in this sample are also more likely to hire private attorneys (71.1%) and less likely to have a prior record (2.3%). Earlier studies in China indicated that bribe-taking is the most common corruption offense (Chen & Xu, 2010; Guo, 2008). However, the most common corruption offense is embezzlement in this study (72.6%), possibly because the prior two studies both targeted high-level officials (county or



division level or higher), while the present study covers offenders at various levels. Because data on age, gender, education, marital status etc. are missing in the sample of this study, no comparison can be made about them.

Comparing statistics before and after the judicial reform (see table 5), it is obvious that the prison term in the post-reform era is much shorter (5.60 years) than that of the pre-reform era (12.72 years), and t-test for equality of means shows the difference is statistically significant ( $t = 7.141$ ). This affirms the third hypothesis of this study—if a case was prosecuted after the judicial reform, then sentencing outcome would be more lenient. The tendency towards leniency is a natural result of social-economic development and influences from the international community. As the economy improves, personal income increases, along with inflation, and the offender is considered less blameworthy for the same amount of property embezzled and is thus sentenced less harshly. This tendency is also consistent with the international concern for human rights. However, the amount of property involved in the post-reform era is also much smaller (255,112 yuan (\$40,818)) than that of the pre-reform era (438,207 yuan (\$70,113)), and t-test is statistically significant ( $t = 2.887$ ).

One striking difference between the two eras is that 88.6% of defendants in the post-reform era confessed to their crimes or turned themselves in, whereas only 49.5% of defendants did so in the pre-reform era. T-test for equality of means shows this difference is significant ( $t = -8.316$ ). Another remarkable difference is that while 71.1% of defendants in the post-reform era returned the illicit property to the state, only 21.6% did so in the pre-reform era. T-test for equality of means indicates this difference is also significant ( $t = -10.529$ ). These findings indicate that post-reform sentence length differences may be due to case characteristics (i.e., sample bias) and therefore spurious, not due to the reform itself.

Table 5

*Descriptive Statistics for All Variables*

Variables	Coding	Overall M (SD)	Pre-reform M (SD)	Post-reform M (SD)
Years sentenced*	0-30 years	N = 343 9.63 (9.79)	n = 194 12.72 (11.60)	n = 149 5.60 (4.17)
Amount of property involved*	¥0-2000,000 (\$320,000)	¥358,670 (588,408) (\$58,606)	¥438,207(698,379) (\$70,113)	¥255,112 (380,710) (\$40,818)
Embezzlement	0 = no 1 = yes	0.726 (.47)	0.773 (.42)	0.664 (.47)
Bribe-taking	0 = no 1 = yes	0.213 (.41)	0.155 (.36)	0.289 (.45)
Misappropriation of public funds	0 = no 1 = yes	0.061 (.24)	0.072 (.30)	0.047 (.21)
Reform	0 = 1996 or earlier 1 = 1997 or later	0.434 (.50)	0.000	1.000
Region	0 = developing 1 = developed	0.198 (.40)	0.299 (.46)	0.067 (.25)
Confession*	0 = Did not confess or attitude not mentioned 1 = Confessed or turned self in	0.665 (.47)	0.495 (.50)	0.886 (.32)
Co-offender	0 = no 1 = yes	0.659 (.48)	0.67 (.47)	0.644 (.48)
Legal representation	0 = no 1 = yes	0.711 (.45)	0.691 (.46)	0.738 (.44)
Prior record	0 = no 1 = yes	0.023 (.15)	0.015 (.12)	0.034 (.18)
Leader role	0 = 1 = yes no	0.146 (.35)	0.139 (.38)	0.154 (.36)
Return of illicit property*	0 = no 1 = yes	0.431 (.50)	0.216 (.41)	0.711 (.46)

\*There were significant differences in pre-reform values compared to post-reform values on these variables.

As mentioned in the methods section, the dependent variable (i.e., years sentenced) is artificially kept as a continuous variable. To provide more information on the dependant variable, frequencies of sentencing outcomes are displayed in table 6. As table 6 shows, in the overall sample, 11.7% of the individuals did not receive any prison sentence, 36.7% of them received 5 years or less, 20.4% of them received 5-10 years, and 13.7% of them received 10-20 years of imprisonment. It is worth mentioning that 10.2% of the offenders in the sample were sentenced to death with immediate execution, which is very high.

Table 6

*Frequencies of Sentence Length*

Sentences	Overall	Pre-reform	Post-reform
	%	%	%
	<i>N</i> = 343	<i>n</i> = 194	<i>n</i> = 149
No sentence	11.7	15.5	6.7
≤ 5.0 years	36.7	23.2	54.4
5.1-10.0 years	20.4	18.5	22.8
10.1-20.0 years	13.7	11.9	16.1
Life imprisonment	5.0	8.7	0
Death with a 2-year suspension	2.3	4.1	0
Death with immediate execution	10.2	18.1	0
Total	100.0	100.0	100.0

Comparing the statistics on the sentencing outcomes before and after the judicial reform, it is noteworthy that there is a substantial increase in the percentage of defendants who received no more than five years of imprisonment after the reform. The number increased from 23.2% in the pre-reform sample to 54.4% in the post-reform sample. Furthermore, there were no life imprisonment, suspended death sentence and immediate death sentence in the post-reform sample. All 35 cases of death penalty with immediate execution (10.2%) and eight cases of suspended death sentence (2.3%) in this sample of 343 cases came to trial before the reform (1996 or earlier). No one has been put to death, suspended or immediate, after the reform in this

sample, although there were still occasional reports of death sentences for corrupt officials after 1997. The longest sentence in the post-reform era was 17 years. Essentially, we see that the prison term in the post-reform era was significantly shorter.

### Factors Impacting Sentencing Outcomes

Pearson's  $r$  correlation analysis was conducted to assess the nature and magnitude of the bivariate relationships among all major variables. Results of the bivariate analysis of the overall sample are presented in table 7 and summarized below.

As table 7 shows, in the overall sample, many of the offense, case process, and offender attributes are significantly ( $p < .05$ ) correlated with longer sentence lengths. Among offense attributes, longer sentences were given to defendants whose crime involved a large amount of money ( $r = .602$ ), who assumed leadership roles ( $r = .193$ ) and who did not return the illicit property to the state ( $r = -.306$ ). Among the case processing attributes, longer sentences were given to defendants who were processed before the judicial reform ( $r = -.361$ ), in more developed regions ( $r = .191$ ), and who did not have legal representation ( $r = -.138$ ). Of the offender variables, longer sentences were given to defendants who did not confess or their attitudes were not mentioned in the case summary ( $r = -.134$ ). There was no significant relationship between sentence length and the other offense and offender attributes, including embezzlement ( $r = -.042$ ), bribe-taking ( $r = .094$ ), misappropriation of public funds ( $r = -.082$ ), and co-offenders ( $r = -.083$ ).

The above correlation coefficients indicated that, as is expected, the amount of property involved has the strongest correlation with sentence length, because offense severity best represents blameworthiness. Judicial reform has a significant impact on sentencing, and sentences meted out after the reform were lighter. Offenders who did not confess, were process

in more developed regions, did not have legal representation, assumed leadership roles, or did not return the illicit property to the state receive longer sentences. These findings so far are in agreement with what is expected.

In an effort to examine the bivariate correlations of the pre-reform and post-reform samples respectively, two separate bivariate analyses were conducted. Results of these analyses are presented in table 8 and 9. As table 8 and 9 show, the patterns of bivariate correlations in pre-reform and post-reform samples are similar. The correlation coefficients of the amount of property involved and years sentenced remain significant in both pre-reform ( $r = .601$ ) and post-reform ( $r = .568$ ) eras. Longer sentences were given to defendants who engaged in bribe-taking in both pre-reform ( $r = .194$ ) and post-reform ( $r = .187$ ) eras as compared to embezzlement and misappropriation of public funds, whereas in the overall sample, the correlation between bribe-taking and sentence length is not significant ( $r = .094$ ). Confession has a weak but negative relationship with years sentenced in both pre-reform ( $r = -.023$ ) and post-reform ( $r = -.014$ ) eras, meaning defendants who did not confess receive longer sentences but the relationship is not statistically significant. Defendants without legal representation received longer sentences before reform ( $r = -.296$ ), whereas defendants with legal representation received longer sentences after reform ( $r = .463$ ). This relationship is counter intuitive and may be spurious. Part of the reason might be that the post-reform sentences were already much more lenient, so having an attorney post-reform did not make a remarkable difference. Defendants with leadership roles received longer sentences both before ( $r = .248$ ) and after reform ( $r = .200$ ). Defendants who failed to return the illicit property to the state received longer sentences both before ( $r = -.204$ ) and after the reform ( $r = -.085$ ).

Table 7

*Bivariate Correlation Matrix of the Overall Sample*

Variables	1	2	3	4	5	6	7	8	9	10	11	12
1. Years sentenced	1											
2. Amount of property involved	.602**	1										
3. Embezzlement	-.042	-.080	1									
4. Bribe-taking	.094	-.009	-.846**	1								
5. Misappropriation of public funds	-.082	.133*	-.416**	-.133**	1							
6. Reform	-.361**	-.154**	-.121*	.162**	-.052	1						
7. Region	.191**	.180**	.060	-.062	-.005	-.288**	1					
8. Confessed	-.134*	-.053	.062	.007	-.128*	.411**	-.174**	1				
9. Co-offenders	-.083	-.009	.261**	-.317**	.055	-.027	-.059	.010	1			
10. Legal representation	-.138*	-.146**	-.045	.048	.002	.052	-.087	.106*	-.146**	1		
11. Leader role	.193**	.135*	.161**	-.154**	-.037	.021	-.019	.153**	.297**	.081	1	
12. Return of illicit property	-.306**	-.189**	-.019	.094	-.124*	.495**	-.123*	.394**	-.106	.126*	.040	1

\*p < .05 \*\*P < .01

Table 8

*Bivariate Correlation Matrix of the Pre-reform Sample*

Variables	1	2	3	4	5	6	7	8	9	10	11
1. Years sentenced	1										
2.Amount of property involved	.601**	1									
3. Embezzlement	-.089	-.027	1								
4. Bribe-taking	.194*	-.003	-.790**	1							
5.Misappropriation of public funds	-.128	.048	-.515**	-.119	1						
6. Region	.090	.162*	.085	-.092	-.008	1					
7.Confessed	-.023	-.034	.216**	-.138	-.156*	-.038	1				
8. Co-offenders	-.083	-.009	.261**	-.317**	.055	-.059	.010	1			
9. Legal representation	-.296**	-.254**	.144*	-.207**	.057	-.148*	.149*	-.066	1		
10. Leader role	.248**	.177*	.111	-.090	-.055	-.035	.228**	.282**	.140	1	
11.Return of illicit property	-.204**	-.132	-.165*	.121	-.098	-.012	.281**	-.030	.135	.031	1

\*p < .05 \*\*P < .01

Table 9

*Bivariate Correlation Matrix of the Post-reform Sample*

Variables	1	2	3	4	5	6	7	8	9	10	11
1. Years sentenced	1										
2. Amount of property involved	.568**	1									
3. Embezzlement	-.155	-	1								
4. Bribe-taking	.187*	.117	-	1							
5. Misappropriation of public funds	-.055	.365**	-	-.141	1						
6. Region	.151	.058	-.093	.125	-.060	1					
7. Confessed	-.014	-.070	-.032	.042	-.020	-.157	1				
8. Co-offenders	-.092	.024	.630**	-	.099	-.025	-.046	1			
9. Legal representation	.463**	.131	-	.312**	-.084	.099	-.022	-	1		
10. Leader role	.200*	.074	.225**	-	-.007	.034	.036	.317**	.001	1	
11. Return of illicit property	-.085	-.153	-.076	.144	-.139	.052	.191*	-.195*	.092	.108	1

\*p < .05 \*\*P < .01



In order to identify the net impact of each major independent variable on the dependent variable (i.e., sentence length), multiple linear regression analysis was conducted and the results are presented in table 10. The standardized partial regression coefficients (i.e., Beta) as opposed to unstandardized coefficients are reported to compare the relative importance of each independent variable.

As indicated by the standardized partial regression coefficients in table 10, in the overall sample, the amount of property involved (Beta = .521), bribery-taking (Beta = .117), misappropriation of public funds (Beta = -.150), reform (Beta = -.248), co-offender (Beta = -.118), leadership role (Beta = .185) and return of illicit property (Beta = -.127) are significantly related to sentence length. In another word, offense severity (i.e., the amount of property involved), crime type (i.e., embezzlement, bribe-taking and misappropriation of public funds), co-offenders, leadership roles, return of illicit properties to the state, and judicial reform are the factors that significantly impact sentencing outcomes in corruption cases in China. There was no significant net effect of confession (Beta = .007), region (Beta = .008), and legal representation (Beta = -.070) on sentencing outcome. Although the legal representation impact is null for the overall sample, it exerts significant and opposite effects on the pre-reform and post-reform sample, which is interesting and will be discussed shortly. Altogether, 48.3% of the variation in sentence length is explained by these independent variables.

Table 10

*Multiple Linear Regression Analysis of Years Sentenced*

Variables	Overall		Pre-reform		Post-reform	
	Beta	Sig.	Beta	Sig.	Beta	Sig.
Amount of property involved	.521	.000	.504	.000	.612	.000
Bribe-taking	.117	.005	.170	.002	-.064	.429
Misappropriation of public funds	-.150	.000	-.112	.040	-.254	.000
Confessed	.007	.867	.025	.669	.055	.332
Reform	-.248	.000				
Region	.008	.840	-.008	.889	.078	.165
Co-offender	-.118	.006	-.188	.001	-.110	.174
Legal representation	-.070	.076	-.161	.006	.357	.000
Leader role	.185	.000	.234	.000	.179	.003
Return of illicit property	-.127	.006	-.111	.047	-.105	.073
R <sup>2</sup>	.483		.500		.592	

In the pre-reform sample, the amount of property involved (Beta = .504), bribery-taking (Beta = .170), misappropriation of public funds (Beta = -.112), co-offender (Beta = -.188), legal representation (Beta = -.161), leadership role (Beta = .234), and return of illicit properties (Beta = -.111) are significantly related to prison term. There was no significant net effect of confession (Beta = .025) and region (Beta = .008) on sentencing outcome. Similar with the overall sample, 50.0% of the variation in sentence length is explained by these independent variables.

In the post-reform sample, as a comparison, the amount of property involved (Beta = .612), misappropriation of public funds (Beta = -.254), legal representation (Beta = .357) and leadership role (Beta = .179) are significantly related to prison term. Return of illicit property is marginally significant (Beta = -.105,  $p = .073$ ). There was no significant net effect of bribe-taking (Beta = -.064), confession (Beta = .055), region (Beta = .078) and co-offender (Beta = -.110,  $p = .174$ ) on sentencing outcome. Altogether, 59.2% of the variation in sentence length is explained by these independent variables.

Similar with the results of bivariate analysis, the net impact of the amount of property involved remains robust, and the pattern holds for all three samples. The net effect of bribe-taking is not consistent across all three samples, probably because bribe-taking and embezzlement are treated the same in Chinese Criminal Law, and together they accounted for 93.9% of all cases in the sample, making it difficult for bribe-taking to have a significant impact alone. The net impact of misappropriation of public funds remains significant across all three samples, indicating misappropriation of public funds as a crime type is treated more leniently both before and after the reform.

Confession, contrary to what is expected, does not have a discernible impact on

sentencing across all three samples. In table 10, confession was coded as a binary variable. When coded instead as an ordinal variable (i.e., 0 = did not confess, 1 = attitude not mentioned, 2 = confessed, 3 = turned oneself in), its impact is not statistically significant either (Beta = .034,  $p = .475$ ). Region also does not have a significant impact on sentencing across all three samples, suggesting no difference in sentencing in developed versus developing regions in China. Judicial reform, as indicated by results of the overall sample (Beta = -.248,  $p = .000$ ), has a significant net impact on sentencing, and sentence length is shorter after the judicial reform. Defendants without a co-offender are more likely to receive longer sentences, and it hold for the overall sample (Beta = -.118,  $p = .006$ ) and the pre-reform sample (Beta = -.188,  $p = .001$ ), but it was not significant for the post-reform sample (Beta = -.110,  $p = .174$ ).

Legal representation is not statistically significant in the multivariate regression analysis in the overall sample (Beta = -.070,  $p = .076$ ), although it is significant in the bivariate correlation analysis ( $r = -.138$ ). Similar with patterns of bivariate analysis, in the pre-reform sample, defendants with attorneys are more likely to receive shorter sentences (Beta = -.161,  $p = .006$ ), but in the post-reform sample, defendants with attorneys are more likely to receive longer sentences (Beta = .357,  $p = .000$ ). This finding is different from western literature, which argues that effective legal representation produces more lenient sentences (Bibas, 2005). Again, this finding might be spurious and it is perhaps because the post-reform sentences were already much more lenient, so the difference attorneys make is not that remarkable.

Defendants with a leadership role are more likely to receive longer sentences

(Beta = .185,  $p = .000$ ), and the pattern holds for all three samples. Return of illicit property has a negative relationship with prison term across three samples, indicating defendants who returned the illicit property are more likely to receive shorter sentences. It is only marginally significant in the post-reform era, perhaps because the percentage of defendants who returned the illicit property increased tremendously post-reform, rendering its impact less significant as compared to the pre-reform era.

To sum up results of the above analyses, table 11 is provided below. Variables indicating higher blameworthiness (i.e., higher amount of property involved, engaged in bribe-taking, assumed leadership role) lead to longer sentences, while variables indicating lower blameworthiness (i.e., engaged in misappropriation of public funds, with co-offenders, returned the illicit property to the state) lead to shorter sentences. They affirmed the first hypothesis of this study, that is, if a case has characteristics indicating higher blameworthiness (e.g., higher amount of property involved), the sentence length will be greater. The variable indicating higher dangerousness (i.e., confession) does not appear to effect sentences significantly. This finding contradicted the second hypothesis of this study, that is, if a case has characteristics indicating higher dangerousness (e.g., lack of confession), the sentence length will be greater. Importantly, this does not mean the focal concerns theory is not applicable, but may be insignificant here because of data limitations or the unique Chinese judicial culture. The judicial reform has a substantial impact on sentencing outcomes. This affirms the third hypothesis of this study, that is, practical constraints and consequences (e.g., judicial reform) impact sentence length as well. When a case was prosecuted after the judicial reform, sentencing tended to be more lenient.

Table 11

*Summary of the Significance of Independent Variables*

Variables	Overall sample	Pre-reform sample	Post-reform sample
<b>Blameworthiness</b>			
Amount of property involved	Significant (+)	Significant (+)	Significant (+)
Bribe-taking	Significant(+)	Significant(+)	Not Significant
Misappropriation of public funds	Significant(-)	Significant(-)	Significant(-)
Co-offender	Significant(-)	Significant(-)	Not significant
Leader role	Significant(+)	Significant(+)	Significant(+)
Return of illicit property	Significant(-)	Significant(-)	Marginally Significant(-)
<b>Dangerousness</b>			
Confession	Not significant	Not significant	Not significant
Legal representation	Marginally significant (-)	Significant (-)	Significant (+)
<b>Practical constraints and consequences</b>			
Reform	Significant(-)		
Region	Not significant	Not significant	Not significant

## CHAPTER 5

### DISCUSSION AND CONCLUSION

This study yields several important findings with regard to the sentencing of corruption offenders in China. It reveals that the best predictor of sentencing outcome is the amount of property involved, which represents offense severity and is an important measurement of blameworthiness. The larger amount of property involved, the more blameworthy the offender is perceived as being, and thus the more severely he or she will be punished.

The second best predictor of the sentencing outcome is the era in which the case was processed (i.e., whether the case was adjudicated before or after the judicial reform in the late 1990s). Judicial reform is a proxy for institutional constraints that judges are bound by when considering sentences. Specifically, after the reform, judges have to consider the prescribed sentence ranges for certain amount of property and circumstances involved. The results demonstrate that the judicial reform has a substantial impact on sentencing and leads to more lenient sentences for cases tried after the reform. This trend is attributable to the changing social-economic environment. With rapid economic development, property crimes involving same or even larger amount of property are viewed less egregious than before.

The third best predictor of sentencing outcome is the offender's role in the offense (i.e., leader or not). Steffensmeier et al. (1998) clearly stated that variables used to measure blameworthiness include the offender's role in the offense (i.e., leader or not). Defendants with leadership roles are considered more blameworthy, and are therefore sentenced more harshly (Wheeler et al., 1982). This finding lends support to the focal

concern perspective.

The fourth best predictor is crime type. Misappropriation of public funds is treated more leniently, as compared to the two other corruption offense types (i.e., embezzlement and bribe-taking). This is because misappropriation of public funds is an act of “borrowing”, rather than “stealing”. Therefore, it is considered less blameworthy. This finding also lends support to the blameworthy element of the focal concern theory.

Whether the defendant has co-offenders, which is a measurement of blameworthiness, is another predictor of sentencing outcome. Defendants without co-offenders are more likely to receive longer sentences, because they are relatively more important to the crime and are thus more blameworthy.

Legal representation has countervailing impacts in the pre-reform and post reform eras – it makes sentences shorter before the reform but longer after the reform. This result might be spurious or possibly due to the unique legal culture in China. Established gradually after 1978, attorney is a relatively new profession in China, and the effectiveness of attorneys remains to be studied. In fact, a study found the representation by defense attorneys had no impact on sentencing outcome (Lu & Miethe, 2002). It is also perhaps because the post-reform sentences were already much more lenient, so the difference attorneys make is not that remarkable. Regardless of the reason, this analysis demonstrates the importance of disaggregating the data and examining sentencing decisions pre-reform separately from those post-reform.

Confession, a measurement of dangerousness, though highly encouraged in the Chinese criminal justice system, does not significantly reduce sentence length. This result is also different from Lu and Miethe’s study (2003), which reported that



confessors were treated more favorably both before (Beta = .10,  $p = 0.01$ ) and after the judicial reform (Beta = .11,  $p = 0.01$ ). This discrepancy is perhaps due to differences in the crimes included<sup>3</sup>. While all cases in the present study are corruption cases, the 1009 cases in the Lu and Miethe (2003) study include all major types of crimes ranging from violent to property and white-collar crimes. In other words, their study included a wider variety of “dangerousness” which may impact the role of confession. The difference could also be attributable to the unique Chinese judicial culture. For example, Lu and Miethe (2003) stated that confession does not ensure a concession in sentencing in most cases, and confessors still face harsh sentences even if they do confess. This partly explains why confession does not reduce sentence length significantly in this study.

Region, which means whether the case was processed in developed regions or not, is another proxy of practical constraints and local culture in the focal concerns framework, because judges are bound by their local legal culture when considering sentences. However, results of this study show that region does not significantly impact sentencing outcome.

The present study contributed to the body of empirical research on the subject of Chinese corruption case sentencing, given the lack of quantitative analysis in the field. It is, however, not without limitations. First, this sample of corruption cases is not a random sample, but instead is essentially the result of a political process. This may impact the applicability of the results of this study, because certain cases may be excluded from the sample, but what kind of cases are missing exactly is unknown. However, it seems likely that excluded cases are systematically different from those in

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<sup>3</sup> When confession was coded as an ordinal variable like the Lu and Miethe (2003) study, it remains non-significant, so differences from the present study to theirs are not due to variable classification.

the data—in other words, they are not missing at random and generalizability is certainly affected. Second, demographic information is not provided in this study due to data limitation. Therefore, variables such as age, gender, education, and marital status are not analyzed to assess their possible impact on sentencing. Future studies could examine media reports on the cases included in the database and attempt to gather more information on the offender's characteristics.

The focal concerns theory of sentencing is derived from the American setting, and it is important to see if it applies to other settings as well. This study provided at least partial empirical support for the focal concern theory in the Chinese setting, because the results of this study demonstrated that blameworthiness (as measured by offense severity, crime type, co-offender, leadership role, and return of illicit property), and practical constraints and consequences (as represented by judicial reform), are key considerations when judges deliver sentences to corruption offenders. Confession (which reflects dangerousness), and region (which represents practical constraints and consequences), do not seem to be prominent factors possibly due to the unique characteristics of the Chinese legal culture. Legal representation (a legal process variable serving as a proxy for blameworthiness and dangerousness) is important but its impact changes from pre-reform to post-reform eras. As such, the present study shows that sentencing decisions are primarily based on the offender's blameworthiness as well as practical constraints and local cultures in the Chinese setting. Therefore, the focal concerns theory of sentencing applies to this different setting as well, and can be used as a foundation for guiding China's sentencing policy. Maybe judges could put decision-making guidelines tied to the three focal concerns into writing, as this might help

achieve consistency and predictability in sentencing. The concern for dangerousness may not be very well reflected in the present study due to the non-violent nature of corruption. Data limitations also prevented studying the construct of dangerousness adequately. Future research should examine the dangerousness part of the focal concerns theory more closely. In addition, there may be need for the focal concerns theory to expand on the construct of practical constraints and consequences when being applied to other cultures and legal settings.

This research provided empirical evidence that sentences in corruption cases in China are primarily based on the amount of property involved, the major indicator of blameworthiness. It also provided empirical proof that sentences after the judicial reform are significantly more lenient than before, at least for corruption cases. After the late 1990s, death penalty in non-violent cases, such as corruption, is handed out with considerably more caution. This practice echoes the classical criminological theory that prosecution and conviction should be certain and swift, but not necessarily harsh (Beccaria, 1819), especially given the non-violent nature of the offense.

To some extent, this study also shed light on the purposes of sentencing (e.g., deterrence, restoration, etc.). Since this study does not find much support for confession, which reflects dangerousness, but instead found more support for the blameworthiness variables, such as offense severity, leader role and return of illicit property, it may be because sentencing of white-collar offenders in China reflects a desire for retribution, which is tied to blameworthiness, and judges are less concerned about incapacitation, which is tied to dangerousness, especially given the non-violent nature of corruption.

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## CURRICULUM VITAE

Graduate College  
University of Nevada, Las Vegas

Qingting Hu

### Degrees:

Bachelor of Arts, 2003  
Soochow University

Thesis Title: Corruption and Criminal Sentencing Dispositions in China

### Thesis Examination Committee:

Chairperson, Melissa Rorie, Ph.D.  
Committee Member, Hong Lu, Ph.D.  
Committee Member, Tamara Madensen, Ph.D.  
Graduate Faculty Representative, Anna Lukemeyer, Ph.D.