

2010·泰国曼谷
第十四届国际反腐败大会

In 2010 Bangkok, Thailand,
the 14th International
Anti-corruption Conference

科学制度 Scientific System

反腐论 on Anti-corruption

王明高◎著
By Wang Minggao

党建读物出版社

Party Building Books
Publishing House of China

2010·泰国曼谷
第十四届国际反腐败大会

In 2010 Bangkok, Thailand,
the 14th International
Anti-corruption Conference

科学制度

Scientific System on Anti-corruption

反腐论

王明高◎著

By Wang Minggao

党建读物出版社

Party Building Books
Publishing House of China

图书在版编目(CIP)数据

科学制度反腐论/王明高著. —北京: 党建读物出版社,
2009. 9

ISBN 978-7-5099-0018-5

I. 科… II. 王… III. 廉政建设—制度—研究—中国
IV. D630.9

中国版本图书馆 CIP 数据核字(2008)第 162194 号

科学制度反腐论

KEXUE ZHIDU FANFU LUN

王明高 著

责任编辑:任建华 装帧设计:张 冀

党建读物出版社出版发行

(北京市宣武区南横东街 6 号 邮编:100052 电话:010—58305795)

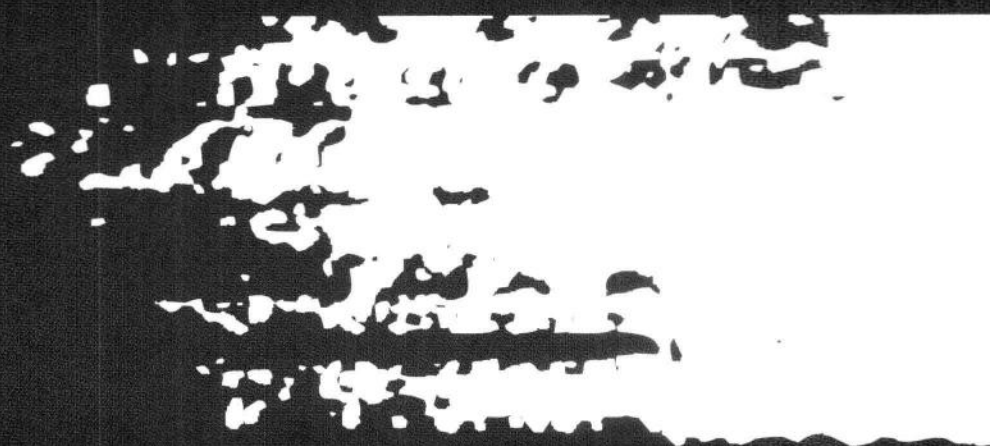
新华书店经销 北京中科印刷有限公司印刷

787 毫米×1092 毫米 16 开本 16.5 印张 200 千字

2009 年 9 月第 1 版 2009 年 9 月第 1 次印刷

ISBN 978-7-5099-0018-5/D·0019 定价: 60.00 元(平)
80.00 元(精)

本社版图书如有印装错误可随时退换(电话:010—58305909)



**谨以此书献给
世界各国所有关心和支持
反腐败事业的人们！**

This book is for people around the world
who care about and support the cause of anti-corruption!

Mr. Wang Minggao

Mr. Wang Minggao, Ph.D in Management Science and Engineering, is the group leader of an important commis-sioned



project funded at later stage of the National Social Science Fund titled *Important Strategies and Measures to Prevent and Punish Corruption in China*. Since 1996, Mr. Wang Minggao started to do research on anti-corruption. He paid much attention to anti-corruption strategies with Chinese characteristics, such as Family Property Declaration System, Financial Real-name System and Citizens' Credit Security Number, Inheritance Tax and Donation Tax, etc. In 1999, his article titled *Consideration and Suggestions on How to Take Special Actions to Control Corruption* not only received much attention from central government, leaders and experts, but also brought to light on very restricted publications. As the study goes in depth, more research achievements were published by hundreds of Chinese and foreign publications such as "People's Daily", "Guangming Daily", "Phoenix Satellite TV", "USA TODAY", "Lianhe Zaobao", "Asahi Shimbun", and it was translated into English, French, German, Spanish, Japanese, Korean, Arabic, etc. From 2003 to 2008, by the invitation of International Anti-corruption Conference Organization Committee, Mr. Wang Minggao took part in the 11th IACC held in Korea, the 12th IACC held in Guatemala as well as the 13th IACC held in Greece.

Introduction

The development of human history is similar to a river running unceasingly. In this river, each dynasty plays a leading role and follows a life cycle around prosperity, corruption and decline. Throughout the ebb and flow of each dynasty, we found that, when one dynasty changes to another and one social system changes to another, corruption always becomes a representative social problem, which acts as a catalyst or an accelerator. From China's first feudal dynasty (the Qin Dynasty) to the last (the Qing Dynasty), from the decline of the ancient Roman Empire to the drastic changes in Eastern Europe, this life cycle seems to be a historical law proved over and over again. As a result, all classes, political parties and countries wish to avoid the life cycle caused by corruption.

Corruption is a sad melody of history and an enchanting spell of power. In human's political life, neither organizations nor individuals can escape from the erosion of corruption. Though has civilization for five thousand years and has made brilliant achievements, corruption existed throughout China's history in a variety of forms; Therefore, some people say that China's Twenty-Four Histories is a battle history between corruption and anti-corruption.

Throughout the world, corruption has transcended national boundaries, race, cultural traditions and social systems, and has

become the biggest obstacle standing in the way of modernization and human development in all countries. Corruption caused the Watergate scandal in the United States, the Milan case in Italy, the scandals of former Presidents Quan Douhuan and Lu Taiyu in South Korea, and so on. Therefore, some scholars asserted that, like a cancer ravaging the human body, corruption is a “political cancer” eroding society.

Facing the serious threat of corruption, countries around the world have strengthened their efforts in fighting it; some countries even carried out massive campaigns. Taking a panoramic view of anti-corruption measures worldwide, the results are different and uncertain; even those countries acknowledged to be clean by the international community cannot say that corruption has been eliminated completely. China is now undergoing a transition from the rule of man to the rule of law, from the traditional planned economy to the socialist market economy; therefore, corruption tends to be growing and spreading, due to both historical reasons and realistic conditions. Of course, we are not scared. We should take rational consideration, deep analysis and comprehensive comparison, so to find out some scientific anti-corruption strategies and measures that will cast light on corruption in China and usher in a brighter future. This is a historic mission entrusted to us, and also the tenor of this book.

I

Definition of corruption is different in politics, economics, sociology and law. In my view, corruption means seeking personal gain by abusing public power. For instance, no one would give a cent

to a worker or peasant without power, even if he is shouting, "Bribe me, please!" in front of the White House, because it brings the briber no interest, which is always the ultimate goal of corruption. Thus, man, power and interest are the three factors of corruption, among which man is the subject of corruption, power is the carrier of corruption, and interest is the goal of corruption. No corruption can be separated from these three factors, around which all strategies to curb and punish corruption must begin.

Why does the combination of man, power and interest bring forth corruption? First, man was born with flaws. The desire to monopolize and dominate others is not only the basic feature distinguishing humans from animals, but also the psychological base and the root of corruption. Second, power leads to corruption. Power is essentially mandatory, domineering, expansive and arbitrary. A famous American scholar named Giovanni Sartor said that power is the strength and ability to control others. This feature of power is often associated with the weakness of human nature, which not only reinforces those tendencies, but also seduces people to expand and abuse power. When there are no effective external constraints, corruption occurs. The famous Enlightenment thinker named Montesquieu once said: "Constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go." The British historian named John Acton said: "Power tends to corrupt, and absolute power corrupts absolutely." Third, self-interest is the catalyst for corruption. Man is in pursuit of maximizing interests. In *Das Kapital*, Karl Marx quotes the British Trade Union leader T. J. Dunning to describe people's greed in

pursuing their interests: "With adequate profit, capital is very bold. A certain 10% will ensure its employment anywhere; 20 percent certain will produce eagerness; 50% positive audacity; 100 percent will make it ready to trample on all human laws; 300 percent, and there is not a crime at which it will scruple, nor a risk it will not run, even to the chance of its owner being hanged." Crime and corruption often follow the rule.

For thousands of years, people's struggle against corruption has generally followed two roads: One is ethics, which means to control one's behavior through self-discipline and moral conscience. It can be called anti-corruption by ethics or anti-corruption by man. The other is the legal system, which means to control one's behavior by law. It can be called anti-corruption by law. These two roads cross each other and have different emphases which bring forth four anti-corruption modes: "Upright Officials Anti-corruption", "Severe Law on Anti-corruption", "Anti-corruption Campaigns" and "Anti-corruption Systems". These four modes have their own characteristics and showed their unique values in particular historic conditions. However, history has repeatedly proved that these four anti-corruption modes neither eradicate corruption nor prevent corruption from spreading because of their innate disadvantages or other factors.

"Upright Officials Anti-corruption" is the most familiar way to fight corruption. For thousands of years, upright officials such as Bao Zheng and Hai Rui are so famous and beloved by the public for enforcing the law impartially and caring about people. What upright officials done set a moral standard for other officials and plays a

positive role in the maintenance and consolidation of feudal power. However, most officials in feudal society were corrupt. Fan Zhongyan, an official who lived in the Song Dynasty once said: "Among all government officials in the world, few are clever and upright, most are foolish and corrupt. Cases cannot be fairly judged, corrupt officials cannot be kept away. Out of 10 cases, five or six will be wrongly judged." Fan Zhongyan lived in the dynasty of Song Renzong, which was a rather peaceful period. If officials in Fan's time could be so corrupt, not to mention others. In essence, Upright Officials Anti-corruption, on the basis of the rule of man, tries to use a single man's strength to fight bad social phenomenon and protect the dynasty. Its effectiveness depends not only on each official's morality, competence, status, energy and life, but also on the ruler's understanding of and determination to eradicate corruption. In feudal dynasties, the ultimate goal of Upright Officials Anti-corruption was to protect the ruler, and the ruler decided whether to combat corruption and what methods to use. Therefore, Upright Officials Anti-corruption could only be a nine days' wonder, and it is impossible to bring a clean government and social justice.

In the face of corruption, past rulers had to impose cruel penalties to protect their own interests and eradicate corruption, which was called "Severe Law on Anti-corruption". The penalties were so cruel that officials dared not break the law; therefore, this mode helped to solve problems, ease social conflicts and safeguard the regime to a certain extent. But the function of bloody punishment cannot last for long. For instance, in the Ming Dynasty, the most severe law was established and the monarch made up his mind to

eradicate corruption, yet the Ming Dynasty was the most corrupt dynasty in history. Finally, Monarch Zhu Yuanzhang asked: "I hope to fight corruption, why even if I kill the offender in the morning, crimes occur in the evening?" The main reason was that the severe law was unstable and unfair; it often changes, especially when it comes to the monarch and his relatives. "Severe Law on Anti-corruption" proved to be incomplete and unfeasible.

"Anti-corruption Campaigns" rely on the masses to fight against corruption. Since the last century, at least 96 countries have launched anti-corruption campaigns, which become wonderful scenes on the political stage. Typical anti-corruption campaigns include "Clean Hands" in Italy, "Shu Policy Refreshes Government" in South Korea, investigations into Suharto family corruption in Indonesia, and so on. In China, the typical anti-corruption campaigns are the 1950s movements against the "three evils" and "five evils". Anti-corruption campaigns at home and abroad show that the masses fight corruption has a large-scale impact and strong deterrent effect, which can not only put huge pressure on corrupt officials and control the spread of corruption, but also guide people's democratic consciousness and sense of autonomy, as well as clean up the political environment and social atmosphere. However, modern anti-corruption campaigns have their own shortcomings. First, these campaigns are like a gust of wind which is neither stable nor long-lasting. Second, the campaigns tend to be either overzealous or anemic. Third, the anti-corruption campaigns focus on punishment rather than prevention. Fourth, the campaigns reduce economic efficiency and affect the process of social development. Due to these deficiencies, few modern civilized countries

choose to abandon anti-corruption campaigns.

When Upright Officials Anti-corruption, Severe Law on Anti-corruption and Anti-corruption Campaigns failed to fight corruption, Anti-corruption System becomes an inevitable choice. In essence, an anti-corruption system changes the rule of man to the rule of law, which is a big leap in the anti-corruption history. Anti-corruption system means to control and supervise the exercise of power through the law and legal system. Anti-corruption experiences worldwide show that anti-corruption system is the best way to curb corruption from the source, since they are universal, fundamental, stable and scientific. A good system is a sharp weapon to combat corruption. It not only meets people's reasonable expectations and achieves the realization of legitimate rights by affirmative norms, but also limits people's illegal activities and infringements on others' legitimate rights. As the Chinese leader Deng Xiaoping pointed out, a good system can restrain bad people from bad actions, while a bad system may hamper efforts of good people or indeed in certain cases, push them in the wrong direction.

II

Since anti-corruption system is the conclusion of anti-corruption experiences and historical choices, and each successive dynasty established a number of systems over thousands of years, why did all dynasties eventually die because of corruption? Under the modern reform and opening up policy, the government has promulgated many anti-corruption systems, why is corruption still rampant?

In order to maintain their dominant role, the ruling classes of each successive dynasty also developed anti-corruption system as an

important means to combat corruption. Their historical experience is worth learning from, but the limitations are obvious. First, the systems were unsystematic. All legislation and related systems failed to form a complete and specialized system; therefore, anti-corruption legislation and the related system could only be incorporated in bits and pieces into the national political system. Second, the systems were loose and unscientific. The ruling classes didn't provide rational and scientific argumentation for legislation and system standards. Third, in the feudal era, monarchs took an arbitrary attitude on the enforcement of laws, and some even changed laws and regulations frequently, especially when anti-corruption measures threatened interests of their relatives.

For the failure of those laws and regulations in fighting corruption, there are three main reasons involved:

First, the systems were not scientifically designed. Justice is the life and soul of laws and regulations. Just as laws can be divided into good law and bad law, so are the systems. A good system, being integrated, clear and sophisticated, reminds people to benefit others when they pursue their own interests. Furthermore, a system's strength is determined by its superiority or inferiority. At present, China focuses on controlling power when designing systems, but these systems have no effective mechanism to control and balance power. The reasons for this situation are, first of all, the large volume of department legislation. Department legislation often focuses on power design by neglecting its responsibility. In order to expand the department's discretionary power and keep a little more power space, the designer would rather choose a rough regulation than a fine one.

Second, the law is disordered and scattered. Provisions the same problem are found in different law with different provision, such as in criminal law, administrative law and some regulations, which affect the progress of anti-corruption work by causing the current anti-corruption system to be unavailable and lack credibility. Hu Changqing, former Vice Governor of Jiangxi Province, recalled the reasons for his corruption after being sentenced to death and said, "The system is like cats in a bullpen, where it's easy to go in and out." A man's words are good when death is near. What Hu Changqing said shows that the system is imperfect. System design is a fine job. The designer to the disobeyer is like a detective to a perpetrator. As long as a system can let people, whether he has good or bad morals, he cannot violate law, whether he is wealthy or powerful, he cannot avoid punishment. Such a system would be powerful and effective.

Second, the implementation of past systems was not rigid. It is more difficult to carry out the law than to establish it. No matter how perfect a law, it means nothing without enforcement. The British philosopher Francis Bacon said, "The consequence of an unfair trial is like more than 10 crimes. Because the crime is to ignore the law, just like the pollution of water, and unfair trials are the destruction of the law, just like the pollution of water sources." In addition to feeble law enforcement, current corruption laws are insufficient. There is no special regulation on officials' self-responsibility and obligation to be honest in existing criminal law, and punishment standards for corruption are not the same as for theft. In his 1764 work *On Crimes and Punishments*, Italian philosopher Cesare Beccaria had two

famous sayings: “Crimes are more effectually prevented by the certainty than the severity of punishment,” and “The more immediately after the commission of a crime a punishment is inflicted, the more just and useful it will be.” Why not give an immediate punishment for corruption? Deng Xiaoping once said, “In recent years, excessive tolerance, indecision, fear of difficulty and the wish to be peaceful have grown within the party, which slacken the party’s discipline, and even worse protected a number of bad people.”

Third, there is no unified guiding law on anti-corruption. At present, there are as many as 1,200 laws and regulations on the prevention and punishment of corruption. But we have no unified standard on these regulations and systems, which seriously weakens their authority. To solve this problem, we must establish a unified anti-corruption standard with which to coordinate anti-corruption organizations and guide anti-corruption legislation.

To sum up, to improve the implementation of the anti-corruption system, we have to improve the quality of the system and the rigidity of its implementation. First, the design of the system must be based on “ruffian principles”. It means that, when a system is designed, all people should be assumed to be ruffians, and only a rigid system can make people subject to the public interest. The Scottish philosopher David Hume argued that we should design a system for the worst situation, and that “consciousness” is unreliable. Second, the system should be feasible. Systems, if with no feasibility or low efficiency, can only bring waste and loss of reputation. Third, good systems should be ascended to law. Only when a system is ascended to law, or even to the will of the state, can the system be more authoritative and

powerful. If a system allows good people to live freely in society while punishing the bad, then it can be called a scientific system on anti-corruption.

III

A scientific anti-corruption system is an important part of any political system, and it covers politics, economics and legal fields. Based on the flaws of human nature, including abuse of power and pursuit of self-interest, countries around the world have established a series of systems for the prevention and punishment of corruption, by strengthening human education, controlling and balancing power as well as supervising personal property. Particularly on controlling and balancing power and supervising personal property, some developed countries have established a set of power-controlling modes according to their longstanding legal tradition, such as Family Property Declaration System, Financial Real-name System and Citizens' Credit Security Number. In addition, Finland, Switzerland, Britain, Germany, Singapore and South Korea have established anti-corruption mechanisms with their own characteristics, including not only anti-corruption regulation and organization, but also a complete set of supporting systems. All these proved that combination of these systems plays a crucial role in controlling political power and preventing crime.

An important component of anti-corruption is learning from others' experiences. In such an economically integrated and information-saturated world, countries must learn from each other's successful experiences according to their respective conditions. This is because: 1. Systems can be divided into good and bad. Countries