

# Riots and Cover-Ups: Counterproductive Control of Local Agents in China



**T**HEIR TACTICS WERE BRUTAL AND RAPACIOUS. In May 2007, local officials in the southwestern Chinese province of Guangxi descended on Bobai county in a campaign aimed at enforcing China's population laws and meeting target goals for allowable numbers of births in their jurisdiction. They forced pregnant women to have abortions. They demolished homes to make residents cough up fines demanded for excess children. Citizen anger boiled over into rioting. Thousands of angry rural residents took to the streets, sacking government offices in protest.

The vicious nature of the local Guangxi enforcement campaign was all the more striking because it directly conflicted with the explicit orders of China's top leaders. Just months before, in January 2007, Central Communist Party ("Party") and government officials had issued a joint directive ordering stronger enforcement of China's population planning laws—precisely the aim of Guangxi authorities. However, the national directive clearly limited the measures to be used. It banned forced abortions, emphasized financial aid to reward compliance with birth control policies, and downplayed the use of coercive measures to

punish noncompliance. Indeed, the director of China's national family planning council even suggested that national authorities would waive fines entirely for poor Chinese citizens.

What explains such a striking disconnect between the central aims and the local realities? Conflicting norms governing official behavior are a key factor. Local cadre responsibility systems employed to evaluate the performance of Party and government officials do not necessarily correspond with central laws and policies. In April 2007, Bobai county Party and government officials issued an implementation plan for the national population planning efforts. The plan designated hard enforcement targets. For example, it required each Party, government, or state-owned enterprise employee to successfully raise 500 yuan in "social compensation" fees from residents who had borne children in excess of population planning laws, and to get one local resident to undergo a tubal ligation or "other remedial measure" by the end of August. Failure of individual state employees to make target resulted in loss of their annual salary bonus and forfeiture of any possibility for career promotion or honors that year. Failure of township governments to reach their collective targets resulted in all township employees receiving similar penalties for up to two years. ...

**CONFLICT BETWEEN NATIONAL LAW** or central directives and local cadre evaluation systems occurs in numerous areas of Chinese law and governance. China has enacted extensive environmental laws and regulations, but Party personnel evaluations of local officials used to determine their career advancement and promotion have traditionally placed heavy emphasis on economic growth statistics. This incentivizes some local officials to violate relevant laws, falsify GDP statistics to superiors, and blindly engage in development projects in an effort to reach their annual targets.

National regulations bar local authorities from retaliating against citizen petitioners who seek to bring complaints before higher authorities. However, Party cadre evaluation systems heavily stress social order statistics. These sanction local Party secretaries based on the number of citizen petitioners who leave the jurisdiction to present grievances to higher-level officials. This leads local officials to resort to repressive tactics (including illegal detentions) to prevent petitioners from reaching higher officials and thereby negatively affecting the career prospects of local officials.

## “Conflict between national law or central directives and local cadre evaluation systems occurs in numerous areas of Chinese law and governance.”

These examples reflect an alternative incentive structure created by the target responsibility systems (*zeren zhuijiu zhi, mubiao guanli zeren zhi*) that are the core of the Chinese Party and government cadre evaluation process. These personnel systems set concrete target goals linked to officials’ salaries and career advancement. They apply sanctions and rewards based on strict, collective, and vicarious liability for the failure (or success) of officials and their units in attaining designated targets. ...

Given the critical nature of cadre responsibility systems—officially promulgated instructions to local Party and government authorities as to what their responsibilities are, and what punishments or rewards will result from failure or compliance—it is surprising how sparsely they are analyzed in the existing literature. ... Furthermore, prior literature has not fully examined core questions regarding the reasons *underlying* the use of responsibility systems. What institutional role do these systems fill, particularly their reliance on strict, vicarious, and collective liability principles? Why do Chinese authorities rely on these systems when they create problematic behavioral incentives for local officials that compete, conflict, and sometimes completely violate norms that central authorities have promulgated? ...

**THIS ARTICLE FILLS** this void. It is divided into three main parts [parts 2–4 after the introduction]. Part 2 outlines the nature and history of Chinese responsibility systems. It also identifies their key shared characteristics: Party-managed personnel systems, based on principles of strict, collective, and vicarious liability, linking the career advancement and salaries of officials to their success or failure in meeting designated goals. Part 2 also identifies the institutional role that responsibility systems play in Chinese law and governance. They are critical governance mechanisms for Chinese leaders to steer and manage a massive bureaucracy. In particular, the widespread application of strict, vicarious, and collective liability through the bureaucratic personnel system is a top-down response by authoritarian Chinese central rulers (imperial and Party alike) who are seeking to address severe principal–agent problems and informational gaps in monitoring their local officials, but who remain very uncomfortable with allowing the emergence of independent, bottom-up institutional channels to respond to these problems.

Part 3 examines the negative side effects produced by central Chinese reliance on responsibility systems to govern—particu-

larly their excessive reliance on strict, vicarious, and collective liability. This strategy creates incentives that fuel a range of abuses by local officials, including cover-ups, corruption, and distorted policy implementation. Ironically, Chinese leaders’ existing strategy for addressing the principal–agent problem at the heart of the Chinese bureaucracy is *itself* a significant source and cause of the governance problems they are seeking to address.

**PART 4 SUGGESTS** how our understanding of the Chinese legal system may need to change in light of this article’s analysis. It calls for the study of Chinese law to expand beyond formal law and recognize the functional role that internal Party regulations play within the bureaucratic system. Explicitly examining them may be essential to understanding (or altering) the actual incentive structures that affect the behavior of Chinese officials. Finally, this part raises important questions regarding the future evolution of the Chinese legal and political system. The governance strategy embodied in responsibility systems exists in uneasy tension with formal legal norms promulgated by the Chinese state in the post-1978 reform period.

It conflicts with an alternative conception of “law” supported by Chinese legal reformers, a view that sees law as outside of, and perhaps an alternative to, the top-down bureaucratic personnel control mechanisms on which Chinese authorities have traditionally relied to govern. Recent developments, however, suggest that central Chinese authorities may be backing away from their decades-long effort to govern China and their local agents, through law and legal institutions. At least some leaders appear to favor an alternative strategy—strengthening the role of responsibility systems as a tool for monitoring their local agents. This is a fundamental conflict over the core issue of how to govern the world’s largest nation. How it is resolved will have lasting implications for China’s domestic evolution and stability. ||||

*Carl Minzner, associate professor of law, focuses his teaching and research on Chinese law and politics.*

Excerpted with permission from 31 *University of Pennsylvania Journal of International Law* 53 (2009) [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1502943](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1502943)