

RESEARCH ARTICLE

Centralized Law Enforcement in Contemporary China: The Campaign to “Sweep Away Black Societies and Eradicate Evil Forces”

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Abstract

In 2018, China’s general secretary, Xi Jinping, announced a three-year war on “black societies and evil forces” and promised to take down various forms of organized crime and evil forces within society. This article examines the operational features of this particular crackdown and how they diverged from previous “strike hard” campaigns. This campaign adopted novel strategies including embedding instructions on law enforcement within criminal justice institutions, promulgating special rules on the crimes of evil forces in order to “strike” campaign targets early, and deploying intrusive investigation tactics that focused on the person and not the crime. Using democratic centralism as a liberal lens, this campaign showcases the struggle between the imperative of legality and the politics of a major campaign in China.

摘要

2018 年，习近平总书记宣布了为期三年的扫黑除恶专项斗争的开始，承诺打击各类有组织犯罪。本文介绍黑除恶专项斗争的实施特点，以及此项斗争与以往严打斗争的区别。文章着重分析了政策实施过程中的刑事司法整合部署、关于实现打早打小的恶势力犯罪规定、以及以斗争对象为侦破方向的侦查运作模式。本文以民主集中制为切口，呈现了专项斗争中政治与司法秩序的紧张关系。

Keywords: centralized enforcement; campaign justice; sweeping away black societies and eradicating evil forces campaign; evil forces; organized crime; criminal law; criminal justice; China

关键词: 集中执法; 扫黑除恶运动; 恶势力; 有组织犯罪; 法律实施; 刑法; 刑事司法; 中国

One of the distinctive features of Chinese criminal justice is the continued mobilization of campaigns to deal with officially proclaimed outbreaks of serious crime.¹ Since the early 1980s, a series of “strike hard” (*yanda* 严打) campaigns has been launched by the central government to curtail escalating crime rates. Four waves of nationwide strike hard movements were conducted in 1983–1987, 1996, 2001–2003 and 2010.² These crackdowns on crime adopted a top-down approach, exemplifying the way in which criminal justice operates when politics is in full control.³ The features of these politically instigated mobilizations in criminal justice were carried forward in the latest nationwide campaign against the crimes of so-called “black and evil forces” (*hei e shili* 黑恶势力). In January 2018, general secretary Xi Jinping 习近平 promised to eliminate various forms of organized crime and announced a three-year war on the black societies and evil forces within society in a

1 Trevaskes 2007a; 2007b.

2 Tanner, Harold 1999; Tanner, Murray 2000; 2005; Bakken 1993; Trevaskes 2010; Dai 2020.

3 Trevaskes 2010, 2.

campaign officially known as “Sweeping away black societies and eradicating evil forces” (*sao hei chu e* 扫黑除恶, the Sweep Away campaign hereafter).⁴ Compared to the previous strike hard campaigns, which emphasized the legal rhetoric of meting out justice in accordance with the law, the political nature of the Sweep Away campaign was made clear from its official announcement. In the “Notice on launching a dedicated struggle against black and evil forces” (the Notice hereafter), the Central Committee of the CCP and the State Council emphasized that the campaign was first and foremost a political task.⁵ The campaign’s guidelines, as set down in the Notice, underscore the full implementation of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and stress that the fight against black societies and evil forces should be combined with the “swatting flies” campaign at the grassroots level to strengthen the stability of the Party’s ruling foundation.⁶ In setting out the tenets of the “special struggle” against black societies and evil forces, the Notice asserts that the campaign should be conducted in accordance with the “five principles”: namely, it must adhere to the Party’s leadership and give full play to political advantages; it must adhere to the dominant position of the people and rely closely on the masses; it must adhere to comprehensive governance and practise joint management; it must adhere to strict punishment in accordance with the law and “strike early before problems grow”; and it must adhere to addressing both symptoms and root causes and implementing governance at the source. These five principles contain the ideological framework for the centralized law enforcement that underpins China’s campaign-style justice, namely the Party-led mass line policy. At the same time, they articulate the key strategies to be employed throughout the campaign in maintaining a high-pressure situation for both the law enforcement agencies and the campaign’s targets. To be specific, these key strategies included a) an enhanced integration of the political mandate and law enforcement instructions; b) the promulgation of special rules to “strike early” at the campaign targets; and c) the deployment of proactive police investigations to address the “symptoms and root causes of black and evil force crimes.”

Drawing on an analysis of two cases categorized as major evil force crimes (over 70 volumes of dossiers), in-depth conversations with legal actors involved in the two cases and 368 criminal judgments concerning black societies and evil forces, this article explores the operational strategies used in the Sweep Away campaign that diverge from those used in previous strike hard campaigns. In so doing, we have identified features of the Sweep Away campaign, as manifested in campaign practices, which have significantly weakened and distorted the criminal justice system through the centralized enforcement demand to deliver the campaign targets. Some of these strategies, such as the proactive investigation model, are not new in the context of China’s justice campaigns. They existed as by-products of an alternative mode of governance when the emphasis was on centralized law enforcement and resources were diverted to focus on problems and targets set out by central Party and state powers. Nevertheless, during the Sweep Away campaign, they were heavily relied upon and brought to the fore for the first time. This campaign approach, in large measure, epitomizes characteristics of centralized law enforcement in China which tends to “conflate policy and law-making, party and state, judicial and administrative power.”⁷

The remainder of the article is structured as follows. By way of a backdrop, the article first presents the ideological platform of the mass line policy and centralized law enforcement as an integral part of the principle of democratic centralism and socialist rule of law with Chinese characteristics. Centralized law enforcement in the form of justice campaigns is so commonly used in China that it should be discerned as an inherent feature of governance that punctuates and complements the ordinary day-to-day administration.⁸ The article proceeds with an analysis of the three strategies outlined in the “five principles.” After a brief account of the data collection, the paper analyses

4 Central Committee of the CCP and the State Council 2018.

5 Ibid.

6 Ibid.

7 Biddulph 2018, 221.

8 Ibid., 198.

the instructions on law enforcement embedded within criminal justice institutions, explaining how campaign directives from the central government were transmitted and integrated into the everyday work of criminal justice agencies. It moves on to examine the controversial definition of evil force crime, which was introduced through judicial interpretations with the purpose of nipping organized crime in the bud. The paper then explores the modus operandi of investigations during the campaign. It concludes with an assessment of the impact of these strategies on criminal law and the criminal justice system and engages with the discussion on the regularization of the anti-black and evil force policy after the campaign ended.

Centralized Law Enforcement and Campaign-style Justice

In her analysis of the principle of democratic centralism as the party-state's ideological and institutional platform, Sarah Biddulph observes that the system has to revert to campaign-style enforcement from time to time to address crises arising through failures in everyday ordinary administration.⁹ As the fundamental organizational principle of the socialist state, democratic centralism has integrated Party leadership, the position of the people as “masters of the country” and socialist rule of law into the governance of the state; it incorporates popular views in the decision-making process of the state and then transmits centralized decisions back to the people.¹⁰ The implementation of democratic centralism consists of a two-pronged mechanism of decentralized governance and centralized campaign-style enforcement. At the decentralized level, state institutions and state agents work within the socialist rule of law framework. They are organized and function in accordance with the principle of democratic centralism in coordinating the relationship between central and local state organs and between different branches of the state powers.¹¹ However, problems occur and accumulate in the decentralized form of governance, not least because the two components of the principle, namely democracy and centralism, are not equally developed or balanced in the political context. In most instances, centralized decision making is made at the expense of democratic participation.¹² As such, campaign-style law enforcement based on the mass line ideology is deployed from time to time to dissolve the widespread dissatisfaction of the public. This process, as Biddulph suggests, is not merely to engage with the popular will; rather, it is intended to guide “the consciousness of the people” to embrace these policies and decisions “as their own.”¹³ Once a decision has been made, full compliance is required. Campaign-style enforcement is, therefore, uniquely situated to appeal to the public, seeking to address failures of bureaucratic governance. At the same time, it takes on a centralized approach, with the targets and missions formulated by the central authorities. This centralized law enforcement perpetuates the leadership of the Party, which uses enforcement campaigns to demonstrate that the party-state is capable of solving social problems in the decentralized administration.¹⁴

Campaign-style enforcement as a regular method of governance in China is exemplified in the strike hard campaigns. The first nationwide strike hard campaign in 1983 was launched to address the leadership's concerns about losing control in the “balance of awe” between the party-state and criminals.¹⁵ The perceived fear was triggered by a constructed moral panic at the leadership level. A decision was subsequently made to strike out against criminals “in one fell swoop” to restore state control over social and public order.¹⁶ Similarly, the 2001–2003 campaign identified organized criminal gangs and their “protective umbrellas” in government as a major threat to social stability.

9 Ibid.
 10 Howland 2012.
 11 Constitutional Law 2018, Art. 3.
 12 Jiang 2010.
 13 Biddulph 2018, 207.
 14 Ibid., 202.
 15 Tanner, Murray 2005.
 16 Tanner, Harold 1999, 60; Trevaskes 2007b, 119.

To target specific hotspots and emerging criminal trends, Party committees and key government officials at all levels were mobilized to strengthen their leadership over the campaign and criminal justice agencies were united by “their political responsibility” in the battle.¹⁷ It is worth noting that although all the anti-crime campaigns adopted the rhetoric of meting out justice in accordance with law, the extent to which the campaign practices were contained within the parameters of the criminal law and criminal procedure law varies from campaign to campaign and at different stages within a campaign. The 1983 campaign, for instance, was known for being the “bloodiest chapter in post-Mao Chinese politics.”¹⁸ Following the “political line,” Party control over the criminal process was reinforced, which created a “brutalizing effect” in society – an estimated 30,000 death penalties were issued as a result of this nationwide strike hard campaign.¹⁹ Following the initial phase of ferocious crackdowns in 1983, a more cautious approach of “surely, accurately and relentlessly” was incorporated into Party policy in the latter half of 1984 to curb overzealous implementation.²⁰ In the 2001 campaign, threshold requirements for guilty verdicts based on the “two basics” (meaning that the basic facts had to be clear and basic evidence conclusive) were lowered to comply with the swift and severe justice demanded. Nevertheless, cautious directives issued by the Supreme People’s Court calling for judges to be “professional” were made to balance the situation.²¹

The principle of democratic centralism and the Party-led mass line policy were referred to as “people-centred development ideology” during the Sweep Away campaign. The “five principles” articulated in the Notice foregrounded the importance of the Party’s leadership and the dominant position of the people and mass line policy.²² Noticeably, the Notice starts with “three concerns” that mobilize public support and highlight the link between the Party and the people, including concerns over “the overall stability of society and the long-term peace,” concerns over “the support or disapproval of the people and the consolidation of grassroots political authority” and concerns with “carrying out great struggles, building great projects, the advancement of great causes, and realization of great dreams.”²³ In addressing these concerns, the ideology of people-centred development was deployed to lend moral legitimacy to the campaign. The Party’s leadership in the campaign was also stressed. Central leadership would formulate political mandates and campaign tasks, which would then percolate down the administrative hierarchy. According to the Notice:

The nationwide struggle to sweep away black and evil [forces] is a critical decision made by the Party Central, with Comrade Xi Jinping at the core, which concerns social stability, prosperity of the country, solidarity of people and stability of local governments ... All regions and departments must raise their political awareness, fully understand the significant implications of implementing the struggle to sweep away black and evil [forces], combine their minds and actions on the basis of the deployment of the Party Central [guidelines], meticulously plan, carefully organize, thoroughly implement and resolutely win the battle. In implementing the guidelines, Party committees and governments at all levels must regard “sweeping away black societies and eradicating evil forces” as a major political task, give it a prominent position in their work and include it on their work agenda.²⁴

As with the strike hard campaigns, political objectives were to be fulfilled, even at the expense of law.²⁵ The long-standing official discourse of doing justice in accordance with the law was replaced

17 Trevaskes 2010, 58.

18 Tanner, Murray 2000, 93.

19 Bakken 2000, 394.

20 Trevaskes 2007b, 136.

21 Trevaskes 2007a, 29.

22 Central Committee of the CCP and the State Council 2018.

23 Ibid.

24 Ibid. Author’s translation.

25 Fu 2013; Zhu, Zhou and Li 2019.

with political and military linguistic terms in the official announcement. Although the Notice mentions that state officials should “take care of matters related to the facts, evidence, procedures, and application of the law in cases” and that they are “strictly forbidden from using torture to extract confessions,” the function of law and legal procedures are instrumental in nature and subordinated to the political determination.

Criminal justice campaigns may be distinguished by their specific political agenda; yet from a legal prospective, it is the extent to which the laws and the legal system are undercut or weakened that marks the characteristics of the campaigns. The following sections will analyse how the Sweep Away campaign made inroads into China’s criminal law and criminal justice system; however, first, it is necessary to provide a brief note on how the empirical data were collected.

Data

Empirical researchers have noted the challenges posed by legal institutions, access to which has become increasingly difficult.²⁶ This is particularly the case when researching politically motivated campaigns. Political sensitivity surrounding the Sweep Away campaign is illustrated by the fact that some cases are deemed too “controversial” to be reported. The tranches of judicial documents uploaded to the centralized website run by the Supreme People’s Court are useful in mapping out the pattern of the movement. Nevertheless, they do not fully represent the wide range of cases caught in the net of the campaign. Owing to the sensitivity of the topic, to date there has been little research within the criminal justice field that sheds light on the modus operandi of the campaign.

The validation of inside information is crucial to the understanding of the campaign. After painstaking negotiations with several criminal justice institutions in different parts of China, one of the authors was granted access to the case dossiers of two “evil force” cases. Both cases were labelled as major and influential by local authorities and the investigation teams received special instructions from the public security bureau at the provincial level. The first case (coded as CASEJC) involved four defendants who were running a second-hand car trading company that had a monopoly over the local market. They extracted inflated service fees from customers by deliberately obfuscating charges and transaction taxes. The defendants were charged with an evil force crime for being embroiled in crimes such as forced trading (*qiangpo jiaoyi zui* 强迫交易罪), fraud (*zhapian zui* 诈骗罪), intentionally inflicting bodily harm (*guyi shanghai zui* 故意伤害罪), picking quarrels and provoking trouble (*xunxing zishi zui* 寻衅滋事罪, picking quarrels hereafter) and racketeering (*qiaozha lesuo zui* 敲诈勒索罪). This case comprised 27 volumes of investigative dossiers containing over 700 witness statements, 28 interrogation records, 113 identification records, hundreds of transaction documents and other miscellaneous documentation.

The second case (coded as CASEYR) concerned two defendants who were involved in organizing prostitution (*zuzhi maiyin zui* 组织卖淫罪) and forced trading. This was a complex case in which the principal defendant and his family members (wife and two sons) were all implicated (the family members being investigated separately and prosecuted for offences derived from the affiliated facts). The principal defendant, YR, was charged with organizing prostitution; however, the bulk of the case dossiers focused on the competition for intercity coach routes between YR and his business rivals from 1996 to 2019. Of the 40 case volumes, only five were pertinent to the charged crimes. This case also comprised copious documentary evidence, including more than 800 witness statements, 45 interrogation records, hundreds of identification records and other sundry documentation. During fieldwork, one of the authors was able to hold in-depth conversations with state officials, the defendants, investigating officers, prosecutors and defence lawyers working on both cases, which provided invaluable insight into the investigation and prosecution of the cases. All

²⁶ Wang 2020.

the parties involved in these two cases have been anonymized to protect the identities of the institutions and individuals.

In addition to the two cases, 368 judgments concerning evil and black force crimes were collected and examined. Of these, 309 judgments, which were handed down by the courts between 2018 and 2020, were downloaded from the central judicial platform for judgments. To complement the published judgments, we collected 59 unpublished judgments from different sources, which, for various reasons, were unpublished. A detailed content analysis of these judgments was conducted to discern the patterns of investigation and judicial decision making with respect to black and evil force crimes. The knowledge gained from *CASEJC* and *CASEYR* also helped to decipher the ways in which the judicial reasonings were versed. The 368 judgments are coded *CASE_JU[n]*. The case numbers (*anjian bianhao* 案件编号) of the 59 unpublished judgments (*CASE_JU1* to *CASE_JU59*) are not provided to keep our information sources confidential.

A Coordinated Political Task and Embedded Instructions

Unlike the strike hard campaigns, which were carried out to tackle the high rates of crime, the launch of the Sweep Away campaign from the outset was primarily a political decision. As the Notice makes it abundantly clear, it was initiated as a continuation of Xi Jinping's anti-corruption movement "at the grassroots level to dig deep into the 'protective umbrella' of the underworld forces."²⁷ In order to extend the anti-corruption campaign to the village and township levels and local communities, a mechanism of comprehensive governance and joint management was put in place to "form an overwhelming situation" of the mass line movement in the hope of "eliminating the breeding grounds of underworld forces."²⁸ During our field research, a senior state official from the local political-legal committee explained the nature of the campaign:

We should contextualize the campaign and place it against the background of China's current politics. Since the system is not based on the principle of rule of law, corruption cannot be automatically removed from the system. To clear these obstacles, the political environment of China requires periodical purification, which is necessary for the stabilization of the grassroots political authority. Hence, extreme measures are needed to keep the virtuous cycle of the system.²⁹

The sweep away black and evil forces offices (*saoheiban* 扫黑办, campaign offices hereafter) were established under the authority of the political-legal committees to direct the execution of the movement and to coordinate Party committees, different strands of criminal justice institutions (including the national security forces and the National Supervision Commission) and propaganda departments in carrying out the tasks.³⁰ To effectively direct the law enforcement agencies and meet the objectives of the campaign, campaign offices were stationed within law enforcement agencies (including the public security bureaus, the procuratorate and the criminal courts), and were heavily involved in their day-to-day operations.³¹ The campaign offices convened meetings on a regular basis to ensure the campaign policy was prioritized by the various criminal justice institutions. They were also responsible for breaking down the campaign objectives into concrete tasks and allocating them to specific enforcement agencies.³² The performance of these agencies was

27 Central Committee of the CCP and the State Council 2018.

28 Ibid.

29 Interview-S1-PL.

30 The Sweep Away Campaign is led by the Leading Group of the Specialized Struggle to Sweep Away Black and Evil Forces (*sao hei chu e zhuanxiang douzheng xiaozu*), which forms part of the Party committees, http://www.gov.cn/xinwen/2019-02/20/content_5367299.htm.

31 Fieldnote-S1.

32 Fieldnote-S2.

frequently scrutinized and reviewed by the evaluation team (*dudaozu* 督导组) of the central leading group of the Sweep Away campaign, whose function was to ensure that the tasks of the campaign were promptly fulfilled.³³ Through such arrangements, the party-state mandates were transmitted to and integrated into the everyday work of the law enforcement agencies.

The performance quota system was used to ensure that criminal justice institutions were responsive to the central mandate of the campaign. The deputy chief prosecutor of the Supreme People's Procuratorate acknowledged that quotas were imposed on the police and the procuratorate during the campaign.³⁴ *Pengpai* reported that all the basic-level procuratorates in Shandong province had been instructed to prosecute at least one black society gang crime or evil force crime in 2018; those failing to do so were marked with a demerit in their annual performance appraisal.³⁵ A similar approach was taken in other parts of China, where performance indicators were assigned to local procuratorates and the police.³⁶ Although law enforcement agencies were generally given targets to fulfil, the specific requirements for each criminal justice institution were different. During our fieldwork, we found that the campaign-orientated quota system was region-specific and predominantly applied to the police and the procuratorate. For example, in W City, a complicated matrix of appraisal calculations was set out to encourage the local police and prosecution agencies to clamp down on black or evil forces in the mineral mining industry and internet-based commercial platforms. The police in W City had to complete all the phase one investigations by 30 June 2020,³⁷ and local procuratorates were required to intervene in these police investigations and direct evidence-gathering tasks.³⁸ Unlike the police and the procuratorate, the local courts were not subject to a specialized appraisal regime during the campaign as far as we know. This arrangement to some extent allowed the courts to identify and rectify inappropriate prosecutions.³⁹ However, all cities in China were requested to periodically publish the results of the campaign, including the number of suspects who had been arrested, tried and convicted.⁴⁰ In this regard, the local courts were not immune from the political pressures to combat black and evil force crimes.

The pressure to deliver campaign results yielded productive achievements. In February 2021, the National Sweep Away Black and Evil Force Campaign Office (*quanguo saohuiban* 全国扫黑办) honoured 200 work units, including police officers, procuratorates and courts, which had produced impressive results in the campaign.⁴¹ According to the Supreme People's Procuratorate Annual Work Report 2021, as of 2018 over 149,000 people had been arrested and 230,000 had been prosecuted for committing black society-related and/or evil force crimes. The number of crackdowns on black society gangs ($n = 54,000$) in 2018 was 11.9 times that of the three previous years combined. By 2021, procuratorates had prosecuted 176,737 people for committing evil force offences and 2,987 state officials who had provided protective networks that sustained black and evil forces within

33 Fieldnote-S2.

34 Qian 2019.

35 "Shangdong: meige jiceng jianchayuan jinnian zhishao yao banli yiqi shehei anjian" (Shandong: every basic procuratorate must prosecute at least one black society gang-related case this year). *Pengpai*, 7 February 2018, https://www.thepaper.cn/newsDetail_forward_1986999. Accessed 29 July 2018.

36 "Zhongguo sao hei chu e douzheng shuqianren beibu Shandong gei jiceng xia zhibiao yin zhengyi" (Thousands of people arrested during the Sweep Away Black and Evil Campaign: controversial performance indicators in basic level institutions in Shandong). *BBC News (zhongwen)*, 9 February 2018, <https://www.bbc.com/zhongwen/simp/chinese-news-42986939>. Accessed 29 July 2018. See also Wu 2020.

37 Phase one investigations into black and evil force cases concentrated on cases that were reported before the end of February 2020.

38 Fieldnote-S3.

39 Fieldnote-S3.

40 Wu 2020.

41 "Quanguo sao hei chu e zhuanxiang douzheng xianjin jiti ni biao Zhang duixiang shiji gongshi qishi" (Notice on the commendation of the deeds of advanced groups in the special nationwide struggle against criminal forces). *People.com.cn*, 4 February 2021, <http://legal.people.com.cn/n1/2021/0204/c42510-32022477.html>. Accessed 11 April 2021.

society.⁴² Following such an unprecedented scale of crackdown on organized crime, the state declared victory in the war against black and evil forces in February 2021, announcing that the country was safer than ever.⁴³

The Concept of Evil Forces: A New Crime

While the Sweep Away campaign resembled the strike hard campaigns in swiftness and severity,⁴⁴ it introduced a novel concept within its practices, the concept of evil force crime. By means of a judicial announcement entitled “Several opinions on the handling of evil force crime” (*guanyu banli e’shili xingshi anjian ruogan wenti de yijian* 关于办理恶势力刑事案件若干问题的意见, Judicial Notice hereafter), the Supreme People’s Court (SPC), the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Justice jointly introduced the offence of evil force crime. This offence refers to “frequently assembled criminal organizations that are yet to be developed into Mafia-style gangs and carry out multiple criminal activities within a certain region or a certain industry through lording it over the people, perpetrating outrages, riding roughshod over people, disrupting economic order and people’s daily activities.”⁴⁵ Aimed at curtailing potential organized crime before it evolves, the Judicial Notice keeps the concept of evil force crime vague to enable a wide application.

As an important crime potentially affecting a large number of people, the promulgation process of the rules concerning evil force crime is highly controversial. In particular, the formulation and enactment of the offence were done through a judicial document rather than going via the formal law-making process. Some may argue that the Judicial Notice is only an interpretation of the penal policy during the campaign era rather than a usurpation of the power of legislation. To be sure, judicial interpretations were used in previous strike hard campaigns to apply and implement severe punishment policies.⁴⁶ However, two judicial phenomena suggest that the evil force crime promulgated by the Judicial Notice is a new and different approach. First, evil force crime has been treated as a new, substantive crime by the SPC ever since its introduction. In the judicial guidelines, the SPC provided explanations to illuminate what constitutes an evil force and evil force organizations, detailing the components of the *corpus delicti*, which include circumstance elements (such as evidence of a core group of regular members and the continuity of criminal activities), result elements (i.e. causing social disturbances and disrupting economic order) and sentencing considerations, including aggravating factors (such as the principals) and mitigating factors (such as guilty pleas and meritorious behaviour).⁴⁷ This judicial interpretation bears all the recognizable features of explicating a new offence created by the judicial authority, which is fundamentally different from traditional strike hard penal policies, which were often published using general terms. Second, the SPC specifically instructed that the lower courts *should* (*yingdang* 应当) use the term “evil force crime” unambiguously in their judgments to “correctly capture the nature of the crime” whenever the elements of the offence of evil force crime were satisfied.⁴⁸ In our data analysis of 368 judgments, we found that this request was faithfully observed by the courts across the board. In these judgments, evil force crime was treated as a new crime by the courts. In the Judicial Notice, evil

42 Zhang 2021.

43 “Sao hei chu e jingnei mubiao taofan quanbu guian” (All target fugitives in the territory are brought to justice). *Xinhuanet*, 26 December 2020, http://www.xinhuanet.com/legal/2020-12/26/c_1126909254.htm. Accessed 11 April 2021.

44 Wang 2020; Trevaskes 2007a; 2010; Tanner, Harold 1999.

45 “Zuigao renmin fayuan zuigao renmin jianchayuan gonganbu sifabu guanyu banli e’shili xingshi anjian ruogan wenti de yijian” (The Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security and the Ministry of Justice on the “Notice concerning several questions on handling evil force criminal cases”). *Xinhuanet*, April 2019, https://www.spp.gov.cn/zdgz/201904/t20190409_414134.shtml. Accessed 10 August 2020.

46 Trevaskes 2007b, 138.

47 Zhu et al. 2019.

48 Zhang 2021; Sun 2020.

force crime is listed as a target of the campaign along with black force crime, which is a well-established concept in Chinese criminal law. According to Article 294 of the Criminal Law 2007, whoever organizes and/or leads a criminal syndicate or participates in one to commit illegal or criminal acts through violence, threat or other means shall be prosecuted for a mafia-style gang crime. Unlike black society gang crime, evil force crime is a new, vague concept. To match black force crime, which has its corresponding offence in Chinese criminal law, tremendous efforts have been made by the judicial authorities to make the new offence of evil force crime match the campaign slogan.

Enacting a new crime in the form of a judicial interpretation based on a campaign agenda is unconventional and problematic under China's legal framework.⁴⁹ By promulgating the evil force crime in such a way, the SPC undercut and contravened the Legislation Law, which sets out the legislative power and formal law-making process.⁵⁰ Notably, Article 8 of the Legislation Law 2000 stipulates that criminal offences and their punishment shall only be governed by law and promulgated by the National People's Congress or its Standing Committee. The SPC is not a legislative body and, therefore, has no such authority to pass and enforce a new law, especially on matters relating to crimes and criminal penalties, under the existing legislative framework.⁵¹ This legislative order is justified not least because of the intrusive nature of criminal law, which carries public censure and stigmatic punishment. Without the consultation and public hearings required in the legislation process, the promulgation and enforcement of evil force crime are indeed detrimental to procedural transparency and erode the unity of law and the integrity of the legal system. Also relevant here is the undermining of the principle of *nullum crimen sine lege* enshrined by the criminal law. Article 3 of the Criminal Law 1997 states that a person should not face criminal punishment except for an act that was criminalized by law before the person carried out the act. Since evil force crime was not officially declared to be a crime in criminal law, technically it should not have been enforced as such during the Sweep Away campaign.⁵²

Aside from the legislative issues, the application of the offence of evil force crime has ramifications for extending the culpability of a range of existing offences. It is worth noting that the evil force offence was not created to be a substantive offence that one can be charged with independently. It is a type of stigmatic offence which has an aggravating effect of being charged with a substantive crime. Evil force crime, however, is not merely a sentencing enhancement law. The term was coined to capture a range of targeted criminal acts, with a particular emphasis on social-political condemnation.⁵³ Thus, to qualify as an evil force crime, defendants should be charged with at least one of the seven offences listed in the judicial guidelines, including forced trading, intentionally inflicting bodily harm, false imprisonment (*feifa jujin* 非法拘禁), racketeering, causing criminal damage with intent (*guyi huihuai caiwu* 故意毁坏财物), assembling people to engage in affrays (*juzhong dou'ou* 聚众斗殴) and picking quarrels.⁵⁴ The evil force crime, once labelled, will have a direct impact on the culpabilities of other charged offences, with the "dark" element of these substantive offences being underscored and the dangerousness of the offender heightened. As an aggravating factor, the evil force crime will result in a heavier sentence. For a group to be considered an evil force, two basic conditions must be met in accordance with the judicial guidelines: (a) the evil force should consist of at least three people, and (b) at least two of the members must have engaged in unlawful activities three times or more and at least one of these activities was a

49 Keller 1994; Hand 2013.

50 Paler 2005; Keller 2000.

51 Chen, Jianfu 2008, 171–206.

52 Organizing an evil force was formally criminalized by the Anti-Organized Crime Law, passed on 24 December 2021.

53 The use of the evil force crime is, to some extent, similar to that of hate crime in the US and the UK.

54 Chen, Xinzhe 2019. In Chinese criminal law, certain offences (such as intentionally inflicting bodily harm) can be converted to other serious offences (such as manslaughter/murder) if it results in death or serious bodily harm. There are 19 convertible offences that can be labelled as evil force-related crimes.

criminal offence committed in the last two years.⁵⁵ Outlier members do not count as an evil force if they knew, or ought to have known, the purpose of the assembly but were exonerated for legal reasons, had already received criminal punishment or administrative penalties, or had participated in unlawful activities on an ad hoc basis or under duress.⁵⁶ People who had joined forces for just a short period of time, whose activities only just met the three-time threshold and had a relatively minor impact should not be labelled an evil force.⁵⁷ Importantly, the group must embody features of evil, i.e. “lording and riding roughshod over people, disrupting economic order and people’s daily activities and causing public outrage.”⁵⁸ Making the application even more complicated, the Judicial Notice further stipulates that certain types of unlawful activity (such as forced trading, picking quarrels, extortion of properties and false imprisonment) are not criminal per se if they only occurred on one occasion; these activities will nevertheless constitute a criminal act if they occurred repeatedly, in which case they should then be treated as one criminal event pursuant to the Criminal Law or relevant judicial interpretations when handling the evil force cases.⁵⁹

Rules as complicated as these are undoubtedly difficult to implement. Among the judgments concerned with black and evil crimes in our sample, we found that 69 cases (26 per cent) failed to meet these criteria. Of the 69 cases, 13 contained only one identified unlawful/criminal activity and in 21 cases none of the defendants’ behaviour could be safely described as criminal and therefore could not qualify as evil force crime under the terms of the Judicial Notice. *Case_Ju49* provides a good example. In this case, the defendant and his friend intercepted two lorries belonging to a construction site to protest against the breach of contract by a construction project contractor. The contractor initially agreed to allow the defendant’s wife to recycle the muck produced in the construction without charge but then broke his promise and charged her substantial fees.⁶⁰ The interception of the two lorries in this case clearly fails to meet the “three times” criterion to qualify as an evil force crime. Nevertheless, the defendant, his friend and his wife were judged to be an evil force and were convicted of picking quarrels. The concept of evil force, as illustrated in this case, has been interpreted in an extensive manner to accommodate situations which are not typically discerned as crimes. Similar instances can also be found in service disputes,⁶¹ negligent damage of property,⁶² debt collection,⁶³ conflicts between police and civilians and so on.⁶⁴ Most of these cases would have been seen as an amalgam of tortfeasance, breach of contract or administrative violations had the concept of evil force crime not been invented.⁶⁵ Once actionable only through civil or administrative suits, these acts are now open to criminal prosecution, signifying an extension of the boundaries of criminal law.

The Judicial Notice emphasizes that crimes and unlawful activities without an element of bullying or oppressing the general public should not be classed as evil force crimes.⁶⁶ Nevertheless, a legion of cases that were civil disputes in nature and with no wider implications were assigned

55 Chen, Xingliang 2019. These criteria are simply referred to as “three people triple times” by academics.

56 Judicial Notice, Sec. 2(6).

57 *Ibid.*, Sec. 2(7).

58 *Ibid.*, Sec. 2 (5).

59 *Ibid.*, Sec. 9.

60 Unpublished judgment issued by Beijing Mentougou Basic People’s Court (2018) Jing 0109 Xingchu No. 230.

61 See, e.g., *Case_Ju71*. Judgment issued by Hebei Yongnian Basic People’s Court (2018) Ji 0408 Xingchu No. 394.

62 See, e.g., *Case_Ju74*. Judgment issued by Guizhou Huaxi Basic People’s Court (2018) Qian 0111 Xingchu No. 554.

63 See, e.g., *Case_Ju85*. Judgment issued by Shangdong Pingyuan Basic People’s Court (2018) Lu 1426 Xingchu No. 88.

64 Unpublished judgment issued by Beijing Tongzhou Basic People’s Court (2018) Jing 0112 Xingchu No. 854.

65 Boundaries between crimes and non-crimes have become blurred during the campaign’s operations. We found that over 50% of evil force crimes were convicted of the offence of picking quarrels owing to the open-ended nature of that particular offence. The vast majority of these offences would potentially be downgraded to administrative matters during non-campaign times. Other evil force-affiliated offences (such as the newly coined term of “soft violence” (*ruan baoli*)) have also been widely interpreted to accommodate situations which are not typically considered as criminal.

66 Judicial Notice, Sec. 2(5).

the evil force stigma. For example, the defendants in *CASE_JU43* were convicted for issues and their behaviour during a dispute with business competitors over the running of a private ambulance service for a central hospital in a large city. In *CASE_JU49*, the defendants were judged to be an evil force as they had blocked access to a building construction site following a disagreement over payment with the developers. Likewise, the defendants in *CASE_JU169*, who had obstructed access to a construction site in response to a disputed compensation settlement with the developers, were condemned as an evil force.⁶⁷ The defendants in *CASE_JU95* who ran a vehicle breakdown and recovery business were regarded as an evil force for overcharging their customers.⁶⁸ It was a similar situation in *CASE_JU367*, where the defendants, who ran a vehicle haulage business for broken-down lorries, were found guilty of being an evil force as they charged their customers excessive towing fees.⁶⁹ In *CASE_JU44*, the defendants, who worked in a shopping mall selling mobile phones, were found guilty of an evil force crime because of the inappropriate promotion of their products. In *CASE_JU82*, the defendants, who organized local villagers to protest against developers working on village farmland in an attempt to defend their collective proprietary interests, also were convicted of an evil force crime.⁷⁰ The list continues. These crimes were confined to the small number of offences associated with evil force crimes. Of the behaviour judged to be black society gang-related or evil force crimes, the offences of racketeering, forced trading and fraud in particular were used to encompass a wide range of activities loosely connected with loan usury and debt collection agencies, which accounted for 11 per cent (n = 41) of the cases. However, despite these unlawful transgressions, few of the defendants' crimes targeted the public at large. The vast majority of victims were part of the defendants' social and business networks. A good proportion of those who were convicted of evil force crimes (27.3 per cent) had no prior criminal record. They were certainly not the type of criminal one would ordinarily associate with evil and dark forces.

The Modus Operandi of the Campaign

Police investigations can be either reactive or proactive depending on how the police authority initiates an investigation in response to the commission of a crime. In reactive police investigations, detection and evidence gathering are triggered by suspected criminal incidents; without detection and evidence, there is no criminal case to answer.⁷¹ Unlike the reactive model, proactive investigations (as a part of proactive policing) entail the strategic deployment of resources in order to target criminally active individuals.⁷² The adoption of proactive strategies is based on the belief that police operations can, and should, be driven by intelligence in an active rather than reactive fashion.⁷³ In the Western context, proactive investigations focus on the acquisition of intelligence, which often involves deception and police trickery. Owing to their intrusive nature, proactive investigations are applied in very limited circumstances (such as investigating police corruption or during a crack-down on drug dealers) and can only be launched based upon reasonable suspicions.⁷⁴

During non-campaign times, Chinese police investigations are predominantly reactive. However, we observed an operational shift towards more proactive, individually focused investigations during

67 *CASE_JU 169* (Judgment number: (2019) Xiang 0281 Xingchu no. 15. China Judicial judgments online <https://wenshu.court.gov.cn/>).

68 *CASE_JU 95* (Judgment number: (2018) Jin 0430 Xingchu no. 69. China Judicial judgments online <https://wenshu.court.gov.cn/>).

69 *CASE_JU 367* (Judgment number: (2019) Jing 0119 Xingchu no. 27. China Judicial judgments online <https://wenshu.court.gov.cn/>).

70 *CASE_JU 82* (Judgment number: (2018) Yu 1327 Xingchu no. 563. China Judicial judgments online <https://wenshu.court.gov.cn/>).

71 Bi 2017.

72 Clarke 2006.

73 National Academies of Sciences, Engineering and Medicine 2018.

74 Girodo 1998.

the Sweep Away campaign. Our analysis of the police dossiers indicates that suspects were identified as evil forces from the very outset, often through a tip-off from members of the public. Once suspects were considered to be evil forces, the police used all the resources at their disposal to gather information from the general public, trawling social networks and people's lives for potential unlawful and criminal activities. Such pre-emptive investigatory methods certainly depart from the principle of the presumption of innocence and the basic role of prosecutors, who are supposed to be bound by the facts and law and adhere to an objective and just position (*bingchi keguan gongzheng de lichang* 秉持客观公正的立场) according to the Prosecutor's Law 2019.⁷⁵ The content of the case dossiers and the facts dismissed by the court showcased clearly overzealous prosecutions.

The evil force case dossiers of the two cases we reviewed comprised copious statements from over 200 witnesses. Apparently, a huge amount of police resources was invested in tracking down individuals who could offer details about the evil force suspects and contextual information. The witness statements acquired were mostly concerned with civil disputes or personal altercations with the defendants (such as issues of car parking, rental disagreement or disturbances between neighbours), which were used to prove the sinister character of the accused rather than uncover particular crimes and their links to suspects. The evil force case dossiers were in fact more akin to vetting checks of the suspicious activities of identified persons and those associated with them.⁷⁶ For example, there were 40 volumes of evidence dossiers in *CASEYR*. The first volume was a compilation of the defendants' (YR and six other people who were YR's employees) basic information. Volume 2 to volume 22 consisted of assorted interrogation records and witness statements concerning YR's family-run intercity coach company and the strategies used by YR in managing the cutthroat competition with business rivals. The remaining volumes contained evidence (interrogation records, witness statements, identification records and miscellaneous documents) focusing on YR's occasional altercations with other people, his gambling habits and his investment in a leisure club where, with his knowledge, the masseuses had engaged in prostitution with customers. The case dossiers read like a biography of YR with chapters highlighting certain unsavoury aspects of his life. In order to charge him with an evil force crime, the prosecutors looked for various offences that would qualify, including gambling, forced trading, picking quarrels and organizing persons to engage in prostitution. After many rounds of deliberation, reinvestigation and negotiation, the prosecution eventually compromised: YR was charged with forced trading and organizing persons to engage in prostitution.

Given the flexibility of some of the targeted offences associated with evil force crimes (picking quarrels in particular), such an individual-focused intelligence gathering approach makes these offences a useful instrument to criminalize any potential interpersonal conflicts identified by the police. Take *CASEJC* as an example. The principal defendant, JC, was charged with, inter alia, multiple accounts of picking quarrels. Evidence in the police files showed that aside from two situations in which JC initiated a verbal assault that resulted in physical brawls, the other instances were minor disputes that were categorized as neither criminal nor unlawful. On one occasion, JC acted as a debt collector on behalf of his friend to ask for defaulted wages. According to the witness statement provided by the employer, the employer was "aware of JC's bad reputation," but their telephone conversation was "straightforward – no quarrel or threat" as the employer was "happy to pay the arrears." This brief telephone conversation between JC and the employer was nevertheless used as the factual basis to prove JC's "soft violence to threaten the employer" (*CASEJC Vol. 3*). In another event, JC visited his former neighbour (N), to whom JC was distantly related, to dissuade him from establishing a second-hand car trading company in their town. Judging from the witness statement on which another charge of picking quarrels was based, the conversation was nothing

75 Article 5 of the Prosecutors Law 2019 requires prosecutors to be bound by the facts and the law and to adhere to an objective and lawful position when practising.

76 *CASEJC* and *CASEYR*.

other than amicable; JC was even invited to have dinner with N and his wife when the conversation took place. N gave up the thought, partially because of JL's visit, which was again interpreted as the use of "soft violence" to pressurize his prospective business competitor (*CASEJC Vol. 2*). There were also picking quarrel charges built upon disputes that had long been resolved. On one occasion, JC was involved in a car accident and had an argument with the negligent driver over the damage to the car. This dispute was settled after the traffic police intervened (*CASEJC Vol. 5*). In another incident, JC, as a landlord, disagreed with his tenant over the unauthorized renovation of the property. According to the statement provided by the tenant, JL called the police to arbitrate the dispute but was advised that "the case was outside their ambit, and he should file the case at the court." Curiously, this incident ended with the police issuing an administrative penalty for JC's overreaction (*CASEJC Vol. 6*). In all the aforementioned instances, JC was either penalized with administrative fines or settled with the other parties. Some of the incidents can be traced back to as early as 2007. Owing to the trivial nature of the incidents and the faded memories of witnesses, many statements were inserted with the qualification that the recollections may have not been absolutely accurate (*CASEJC Vols. 14, 16, 17, 19 and 21*). Curiously, neither the police nor the prosecutor seemed to have noticed the expired statute of limitations.

These picking quarrel incidents would have been regarded as too insignificant to be treated as crimes pursuant to Article 13 of Criminal Law 1997 under normal circumstances. Under the Sweep Away campaign, however, these minor transgressions were repackaged as elements of an evil force. Picking quarrels is not the only offence that exhibits a remarkable amount of flexibility as intended by the criminal justice authority. Other listed offences can also be construed to augment criminal culpability and criminalize conduct, even if they are better regulated by other means. In summary, we identified the following law enforcement issues: (1) excessive prosecution of minor or even frivolous offences that should have been regulated by moral or other social norms; (2) the prosecution of matters that should have been addressed using civil procedures (such as traffic accidents and landlord/tenant disputes); and (3) the prosecution of conduct that had been previously penalized by the authorities and/or had passed the statute of limitations. In many instances, the prosecution can be described as aggressive where criminal law is weaponized to the extreme. These phenomena emerged owing to the wide interpretation and application of a small number of criminal law provisions as well as the extraordinary discretionary power delegated to criminal justice institutions, especially the police, in the politically motivated campaigns.

Conclusion

This article has examined the new characteristics of centralized law enforcement during the Sweep Away campaign and the struggle between the imperative of legality and campaign politics from the perspective of democratic centralism. While some of the strategies deployed in this nationwide movement are not new to China's justice campaigns, the fact that they occupied the campaign foreground makes them a distinctive feature of this particular campaign. The greater distinction between the Sweep Away campaign and the earlier strike hard campaigns lies in the extent of the incursion of the political administration into the terrain of criminal law and the criminal procedure law. In many ways, campaign justice is treated as a special operation by the party-state, where legality gives way to political determination. The Sweep Away campaign was subject to systematic control by the Party. The decision to launch the campaign itself was a political movement. To achieve its political objective, the campaign embedded instructions on law enforcement within criminal justice institutions and promulgated special rules on evil force crime to strike campaign targets early – all under the Party's management. The criminal justice institutions measured by the campaign-related performance indicators (especially the police and the procuratorate) were susceptible to compromised professionalism. Overzealous police investigations and prosecutions were clearly evident in some of the proactive police investigations, producing far-reaching implications in

the operation of criminal justice beyond campaign justice. The proactive investigation model permitted the use of intrusive tactics to target individuals, tactics which could be easily abused and weaponized to achieve political ends. Interestingly, no specific campaign-related appraisal targets were imposed on the courts. This permitted the judiciary an opportunity to restrain and push back on some aggressive prosecutions. Indeed, our analysis of the judgments indicates that certain local courts had held their baseline and refused to ascertain the black or evil nature of the crimes prosecuted.⁷⁷ Despite this, the appraisal performance system was region specific, and the courts were certainly not immune from the campaign's influence. The scope of this study prevents us from thoroughly exploring this matter. Future research is needed to understand the extent to which the courts were truly capable of upholding the legal principle under campaign circumstances.

The three-year war on black and evil forces did not end in 2020. With the victory of the Sweep Away campaign being declared in 2021, the Central Committee of the CCP and the State Council jointly announced that the struggle to Sweep Away should be "regularized" (*changtaihua* 常态化) and continued in everyday administration to "resolutely remove the soil of black and evil forces."⁷⁸ While this appears to be an attempt to normalize and consolidate the Sweep Away campaign, such centralized enforcement that extends beyond ordinary forms of bureaucratic governance may not be sustainable in the long run. Past experience shows that the combination of diverted resources and fatigue have led to the perfunctory performance of criminal justice agencies.⁷⁹ Democratic centralism can only operate effectively on a motional balance between the centralized campaign movement and decentralized bureaucratic management. The Sweep Away campaign was therefore more of a necessary mechanism that endeavoured to correct the deficiencies of regular, centralized governance than an established institutional arrangement.

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⁷⁷ See, e.g., *Case Ju71*. Judgment issued by Hebei Yongnian Basic People's Court (2018) Ji 0408 Xingchu No. 394; *Case Ju74*. Judgment issued by Guizhou Huaxi Basic People's Court (2018) Qian 0111 Xingchu No. 554; *Case Ju85*. Judgment issued by Shangdong Pingyuan Basic People's Court (2018) Lu 1426 Xingchu No. 88. It is worth noting that the courts still convicted the defendants in those cases, even though they were not labelled as black or evil forces.

⁷⁸ Central Committee of the CCP and the State Council 2021.

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