As a one-party, authoritarian regime, the Chinese government has never tried to achieve the ideal of “the rule of law, not of men” that strives to ensure that law itself will govern the state, not the wishes of powerful individuals. The story of Chinese law since the 1979 initiation of reforms is the story of pragmatism initiated by China’s paramount leader Deng Xiaoping. According to Chinese political leaders, law is currently an instrument serving the goal of economic development. Thus, criminal penalties are determined by official perceptions of current “actuality,” despite recent efforts to standardize the sentencing of criminals. When major financial crimes have been perceived as threats to the nation’s economic stability and thus a challenge to the CCP’s political order, the party has resorted to the strategy of hard strikes. Each Strike Hard campaign creates a wave of arrests, convictions, and severe penalties. The periodic crackdown on financial crime has created a vicious circle of crime and policing. The inadequacies of the law and inconsistent enforcement practices have made offenders more fatalistic, simply hoping they will not be the unlucky ones to get caught.

This chapter offers a normative reconstruction of the concept of financial crime in Chinese law and courts. My goal is not to conduct a linguistic inquiry into the various ways in which the concepts are used. Rather, this chapter seeks to provide a sociolegal framework for thinking critically about the range of pragmatic concepts that have been associated with financial crimes. What I hope to suggest here is that there is, indeed, a Chinese version of financial crime that emerged from Chinese political culture and it is distinct, both analytically and functionally, from Western countries’ concepts of such crimes.

H. Cheng, Financial Crime in China
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Political Culture and Criminal Legislation against Financial Fraud

Although Chinese society has been heavily influenced by the West in recent years, the Confucian social hierarchy still remains as the main social organization of China, which supports a pyramid-shaped structure of submission in which the many must, in all circumstances, submit to the few privileged individuals. Confucius believed that all human beings are inherently good, and therefore, he famously opposed the coercive rule of law. He argued that the ideal state rested upon a stable and harmonious socialpolitical order achieved by a virtuous and benevolent sovereign through moral persuasion rather than by force of law (Wright, 1960). The Confucian understanding of power and hierarchy still has, arguably, a fundamental impact on the intermittent development of legal thought in China’s history.

After the Cultural Revolution, the Chinese leadership felt that the people had begun to doubt heaven-designated power and therefore, they needed nominal laws to legitimate their rule and the pyramid-shaped class structure. The establishment of a legal system was also necessary both as an instrument and as a guarantee of the transformation of social and economic life that was the objective of the economic reform initiated in 1979. From the then top leader Deng Xiaoping’s pragmatic perspective, law must serve the nation’s economic development and inequality should be permitted, at least for the time being:

The purpose of allowing some regions and some people to become prosperous before others is to enable all of them to prosper eventually. We have to make sure that there is no polarization of society—that is what socialism means.1

When some people and some regions get rich first, others will be brought along and through this process, common prosperity of the entire population will be gradually achieved...this is our policy. And it will be the responsibility of the first prosperous regions to bring along other less developed places.2

I have consistently maintained that some people and some regions should be allowed to prosper before others, always with the goal of common prosperity.3

Since the reform policy was launched, however, especially after the Tian’anmen Square public protest in 1989, Chinese leaders have been increasingly confronted with the duality inherent in the law: law as an instrument of political power and as an agent for restraining this same