

The Politics behind Corporate Crime Legislation: A Critical Perspective

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Abstract

The Legislature has been keeping expanding the coverage of corporate criminal liability ever since 1987, when the Customs Law introduced the concept into China. In one special criminal law and eight amendments approved after 1997, almost half of the articles defined new corporate crimes. However, the reality shows that increasingly stringent criminal legislation has limited impact on preventing corporate crime and is of only symbolic and semiotic significance, just like the death penalty. Current political analysis of corporate crime legislation shows that corporations in influential positions, especially the state-owned ones, have little chance of being punished and expend low costs due to the absence of a well structured policy and undue importance laid on GDP growth by local governments. What is more, corporate crime legislation has been used to reduce the political pressure resulting from corporate crime, enhance administrative discretion and protect local interests by governments as it can divert public attention from political system as a whole to isolated incidents and even individuals. Therefore, this article holds that to carryout political reform is much more urgent than to strengthen criminal law to prevention of corporate crime.

Keywords: Corporate crime; Criminal liability; Purpose of penalty; Political choice

1. Introduction

China did not accept the concept of corporate criminal liability until late 1980s.⁽¹⁾ The first Chinese Criminal Law promulgated in 1979 (hereinafter the Criminal Law 1979) was generally believed to be a individualism code because, on one hand, the emphasis laid on defenders' moral blameworthiness left no place for the liability of a fictional existence due to the influence of the criminal law ideology transplanted from former Soviet Union, and on the other hand, corporate illegality could not be found at all before 1970s because of the strict adherence to planning economy system.⁽²⁾ After the 1980s, along with commercial organizations being granted greater decision-making power thanking to the implementation of the reform and opening up policy, corporate crime, such as smuggling, tax evasion and environment pollution, led to a high degree of political attention. Although the majority of criminal academics still firmly held a stand against the criminal liability of organizations, the Standing Committee of National People's Congress (hereinafter, the Legislature) passed the Amendment

to the Customs Law of the People's Republic of China on 22 January 1987, introducing corporate criminal liability for the first time. Ever since then, the Legislature has never stopped expanding its coverage. In recent fifteen years, a separate criminal law and eight Amendments to the Criminal Law had been passed, and nearly half of the articles are related to corporate criminal liability, either extending its coverage or enhancing severity of punishments.

However, the reality is that increasingly stringent corporate crime legislation has much weaker impact on preventing corporate crimes than expected. Then, why are Chinese policymakers still so keen on expanding corporate criminal liability and what is the point? Why don't State organs and State-owned enterprises that play a powerful, if not decisive, role in China's political stage hinder corporate crime legislation that might affect their interests? This article is intended to answer these questions from a critical perspective. To this end, this paper first reviews the development and expansion of corporate crime legislation; Then, it concludes that corporate crime legislation has more symbolic than practical significance on the basis of

statistics and specific cases and holds that it is necessary to read corporate crime legislation from a political perspective in order to understand the paradox between its expansion and uselessness; Finally, in the perspectives of state-owned enterprises, state agencies and the injured parties, etc, it explains the corporate crime legislation in a critical political aspect.

2. Development of corporate crime legislation

As mentioned above, Chinese legislators introduced the concept of corporate criminal liability in spite of strong academic opposition in 1987 due to high political concern about the damage caused by corporate crimes and firm belief in the deterrence of criminal punishment as a social control tool. Since then, it continuously enacted more than ten separate criminal laws and supplementary criminal articles in administrative and economic laws, such as ‘Provisions on Punishing the Crimes of Smuggling’ (21 January 1988), ‘Provisions on Punishing the Crimes of Tax Evasion and Refusal to Pay Tax’ (4 September 1992), ‘Decision on Punishing Crimes of Producing and Selling Counterfeit Consumer Goods’ (2 July 1993), ‘Decision on Punishing Crimes of Disrupting Financial Order’ (30 June 1995) and ‘Decision on Punishing Crimes of Falsely Making out, Forging and Illegally Selling Invoices’ (30 October 1995). In 1997 when the Criminal Law 1979 was comprehensively amended, the Legislature incorporated relative articles into the Criminal Law 1997 and defined the concept of corporate crime and the principles of punishment respectively in Article 30 and 31. According to article 30 of the Criminal Law 1997, corporate crime refers to (i) an act committed by an organization such as a company, an enterprise, an institution or a State organ that endangers society with (ii) a guilty mind and (iii) prescribed by law as a crime.

Nine chapters of the Special Part of the Criminal Law 1997 provide 136 specific corporate crimes,⁽³⁾ except for Chapter X, *Crimes of Servicemen’s Transgression of Duties*. The absolute majority of corporate crimes involve acts disturbing economic order, impairing social administration and endangering public security. Specifically, Eighty crimes are provided in chapter three, *Crimes of Disrupting the Order of the Socialist Market Economy*, accounting for 59 percent of the total; thirty five in chapter six, *Crimes of*

Obstructing the Administration of Public Order, accounting for 26 percent; eight in chapter two, *Crimes of Endangering Public Security*, accounting for 6 percent, leaving only thirteen (9 percent) for the remaining six chapters. Such a distribution is obviously consistent with the original intention of decision-making authorities to deter corporate criminality through criminal punishment, the most severe sanction that a society can utilize.

After the promulgation of the Criminal Law 1997, the Legislature continues to extend the scope of corporate criminal liability. The ‘Decision of the Standing Committee of the National People’s Congress on Punishing Crimes of Fraudulently Purchasing, Evading and Illegally Trading in Foreign Exchange’ adopted on 29 December 1998 created the ‘crime of fraudulently purchasing in foreign exchange’ and made corporations punishable for the crime of illegal business operation in Article 225 of the Criminal Law 1997. Thereafter, seven of eight Amendments to the Criminal Law 1997 created fifteen new corporate crimes, increasing the total number to 153.

In addition to creating new crimes, the Legislature extended the coverage of corporate punishment in the Criminal Law 1997 through following two approaches. One is to change the constitution of a crime, such as widening the coverage of its actor. For example, according to article 163 of the Criminal Law 1997, it is a crime where *an employee of a company or enterprise* who, taking advantage of his position, demands money or property from another person or illegally accepts another person’s money or property in return for the benefits he seeks for such person. The central government of China launched a special campaign against commercial bribery in 2005 and was confronted with difficulties in punishing doctors in hospital who accepted bribery, because they are neither state functionaries nor employees of a company, institution or enterprises. In a word, they couldn’t be punished according to the Criminal Law 1997.⁽⁴⁾ Therefore, The Amendment VI to the Criminal Law 1997 adopted on 29 June 2006 revised the article and extended the coverage of actor from ‘*an employee of a company or enterprise*’ to ‘*an employee of a company, enterprise or other units*’ and thereby made it possible to punish an employee of any organization including doctors.

The other is to lower conviction threshold. For

example, article 145 of the Criminal Law 1997 provides that a conviction can be handed over where s/he produces medical apparatus and instruments or medical hygiene materials that aren't up to the national or trade standards for safeguarding human health or sells such products clearly being aware of the fact and thereby *causes serious harm to human health*. The Amendment IV to the Criminal Law 1997 adopted on 28 December 2002 deleted the 'serious harm' requirement and provides instead that it is enough to give a conviction where the actor is aware of the fact that the medical apparatus and instruments or medical hygiene materials that s/he produces or sells aren't up to the national or trade standards for safeguarding human health and *harmful enough to seriously endanger human health*. The conviction threshold here is apparently lowered by the substitution of the requirement for an actual harm with that for a possibility to cause harm.

Then, has the corporate crime legislation achieved the intention of legislators and played the expected role of preventing corporate crime?

3. Preventive effect of corporate crime legislation

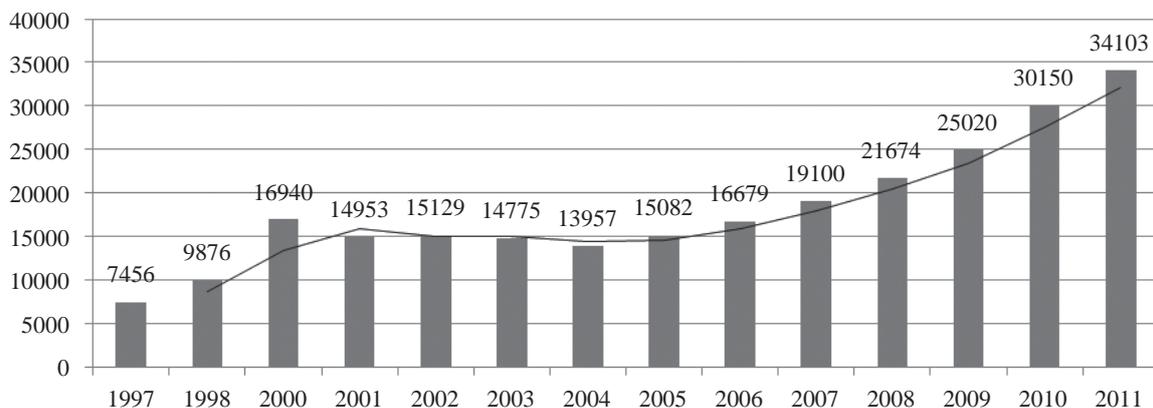
On this issue, both the macroscopic and microcosmic statistics have shown little optimism. Chinese judicial authorities do not release detailed statistics, mostly a general number or percentage, on convictions and sentences regularly as the US and Japanese governments do and we therefore have no access to annual data of charged corporations and punishments. However, the fact that nearly 60 percent of specific

corporate crimes are in chapter three of Special Part of the Criminal Law 1997, *Crimes of Disrupting the Order of the Socialist Market Economy* and these crimes are usually committed by organizations in practice makes it possible for us to draw a general picture referring to annual statistics of related criminal cases heard in people's courts.

According to China Statistical Yearbooks released by the National Bureau of Statistics, the number of cases involving crimes of disrupting the order of the socialist market economy heard at the first instance by people's courts at all levels increases rapidly (as Figure 1 shows), from 7454 in 1997 to 16940 in 2000, by nearly 127 percent in three years. From 2002 to 2004, the number drops slightly from 14953 in 2002 to 13957 in 2004 and basically reveals a stable trend. From 2004 to 2011, the number shows a continuous upward trend and since 2006, the increasing trend is much more obvious than ever. Considering the absolute amount, the number has increased by 144 percent from 13957 in 2004 to 34103 in 2011. Compared with 1997, the total number in 2011 increases by 357 percent, more than a threefold increase. Therefore, the above comes to the conclusion that although legislators have been strengthening legislation of economic crimes and corporate crimes, they haven't achieved expected outcomes.

Seeing from the microcosmic perspective, statistics regarding typical corporate crimes indicates that we should not be optimistic either. For example, the Amendment VIII to the Criminal Law 1997 that came into force as of 1 May 2011 made it a crime to refuse to pay labour remuneration because it 'has become a

Figure 1: The Chapter three Cases at the First Instance (1997-2011)



Source: China Statistical Yearbooks (1998-2012)

prevailing social phenomenon in recent years, which not only seriously violates the legitimate rights and interests of ordinary workers but also causes great negative impact on the construction of socialist harmonious society, and administrative and civil legal measures cannot effectively regulate such acts.’⁽⁵⁾ Did the criminalization of refusing to pay labour remuneration work? The fact is that ‘refusing to pay remuneration is getting even more malicious and intensified nationwide. Few corporations have actually been prosecuted.’⁽⁶⁾ ‘Labour security supervision authorities received totally 218,000 complaints involving refusing to pay labour remuneration in 2012, an increase of 5 percent compared to previous year. While people’s courts at all levels only filed 152 criminal cases with 134 being closed by December 2012. This is obviously disproportionate.’⁽⁷⁾

Similarly, the Amendment IV to the Criminal Law 1997 passed on 28 December 2002 made it a crime to employ a minor under the age of 16 to conduct physical labour of ultra-intensity because, as a high-rank official of the Legislature once commented, ‘a big number of companies, in order to seek illegal interests, employ minors, and some even employ child labour to do physical labour of ultra-intensity, or engage in aerial, underground work, or work in explosive, flammable, radioactive, toxic and other hazardous environment, which seriously endangers the health of minors and even causes death consequences.’⁽⁸⁾ However, it seems that the newly created crime hasn’t worked at all. On 10 June 2007, the International Trade Union Confederation denounced the Beijing 2008 official licensed Olympics souvenir manufacturers for employing child labour; shortly after, the Shanxi brickyard child slave labour scandal broke. The youngest victim was only eight years old and oldest less than thirteen. What is more shocking is that it is not until 400 parents sought for help together on the Internet did the local police authority try to rescue, but only, their children.⁽⁹⁾ In 2008, one accident in Hezhou, Guangzhou province, killed one child labour and severely hurt 12 children. ‘The heart-wrenching phenomenon of child labour not only occurs in remote and poor regions, you can also see innocent faces dripping with sweat, working busily in car repair stalls, markets and garbage stations in developed regions of the urban fringe.’⁽¹⁰⁾ Even the multinational enterprise like Samsung was denounced for illegal employment

of child labour in China by China Labour Watch, an American organization which intends to protect labour interests and rights.⁽¹¹⁾

The last example is corporate bribery. Article 387 and article 393 of the Criminal Law 1997 respectively provides accepting and offering bribery by corporations, and as mentioned above, the Legislature extended the coverage of article 164 when the special campaign against commercial bribery was launched in 2005. Has any expected effect been achieved? The answer is no. Let’s take multinational corporations conducting business in China as example. According to a report released in 2009 by Anbound Group, a non-official economic analysis organization in China, ‘there has been an upward trend of bribery among multinational corporations in China. At least 500,000 cases have been investigated in the past decade, 64 percent of which involves international trade and foreign businesses.’⁽¹²⁾ Moreover, influential and notorious corporate bribery cases occur one after another since 2002. For instance, in 2004, the U.S. Securities and Exchange Commission investigated Lucent who during the past three years arranged and paid for the trips for almost one thousand Chinese government officials and executives running telecom businesses to Hawaii, Las Vegas, Grand Canyon, Disneyland and New York under the disguise of ‘factory visiting and training,’ costing Lucent millions of dollars. In 2005, a report released by the American Department of Justice reveals that the Diagnostic Products Corporation Tianjin Branch has been bribing doctors from the state-owned hospitals for 11 years from 1991 and the bribe amounts to 1,623,000 US dollars.⁽¹³⁾

The widespread existence of refusing to pay labour remuneration, employing minors and corporate bribery shows the disrespect and even defiance of corporations to the criminal law. In other words, present corporate crime legislation plays a little role in helping corporations establishing a law-abiding culture, at least in relation to the three categories of crimes here.

Meanwhile, those prevention measures and policy strength that are considered effective to reduce corporate crimes in the macroscopic perspective haven’t been attached enough political attention. Instead, they are unduly restricted. For instance, as to protecting labour interests, wage interests included, and child interests, neutral active NGOs like Labour Union have played an indispensable role in western countries

through organizing demonstration, offering free legal aid, filing public interest lawsuit, etc. However, due to systemic reasons like government control, China actually doesn't have many NGOs in the real sense. As it was once commented, 'there had been 211661 NGOs in China as early as in 2007. The number is huge but among these organizations labelled NGO, only a few can operate independently. The reason is that the absolute majority of these organizations are founded by government. Nearly 50 percent of their budget comes from government and related subsidies, and 3.6 percent from government-supported research funds. Besides, many non-governmental organizations themselves were transformed government agencies or organizations established by the government.'⁽¹⁴⁾ On the other hand, as for those NGOs that operate independently, local governments usually adopt the 'Three No' principle: 'no contacting, no recognizing, and no banning.' However, they will interfere directly with and even take compulsory measures on activities of those NGOs when specific cases arise, especially in cases where a large number of victims are involved in order to reduce negative political effect and sometimes to protect political prospects of liable individuals. In a word, it is unrealistic for NGOs to play an effective role in preventing corporate illegality as it is to a high degree controlled by public powers and lacks legal space to carry out activities freely.

What's more, GDP is an important unsaid promotion touchstone for local officials in current political structure. An political achievements and promotion analysis report of 283 mayors and Party secretaries in small and middle-sized cities in the past decade in China released in May 2013 by Professor Deng Yongheng, Dean of Real Estate Research Institute of National University of Singapore, shows that if GDP increases by 0.3 percent over the previous term, the promotion probability is 8% higher. If resource is constantly spent on people's livelihood and environmental protection, the probability is negative.⁽¹⁵⁾ Therefore, local governments are more concerned with local economic interests rather than social welfare in reality and are reluctant to sanction corporations that contribute to GDP growth. And this partly explains why it is common to see political pressure from superior party organizations or administrative organs plays a crucial role in prosecuting a locally influential corporation.

Sanlu milk power contamination scandal is a typi-

cal example that resulted in more than ten death and thousands of injuries. Since December 2007, Sanlu Group, a giant state-owned dairy producer located in Shijiazhuang, the capital city of Hebei Province, started to receive complaints from infant milk formula consumers who found red, solid substance in their children's urine, and even reports showing that infants got sick of kidney. But the company didn't carry out inspections so as to solve the problem at all, either did Consumers' Associations actively involve after receiving complaints. In August of the same year, the local government received Sanlu's test report indicating the complained products contain toxic substances but made no public notice. On the contrary, one of the vice-mayors of Shijiazhuang municipal government ordered Sanlu managerial level to keep the contamination secret 'for fear of social unrest and so as not to embarrass the country so soon before the Olympics.'⁽¹⁶⁾ Not until early September when the State Council of China received a briefing from the New Zealand government did the local government began investigation under heavy political pressure.⁽¹⁷⁾ When victims tried to file lawsuits claiming compensation, although NGOs represented by voluntary lawyers planned to offer legal aid and other supports, their activities were immediately controlled.⁽¹⁸⁾ The hostile attitude and resistance of the local government in the Sanlu case are just the epitome of local governments' real concerns with corporate crimes, especially those relating to food safety, environment pollution and product quality. It might be said to a certain extent that strict implementation of corporate crime legislation can barely gain full political support at local level.

In brief, both macroscopic and microcosmic statistics have shown that China's current corporate crime legislation is not strictly implemented. Meanwhile, it has been confronted with political resistance and has to stand alone sometimes because of the weak role of civil society. As a consequence, corporate crime legislation is only significant as a symbol showing a political attitude towards corporate crime. Then, why do Chinese policy-makers still keep amending criminal law and expanding the coverage of corporate criminal liability? What sense does it make to pass new laws destined to achieve nothing other than a few more convictions? Moreover, as is well known, state-owned enterprises hold a strong position in China's political and economic state. Why did they never try

to obstruct corporate crime legislation that may be applied to them? To answer these questions needs a political reading of corporate crime legislation.

4. A Political Reading of Corporate Crime Legislation

In the situation of corporate crime, there are usually three direct parties: guilty corporations, victims who suffer from corporate illegality and state agencies responsible for supervision and investigation. Although corporate crime legislation as a whole is of symbolic significance, it has different and particular meanings to the three parties.

First of all, state-owned and large-scale private enterprises have little chance of being punished and instead could even benefit from illegal acts by taking advantage of their political influence. For example, the authorities in charge of food safety and quality examined milk powder produced by 22 dairy companies after the Sanlu scandal in September 2008. Results showed that almost all products contained melamine, which obviously didn't meet the national standard.⁽¹⁹⁾ However, the eventual outcome of the event shocked the whole country and sparked national outrage because the authorities didn't strictly enforce the national standard and order dairy companies to enhance the quality of their products. On the contrary, they lowered the milk quality standard to meet dairy companies' interests when revising the national standard of dairy product in 2010.⁽²⁰⁾

Similarly, the safety of Telunsu milk produced by Mengniu Dairy was questioned in early February 2009 because the additive called OMP it contains hadn't been approved by any law or administrative authority. Available research data suggests that the addictive contributes to the growth of both healthy and cancer cells and even carcinogenicity. Scholars have clearly stated that drinking the milk would increase the risk of catching cancer.⁽²¹⁾ The State Administration of Quality Supervision, Inspection and Quarantine therefore issued an official notice, prohibiting Mengniu from adding the OMP into Telunsu. Ironically, the result was that the Ministry of Health stated that the OMP isn't a food ingredient up to the National Health Standards and Mengniu didn't use OMP upon prior application, while claiming the product wasn't hazardous to consumers' health.⁽²²⁾ This conclusion magically turned the illegal additive into lawful invention.

Third example is environment pollution crime. It has been universally accepted that the economic development in China is to a high degree at the cost of environment destruction and sacrifice of legal rights of average citizens, as shown in the report on 'Cancer Villages' in recent ten years, which shocked both China and the whole world due to the massive deprivation of health and even life of peasants who had been living at the polluted area.⁽²³⁾ As a result, the Amendment VIII to the Criminal Law 1997 revised article 338 from 'the crime causing major environmental pollution accident' to 'crime of environmental pollution' and thereby lowered the conviction standard. Has the legislation actually improved environmental law enforcement? Undoubtedly, it has been put into legal practice.⁽²⁴⁾ However, just like the crime of refusing to pay labour remuneration and the crime of illegally employing minors mentioned above, 'it is very likely that the local government and the enterprise form interest alliance and jointly resist the pollution abatement and regulatory policies made by the central government. It's not hard to imagine that the policy was ignored by local governments, and relevant laws and regulations become blank words in the book.'⁽²⁵⁾

Meanwhile, it should be noted that the increasingly stringent corporate crime legislation may be used to help powerful corporations to beat their competitors, mainly small and medium-sized enterprises, especially those private owned small ones, and expand their market share because of their complicated relationship with government officials that makes selective law enforcement possible.

As far as stage agencies are concerned, one of the prime reasons that the Legislature extends corporate crime legislation is to provide legal basis for law enforcement authorities. For instance, the Legislature specifies in Introduction to the Amendment VII to the Criminal Law 1997 (Draft) that the reason that corporate criminal liability was extended to the crime of shielding or concealing criminal proceeds in article 312 of the Criminal Law 1997 is that 'the People's Bank of China states that it is usually committed by organizations in practice and therefore to punish it as a corporate crime is necessary in order to strengthen anti-money laundry measures.'⁽²⁶⁾ However, the real significance of corporate crime legislation to administrative authorities lies not here but in the following three aspects.

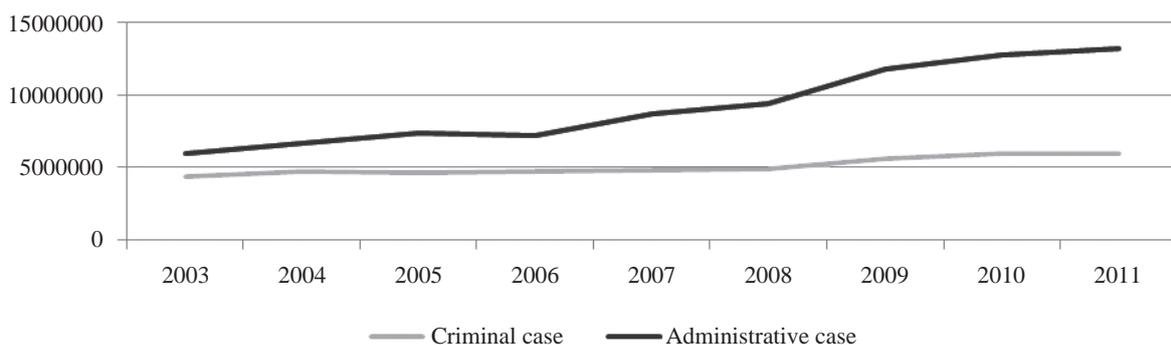
First, corporate crime legislation reduces the responsibility of administrative organs without weakening their power. The fact that an act is made a crime means the responsibility to deal with it is shifted from administrative authorities to judicial organs. According to the Criminal Procedure Law, apart from cases of bribery, corruption and dereliction of duty, investigation of other criminal cases is in the charge of public security organs. As can be seen in Figure 2, millions of criminal and administration of public security cases (hereinafter, administrative cases) are placed on file by public security organs at all levels each year. The total number has been increasing rapidly ever since 2006 and exceeded ten million in 2008 (twelve millions in 2011). Confronted with such an intensive pressure, public security organs will surely put priority on maintaining social stability, the greatest political task overwhelming everything, instead of investigating case involving relatively few persons, and reasonable citizens won't unduly expect from them because of the influence of the ideology of sacrificing individual for collective interest. That is, even if such acts as refusing to pay remuneration, employing child labour and possessing forged invoices are included into the criminal law, judicial organs are not capable of enforcing related articles effectively and efficiently due to the limited judicial resources.

While increasing the burden of public security organ, corporate crime legislation reduces the burden and enhances discretion of administrative organs. On one hand, they don't have to deal with those acts in question because they have been criminalized and fell into the hands of judicial organs '*theoretically*'. On the other hand, both administrative and criminal laws haven't deprived them of sanctioning power, and thus

whether, when and how to exert their power are completely at the will of their own '*legally*'. As a consequence, criminalization of certain acts that used to be provided in administrative laws enlarges space for administrative organs to selectively enforce law instead of offering victims' remedy due to limited number of charges and high cost they have to bear. Victims have actually been put between a rock and a hard place. Take refusing to pay remuneration as an example. Victims could resort to labour administrative organs and apply for compulsive measures before the passage of the Amendment VIII to the Criminal Law of 1997. But thereafter, those organs can easily shift the responsibility to the hands of public security organs telling complainants to go to the police because that it is a crime now. As explained above, it is usually unrealistic for them to gain expected help from the police.

Second, corporate crime legislation enables the government to defuse public anger and relieve domestic pressure without taking no substantive correction measures. It can be clearly seen from above exploration that the pursuit of GDP growth, resistance of local governments and absence of internal regulation inside corporations are main causes of corporate crime. Correspondingly, political reform aiming at promoting transparency and democracy in using administrative powers is much more urgent and effective to prevention of corporate crime, just as has been commented: 'what is urgent for Chinese political reform now isn't to resolve the issue of democracy and freedom at western sense but the problem of power corruption. Chinese officials are granted the power that can barely been seen in other parts of the world but receives feeble supervision. Therefore, Chinese political reform

Figure 2: Criminal and administrative Cases Accepted by Public Security Organs (2003-2011)



Source: China Statistical Yearbook (2004-2012)

should first be focused on power supervision and look for an economical and efficient supervision method using present systemic resource.⁽²⁷⁾ However, the reality is that decision makers are reluctant to make due efforts to promote political reform.

As mentioned above, bribery crime is one of the focuses of current corporate crimes, as well as where Chinese people attach much attention. According to the public poll about safety index conducted by the National Bureau of Statistics, when asked the question of ‘your top concerns,’ 7.6% of respondents chose ‘corruption’ in 2007; the number in 2006 was 9.1 percent; in 2005, it was 12.6 percent; in 2004, it was 14.26 percent and in 2003, it was 15.92 percent.⁽²⁸⁾ And a majority of those who committed bribery crimes, especially those accepting bribery from corporations, work in state organs. It is true that China has always maintained a strict attitude towards corruption issue. An official report disclosed that during the decade from 2002 to 2012, eleven high-rank officials were executed and twenty seven were sentenced to death with two-year suspension because of corruption and bribery.⁽²⁹⁾ However, no substantial steps have been taken in tackling systemic cause of corruption. ‘Corruption is a common challenge faced by all States in the world. Two approaches that are universally considered effective presently are (i) check and balance among political powers and (ii) fairness and transparency in use of powers,’⁽³⁰⁾ and ‘it has become a public consensus in China that prevention system should be strengthened through adopting such laws as property declaration law.’⁽³¹⁾ Legislative efforts regarding the property declaration law and relevant systems have been stumbled all the way in China. Although had appeared in legislation program as early as in 1994, the property declaration law hasn’t entered formal procedure so far. When reviewing the draft of the Civil Servant Law in 2005, the Legislature refused the proposal to include property declaration issue. In the beginning of 2012, the Legislature repeated again its explanation in responding to public appeals for property declaration system that there were still fundamental obstacles to overcome before opening the legislative procedure for the system and internal conditions weren’t mature yet.⁽³²⁾

Meanwhile, similar to powerful corporations, although punishable according to the Criminal Law 1997, State organs have barely been punished in real-

ity, except very few cases in mid-1990s.⁽³³⁾ For example, the Amendment VIII to the Criminal Law 1997 extended corporate criminal liability to the crime of possessing counterfeit invoice, which had been proven to be a useful tool in such crimes as tax evasion and fraud and embezzlement. Meanwhile, the central government launched a special campaign against producing and using counterfeit invoice. According to the National Audit Office, fifty six central State organs were found to use false invoices and the total amount reached 1.42 million RMB in 2011, but none was punished.⁽³⁴⁾

A more vivid example is the Urumqi railway transport intermediate people’s court (hereinafter, the defendant court) bribery case in 2006, where the defendant court was accused of accepting bribery provided in article 387 of the Criminal Law 1997.⁽³⁵⁾ During the first court session, the defence counsel questioned the constitutionality of the accusation, holding that although article 30 of the Criminal Law 1997 doesn’t exclude the criminal liability of the people’s court, if convicted, could the defendant court continue to exercise judicial power and function as the Constitution provides? Moreover, shall the convicted court continue to exist or be disbanded? On the contrary, the majority of academic researchers insisted that the defendant court should incur criminal liability from the perspective of present legislation. For example, Liu Renwen, professor at the Institute of Law of Chinese Academy of Social Sciences, pointed out that ‘no legal barrier could be found in prosecuting the people’s courts. Chinese criminal law expressly provides that it is a crime of accepting bribery where a State organ, State-owned company, enterprise, institution or people’s organization illegally accepts another person’s money or property, and people’s courts are included in the “State organs” in the article 30.’⁽³⁶⁾ However, after carefully considering possible negative influence of the case on public trust in and authority of judicial organs and listening to suggestions from the court hearing the case, the prosecution withdraw the accusation against the defendant Court by substituting it with individuals who had been charged as the persons who were directly in charge and other persons who should take direct liability. In other words, the defendant court was exempted from criminal charge.

Third, to prosecute and severely punish corporations and liable individuals helps to protect concrete

benefit of local governments as it diverts public attention and offers a shield against political pressure imposed by superior authorities. Local governments have to face public condemnments almost after every incident that caused widespread harm. A common choice of local governments in crisis management is to strictly investigate the criminal responsibility of the individual so as to calm down the public and at the same time save concrete interests. Let take the Sanlu case for an example again. According to the estimation in public reports, the whole property of Sanlu Group was barely enough to pay for victim compensation.⁽³⁷⁾ What did the municipal government of Shijiazhuang do? It rushed to sell the company's validated assets such as land use right, buildings, machinery and investment interests,⁽³⁸⁾ while responding to public condemnation by punishing liable individuals harshly.⁽³⁹⁾ Not long after the criminal trial was closed, Sanlu Group was declared bankrupted in November 2009 and the gate to compensation for the children suffering calculus was shut down.⁽⁴⁰⁾ It can be clearly seen that the local government successfully kept the company's fixed assets and most of its concrete benefits and lost nothing other than a commercial brand.

Briefly, the reason that State organs and powerful corporations, especially State-owned enterprises, did nothing to hinder the adoption of corporate crime legislations isn't that they are incapable but that they can benefit from it without their illegal act being punished. Once they feel the danger that a new law will hamper their interests, they will spare no effort to block its legislative procedure even if it is concerned with overall social welfare and national security. For example, the World Bank announced that the Gini coefficient in China had reached to 0.47 in 2010, which implies that the wealth gap was unlimitedly close to the bottom line that the society could tolerate. Four major household income surveys since the 1980s also indicated that the income gap between 10% of the highest and lowest income range had increased from 7.3 times in 1988 to 23 times in 2007.⁽⁴¹⁾ Hence, the central government started drafting the overall plan for the reformation of income distribution system in 2004 and finished drafting the new Wage Regulation, in which the adjustment of distribution of powerful State-owned corporations is one of the focuses. Nonetheless, the regulation hasn't been entered formal legislative procedure so far due to the strong opposition of the

monopolies.⁽⁴²⁾

Finally, corporate crime legislation consoles victims. 'Seeing from the creation and development of criminal penalty, it has been a long period from personal revenge to central national justice. During this long period, criminal penalty has kept the primitive nature of revenge. So it exists, to a great extent, to satisfy victims' wishes of taking revenge.'⁽⁴³⁾ Corporate crime legislation, although has merely symbolic significances in general, can undoubtedly work in consoling victims and their families and satisfying their revenge emotion and thereby prevent their private revenge or radical acts in particular cases. In addition, the strengthening of corporate crime legislation and severe punishments in individual cases can placate the public's resentment to culpable individuals and distract public attention from structural and systemic causes of corporate crime.

5. Conclusion

'The introduction of corporate criminal liability is a hasty response of the Legislature to social pressure and lacks profound theoretical exploration.'⁽⁴⁴⁾ Therefore, corporate crime legislation in China was ironed a deep political mark in its very beginning. Since the 1990s, corporate crime increased rapidly along with reforms in economic systems deepening and a market mechanism gradually coming into existence. Shocked by massive harm to individual property and rights and social stability caused by corporate crimes, the Legislature has been continuously strengthening corporate crime legislation, extending the coverage corporate criminal liability or providing harsher punishments. Unfortunately, the absence of a well-structured policy, the reluctance of decision makers to carry out political reform and direct intervention of governments with economic and judicial activities rendered corporate crime legislation as a whole a symbolic response to public anxiety.

One of the fundamental principles in Chinese political economy textbooks is that 'economic base determines superstructure, and superstructure reacts to economic base.' This principle, if applied to current situation of corporate crime, would be followed by the conclusion that in order to reduce corporate crime, an abnormal phenomenon in economic base, what is the most crucial now is not to strengthen criminal law, although necessary, but to reform the superstructure,

such as perfecting supervision on law enforcement and weakening political influence of corporations on governments by cutting off interest link between them. In a word, only when corporations, particularly powerful State-owned enterprises, fear and respect it can corporate crime legislation work as expected.

NOTE

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- (1) It might be misleading to use the phrase ‘corporate criminal liability’ here, because the word used in Chinese criminal laws is ‘unit’, which covers much more widely than ‘corporation’, including State organs, institutions, enterprises, companies and other organizations. But the essence is the same in that both are intended to punish ‘organization’.
- (2) For detailed analysis and more discussion, see Zhenjie Zhou, *Comparative Studies on Corporate Crime*, Beijing: Press of People’s Public Security University of China, 2012, pp.23-7.
- (3) Disputes still exist as to the scope of corporate crime. Briefly, the number of corporate crime depends on the opinion whether the acts prescribed in article 135, article 137, article 138, article 139, article 244 and article 250 of the Criminal Law 197 are corporate crimes. For example, see Feng Jun, ‘Corporate Crimes in the New Criminal Law’, in Mingxuan Gao & Bingzhi Zhao (ed.), *A Comparative Study of Sino-Japanese Economic Crime*, Beijing: Law Press, 2005, p103. This article holds that all crimes provided in the articles that use the phrase of ‘the persons who are directly in charge and the other persons who are directly responsible for the crime in question’ are corporate crime according to article 31 of the Criminal Law 1997. For a detailed discussion, see Zhou, op. cit., pp.42-4.
- (4) For detailed introduction, see Zhenjie Zhou, ‘Corporate Punishment in China: History, Legislation and Future Reform’, *WIAS Researcher Bulletin 1*, 2009, pp.84-5
- (5) Mingxuan Gao and Chen Lu, *Understanding Amendment VIII to the Criminal Law of the People’s Republic of China*, Beijing: China Renmin University Press, 2012, p108.
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- (23) For example, see Jun Yin, ‘Cancer Villages in Huaihe River Area’, *Forum on Counties and Towns* 16, 2007; Yong Wang, ‘Who Can Save Cancer Village’, *China Business Weekly* 14, 2012; Qiaobo Hong, ‘Why More and More Cancer Villages’, *Environment Economy Journal* 15, 2005.
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