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Corporate Crime and State Legitimacy:
Non-Issue Making in The 2008 Chinese Melamine Milk Scandal

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DEDICATION

To

my parents, sisters & friends

Carolyn, Kamran, Chloe, Yasmine & Vince:
thank you for being the best family a nerd could hope for

Julie, Michael, Westley, Eric, Rashad & Tori:
thank you for accommodating my terrible schedule and
for spending time with me when I could

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ABSTRACT

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By

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While the study of corporate crime began nearly seventy years ago, academic access to Asian countries, and China in particular, has become available only in the past two decades. The growing economic crime rate in China remains a difficult area of research, but recent studies demonstrate the impact China's economic reform on crime in general. This study aims to apply western corporate crime and state theories to China in an effort to explain both China's economic crime rate and the government's response. This qualitative study draws on information about the 2008 melamine milk scandal from both Chinese and western newspapers, as well as scholarly journals. An analysis of these sources reveals China is similar to the United States of America and other developed nations: economic crime is tolerated if that crime provides a direct benefit for the offending corporation and indirect benefit for the state. China's authoritarian government increases this tolerance as the state is able to both censor the media and use force to prevent social movements, liberties that have a dampening effect on economic crime in western democracies. This implies that without a liberalization of government to match the liberalization of economy, China's economic crime rate will remain high.

Introduction

Corporate crime is a worldwide problem (Friedrichs, 2010), but the burgeoning economic crime rate in China (Deng, 1999) involving such acts as poisoned food (Xiu & Klein, 2010) and rampant environmental pollution (van Rooij, 2006), provide a unique opportunity to study the nature of such offending in a country whose economy is growing faster than any other in history. China retained authoritarian one-party control as the nation transitioned from the collectivist economy established by Mao Zedong to the current “socialist market economy,” a capitalist market system combined with state-owned-enterprises. This combination of control and capital may help explain the documented rise in white-collar and corporate offending in China, and provides a unique backdrop for examining the relevance of theories developed through the study of western capitalist societies.

Few scholarly works exist that examine similarities and differences between corporate crime in China with offenses in the west (Cao & Cullen, 2001; Gibbs, McGarrell, & Axelrod, 2010). One paramount issue is whether such illegalities are subject to “non-issue making” (Crenson, 1971; Goetz, 1997) where the state provides *de facto* approval for injurious behaviors through non-response. Not all corporate offenses in the west are treated in this manner as some have argued that selectivity in regulatory enforcement results in the investigation of crimes that threaten capital *accumulation* (Calavita and Pontell, 1994). This is likely due to the state’s desire to maintain a balance between its essential functions: capital *accumulation* and government *legitimacy* (O’Connor, 1973; Poulantzas, 1969). While there appears to be evidence for such theories in western

capitalist democracies, their applicability to single-party states such as China has yet to be examined by scholars.

The aim of this study is to compare Chinese state response to corporate crime with that of capitalist democracies given the People's Republic of China's authoritarian, one-party rule. It seeks to answer four basic questions regarding China's response to economic crime. First, to what extent do local and national enforcement agencies in China allow for unpunished regulatory violations? Second, to what degree does government response to violations relegate corporate crime to non-issue status? Third, when met with public dissatisfaction, how does the state respond with enforcement in addressing popular concern and/or maintaining its own legitimacy? Fourth, once threats to *legitimacy* pass, does the state goal of *accumulation* result in a return to lax enforcement? These questions will be considered through an in-depth examination of the Sanlu milk scandal of 2008 that involved widespread harm and worldwide media coverage.

Historical Background

In 1978, Deng Xiaoping's "dual traffic" policy sought to modernize China with pro-economic, anti-political reform to increase wealth while retaining Chinese Communist Party control. This policy was "anti-Left" in economics and "anti-Right" in politics (Ding, 2006). Ding (2006, p. 2) writes, "Without legally abandoning state dominance over the economy and granting private ownership equal rights, the Dengists wanted to create a dynamic and efficient economic structure free of all the defects associated with the socialist economy. Yet, while promoting economic pluralism, the Dengists refused to undertake political liberalization and wanted to keep the core of the Communist government system

intact.” As argued here, an unintended consequence of this policy may be to encourage forms of economic crime.

Economic Reform and Its Effects

Since the 1978 market reforms began, The People’s Republic of China has experienced an average of ten percent economic growth per year, for the past three decades (Censky, 2012). This far exceeds the current two percent per year growth of the United States of America (Censky, 2012). In 2006, China’s Gross Domestic Product surpassed both Great Britain and France and is poised to overtake that of the United States in less than a generation (M. Pei, 2006). Indeed, some believe China will have the world’s largest GDP in less than a decade (The Economist, 2012), if it does not already (Subramanian, 2011). While the transition from a collective economy to a socialist market economy has created widespread growth and opened the country to private ownership, as well as foreign investment, most newly “corporatized” state-owned-enterprises still have heavy party involvement: 81 percent of enterprise Chief Executive Officers and 56 percent of the senior corporate executives are party-appointed (M. Pei, 2006). While the World Bank notes all segments of China’s population have seen gains in average income, the largest have been among the government-connected rich (Farrell, 2012). The income gap between rural and urban areas has increased over the past 25 years leading to an estimated Gini coefficient¹ of over 0.412 (Xuyan & Yu, 2012). The Chinese government has refused to update the country’s official Gini coefficient since 2000, citing incomplete data

¹ “The Gini coefficient, which measures income distribution on a scale of zero to one, indicates a relatively reasonable income gap if the number is between 0.3 and 0.4. A Gini index between 0.4 and 0.5, however, signals a large income gap” (Xuyan & Yu, 2012).

for high-income earners. So, while China's GDP has increased, nominal per capita GDP remains lower than other East Asian countries. Indeed, "market reforms in China have generated widespread suffering and life disruptions, affecting many social groups" (Hung & Chiu, 2003, p. 231). One group particularly affected is farmers, including those in the dairy industry, who have been hit with "stagnant farm prices, rising input prices, and rapacious local governments" (Yang, 2006, p. 151).

In response to China's social problems, protests are also increasing. "Popular discontent with rising inequality, unfair income distribution, and rampant corruption has made parts of Chinese society volatile cesspools of potential instability" (Yang, 2006, p. 153). Riots have erupted from events as simple as traffic accidents, to more complex ones such as public concern regarding environmental degradation. "For the past quarter century, the Chinese Communist Party has relied mainly on rapid economic growth and improvement of people's living standards to boost its legitimacy," but there is a "growing sentiment" that "China needs not only economic growth but also more concern for the environment, more support for the disadvantaged, and more attention to social justice overall" (Yang, 2006, p. 160).

The official crime rate was 55.91 per 100,000 as the reforms began in 1978 and had risen to 337.5 per 100,000 in 2002 (Liu, 2006); an increase by a factor of six. Recent years show a downward trend in violent crime with murder, rape, arson, and bomb attacks all on the decline between 2006 to 2007 (Xinhua, 2007). The rate of economic crime increased by ten percent overall during this time period, and it was reported that production and sale of fake or substandard products alone was up 24.3 percent from the prior year (Xinhua, 2007). China represents 20 percent of the world's population (M. Pei, 2006), but the

impact of economic crimes may have much wider global implications. From 1990 to 2012, China has averaged exports worth \$48.8 billion (U.S.) per year (General Administration of Customs, 2012) and in 2007, 60 percent of product recalls in the United States were of Chinese imports (Serrano, 2007). These included a variety of items including toothpaste tainted with antifreeze, toys for small children made with dangerous breakable parts, lead-painted toy trains, melamine-tainted pet food, salmonella- and nitrofurantoin-tainted seafood, and almost half a million defective truck tires (Serrano, 2007).

Research Question

International and comparative work provide a broader theoretical backdrop than do studies confined to a single nation for the study of both violent and economic crime. As recently noted, international studies “alerted scholars to the fact that explanatory paradigms had to be seriously re-formulated when it became evident that they had only parochial application” (Pontell & Geis, 2010, p. 87). In this regard, China provides a new and ever growing venue to test western theories of corporate criminality.

Some past studies of corporate crime have shown the state to be “selective” in its legal response. Calavita and Pontell (1994, p. 305) posit that the state has a weaker response to “social” regulations, “such as occupational safety and health standards, which are aimed at controlling production processes” and a relatively stronger response to “economic” regulations, “such as insider trading restrictions, which regulate the market and stabilize the economy.” Earlier studies (Barnett, 1979; Calavita, 1983; Snider, 1991; Yeager, 1988) reveal that the lax response to social regulations is tied to the capital accumulation function of the state. There are occasional attempts to “shore up worker safety, reduce environmental hazards, or enforce labor standards,” (Calavita & Pontell,

1994, p. 306) but only when the other function of the state, *legitimization*, is threatened by a sufficiently powerful political movement (O'Connor, 1973). Legitimacy can be defined as “the capacity of the system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society” (Lipset, 1981, p. 84). The current study analyzes a major food scandal in China involving tainted milk in order to explore whether the state response to corporate malfeasance operates in a similar manner.

The Sanlu Scandal

On September 11, 2008, the Chinese government announced that a large amount of the nation’s infant formula supply was tainted with the industrial chemical melamine. Approximately 300,000 infants were affected by the dangerous products and at least six babies were confirmed dead (Xiu & Klein, 2010). Just one year before the melamine milk scandal broke, Chinese Premier Wen Jiabao had authorized the use of \$1.1 billion U.S. and 300,000 inspectors to regulate and inspect the food industry. The resulting four-month sweep of the food industries in China resulted in “1,187 criminal investigations opened, 300 drug makers shuttered, 192,400 unlicensed food shops closed and 1,400 substandard slaughterhouses shut down” (Yardley & Barboza, 2008). After the inspections, in May 2008, the State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) reported that the milk industry was one of the safest in China and that “99 percent of [the companies] passed safety inspections for their infant milk formula” (Yardley & Barboza, 2008). After the melamine scandal in September 2008, the AQSIQ again inspected 1,548 dairy companies and revealed that perhaps as many as 372 milk collection stations had been adding melamine to milk since April 2005 (Spears & Leung, 2008). The agency tested 491 different batches of formula from 109 different companies and found that

twenty-two companies, including government-sanctioned “Chinese National Brands” Sanlu Group, Inner Mongolia Yili Industrial Group Company, Mengniu Dairy, and Shanghai Bright Dairy & Food Company, were manufacturing and selling melamine-tainted products (Xinhua, 2008a). That meant nearly 20 percent of all available infant formula in China was toxic to the babies drinking it (McLaughlin, 2008). The scandal made it apparent that there were large regulatory problems throughout the Chinese dairy industry (Yardley & Barboza, 2008). Furthermore, in the months prior to the public announcement, the government attempted to censor the media to avoid making the case public knowledge (Barboza, 2008).

Methodology

The melamine milk scandal was chosen for this case study for a few key reasons, all having to do with the scale of the incident. First, it was a highly notable event, defined by the World Health Organization as one of the largest in recent years (Schlein, 2009). Second, the case was not an isolated incident; it later revealed industry-wide crimes that had occurred over a number of years. Third, it is one of the few recent Chinese cases of corporate crime that was significant enough to receive considerable news coverage within and outside of China; it simply was too big for the state to simply cover-up, and thus it provides much more information and commentary than one might normally obtain solely from the Chinese media.

All of the data for this study were located in journal and newspaper articles. The three main news sources were Xinhua, *South China Morning Post*, and various New Zealand newspapers. The melamine scandal was large enough that the state-controlled Xinhua not only published frequent stories on the topic, but it also provided some of the most useful statistics, such as total victim count. The *South China Morning Post* is a Hong Kong-based

newspaper with former managing editors from *The Wall Street Journal*. The paper has been accused of having a pro-Beijing bias (Smith, 2006), but it also covers “banned on the mainland” topics such as Tiananmen Square (Chong, 2012). New Zealand publications provided data with little to no bias as the country was only indirectly affected by the scandal (through the Sanlu-Fonterra connection described later in this study). In total, 112 news articles, published over a period of four years (2008 through 2012), were used to inform this study.

One major issue is the potential effect of the state-controlled media on the accuracy of newspaper reporting in China. While state-supervised Chinese journalists are likely to paint a biased picture (Zhao, 1998), this does not present an unresolvable problem, since the bias is presumably pro-government, or at the very least, a bias that will not blame the regime. One might therefore presume that reported negative information provides “best case” scenarios that underestimate the extent and nature of the damage resulting from actual criminality, especially as it relates to the role played by higher levels of government corruption.

Corporate Crime and State Theory

There have been a number of studies on the lax regulation of corporate crime (Aulette & Michalowski, 1993; Calavita, 1983), how governments choose to ignore elite offending (Crenson, 1971; Goetz, 1997), what forces the state to respond to corporate crime (Calavita & Pontell, 1994; Calavita, 1983; Goetz, 1997), and why the state responds to elite offenses it would otherwise ignore (O'Connor, 1973; Poulantzas, 1969).

As documented in previous research studies (Braithwaite, 1982; Calavita, 1983; Clinard & Yeager, 1980; Crenson, 1971; Geis, 1967; Goetz, 1997; Snider, 1990, 1991), corporate crime is met with a lax response. The state tolerates the violation of "social" regulations since their enforcement "cut into profits" (Calavita & Pontell, 1994, p. 305). For example, Aulette and Michalowski's (1993) study of the Imperial Food Products fire that killed 25 poultry workers, and injured another 56, concluded that the North Carolina state government and Occupational Safety and Health Administration (OSHA) failed due diligence in inspecting the Imperial chicken factory. Plant workers had been stealing poultry through the fire exit, so management pad-locked the door without providing access to the key in the case of an emergency. The North Carolina state OSHA was deliberately "underfunded and overwhelmed" at the time (Aulette & Michalowski, 1993, p. 166) and failed to require safety compliance from the factory. When a fire in the inescapable building began, it killed 25 due to OSHA's ineffective oversight.

Repeated acts of corporate malfeasance that are not subject to serious governmental response results in such offenses becoming "non-issues," i.e., acts that are technically illegal, but that are rarely pursued by law enforcement. In one study in Indiana, Crenson (1971) showed that when the enforcement is expected to negatively affect

corporate profits, government generally avoids a legal response. Despite the known danger of air pollution, local government chose not to enact air quality controls that conflicted with the private interests of local steel factories. Air pollution became a “non-issue” with implicit governmental approval. Goetz’s (1997) study of class-bias² in law enforcement found that the “Hyde” Fire Department in Boston did not investigate arson-for-profit by landlords seeking insurance money. Not only did the government tacitly approve of the dangerous practice, one investigator described the arson as a “good business decision” given the destruction of low-rent property to make way for the construction of new gentrified buildings (Goetz, 1997, p. 577).

While the state may allow corporations (Aulette & Michalowski, 1993; Crenson, 1971) and high socio-economic status offenders (Goetz, 1997) to commit white-collar crimes with relative impunity, social regulations cannot be violated indefinitely. Goetz (1997) found that, eventually, lower-class residents were able to apply enough pressure on the Hyde Fire Department that it formed a task force to address the public's concerns, investigate elite offenders, and attempt to prevent future fires. The task force lasted only a few years and proved ultimately unsuccessful. Likewise, Calavita (1983) found that President Carter created OSHA in the early 1970s as a symbolic gesture to restore “social harmony” among American workers. At the time, unsafe working conditions killed 100,000 persons a year and disabled another 390,000 (Calavita, 1983). Calavita (1983) argued

² Goetz (1997) argued that the choice of the Hyde Fire Department to investigate low socio-economic status (SES) offenders while simultaneously ignoring high SES offenders was the result of “the power of organizational interests shaping the definition, enforcement, and administration of laws” (Schrager & Short, 1980, p. 17). Not only did this class bias include offenders, but also victims as the repeated victimization of low SES workers and consumers helped “reproduce inequities” between the two groups (Goetz, 1997).

OSHA was not a sincere attempt at regulation, but merely an attempt to placate upset workers. Accordingly, in its first six years of operation, the agency failed to have Congress enact regulations that protected workers. By the end of the 1970s, however, the political heft of the agency had grown. Soon after, the Reagan administration quickly began to dismantle and defund the agency. Calavita (1983) found the government action came because OSHA had allowed for “incremental gains by labor, both managerial and ideological” (Calavita, 1983, p. 437).

Calavita and Pontell (1994) used state theory to explain why, and how, governments occasionally respond to social regulation violations despite their predilection to help capital (O’Connor, 1973; Poulantzas, 1969). Poulantzas (1969) argues that the state apparatus tolerates corporate crime because capitalist interests and the state have an *objective relation* such that success for capitalist interests (continued economic growth) is beneficial for the state (political stability and tax revenue). While capitalist success leads to state success, this relation is tempered by the state’s necessity to fulfill two functions: *accumulation* and *legitimization* (O’Connor, 1973). As O’Connor (1973, p. 6) describes, “the state must try to maintain or create the conditions in which profitable capital accumulation is possible,” however, “the state must also try to maintain or create conditions for social harmony.” When the state favors the capitalist class too heavily it jeopardizes *legitimacy* “by alienating the other classes who inevitably pay the price” (Calavita & Pontell, 1994, p. 306). Thus, it is only when this legitimacy is threatened that the state will respond to most corporate crimes.

As mentioned earlier, studies linking lax enforcement and industry profits (Barnett, 1981; Snider, 1991; Yeager, 1988) note that the state periodically will make an effort to

launch “visible enforcement campaigns” to “shore up worker safety, reduce environmental hazards, or enforce labor standards” but only “when there is a politically powerful working-class movement” (Calavita & Pontell, 1994, p. 306); these enforcement campaigns wane once political attention moves on (Goetz, 1997; Calavita, 1983). In the case of China, Van Rooij (2010) analyzed citizen response to pollution and found environmental violations to be a “pervasive problem.” Studies show, however, that citizens have petitioned local and national government institutions and organized mass demonstrations against pollution to positive effect (Dasgupta & Wheeler, 1997; van Rooij, 2006), in some cases “indirectly increasing the pressure on firms to comply” (van Rooij, 2010, p. 57). As van Rooij notes, this occurs only with great difficulty as “underlying many of the obstacles to citizen activism are political constraints. China is and remains an authoritative state with limited freedom of press, freedom of association, freedom of speech, freedom of demonstration, and lacking an independent judiciary” (van Rooij, 2010, p. 75). It is within this political and theoretical context that corporate crime in China is best analyzed.

Case Study: The 2008 Melamine Milk Scandal

The Chinese dairy industry has grown since China instituted economic reform. Historically, the Chinese did not drink cow's milk, but successful advertising campaigns increased adult consumption and the use of infant formula as a replacement for breast milk (Khan, 2011; Lim, 2008). As Chinese women entered the urban workforce in increasing numbers, infant formula use grew in popularity. Currently, 70 percent of mothers feed their infants either infant formula or water, in lieu of a pure breast milk diet (Fei & Jinyuan, 2011). With increases in milk consumption for both adults and infants, the dairy industry has grown at an average annual rate of 23 percent since 2000 (Debnam & Stanley, 2008). "From 2006 to 2007, dairy exports grew 157 percent, totaling \$242 million [U.S.]," (Stratfor, 2008, p. 1) and, "in 2006, milk production reached 30 million tons, ten times the volume of a decade before" (Chu, 2008, p. 9). This was a 25 percent increase from the year before and places China third behind the United States and India in yearly milk production (Debnam & Stanley, 2008).

In the United States, as in most other industrialized countries, one company produces milk from "cow to consumer," meaning the farming, milk collection machinery, milk processing system, and distribution are handled by one corporation (Xiu & Klein, 2010). In China, however, the transition from an agrarian society to an industrial society occurred along with the transition from a collective economy to the market socialist economy. The result is a trifurcation of the milk production process (Xiu & Klein, 2010). First, dairy farmers raise milk-producing cows. Second, these farmers, generally too poor to own the expensive machinery needed for milking, transport their cows to milk collection stations. Here the collector buys the milk as it is removed from the cow. Third, large milk

conglomerates purchase milk from the collectors, then package and distribute the final dairy products (Xiu & Klein, 2010).

With massive growth in food production in general, and dairy production in particular, the Chinese food industry regulatory structure has adapted to consist of 10 different agencies (Wei, 2007). This diffuse system of regulation leads to two marked problems: first, regulatory “blind spots” due to ambiguity in task assignment and second, “buck-passing” where overlapping oversight results in diffusion of responsibility (Ni & Zeng, 2009). In the complex Chinese dairy regulatory system, milk production was overseen by a patchwork of governmental agencies; the Ministry of Agriculture (MOA) was responsible for the milk as it exited the cow; production was inspected by the State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and Ministry of Health (MOH); and the marketing process was the responsibility of the Ministry of Commerce (MOC), State Administration of Industry and Commerce (SAIC) and the State Food and Drug Administration (SFDA) (Ni & Zeng, 2009). This system was deemed needlessly inhibitive by the national Chinese government and in December 1999 the state granted “inspection free” status to the largest milk producers (Chen, 2009). This “inspection free” status allowed large milk conglomerates with proven safety records to forgo *all* government inspections. The government’s assumption was that these companies were so large that they would police themselves for fear of losing profits. Beyond the “inspection free” status, Chinese regulations in the food industry do not follow international standards (Jensen & Dong, 2007). In 2004, China complied with only 23% of international food safety standards (Chen, 2009) and, at the time of the melamine scandal, “there [were] altogether 31 standards in total in China to govern the production,

processing, and distribution [of milk], but no standard mentions about the testing of [m]elamine” (Chen, 2009, p. 735).

There are more than two-dozen large dairy production companies, but in 2008 the four largest companies (Mengniu, Yili, Bright Dairy, and Sanlu) combined to share 44 percent of the overall market (Debnam & Stanley, 2008). All four of these companies relied on small dairy farmers for more than 90 percent of their production capacity due to facility constraints (Guo, 2008). As production increased, these small-scale farmers were met with issues of supply and demand. First, growing input costs for livestock, feed, and facilities and, second, government-mandated price caps put in place to combat inflation (Stratfor, 2008). In this system, the milk farmers and milk collectors are both “price takers” meaning they have no say in determining the price of the dairy they’re selling (Xiu & Klein, 2010). This crime-facilitative environment (Needleman & Needleman, 1979) created a situation where, the only way milk collectors could guarantee profits was to sell more milk, so they began mixing the milk with water. Since watered-down milk contains low protein levels that are easy to detect, melamine, a product high in nitrogen, was added to the milk to boost the apparent protein content (X. Pei et al., 2011). The direct test for protein is expensive, but a main component in protein is nitrogen, so milk production companies use “the Kjeldahl method,” a test for nitrogen content, instead (Breidbach, Bouten, Kröger, & Ulberth, 2009). While watery milk sold as the real thing is fraud, the crime became more serious as the milk collectors increased the amount of melamine. At a certain point the chemical crystallizes in the body and is excreted through the urinary tract. Too much melamine creates large crystals that cause kidney stones and death (X. Pei et al., 2011).

Melamine was not the first chemical to be added to milk; originally farmers used urea, a component in urine, to fake the protein content (Chu, 2008). This stopped in 2005, however, as detecting urea was relatively easy compared to melamine. Between late 2005 and early 2006, manufacturers sold a chemical in 25-kilogram brown paper bags as “protein powder,” which could be mixed with raw milk to boost protein levels (Fairclough, 2008). Each bag of powder sold for around 350 RMB (approximately \$52 U.S.). It was marketed as undetectable and, while it contained melamine, farmers claimed that no one knew: “Everyone just called it protein powder. Nowhere did it say melamine. People never thought about it and never thought they needed to know more details” (Fairclough, 2008). From 2005 on, the practice of adulterating milk with melamine was an “open secret” in China (Fairclough, 2008).

While scattered reports of dangerous milk found their way online from 2005 through 2008, the Chinese government deleted most posts and the health risk was kept out of the public’s view. The first company to acknowledge a problem with their milk supply was Sanlu Group, a dairy production company based in Shijiazhuang, Hebei Province. Sanlu was China’s largest provider of budget infant formula (Spears, 2008). On August 2nd, 2008, the Sanlu board was notified of the contaminated milk and the company sent a letter to the local government in Shijiazhuang requesting a quiet recall of its products. Sanlu asked for help to “increase control and coordination of the media, to create a good environment for the recall of the company's problem products... to avoid whipping up the issue and creating a negative influence in society” (Blanchard, 2008). Nine days later, a public relations firm advised Sanlu to try to screen and censor the Internet. Allegedly acting on behalf of Sanlu, the PR firm, Teller International, attempted to pay China’s largest

search engine, Baidu, approximately \$640,000 to remove all references linking Sanlu and dangerous products; Baidu rebuffed the offer (Fairfax New Zealand News, 2008).

Six weeks later on September 11, 2008, the Chinese newspaper *Dongfang Zaobao* reported a connection between Sanlu infant formula and kidney stones (Tong, 2011). That evening the Chinese Ministry of Health notified the World Health Organization (WHO) and held a press briefing to confirm the connection. The WHO issued a statement asking Beijing why the scandal had been kept secret for so long; the organization inquired if the incident was a result of ignorance or if the secrecy was deliberate (South China Morning Post, 2008). One representative for the WHO stated discovering who knew what and when was important: "...because if it was ignorance, there is a need to have much better training and education... if it is neglect, then it is, of course, more serious" (Elegant, 2008).

Even after the story broke, Sanlu continued to produce milk for two more days. On September 13, 2008, the company halted production when ordered to by the government and on September 15, the company began a recall; 2,176 tons of milk were seized while another 9,000 tons remained on store shelves (Yuxia, 2008). Just as the recall began, the first two confirmed deaths were announced and the sick infant count jumped from 14 on September 10 to 1,253 a mere five days later (Spencer, 2008). On September 16, the government revealed that milk powder from 22 companies total was tainted, including the remaining top brands: Mengniu, Yili, and Bright Dairy (Xinhua, 2008a). The WHO estimated the blow to consumer confidence would be large and, indeed, stock prices fell for all companies involved in the scandal (Reuters, 2008; South China Morning Post, 2008).

As the State Council released its findings, a number of top governmental officials issued statements attempting to explain both how the scandal occurred and what would be

done to prevent future catastrophes. On September 21, Premier Wen Jiabao explained, "This incident made me feel sad, though many Chinese have been understanding. It disclosed many problems for government and company supervision of the milk sources, quality and marketing administration. The government will put more efforts into food security, taking the incident as a warning. What we are trying to do is to ensure no such event happens in the future by punishing those leaders as well as enterprises responsible. None of those companies without professional ethics or social morals will be let off" (Guodong, 2008). A few weeks later, on October 6, the government reiterated that China's "chaotic dairy production and distribution order" and "gravely absent supervision" combined with "illegal production and greed" caused the incident (Callick, 2008). As Chinese officials apologized to the public, they told the WHO that the contamination had been "accidental" (Wong, 2008b) and subsequently refused to release updated casualty counts. The government claimed, "because it is not an infectious disease [...] it's not absolutely necessary for us to announce it [the updated figures] to the public" (The Standard, 2008).

In late 2008, Sanlu filed for bankruptcy and the government arrested those it believed were responsible for the adulteration including the chairwoman of Sanlu and honorary CCP secretary, Tian Wenhua (CNN, 2008). Wenhua admitted that she had first read consumer reports about Sanlu's dangerous milk in May 2008 (Ransom, 2008). On January 22, 2009, 21 people were convicted of various offenses, although only three of them received significant punishments (Macartney, 2009). Tian Wenhua was sentenced to life in prison and stripped of her party title. Zhang Yujun, a cattle farmer, was charged with producing and selling 770 tons of melamine and sentenced to death. Geng Jinping was

found guilty of selling tainted milk to Sanlu and also received a death sentence (Macartney, 2009). Various Sanlu executives were also sentenced to prison with terms ranging from five to fifteen years (Davidson, 2009). On November 24, 2009, Yujun and Genping were executed (Bodeen, 2009). While various Party members lost their posts after the scandal, at least three have been reinstated, or promoted, to new government positions (Huifeng, 2012). Given that twenty percent of all milk powder in China was tainted by 22 companies, the vast majority of those responsible for introducing melamine into the milk supply were not punished.

State Response to Scandal

In 2005 and 2006, Jiang Weisuo, a worker at the northwest Chinese Shannxi Jinqiao Dairy Company claimed unsafe chemicals were being added to the company's competitor's milk products. He reported this to both regulators and management at the guilty dairy companies. "They all said they would look into it, but there was never any result" (Fairclough, 2008). He passed the information on to China Central Television which aired a report that detailed the adulteration. During the broadcast, the channel included video of the unsafe chemicals being added to milk, however, the Shaanxi Quality and Technical Supervision Bureau declared the milk production process safe and legal (Fairclough, 2008).

Throughout the summer of 2008, a variety of different sources reported dangerous infant formula to various regulatory agencies only to either be redirected in their inquiry or censored. On July 16th, 2008, Gansu Province reported to the Chinese Ministry of Health a local hospital with sick infants that had been fed Sanlu formula (Yardley & Barboza, 2008). As a result, the Ministry of Health sent investigators to Gansu Province in August, but no further information was obtained. On July 24th, 2008, a pediatric urologist questioned the connection between sick infants and formula at his hospital, but was told to speak to the health department instead (Yardley & Barboza, 2008). A journalist for the newspaper *Southern Weekend* caught wind of the developing story of dangerous form but was censored by the Chinese government before the story made it to press (Bandurski, 2008).

Records indicate Sanlu received complaints about its milk in 2007, tested its supply in June 2008, and on August 2nd, 2008 notified its board of the problem yet it did not attempt an immediate recall (Yardley & Barboza, 2008). Fonterra Co-operative Group Limited, a New Zealand dairy company that owned a 43% minority stake in Sanlu,

advocated for an immediate recall, but neither Sanlu nor Chinese officials took action. As a result, the tainted milk continued to be sold in China through August and into September. The New Zealand Prime Minister, Helen Clark, was notified of the dangerous formula on September 5th, 2008 and, not having seen movement from Sanlu or the local Chinese government in Hebei Province, notified the central Chinese government three days later (Chen, 2009). Finally, on September 11, 2008, news agencies reported that 14 infants in rural Gansu Province were sick with kidney stones as a result of drinking the same type of powdered infant formula (Spencer, 2008). Prime Minister Clark would later describe the situation: “They [Fonterra] have been trying for weeks to get an official recall and the local authorities in China would not do it. At a local level... I think the first inclination was to try to put a towel over it and deal with it without an official recall” (Spencer, 2008). It is important to note the similarity between this and the pet food scandal in 2007 (see: Nestle, 2008). In both cases, it was not until interventions by foreign governments (the U.S. in 2007 and New Zealand in 2008) that China was forthcoming with evidence of corporate wrongdoing.

During this six-week lag time, China held the 2008 Beijing Olympic Games and the Australian news media linked the announcement delay directly to censorship practices instituted before the Olympics (Hutcheon, 2008). A 21-point directive, released by the Central Propaganda Department prior to the Olympics, contained a list of rules for the media to follow in preparation for the Olympics. The directive was intended to remain within the Chinese journalism industry, but the *Sydney Morning Herald* published an English-language version on August 14th, 2008. The directive contained this line: “All food safety issues, such as cancer-causing mineral water, is [sic] off-limits”(Hutcheon, 2008).

The Chinese government denies issuing such a directive, but similar directives have been leaked in the past, such as one in 2005 concerning Tiananmen Square. The journalist who leaked that directive was sent to jail for ten years as a result (Hutcheon, 2008).

Government control in China not only inhibits the dissemination of information, but also limits the response of the public: “Within days of the story breaking, the state media was commanded by the Propaganda Department to tone down its coverage of the tainted-milk-scandal. Lawyers looking to file suits on behalf of aggrieved parents were ordered in no uncertain terms to drop their plans. Internet discussions of this and other recent disasters were swiftly deleted” (Elegant, 2008). The result of the posturing against lawyers and Internet users creates both an effective lack of mobilization and of redress. Following the scandal, the China Dairy Industry Association collected approximately \$170 million U.S. from the 22 companies involved, of which \$30 million U.S. was earmarked for “future medical complications.” The official Ministry of Health compensation plan allowed for three different payments: \$300 U.S. for an ill child, \$4,600 U.S. for a seriously ill child, and \$31,000 U.S. for a death, but it is unclear how many families were actually paid (NBC, 2011). To receive payment each family agreed to not file lawsuits against Sanlu (Barboza & Wong, 2009). Peng Jian, a lawyer who filed a class-action case in Hong Kong, explained, “The government said most of the parents have received compensation. But I know at least 400 parents who refused to sign the agreement. Some of them don’t agree with the terms, and some of them think a further investigation into these children’s future health should be included” (NBC, 2011).

On January 2, 2009, a group of aggrieved parents planned to hold a news conference and the government detained five of the parents involved (Macfie & Richardson, 2009).

After the news conference took place, the parents in custody were released. A lawyer representing the group stated, "Their [the police] aim was to stop them from holding a press conference" (Macfie & Richardson, 2009). The parent's message was not a request for more compensation, but a request for a guarantee that their children would have long-term positive health. While the parents holding the press conference had already received compensation, there is an unknown number of parents who have not and will not receive government assistance: all children who fell ill before the scandal became public on September 11 are not eligible for state-provided medical care (Wong, 2008a). Other parents were not content with the failed lawsuits and settlements; at least two fathers were jailed after speaking out. One father complained on the Internet and received a one-year sentence to "re-education through labor," a common punishment for dissidents in China. The other father was given a two-and-a-half-year jail sentence for campaigning on behalf of the affected parents (Asia News, 2010; New York Times, 2011).

The 2008 melamine scandal was the most serious food scandal that occurred during China's recent rise as an economic super power and yet resulting legislation appears inadequate to prevent another food adulteration disaster. As of late September 2008, the "inspection free" status was removed and the Ministry of Agriculture vowed to repair the milk production process (Xinhua, 2008b). In February 2009, the Standing Committee of the National People's Congress approved a slew of new food safety laws in response to the melamine crisis, but the media expressed doubts concerning the effect the new laws would have (X. Pei et al., 2011). One of the largest problems was that still no less than six governmental agencies, including the AQSIQ and various other ministries, were to oversee the implementation of the new standards and their related inspections (X. Pei et al., 2011)

recreating the “blind-spots” and “buck passing” that resulted in the “inspection free” status in the first place (Ni & Zeng, 2009). Even with the new laws passed in February 2009, throughout 2009 and 2010 melamine was found in both milk factories and in products on store shelves (Ching, 2010; Wines, 2010a). As a result of the continued contamination, the minimum legal protein level for milk was lowered to 2.8 percent from 2.955 percent (the U.S. and E.U. standard is 3 percent) with hopes that with watered-down milk now acceptable for sale that farmers, collectors, and companies would not feel it necessary to doctor their supply with melamine. Prior to this change 75 - 90 percent of milk would routinely fail the protein standards (Pinghui, 2010). However, less than a month later, however, more tainted milk was found (Wines, 2010b). Journalists describe the new standards as having been “hijacked” by the dairy companies as the old standards for bacteria count were limited to 500,000 bacteria per milliliter, but the new standards allow for two million (Pinghui, 2012). One report quotes a Chinese professor: "Small-scale farms and poor management were blamed three years ago yet we still see dairy companies spend huge amounts on marketing rather than on improving dairy farms. It is wrong to lower the standard to fit the reality. Don't cut the foot to fit the shoe" (Pinghui, 2012, p. 6).

Discussion

The majority of scholarship on Chinese corporate crime shows substandard regulations and lax enforcement in almost every area, including food production (Chen, 2009; Cheng, 2011) and environment protection (van Rooij & Lo, 2009; van Rooij, 2010). This comparative study of the melamine scandal in China suggests that state-theory can supplement the corporate crime literature that has theorized a connection between the profit-motive and criminality (Aulette & Michalowski, 1993; Clinard & Yeager, 1980; Goetz, 1997). The 2008 melamine scandal reveals that, similar to the United States and other western democracies, China experiences problems of regulatory capacity and non-issue making regarding corporate crime, but that there are also key differences.

First, similar to Aulette & Michalowski's (1993) and Calavita's (1983) findings on OSHA's purposeful handicapping, the ineffective dairy regulatory structure was made worse with the removal of overlapping jurisdictions and creation of the "inspection free" status. This allowed milk adulteration to continue unchecked for a number of years. Second, the immediate response of both local and national governments was an attempt to cover-up crimes in lieu of halting the crimes themselves. The Hebei provincial government "tr[ie]d to put a towel over it and deal with it without an official recall," (Spencer, 2008) while the national government censored Internet and media reports for at least three years, culminating in a blanket media-ban on food safety issues in the lead up to the 2008 Beijing Olympics. Just as Crenson (1971) and Goetz (1997) found, in the view of the Chinese state, the negative consequences for private enterprise did not outweigh the benefit to society. In this case, relegating milk adulteration to "non-issue" status was the "good business decision" (Goetz, 1997, p. 577). Third, unlike the creation of OSHA

(Calavita, 1983) and Hyde Fire Department Task Force (Goetz, 1997), the Chinese government responded to pressure from the New Zealand Prime Minister, not the public. In fact, in the immediate aftermath, Party officials maintained the adulteration was “accidental” and, in an effort to quell public protest and a potential larger social movement, required a legal contract for compensation and medical aid. Those who did not sign were not helped at all and those who spoke out against the government faced prison sentences. Fourth, milk adulteration continues, though on a much lower scale. In the four years since the event, efforts to prevent additional adulteration have not focused on more efficient monitoring. Instead, they have resulted in the lowering of milk quality standards further demonstrating China’s familiarity with the *objective relation* between the state and capital (O’Connor, 1973; Poulantzas, 1969).

The aim of this study was to compare the Chinese response to corporate crime in an effort to explain China’s growing economic crime rate. In China, the balancing act between *accumulation* and *legitimization* is skewed. In western democracies, legitimacy is affirmed through open elections, a free press, and the ability to publicly assemble (Lipset, 1981). While elections in China are open, there is only one party, the press is state-controlled, and protests are dealt with swiftly (van Rooij, 2010). Instead, China has chosen two alternative ways to maintain legitimacy. First, China has linked accumulation *to* legitimacy. In 2002, General Secretary of the Chinese Communist Party, Jiang Zemin, presented his vision for China’s future, the “Three Representations,” in an effort to redefine China’s ideology (Holbig, 2006). The statement redefines “common interest” such that, “According to this new definition of ‘common interest,’ the CCP represent not the ‘revolutionary forces’ of proletarian workers and peasants, but instead a new trinity of political, intellectual and

economic elites. While formally justifying the CCP's political authority in the name of representing the interests of the whole 'Chinese nation,' legitimacy of CCP rule is thereby tied to its mission of economic modernization, a mission that gives priority to the interests of the new economic and professional elites" (Holbig, 2006, p. 21). Western Chinese scholars hold that "economic performance is left as the only factor to bestow regime legitimacy to the Chinese party-state, implying that Communist one-party rule will immediately plunge into a serious legitimacy crisis should economic success falter one day" (Holbig, 2006, p. 6).

Second, the Chinese Communist Party spends a considerable amount of resources to control threats to legitimacy, "The regime is constantly on the guard against all kinds of dissenting discourses and activities and tries to suppress or, at least, to prevent them from entering the public. The rigid control of the public sphere in [s]ocialist systems, therefore, should not be regarded as an alternative to the legitimization of political power, but rather as its concomitant; legitimation and control are working hand in hand" (Beetham, 1991, p. 188). In the U.S. and other western countries, a free press³ is able to notify the public of corporate and governmental misdeeds. The power of negative publicity can lead to changes in corporate policy and behavior, especially when coupled with resistance from consumer and social activist groups (Fisse & Braithwaite, 1983; Gerber, 1990). Fisse and Braithwaite (1983) argue that where government responses may be weak, "adverse publicity" can take its place; they quote Pulitzer to illustrate their point: "There is not a

³ The term "free press" is used here in a relative sense. While the press in the U.S. and other western nations are not strictly censored, as they are in China, media conglomerates, mergers, and a concentration of ownership has reduced the "voice" of the public in recent decades (Shah, 2009).

crime, there is not a dodge, there is not a trick, there is not a swindle, there is not a vice which does not live by secrecy. Get these things out in the open, describe them, attack them, ridicule them in the press, and sooner or later public opinion will sweep them away. Publicity may not be the only thing that is needed, but it is the one thing without which all other agencies will fail" (Brian, 2001, p. 377). This study demonstrates that, in China, both the government response and media coverage are purposefully weak.

While in the U.S., research shows that without a conscious effort to produce truthful, *negative* publicity the media is likely to "reproduce a narrative of traditional, system-legitimizing assumptions and assertions"(Lofquist, 1997, p. 244), China's state-press presents the story the Chinese Communist Party believes should be told, dampening the sanctioning effect negative publicity may have. Indeed, the Party use of propaganda has changed over the past thirty years; the "objective shifted from a utopian one of raising people's consciousness to a more pragmatic one of promoting its own legitimacy" (Thomas & Nain, 2004, p. 179). The Party would face an immediate challenge to its legitimacy if there were an admission of a multi-year scandal involving the ability of the government to guarantee safe food. Chinese Communist Party control of the media allows the state to further advantage capitalist interests: "Party state power is increasingly converging with the power of capital in the Chinese media. This fusion of Party state and market power has created a media system that serves the interests of the country's political and economic elite, while suppressing and marginalizing opposing and alternate voices" (Thomas & Nain, 2004, p. 179).

As Calavita and Pontell (1994) note, social movements can have an effect on capital interests if the movements are large enough to be threatening to the legitimacy of the state,

but getting to this level is difficult. According to van Rooij (2010, p. 65), Chinese local governments are “well known to maintain close ties to local enterprises” presenting both problems of “abuse of power” and “limited institutional independence.” Local governments do not help identify elite offenders, fail to gather evidence, and do not enforce laws. The governments go so far as to actively “oppose justice seekers” and, in the worst cases, “[use] violence to keep citizens from taking action.” Van Rooij (2010) notes that the most effective form of combat to citizen action is labeling behavior as “subversive turmoil that damages social order.” Not only does this provide tacit approval for any offense that is protested, but also minimizes future attempts to begin legitimate complaints.

Coincidentally, in relation to pollution, van Rooij (2010, p. 71) found that national media usually would report on large stories, but would “be careful not to blame national policies.” Beyond the substantial governmental obstacles to the initiation of social movements, forming a powerful enough degree of activism requires personal resources beyond the means of most Chinese citizens: time, expertise, and a disposable income (Gerber & Jensen, 2000).

Conclusion

This study finds that the Chinese response to corporate crime does not differ greatly from that of western democracies and that the authoritarian structure of China's government only seems to exacerbate the issues of corporate crime and capital accumulation already found in other countries. For example, in the U.S., private corporations may not be forthcoming about defective products, but in China direct state control of the media and the government's ability to halt social movements through use of force further disrupts the flow of information and stunts the public's response beyond what occurs in the U.S. China has gone one step beyond the *objective relation*, which dictates a state's interest in capital accumulation, and has connected accumulation to legitimacy. As crimes present threats to accumulation *or* legitimacy, the Chinese state uses its power to maintain secrecy beyond that of open democracies, effectively negating the sanction of the media. In the 2008 melamine case, publicity eventually led to falling share prices, Sanlu's bankruptcy, and declined consumer confidence. This outcome makes sense given Fisse and Braithwaite's (1983) analysis of the sanction effects of publicity. China's authoritarian control meant that negative publicity occurred later than it could have in a more open democracy and, as melamine-adulterated milk sales continued, more deaths occurred as a result corporate crime.

The state finds itself in a constant balancing act between capital accumulation and political legitimization (O'Connor, 1973); China's three decades of economic growth, recent increased economic crime rate, and increase in political protests demonstrate that the Chinese government is not immune to this metaphorical tug-of-war. Though western media and scholarship tend to characterize China as lawless and corrupt, this study

demonstrates that similar processes are at work in China as compared to non-one-party countries. The differences are largely a matter of degree and are tied to the organization of business practice under state authoritarian rule. This finding extends the theoretical importance of “non-issue making” from Goetz’s (1997) original conception of governmental *inaction* to include deliberate governmental *counteraction*. Additional case studies of major corporate crimes in China will not only benefit further theory development in this important yet relatively understudied area, but will be invaluable in effecting better compliance systems in the future as well.

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