

*Corporate Crime in China: History and Contemporary Debates* BY ZHOU ZHENJIE  
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Corporate crime has recently been raising public concern in China, with cases involving bribery and corruption (eg the 2014 GlaxoSmithKline bribery case), unsafe food (eg the 2008 Sanlu milk powder contamination scandal) and industrial accidents (eg the 2014 Kunshan metal product factory blast case). While there is much scholarly discussion on corporate crime in general, there is a paucity of English-written literature examining legislation and judicial practice concerning corporate crime in China.

The book is divided into eight chapters. The first chapter discusses the definition of corporate crime, the punishment of corporations and three representative corporate crime cases in recent years. It examines the two fundamental elements for determining corporate crime under the Criminal Law of the People's Republic of China 1997 ("the Criminal Law") (at p 2): "an act committed by an organization that endangers society" (the objective elements) and "a guilty mind" (the subjective element). Also, as required by the principle of legality (*fa ding zhu yi*) in Article 3 of the Criminal Law, "an act should not be punished unless provided as a corporate crime" (at p 5).

In this chapter, the author further highlights a unique characteristic of corporate crime in China, that is, the influence of political considerations in criminal legislation and judicial practice. He notes, at p 17, that "[e]verything and everyone is supposed to serve 'stability' and 'development,' the two greatest themes of the time. Criminal justice system is no exception." Indeed, "the fundamental values of criminal law, such as independence, justice and fairness, sometimes have to yield to political considerations in relation to 'stability' and 'development' even at a macro level."

Although the author mentions that the terms "unit (*danwei*) crime" and "corporate crime" are similar under Chinese law (at p 2), there appears to be inadequate discussion on "unit crime". In the context of Chinese law, "corporate crime" is a subset of "unit crime" (Vincent Cheng Yang, "Corporate Crime: State-owned Enterprises in China" (1995) 6 Crim L F 143 at pp 146 to 147). According to Article 30 of the Criminal Law, "corporations, enterprises (*qiye*), nonbusiness institutions (*shiy*e), government agencies (*jiguan*), and societies (*tuanti*)" can be criminally liable for committing a criminal offence. Therefore, the subject (*zhuti*) of corporate crime includes not only corporations, but also unincorporated associations, such as enterprises, nonbusiness institutions, government agencies, and societies. As Chapter 4 of the book discusses the criminal liability of state organs, which are not corporations,

it would have been better if the author had clarified the connotation of “corporate crime” at the outset.

The historical overview of the corporate crime legislation in Chapter 2 offers the reader a fascinating insight into the evolution of the concept of corporate crime and academic debates on corporate criminal liability. The author explains that, unlike the United States (“US”) and the United Kingdom (“UK”) which began to prosecute corporations from the 1950s to the 1970s (at p 44), there had been no regulation of corporate crime in China during the same period. This was due to the intense influence of the criminal legislation and criminal ideology of the former Soviet Union, which believed in moral and individual liability as the basis for criminal law (at p 24). Meanwhile, the planned economy system deprived corporations of the incentives to pursue their own interests and made it practically unnecessary to regulate corporations via criminal punishment (at p 44). The author highlights that the political objective to curb public anxiety resulting from sensational cases (*eg* smuggling, environmental pollution, tax evasion and bribery) was the main driving force behind the eventual introduction of corporate criminal liability in China in the 1980s (at p 44).

After a comprehensive comparative study on the scope of corporate crime in Chapter 3, the author focuses on the criminal liability of state organs in Chapter 4, which is a peculiar issue in China. The function and responsibility of state organs have been evolving ever since the 1978 economic reform. While China was still a planned economy system, the government and economic enterprises were not separated from each other and thus the criminal liability of state organs was rarely questioned (at p 70). However, there has been an increasing degree of separation of economic and administrative functions of state organs since the 1990s. As such, the question of whether state organs should be criminally liable has become a fiercely debated topic in Chinese academia and judicial practice.

The author presents a masterful analysis to justify imposing criminal liability on state organs “from the standpoints of the constitution, judicial practice, the purpose of punishment and comparative law” (at p 89). The author also argues that state organs at the national level should be excluded from corporate criminal liability. These include the People’s Congress of the People’s Republic of China (the “PRC”) and its Standing Committee, the President of the PRC, the State Council of the PRC, the National Committee of the Chinese People’s Political Consultative Conference, and the National Military Committee (at p 84). While it is understandable that these organs are the highest in terms of state power, the simple reason given by the author for his suggestion, that is, “to prosecute them is to prosecute the PRC itself” (at p 84), is less than convincing.

The latter part of Chapter 4 touches on another peculiar issue regarding the criminal liability of China’s People’s Court. Comparing the functions of the People’s Court and the process of appointing judges with that in Western countries, the author contends that criminal liability of the People’s Court is acceptable given the current one-party political situation in China, because the Chinese judiciary “is quite different, if not completely different, from that in Western countries that have adopted the principle of separation of powers; it is more administrative than judicial in nature” (at p 88).

Chapter 5, titled “The Basis Of Corporate Criminal Liability”, tackles a thorny question in corporate crime: whether corporate criminal liability should be based on individual fault or organizational fault. Deftly exploring the significance of the derivative approach and the directive approach in imposing criminal liability on corporations, the author suggests that the latter is more effective than the former in deterring corporate crime. He contends that a derivative approach is a compromise between traditional criminal law based on individualism and the pragmatic impetus to regulate corporate activities, and may result in unfairness (at p 112), while the directive approach places more emphasis on objective elements, and the wrongful state of mind of the body corporate is to be more “presumed” than proved under this approach (at p 101).

The sixth chapter on corporate compliance programmes is a far more interesting read as it offers a new perspective on preventing corporate crime. This internal mechanism provides an alternative solution to preventing potential corporate illegality. Originating from the US, these programmes have been widely adopted by many jurisdictions, including Japan, Australia, France, Italy and Russia (at pp 116 to 122). The author critically argues that the compliance programme plays a positive role in deterring corporate misconduct, and goes on to propose that China should adopt such a programme (at p 137). However, it appears that there is no empirical evidence on the enforcement of the corporate compliance programme, and hence doubts can be raised as to the effectiveness of this mechanism in preventing corporate crimes in China.

Chapter 7 is an informative exposition on various procedural matters relating to corporate crime, including, *inter alia*, jurisdictional issues, the litigation representative, the defendant corporation and the accused persons in collateral civil action, the use of coercive measures, private prosecution, criminal reconciliation, trial organizations, and revocation. What perhaps deserves further discussion is the enforcement of a judgment, especially given its importance in an emerging economy and the difficulty of enforcement in rural areas. The author pointed out that “political elements often intervene” in the enforcement of judgments, especially when a state-owned corporation is involved (at p 160), and “more political than legislative courage and efforts” are required to resolve the execution problems in corporate criminal cases. Nonetheless, this leaves the reader wondering what the political elements and efforts are. Arguably, a concerted nation-wide reform on the corporate governance structure and ownership structure of state-owned enterprises may be one of the options.

Examining the existing problems facing corporate crime prevention in China, the concluding chapter makes constructive proposals to improve the current corporate crime prevention policy, including flexible punishments, victim compensation and whistle-blower protection. Reminding the reader of the unique cultural, economic and political elements in China, as well as the increasing number of cases and amounts of harm caused by corporate crime, the author calls for a number of governmental and social efforts in preventing corporate crime, instead of merely relying on criminal law as the last resort. These efforts include, amongst others, a comprehensive policy composed of strict enforcement of law by government agencies, voluntary self-control of corporations and enthusiastic public participation, establishment of a compliance culture within corporations, citizens’ participation

in discovering corporate misconduct in preventing corporate crime, as well as a consolidated whistle-blower protection law (at pp 184 to 185).

All in all, Zhenjie Zhou's book is a very timely and deeply informative book in the area of corporate crime. As the subtitle indicates, a distinctive feature of the book is that it presents the "history and contemporary debates" on the subject matter. In addition to offering a historical review on the legislation of corporate crime, the book tackles selected key issues regarding corporate crime: the scope of the crime, the criminal liability of state organs, the basis of corporate criminal liability, the corporate compliance programme and the crime prevention policy. The strength of the book also lies in its comprehensive analysis of corporate crime cases and the underlying policy debates, and this provides extremely useful insights into corporate crime in the unique social and legal context of China. This book is a remarkable resource for lawyers practicing corporate criminal defense, and for academics and students who are interested in the study of corporate crime in China.

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