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Food Fraud and the Partnership for a 'Healthier' America:
A Case Study in State-Corporate Crime

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Abstract

At a moment of heightened public concern over food-related health issues, major corporations in the food industry have found their products and practices under scrutiny. Needing to be understood as socially responsible, these corporations have established partnerships with the state to construct a positive, proactive, and cooperative public image. One major public-private partnership that evolved from former First Lady Michelle Obama's *Let's Move* initiative—the Partnership for a Healthier America (PHA)—serves as a case study in this paper, which analyzes the opportunity costs and social harms perpetuated by a public health campaign bound by the imperative to maximize profit. By using trusted state actors to deliver accurate but deceptive claims about food companies' commitment to public health, this public-private partnership actively misleads the public and potentially exacerbates public health challenges, warranting a skeptical revision of how we understand corporate social responsibility and neoliberal governance on issues of health and nutrition. As a form of fraud, these attempts to mislead the public go beyond the actions of public sector individuals or members of corporate boards, but are structurally incentivized by the legal rights, regulatory privileges, and profit-related incentives central to the modern corporate form. While conventional criminological research tends to underemphasize state and corporate harms, we make use of a critical criminological perspective to analyze state-corporate partnerships in the space between food industry practices and public health policy.

Keywords: Food Crime, Food Studies, Corporate Crime, Public Private Partnerships

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Introduction

Corporations play an integral role in the supply, distribution, and delivery of food in the United States. Corporate dominance of agricultural supply chains and global food markets is both a cause and a symptom of the private sector's ability to influence public policy and public health initiatives, especially when such policies directly intersect with corporate products and services. Public-private partnerships are reflective of such power, where profit-maximizing strategies are embedded into large-scale campaigns that ostensibly have the public interest in mind. The strategic use of Corporate Social Responsibility (CSR) messaging further advances this process, enabling food corporations to frame themselves as "vital community partners poised to 'work together' across sectors to solve childhood obesity" and other public health problems (Ken 2014a: 130). Whereas some scholars have critiqued CSR as being a mere instrument of "feel good" marketing, others have argued that the corporate form itself is problematic in all occasions where it purports to be capable of advancing public interests, particularly those that do not inherently align with private economic incentives. This stems from a broader view of the corporate form as a source of structurally incentivized harms that are antithetical to the common good (Tombs & Whyte 2015). To empirically evaluate the applicability of this structural and conceptual critique, we focus on corporate influence in food, nutrition, and public health. We examine the Partnership for a Healthier America (PHA) – a public-private partnership – and present actions and outcomes that should be understood as forms of fraud and false advertisement, resulting in social harms and significant opportunity costs that are hidden behind a marketable veil of Corporate Social Responsibility. In doing so, we aim to contribute to the conceptual bridge linking neoliberal governance studies and state-corporate crime scholarship with the emergent literature on food crime.

The Partnership for a Healthier America (PHA) was founded in 2010 “to ensure the health of our nation’s youth by solving the childhood obesity crisis” (PHA n.d.-a), web). The PHA was founded “in conjunction with – but independent from” – the *Let’s Move!* initiative championed by then-First Lady Michelle Obama. The former First Lady has served as the PHA’s honorary chair alongside honorary vice-chairmen U.S. Senator Cory Booker and former U.S. Senate Majority Leader William Frist. The affiliation of these state representatives is notable in the PHA’s external communication and public events. The private sector’s representation includes corporations from a variety of industries, including food and beverage (e.g., Mars, Coca-Cola, Walmart), fitness apparel (e.g., Nike, Reebok), health insurance (e.g., General Electric, Henry Ford Health System, Kaiser Permanente), and academic institutions (e.g., American University, Florida State University, George Washington University).[3]

To some, it may seem counter-intuitive that corporations such as Mars and Coca-Cola, which specialize in snack food and “liquid candy” (Jacobson 2005), would be at the helm of a national health and nutrition initiative. The notion that snack food and soda corporations can successfully project the ability to prioritize and improve public health indicators such as childhood obesity may represent a conflict of interest, or structural contradiction. Previous work has found that the rhetoric of the PHA and similar organizations highlights unmeasured advancements in public health, while distracting from the actions of the public sector to assist with private partners’ business strategies of

[3] An itemized list of all PHA affiliates is available online at (http://ahealthieramerica.org/our-partners/)

increasing revenue and market-share (Ken 2014a; 2014b; 2014c). In this paper we use both legal and normative criteria to offer a more critical position, examining how the PHA can be understood as advancing a form of state-corporate fraud, and by extension, serving as a case study in the crimes of the powerful.

Advancing a Structural Unit of Analysis

In addition to substantial media coverage surrounding high profile cases of food-related scandals or mishaps (e.g., food contamination, product recalls), there is a growing body of empirical research on what some have labeled "food crimes." Whether a "criminology of food" gains traction as a term in academe is independent from the fact that food-related harms – some of which have been within the purview of criminal law – have been studied by journalists and academics alike for over a century (see Sinclair 1906). Some scholars have drawn connections between food-related harms and private industry practices, conceptualizing food crimes as a form of white-collar crime (Newman 1957; Friedrichs 2010). Various scholars (Croall 2013; Leighton 2016; Spink & Moyer 2011; Tombs & Whyte 2015) have contributed to a growing typology of food-related offenses, offering specific categories such as those listed in Table 1.

Table 1. Food Crime Categories

Food Fraud	Pricing Schemes
Food Safety Incidents	Labor Exploitations
Food Poisoning	Cruelty to Animals in Food Production
Improper Food Labeling	Tax & Subsidy Fraud
Anti-Competitive Trade Practices	Regulatory Non-Compliance

A notable feature of the phenomena captured by Table 1 is that formal prosecutions and convictions in criminal courts are relatively rare and largely absent from the public conscience as it pertains to common depictions of crime. This relative absence of food-related crimes and social harms in conventional crime record-keeping and popular discourse does not reflect the seriousness of their effects. Consumers may be misled, wrongly charged, made ill, or even killed as a result of private sector practices in the production, distribution, preparation, and sale of food industry products (Tombs & Whyte 2015; Croall 2007). However, despite a robust historical record of corporate-induced harms and regulatory violations in the food industry, such events tend to be framed as singular deviations and are not likely to be salient in the public consciousness as constituting criminal wrongdoing or a form of corporate crime. For example, multiple deaths resulting from unsafe workplaces, such as chicken processing plants and farms, tend to get reported as "accidents" or "disasters" while the term "mass murder" is reserved for street crime (Barak et al. 2015, p. 211; Reiman & Leighton 2013; Wright et al. 1995). As is the trend with corporate activity across industries, such phenomena are viewed as "catastrophes" instead of employee manslaughter; "scandals" instead of the logical and foreseeable consequences of industry practices; "misdeeds" instead of systematic violations (Walters 2007; Wells 2001: 10).

Other corporate crime studies have examined the nexus between individual decision-making and organizational incentives, focusing for instance on the intentionally injurious decisions made in corporate boardrooms (e.g., Kerschke-Risch 2014; Manning and Soon 2016; Croall 2013; Spring and Moyer 2011). We seek to contribute to this broadening of the unit of analysis and move beyond more individualized narratives of "isolated" incidents (see Perrow 1984), or individually-contingent "normal organizational wrongdoing" (Palmer 2012), and cautiously use the PHA as an illustration of the consequences and opportunity costs associated with outsourcing public health and nutrition initiatives to a state-corporate symbiotic form.

This is hardly a new or novel position. A growing body of critical scholarship has attributed a sizable portion of food industry crimes—in which consumers and workers are misled, overcharged, made ill, or even killed—to the imperative to maximize profit (Aulette and Michalowski 1993; Tombs & Whyte 2015, p. 42, 44; Croall 2007). A recent critique by Tombs & Whyte (2015) puts forth a historical and sociological account of the corporate form, and how its organizational composition and placement in modern society is structurally criminogenic.[4] At the same time that private sector institutions continuously generate significant societal harms as byproducts of their activities, such actions are not only typically exempt from the purview of criminal law, but "part and parcel" to the legal structure of an industrial nation's political economy (Barak 2016). The fraudulent actions of corporations in the food industry, in our thesis, go beyond the actions of private sector individuals or members of corporate boards, but are routinely perpetuated because of the legal rights, regulatory privileges, and market-related incentives central to the modern corporate form. The context in which this occurs is the political and ideological project of neoliberalism.

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[4] *Criminogenic* refers to the state or quality of producing conditions favorable to whatever is labeled as "crime." The term is not deterministic, but probabilistic, in that the corporate form will not inevitably produce "crimes" for ALL food corporations, but instead incentivize the consistent maintenance of some rate or statistical likelihood of crime. If the corporate form were criminogenic, it would mean that food-related crimes/harms are not isolated incidents or sporadic accidents, but expected byproducts that will consistently occur at some avoidable rate.

Neoliberal Governance and Corporate Social Responsibility

Corporations influence the laws and regulations that govern them. One of the clearest examples of this relationship comes in the form of "associations" or "partnerships" between regulatory bodies and corporations, in which private businesses agree to voluntarily regulate themselves in lieu of more formal and vigilant governmental oversight. In this configuration, counting on the state to curb or disincentivize harmful corporate activities is replaced, as McCarthy and Prudham (2004:276) describe it, with a shift

> to increasingly voluntarist, neo-corporatist regulatory frameworks involving non-binding standards and rules, public-private co-operation, self-regulation, and greater participation from citizen coalitions, all with varying degrees of capacity and accountability.

As a neoliberal governance project, public-private partnerships bring together government and industry to achieve common goals. This assumes that profit-seeking corporations and the state agencies designed to protect the population from harm could and do share common goals, and it puts corporations in the driver's seat for advancing such objectives. In this way, "market-driven" or "private industry solutions" to public issues is coded language for "business-friendly" or "profitable" solutions sought on behalf of the public-private partnership. Corporations absorb legitimacy from the state, which enhances their own reputation and contributes to their primary purpose: economic growth and profitability. "The net result of this private–public institutional support has been a metamorphosis for corporate citizenship by affirming its legitimacy" (Hemphill 2004:348).

When private industry receives criticism for practices that negatively impact constituents (e.g., hiring practices, environmental impacts, community degradation, criminal activity), significant adjustments to retain legitimacy can be expected. Companies may design strategies that operationalize Corporate Social Responsibility (CSR), allowing the organization to improve or maintain its reputation, often by co-opting altruistic messages and aims that might otherwise stand out as "threats" to its bottom line. The contradiction surrounding the conceptual integrity of CSR has been articulated as far back as 1962, when economist Milton Friedman made his influential pronouncement in *Capitalism and Freedom* that, "There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits" (1962:133). Within this doctrine, any social initiative, whether meant to affect employees, communities, or customers, must be subsumed under the profit motive. In other words, socially responsible activities must only be considered if they benefit the corporation's financial interests. As the World Economic Forum stated at its "Global Corporate Citizenship Initiative" meeting in 2001:

> [w]hile there may be a lack of consensus as to the extent of a company's moral responsibility for corporate citizenship, the range of *business benefits* that can result should be sufficient to make any forward-thinking organisation see increasing corporate citizenship as an integral part of good business management. (Sadler and Lloyd 2009:5, emphasis ours)

In other words, CSR practices have value "only insofar as they are instrumental in furthering their ultimate goals" (Pearce 2009: 113). For publicly traded companies in mature markets where positive quarterly earnings reports are essential, CSR may be employed wherever it can be a profit-generating and reputation-enhancing posture. In the case of snack food and beverage corporations, this is especially important in a contemporary era where snack food and soda companies might be viewed as entities that have actively contributed to health and nutrition-related concerns. CSR can therefore be viewed as either another marketing strategy at best, and a fraudulent concept at worst.

While corporations may obscure the profit-seeking basis of CSR to the public, they are very clear about it amongst themselves. Quite boldy, business and organization scholars focus on the corporate reputation as an asset to be invested in: "CSR can have both financial and strategic advantages for firms," explains one research group (without irony) in the *Journal of Business Ethics* (Jizi et al. 2014:602-3). "By engaging in social activities and reporting on CSR, firms develop the trust and goodwill of stakeholders, which can provide them with competitive advantages." CSR enhances a firm's reputation, analysts say, which has ripple effects:

> 1) It improves cash flows and profitability; 2) it acts like a barrier that impedes rivalry; 3) it provides a company with an enhanced license to operate; and 4) it raises a protective shield against downturns and crises. Therefore, a company's reputational capital has a positive impact on the company's bottom-line performance and long-term financial performance. (Hemphill 2004:354)

CSR is also a vehicle through which state regulatory intervention is undermined. The President of the United States gives awards to "socially responsible" corporations, and major business organizations "work together" with federal and local agencies ranging from the U.S. Departments of State, Commerce, and Treasury to local school districts and city governments. Rather than direct regulation and oversight, collaboration has come to be the order of the day, with a hidden and under-examined cost: Public-private partnerships may do more harm than good by creating a perception of progress while obscuring the full scope or sources of problems (Lubell 2004; Manjyot 2015). Further, the failure of the state to encode more robust regulatory frameworks on the basis of its "conscious pursuit of a 'business friendly' environment" in which businesses are free to define their own socially responsible activities ultimately "minimizes criminal liability for corporations," including issues of fraud and other social harms (Leighton 2016:77).

The Partnership for a Healthier America (PHA) is but one example of a public-private partnership that, in its enactment of state-sanctioned neoliberal governance, emphasizes the Corporate Social Responsibility of its food industry "partners." We analyze the agreements that corporations affiliated with the PHA voluntarily enact – without any observable accountability or enforcement mechanisms – along with the rhetoric the organization uses to imply a causal relationship between their practices and the rate of childhood obesity in the United States. In thoroughly examining these voluntary commitments and rhetorical claims, we emphasize how the guise of Corporate Social Responsibility can serve as the mechanism through which fraudulent messaging harms the public.

The Partnership for a Healthier . . . Profit

Companies like Coca-Cola and PepsiCo operate within a "massively mature market" (O'Reilly 2015), or one that has reached its peak. The message is clear that sugary drinks and salty snacks are unhealthy, and revenues for these items have declined as consumer preferences have shifted. While this might be viewed as a positive trend for a population of eaters, it represents an economic emergency for large companies that rely on the profitability of mass-market foods, which tend to be sugary, salty, and heavily processed. At face value, healthier eating patterns would seem to put health advocates in an adversarial relationship with Coke and Pepsi along with candy bar makers like Mars and Hershey, cereal companies like General Mills and Kellogg, and fried potato purveyors like ConAgra. But this is not the message these companies convey.

These referenced companies and others have adjusted to health concerns and market developments, recognizing the liability of their products becoming increasingly viewed as enemies of public health. Instead, these influential corporations have adopted the strategy of publicly "partnering" with health advocates and state entities that might otherwise seek to dissuade consumption their products. The Partnership for a Healthier America is a high-profile example of this public-private commitment to "working together" to "build a healthier future" (Ken 2014a; Ken 2014b), which it accomplishes with (1) claims of implied causality, (2) "meaningful commitments" from its private sector partners, (3) euphemistic references to "healthier environments," and (4) a very well-coordinated push for greater (not less) consumption of the products of their affiliates.

<u>Causal Claims</u>

Word choice is very important in advancing the goal the PHA draws attention to: a healthier America. In its public materials the PHA communicates its mission this way (PHA n.d.-a):

> "The Partnership for a Healthier America (PHA) is devoted to working with the private sector to ensure the health of our nation's youth by solving the childhood obesity crisis."

The purpose of the organization, this says, is to "ensure" health and "solve" the obesity crisis. The desired outcome is repeated often:

> "PHA brings together public, private and nonprofit leaders to broker meaningful commitments and develop strategies to end childhood obesity" (PHA n.d.-a).

These materials are presented using text, imagery, and music that convey inspiring and upbeat messaging, and they clearly communicate that the PHA's explicit organizational purpose is to eradicate childhood obesity – a goal that could conceivably exist independently from any revenue-maximizing imperatives or quarterly market incentives.

To assess exactly what this organization does, it is instructive to consider its most recent "progress report," where one might reasonably expect to find data about the substantive gains made to "end childhood obesity." The 2015 report (PHA n.d.-b) is called "In It For Good," and it starts with a letter from the organization's Chairman titled, "LOOKING AHEAD: A HEALTHIER FUTURE FOR THE NEXT GENERATION" (capitalization in original). This letter explains what the organization does and frames its efforts in bold, blue lettering: "**As we embark upon our sixth year tackling the national childhood obesity crisis, the Partnership for a Healthier America (PHA) proudly claims much success that we can look back on**." Note that this capitalized and bold lettering is not about profit maximization, successful mergers, or the PHA partner corporations' reputations. Rather, it reminds readers of the organization's goal (i.e., "tackling the national childhood obesity crisis") and it "claims much success." The next line of this letter reports that obesity among 2-5-year-old children has decreased. A casual reader may not notice the absence of any methodological (or logical) connection in the report between PHA activities and obesity statistics. In fact, no statistical or econometric analysis of a causal relationship between the PHA's strategies and the obesity rate is included (or possible). Nevertheless, a treatment effect is implicit in the presentation of obesity data following immediately after the explicit "success" the PHA can "proudly claim." This success is based on the "meaningful commitments" it secures with its private sector partners.

Meaningful Commitments

The primary requirement for all of PHA's private sector partners is to enact what the organization calls "meaningful commitments." These commitments, they say, allow the organization to "harness the resources, expertise and most importantly the free-market creativity that drives this nation" (PHA n.d.-c). The PHA has negotiated hundreds of these commitments across different areas of focus, such as physical activity, healthcare, and marketplace activities. We have analyzed the entire population of commitments in the "marketplace" focus area from the three years of progress reports the PHA has published (2013-15). An illustrative sample of these is itemized in Table 2 below (emphases ours).

Table 2: Illustrative Sample of Private Sector PHA "Marketplace" Partners and Their "Meaningful Commitments"

Birds Eye	Birds Eye has "funded $303,000 worth of promotional activities for an online **advertising campaign** with Walmart. The campaign . . . included banners on the Walmart website, emails, 'kid approved' recipes involving Birds Eye products, and healthy eating tips. It also included use of the PHA logo. The campaign targeted various audiences, including moms, families with children and Supplemental Nutrition Assistance Program recipients."
Darden	Darden will "**reduce its calorie footprint** by 10% over five years."
Del Monte	Del Monte will "**distribute 50 million coupons** in each calendar year of 2014, 2015 and 2016 for reduced pricing (at least 40%) on Del Monte food products."
Healthy Weight Commitment	The HWCF pledged to "**provide annual confidential progress updates** to PHA." Updates were focused on

Foundation (a group of companies including Coca-Cola, PepsiCo, Mars, Hershey, and Kellogg)	"product reformulation (e.g., lower calorie versions of products, revisions of levels of macronutrients such as fats, fatty acids, carbohydrates, sugars and proteins), portfolio shifts (e.g., shifts from higher-calorie to lower-calorie choices) and portion control (e.g., reductions in serving sizes)."
Hyatt	Will "**reduce caloric values** on food menus by at least 10% from baseline." The hotel chain has "met its 5 year calorie commitment with a 11% decrease in average calories from baseline."
Sodexo	Sodexo pledged to **offer "default side(s)** of 1/2 cup fruit and/or non-fried vegetable" and "default beverage of water or low-fat milk" in the children's meals sold "cultural destinations" such as the National Aquarium and the Dallas Museum of Art.
Walmart	Walmart committed to **providing "an annual report** on the number of private label foods eligible for front-of-package seal and the specific products that received a front-of-package seal." The company met this goal by providing "a list of 581 products that qualify for Walmart's Great for You front-of-package seal."

Note to Table 2: Each of these is just one "meaningful commitment" and most private sector partners make more than one commitment.

The language of the commitments included here is typical of the agreements reached with other marketplace partners. In short, the companies pledge to create advertising campaigns, reduce the calories of the products they sell, give away coupons, and provide reports on their activities. These may or may not be successful initiatives – that is not our focus. What these commitments are said to accomplish, though, is "solving the obesity crisis."

It may seem odd, then, that the PHA does not conduct any evaluation studies that systematically isolate the effects of coupon giveaways and online advertising campaigns on the obesity rate. The relationship between these meaningful commitments and any indicators of a "healthier America" is not measured or accounted for.[5] Nonetheless, the reputations of affiliated corporations are augmented from activities that appear socially responsible and that receive the public stamp of approval from representatives of the state (i.e. the East Wing of the White House). Since the companies involved with PHA have entered these agreements "voluntarily," the introduction of substantive policy that restricts corporate infiltration is thwarted, the reputation of the food industry is improved, and, in our view, a defrauding of the public occurs in an arena where lives and life expectancies are significantly affected.

"Access" in a Healthier Environment

Despite the lack of evidence linking food industry companies' meaningful commitments to actual measures of a healthier America, the PHA does articulate other explicit claims. For example, the PHA Chairman (PHA n.d.-b) states that children today whose rates of obesity have gone down live in a healthier environment than their older brothers and sisters, and he credits the organization in the following way: "I'm proud to say that this is in part because of the work PHA has accomplished since its launch in 2010." What is misleading about this statement is that the Chairman seems to be saying the PHA's work has affected young children's obesity rates, but he is not. Rather, he is raising a celebratory note that young children will be "growing up in a world that's providing easier *access* to healthy options and healthy lifestyles" (PHA n.d.-b) [italics added]). *If* some children's levels of obesity are lower than in years past, his statement

[5] While the concept of the "obesity rate" is problematic for a number of reasons (see, e.g., Guthman 2011), it is notable that the most recent National Center for Health Statistics report indicates that the overall youth obesity rate has actually increased from 2010, when the PHA was initiated (Fryer et al., 2016).

says, it *could be* because of some of the changes food companies have committed to, which make their products *easier to find and buy*.

These products appear in what the PHA repeatedly refers to as a "healthier environment," which in business language is the operationalized term for "easier *access* to healthy options" (emphasis ours). What is easier to access—and what is possible to measure in units of sale—are products and their correlated market presence. Diversifying "options" means providing more consumer goods made by the same companies (e.g., PepsiCo and Hershey) that could easily be understood to be significant contributors to obesity as a public health problem – not pioneers of the solution. In some cases the "options" that consumers might be able to access more easily could be apples or zucchini, but more typically they are slightly smaller (but sometimes higher priced) packages of snack crackers, boxes of cereal, or squeezable, "low-fat" yogurt pouches that still contain more than a full day's allotment of added sugar. In this way, "easier access" is synonymous with what the logistics of providing such access required: increased market share.

PHA's progress reports are pitched as a set of indicators of the "healthier environment" the organization is working to create, which is, in the food and beverage sphere, a business strategy that increases marketing to children and swaps out one set of products for another. The organization's most prominent public sector representative, then-First Lady Michelle Obama, has further promoted this definition of a "healthy environment" in her speeches for the organization and her yearly letters in its progress report. "Together," she says, PHA (n.d.-b) partners have "made real progress":

> It's been incredible to see the more than 200 private sector agreements enabled by PHA come to fruition over the years. PHA partners are

> creating healthier environments in childcare and out-of-school settings for more than six million children, with healthier snacks and meals and more opportunities for them to move; offering more physical activity opportunities before, during, and after school for more than 3.9 million students; reformulating products to reduce the amount of fat, sugar, and salt in the food we buy for our families and eliminating more than 6.4 trillion calories from the marketplace; revamping children's menus at 28,000 restaurants and hotels to offer healthier options; and investing more than $90 million in physical activity programming.

The language of this message merges together activities such as "reformulating products" with "creating healthier environments." The reader's attention is focused in a particular direction, away from questions about why there were 6.4 trillion apparently unnecessary calories "in the marketplace" to begin with; which companies have enough revenue to be able to spend $90 million on advertising in children's spheres of physical activity; and the shareholder benefits of the mass food & beverage industry partners that become associated with the First Lady of the United States.

<u>Greater Consumption</u>

The most recent PHA report (n.d.-b) comes in the organization's sixth year of "making the healthy choice the easy choice for American families." It also identifies a shift in the organization's approach, from a sole focus on securing meaningful commitments like those above from private sector partners to also "generating demand for healthier options." To this end, the PHA says it has adopted the "tactics and channels employed by leading marketers to drive greater consumption" for water, fruit, and vegetables. Of course, increased consumption of these beneficial items—with a concomitant decrease in consumption of fat-, sugar-, and salt-laden products—is the sort of general goal that any health and nutrition advocate could support. However, what is hidden in plain sight is that an increase in "consumption" means an increase in sales and revenue, which is at the core of any corporation's incentive to participate in an initiative like this. The framework in the PHA's most recent report does mention "a boost in produce sales" and the victory of "water sales rising," but neither the First Lady nor the PHA's public statements identify revenue generation as the goal of these industry changes; it identifies a "healthier future" as *the* goal, as opposed a healthier financial future for its partners.

Any group the organization identifies as a target population for reducing obesity rates—such as "3.9 million students" or "8.1 million people in food deserts"—is also, not coincidentally, a group to which the private sector partners can market and sell. Examples of the sort of language that signals the importance of children and families as markets abound. The Chairman of the organization pointed to the marketing victory imagined for water drinkers, for instance: "Should they get thirsty, they'll be more likely to find the Drink Up logo, reminding them to drink more water, more often" (PHA n.d.-b). Specifically, they will be reminded to drink more bottled water, provided by partners such as Aquafina. The PHA employed a content marketing firm called Delucci Plus to make bottled or filtered water seem "interesting, engaging and even funny" (DelucciPlus n.d.), and to "jump start" the "engagement rate" using this Drink Up logo. "In the end," the firm says, "our goals are not only to increase fans, followers and engagement but also help lift incremental *water sales* across the country" (DelucciPlus n.d., emphasis ours).

For further evidence of the scale of influence that major food and beverage corporations have in matters of childhood nutrition (or lack thereof), consider the activities of another PHA partner, the Healthy Weight Commitment Foundation (HWCF). HWCF represents a group of companies including Coca-Cola, Hershey, Kellogg, PepsiCo, and Mars, among others. The foundation documents its "impact" on its website, including measures of its "reach" (emphasis ours):

- Cumulatively, we have **reached more than 3.2 billion children and adults** with positive health messages and information since 2009.
- Our award-winning school curriculum has **reached 40.7 million American Pre-K—Grade 5 children**.
- Through Smart from the Start, HWCF has **reached 10% of American preschool children living in poverty**.

The HWCF recently extended its reach from the United States into Mexico – an important market. It tracks the number of unique website visits it receives ("2M+" by 2014) and notes that its "Cumulative Consumer Reach hit 500K+" in 2013 (HWCF n.d.). The PHA honored the foundation with the "Healthier Future Award" in 2016.

So What Is The Problem?

The PHA's approval of the Healthy Weight Commission Foundation is a particularly egregious example of the problematic—and, we argue, fraudulent—form of corporate-corrupted public health messaging covering for food industry activity that indisputably causes social harms. The companies involved with the foundation are the giants of "Big Soda" and "Big Food." As the representative of these companies, the HWCF makes dramatic pronouncements about "removing trillions of calories from the marketplace," even though recent findings "provide objective evidence that pre-pledge trends and other secular changes fully explain the observed calorie reduction in HWCF brand sales" (Mozaffarian 2014:e9). Writing in the *American Journal of Preventative Medicine*, Dariush Mozaffarian (2014:e9) calls the foundation's "meaningful commitment" to the PHA an "industry charade." Mozaffarian is the Dean of the Tufts Friedman School of Nutrition Science & Policy and the university's Jean Mayer Chair and Professor of Nutrition, and his article summarizes two studies by nutrition scientists whose work is funded by the National Institutes of Health and the Robert Wood Johnson Foundation. It is worth quoting his conclusions at length:

> These findings go a long way toward explaining the initially puzzling HWCF "pledge." In 2010 when the pledge was made, these companies would have been fully aware of the secular trends in their calorie sales over the prior decade. With a simple extrapolation forward to 2015, they could easily have predicted continued declines in caloric sales, without any need for action of their own. At the same time, these companies faced growing public pressure from scientists and advocacy groups to take action against adverse health impacts of their products. In this setting, the pledge appears to have been a stroke of marketing genius, turning their steadily declining calorie sales into a novel opportunity for self-promotion, an easily publicized but deceptive "sham" pledge that merely reflected ongoing trends.

This assessment is damning, and while it is, technically speaking, available to the public, it is unlikely that most people will seek out a peer-reviewed journal of medicine before deciding whether to trust the companies that provide the food they buy, or critically question the ostensibly progressive changes being made under the guise of supporting healthier food consumption. Rather, they rely on messages they hear from organizations like the PHA, which fund major PR campaigns that include a music video and track from Grammy-winning *Ashanti* that simultaneously engages a wide followership on Twitter (Ads of the World 2016). It is notable that the PHA awarded the Healthier Future Award to the HWCF two years *after* Mozaffarian's critical assessment appeared in print.

It is also instructive to combine Mozaffarian's analysis with an evaluation of "sales growth" conducted in the same year by Hank Cardello of The Hudson Institute, a conservative think tank. His study, which was released at a National Press Club briefing and introduced by the former U.S. Secretary of Agriculture, Dan Glickman, was meant to "determine quantitatively whether HWCF companies were making progress in *selling more* lower-calorie foods and beverages in concert with their pledge to Partnership for a Healthier America" (Hudson Institute 2014, emphasis ours). We cannot reiterate enough the fact that these pledges and commitments are not being measured in relation to the obesity rate or other indicators of a healthier America in any way. Instead, what this Hudson Institute summary (intended primarily for an audience of industry insiders and public sector specialists) states is that the PHA's award-winning partner, the HWCF, is making progress toward its goal: selling more foods and beverages.

What these analyses reveal is that this public-private partnership—the PHA—which has very high-profile public sector spokespeople directing our attention to matters of health, is at its core a savvy corporate marketing mechanism that empowers food companies to appear as legitimate contributors to the public interest while accommodating efforts to rebrand and secure sales in a mature market. The PHA specifically, and public-private partnerships generally, are problematic in situations like these where the market incentive structure is incongruent with the goal of actually advancing public interests that should be undertaken independent of whose products receive preferential visibility. Misleading claims, disingenuous marketing devices, and the blessing of public officials are put forth to convince the public that the PHA is the best and most effective entity to "solve" the public health problem of childhood obesity through the benevolent and voluntary practices of socially responsible corporations.

Our critique of the Partnership for a Healthier America is not the first of, and PHA affiliates have been critically examined in a variety of outlets. In a 2016 article, *The*

New York Times documented the contradictory actions taken by Coke and Pepsi, citing various reports and refereed articles that illustrate the duplicitous nature of their philanthropic spending (see O'Connor 2016). Professors Daniel Aaron and Michael Siegel in *The American Journal of Preventative Medicine* are one of several recent sources documenting how major soda companies donate to public health organizations while simultaneously lobbying against policies that are unfavorable to their business interests (Aaron & Siegel 2017; O'Connor 2016). Contained within *The New York Times* article, Marion Nestle – Professor of Nutrition, Food Studies and Public Health at New York University – stated that these soda companies "want to have it both ways – appear as socially responsible corporate citizens and [yet] lobby against public health measures every chance they get" (O'Connor 2016).

While such activities are problematic, is this criminal? Corporate crime occurs when an individual or group of individuals representing a formal organization commit acts that "have a serious physical or economic impact on employees, consumers or the general public" (Box 1983:20; Snider 2009; Whyte 2009). Yet the term "crime" is problematic for similar reasons as those found in white-collar crime scholarship[6]. While unscrupulous practices that result in toxic or adulterated food products might easily constitute serious physical harms on consumers or the general public, we argue that the activities of the PHA constitute a form of false advertising that defrauds the public in a multitude of ways. Whereas salmonella poisoning can result in an acute illness, the masquerade of candy and soda companies as public health partners, and increases in revenue and market share as indicators of public health are real harms deliberately

[6] A nuanced presentation of the various definitional challenges for white-collar and corporate crime is beyond the scope of our focus. Readers are encouraged to see Geis (2016) and Friedrichs (2010).

perpetrated on the general public, and as such, constitute corporate fraud. To be clear, we argue that it is fraudulent to co-opt the aims of public health initiatives by advancing symbolic commitments that – as far as we can tell – are meaningful insofar as they target measures of profitability and market-share for the largest snack food and carbonated beverage corporations.

Federal statutes and laws governing white-collar crime more generally are vaguely worded, but still apply to the phenomena of study. False pretenses, wire fraud, and non-delivery of services are all legally relevant concepts *could* conceivably apply to the PHA, but not in the current political and legal structure where organizations and individuals are treated differently in the eyes of the law. Therefore there is no serious legal case to argue here, but a normative one. The PHA has not only failed to deliver any defensible operationalization of what it means to "create a healthier America" or "solve childhood obesity," but has deceived its stakeholders and audience in an attempt to make it seem as though it has advanced such a goal. Neoliberal governance and voluntary self-regulation do not easily lend themselves to enforcement mechanisms, and "meaningful commitments" are not enforceable contracts. This is more than a gaffe or an oversight, and, given the involvement of the state in this marketable charade, it can degrade the public's trust in the ability of public institutions (in this case, the East Wing of the White House during two Obama Administrations) to competently advance the public's well-being on matters of health, nutrition, and *quality* food access.

Situating Critical Food Studies within the Domain of State-Corporate Crime

Criminology has been mostly concerned with the offender who "has arms, legs, most likely is young, male, and probably black" (Tombs & Whyte 2015: 68; see Hagan

2010). In the subfield of corporate crime, the focus has largely been on the nature and "characteristics of the *crimes* and *harms* rather than the corporation itself" (*ibid* 68: italics in the original). We have examined the structural basis for one specific type of food crime and take a similar position to scholars who examine more than the corporate form, but the mechanisms that produce what many have called state-corporate crime. An organization is *criminogenic* when it produces conditions favorable to the continuation of behavior that is labeled as "crime." We argue that the corporate form itself is criminogenic in the sense that it structurally incentivizes – or consistently generates – food-related harms of various kinds. Frank Pearce (2001: 45-6) provides the basis for viewing the corporate structure as constituting a form of "structured irresponsibility" (Tombs & Whyte 2015):

> Shareholders invest in a wide range of companies, and since their only concern is with the return of investments they are indifferent to what occurs within different production processes and rarely live in the areas where these take place. They are legally protected from most of the negative consequences of company actions. Company executives are also fundamentally concerned with profitability and with "willful blindness" are again often distanced from (and legally protected from the consequences of) production, conceive of it abstractly and, in turn, pressure managers to produce as much and as cheaply as possible. This creates a form of structural irresponsibility where it is often difficult to identify how decisions are made and how well or poorly they relate together.

Crimes against consumers generally, and food crimes in particular, are not only made possible, but are directly generated from, the profit-seeking corporation (Tombs & Whyte 2015). The regular occurrence of food crimes can therefore be viewed as a statistical inevitability that is structurally and rationally driven by the corporate form. When a public-private partnership such as PHA secures the First Lady of the United States as its honorary chair and involves profit-seeking corporations with thin accountability structures and robust resources that enable them to construct high-profile claims that are technically accurate but deceptive, the end result is public-private collusion in a) actively misleading the public and b) perpetuating harms that result from inaction in an important public policy arena.

"State crime" and "corporate crime" are agent-specific categories, as opposed to action-specific categories like "violent crime" or "cyber crime." Crimes committed by government and corporate elites often avoid formal intervention, and when they are, they are not readily prioritized, detected, or captured by the mechanisms of criminal justice (i.e., police, courts, corrections). Paradoxically, the state is trusted to protect life and liberties and administer the institutions of justice, and yet there is robust empirical evidence that "the worst crimes – in terms of physical harm to human beings, abuse of civil liberties, and economic loss – have been committed by individuals and units acting in the name of the state" (Friedrichs 2000). To the extent that the public-private partnership of the PHA has enabled and empowered the public health-related activities presented in this paper, the public sector has been complicit in advancing a form of fraud that belongs in the domain of state-corporate crime, and in turn, crimes of the powerful.

Discussion

Our thesis tackles a murky interpretation between what some might reasonably view as excellent business practices where others see instances of state-sponsored corporate fraud. In defense of the former orientation, PHA and other public-private partnerships are likely to be a rational option for ensuring the most efficient system of producing and distributing any kind of material good, so why not the calorie? Regulating private industry can in turn be understood as maintaining stability in the production, distribution, and consumption of economic goods and services (Tombs & Whyte 2015).

A "business friendly" regulatory arena, occupied by the most well-financed and robustly structured corporations, is likely to leverage the dimensions of predictability, calculability, efficiency, and control, relative to smaller-scale businesses and more localized food industry actors. If the corporate form is *the* quintessential deliverer of economic efficiency and market productivity, then it is quite intuitive that the state and the character of legal regulations should facilitate this. Indeed it would be reasonable to argue that *if* the state has a fundamental mandate to protect life, liberty, and *property*, then public-private partnerships are a logical evolution in this process of advancing private interests. This is just another way of defining neoliberalism. When electoral campaigns can fail or succeed based on discourses of economic performance, the incentive structures of all parties are understandable and intuitive.

Our argument does not seek to merely identify drawbacks or conceptual flaws in public-private partnerships, the attempts to exercise corporate social responsibility, or the shared incentive structures of regulators and "the regulated." The issue at hand is that powerful actors in well-resourced organizations in both the public and private sector are *claiming* to be advancing gains in an important public health issue (e.g., childhood obesity), while the activities undertaken by such wealthy institutions are in fact focused on maximizing profits and preserving their own interests. Substantive public health advances are incidental, and if they are too costly, they are not included in the companies' commitments. If the PHA's reports and its organizational mission were titled more accurately (e.g., A Partnership for a Financially-Healthier Set of Companies, or The Campaign for Financial Fitness), the organization might only be criticized for manipulative marketing (e.g., placing "zero trans fat" stickers on products that should not contain trans fat to begin with).

There is much to be desired from the efforts of a well-resourced collaboration, but a glaring issue is that in all the meaningful commitments made by the PHA partners and the organization's own evaluation studies, not a single indicator of childhood obesity is included. Organizations like the PHA could offer a more honest characterization of their business model, instead of masking it in the "feel-good" guise of CSR, which detracts attention away from the fact that there could be more competent policies enacted to tackle childhood obesity and other issues related to health and nutrition. Furthermore, opportunity costs of substantial consequences are incurred, since these activities replace and eliminate the space in which other efforts might develop that could actually reduce obesity among children and adults.

There are some important caveats and limitations to our argument, one of which is that we are labeling rational and legal economic practices as criminal. Several scholars have addressed the nuances of word choice, reflecting the old but enduring tension between those who limit conceptions of crime to actions that are positively regulated by criminal law, and those who find such parameters restrictive and problematic (see Geis 2016; Holtfreter 2005). Criminal law and the administration of justice do "not simply *reflect* the reality of crime," though; they also have "a hand in *creating* the reality we see" (Reiman & Leighton 2013, p. 61; emphasis in the original). Images of willful, negligent, and knowingly injurious *corporate* actions are seldom represented in any conventional understanding of crime (Barak 2015; Friedrichs 2010). "Thus, to say that the criminal law appropriately focuses on the most dangerous acts is a problematic statement because the criminal law shapes our perceptions about what is a dangerous act" (Barak et al. 2015, p. 211).

Further, given the importance of regulation—or the lack thereof—in corporate crime, it is also important to highlight the influence corporations have on the nature of the law itself. Corporations are the most powerful representation and instrument of contemporary capitalist law, which has permeated and characterized the body and character of U.S. jurisprudence and legal structures since its founding (Chambliss 2009). The bulk of criminological research *positively excludes* state and corporate harms (Hillyard & Tombs 2007), and harms or outright legal violations committed on behalf of multinational corporations have been consistently "defined down" (Barak 2016). As such, we find it important to provide examples – such as this case study – that can incrementally advance a shift in how such issues are conceptualized, and perhaps in turn, prompt a reconsideration of the role that public-private partnerships have in matters so central to public health.

With these caveats in mind, it is important to not overstate our claims or the implications of our argument. It would be foolish entertain the claim that PHA's messaging about "solving childhood obesity" can be established as criminally fraudulent in a court of law, even if there are no measures or evaluations that assess the treatment effect of any of partner commitments on obesity rates. Criminal justice and criminal law in the U.S. is focused on acts or omissions between *individuals*, and are not structured to find criminal culpability on behalf of organizational forms, further complicating the study and understanding of state and corporate crime. While there are high profile cases of individuals held criminally responsible for their actions in the course of their organizational duties, such cases are outliers and contribute to differences in selecting a unit of analysis. “Corporate criminal” may refer to a single human being with agency and specific traits that might correlate with their actions, but the characteristics of the specific people involved in the PHA are not of concern for our analysis. We would not seek trait-based explanations for what we view as a political-economic phenomenon, or individualized explanations for what is a structurally embedded trend across industries.

There are legitimate debates within and across many communities on whether private-partnerships are the best method of pursuing public policy objectives. Our informal discussions with those who have worked for the PHA and negotiated these agreements with food companies indicate that they believe they are truly advancing the public interest. There are no nefarious aims apparent in the approach these individuals take in dealing with public health problems or in the work they carry out. They are working within the system that exists. The private sector has long been the backbone of government-related projects, and in this process, private capital is typically leveraged to advance a goal that “trickles down” to benefit the public, even if the empirical basis for a “trickle down” effect remains questionable.

If the Partnership for a Healthier America is the very best that can be done to address obesity and other health indices, though, the critique offered here is more than simply a cataloging of the organization’s shortcomings. Public health data are presented in abstractions, like per-population statistics and mortality rates that do not speak to the lived experiences of any one person. But these numbers do correspond with real lives, life expectancies, and the presence, absence or intensity of chronic diseases. What’s more, unlike space exploration or highway construction, excessive corporate influence in the public health arena can have dire consequences, especially when actions that harm end-users (i.e., consumers) are viewed as strategic businesses practices, or when these same supposedly socially responsible beverage companies lobby public officials to thwart health-related legislation that is unprofitable for their interests (see O'Connor 2016). The significance of interpretation is important, especially when the same practice can be viewed as being a) legal and profitable and b) normatively toxic and potentially deadly. Martin "Pharma Bro" Shkreli was vilified in the court of public opinion for raising the price of a Turing Pharmaceuticals AIDS medication from $13.50 to $750.00 per unit. Despite Shkreli's depiction as an "easily dislikeable villain," he has been held to represent the face of U.S. healthcare (Chandler 2015) for dutifully advancing his fiduciary responsibility to corporate shareholders. In the arena of food and health, our paper provides just one case study of what happens when the activities of an organized alliance of corporations are left unchecked or under-examined, and the larger ramifications of this for issues of public health. Now imagine how the net harms can be compounded when the state not only structurally incentivizes such a process, but is an active partner with the blessing of the East Wing of the White House.

Criminology as a discipline has advanced an understanding of how certain "treatments" or "interventions" can produce unintended harms, and critical criminologists – however diverse their specializations – have generally emphasized the role of power and its unequal distribution in society. Similarly, in the context of food policy and public health, we hope that an emerging criminology of food can include these kinds of insights as to whether treatments or interventions in the form of "meaningful commitments" similarly result in preventable harms and breaches of trust in the state's fundamental ability to represent and advance the public interest.

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