Extraterritoriality and International Bribery

The book presents a collective action perspective to explain how extraterritoriality functions and assess when, and to what extent, extraterritoriality is effective. A collective action perspective provides a new account of foreign anti-bribery laws and their extraterritorial enforcement that draws on theories discussed in the field of economic governance. Within this framework, the book offers an intensive analysis of US foreign anti-bribery law such as the Foreign Corrupt Practices Act (FCPA), international law as it emanates from the OECD Anti-Bribery Convention, and comparative insights into UK law and German law. To test the theory in practice, the book provides a unique data set of more than 40 foreign anti-bribery enforcement actions conducted by the US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC), and other examples from comparative jurisdictions.

Extraterritoriality and International Bribery is ideal reading for academics and students with an interest in global governance, economic crime, criminology, and law and economics, as well as practitioners concerned with foreign anti-bribery enforcement, including compliance officers, lawyers, investigating and prosecuting authorities, and business leaders. The book also discusses governance alternatives existing outside international anti-bribery law and offers policy and legal reforms proposals. The book suggests a decentralized enforcement model with the delegation of some enforcement tasks to an external body as the most appropriate governance alternative.

Branislav Hock, Ph.D., is a Lecturer in Counter Fraud Studies at the Institute of Criminal Justice Studies, University of Portsmouth. He has research expertise in the area of transnational economic crime such as corruption and bribery along with interests in corporate compliance and economic governance. Dr Hock is a member of the Tilburg Law and Economics Center (TILEC), where he worked as a researcher and completed Ph.D. in anti-corruption law. He worked in the Private Office of the Dutch Member of the European Court of Auditors and for a law firm advising on various compliance issues. Dr Hock is a co-founder of the European Compliance Center.

The Economics of Legal Relationships

Sponsored by Michigan State University College of Law

Series Editors:

Nicholas Mercuro, Michigan State University College of Law

Michael D. Kaplowitz, Michigan State University

20 Predatory Pricing in Antitrust Law and Economics

Nicola Giocoli

21 The Role of Law in Sustaining Financial Markets

Edited by Niels Philipsen and Guangdong Xu

22 Law and Economics

Philosophical issues and fundamental questions

Edited by Aristides N. Hatzis and Nicholas Mercuro

23 Public Procurement Policy

Edited by Gustavo Piga and Tünde Tatrai

24 Legal Origins and the Efficiency Dilemma

Nuno Garoupa, Carlos Gómez Ligüerre and Lela Mélon

25 Law and Economics of Public Procurement Reforms

Edited by Gustavo Piga and Tünde Tátrai

26 Law and Economics as Interdisciplinary Practice

Philosophical, Methodological and Historical Perspectives

Péter Cserne and Magdalena Malecka

27 Extraterritoriality and International Bribery

A Collective Action Perspective

Branislav Hock

*The first three volumes listed above are published by and available from Elsevier

For a full list of titles in this series please visit <https://www.routledge.com/The-Economics-of-Legal-Relationships/book-series/ELR>

Extraterritoriality and International Bribery

A Collective Action Perspective

Branislav Hock

First published 2020
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
52 Vanderbilt Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

© 2020 Branislav Hock

The right of Branislav Hock to be identified as author of this work has been asserted by him in accordance with sections 77 and 78 of the Copyright, Designs and Patents Act 1988.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Trademark notice: Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

A catalog record has been requested for this book

ISBN: 978-0-367-08607-7 (hbk)

ISBN: 978-0-429-02334-7 (ebk)

Typeset in Bembo
by codeMantra

**To my parents Eva and Branislav for all love, support,
understanding, and patience.**

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Contents

<i>Preface</i>	xi
<i>List of abbreviations</i>	xiii
<i>Acknowledgements</i>	xv
1 Introduction	1
1.1 Foreign anti-bribery enforcement and competitive disadvantage	1
1.2 Extraterritoriality and international bribery	4
1.3 Extraterritorial enforcement and collective action	8
1.4 The outline and focus	9
References	11
2 International bribery and collective action problems	13
2.1 Introduction	13
2.2 The theory of collective action	14
2.3 Why the regulation of international bribery is a collective action problem	19
2.4 How extraterritoriality relates to the collective action problem	30
2.5 Conclusion	34
References	35
3 The evolution of foreign anti-bribery legislation	39
3.1 Introduction	39
3.2 The regulation of foreign bribery in historical context	40
3.3 The OECD Convention and functional equivalence	46
3.4 Excursion to national foreign anti-bribery laws	52
3.5 Conclusion	55
References	56

4 The OECD Anti-Bribery Convention and national foreign anti-bribery laws	58
4.1 Introduction	58
4.2 The offense of bribery of foreign public officials	59
4.3 The briber: “any person”	60
4.4 Indirect bribery: intermediaries and complicity	61
4.5 The bribed party: “foreign public official”	70
4.6 The bribe: “any undue advantage”	75
4.7 Jurisdiction	79
4.8 Enforcement	86
4.9 Cooperation and coordination	96
4.10 Conclusion	105
References	106
5 Foreign anti-bribery enforcement schemes	109
5.1 Introduction	109
5.2 Foreign bribery resolution: formal and functional understanding	110
5.3 Enforcement in the US, the UK, and Germany	113
5.4 Qualitative study – analytical framework	118
5.5 Endemic bribery: Siemens	121
5.6 We will catch them all: Bonny Island	130
5.7 International bribery and alternative laws: BAE	140
5.8 Conclusion	144
References	146
6 Patterns of foreign anti-bribery enforcement	147
6.1 Introduction	147
6.2 Foreign bribery and territorial nexus with the US	148
6.3 Foreign bribery and concurrence of substantive laws	151
6.4 Indirect bribery: parent–subsidiary liability and agency relationship	161
6.5 Successor’s liability	168
6.6 US enforcement and conspiracy charges	169
6.7 Cooperation and coordination	174
6.8 Conclusion	187
References	189
7 The effectiveness of extraterritorial anti-bribery enforcement	191
7.1 Introduction	191
7.2 The effectiveness of international regimes	192
7.3 The effectiveness of the OECD “unilateral” anti-bribery regime in practice	195

7.4	<i>An evolution to a shaky multilateral enforcement regime</i>	203
7.5	<i>Conclusion</i>	213
	<i>References</i>	213
8	How should the OECD anti-bribery enforcement regime foster collective action?	215
8.1	<i>Introduction</i>	215
8.2	<i>Desirable and undesirable heterogeneity: when external governance is just effective</i>	215
8.3	<i>Addressing credibility problems</i>	217
8.4	<i>Addressing clarity problems</i>	217
8.5	<i>Conclusion</i>	225
	<i>References</i>	226
9	Beyond the OECD: international court and other alternatives	227
9.1	<i>Introduction</i>	227
9.2	<i>International anti-corruption court</i>	228
9.3	<i>WTO model: a body deciding state disputes</i>	229
9.4	<i>Decentralized enforcement models: eCommunication</i>	230
9.5	<i>Transnational regulatory networks</i>	234
9.6	<i>Self-regulation and corporate compliance</i>	239
9.7	<i>Conclusion</i>	242
	<i>References</i>	243
10	Conclusion	246
10.1	<i>Foreign anti-bribery enforcement as a collective action problem</i>	247
10.2	<i>More collective action: who else is coming on board?</i>	247
10.3	<i>External governance as a response to new collective action problems</i>	249
10.4	<i>Transnational law: effectiveness and the rule of law – public and private</i>	250
	<i>References</i>	252
	<i>Table of cases and settlements</i>	255
	<i>International Agreements</i>	259
	<i>Statutes</i>	261
	<i>Recommendations, guidelines, and reports of public authorities and international organizations</i>	263
	<i>Index</i>	267

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Preface

When I started thinking about the topic of this book in 2012, international anti-corruption law was still a marginal issue in Europe. Ever since then, the interest in this topic has been growing. This is not a surprise given how American, and increasingly also non-American, enforcers are harshly sanctioning firms from all around the world for actions undertaken in far-away jurisdictions. I can say with confidence that at the end of 2019, international anti-corruption law has emerged as a specialized legal and research field that is recognized all around the world.

The global increase in the enforcement of foreign anti-bribery laws leads us naturally to a more sophisticated discussion about the desirability, effectiveness, and fairness of the foreign anti-bribery enforcement regime. In this new era, a large number of specialized corporate bribery-related conferences, business workshops, podcasts, policy events, and research group meetings are taking part every month. Increasingly, these discussions recognize the specificity of this legal field, especially that certain jurisdictional, substantive, and procedural elements of national legal orders function very differently from other legal fields.

In this book, I tried to conceptualize this complexity by introducing a collective action perspective. The perspective will help readers distinguish between foreign anti-bribery law in books and these legal provision and enforcement processes that matter in practice. Moreover, the perspective allows readers to see the function of quasi-legal processes that makes this legal field so complex. You will learn, for example, about patterns of tough negotiations between multiple enforcement authorities and corporations, and how these modify legal institutions and determine enforcement outcomes. This should be appealing to academics and students with an interest in global governance, economic crime, criminology, and law and economics, as well as prove useful to practitioners concerned with foreign anti-bribery enforcement, including compliance officers, lawyers, investigating and prosecuting authorities, and business leaders. Moreover, my aspiration is to allude a vision for the future by engaging in a normative discussion about the desirability of extraterritoriality and about an appropriate anti-bribery enforcement model.

Branislav Hock
Portsmouth
May 2019

Taylor & Francis

Taylor & Francis Group

<http://taylorandfrancis.com>

Abbreviations

1997	Recommendation Revised Recommendation of the Council on Combating Bribery in International Business Transactions
2000	MLA Convention European Union Convention on Mutual Legal Assistance
2009	Recommendation for Further Combating Bribery of Foreign Public Officials
2013	Act Crime and Courts Act 2013
ACWG	G20 Anti-Corruption Working Group
ADM	Archer Daniels Midland Company
Alba	Aluminum Bahrain B.S.C.
AON	AON Limited
AWAC	Alcoa World Alumina and Chemicals
BGB	Bürgerliches Gesetzbuch
Bribery Act	Bribery Act 2010
Bundeskriminalamt	German Federal Criminal Police Office
CBF	Brazilian Football Confederation
CoE	Council of Europe
CONCACAF	Confederation of North Central American and Caribbean Association Football
CONMEBOL	Confederación Sudamericana de Fútbol
DOJ	United States Department of Justice
DOS	United States Department of State
DPA	Deferred Prosecution Agreement
DT	Deutsche Telekom
EU	European Union
FATF	The Financial Action Task Force
FBI	Federal Bureau of Investigation
FCA	Financial Conduct Authority
FCPA	United States Foreign Corrupt Practices Act
FIFA	Fédération Internationale de Football Association
FIUs	Financial Intelligence Units

FSA	Financial Services Authority
GAO	United States Government Accountability Office
GDP	Gross Domestic Product
Grundgesetz	German Constitution
HP	Hewlett-Packard Bribery Scheme
ICBC	ICBC Standard Bank
ICC	International Criminal Court
ICSID	Convention on the Settlement of Investment Disputes
IntBestG	Gesetz zur Bekämpfung Internationaler Bestechung
ITAR	International Traffic in Arms Regulation
JGC	JGC Corporation
JIT	Joint Investigation Team
J&J	Johnson & Johnson
KBR	Kellogg Brown & Root, LLC
KBR	Kellogg Brown & Root Inc.
MLA	Mutual Legal Assistance
MNCs	Multinational Corporations
MWKL	M.W. Kellogg Limited
Nabisco	RJR Nabisco Inc. v. European Community
NGOs	Non-Governmental Organizations
NNPC	Nigerian National Petroleum Corporation
NPA	Non-Prosecution Agreement
NRAs	National Regulatory Authorities
NYSE	New York Stock Exchange
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OECD Convention	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
OWiG	Gesetz über Ordnungswidrigkeiten
Petrobras	Petróleo Brasileiro S.A.
Resource Guide	A Resource Guide to the U.S. Foreign Corrupt Practices Act
RICO	Racketeer Influenced and Corrupt Organization Act
SBM	SBM Offshore N.V.
SEC	Securities and Exchange Commission
SFO	Serious Fraud Office
StGB	Strafgesetzbuch
StPO	Strafprozeßordnung
UNCAC	United Nations Convention Against Corruption
UK	United Kingdom
UN	United Nations
US	United States
WGB	Working Group on Bribery
WTO	World Trade Organization

Acknowledgements

This book is based on my doctoral thesis, written during my time at the Tilburg Law and Economics Center in the Netherlands, and re-worked from my current location at the University of Portsmouth in the United Kingdom. This book could not have been written without the help of many colleagues and friends.

Particular thanks must go to my doctoral thesis supervisor Prof. Dr. Pierre Larouche for recognizing my research potential and for giving me the necessary freedom and academic support during my Ph.D. studies. I would like to express my gratitude to my doctoral thesis supervisor Dr. Angelos Dimopoulos not only for his valuable and constructive suggestions during the planning and development of this research work, but also for his empathy and emotional support. His willingness to give his time so generously has been very much appreciated. I would also like to thank the members of my Ph.D. Committee, Prof. Dr. Leigh Hancher, Prof. Dr. Eric Talley, Prof. Dr. Kevin Davis, Dr. Cecily Rose, and Dr. Jens Prüfer for their willingness to read the manuscript and provide comments.

I would like to express my deep gratitude to Prof. Dr. Leigh Hancher for her trust in me, her personal guidance, and for her encouraging words. My grateful thanks to Prof. Dr. Alex Brenninkmeier, Gaston Moonen, and Raphael Debets for giving me the opportunity to work in their team at the European Court of Auditors, teaching me how to deal efficiently with important policy issues, and for many other skills they helped me to develop.

Many thanks also due to Dr. David Shepherd, Dr. Elina Karpacheva, Chris Lewis, Prof. Andrew Spalding, Prof. Dr. Mark Button, Olia Kanevskaia, Dr. Suren Gomtsyan, Prof. Dr. Panos Delimatsis, Dr. Costantino Grasso, Dr. Lorenzo Pasculli, and Prof. Dr. Francis Pakes for their comments and suggestions on earlier drafts of this book.

I wish to thank Tilburg Law School for selecting my research proposal and awarding me a fully funded Ph.D. position, all the members of TILEC, colleagues at the University of Portsmouth and the ICJS, and all other colleagues and friends for their help and support. I am grateful to Fordham Law School where I spent time working on the book as a visiting researcher. I am also

grateful to the staff at Routledge for their guidance and support in bringing the book to press.

Finally, I am thankful to my parents Eva and Branislav, my wife Elina, my sister Eva, and whole my family for all love, support, understanding, and patience.

1 Introduction

This book attempts to come to grips with extraterritorial enforcement in the area of international bribery. Extraterritoriality is the key driver of foreign anti-bribery enforcement: national enforcement authorities can sanction subjects, both domestic and foreign, acting beyond the borders of a given country. While extraterritoriality stems from international treaties such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention),¹ each national enforcement authority has its own perception regarding whether, how, and why a specific case of bribery should be prosecuted. It leads to a wide array of enforcement responses accompanied by legal and political uncertainty and a controversy over the desirability of extraterritoriality.

This study introduces the framework of collective action to analyze and evaluate extraterritoriality. The book argues that extraterritoriality has initiated collective action to fight international bribery. This gives extraterritoriality a price because it has been an alternative to regulatory failures and markets in which corruption and bribery are in practice not sanctioned. The ultimate question, therefore, is not whether extraterritoriality has a price. It is whether, and when, that price is worth paying. Then, how much public good extraterritoriality can produce? And, conversely, what are the limits of extraterritorial enforcement in initiating and sustaining collective action?

1.1 Foreign anti-bribery enforcement and competitive disadvantage

Businesses generally disfavor heavy regulation. More than anything else, however, businesses hate laws that provide their competitors with an edge. The same is true in the field of international anti-bribery law in which businesses have lobbied hard for the level playing field rather than for a lighter

¹ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris, 17 December 1997, in force 15 February 1999, 37 ILM 1 (hereinafter OECD Convention). Available in OECD (2011).

2 Introduction

regulation. Paradoxically, the effect of business lobby has been the establishment of an international anti-bribery regime and global increase in catching and punishing companies for international bribery.

Even the advent of the Trump's administration associated with the rise of trade protectionism has not weakened international anti-bribery law. President Trump called the Foreign Corrupt Practices Act (FCPA)² a "horrible law." This view of US foreign anti-bribery law has been common among many business people since the adoption of the FCPA in 1977. What they see as "horrible" is that American firms that bribe in far-away jurisdictions face potentially harsh sanctions in the US.³ In *Bonny Island* bribery scheme, for example, KBR LLC and its parent companies Halliburton and KBR Inc. secured four contracts to design and build natural gas plants in Nigeria worth more than \$6 billion. In order to do so, they bribed Nigerian government officials. The United States Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) sanctioned these American businesses with criminal charges and civil penalties of \$579 million. One could say: if they did not bribe, other businesses would bribe and secure the contracts.

Nonetheless, such view of the US foreign anti-bribery law is becoming out of step with the times. One does not need to lighten strict national standard to level the playing field. Powerful states can impose such standard on foreigners: 27 out of the 40 largest enforcement actions between the years 2008 and 2018 were directed against non-US corporations (see Chapter 7). What President Trump underestimated is that Halliburton and other US firms are not the only corporations sanctioned by the US authorities. In *Bonny Island*, French, Italian, Dutch, and Japanese firms were also charged with violations of the FCPA alongside the US firms and paid approximately \$1 billion in sanctions to the US treasury.⁴ In March 2019, the US authorities have started sanctioning even Russian national champions. Consider MTS, the largest telecommunication company in

2 Foreign Corrupt Practices Act of 1977, 15 U.S.C. §78dd-1 et seq. (hereinafter FCPA).

3 "They [the U.S.] prosecute for going over to China and Mexico and other countries and getting business and creating jobs in this country. [...] Now, every other country goes into these places and they do what they have to do. [...] We are like a policeman of the world it is ridiculous. Every other country in the world is doing it, we're not allowed to. It puts us at a huge disadvantage." CNBC, Trump: Dimon's Woes & Zuckerberg's Prenuptial (15th May 2012) < <https://www.cnbc.com/video/2012/05/15/trump-dimons-woes-zuckerbergs-prenuptial.html?play=1> > accessed 25 February 2019.

4 The FCPA makes it an offense to provide anything of value to a foreign official for the purposes of securing any improper advantage in order to assist the actor in obtaining or retaining business. 15 U.S.C. §§78dd-1(a), 78dd-2(a), 78dd-3(a). United States Department of Justice and United States Securities and Exchange Commission, 'A Resource Guide to the U.S. Foreign Corrupt Practices Act' (2012) 10 < <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf> > accessed 27 February 2019.

Russia that was charged with \$850 million for paying bribes in Uzbekistan.⁵ Therefore, the US foreign anti-bribery enforcement is not an action directed exclusively against US businesses that bribe but also against non-US businesses.

Moreover, the American businesses lobby worked hard to establish an international anti-bribery regime in order to subject non-American businesses to an anti-bribery standard similar to the US standard (Rose, 2015: 1). They were successful. Besides the introduction of extraterritorial jurisdiction under the 1998 amendments to the FCPA, also other countries introduced foreign anti-bribery laws.⁶ More recently, non-US enforcement authorities have started enforcing their own anti-bribery laws. Consider Rolls-Royce, Telia Company, and SBM Offshore, global companies which all entered into global foreign bribery settlements, and agreed to pay fortunes to the US, UK, Brazilian and Dutch authorities because of their bribing. These global settlements indicate that the time when the US was the only enforcer of foreign anti-bribery laws has passed. The foreign anti-bribery regulatory landscape is undeniably becoming global.

In this context, the view that every non-US country in the world is tolerating foreign bribery is misleading. It is true that the extraterritorial enforcement of foreign anti-bribery laws was a unilateral effort of the US. Recently, however, non-US jurisdictions have stepped forward with their own regulatory responses and the enforcement has become a multilateral effort. At the same time, it would be misleading to argue that US extraterritoriality is without limits. Especially companies from China and India have not been sanctioned for international bribery. This is partly because many Chinese and Indian companies are not subject to the FCPA and other anti-bribery laws. Yet, this is partly also because the US enforcement authorities did not treat Chinese and Indian corporations in the same way as other non-US corporations that are subject to the FCPA (see Section 7.3.2). This dynamic may well change soon as the DOJ has recently established the Initiative to Combat Chinese Economic Espionage. One priority of the initiative is to prioritize international bribery cases that include Chinese companies and individuals (Section 10.2.1).⁷

5 United States Department of Justice, Mobile TeleSystems PJSC and Its Uzbek Subsidiary Enter into Resolutions of \$850 Million with the Department of Justice for Paying Bribes in Uzbekistan (Press Release 7 March 2019) <<https://www.justice.gov/opa/pr/mobile-telecommunications-pj-sc-and-its-uzbek-subsidiary-enter-resolutions-850-million-department>> accessed 18 April 2019.

6 The International Anti-Bribery and Fair Competition Act 1998. Prior to the 1998 amendment of the FCPA, the US approach was based only on territorial jurisdiction.

7 United States (2018) Attorney General Jeff Session's China Initiative Fact Sheet <<https://www.justice.gov/opa/speech/file/1107256/download>> accessed 28 April 2019.

1.2 Extraterritoriality and international bribery

A collective action perspective introduced in this book highlights two crucial advantages that extraterritoriality offers. The first one is that extraterritoriality can offset failures of some states to regulate international bribery. The second is that extraterritoriality can incentivize non-US jurisdictions to step forward with their own anti-bribery enforcement. This potential gives extraterritoriality a price that should be analyzed and evaluated (see Section 1.3 and Chapter 2). The collective action perspective should inform a broader discussion about the desirability of extraterritoriality, in general, and in the specific context of international bribery. This section summarizes the broader discussion about the desirability of extraterritoriality.

1.2.1 Extraterritorial legislation as a response to global problems

More generally, extraterritoriality of national laws can be seen as the states' response to the rising economic and regulatory powers of multinational corporations (MNCs). While MNCs create jobs, wealth, and innovate, MNCs act mostly in their private interest, in order to maximize profits (Danielsen, 2005). The pursuit of private interest, without good governance, however, results in financial breakdowns, infringements on human rights, and other global problems (Leisinger, 2009).

To address global problems in both the US and the European Union (EU), national states and the EU have increasingly subject MNCs to extraterritorial forms of legislation. In areas such as cybersecurity, environment, and human rights, they have unilaterally, or under the auspices of international law, adopted statutes allowing them to extend their jurisdiction to both domestic and foreign firms (Parrish, 2009: 852–856; Zerk, 2010; Coffee, 2014; Scott, 2014). International bribery is one global problem that has been tackled by extraterritoriality.

International bribery is a hard nut to crack. There is a universal agreement that bribery in international business transactions is undesirable because it undermines overall productivity and public welfare (Shleifer and Vishny, 1993; Méon and Khalid, 2005). Yet, most of the states have struggled to regulate international bribery effectively. They have struggled because they do not have sufficient laws, expertise, political will, and resources to address the transnational character of bribery. Bribery is based on the use of complicated systems of corporate veils to bribe globally public and private officials. In addition, international bribery includes third parties that are controlled by or act on behalf of the main parties: bribe-giver and bribe-taker, and complicated transnational communication channels and payment systems.⁸ This struggle to regulate international bribery features a collective action problem (see Section 1.3 and Chapter 2).

8 See the discussion about complexity of foreign bribery in Chapter 2.

Global bribery schemes can hardly be regulated effectively by legislation that is strictly limited by state borders. Without extraterritorial legislation, MNCs could hide themselves from the investigation in secure jurisdictions or be shielded from liability by their intermediaries. The need to overcome these problems is the reason why we see the rise of extraterritoriality in the area of international anti-bribery law. This rise is closely tied with the adoption of the OECD Convention at the end of 1997. The OECD Convention has directly facilitated the adoption of specific foreign anti-bribery legislation, strongly inspired by the FCPA, by countries such as the UK and Germany, and facilitated the cooperation between the US and these countries.⁹ Yet the rise of extraterritoriality is not without controversy.

1.2.2 Extraterritorial enforcement is controversial

The higher the expansion of extraterritoriality, the more concern these interested in democratic sovereignty, stable international relations, allocative efficiency, and the rule of law will show. To some extent, these concerns are mitigated by international law because extraterritoriality is envisaged and supported by a number of international treaties. In some cases, these treaties may increase the clarity of measures, the trust between involved actors and their cooperation and coordination. In other cases, however, international law does not prevent various legal, political, and economic conflicts associated with extraterritorial enforcement.¹⁰

In the area of foreign anti-bribery law, the OECD Convention provides legal basis for extraterritoriality. The OECD Convention provides that states should interpret the territorial basis for jurisdiction broadly.¹¹ Being it because of moral concerns, good governance issues, negative effects on economic development, and because bribery distorts international competitive conditions, the wide jurisdiction is deemed necessary to oppose negative effects of international bribery. More specifically, the broad application is an attempt to oppose the power of MNCs in order to make markets more competitive (see Keohane, 2005: 1–5). In other words, foreign anti-bribery law and its extraterritoriality, similarly as in competition law and other fields of law, are to a large extent an issue of economic governance and market regulation.

9 The OECD Convention operates in conjunction with many other important international anti-corruption treaties such as the United Nations Convention against Corruption. The UNCAC is still in the review stage that focuses on its implementation, rather than on the enforcement of its provisions. United Nations, Convention against Corruption, New York, 31 October 2003, in force 14 December 2005, 2349 U.N.T.S. 41, 43 I.L.M. 37 (hereinafter UNCAC). In this context, see Zagari (2015: 137–138).

10 Consider, for example, an international conflict between the EU and the US over EU passenger sensitive data sharing with US authorities (see Ryngaert, 2015).

11 Article 4 of the OECD Convention provides that a Signatory shall establish jurisdiction when the offense is committed in whole or in part in its territory. Paragraph 25 of the Official Commentaries to the OECD Convention (OECD, 2011) further explains that “the territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required.”

1.2.2.1 Moral imperialism critique

Economic governance and market regulation, however, compete with other policy rationales. This is why extraterritoriality is the source of intellectual and practical conflicts. Historically, the first efforts to regulate international bribery were largely based on a neoliberal ideology that supported privatization, internationalization, deregulation, and free trade (Kennedy, 1999). Negative economic effects assigned to corruption and bribery were claimed to be universal and presented as the justification for the application of foreign anti-bribery legislation to conduct occurring in other jurisdictions. A number of scholars argue that this is moral imperialism, i.e. the imposition of western anti-corruption standards onto regions with different values.¹² For example, US foreign anti-bribery enforcement in Nigeria might be seen as the imposition of foreign standards on Nigerian markets without involving Nigerian citizens thereby threatening democratic sovereignty.

1.2.2.2 Double measure: domestic vs. foreign corruption

Moral imperialism may be accompanied by hypocrisy in the form of ignoring corruption problems at home. While the US enforcement authorities set a very strong anti-bribery standard in far-away jurisdictions, the US Supreme Court has been narrowing the definition of domestic corruption since the 1970s. In *Citizens United v Federal Election Commission*, the US Supreme Court confirmed the right of corporations to spend de facto unlimited resources to influence elections.¹³

Furthermore, legal gaps in US anti-corruption laws make it difficult to sanction cases of domestic corruption. For example, in 2014, former Virginia governor was sentenced to two years in prison for setting up meetings for a businessman with state health officials. In exchange, he and his wife enjoyed gifts and sweetheart loans worth \$175,000.¹⁴ However, this was not enough for the US Supreme Court that overturned the ruling because the government did not show a connection between these gifts and an “official act.”¹⁵ In other words, giving expensive gifts to a public official in exchange for setting up meetings with other public officials in order to lobby them was not considered as an official act, hence legal. These domestic limitations can make it hard to justify the enforcement of US foreign anti-bribery law in far-away jurisdictions.

12 The centrum of the discussion was between Nichols (2000), who supports the extraterritorial enforcement, and Salbu (1999) who criticizes it.

13 *Citizens United v. FEC* (558 U.S. 310). For further discussion about the implications of the decision, see Teachout (2016).

14 Smith, D. (27 June 2016) Supreme Court Overturns Bribery Conviction for Former Virginia Governor. *Guardian* <<https://www.theguardian.com/law/2016/jun/27/bob-mcdonnell-supreme-court-ruling-bribery-overturned>> accessed 25 February 2019.

15 *McDonnell v. United States*, June 27, 2016 at 14.

1.2.2.3 Negative effects of foreign anti-bribery enforcement

Furthermore, the extraterritorial application of law has important economic consequences. Spalding (2010) claims that overseas anti-bribery enforcement is, de facto, the imposition of economic sanctions against emerging markets. In effect, if enforcement becomes too demanding, the economy of some countries will struggle, for instance, because relatively more corrupt countries will tend to attract investments from firms based in relatively more corrupt countries and deter investments from firms based in relatively less corrupt countries (Cuervo-Cazurra, 2006). Therefore, despite the fact that foreign anti-bribery enforcement may limit some bribery, it can also negatively influence economic growth and the inflow of foreign direct investment in developing countries (see Koehler, 2010; Westbrook, 2011).

1.2.2.4 Extraterritoriality and the conflict of interests

Besides the mitigation of global problems such as corruption and bribery, the politico-economic interests are a crucial driver of extraterritoriality. These interests, however, may be in conflict with what is needed to address the global problems. Sanctioning of perpetrators in the US may be similarly important as compensating victims that suffered because of the sanctioned perpetrators. While firms from all around the world are being harshly sanctioned in the US for actions undertaken in far-away jurisdictions, the US justice system does not focus so much on injured parties. For example, US law either does not recognize a private right of action for injuries suffered outside the US or the US courts have been increasingly foreclosing this opportunity.¹⁶ Yet, more focus on foreign victims could help justify expansive forms of extraterritoriality.

We can go on and criticize extraterritoriality from much more angles. International lawyers might see some forms of extraterritoriality violating statutory constructions or even as unconstitutional (Colangelo, 2014). MNCs that have to comply with extraterritorial laws might, for instance, be calling for more legal certainty and their right not to be punished by multiple disorganized enforcement authorities for the same offense.¹⁷ Russian hackers might argue that the US Department of the Treasury's Office of Foreign Assets Control (OFAC) lacks legitimacy to sanction them for cyber-attacks.¹⁸ Citizens of Nigeria and Papua New Guinea that suffered from pollution linked to operations of MNCs might find it unfair that monetary sanctions related to extraterritorial enforcement are transferred to a foreign treasury. The criticisms cast a shadow of doubt over whether extraterritoriality has any merit at all. This book introduces a collective action perspective in order to contribute to this broader discussion about the desirability of extraterritoriality.

16 See, for example, *Morrison vs. Nat'l Austl. Bank*, 561 U.S. 247 (2010).

17 See the discussion about the *ne bis in idem* principle in Chapter 4.

18 US Department of Treasury (11 June 2018), Treasury Sanctions Russian Federal Service Enablers <<https://home.treasury.gov/news/press-releases/sm0410>> accessed 25 February 2019.

1.3 Extraterritorial enforcement and collective action

This book introduces a collective action perspective as a new account of foreign anti-bribery laws and their extraterritorial enforcement. Analyzing and evaluating extraterritoriality from the perspective of collective action complements the ongoing discussion about the desirability of extraterritoriality, in general, and in the specific context of international bribery. Furthermore, politicians, prosecutors, practitioners, researchers, and students in building up their strategies, compliance programs and theories should not rely on a dogmatic analysis of anti-bribery laws and should not blindly follow simplistic data about anti-bribery enforcement trends. The collective action perspective allows those interested in foreign anti-bribery law to understand how enforcement functions in practice, including complex interactions between national enforcement authorities and firms, and how these interactions evolve with the changing enforcement landscape.

The key premise of the perspective is that extraterritoriality can offset failures of some states to regulate international bribery as well as can incentivize new states to step forward with their own anti-bribery enforcement. This gives extraterritoriality a price because it can be an alternative to regulatory failures and markets in which global problems such as corruption and bribery are legal or illegal but in practice not sanctioned. Although extraterritoriality is, and should be, subject to criticism, we should not neglect that extraterritoriality could be effective in initiating collective action to fight societal problems such as international bribery.

The collective action perspective is based on an assumption that states are more effective in addressing global societal problems if they cooperate and coordinate their action in the provision of public goods. In our case, such public good is the enforcement of foreign anti-bribery laws. The problem with the provision of public goods is that those members of the international community of states that invest in enforcement cannot exclude other states from free-riding on the beneficial effects of enforcement (see Olson, 1971). Hence, the collective action problem: if each member of the community prefers to free-ride, then the public good will simply not be provided (see Heather and Peiffer, 2015).¹⁹ In other words, the provision of foreign anti-bribery enforcement is a public good because placing as many corporations as possible under strict regulatory scrutiny facilitates, assumedly, the achievement of the aim of international anti-corruption policy (see Section 2.3.3).²⁰

19 Heather and Peiffer (2015) discuss how collective action problems undermine the effectiveness of institutions meant to fight corruption.

20 In this context, the objective of international anti-corruption policy – open and competitive markets – helps to define public goods under the methodology of collective action. In this sense, the objective of open and competitive markets is the justification for resolving the collective action problem.

In the remainder of the book, we will see that the link between extra-territoriality and the provision of the enforcement as a public good is more complicated. Given the steady uptick in countries jumping on the foreign anti-bribery enforcement bandwagon, the provision of public good also requires cooperation and coordination of national enforcement authorities (see Section 2.4). Hence, with the increasing number of states that enforce anti-bribery laws, the real collective action problem lies in multilateral enforcement (for more detail, see Chapter 2). The collective action perspective will reveal how legal institutions and governance mechanisms accompanying multijurisdictional enforcement make a difference between more and less effective solutions to collective action problems (Chapter 7).

1.4 The outline and focus

The main aim of this book is to show how extraterritoriality functions and evaluate to what extent extraterritoriality solves collective action problems associated with foreign anti-bribery enforcement. Chapter 2 introduces a collective action framework as discussed by economic governance scholars, which provides a key methodological innovation and as such a contribution to assessing the effectiveness of legal institutions. The chapter explains what is a collective action problem, why, and in what way, the regulation of international bribery can be viewed as a collective action problem. Moreover, the chapter also discusses the parameters that determine how collective action problems can be resolved.

Chapters 3 and 4 focus on international anti-bribery legislation. Chapter 3 introduces the history of international anti-bribery legislation and explains the key characteristics that distinguish it from domestic anti-corruption legislation. The chapter also explains the evolution of international anti-bribery legislation and analyzes key principles and provisions of the OECD Convention. This book primarily focuses on the OECD Convention because no other international treaty has had a bigger impact on the functioning of foreign anti-bribery extraterritorial enforcement. The book will refer to principles, norms, rules and decision-making procedures related to foreign anti-bribery enforcement as the “OECD anti-bribery enforcement regime.”

Chapter 4 analyzes foreign anti-bribery legislation, primarily the OECD Convention and the national laws of the US, and where necessary of other enforcement actors, such as the UK and Germany. This is done from the perspective of collective action, focusing on legal norms determining the provision of enforcement, legal mechanisms that incentivize cooperation and coordination between national enforcement authorities, and legal ambiguities that may cause cooperation and coordination problems.

Chapters 5 and 6 adopt a qualitative approach in order to shed light on what happens beyond the formal legal framework. Numbers and other statistical data are important and can indicate patterns and help to compare enforcement trends, however, their validity is limited because of the complex institutional

dimension of foreign anti-bribery enforcement. Chapter 5 explains how foreign anti-bribery cases are structured, provides an overview of the enforcement activity in the US, the UK, and Germany, and an in-depth case study of foreign anti-bribery enforcement practice in three “classic” enforcement schemes, including *Siemens*, *Bonny Island*, and *BAE Systems*.

Chapter 6 builds on the in-depth case study in order to identify common patterns of enforcement. The chapter examines 40 largest foreign anti-bribery enforcement actions concluded between from January 2008 to December 2018. The chapter discusses the following questions: How territorial jurisdiction is established? How, and why, do national enforcement authorities use different charges, including the conspiracy charges, to prosecute foreign bribery? And how the concept of corporate liability is interpreted by enforcement authorities when prosecuting MNCs for bribing? What is more, the chapter explains when, how, and why national enforcement authorities cooperate with each other and coordinate their enforcement actions.

Chapters 7 through 9 evaluate extraterritoriality and provide policy recommendations. The value of the collective action framework is materialized in Chapter 7 that explains how, when, and to what extent, extraterritoriality is effective in solving collective action problems.²¹ Chapter 7 applies the collective action framework (presented in Chapter 2) and explains in what way and to what extent, extraterritoriality is effective in solving enforcement difficulties of the OECD anti-bribery enforcement regime.

Chapter 8 provides policy and legal reforms proposals. The chapter is relatively narrow as it provides suggestions specific to the OECD anti-bribery enforcement regime so that states and the OECD may consider how extraterritoriality contributes to solving collective action problems, and adopt a policy to foster collective action.

Chapter 9 analyzes alternative solutions to collective action problems, both in the area of anti-bribery and in other fields. Chapter 9 offers explanations why and when an enforcement system supervised by an international tribunal such as the International Criminal Court (ICC), the World Trade Organization (WTO) model, and more de-centralized solutions could work, and why, and when, they could not work. Furthermore, this chapter also discusses the impact of private actors on collective action and indicates how private and public actors can, and should, cooperate to further mitigate collective action problems. As the book presents the link between extraterritoriality and collective action as a general conceptual challenge, final conclusions are relevant not only in anti-bribery law but also in other fields of law.

The final chapter summarizes the book and sets a research agenda for the future.

21 The notion of regime effectiveness is commonly understood as “the extent to which regimes contribute to solving or mitigating the problems that motivate those people who create the regimes” (Young, 2011: 19854) referring to (Young, 1999: 109).

References

- Coffee, J. C. (2014) 'Extraterritorial Financial Regulation: Why E.T. Can't Come Home' 99 *Cornell Law Review* 1259.
- Colangelo, A. J. (2014) 'What Is Extraterritorial Jurisdiction' (2014) 99 *Cornell Law Review* 1303.
- Cuervo-Cazurra, A. (2006) 'Who Cares about Corruption?' 37 *Journal of International Business Studies* 807.
- Danielsen, D. (2005) 'How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance' 46 *Harvard International Law Journal* 411.
- Heather, M. and Peiffer, C. (2015) *Corruption and Collective Action*. U4 Anti-Corruption Resource Center, Research Paper 32 <<http://publications.dlprog.org/CorruptionandCollectiveAction.pdf>> accessed 25 February 2019.
- Hock, B. and Gomtsian, S. (2018) 'Private Order Building: The State in the Role of the Civil Society and the Case of FIFA' 17 *The International Sports Law Journal* 186.
- Kennedy, D. (1999) 'The International Anti-Corruption Campaign' 14 *Connecticut Journal of International Law* 455.
- Keohane R. O. (2005) 'Global Governance and Democratic Accountability' In R. Wilkinson (Ed.) *Global Governance Reader* (pp. 121–139). London: Routledge.
- Koehler, M. (2010) 'The Facade of FCPA Enforcement' 41 *Georgetown Journal of International Law* 907.
- Leisinger, K. M. (2009), 'The Role of Corporations in Shaping Globalization with a Human Face' In J. Straus (Ed.), *The Role of Law and Ethics in the Globalized Economy* (pp. 1–19). Berlin: Springer.
- Méon, P.-G. and Khalid S. (2005) 'Does Corruption Grease or Sand the Wheels of Growth?' 122 *Public Choice* 69.
- Nichols, P. M. (2000) 'The Myth of Anti-Bribery Laws as Transnational Intrusion' 33 *Cornell International Law Journal* 627.
- OECD (2011) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents* <http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf> accessed 25 February 2019.
- Olson, M. (1971) *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press.
- Parrish, A. L. (2009) 'Reclaiming International Law from Extraterritoriality' (2009) 93 *Minnesota Law Review* 815.
- Rose-Ackerman, S. (2011) 'Anti-Corruption Policy: Can International Actors Play a Constructive Role?' (2011) 440 *Yale Law & Economics Research Paper*.
- Rose, C. (2015) *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems*. Oxford: Oxford University Press.
- Ryngaert, C. (2015) 'Symposium issue on Extraterritoriality and EU Data Protection' 5 *International Data Privacy Law* 221.
- Sandler, T. (2004) *Global Collective Action*. Cambridge: Cambridge University Press.
- Salbu, S. R. (1999) 'Extraterritorial Restriction of Bribery: A Premature Evocation of the Normative Global Village' 24 *Yale Journal of International Law* 223.
- Scott, J. (2014) 'Extraterritoriality and Territorial Extension in EU Law' 62 *American Journal of Comparative Law* 87.
- Shleifer, A. and Vishny, R. W. (1993) 'Corruption' 108 *Quarterly Journal of Economics* 599.

- Spalding, A. B. (2010) 'Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets' 62 *Florida Law Review* 351.
- Teachout, Z. (2016) *Corruption in American: From Benjamin Franklin's Snuff Box to Citizens United*. Cambridge, MA: Harvard University Press.
- Westbrook, A. D. (2011) 'Enthusiastic Enforcement, Informal Legislation: The Unruly Expansion of the Foreign Corrupt Practices Act' 45 *Georgia Law Review* 489.
- Young, O. R. (1999) *Governance in World Affairs*. Ithaca, NY: Cornell University Press.
- Young, O. R. (2011) 'Effectiveness of International Environmental Regimes: Existing Knowledge, Cutting-Edge Themes, and Research Strategies' 108 *Proceedings of the National Academy of Sciences of the United States of America* 19853
- Zagaris, B. (2015) *International White Collar Crimes: Cases and Materials*. Cambridge: Cambridge University Press.
- Zerk, J. A. (2010) 'Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere from Six Regulatory Areas' (Harvard University, John F. Kennedy School of Government <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_59_zerk.pdf> accessed 25 February 2019.
- Arnone, M. and Borlini, L. S. (2014) *Corruption: Economic Analysis and Evolution of the International Law and Institutions*. Cheltenham: Edward Elgar.
- Bachmann, R. and Zaheer, A. (2006) *Handbook of Trust Research*. Cheltenham: Edward Elgar.
- Bardhan, P. (1997) 'Corruption and Development: A Review of Issues' 35 *Journal of Economic Literature* 1320.
- Barnett, M. and Duvall, R. (2005) 'Power in International Politics' (2005) 59 *International Organization* 39.
- Bernstein, L. (1992) 'Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry' 21 *Journal of Legal Studies* 115.
- Boersma, M. (2012) *Corruption: A Violation of Human Rights and a Crime under International Law?* Cambridge: Intersentia.
- Cogan, J. K. (2002) 'International Criminal Courts and Fair Trials: Difficulties and Prospects' 27 *Yale Journal of International Law* 111.
- Cooter, R. D. and Ulen, T. S. (2012) *Law & Economics*. Boston, MA: Addison-Wesley.
- Cuervo-Cazurra, A. (2006) 'Who Cares about Corruption?' 37 *Journal of International Business Studies* 807.
- Davis, K. E. and Trebilcock, M. J. (2008) 'The Relationship between Law and Development: Optimists versus Skeptics' 56 *American Journal of Comparative Law* 895.
- Dixit, A. K. (2003) 'Trade Expansion and Contract Enforcement' 111 *The Journal of Political Economy* 1293.
- Dixit, A. K. (2009) 'Governance Institutions and Economic Activity' 99 *American Economic Review* 5.
- Dixit, A. K. (2014) *Lawlessness and Economics: Alternative Modes of Governance*. Princeton, NJ: Princeton University Press.
- Eigen, P. and Eigen-Zucchi, Ch. (2003) 'Corruption and Global Public Goods' In I. Kaul (Ed.) *Providing Global Public Goods* (pp. 576–597). New York: Oxford University Press.
- Falvey, R. E. and Lloyd, P. J. (1999) 'An Economic Analysis of Extraterritoriality' University of Melbourne Research Paper 675 <<https://www.nottingham.ac.uk/gep/documents/papers/1999/99-03.pdf>> accessed 26 February 2019.
- Farrales, M. J. (2005) 'What Is Corruption? A History of Corruption Studies and the Great Definitions Debate' <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1739962> accessed 26 February 2019.

- Ferguson, W. D. (2013) *Collective Action and Exchange: A Game-Theoretic Approach to Contemporary Political Economy*. Stanford, CA: Stanford University Press.
- Fouladvand, S. (2019) 'Corruption and Human Trafficking' In L. Pasculli and N. Ryder (Eds.) *Corruption in the Global Era: Causes, Sources and Forms of Manifestation* (pp. 289–305). Abingdon: Routledge.
- Gibbons, R. and Henderson, R. (2012) 'Relational Contracts and Organizational Capabilities' 23 *Organization Science* 1350.
- Greif, A., Milgrom, P. and B. R. Weingast (1994) 'Coordination, Commitment, and Enforcement: The Case of the Merchant Guild' 102 *Journal of Political Economy* 745.
- Hadfield, G. K. and Weingast, B. R. (2012) 'What Is Law? A Coordination Model of the Characteristics of Legal Order' 4 *Journal of Legal Analysis* 471.
- Hardin, R. (1971) 'Collective Action as an Agreeable N-Prisoners' Dilemma' 16 *Behavioral Science* 472.
- Heather, M. and Peiffer, C. (2015) 'Corruption and Collective Action. U4 Anti-Corruption Resource Center' Research Paper 32 <<http://publications.dlprog.org/CorruptionandCollectiveAction.pdf>> accessed 25 February 2019.
- Heckathorn, D. D. (1989) 'Collective Action and the Second-Order Free-Rider Problem' 1 *Rationality and Society* 78.
- Huntington, S. P. (1968) *Political Order in Changing Societies*. New Haven, CT: Yale University Press.
- Johnston, M. (2010) *Syndromes of Corruption: Wealth, Power, and Democracy*. Cambridge: Cambridge University Press.
- Kaczmarek, S. C. and Newman, A. L. (2011) 'The Long Arm of the Law: Extra-territoriality and the National Implementation of Foreign Bribery Legislation' 65 *International Organization* 745.
- Kahan, D. M. (2003) 'The Logic of Reciprocity: Trust, Collective Action, and Law' 102 *Michigan Law Review* 71.
- Kennedy, D. (1999) 'The International Anti-Corruption Campaign' 14 *Connecticut Journal of International Law* 455.
- Keohane, R. O. (2005) *After Hegemony: Cooperation and Discord in the World Political Economy*. Princeton, NJ: Princeton University Press.
- Lambsdorff, J. G. (2006) 'Causes and Consequences of Corruption: What Do We Know from a Cross-Section of Countries' In S. Rose-Ackerman (Ed.) *International Handbook on the Economics of Corruption* (pp. 3–51). Cheltenham: Edward Elgar.
- Landa, J. (1981) 'A Theory of the Ethnically Homogeneous Middleman Group: An Institutional Alternative to Contract Law' 10 *Journal of Legal Studies* 349.
- Manacorda, S. and Grasso, C. (2018) *Fighting Fraud and Corruption at the World Bank: A Critical Analysis of the Sanctions System*. Cham: Springer.
- Masten, S. E. and Prüfer, J. (2014) 'On the Evolution of Collective Enforcement Institutions: Communities and Courts' 43 *Journal of Legal Studies* 359.
- Melgar, N., Rossi, M. and Smith, T. W. (2010) 'The Perception of Corruption' 22 *International Journal of Public Opinion Research* 120.
- Méon, P.-G. and Khalid S. (2005) 'Does Corruption Grease or Sand the Wheels of Growth?' 122 *Public Choice* 69.
- Mishra, A. (2005) *The Economics of Corruption*. Delhi: Oxford University Press.
- Nichols, P. M. (2016) 'The Neomercantilist Fallacy and the Contextual Reality of the Foreign Corrupt Practices Act' 53 *Harvard Journal on Legislation* 203.
- North, D. C. (1990) *Institutions, Institutional Change and Economic Performance*. Cambridge, MA: Cambridge University Press.

- North, D. C. (1991) 'Institutions' 5 *Journal of Economic Perspectives* 97.
- OECD (2011) *The OECD at 50 and Beyond*. OECD <<http://www.oecd.org/about/47747755.pdf>> accessed 26 February 2019.
- OECD (2013) 'Interconnected Economies: Benefiting from Global Value Chains' OECD.
- Olson, M. (1971) *The Logic of Collective Action: Public Goods and the Theory of Groups*. Cambridge, MA: Harvard University Press.
- Ostrom, E. (1990) *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge University Press.
- Ostrom, E. (2000) 'Collective Action and the Evolution of Social Norms' 14 *Journal of Economic Perspectives* 137.
- Ostrom, E. et al. (2002) *The Drama of the Commons*. Washington DC: National Academy Press.
- Ostrom, E. (2004) 'Collective Action and Property Rights for Sustainable Development, Understanding Collective Action' In R. S. Meinzen-Dick and M. Di Gregorio. *Collective Action and Property Rights for Sustainable Development* (Brief 2). Washington DC: International Food Policy Research Institute.
- Parrish, A. L. (2012) 'Domestic Responses to Transnational Crime: The Limits of National Law' 23 *Criminal Law Forum* 275.
- Pasculli, L. and Ryder, N. (2019) 'Corruption and Globalisation' In L. Pasculli and N. Ryder (Eds.) *Corruption in the Global Era: Causes, Sources and Forms of Manifestation* (pp. 3–23). Abingdon: Routledge.
- Perrings, C. (2014) *Our Uncommon Heritage, Biodiversity Change, Ecosystem Services, and Human Well-Being*. Cambridge: Cambridge University Press.
- Reed, Q. and Fontana, A. 'Corruption and Illicit Financial Flows: The Limits and Possibilities of Current Approaches' U4 Anti-Corruption Research Center < <http://www.u4.no/assets/publications/3935-corruption-and-illicit-financial-flows.pdf>> accessed 26 February 2019.
- Rose-Ackerman, S. (1999) *Corruption and Government: Causes, Consequences, and Reform*. Cambridge: Cambridge University Press.
- Rose-Ackerman, S. (2011) 'Anti-Corruption Policy: Can International Actors Play a Constructive Role?' (2011) 440 *Yale Law & Economics Research Paper*.
- Sandler, T. (2004) *Global Collective Action*. Cambridge: Cambridge University Press.
- Sandler, T. (2016) 'Strategic Aspects of Difficult Global Challenges' 7 *Global Policy* 33.
- Schäfer, A. (2006) 'A New Form of Governance? Comparing the Open Method of Co-ordination to Multilateral Surveillance by the IMF and the OECD' 13 *Journal of European Public Policy* 70.
- Shleifer, A. and Vishny, R. W. (1993) 'Corruption' 108 *Quarterly Journal of Economics* 599.
- Simone de, F. and Zagaris, B. (2014) 'Impact of Foreign Bribery Legislation on Developing Countries and the Role of Donor Agencies' U4 Anti-Corruption Research Center <<http://www.u4.no/publications/impact-of-foreign-bribery-legislation-on-developing-countries-and-the-role-of-donor-agencies/downloadasset/3610>> accessed 26 February 2019.
- Slaughter, A-M. and Zaring, D. (1997) 'Extraterritoriality in a Globalized World' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=39380> accessed 26 February 2019.
- Snidal, D. (1985) 'The Limits of Hegemonic Stability Theory' 39 *International Organization* 579.

- Spahn, E. K. (2012) 'Multijurisdictional Bribery Law Enforcement: The OECD Anti-Bribery Convention' 53 *Virginia Journal of International Law* 1.
- Spear, S. (2004) 'Learning to Lead at Toyota' 82 *Harvard Business Review* 78.
- Spear, S. and Bowen, K. H. (1999) 'Decoding the DNA of the Toyota Production System' 77 *Harvard Business Review* 96.
- Stephan, P. B. (2012) 'Regulatory Competition and Anticorruption Law' 53 *Virginia Journal of International Law* 53.
- Tarullo, D. K. (2004) 'The Limits of Institutional Design: Implementing the OECD Anti-Bribery Convention' 44 *Virginia Journal of International Law* 665.
- TI (2009) *The Anti-Corruption Plain Language Guide* <http://www.transparency.org/whatwedo/publication/the_anti_corruption_plain_language_guide> accessed 26 February 2019.
- Turk, M. C. (2013) 'A Political Economy Approach to Reforming the Foreign Corrupt Practices Act' 33 *Northwestern Journal of International Law & Business* 325.
- Windsor, D. and Getz, K. A. (1999) 'Regional Market Integration and the Development of Global Norms for Enterprise Conduct: The Case of International Bribery' 38 *Business & Society* 415.
- Adams, M. and Griffiths, J. (2012) 'Against "Comparative Method": Explaining Similarities and Differences' In M. Adams and J. Bomhof (Eds.) *Practice and Theory in Comparative Law* (pp. 279–301). Cambridge: Cambridge University Press.
- Arner, D. W. (2007) *Financial Stability, Economic Growth, and the Role of Law*. Cambridge: Cambridge University Press.
- Ashcroft, J. and Ratcliffe, J. (2012) 'The Recent and Unusual Evolution of an Expanding FCPA' 26 *Notre Dame Journal of Law, Ethics & Public Policy* 25.
- Bogdan, M (1979) 'International Trade and the New Swedish Provisions on Corruption' 27 *American Journal of Comparative Law* 665.
- Dalton, M. M. (2006) 'Efficiency v. Morality: The Codification of Cultural Norms in the Foreign Corrupt Practices Act' 2 *The NYU Journal of Law and Business* 583.
- Deth Van, J. W. (2013) *Comparative Politics: The Problem of Equivalence*. Colchester: ECPR Press.
- DOJ and SEC (2012) 'A Resource Guide to the U.S. Foreign Corrupt Practices Act' (2012) 10 < <https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>> accessed 27 February 2019.
- George, B. C. and Lacey, K. A. (2000) 'A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives' 33 *Cornell International Law Journal* 547.
- Goodman, J. (2013) *The Anti-Corruption and Antitrust Connection*. The Antitrust Source. <http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/apr13_goodman.authcheckdam.pdf> accessed 27 February 2019.
- Koehler, M. (2012) 'The Story of the Foreign Corrupt Practices Act' 73 *Ohio State Law Journal* 929.
- Krasner, S. D. (1985) *Structural Conflict: The Third World against Global Liberalism*. Berkeley: University of California Press.
- Larouche, P. (2013) 'Legal Emulation between Regulatory Competition and Comparative Law' In P. Larouche and P. Cserne (Eds.) *National Legal Systems and Globalization: New Role, Continuing Relevance* (pp. 247–287). The Hague: T.M.C. Asser Press.
- Luhmann, N. (1970) *Soziologische Aufklärung*. Opladen: Westdeutscher Verlag.
- Michaels, R. (2006) 'The Functional Method of Comparative Law' In M. Reimann and R. Zimmermann (Eds.) *Oxford Handbook of Comparative Law* (pp. 339–382). Oxford: Oxford University Press.

- Nichols, P. M. (2016) 'The Neomercantilist Fallacy and the Contextual Reality of the Foreign Corrupt Practices Act' 53 *Harvard Journal on Legislation* 203.
- Noonan, J. T. (1984) *Bribes*. New York: Macmillan.
- OECD (2011) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents* (2011) <http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf> accessed 25 February 2019.
- Pieth, M., Low, L. A. and Bonucci, N. (Eds.) (2014) *The OECD Convention on Bribery: A Commentary*. Cambridge: Cambridge University Press.
- Pieth, M., Low, L. A. and Cullen, P. J. (Eds.) (2007) *The OECD Convention on Bribery: A Commentary*. Cambridge: Cambridge University Press.
- Pines, D. (1994) 'Amending the Foreign Corrupt Practices Act to Include a Private Right of Action' 82 *California Law Review* 185.
- Rose, C. (2015) *International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems*. Oxford: Oxford University Press.
- Rossbacher, T. W. and Young, H. H. (1997) 'The Foreign Corrupt Practices Act within the American Response to Domestic Corruption' 15 *Dickinson Journal of International Law* 509.
- Runnels, A. M. and Burton, M. B. (2012) 'The Foreign Corrupt Practices Act and New Governance: Incentivizing Ethical Foreign Direct Investment in China and Other Emerging Economies' 34 *Cardozo Law Review* 295.
- Spalding A. B. (2010) 'Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets' 62 *Florida Law Review* 351.
- Tarullo, D. K. (2004) 'The Limits of Institutional Design: Implementing the OECD Anti-Bribery Convention' 44 *Virginia Journal of International Law* 665.
- TI (2018) *Exporting Corruption: Progress Report 2018: Assessing Enforcement of the OECD Convention on Combating Foreign Bribery*, available at <https://www.transparency.org/whatwedo/publication/exporting_corruption_2018> accessed 27 February 2019.
- Weiler, J. (2005) 'Mutual Recognition, Functional Equivalence and Harmonization in the Evolution of the European Common Market and the WTO' In F. Padoa-Schioppa (Eds.) *The Principles of Mutual Recognition in the European Integration Process* (pp. 25–84). Basingstoke: Palgrave Macmillan.
- Wolf, D. and Schmidt-Pfister, S. (Eds) (2010), *International Anti-Corruption Regimes in Europe: Between Corruption, Integration, and Culture*. Baden-Baden: Nomos.
- Zweigert, K. (1972) 'Methodological Problems in Comparative Law.' 7 *Israel Law Review* 465.
- Acorn, E. (2016) *The Power of Procurement in the Fight against Foreign Bribery*. 2016 OECD Integrity Forum.
- Berman, P.S. (2005) 'From International Law to Law and Globalization' 43 *Columbia Journal of Transnational Law* 485.
- Berman, P.S. (2007) 'Global Legal Pluralism' 80 *Southern California Law Review* 1155.
- Colangelo, A. J. (2009) 'Double Jeopardy and Multiple Sovereigns: A Jurisdictional Theory' 86 *Washington University Law Quarterly* 769.
- Corruption Watch (2016) 'Out of Court, Out of Mind: Do Deferred Prosecution Agreements and Corporate Settlements Fail to Deter Overseas Corruption' <<http://www.cw-uk.org/wp-content/uploads/2016/03/Corruption-Watch-Out-of-Court-Out-of-Mind.pdf>> accessed 19 January 2019.
- Cryer, R. (2007) *An Introduction to International Criminal Law and Procedure*. Cambridge: Cambridge University Press.

- DOJ and SEC (2012) 'A Resource Guide to the U.S. Foreign Corrupt Practices Act' (2012) 10 <<https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf>> accessed 27 February 2019.
- Doyle, Ch. (2016) 'Federal Conspiracy Law: A Brief Overview' Congressional Research Service, 2 <<https://www.fas.org/sgp/crs/misc/R41223.pdf>> accessed 31 December 2018.
- Ferguson, G. (2015) *Global Corruption: Law, Theory and Practice*. Creative Commons License <<http://icclr.law.ubc.ca/global-corruption-law-theory-and-practice>> accessed 23 April 2019.
- Fine, M. (2011) 'Coordinating UK Bribery Act & FCPA Compliance'. LNT's Ethics & Compliance.
- Guzman, A. T. (2011) *Cooperation, Comity, and Competition Policy*. New York: Oxford University Press.
- Hill, J. (2003) 'Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique?' *Journal of Business Law* 1.
- Inazumi, M. (2005) *Universal Jurisdiction in Modern International Law: Expansion of National Jurisdiction for Prosecuting Serious Crimes under International Law*. Antwerpen: Intersentia.
- International Bar Association (2009) Report of the Task Force on Extraterritorial Jurisdiction. IBA Legal Practice Division Task Force on Extraterritorial Jurisdiction.
- Ireland-Piper, D. (2013) 'Prosecutions of Extraterritorial Criminal Conduct and the Abuse of Rights Doctrine' 9 *Utrecht Law Review* 68.
- Koehler, M. (2010) 'The Facade of FCPA Enforcement' 41 *Georgetown Journal of International Law* 907.
- Lord, N. (2011) 'Regulating Transnational Corporate Bribery in the UK and Germany' (Cardiff University PhD Thesis 2011) <https://orca.cf.ac.uk/26844/1/Nicholas%20Lord_PhD%20Thesis_May%202012%20-%20NEW.pdf> accessed 2 May 2019.
- Lord, N. (2016) *Regulating Corporate Bribery in International Business: Anti-corruption in the UK and Germany*. London: Routledge.
- Ministry of Justice (2011) *The Bribery Act 2010 Guidance* <<https://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>> accessed 27 December 2018.
- Monti, G. (2016) 'Independence, Interdependence and Legitimacy: The EU Commission, National Competition Authorities, and the European Competition Network' In D. Rittleng (Ed.) *Independence and Legitimacy in the Institutional System of the European Union* (pp. 180–205). Oxford: Oxford University Press.
- Oduor, J. et al. (2014) 'Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery' Stolen Asset Recovery Initiative <<http://star.worldbank.org/star/sites/star/files/9781464800863.pdf>> accessed 7 January 2019.
- OECD (1999) CLN Report on Positive Comity <<https://www.oecd.org/daf/competition/prosecutionandlawenforcement/2752161.pdf>> accessed 3 May 2019.
- OECD (2009) 'Typologies on the Role of Intermediaries in International Business Transactions' OECD.
- OECD (2011) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents <http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf> accessed 25 February 2019.
- OECD (2012) Typology on Mutual Legal Assistance in Foreign Bribery Cases <<http://www.oecd.org/daf/anti-bribery/TypologyMLA2012.pdf>> accessed 3 May 2019.
- OECD (2014) Challenges of International Co-operation in Competition Law Enforcement <<https://www.oecd.org/daf/competition/Challenges-Competition-Internat-Coop-2014.pdf>> accessed 3 May 2019.

- Okoth, J. R. A. (2014) *The Crime of Conspiracy in International Criminal Law*. The Hague: Asser Press.
- Pieth, M., Low, L. A. and Cullen, P. J. (Eds.) (2007) *The OECD Convention on Bribery: A Commentary*. Cambridge: Cambridge University Press.
- Pieth, M., Low, L. A. and Bonucci, N. (Eds.) (2014) *The OECD Convention on Bribery: A Commentary*. Cambridge: Cambridge University Press.
- Ryngaert, C. (2008) *Jurisdiction in International Law*. Oxford: Oxford University Press.
- Ryan, R. N. (2013) 'The Equity Façade of SEC Disgorgement' 4 Harvard Business Law Review Online.
- Schomburg, W. et al. (2012) *Internationale Rechtshilfe in Strafsachen = International Cooperation in Criminal Matters*. München: C. H. Beck.
- Van Alstine, M. P. (2012) 'Treaty Double Jeopardy: The OECD Anti-Bribery Convention and the FCPA' 73 Ohio State Law Journal 1321.
- Zerk, J. A. (2010) 'Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere from Six Regulatory Areas' (Harvard University, John F. Kennedy School of Government <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_59_zerk.pdf> accessed 25 February 2019.
- Hock, B. (2017) 'Transnational Bribery: When Is Extraterritoriality Appropriate?' (2017) 11 Charleston Law Review 305.
- Koehler, M. (2014) 'A Foreign Corrupt Practices Act Narrative' 22 Michigan State International Law Review 3.
- Oduor, J. et al. (2014) 'Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery' Stolen Asset Recovery Initiative <<http://star.worldbank.org/star/sites/star/files/9781464800863.pdf>> accessed 7 January 2019.
- Acorn, E. (2016) *The Power of Procurement in the Fight against Foreign Bribery*. 2016 OECD Forum Integrity Forum <<https://www.oecd.org/cleangovbiz/Integrity-Forum-16-Elizabeth-Acorn.pdf>> accessed 31 December 2018.
- Bauerschmidt, J. E. (1990) 'Mother of Mercy – Is This the End of RICO – Justice Scalia Invites Constitutional Void for Vagueness Challenge to RICO Pattern' 65 Notre Dame Law Review 1106.
- Colangelo, A. J. (2010) 'The Foreign Commerce Clause' (2010) 96 Virginia Law Review 949.
- Doyle, Ch. (2016) *Federal Conspiracy Law: A Brief Overview*. Congressional Research Service <<https://www.fas.org/sgp/crs/misc/R41223.pdf>> accessed 31 December 2018.
- Dubber, M. D. and Hörnle, T. (2014) *Criminal Law: A Comparative Approach*. Oxford: Oxford University Press.
- Gideon, M. (2013) 'RICO's Extraterritoriality' 50 American Business Law Journal 543.
- Hock, B. (2018) 'The Bundling of Foreign Bribery Cases' 2018 TILEC Discussion Paper 12.
- Ilzkovitz, F. and Meiklejohn, R. (Eds.) (2006) *European Merger Control: Do We Need an Efficiency Defence?* Cheltenham: Edward Elgar.
- Lewi, M. K. (2015) 'When Foreign is Criminal' 55 Virginia Journal of International Law 625.
- Oduor, J. et al. (2014) 'Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery' Stolen Asset Recovery Initiative <<http://star.worldbank.org/star/sites/star/files/9781464800863.pdf>> accessed 7 January 2019.
- OECD (2012) Typology on Mutual Legal Assistance in Foreign Bribery Cases <<http://www.oecd.org/daf/anti-bribery/TypologyMLA2012.pdf>> accessed 3 May 2019.
- OECD (2017) International Co-operation in Corruption Cases <<https://www.oecd.org/corruption/acn/OECD-International-Cooperation-in-Corruption-Cases-2017.pdf>> accessed 7 January 2019.

- Otey, M. L. (2015) 'Why RICO'S Extraterritorial Reach Is Properly Coextensive with the Reach of Its Predicates' 14 *The Journal of International Business & Law* 33.
- Paoli, L. (2014) *The Oxford Handbook of Organized Crime*. Oxford: Oxford University Press.
- Pieth, M., Low, L. A. and Bonucci, N. (Eds.) (2014) *The OECD Convention on Bribery: A Commentary*. Cambridge: Cambridge University Press.
- Sullivan, S. (2015) 'The Future of the Foreign Commerce Clause' 83 *Fordham Law Review* 1955.
- Choi, S. J. and Davis, K. E. (2014) 'Foreign Affairs and Enforcement of the Foreign Corrupt Practices Act' 11 *Journal of Empirical Legal Studies* 409.
- Dixit, A. K. (2014) *Lawlessness and Economics: Alternative Modes of Governance*. Princeton, NJ: Princeton University Press.
- George, B. C. and Lacey, K. A. (2000) 'A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives' 33 *Cornell International Law Journal* 547.
- Getz, K. A. (2006) 'The Effectiveness of Global Prohibition Regimes: Corruption and the Antibribery Convention' 45 *Business & Society* 19853.
- Gibbons, R. and Henderson, R. (2012) 'Relational Contracts and Organizational Capabilities' 23 *Organization Science* 1350.
- Glenn, P. H. (2010) *Legal Traditions of the World: Sustainable Diversity in Law*. Oxford: Oxford University Press.
- Hock, B. (2014) 'Intimations of Global Anti-Bribery Regime and the Effectiveness of Extraterritorial Enforcement: From Free-Riders to Protectionism?' TILEC Discussion Paper No. 2014-009 <<https://ssrn.com/abstract=2395156>> accessed 26 January 2019.
- Keohane, R. O., Haas, P. M. and Levy, M. A. (1993) 'Improving the Effectiveness of International Environmental Institutions' In R. O. Keohane, P. M. Haas and M. A. Levy (Eds.) *Institutions for the Earth: Sources of Effective International Environmental Protection* (pp. 397-426). Cambridge, MA: The MIT Press.
- Koh, H. H. (1997) 'Why Do Nations Obey International Law?' (1997) 106 *Yale Law Journal* 2599.
- Legrand, P. (1996) 'European Legal Systems are not Converging' 45 *International & Comparative Law Quarterly* 52.
- Margeson, G. N. (2014) *An Analysis of the Effectiveness of the Foreign Corrupt Practices Act in Combating Corruption*. The University of Texas at Austin, Report <<https://repositories.lib.utexas.edu/bitstream/handle/2152/26501/MARGESON-MASTERSREPORT-2014.pdf?sequence=1&isAllowed=y>> accessed 4 May 2019.
- Masten, S. E. and Prüfer, J. (2014) 'On the Evolution of Collective Enforcement Institutions: Communities and Courts' 43 *Journal of Legal Studies* 359.
- Nelken, D. and Feest, J. (2001) *Adapting Legal Cultures*. Oxford: Hart Publishing.
- Nichols, P. M. (2016) 'The Neomercantilist Fallacy and the Contextual Reality of the Foreign Corrupt Practices Act' 53 *Harvard Journal on Legislation* 203.
- Ostrom, E. et al. (2002) *The Drama of the Commons*. Washington, DC: National Academy Press.
- Pines, D. (1994) 'Amending the Foreign Corrupt Practices Act to Include a Private Right of Action' 82 *California Law Review* 185.
- Snidal, D. (1985) 'The Limits of Hegemonic Stability Theory' 39 *International Organization* 579.
- Stuntz, W. J. (2004) 'Plea Bargaining and Criminal Law's Disappearing Shadow' (2004) 117 *Harvard Law Review* 8.

- Tarun, R. W. (2006) Basics of the Foreign Corrupt Practices Act. Latham & Watkins <https://www.lw.com/upload/pubContent/_pdf/pub1287_1.pdf> accessed 20 July 2019.
- Teubner, G. (1983) 'Substantive and Reflexive Elements in Modern Law' 17 Law & Society Review 239.
- Torpman, J. and Jörgensen, F. (2005) 'Legal Effectiveness: Theoretical Developments on Legal Transplants' 91 Archives for Philosophy of Law and Social Philosophy 515.
- World Bank (2007) Sourcebook for Evaluating Global and Regional Partnership Programs Indicative Principles and Standards.
- Worth, M. (2013) Whistleblowing in Europe. Transparency International <<https://whistlenetwork.files.wordpress.com/2014/01/whistleblowing-in-europe-report-november-2013.pdf>> accessed 4 May 2019.
- Young, O. R. (1999) *Governance in World Affairs*. Ithaca, NY: Cornell University Press.
- Young, O. R. (2011) 'Effectiveness of International Environmental Regimes: Existing Knowledge, Cutting-Edge Themes, and Research Strategies' 108 Proceedings of the National Academy of Sciences of the United States of America 254.
- Colangelo, A. J. (2016) 'Absolute Conflicts of Law' (2016) 91 Indiana Law Journal 719.
- Dixit, A. K. (2014) *Lawlessness and Economics: Alternative Modes of Governance*. Princeton, NJ: Princeton University Press.
- Ezrachi, A. (2012) *Research Handbook on International Competition Law*. Cheltenham: Edward Elgar.
- Fontanelli, F. (2011) 'Tomer Broude and Yuval Shany (eds). Multi-Sourced Equivalent Norms in International Law. Oxford: Hart Publishing, 2011. Pp. 344. \$120. ISBN: 9781849461450' 23 European Journal of International Law 597.
- Hadfield, G. K. and Weingast, B. R. (2012) 'What Is Law? A Coordination Model of the Characteristics of Legal Order' 4 Journal of Legal Analysis 471.
- Lord, N. (2016) *Regulating Corporate Bribery in International Business*. London: Routledge.
- Michaels, R. and Pauwelyn, J. (2012) 'Conflict of Norms or Conflict of Laws?: Different Techniques in the Fragmentation of Public International Law' 22 Duke Journal of Comparative & International Law 349.
- Taylor, M. D. (2006) *International Competition Law: A New Dimension for the WTO?* Cambridge: Cambridge University Press.
- Zerk, J. A. (2010) 'Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere from Six Regulatory Areas' (Harvard University, John F. Kennedy School of Government <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/workingpaper_59_zerk.pdf> accessed 25 February 2019.
- Abbott, K. W. and Snidal, D. (2002) 'International Action on Bribery and Corruption: Why the Dog Didn't Bark in the WTO' In D. M. Kennedy and J. D. Southwick (Eds.), *The Political Economy of International Trade Law* (pp. 177–204). Cambridge: Cambridge University Press.
- 36 Article 7 of the Electronic Communication Directive.
- Balakrishnan, R. (1999) 'Corruption, Legitimacy and Human Rights: The Dialectic of the Relationship' 14 Connecticut Journal of International Law 495.
- Beach, K. (2016) *The Internal Revenue Service's (Potential) Role in Combating Foreign Bribery* (The Global Anticorruption Blog) <<https://globalanticorruptionblog.com/2016/02/05/the-irs-should-supplement-fcpa-investigations/>> accessed 27 March 2019.

- Brenninkmeijer, A., Moonen, G., Debets, R. and Hock, B., (2018) 'Auditing Standards and the Accountability of the European Court of Auditors (ECA)' 14 *Utrecht Law Review* 1.
- Button, M. (2019) *Private policing*. Abingdon: Routledge.
- Cole, M. (2010) *Pursuing European Regulatory Cooperation and Consistency*. *Global Competition Review* 24–25 <<https://www.cov.com/~media/files/corporate/publications/2010/02/pursuing-european-regulatory-cooperation-and-consistency.pdf>> accessed 18 March 2019.
- De Visser, M. (2013) 'The Reform of EU Electronic Communications Law: Revolution or Evolution?' In P. Larouche and P. Cserne (Eds.) *National Legal Systems and Globalization: New Role, Continuing Relevance* (pp. 155–181). The Hague: Asser Press.
- Dehousse, R. (2016). 'The Politics of Delegation in the European Union' In D. Ritleng (Ed.) *Independence and legitimacy in the institutional system of the European Union* (pp. 57–82). Oxford: Oxford University Press.
- Deloitte (2016) *In the Wake of the "Panama Papers"* <<http://www2.deloitte.com/content/dam/Deloitte/us/Documents/finance/us-fas-panama-papers-leak.pdf>> accessed 27 March 2019.
- Demas, R. R. (2011) 'Moment of Truth: Development in Sub-Saharan Africa and Critical Alterations Needed in Application of the Foreign Corrupt Practices Act and Other Anti-Corruption Initiatives' 26 *American University International Law Review* 315.
- Dixit, A. D. (2015) 'How Business Community Institutions Can Help Fight Corruption' 29 *The World Bank Economic Review*.
- Eberlein, B. and Grande, E. (2005) 'Beyond Delegation: Transnational Regulatory Regimes and the EU Regulatory State' 12 *Journal of European Public Policy* 1.
- Eberlein, B. and Newman, A. L. (2008) 'Escaping the International Governance Dilemma? Incorporated Transgovernmental Networks in the European Union' 21 *Governance* 1.
- Ezrachi, A. (2012) *Research Handbook on International Competition Law*. Cheltenham: Edward Elgar.
- FATF/OECD (2013) *The Use of the FATF Recommendations to Combat Corruption* <<http://www.fatf-gafi.org/media/fatf/documents/recommendations/BPP-Use-of-FATF-Recs-Corruption.pdf>> accessed 25 March 2019.
- Gomtsian, S., Balvert, A., Hock, B., and Kirman, O. (2018) 'Between the Green Pitch and the Red Tape: The Private Legal Order of FIFA' 43 *Yale Journal of International Law*, 43, 1.
- Greif, A., Milgrom, P. and Weingast, B. R. (1994) 'Coordination, Commitment, and Enforcement: The Case of the Merchant Guild' 102 *Journal of Political Economy* 745.
- Hillman, J. A. (2018) 'How to Make Trade War Even Worse'. *New York Times* <<https://www.nytimes.com/2018/12/17/opinion/trade-war-china-wto.html>> accessed 16 April 2019.
- Hock, B. and Gomtsian, S. (2018) 'Private Order Building: The State in the Role of the Civil Society and the Case of FIFA' 17 *The International Sports Law Journal* 186.
- Klitgaard, R. E., Ronald, M. A. and Lindsey, P. H. (1999) *Corrupt Cities: A Practical Guide to Cure and Prevention*. Oakland, CA: ICS Press.
- Knobel, A. and Meinzer, M. (2014) *Automatic Exchange of Information: An Opportunity for Developing Countries to Tackle Tax Evasion and Corruption* (Tax Justice Network, June 2014) <<http://www.taxjustice.net/wp-content/uploads/2013/04/AIE-An-opportunity-for-developing-countries.pdf>> accessed 27 March 2019.

- Martinez-Diaz, L. and Woods, N. (2009) *Networks of Influence? Developing Countries in a Networked Global Order*. Oxford: Oxford University Press.
- Mathieu, E. (2016). *Regulatory Delegation in the European Union: Networks, Committees and Agencies*. London: Palgrave Macmillan.
- Monti, G. (2016) 'Independence, Interdependence and Legitimacy: The EU Commission, National Competition Authorities, and the European Competition Network' In D. Ritleng (Ed.) *Independence and Legitimacy in the Institutional System of the European Union* (pp. 180–205). Oxford: Oxford University Press.
- Nichols, P. M. (1997) 'Outlawing Transnational Bribery through the World Trade Organization' 28 *Law & Policy in International Business* 2.
- OECD, *International Regulatory Co-operation: Addressing Global Challenges* (OECD Publishing 2013).
- Pauwelyn, J., Wessel, R. A. and Wouters, J. (2012) *Informal International Lawmaking*. Oxford: Oxford University Press.
- Pearson, Z. (2013) 'An International Human Rights Approach to Corruption' In P. Larmour and N. Wolanin (Eds.) *Corruption and Anti-Corruption* (pp. 30–61). Canberra: ANU E Press.
- Piga, G. (2011) 'A Fight Chance Against Corruption in Public Procurement?' In S. Rose-Ackerman and T. Søreide (Eds.) *International Handbook on the Economics of Corruption* (pp. 141–181). Cheltenham: Edward Elgar.
- Pollack, M. (2003) *The Engines of European Integration. Delegation, Agency and Agenda Setting in the EU*. Oxford: Oxford University Press.
- Sauter, W. (2016) *Coherence in EU Competition Law*. Oxford: Oxford University Press.
- Slaughter, A-M. (2000) 'The Real World Order' In P. O'Meara, H. D. Mehlinger, and M. Krain (Eds.) *Globalization and the Challenges of a New Century* (pp. 122–122). Bloomington: Indiana University Press.
- Spalding, A. B. (2014) 'Corruption, Corporations, and the New Human Right' 91 *Washington Law Review* 1365.
- United Nations Global Compact (2010) *Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers* <<http://www.unglobalcompact.bg/wp-content/uploads/2014/05/131.pdf>> accessed 14 April 2019.
- Verdier, P-H. (2009) 'Transnational Regulatory Networks and Their Limits' 34 *Yale Journal of International Law* 1.
- Andreas, P. and Nadelmann, E. (2006) *Policing the Globe: Criminalization and Crime Control in International Relations*. New York: Oxford University Press.
- Berman, P. S. (2007) 'Global Legal Pluralism' 80 *Southern California Law Review* 1155.
- Delimatsis, P. (2011) 'The Fragmentation of International Trade Law' 45 *Journal of World Trade* 87.
- Dixit, A. K. (2014) *Lawlessness and Economics: Alternative Modes of Governance*. Princeton, NJ: Princeton University Press.
- Ellickson, R. C. (2016) 'When Civil Society Uses an Iron Fist: The Roles of Private Associations in rulemaking and Adjudication' 18 *American Law and Economics Review* 2.
- Fischer-Lescano, A. and Teubner, G. (2004) 'Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law' 25 *Michigan Journal of International Law* 999.
- Krisch, N. and Kingsbury, B. (2006) 'Introduction: Global Governance and Global Administrative Law in the International Legal Order' 17 *European Journal of International Law* 1.

- Petrucchi, C. (2018) *Both EU and US Want to Protect Competition – So Why Do They Disagree about Google’s €4.32 Billion Fine?* <<https://theconversation.com/both-eu-and-us-want-to-protect-competition-so-why-do-they-disagree-about-googles-4-32-billion-fine-100283>> accessed 20 April 2019.
- Riles, A. (2008) ‘The Anti-Network: Private Global Governance, Legal Knowledge, and the Legitimacy of the State’ 56 *American Journal of Comparative Law* 605.
- Rose-Ackerman, S. (2011) ‘Anti-Corruption Policy: Can International Actors Play a Constructive Role?’ (2011) 440 *Yale Law & Economics Research Paper*.
- Spahn, E. K. (2012) ‘Multijurisdictional Bribery Law Enforcement: The OECD Anti-Bribery Convention’ 53 *Virginia Journal of International Law* 1, 43.
- Turk, M. C. (2013) ‘A Political Economy Approach to Reforming the Foreign Corrupt Practices Act’ 33 *Northwestern Journal of International Law & Business* 325.
- Zumbansen, P. (2013) ‘Administrative law’s Global Dream: Navigating Regulatory Spaces between “National” and “International”’ 11 *International Journal of Constitutional Law* 2.