BOOK REVIEWS

Negotiated Settlements in Bribery Cases: A Principled Approach, edited by Tina Søreide and Abiola Makinwa [Edward Elgar, Cheltenham, 2020, 384pp, ISBN 978-1-78897-040-2, £110 (h/bk)]

An impressive group of legal scholars and practitioners from the US and Europe come together in this edited volume to reflect on the growing use of what the editors call 'negotiated settlements' in corporate criminal law, or what many readers may know as deferred prosecution agreements. The volume focuses on the use of negotiated settlements in foreign bribery cases, where such settlements have become the dominant mechanism to resolve allegations that a corporation paid bribes to a foreign public official to obtain a business advantage (3). This positions the book at the intersection of international and comparative law. It is international law that requires States to criminally prohibit foreign bribery—in instruments like the Organization for Economic Cooperation and Development's (OECD) Anti-Bribery Convention and the United Nation's Convention Against Corruption. But international law leaves much to the discretion of States in enforcing these prohibitions and, as the book attests, it is comparative law that is crucial to understanding how anti-foreign bribery laws are enforced and operate in practice.

The book will appeal to scholars of international economic law, comparative criminal law, anti-bribery law and those with a general interest in the governance of global business. The chapters are accessible and provide a useful entry point for readers who may be encountering negotiated settlements for the first time. An early chapter by Mark Pieth, the former Chair of the OECD's Anti-Bribery Working Group, is a particularly helpful introduction to the topic, as he explains the attraction of negotiated settlements in foreign bribery cases and how they can help to surmount complex corporate structures and provide accountability for wrongdoing. The volume will also be of interest to those more seasoned in the area. Readers looking to catch up on recent developments and debates will find much of interest in chapters that review the evolution and recent use of negotiated settlements in the US (Garrett and Low and Prelogar), the UK (Hawley, King and Lord), France (Arlen) and Italy (Lonati and Borlini).

The volume is organised into a tripartite structure. Chapters in the first section introduce anti-foreign bribery law and the role of negotiated settlements in corporate criminal law. The second section considers the effects of negotiated settlements, focusing on when these resolutions can facilitate deterrence and prevent the occurrence of bribery in transnational business. Jennifer Arlen writes in her chapter that the answer to this question is context specific: negotiated settlements 'can help deter corporate misconduct', but if 'improperly designed … can, instead, undermine deterrence if they operate primarily to reduce the sanctions imposed on companies for corporate crime' (158). The final section of the book turns to a broader assessment of impact, with chapters pushing the reader to critically examine what standards should be used to evaluate negotiated settlements. As these chapters set out, there are multiple valid objectives of corporate criminal law and international anti-bribery law, including condemnation of morally objectionable behaviour and remedy of the harm suffered by the victims (Davis and Hawley, King and Lord). These chapters suggest that the evaluation of negotiated settlements must also be context specific. Kevin Davis makes this point succinctly: 'reasonable people can disagree about which of these objectives to pursue … as a result, there is considerable scope for disagreement about how to evaluate the effectiveness of any given approach to negotiated resolutions' (266).

An important contribution of the volume is the documentation of what the editors describe as 'the fragmented anti-corruption landscape', which is brought to the fore by examining negotiated settlements (3). While the chapters demonstrate that negotiated settlements in the enforcement of anti-foreign bribery laws are now commonplace, they also highlight significant differences across countries, a finding my own work has also demonstrated. Arlen compares the use of negotiated settlements in the US, the UK, and France and argues that we should not assume that the British

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and French versions will resemble the negotiated settlements developed in the US, given significant differences in corporate criminal law among these three countries, as well as variable levels of sanctions and public resources dedicated to the investigation of corporate wrongdoing. It is a compelling example of what recent comparative law scholarship has shown: that legal institutions and practices are not easily 'cut and paste' from one jurisdiction to another.

The editors respond to this fragmentation with a call for harmonisation and building an 'international consensus around best-practice recommendations for more legitimate, efficient and harmonized enforcement practices' (17). This is an attractive conclusion and there are good reasons why national differences in negotiated settlements may be problematic, like the friction national divergences can create for law enforcement cooperation and disruption of the 'level playing field' that international prohibitions against foreign bribery sought to create. But while the editors recognise that harmonisation presents both 'advantages and difficulties' (6) there is little in the book that explicitly grapples with the politics that lie behind these difficulties. Considering why States chose, in the first place, to combat foreign bribery through an international treaty that relies on domestic law enforcement suggests that State sovereignty and protecting national policy autonomy loom large and that harmonisation will be no easy feat. This is an important avenue for future research, which can build off the excellent work in this volume to continue to unravel the interaction between national and international law and the complexity of governing global business through a combination of these legal orders.

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Contract Law in Contemporary International Commerce: Considerations on the Complex Relationship between Legal Process and Market Process in the New Era of Globalisation by Gianluigi Passarelli [Nomos, Baden-Baden, 2019, 207pp, ISBN 978-3-8487-6038-1, £56.36 (p/bk)]

In Shakespeare's play *the Merchant of Venice*, Shylock, a Jewish moneylender, is an alien in the Venetian Christian community. He reaches an agreement with the merchant, Antonio, to lend his friend three thousand ducats and be repaid within three months. In case of default, the bond grants Shylock a legal claim for one pound of Antonio's flesh. The backdrop for this aberrant covenant is the great disdain Shylock and Antonio hold towards each other, their different religious backgrounds, the deep loathing each one possesses for the other, and their lack of mutual trust. Eventually, the loan is not reimbursed, and Shylock ends up pleading its effectuation. He passionately appeals for a strict enforcement of the bond, but later on he is disheartened. Apparently, the parties have not negotiated the likely risk of bleeding in the incision process. This lack of contractual stipulation invalidates the loan agreement as it stands and renders it unenforceable since human flesh cannot be cut without the drop of blood.

Though melodramatic, Shakespeare's play reinforces the perception of contract as an act of social agents. It portrays the alienation experienced by an outsider who seeks justice in another's legal system. More so, it highlights the need of such persons for detailed agreements that minimise uncertainty and ambiguity. Contrariwise, if the agreement had been founded on mutual trust and shared assumptions, the parties would have had a better chance of resolving their disputes in more balanced ways than Shakespeare's account. This reading of the play asserts that contracts are binding promises embedded in specific legal, social and cultural meanings. Parties who come from diverse life experiences, who are unversed in each other's repertoires and discourses, who lack trust in the other party, are reasonably expected to favour a completely stipulated agreement over an incomplete one, in an attempt to compensate for the lack of commonalities and shared expectations.

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