

CONTENTS

1	The Topic, Methodology, and Potential Contribution	1
1	<i>The Current Topic for Transnational Bribery Regulation Analysis</i>	1
2	<i>The Formation of the Problem-Solving Paradigm</i>	5
2.1	<i>Phase 1: Academic Insights to the Wisdom of the FCPA Approach</i>	6
2.2	<i>Phase 2: From Academic Insights to Public Beliefs</i>	17
2.3	<i>Phase 3: From Public Beliefs to Preconceptions of Convention Enforcement</i>	21
2.4	<i>Phase 4: The Formation of the Problem-Solving Paradigm</i>	27
3	<i>Structural Flaws of the Standard Problem-Solving Paradigm</i>	29
3.1	<i>Questioning the Formulation of “Ineffective Convention Enforcement”</i>	30
3.2	<i>Questioning the Ingredients of the Standard Problem-Solving Paradigm</i>	32
4	<i>Virtue and Limits of the Standard Problem-Solving Approach for Analyzing Convention Enforcement</i>	36
4.1	<i>Strong Interpretative Power in Causally Attributing the “Ineffective Convention Enforcement”</i>	36
4.2	<i>Weak Prescriptive Power of the Standard Problem-Solving Approach in Current Literature</i>	41
4.3	<i>The Inherent Limitation of the Problem-Solving Paradigm</i>	43

4.4	<i>The Demand for a Supplementary Paradigm</i>	44
5	<i>Framing the Supplementary Paradigm</i>	45
5.1	<i>The Mission of the Supplementary Paradigm</i>	45
5.2	<i>Theoretical Source for Framing the Supplementary Paradigm</i>	46
5.3	<i>A Historically Contextual Approach</i>	50
5.4	<i>The Relation of the Historically Contextual Approach to the Problem-Solving Paradigm</i>	51
6	<i>Outline of the Book</i>	52
	<i>References</i>	53
2	The Institutionalization of OECD Anti-bribery Collaboration	61
1	<i>Introduction</i>	61
2	<i>The FCPA: An Endogenously Created Institution in the Economic Context of the US</i>	64
2.1	<i>A Historical Review: The US' Unilateral Illegalization of Transnational Bribery</i>	65
2.2	<i>Limits of Standard Accounts of the FCPA</i>	72
2.3	<i>The FCPA as an Outcome of Coordinating Domestic Demands within the Boundaries of Democratic Values</i>	75
3	<i>The OECD Anti-bribery Convention: A "US-Induced" Institution</i>	80
3.1	<i>A Historical Review: The Role of the US in the Formation of the Convention</i>	80
3.2	<i>Limits of Standard Accounts of the Convention</i>	89
3.3	<i>The Convention as an Outcome of a Chain Reaction Initiated by the US</i>	92
4	<i>The Post-Convention Era: "OECD-Imposed" Institutions for Non-collaborators</i>	94
4.1	<i>An Attempt by Existing Collaborators to Expand the Community (Since 1994)</i>	95
4.2	<i>A Historical Review: OECD Efforts to Expand the Community of Collaborators (Since 1999)</i>	95
4.3	<i>The Expansion of the Collaboration: Anti-bribery Institutions Imposed on Non-collaborators by Current Collaborators</i>	97

5	<i>Institutionalizing the Collaboration: An Evolutionary Event Defined by Path Dependence</i>	98
5.1	<i>The Relevance of Path Dependence to the Whole Story</i>	99
5.2	<i>Key Operative Factors of the Establishment of Central Institutions of the Collaboration</i>	100
	<i>References</i>	104
3	A Causal Attribution Model for General Compliance with the Convention	109
1	<i>Introduction</i>	109
2	<i>Destabilizing Factors Indigenous to the Collaboration that Encourage Defection</i>	112
2.1	<i>A Predefined Behavioral Logic of Signatories</i>	113
2.2	<i>Destabilizing Factors in the Collaboration that Encourage Defection</i>	115
3	<i>The Current Institutional Design Fails to Prevent Defection</i>	124
3.1	<i>The Importance of a Coordinating Mechanism</i>	124
3.2	<i>Two General Causal Attributions: The Absence of Credible Sanction and the Absence of Effective Monitoring</i>	126
3.3	<i>The Underperformance of the OECD Monitoring System</i>	128
4	<i>A Non-routine Problem that Defies Routine Solution</i>	131
4.1	<i>Unquantifiable Individual Efforts in OECD Anti-bribery Collaboration</i>	132
4.2	<i>A Non-routine Problem that Fails Central Monitoring</i>	133
4.3	<i>A Non-routine Problem that Demands an Innovative Solution</i>	137
5	<i>Beyond Explaining the Problem of “Ineffective Enforcement”</i>	138
5.1	<i>A Few Signatories’ “Zealous Enforcement” of the Convention Is Not Explained</i>	138
5.2	<i>The Problem-Solving Paradigm Cannot Explain This Developmental Reality</i>	139
5.3	<i>A Historically Contextual Approach to Analyze the Case of the US’ FCPA Enforcement</i>	140
	<i>References</i>	146

4	A Solution Model for the Problem of “Ineffective Enforcement”	151
1	<i>Introduction</i>	151
1.1	<i>Collective Action and Collective Action Problems</i>	151
1.2	<i>The Utility of a Monitoring System for Solving Collective Action Problems</i>	152
1.3	<i>The “Underperformance” of the OECD Monitoring System</i>	154
1.4	<i>An Unexplained Question: Institutional Flaws Accounting for the Monitoring Problem</i>	155
2	<i>Structural Flaws of the OECD Monitoring System</i>	156
2.1	<i>The Organizational Structure of the OECD Monitoring System</i>	157
2.2	<i>Information Flow in the OECD Monitoring System</i>	160
2.3	<i>Inaccurate, Second-Hand Information that Cannot Maintain “Effective Control” Among Signatories</i>	164
3	<i>Toward High-Level Information Inflow: Private Sector as Information Sources</i>	167
3.1	<i>The Advantage of Private Sector Actors as Information Source</i>	168
3.2	<i>The Legitimacy of Private Sector Actors as Information Source</i>	170
3.3	<i>Existing Laws on Rights of Private Sector Actors</i>	172
4	<i>Toward High-Level Information Processing: The Dominant Role of National Prosecutors</i>	174
4.1	<i>The Limited Role of Private Sector Actors in Transnational Bribery Regulation</i>	174
4.2	<i>Incorporating the Private Sector and the Public Sector into a Holistic Solution Model: The US Model of Qui Tam Action and the Whistleblower Program</i>	176
5	<i>Toward Effective Mutual Monitoring: Participation Rights of National Regulators in the Home Countries of Victimized Competitors</i>	178
5.1	<i>Can the US Model Be Marketed to Other Signatories?</i>	178
5.2	<i>Taking the Role of National Regulators in the Home Countries of Victimized Competitors into the Solution Model</i>	180
5.3	<i>Outlining a New Type of Monitoring System</i>	183
6	<i>Conclusion</i>	185
	<i>References</i>	189

5	Inspirations from the US' Increasingly Aggressive Enforcement	195
1	<i>Introduction</i>	195
2	<i>The SEC's Increasingly Aggressive Enforcement of the FCPA</i>	197
2.1	<i>The SEC's "Quiet Years" in FCPA Enforcement in the First Two Decades</i>	199
2.2	<i>The SEC's Increasingly Aggressive Enforcement of the Anti-bribery Prong in Recent Two Decades</i>	211
2.3	<i>A Bridged Gap Between Enforcing the Accounting Provisions and the Anti-bribery Provisions of the FCPA</i>	219
3	<i>The DOJ's Increasingly Aggressive Enforcement of the FCPA</i>	220
3.1	<i>The DOJ's "Passive Enforcement" in the First Two Decades</i>	221
3.2	<i>The DOJ's "Active Enforcement" in Recent Two Decades</i>	228
3.3	<i>Efforts of the DOJ to Reconcile FCPA Enforcement and US National Interests</i>	235
4	<i>Increasingly Aggressive Enforcement: An Unavoidable Result of Independent Performance of Duties of Domestic Agencies</i>	236
4.1	<i>The Increasing Demand for Transparent Corporate Management Caused a "Black Hole Effect" Altering the Institutional Context for FCPA Enforcement</i>	237
4.2	<i>Performance of the SEC and the DOJ that Fails Rational-Choice Interpretations</i>	239
4.3	<i>The "Catfish Effect" of the US' FCPA Enforcement on Other Regulatory States</i>	242
5	<i>Conclusion</i>	244
	<i>References</i>	255
6	Conclusion	261
1	<i>Methodology: The Problem-Solving Paradigm and a Historically Contextual Approach</i>	262
1.1	<i>The Problem-Solving Paradigm in Current Literature</i>	262
1.2	<i>The Ideological Roots of the Problem-Solving Paradigm</i>	263
1.3	<i>Strength and Limitation of the Problem-Solving Paradigm</i>	264
1.4	<i>A Historically Contextual Approach as a Supplementary Methodology</i>	265

2	<i>The Dynamic of the Formation of OECD Anti-bribery Collaboration</i>	265
3	<i>The Dynamic of State Compliance with the Convention</i>	267
4	<i>A Solution Model for the Problem of “Ineffective-Enforcement”</i>	269
5	<i>Inspirations from the US’ Increasingly Aggressive Enforcement of the FCPA</i>	270
6	<i>Future Research Directions: The Contributions and Limitations of Historically Contextual Analysis</i>	273
	Index	277