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Book Review

Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics
by Christopher Hodges (2015) Hart Publishing,
832 pp, ISBN 9781849466530

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What Christopher Hodges accomplishes in *Law and Corporate Behaviour* is impressive.¹ It is rare for a corporate lawyer of great distinction and breadth of experience such as Hodges to turn, later in life, to a major academic pursuit. And this is a large one. If leaders of the profession do turn to writing, this tends to have the character of sage advice, biography or memoir. Hodges, in contrast, has worked exceptionally hard at acquiring a sophisticated grasp of the scholarly literature that few regulatory scholars have, to match his extensive experience doing battle at the corporate frontline. The result is a fresh style that seeks a wise, empirically and theoretically informed policy balance.

My main criticism of the book is an inevitable consequence of its broad ambition. But it is also the weakness of an author with the strength of many years in the legal trenches of corporate law. Footnoting in corporate law scholarship, and evidence submitted in corporate litigation, can be driven more by the aura of the authoritativeness of the source of the data than by the technical quality of the data collection and analysis. At times, I found myself unimpressed by Hodges' acceptance of empirical claims from poorly conducted research, bald opinion dressed up as empirical research, or selective literature reviews reported as if they were systematic meta analyses.

Nevertheless, across its 800-plus pages Hodges' text is richly and informatively footnoted as it covers most of the major domains of business regulation in the United Kingdom ('UK'). There are many instructive comparisons to United States regulatory practice and innovation, and careful effort to put British developments in the context of European Union ('EU') law and global regulatory institutions. Australian regulatory practice is little drawn upon, though insights from many of the leading Australian scholars frequently influence the ideas in the text. Insights from Asia, Africa and Latin America are few. This is surprising when Hodges does report the following arresting 2013 data from the pan-EU Rapid Alert System for non-food product safety.² The largest source country for product safety alerts was China with 1439. The second largest source had 243 alerts. This was for

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¹ Christopher Hodges, *Law and Corporate Behaviour: Integrating Theories of Regulation, Enforcement, Compliance and Ethics* (Hart Publishing, 2015).

² Ibid 536.

where the country of origin of the products was ‘unknown’! The source country for the third largest number of alerts was Turkey (82 alerts) and fourth was Germany (55 alerts). In so many ways beyond product safety, the critical thing to transforming the dangers of European capitalism is to transform the dangers of Chinese capitalism.

The balanced way to view this book is as a magnificently sweeping North Atlantic work on the modern history and the most contemporary developments across diverse domains of business regulation — focused on one important country, but thoughtfully placing it in the context of regional and global developments and ideas. The timing is apt for such a work, with the lessons learned from the 2007 ‘Global Financial Crisis’ able to be well absorbed into its fabric. I am a frequent traveller to the UK and avid reader of British regulatory research, but there was so much that I learned from this book, especially on the most recent developments.

Some critics will say the book jumps from one regulatory domain to another without enough theoretically integrating rhyme and reason — particularly when the book’s subtitle is *Integrating Theories of Regulation, Enforcement, Compliance and Ethics*. I do not share this critique as I quite like pointillist books that sprawl countless dot points of diversity across many pages and invite the reader to discover their own interpretation of the patterns. Moreover, the last word of that subtitle does reveal the integrating glue of the text: ethics. Unconventionally, the book starts with the empirical and theoretical literature on the psychology of business conduct and ends with its ethics. At times, it does take methodological individualism too far for my taste. Unlike the author, I do see corporations as having ‘emergent properties’, as the complexity theorists put it, that are more than the sum of their individual corporate agents. With that qualification, I do find persuasive the book’s more integrating message that unless there is transformative change to the character of business ethics, all of our best strategies for improving risk analysis, compliance systems, self-regulation, transparency, monitoring, detection, sanctioning and training will fail more often than they succeed. Yes, we do need a multidimensional approach to improving corporate conduct that tackles all these challenges, and this book is full of insights from all these domains about how to make progress.

Yet, the ‘worm in the apple’ will always grow unless ethical transformation is a central integrating concern. So one must improve risk analysis, compliance systems and training in ways that challenge and grow the ethical sensibilities of regulators and firms being regulated. The worst thing we can do for ethics is to leave it to the philosophers or business ethics consultants. It must be integrated into everything, including our election campaigns and the education of our children in schools and families. Today we are a business culture in a way that was not true of the culture into which previous generations were born. Neoliberal discourses permeate that business culture. ‘Brexit’ (the UK withdrawal from the EU) in Britain and support for Pauline Hanson’s One Nation political party in Australia are examples of the dangers to our electoral politics of allowing our business culture to be so resiliently neoliberal as to stoke contempt from the economically excluded. Hodges points to the evidence that firms that are maximally focused on

neoliberal discourses of profit maximisation make lower profits and create fewer jobs for the excluded than firms that have a balanced focus on earning their economic licence (serving shareholders, creating jobs), their legal licence (the craft of compliance and obligation) and their social licence.³ That social licence includes concern for the impact of their firm on human communities, on social inclusion and on the environment. Hodges makes fine use of the work of Australian scholar Neil Gunningham on this theme,⁴ so readers can track it down by joining the dot points of the references to Gunningham in the index.

Of course, while I agree that neoliberal discourses and the ethics of short-term profit maximisation are the worm in the apple, those of us who write on regulatory capitalism do not think we live in an era of bourgeoning markets and bourgeoning deregulation. Rather, ours is an era where markets are becoming more vibrant, with both positive and negative consequences — because markets in vice grow together with markets in virtue — and regulation is also becoming more vibrant. Hodges documents many ways this has happened since the Global Financial Crisis, while also showing how the large spike in post-crisis vigilance and ethical debate quickly begins to erode as financial engineers get to work at engineering new ways around the latest strengthening of capital adequacy and liquidity rules, for example.

It will always be thus, Hodges warns, unless we transform our business culture to one that better serves our economy, our environment and, particularly, the most excluded and disillusioned fractions of our citizenry. The city of London might have won the Brexit debate had it been able to offer up into the policy conversation a new kind of ethical business leader who joined arms with advocates of the excluded to promise them a focus on jobs, fair payment of taxes and more equally shared development. For the moment, our political leaders and business leaders are too narrowly ensnared within neoliberal discourses for that. And our social movement leaders are too much like British Labour leader Jeremy Corbyn — so consumed by the politics of critiquing neoliberalism that they cannot project a practical vision for transformation that grows decent jobs.

This is a book I will pull off my shelf often to discover all manner of practical things like how British civil aviation regulation works, how British environmental regulation provides for restorative justice, the latest financial regulatory developments at Basel, the Organisation for Economic Co-operation and Development ('OECD') Best Practice Principles on Regulatory Enforcement and Inspections, and much more.

³ See, eg, *ibid* 676.

⁴ See, eg, *ibid* 36.

