

## Modern Bribery Law: Comparative Perspectives



Edited by **Jeremy Horder**

**and Peter Allridge**

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Book review by Sally Ramage, *The Criminal Lawyer* (ISSN 2049-8047)



The front cover of this very interesting book is a copy of William Hogarth's 'Falstaff examining his Recruits', oil on canvas painting, well chosen by the editors. The subject is taken from Shakespeare's Henry IV, Pt.2, Act 3, scene 2. This is painted representation of an actual stage performance and indeed it is the earliest known painting of a scene from Shakespeare. The lighting from the front, steep perspective and boxed-in-look of the room suggests that this is a record of an actual performance.<sup>1</sup> The artist Hogarth was a social historian who lived in an age of rampant inequalities, divided by wealth, with the majority of

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<sup>1</sup> Editor, (1987) *Manners & Morals, Hogarth and British Painting 1700-1760*, London: Tate Gallery Publications. ISBN 0-946-590-84-2.

the British population often knowing want and poverty, lack of opportunity and callous injustice. *'While most of the wealth was amassed by a small section of landowners and merchants in a relatively open society as society such as England had, it could not but help filtering down to an increasingly greater number of the less privileged.'*<sup>2</sup>

The book itself is an enterprising edition on bribery law consisting of contributions from legal scholars from many parts of the world and the editors are Jeremy Horder, former Law Commissioner and Peter Alldridge, Draper<sup>3</sup> Professor of Law at Queen Mary, University of London. It includes case law from Canada; Hong Kong; Italy; United Kingdom ('UK') and the United States ('US') and seven European Union cases plus relevant laws from these jurisdictions. Its aim is not to dwell centrally on the UK's Bribery Act of 2010 but to examine the various countries' policies on bribery. We must not forget that the UK's Bribery Act 2010 gained Royal Assent in March 2010 before going through its full procedure of debates and adjustments, because the UK had a change of government then and it was hurriedly agreed that this statute would be enacted. However, the UK's legal industry was neither happy nor clear as to its full meaning and so there was the government produced 'guidance' one year later in 2011 after which time, the Bribery Act 2010 came into force. The UK Bribery Act 2010 (in force from August 2011) is an attempt to codify bribery offences. Since then the Serious Fraud Office has published a further guidance dated 2012. Unfortunately, it is still very little understood in the legal industry. So the contributions in this book dwell on policy and substantive law rather than the nuts and bolts of bribery laws. It is interesting to

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<sup>2</sup> Ibid, page 11.

<sup>3</sup> Professor Draper was the distinguished former University of Sussex law academic and Nuremberg prosecutor. Professor Colonel Draper was one of the first Allied officers to arrive at the Bergen-Belsen concentration camp at the end of the Second World War, which affected him profoundly. He went on to serve as prosecutor at Nuremberg as well as at various War Crimes Trials between 1945 and 1949. On retirement from military life in 1956 he turned to academia and eventually became Reader in Law at the University of Sussex in 1967, where he embarked on a wide-ranging and distinguished career in the field of humanitarian law and the law of armed conflict. He died in 1989. See <http://www.sussex.ac.uk/broadcast/read/2028>.

note the 2004 research findings on corruption in the United States which showed that the *'more educated states, and to a less degree richer states, have less corruption. This relationship holds even when we use historical factors like education in 1928 or Congregationalism in 1890, as instruments for the level of schooling today. The level of corruption is weakly correlated with the level of income inequality and racial fractionalization, and uncorrelated with the size of government...'*, the paper stated.<sup>4</sup>

It is therefore of no surprise to know that after spending millions of pounds on discussing, consulting and procrastinating on the need for a new bribery law, the only prosecution to have been brought under the UK Bribery Act 2010 was for a *'quotidian piece of local government corruption by a clerk at a Magistrates court fixing speeding tickets for money'* as recorded in *R v Munir Patel*, unreported, 18 November 2011.<sup>5</sup>

This case is important in reflecting the ridiculousness of drafting an all-powerful statute encompassing the whole world, which, it turns out, was used for a 'small beer' bribery operation, while rich corporations and fat directors continue trading as normal. The Southwark Crown Court judge, Alistair McCreath, made extensive remarks to 22 year old Munir Patel in sentencing to three years in prison, saying:

*'...these were very serious offences. They involved a very substantial breach of trust. Your position as a court clerk had at its heart a duty to uphold and protect the integrity of the criminal justice process. What you did was to undermine it in a fundamental way. By doing*

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<sup>4</sup> Edward L. Glaeser and Raven E. Saks, 'Corruption in America', *National Bureau of Economic Research*, Working Paper No. 10821, September 2004. LaPorta, Lopes-de-Silanes, Shleifer and Vishny (1999) confirm that more fractionalised countries are more corrupt and also document a strong relationship between economic development and corruption.

<sup>5</sup> The remarks are available at <http://www.judiciary.gov.uk/Resources/JCO/Documents/munir-patel-sentencing-remarks.pdf>.

*what you did, you created a danger not only to the integrity of the process but also to public confidence in it.'*

This can surely not have been the aim of the Bribery Act 2010<sup>6</sup> because the UK was forced to draft the said act by the OECD after billions of pounds of bribery in trade was discovered.

Bob Sullivan, Emeritus Professor at University College London dealt with the UK Bribery Act 2010 in Chapter 1.

The very interesting contributions that space and time allows comment on, relate to chapters 10 and 11. Chapter 10- 'Prosecuting bribery in Hong Kong's human rights environment' was authored by Simon N.M. Young, professor and director at the Centre of Comparative and Public Law at the University of Hong Kong. Chapter 11- 'Is the UNCAC an effective detriment to grand corruption<sup>7</sup>?' was authored by Tim Daniel and James Maton, partners at law firm Edwards Wildman Palmer UK LLP.

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<sup>6</sup> The book reviewer was the Sweet and Maxwell annotator of the UK Bribery Act 2010 for Current Law Statutes Annotated.

<sup>7</sup> See Susan Rose-Akerman (Yale Law School), 'Grand Corruption and the Ethics of Global Business', *Social Sciences Research Network*, October 1999. Ms Akerman maintained that corruption can undermine the functioning of the host state and lower the efficiency of production. The struggle to appropriate the gains of public projects can have a destructive impact on a country's economic and political system and outside investors and aid organisations often play an active role in maintaining corrupt systems.