

Corporate Crime and Punishment

The Politics of Negotiated Justice
in Global Markets

Cornelia Woll

Beyond corporate impunity

The New York Times

Volkswagen Set to Plead Guilty and to Pay U.S. \$4.3 Billion in Deal

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BNP Paribas nears \$8.9bn settlement with US

French bank finalises plea deal over alleged sanctions breaches



 NEWS WATCH NOW

BUSINESS NEWS

Judge Approves \$20 Billion Settlement in BP Oil Spill

The final approval resolves years of litigation over the 2010 BP oil in the Gulf of Mexico.

 TAP TO UNMUTE



The New York Times

Airbus to Pay \$4 Billion to Settle Corruption Inquiry

The airplane maker will pay penalties in France, Britain, and the United States, removing a legal hurdle as it competes with rival Boeing.

 Give this article  



Beyond corporate impunity

Corporate accountability in global markets

- Traditional assumptions:
 - Mobile companies, national criminal law
 - Regulatory arbitrage
 - Structural power
- ▶ Why do companies no longer escape legal sanctions in global markets?

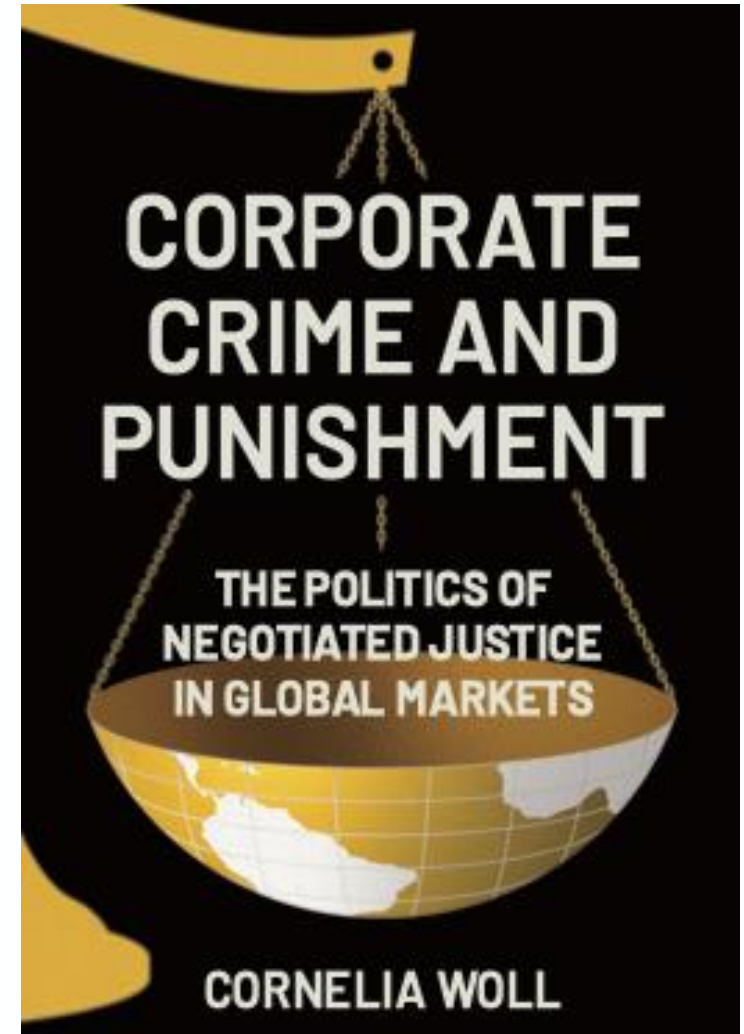


@Corporate Crime Comics, 1979

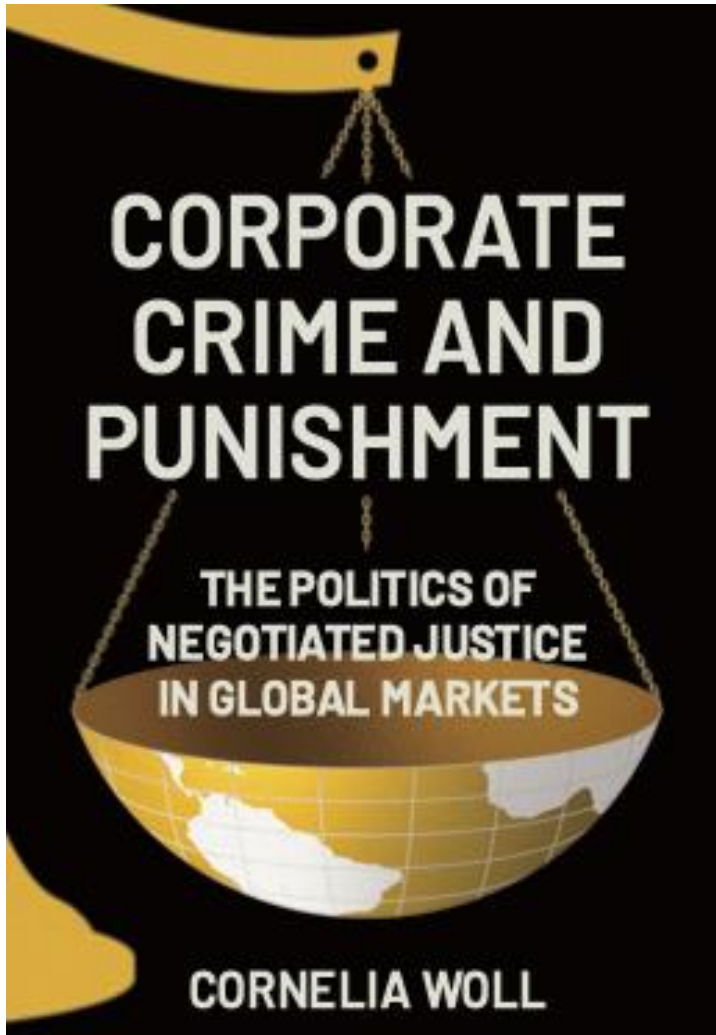
Beyond corporate impunity

Empirical argument

- Corporate prosecutions in US moved towards settlements
 - Extraterritorial reach of American law exposed governments elsewhere as inactive
 - Legal reach over companies in global markets requires either harmonized rules or negotiation tools
- ▶ The rise of negotiated corporate justice



Beyond corporate impunity



Theoretical argument

- Market power allows for the extraterritorial use of domestic law
 - Strategic use of law to defend national interest or norms
 - Use of law across boundaries acts as “irritant” and triggers institutional change abroad
- ▶ Legal regime theory + weaponized interdependence = institutional change

Beyond corporate impunity

Outline

1. American corporate prosecutions
2. Extraterritoriality
3. Economic lawfare
4. The rise of negotiated justice

Dynamics in US corporate criminal law

Evolution since 2000s

- Increased use of financial penalties
- Shift towards negotiated agreements
- Decrease in the prosecution of individuals
- Drop in prison sentences



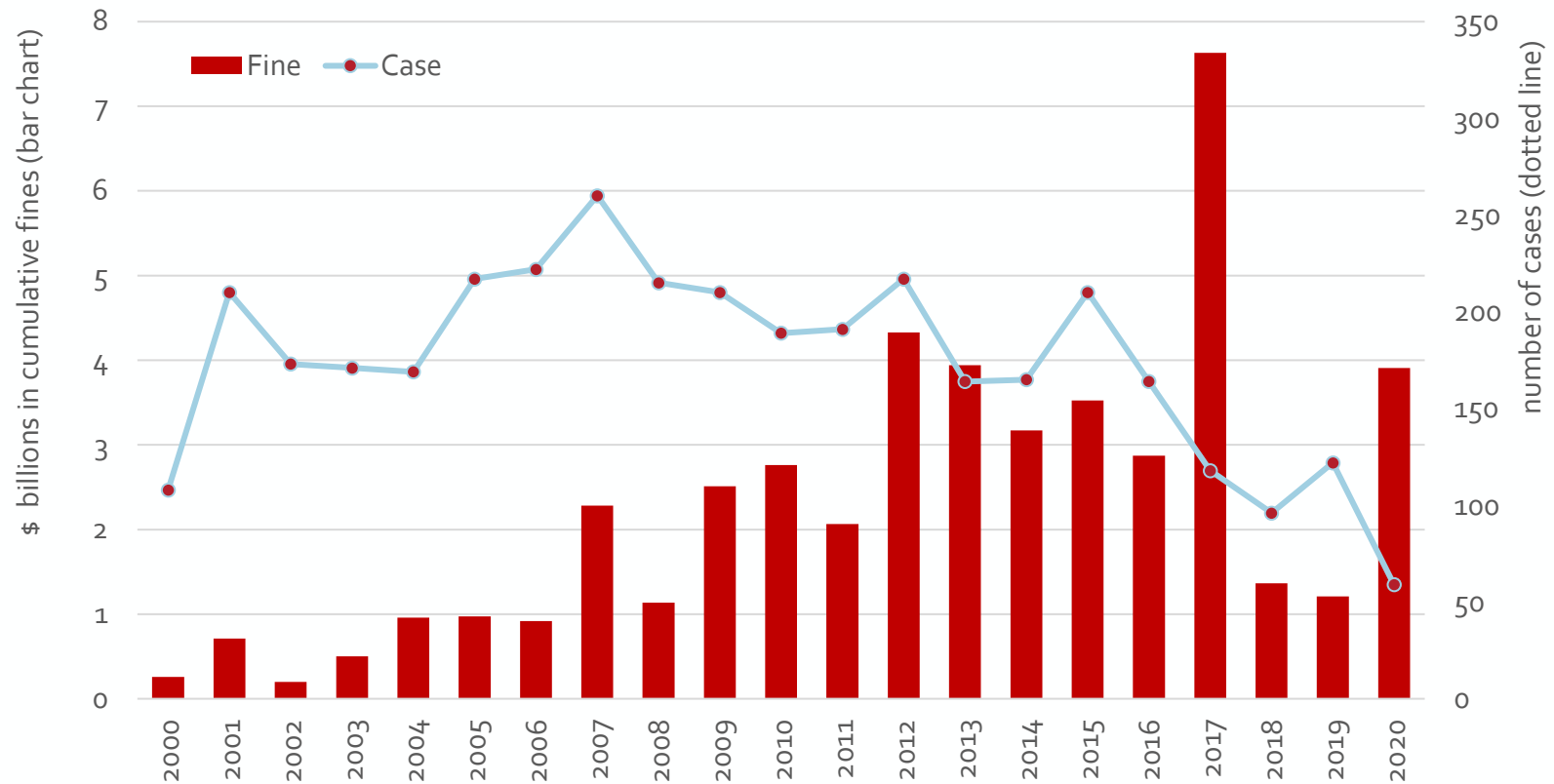
Houston Chronicle, May 25, 2006



NYTimes, September 16 2018

Dynamics in US corporate criminal law

Federal corporate prosecutions



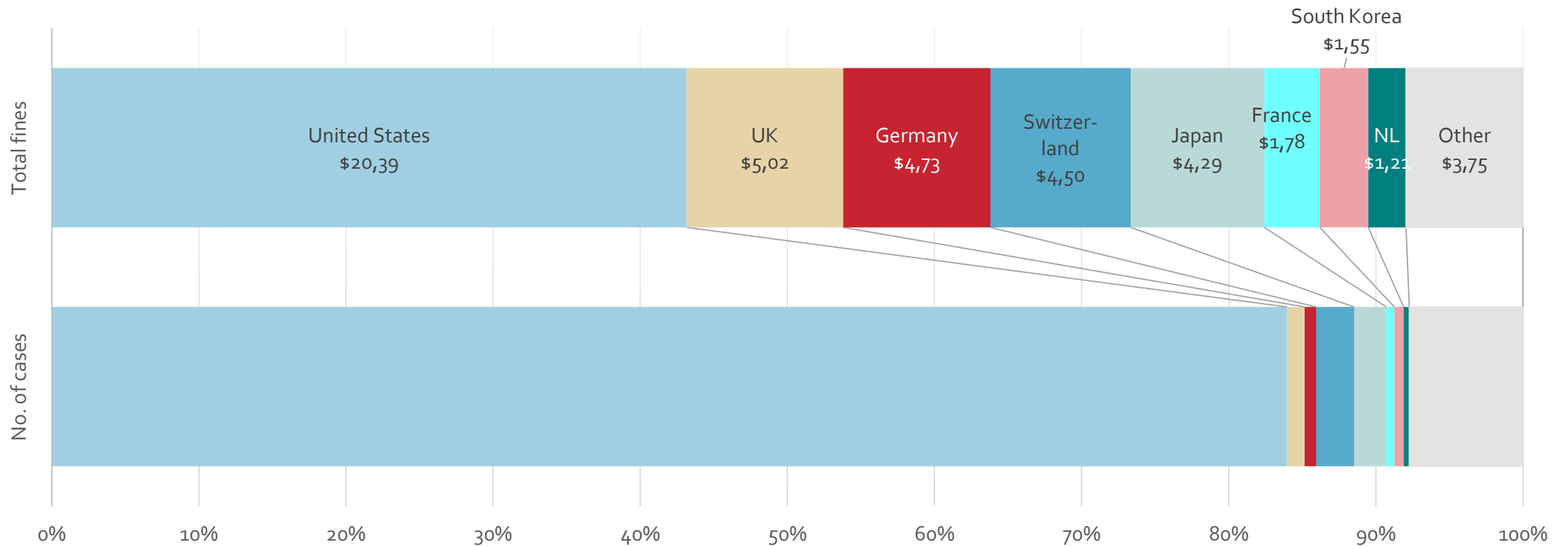
Data source: Ashley and Garrett, Corporate Prosecution Registry

Corporate criminality:

- antitrust
- tax fraud
- bank secrecy
- securities fraud
- sanction violations
- foreign corruption
- pharma
- environment

Home bias

US federal corporate prosecutions by country of origin



Data source: Garrett and Ashley (2021) *Corporate Prosecution Registry*

Home bias

Federal corporate prosecutions

- 16% foreign companies account for 57% of all collected fines
- **Likelihood** of being fined increases by **14.8%** for foreign companies
- Foreign companies pay **fines** that are **6.6 times larger**

Table 3.1: Linear Regression on Log Fines (for cases with fines only)

Variable	Coefficient	Standard Error	Exponential (ERR)	95% Interval	
Type of company					
Foreign	1,89***	0,15	6,61	4,95	8,83
Public	2,11***	0,18	8,22	5,77	11,70
Type of disposition					
DP	Ref.				
NP	-0,87**	0,29	0,42	0,24	0,73
Plea	-2,54***	0,22	0,08	0,05	0,12
Trial	-1,33**	0,49	0,27	0,10	0,69
Type of crime					
Maritime Pollution	1,39***	0,30	4,01	2,25	7,16
Antitrust	3,43***	0,24	30,78	19,32	49,03
Bank Secrecy Act	0,67	0,56	1,96	0,65	5,91
Bribery	1,60**	0,48	4,95	1,91	12,78
Controlled Substances	-0,73	0,39	0,48	0,23	1,04
Environmental					
FCPA	1,82***	0,30	6,18	3,43	11,13
FDCA / Pharma	2,24***	0,29	9,43	5,37	16,55
False Statements					
Food	-0,63*	0,30	0,53	0,30	0,96
Fraud - Accounting					
Fraud - General	1,08***	0,22	2,96	1,94	4,52
Fraud - Health Care					
Fraud - Securities	3,33***	0,73	28,05	6,69	117,52
Fraud - Tax					
Gambling	-1,22*	0,59	0,29	0,09	0,94
Immigration	-1,12***	0,29	0,33	0,19	0,58
Import / Export	0,71**	0,27	2,03	1,20	3,44
Kickbacks					
Money Laundering	0,09	0,40	1,09	0,49	2,41
Workplace Safety	0,27	0,46	1,31	0,53	3,21
Obstruction of Justice	1,38**	0,52	3,97	1,44	10,96
Other					
Wildlife	-0,82**	0,30	0,44	0,25	0,78
Constant	13,33***	0,28			
N			2601		
R ²			0.444		

* p<0.05, ** p<0.01, *** p<0.001

Power in a geoeconomic world

Effective jurisdiction

- Reliance on market infrastructure
 - Securities regulation
 - Settlement systems
 - Data
 - Enforcement
 - Market access
 - Negotiation tools
- Prescriptive jurisdiction + market power = effective jurisdiction



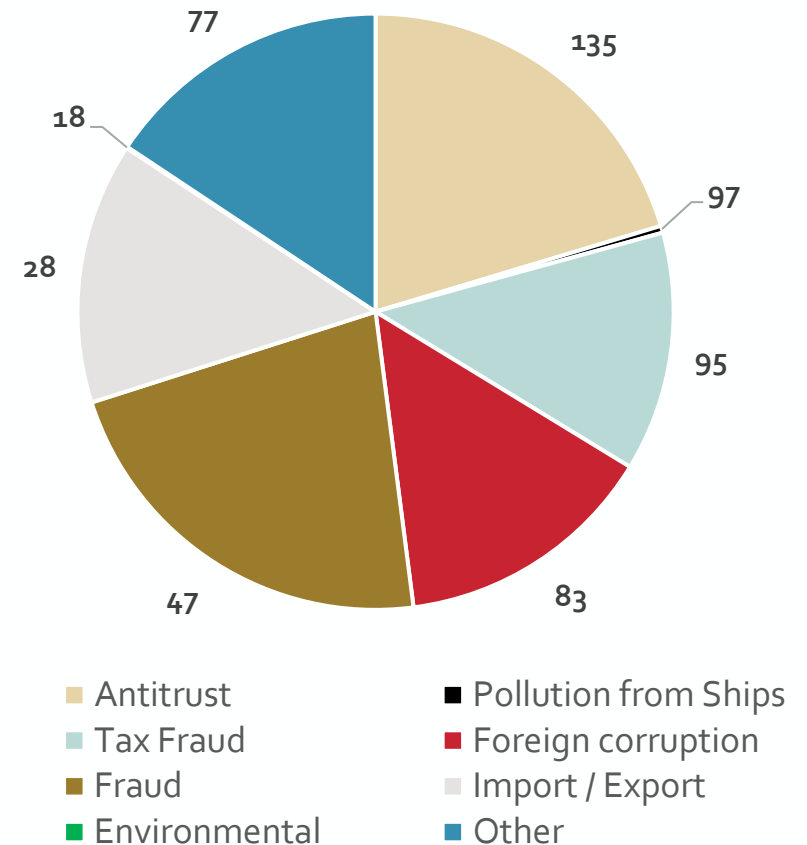
@Chapatte, May 28, 2014

The long arm of American law

Legal reach

Domaine	Nexus
Antitrust	Impact on domestic markets
Securities trading	Listing on US stock exchange
Foreign bribery	Listing on US stock exchange
Economic sanctions	Dollar settlement system
Organized crime, money laundry, tax	Dollar settlement system and citizenship
Intelligence and data	Data held by US firms

Total payments by foreign firms



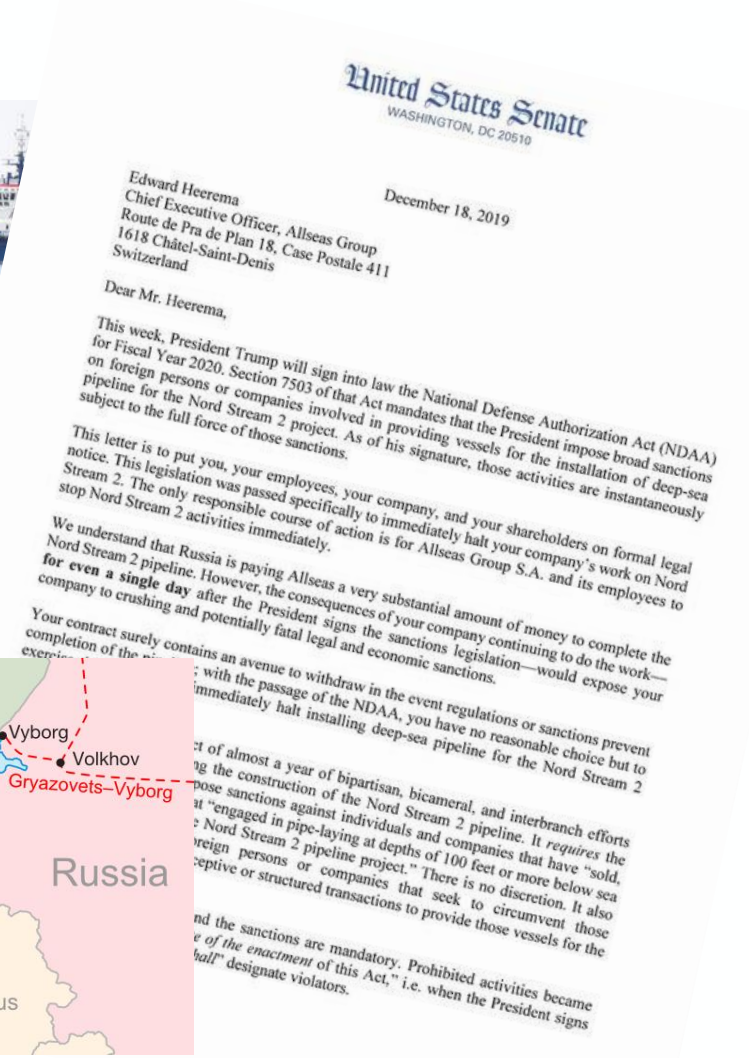
Economic statecraft

Firms as sites of interstate conflict

Strategic objectives

- Access to networks
- Visibility over activities
- Market reach

Private actors need to be enrolled in government strategies



Economic statecraft

Chokepoints

Secondary sanctions **US EU**



Interstate conflict,
unilateral imposition

Visibility

Data access **US CN**



Interstate conflict,
multiple sectoral regimes

Market reach

Antitrust **US JP**



Sectoral regime consensual

Economic statecraft

Authority in global markets

	International economic governance	Economic lawfare	Global law enforcement
Objective	Shared rules for economic behavior	Gaining strategic advantage through law enforcement	Enforcement of shared rules
Scope	Multilateral or bilateral	Extraterritorial	Multilateral, bilateral or extraterritorial
Principles	Reciprocity	Unilateral	Unilateral and reciprocal
Application	Even application	Home bias	No systematic biases

4. The rise of negotiated corporate justice

Explaining institutional change

Challenge for governments

- Regain judicial sovereignty
- Address corporate malfeasance



@Dave Simonds / The Economist

Diffusion

2013	United Kingdom	Deferred prosecution agreement
2014	Brazil	Leniency agreement
2015	Spain	
2016	France Colombia	Judicial agreement in the public interest
2017	Mexico	
2018	Argentina Canada Japan Peru Singapore	Effective collaboration agreement Remediation agreement

Administrative corporate criminal regimes

	United Kingdom	Canada	France	Germany	Brazil
Legal family	Common law	Common law	Civil law	Civil law	Civil law
Abbreviated criminal trials	Plea bargaining (1970)	Plea bargaining (1995)	Penal orders (1972), pleas (2004)	Penal orders (1877), pleas (2009)	No penal orders or plea bargaining
Corporate criminal liability	Yes, identification principle	Yes, identification principle	Yes, since 1994	No	No
Deferred prosecution agreements	2013: Deferred prosecution, 9 cases	2018: Remediation agreement, never used	2016: Judicial agreements, 11 cases	No	No, but leniency agreements
Nature of change	Sectoral use of negotiation tools by Serious Fraud Office	Unused legal innovation	Active deployment of judge-centered negotiated justice	Resistance to reform	Prosecutorial activism based on minor changes

Crime and punishment in the global economy

Globalization as competitive transformation of corporate justice

Risks

- Negotiated justice biased if judges are sidelined
- Companies are not equal in negotiation
- Special status of platform companies in world economy

Democratic legitimacy

- failure to develop fair notions of corporate liability are a challenge

Thank you!

