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Anna Donovan, *Reconceptualising Corporate Compliance: Responsibility, Freedom and the Law* (Review) (2021 Hart Contemporary Studies in Corporate Law)

Ciara Hackett
Senior Lecturer, Queens University Belfast
c.hackett@qub.ac.uk

Corporate Governance literature and by extension, work on compliance and tax, is at something of a crossroads and has been for some time – there is a struggle to definitively add to the crowded and somewhat stagnant field. To do something in a way that is significant, original, and relevant and which does not return to the age-old debates of the separation of ownership and control, stakeholders and shareholders is an achievement. That is not to say that these debates are necessarily settled (nothing could be further from the truth) rather, in seeking to recalibrate and reinvigorate the field, something new is needed.

Reconceptualising Corporate Compliance: Responsibility, Freedom and the Law is about corporate compliance within the capitalist system. In exploring misunderstandings within capitalism and human behaviour, this book intersects company law, sociology, and social psychology. The book has two main aims: one, an exploratory analysis of the traditional views of the market and two, an analysis of people's behaviour. In addressing the first aim, Donovan challenges our willingness to accept those sweeping ideologies that prevail amongst those of us who study and research within this field. Namely, in our acceptance that the system cannot be perfect, we are too willing to see the market economy as resplendent with amorality and 'bad apples'. Does our desire to 'solve' the problem lead us to just conclude that the system is rotten and needs a complete change? Is an alternative approach to appreciate the power of incremental adjustments in our thinking and in how we understand compliance? This first aim is unpacked in chapters 1-4. The second aim of the book (chapters 5 – 7) is explored using analyses of social psychology. It looks at how people are motivated to behave, even in instances where sanction is limited (or indeed non-existent). It challenges deterrence theories and unpacks legitimacy theory and procedural rationales to consider how we as individuals are motivated to behave, challenge, or conform to standards and responsibilities. Donovan's reform proposal (chapter 8) to break the impasse is original, refreshing, and ambitious. She proposes a return to the first principles of classical liberal ideology which has, as she concludes, 'freedom and cooperation at its core, demonstrating how these are coterminous, not mutually exclusive' (2021, p. 183). Her conclusion uplifts, surmising that if we start to view the system as something founded on values of law and equality, we start to see the potential for spirited compliance with the law – which will allow for freedom and responsibility to emerge.

The idea that 'spirited compliance' is a legitimate objective is the core argument of the text. Compliance need not necessarily be a compromise and in viewing it as an acceptable (and indeed wanted) outcome challenges the widespread view that technical compliance is just the workings of capitalism. The rationale for her argument is best captured by this statement:

The continued focus on the symptoms of creative compliance, rather than its cause, has meant that we have yet to meaningfully curtail the fundamental challenge of how compliance is defined and understood by legal subjects. The problem of creative compliance is, in part, one of legislative gap-filling. These gaps will always remain, whether regulations are complex and targeted ...or adopt a broader approach like the

GAAR. As we continue to see, corporations are proving resistant to even the most sophisticated of regulatory designs, meaning that these gaps...are defined in reductive and profit maximising terms. The challenge we face is not necessarily more regulation, but a better understanding of the root cause of why, and therefore how best to address, the reductive approach to compliance that seemingly pervades the corporate community. (2021, p.39)

Donovan is realistic – she recognises that a compliance crisis exists but argues (and challenges perceptions of same) that creative compliance is the product of social construction, and is therefore, capable of social *reconstruction* (2021, p 182). She uses the example of smoking (around p. 63 and littering p. 55) to explain norm management and how a change in social construction of a norm can be achieved. This idea of social reconstruction is powerful and forces a rethinking of our biases towards and about the area of (creative) compliance which is what Donovan set out to do. And she does it so well. The book has similar arguments to the work of Hall and Holmes (2015) particularly around rationalisations for creative compliance. Their focus is on company lawyers, and so, her analysis of the system (albeit as applied to tax) can be distinguished. Even though this work focuses on corporate compliance, broader comparisons can be made with the corporate governance field in its entirety. The same criticisms that have befallen compliance can be applied – and extended - to the area of corporate governance. By challenging us to see incrementalism in thinking as fine-tuning the system goes some way to realigning the narrative on ‘failures’ of corporate governance (Moore, 2009; O’Kelly & Wheeler, 2012). This is especially the case when viewing this argument through the values of law and equality as Donovan does so aptly throughout (but particularly in Part 3). With the increased focus on human rights, and Sustainable Development Goals within corporate governance, this view becomes even more important. Thus, the text has broad appeal within the corporate governance space.

The way in which tax (particularly the examples of Google and the General Anti Abuse Rule (GAAR)) is used as a focus and case study means that each chapter is well structured and stands on its own as a contribution to the debate. When the piece is read in its entirety, the value of this focus is realised. The book informs, interests and intrigues. In noting the continued focus in academia and practice on the symptoms of compliance, this book adds considerably to the work on compliance of both Williams and McBarnet (and their respective co-authors) that emerged in the later 90s, early 00s. It is refreshing to have a new addition to the field and to see *Reconceptualising Corporate Compliance* being cited in the same space as subject defining literature. In addition, the evolution and development of discussion around a newer dimension of social psychology along with compliance illuminates. I found chapters 4 and 5 (especially Chapter 4, Part IV (2021 p 94-95) and Chapter 5, (2021, Part III, p 113) to be a particular strength (straddling the two core aims of the book), and the chapters which led me to critically engage with my own thoughts on the topic. The outworking of the ideas in this book can be seen in the work of Meers, Halliday and Tomlinson (2023) which heavily cite Donovan’s work on creative compliance in the context of Covid-19 and Lockdown Restrictions.

This book is, without doubt, a socio-legal text, written by a lawyer. To which the perennial question becomes: how socio- can one go? This is a question which a lot of socio-legal scholars have grappled with in the past, and it is one for consideration here too. Donovan’s work sits apart from many socio- texts in a similar space, but equally they are well read together in advancing the field. Further exploration into the work of Goffman (especially social roles and frame analysis) might be useful in any evolution of this project. Whereas his work focuses on persons, the importance of context and social norms resonates with the analyses of behaviour in Donovan’s text. Even though Goffman does not look at organisations, his work has been

applied elsewhere in this context. Manning (2008) for example selects which aspects of Goffman's work can be used when thinking about organisations. (As an aside, from a methodological point of view, this piece provides an interesting insight on how these types of theories can be applied empirically). Beyond, when studying the corporate form together with motivations of corporate actors, the work of Pettit adds to debate. Donovan does reference Pettit and his work on *Basic Liberties* in Chapter 5, but his other work could also inform. Donovan is particularly interested in how individuals are motivated to behave, challenge, or conform to standards and responsibilities. I would love to see this extended to see whether the corporate form as an entity is motivated to comply with norms distinct from the motivations of its employees. This would be a particularly interesting argument with Donovan's work around p149- 156 in this text. Specifically, I would recommend consideration of Pettit's work on deliberative democracy and the discursive dilemma (2001), groups generally (2007, 2010) and his work with List on group agency (2002, 2011). However, this depends on whether Donovan thinks that their future work in this space would benefit from a political philosophy angle given its already broad-church appeal. For what it's worth, I think it is a useful approach to take and the fields of corporate governance and political philosophy could be augmented from this research.

Dr. Anna Donovan is currently a lecturer at UCL. She has both a practice and academic background which makes her work in this area so potentially far reaching. Her background in practice as well as her intricate knowledge of the practice and the theory of corporate compliance helps this book to stand out. *Reconceptualising Corporate Compliance* links in well with Donovan's teaching and research profile to date. Her prowess in this space can be best understood through her report on Blockchain: Developing Regulatory Approaches for the use of Technology in Legal Services (Commissioned by the Legal Services Board) and her co-authored article (with Iris Chiu) in the Journal of Corporate Law Studies (2017) on A New Milestone in Corporate Regulation: Procedural Legalisation, Standards of Transnational Corporate Behaviours and Lessons from Financial Regulation and Anti-Bribery Regulation. Indeed, section 3 of this 2017 article maps nicely onto some of the themes explored and deepened in *Reconceptualising Corporate Compliance*. *Reconceptualising Corporate Compliance: Responsibility, Freedom and the Law* was joint runner up for the Peter Birks prize for outstanding legal scholarship. In addition to academic prowess, Donovan has a nuanced grasp of the practice of the law in this area (see for example the General Anti Abuse Rule (GAAR)) but at the same time can engage and motivate the reader to understand complex theoretical interpretations of compliance thus highlighting her academic prowess in the space. Indeed, the book is a remarkable mix of company law and corporate governance, and the ease that Donovan moves from case law to governance theory demonstrates her understanding with the subject matter. To that end, this work will be of interest to those who are engaged in the practice and technical acumen of compliance in addition to those of us who are interested in the conceptual underpinnings of approaches to and around compliance. This book is written in such a way that will appeal to graduate students as well as academics and practitioners – it is clear, concise and precise and well structured around key themes. At a critical juncture in corporate governance studies generally, and compliance specifically, this book brings some much-needed optimism to the field. I came away from the read with a much more positive outlook than prior. I advise you to do the same.

