

BOOK REVIEW

Power, Participation, and Private Regulatory Initiatives: Human Rights Under Supply Chain Capitalism (University of Pennsylvania Press, 2021)
Edited by Daniel Brinks, Julia Dehm, Karen Engle and Kate Taylor

As the field of business and human rights evolves, it generates new questions and research areas. This incisive book focuses on the role of the state and business in maintaining ‘the unequal distribution of resources and power in the global economy’ and on the potential of human rights to challenge this ‘global marketplace rooted in inequality’.¹ It does so through focus on ‘supply chain capitalism’, defined as ‘global production and distribution [that is] organized through disaggregated, geographically dispersed supply chains’² and the new regulatory forms that have emerged in attempts to tame it. Although the general topic of private regulation initiatives (PRIs) within supply chains has been extensively studied, this book attempts something new in situating human rights-based regulation in the context of the global political economy. It is well known that PRIs, as voluntary initiatives that require business cooperation risk subservience to business, becoming decorative CSR projects that mask continued exploitation and business-as-usual. This book attempts to explore the law, politics and economics that underlie this reality, and to use this to plot strategic pathways forward. The book is organized in four parts. Part 1 frames the discussion. Part 2 investigates multistakeholder initiatives (MSIs), and part 3 investigates worker-driven social responsibility (WSR) programs. Part 4 offers critical reflections on the field.

Chapter 1 provides an editors’ introduction and summarizes the key points of the book. In chapter 2, Justine Nolan offers an overview of the role and history of MSIs in the context of public regulation and other strategies. She argues that to address the varied governance problems evidenced and constituted by supply chain capitalism, some form of ‘synergistic governance’ is required, wherein public, private and social strategies mutually reinforce one another. This builds on a long history in regulation studies, including Ruggie’s ‘smart mix’ of regulation. Nolan appears hopeful that the combination of human rights due diligence and transparency laws, coupled with evolving private and social governance mechanisms, may ameliorate at least some harm within supply chains.

In chapter 3, Farai Maguwu critiques the Kimberley Process (KP), designed to eradicate ‘conflict diamonds’. Maguwu argues that ‘KP was created by the government to ensure total control of the rough diamonds trade’, not to protect human rights.³ The author narrates his work and personal experience in the chapter as a human rights activist in Zimbabwe and

¹ Daniel Brinks, Julia Dehm, Karen Engle and Kate Taylor (eds), *Power, Participation, and Private Regulatory Initiatives: Human Rights Under Supply Chain Capitalism* (University of Pennsylvania Press, 2021), 5–6.

² *Ibid.*, 3.

³ *Ibid.*, 53.

describes powerfully why diamonds mining has continued ‘to be a major cause of human rights abuses, which range from murder, torture, and rape to community displacement’.⁴

In chapter 4, Marcus Colchester analyses the Forest People Programme (FPP), designed ‘to hold governments and corporations accountable for violations of the human rights of people who live in the forest’.⁵ Echoing Nolan’s concerns regarding uncoordinated regulation, Colchester argues ‘that national laws, which do not uphold indigenous people’s rights, are in effect overriding the higher standards of these voluntary schemes’.⁶ Chapter 5, by Charles Hale and José Alwin, analyses the Forest Stewardship Council (FSC), a certification MSI for forest products, through a case study of the Mapuche People in Southern Chile. Chapter 6, by Geisselle Monge, studies another certification scheme, the Roundtable on Sustainable Palm Oil (RSPO), with a case study of Guatemala. Both chapters on certification schemes voice serious doubts as to their efficacy. Alwin and Hale, like Colchester, note that overlapping rights regimes cause choice-of-regime problems,⁷ and that substantively, FSC-certified corporations have occupied ‘significant portions’ of Mapuche land.⁸ Monge notes problems with the RSPO, including that ‘continuous improvement’ leads to inclusivity trumping meaningful standards; power asymmetries; and a lack of grievance procedures.⁹

Chapters 7–9 cover worker-driven social responsibility (WSR) programmes, defining them as ‘attempts to redistribute power’. Sellers covers these programmes generally and defines WSR programmes according to six principles: worker-driven; enforceable agreements with corporations; that mandate buyer assistance to suppliers to comply; include consequences for non-compliance; improve workers’ lives’ and use independent audits.¹⁰ Sellers also notes three main features of sectors that will define whether WSR programmes can succeed. These are: the nature of the problem, for example, how feasible it is to document and audit abuses within a specific industry; the nature of the industry, particularly highlighting the importance of brand sensitivity; and the capacity of the worker organization.¹¹ Jessica Champagne and Erika George then discuss in detail the Bangladesh Accord and the Fair Food Program, respectively. Both speak favourably of their respective programmes and note the mechanisms that allowed them to succeed in the context of the particular political economies.

In Chapter 10, James Brudney begins the reflective final section by assessing the findings of three of the substantive chapters. Brudney focuses on worker participation, monitoring, contract-based enforcement, and a funding mechanism to realise these aims. In chapter 11, Dan Danielson nicely explicates the political economy of supply chain capitalism.¹² With echoes of Thomas Friedman’s notion of the ‘golden straitjacket’, Danielson highlights how market discipline neuters opportunities for progressive policy making at state and business levels. Danielson also highlights the challenges to human rights posed by private law (company law, tort and contract).¹³ Danielson’s main argument is that by mapping the power relations, political economy, and myriad legal regimes that constitute supply chain capitalism, PRIs may find novel ways through which to create human rights respect within supply chains. For example, supply chain capitalism is increasingly failing to deliver growth

⁴ *Ibid.*, 54.

⁵ *Ibid.*, 74.

⁶ *Ibid.*, 75.

⁷ *Ibid.*, 107.

⁸ *Ibid.*, 102.

⁹ *Ibid.*, 134–135.

¹⁰ *Ibid.*, 146–148.

¹¹ *Ibid.*, 148–153.

¹² *Ibid.*, 227–234.


¹³ *Ibid.*, 235.

to the global south, and this economic reality can bolster human rights arguments for transformative change. Danielson advocates that PRIs seek to ‘foster new conceptions of development, forms of political organization, and means of social provision’, to begin to overcome, rather than merely ameliorate, the harms of supply chain capitalism.¹⁴

Lauren Fielder, in chapter 12, explores the role of consumer protection laws as part of ‘creative litigation strategies’.¹⁵ The chapter reviews both recent disclosure-related laws and human rights-related judicial proceedings against businesses grounded in consumer protection laws. The US case of *Kasky v Nike* is used to demonstrate the potential and pitfalls using existing consumer protection law. The case alleged false and misleading commercial speech by Nike regarding the human and labour rights standards in the manufacturing of Nike products. Disclosure-related laws are part of a wave of recent and forthcoming rules that culminate, for now, in mandatory human rights due diligence, including the French Duty of Vigilance Law and the forthcoming EU Directive on Corporate Sustainability Due Diligence. Fielder notes that although consumer law is limited due to its focus on harm suffered by misled consumers, rather than on human rights violations, the combination of disclosure laws and the threat of litigation for false speech may assist incremental improvements in rights protection.¹⁶

Various authors note a range of limitations and harms within the PRI system. Ostensibly ‘multistakeholder’ structures obscure significant power imbalances within them, grievance mechanisms fail affected communities, and there is an over-reliance on consumers, who face limited knowledge and competing pressures. PRIs can act as veneers that disguise the reality of supply chain capitalism and reify traditional power centres. As is the perpetual refrain within human rights work, the argument that PRIs are perhaps capable of challenging the most egregious practices and human rights violations rings out the loudest, while the structures, the perpetuating of poverty, the profit, and the legal, corporate and political support that this structure benefits from are ignored. Although worker-led programmes are seen more favourably, in terms of both process and result, it is noted that they face serious contingent barriers.

The book is a useful contribution to business and human rights (BHR). The specific case studies shed light on disparate areas of the BHR landscape, and the discussion of PRIs and their limits is nuanced and fair. The major value of the book is in bringing together the normative aims of human rights with the practical reality of supply chain economics and governance, and, in so doing, opening new spaces for regulation and critique. The book spotlights the intersecting pressures and conflicts faced by those attempting to transform, or even ameliorate, the harmful conditions of supply chain capitalism. Worker and community empowerment is possible but relies on unusual preconditions. The law is a source of vulnerability and oppression, as well as a necessary tool of progress. Ultimately, this book is about power. Currently, a small number of MNCs hold monopsony control over suppliers and exert significant influence over governments. There may be no level of regulatory sophistication that can overcome this reality, although, as this book demonstrates, there is value in trying, and victories can be won.

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¹⁴ Ibid, 240–241.

¹⁵ Ibid, 242.

¹⁶ Ibid, 255–256.