

***Law, Business and Human Rights: Bridging the Gap*, edited by Robert C. Bird, Daniel R. Cahoy and Jamie Darin Prenekert. Cheltenham, UK: Edward Elgar Press, 2014. 269 pp. ISBN: 978-1782546610**

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The UN Human Rights Council unanimously passed the UN Guiding Principles on Business and Human Rights (UNGPs) in July 2011. The voluntary, tripartite framework, in short, declares that states have the duty to protect human rights, corporations have the responsibility to respect human rights, and all actors—states, companies and civil society—should ensure that victims have access to judicial or non-judicial remedy mechanisms. Since the passage of the UNGPs, policymakers, managers, human rights activists, and scholars have been trying to make sense of this new agenda. What does the “responsibility to respect” human rights entail in terms of business practices? How should states implement the UNGPs? What do state and corporate best practices look like and who should monitor conduct? Finally, How do businesses and states work together to provide access to remedy?

In *Law, Business and Human Rights*, the editors and contributing scholars aim to address some of these questions. They provide a deep discussion around the potential interpretation and application of the UNGPs, across a number of sectors. Part I of the book explores the role of firms in respecting human rights; Part II takes a closer look at affected stakeholders and delves deeper into the specific issues associated with labor rights, sustainability, indigenous rights, conflict minerals, and food. The authors utilize a variety of perspectives and, in so doing, aim to increase our understanding around how multinational corporations are engaging with this agenda and how stakeholders’ human rights are currently effected by corporations. This is an ambitious and timely task and the volume elucidates the business and human rights agenda from a legal perspective. The trade-off, however, is that the volume seems disjointed at times as the contributions cover a variety of issues, including, but not limited to: disclosure laws, polycentric governance, indigenous traditional knowledge and intellectual property, and corruption. While there are lessons to be drawn from each chapter, the reader must discern how this volume, as a whole, moves the broader discussion on business and human rights forward.

Part I of the volume, “The Role of Firms in Respecting Human Rights,” begins with a brief narrative of the business and human rights agenda, its contentious past, and the potential convergence of the responsibility to respect (RtR) human rights with the UNGPs. Part II will be of particular interest to those working on issues areas explored in depth: labor rights and sustainability, indigenous rights, conflict minerals, and the human right to food. There are broad themes that are addressed in Part I: (1) definition and scope of the UNGPs; (2) the role of disclosure; (3) intellectual property; and finally, (4) the nature of the business-society relationship with regards to human rights. Each of these themes is addressed in turn below.

Chapters one and three seek to contextualize the UNGPs within a broader conversation regarding the RtR agenda and efforts to combat corruption, respectively. Radu Mares' work in chapter one encourages scholars to build on the lessons RtR provides and argues that the UNGPs move beyond RtR: corporations are now expected to "both *respect* responsibilities grounded in the 'do no harm' imperative and *protect* responsibilities in the 'reach out and help' proposition" (6, emphasis original). Perhaps the most insightful contribution is the textual analysis of the UNGPs across its numerous iterations; the chapter provides new meaning to "principled pragmatism," the term John Ruggie uses to describe his approach as the UN Special Representative of the Secretary General. The author argues that in the drafting process, Ruggie was able to expand key definitions (12), utilize ambiguity as strategy (19), and engage in a burden-shifting task, in which respecting human rights remains squarely on the corporate entity, not the supplier or subcontractor (26). Though interesting, the concern is that what one might consider a strategic move to broaden the scope of the UNGPs, others may interpret as overreaching and conceptual weakness. Even so, the key innovation of the UNGPs remains, which is that the due diligence component transforms conceptions of 'do no harm' to risk management.

Chapter three by Norman Bishara and David Hess convincingly illustrates that the business and human rights agenda must be paired with efforts to combat corruption if any success is to be achieved. The authors support this claim with two secondary points: first, the corruption and human rights agendas are tightly linked. Businesses continue to operate in unsafe building standards and with weak infrastructure, for example, due to corrupt inspectors and managers. The second and related point is that corruption is often described as something that happens to multinational corporations, yet the authors suggest the supply side of corruption is equally important; they highlight the importance of efforts like Transparency International's Bribe Payers Index, the Global Compact and the Global Reporting Initiative in this effort. Ultimately, the authors conclude that respect for human rights can be achieved through efforts to combat corruption; with a proactive focus on the due diligence process (80), companies will be able to more accurately foresee the potential risk of corrupt practices on human rights.

Chapters two and four engage with the second theme on the potential role of corporate disclosure around human rights. Stephen Kim Park suggests disclosure can play a substantive and integrative role; the process of disclosure "may help MNCs translate international human rights doctrine into operational scripts" and subsequently, this process "may help [MNCs] express their intent and adherence to global human rights principles, which then encourages and rewards further efforts by MNCs to respect human rights" (49). Lucien Dhooge highlights in chapter four the tension between disclosure regulations and business interests to avoid compelled speech in an effort to shield or protect information. The chapter provides case detail regarding recent challenges to disclosure laws in the United States and concludes there are alternatives to current disclosure laws that adhere to the strict scrutiny standard, which may include deference to the government in determining whether the disclosure advances the government's stated interests (111-3) and the ability to distinguish between disclosures made specifically to the government rather than

the general public. Missing from the discussion, however, is the broader criticism that some disclosure efforts have been ineffective due to weak signals, lack of standardization, and may be counterproductive. While Park's chapter illustrates the potential contribution of disclosure from a firm-perspective, it would be helpful to have a greater understanding as to how the business and human rights agenda may utilize disclosure more strategically, given its shortcomings in other issue areas.

The third theme is explored in chapter seven by David Orozco, Kevin McGarry and Lydie Pierre-Louis and chapter nine by Daniel R. Cahoy, which discuss the role of intellectual property in two very different contexts. Chapter seven highlights an interesting, but relatively understudied, phenomenon of indigenous knowledge in light of the recent *Kiobel* decision. The authors note that indigenous populations often have a sophisticated understanding of the world's biodiversity and its applications. The question becomes how to best recognize the intellectual property of indigenous communities and avoid "bio-piracy." The authors delve into existing international law and agreements (The UNESCO Conventions on Cultural Intangibles and Expressions, the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, the WTO, ESCR, and TRIPS) to support their claim that, even with the US Supreme Court's narrowing of the Alien Tort Statute, access to remedy is possible under common law equitable doctrines. The final portion of the chapter outlines how this might be achieved and highlights how remedy law can facilitate "compatibility with international human rights law, uphold the state's legal duty to protect human rights and offer judicial remedies" (197). Chapter nine also engages in the question of intellectual property, but in the context of food production for a growing global population. This chapter recognizes the tension between incentives for technological innovation and providing food at a reasonable price to those in need. The author delves into an interesting discussion regarding compensation, which is the heart of the matter, but skirts over some the difficulty countries have faced when employing the compulsory provision in TRIPS.

The final theme of the business-society nexus is exceptionally interesting as scholars and practitioners begin to think about how to move forward. Given the UNGPs assume participation of numerous actors, in chapter five Janine S. Hiller and Shannon S. Hiller engage the trade-offs and tensions that NGOs and MNCs face when working together, including the potential of NGOs being co-opted by corporate actors. The authors propose a theory of "co-opetition," a term that typically describes cooperation between firms in competitive industries. They suggest MNCs and NGOs may be able to create value through "more open, reliable and timely channels of information in order to allow both players to act proactively in the absence of functioning government safeguards" (135). An essential element, however, is to explicitly allow for competition, or confrontation (136). This is an especially helpful framework in that it aims to reconcile the paradoxical, yet necessary cooperation-confrontation relationship amongst various stakeholders.

Two additional chapters will be of interest to practitioners, policymakers, and academics fascinated by, and perhaps struggling with, the complexity of the business and human rights agenda. In chapter six, Marisa Anne Pagnattaro highlights the linkages between labor rights and trade policy by exploring the garment industry in

Bangladesh and Apple's supply chain in China. This chapter ultimately makes the case that trade policy may be an important regulatory tool to encourage improved labor standards in developing countries.

Chapter eight by Jamie Darin Prenkert makes an important contribution by using the literature on polycentric governance to frame the variety of concerted efforts to reduce the use of conflict minerals, particularly those from the Democratic Republic of Congo. The chapter includes a helpful summary and discussion of the provision (specifically, section 1502) in the Dodd-Frank Act and links it to the UNGPs. The chapter's real contribution, however, is in the discussion of what has since followed Dodd-Frank, including: state and municipal enactments around conflict minerals; discussion around similar laws in Canada and the EU; the effects of Dodd-Frank on OECD guidance; global industry-level efforts to create conflict-free smelters; and, finally, civil society efforts to create conflict-free campuses. This fascinating progression of the conflict minerals agenda illustrates that the solution may, indeed, be as complex as the problem. Those with a proclivity for Occam's razor may be dissatisfied. Embracing a multi-faceted approach, however, will likely be necessary to make meaningful change.

Overall, the volume seeks to "shed light on the interaction of business and human rights" (xi). While the book meets this modest goal, more work is needed in this arena to fully understand how to effectively bridge this gap. For business ethics, management, and political economy scholars, the chapters of greatest interest are those that delve into specific issue areas from a legal perspective. For legal scholars, the tacit contribution of this volume is to guide them forward after the US Supreme Court substantially narrowed the application of the Alien Tort Statute in 2013.

Ultimately, this volume highlights the nascent nature of the business and human rights literature and the need for improved theory around business and human rights as well as greater empirical research to understand how practices in specific issue areas have changed over time. Indeed, the July 2015 report by the UN Working Group on Business and Human Rights to the General Assembly highlights the importance of data and measurement in this arena. It remains to be seen whether, as this volume suggests, transparency, disclosure, reporting, or polycentric governance mechanisms have an effect, if any, on corporate human rights practices.