

INTRODUCTION

INTERNATIONAL LEGAL THEORY: SYMPOSIUM ON THE LAW AND POLITICAL ECONOMY OF BUSINESS AND HUMAN RIGHTS: A TURN TO ROOT CAUSES?

The Law and Political Economy of Business and Human Rights: A turn to root causes? An Introduction to the Symposium

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This Symposium is intended as an intervention at a pivotal moment for the Business and Human Rights (BHR) field. BHR has reached a point where key discursive and policy priorities of the past decade have successfully entered public debate and influenced policymaking, with legally binding human rights due diligence obligations (HRDD) being the most prominent example. However, this ‘mainstreaming’ of the BHR agenda, without corresponding structural changes in the global political economy, raises concern that any tangible impact on global production realities will remain limited.

As the need for a new agenda that would go beyond enforcement becomes increasingly clear, the Symposium aspires to expand the horizons of the BHR discourse by exploring new critiques and institutional imaginaries. It does so by engaging with the emerging scholarship of Law and Political Economy (LPE). Just like BHR scholarship, LPE has been attentive to the question of private corporate power. However, it has focused less on how such power may be regulated, mitigated, or redressed (e.g., through the extension of corporate accountability norms, remedies for victims, human rights due diligence obligations, etc.) and more on how it is legally constituted. As such, an LPE agenda within BHR would emphasize that it is the underlying legal architecture of the global economy – rather than ‘governance gaps’ – that enables the exploitation and structural inequality shaping our political economy, ultimately driving the recurring patterns of human rights violations. At the same time, our ambition was to shape an LPE agenda that does not halt the interrogation of root causes of human rights violations too soon, but it rather considers how law itself is shaped by the entrenched logics of global production. In this sense, the Symposium wrestles with the implications of viewing human rights harms as – at least in part – structural outcomes of the form of production itself, and what this perspective means for legal critique and institutional imagination.

My article with Lottie Lane, ‘The Law and Political Economy of Business and Human Rights: From Governance Gaps to Root Causes’, expands on these themes, ultimately outlining a double move: The first is a ‘legal-institutional’ move, which critiques the concept of ‘governance gaps’ and highlights the deliberate legal underpinnings of corporate power and how these may be susceptible to different orderings. The second is a ‘legal-social’ move which, while acknowledging how the institutional perspective demystifies and denaturalizes corporate power, adds nuance to its latent

voluntarism and the assumption that simply re-coding legal structures could restructure the economy and rectify power imbalances. This leads to a critique that recentres social movements and points to ‘non-reformist reforms’ that operate in the deep structures of the legal system by targeting decision-making structures and relations of power.

In their contributions to this Symposium, the authors engage in these different directions of critique. In ‘From Business and Human Rights to Entangled Accumulation: Making Sense of Violence along Global Value Chains’, Hannah Franzki and Angela M. Sánchez-Alfonso critique law’s role – particularly through HRDD – in legitimizing capitalist exploitation within GVCs as non-violent. In their account, law plays a structural role in producing inequality and exploitation by delinking violence from legalized capitalist accumulation. Against this backdrop, their vision for a critical BHR practice involves exposing instances of primitive accumulation while simultaneously critiquing the underlying economic processes that generate such violence, thereby creating space for social imagination to envision post-capitalist futures.

Viewing HRDD in a different light, Klaas Hendrik Eller’s ‘Pricing and Distribution in Global Value Chain Regulation’ emphasizes its nature as a dynamic and learning regulatory regime and argues that bringing distributive considerations around value capture, pricing, and wages to the forefront could be a key step in elaborating modes of reflexive governance of pricing and sourcing practices. This contribution avoids the temptation of seeing HRDD as a silver bullet, while at the same time building on a mode of critical legal inquiry that unearths and seeks to harness the plasticity of institutions.

In a similarly reconstructive inquiry, Abdurrahman Erol, Federica Violi, and Alessandra Arcuri, in ‘Policies on Foreign Investment in National Action Plans on BHR: Transformative Change or Reproduction?’, challenge the distributive and power-conferring effects of the artificial separation between international investment law and BHR, while exploring the under-utilized potential of National Action Plans to tackle power imbalances inherent in the investment relation.

In conclusion, these contributions deploy LPE as an analytical lens to reflect on the constitutive role of law in global production. They collectively highlight the importance of interrogating both the structural role of law in maintaining global inequalities and its potential to function as a vehicle for socio-economic transformation. We hope that this focus on the underpinning function of law could contribute to the development of new institutional imaginaries within the evolving field and praxis of BHR.