

The final part of *American Law* outlines 13 American legal topics and how they compare and contrast with those of selected European jurisdictions. In the chapter on constitutional law, De Geest theorizes that although the U.S. is a common law system, constitutional jurisprudence closely resembles the civil law tradition. He remarks, for example, that the U.S. Supreme Court does not “openly admit that many constitutional rules are made up by judges.” Instead, the justices “first make the rules and then go through constitutional texts until they find a sentence in which they can read what they have already decided,” similar to civil law judges. Although the analysis is incomplete, due to the nature of this book as a primer, De Geest presents a fairly convincing hypothesis on American constitutional law in this regard. Part 3 also provides brief comparative summaries on contract law, bankruptcy law, and evidence, among other subjects.

American Law succeeds in succinctly describing the core attributes of U.S. law and jurisprudence in a straightforward manner. In this brief primer, De Geest manages to cover a wide range of topics from legal history to philosophy and jurisprudence to practical law. This book will be a useful introductory guide for a wide variety of audiences, particularly international law students and legal practitioners outside the U.S. Students and researchers in the U.S. who are new to comparative law may also benefit from reading *American Law*.

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Research Handbook on Human Rights and Business. Edited by Surya Deva & David Birchall. Cheltenham, UK; Northampton, MA; Edward Elgar Publishing, 2020. Pp. v, 576. ISBN: 978-1-78643-639-9. US \$ 310.00.

In response to the COVID-19 pandemic, numerous apparel brands and retailers canceled orders without assuming any financial liability causing supplier factories in Asia to be unable to pay workers' wages. As a result, an estimated one million workers were laid off in Bangladesh, where the government has no capacity to provide economic relief, exacerbating the human rights crisis ushered in by the pandemic.¹

In April, 2013, Rana Plaza in Dhaka Bangladesh, home to several garment factories, collapsed, killing at least 1,139 people.² The collapse occurred only months after at least two of the factories within the Rana Plaza complex passed social audits by the Business Social Compliance Initiative, a common tool used by businesses to satisfy voluntary corporate social responsibility (CSR) commitments.³

These two events highlight the shortcomings and challenges in integrating human rights responsibility into a corporate model that prioritizes shareholder profits. What are the obligations of big-name retailers to the workers at the bottom of their supply chains during a global crisis which causes severe economic contractions? What can be done to prevent another Rana Plaza tragedy? Social auditing failed to perceive the dangers in Rana Plaza, a tragic failure of the voluntary CSR framework in protecting human rights.

In the *Research Handbook on Human Rights and Business*, a collection of 24 essays divided into six parts, the contributing scholars tackle practical and normative issues that emerge at the interface of human rights and business. An underlying theme in the *Research Handbook* is how to reorient the role of the corporation so that its primary objective is to serve society instead of profit maximization. In other words, how might states and other interested actors compel corporations to treat human rights not as an impediment to profit maximization, nor as a means to achieve profit maximization (e.g., by improving their reputations), but as a goal in itself?

Part I of the *Research Handbook* delves into the history of human rights and business and its relation to CSR, and traces the development of the touchstone of modern business and human rights discourse, the Guiding Principles

¹ *Brands Abandon Asia Workers in Pandemic*, HUMAN RIGHTS WATCH (Apr. 1, 2020), <https://www.hrw.org/news/2020/04/01/brands-abandon-asia-workers-pandemic>.

² RESEARCH HANDBOOK ON HUMAN RIGHTS AND BUSINESS 140 (Surya Deva & David Birchall eds., 2020).

³ *Id.* at 120.

on Business and Human Rights (UNGP), endorsed by the UNHRC in 2011. Chapter 1 is critical to understanding how and why modern business and human rights discourse rejects the CSR framework. CSR, born out of management and business scholarship places responsibility for human rights into the private sphere by encouraging (but not obligating) corporations to take the initiative in protecting human rights while pursuing economic objectives. Business and human rights, on the other hand, was born out of legal scholarship and calls for public accountability for human rights through binding legislation, state-sponsored oversight, and access to remedies.

Parts II and III focus on corporate due diligence, particularly in global supply chains, and the state's responsibility and jurisdiction in protecting human rights which may potentially conflict with the principle of foreign sovereign immunity and the state's political interests, especially in the context of state-owned enterprises. With regard to corporate due diligence, John Ruggie, the author of the UNGP, rejected delineating a limited set of rights for which corporations may bear responsibility and instead called for the delineation of "specific *responsibilities* of companies with regard to *all* rights."⁴ In realizing the protection of human rights within the context of business operations, the authors in Chapter 6 argue against the use of social auditing which often amounts to nothing more than a checked box, and push instead for binding legislation that not only requires corporate due diligence, but also provides specific guidance as to how to effectively conduct human rights due diligence.

Part IV examines the interaction of human rights with trade, investment, and finance. Trade agreements and investment treaties are not referred to in the UNGP outside of the commentary, but they invariably limit the options available to states in fulfilling human rights obligations through clauses that prohibit regulatory instruments such as tariff increases or discriminatory protective measures. In the case of investment treaties, a state's obligation to protect certain human rights, such as the rights of indigenous peoples who may be affected by an investment project, often conflicts with the state's obligations under an investment treaty to protect the investor's interest. The authors of these chapters offer several options for mitigating the negative impacts of trade and investment treaties on human rights including the incorporation of a human rights exception clause or binding investor obligations in trade and investment treaties. In the final chapter of this part, the authors scrutinize the independent accountability mechanisms of multilateral development banks (MDBs) such as the World Bank and the International Finance Corporation to elucidate MDBs' approaches to human rights violations that arise from their operations.

Parts II through IV examine business and human rights from the perspective of corporations and the state. Part V looks at the other end of the equation—the peoples whose rights are most at risk by corporate activity (or disinterest) and in so doing, identifies the weaknesses in the UNGP with regard to certain vulnerable groups: indigenous peoples, for whom the land is central to their cultural existence and socioeconomic survival, children, and those living in regions suffering from gross violations of international human rights and humanitarian law ("complex environments"). With regard to children, business activities impact a range of rights besides labor, including access to food, water and health-care, children's rights in conflict-affected areas, digital technologies, e.g., cyber-bullying, child pornography, and child safety online, and climate change. Yet the UNGP, with the exception of its commentary and references to child labor, overlooks children and the seminal treaty on children's rights, the Covenant on the Rights of the Child. As for indigenous populations, there is a dearth of legal sources in domestic and international law that ascribe the protection of indigenous peoples' rights to corporations and the author in Chapter 16 argues for binding obligations to respect and protect indigenous rights, including the right to free, prior and informed consent and access to judicial remedies. Finally, for complex environments, Chapter 17 challenges the assumption that businesses can respect human rights if they engage in sufficient due diligence by invoking the findings of transitional justice mechanisms which point to the limitations of the UNGP in contexts where it may be impossible for a business to respect human rights. In such situations, for businesses that are able, the only solution may be to leave the "complex environment."

The final section, Part VI, explores access to remedies and mechanisms for corporate accountability. Beginning with a discussion of the challenges presented by lack of information (a "gateway right") to accessing judicial remedies due to formidable power and information disparities (e.g., victims of severe pollution in the Niger Delta were unable to obtain documents from Royal Dutch Shell and Shell Petroleum Development Corporation that would substantiate their claims), this part then moves on to examining the role of civil society organizations and human rights defenders in promoting corporate accountability. Part VI also examines the question of parent company responsibility for the human rights violations of its subsidiaries, and the roles of non-judicial grievance mechanisms, national human rights institutions, and international criminal law in providing access to remedies.

⁴ *Id.* at 90.

The *Research Handbook on Human Rights and Business* provides a thorough analysis of the complex issues associated with business and human rights by some of the most prominent scholars in the field. This book is integral to legal scholars and advocates for understanding both the shortcomings in the UNGP and current mechanisms for protecting human rights and the pathways to reforming the human rights and business paradigm in a way that obligates corporations and states to treat human rights as an objective in itself, rather than a hindrance to profit maximization. Instead of viewing corporations as agents of profits, this book puts forth the argument that corporations should be seen as agents in service of society, a perspective that is gaining traction in national and international law as evidenced by the recent passage of national legislation placing binding obligations on corporations such as the Modern Slavery Acts in the UK and Australia and a recent French law requiring that corporations engage in due diligence. The current CSR framework espousing voluntary initiatives of corporations is woefully inadequate in protecting human rights. A binding framework obligating human rights assessments by corporations and memorializing access to information and remedies is critical to confronting the formidable human rights challenges ahead brought on by climate change and digital technology.

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