

DEVA, Surya, *Regulating Corporate Human Violations: Humanizing Business*, Londres, Routledge, 2012.

Surya Deva, Associate Professor at the City University of Hong Kong and a worldwide known expert on the topic of business and human rights, provides us with a brilliant and interesting work that will be attractive to academics, practitioners, public officials and law students throughout the world that deal with the topic of business and human rights, corporate social responsibility and business ethics.

His book, divided in eight chapters, focuses on the Bhopal industrial catastrophe that struck India in the 1980s and that still nowadays continues violating the human rights of the direct and indirect victims of an accident that showcased the responsibility that corporations might have regarding their human rights “responsibilities” —which, the author argues, should instead be understood as obligations—. We must mention that the use of this case study permits to have a real analysis on the limitations, opportunities and implications of regulating corporate human rights violations, and gives the analysis made by Deva a much needed reality dose in a topic plagued by aspirational discourse that is sometimes distant from the reality in which corporations operate.

Professor Deva addresses some of the most fundamental questions in the field, through the taxonomy of some of the existing regulatory initiatives: his book seeks to answer the questions of who should regulate the negative impacts of corporate activities in human rights, what should be regulated, which corporation within a corporate group should be regulated, where should the regulation occur, and how should regulation be supported. Therefore, he engages in a quest to discuss, through the human rights lens, the five regulating dilemmas that pose difficulties to the business and human rights field: the source, content, targeting approach, level and nature of the regulation that should take place when dealing with corporate actors.

An interesting element that the author conceives is a method to determine the adequateness of a regulatory initiative. In his opinion, a regulatory initiative will be effective if it provides effective tools and opportuni-

*Boletín Mexicano de Derecho Comparado*,  
nueva serie, año XLVI, núm. 138,  
septiembre-diciembre de 2013, pp. 1193-1196.

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ties at the preventive and redressive levels, in what he calls a *twin-efficacy test*. This test is used while analyzing and evaluating the effectiveness of seven regulatory initiatives that have been used since the 1980s, namely the Alien Tort Claims Act of the United States of America, corporate codes of conduct (c<sup>3</sup>), the OECD Guidelines on Multinational Corporations, the ILO Declaration on Fundamental Principles and Rights at Work, the UN Global Compact, the UN Norms of the Sub-commission on the promotion and protection of human rights, and the Guiding Principles on Business and Human Rights.

Throughout his analysis of these regulatory initiatives, professor Deva highlights the benefits, obstacles and disadvantages of every model, providing sharp criticism on the shortcomings while trying to regulate corporate conduct in the field of human rights, and offering what could have been or still are interesting options to improve the respective frameworks.

Chapter 5 deals with the explanation of the rationale behind imposing human rights obligations to corporations. The author first analyzes the traditional capitalist views of Friedman and Sternberg and then the business case for human rights (what he terms “goodwill-nomics”), describing their postulates and then showing why they are flawed perspectives into the problem, that don’t have sound bases to compromise corporations with the respect of human rights. Then, Deva suggests that the reason why corporations should have human rights obligations is their relation to and position in society. Going a bit further in the same line of thinking, it becomes remarkably clear that whenever a breach occurs—in this case, a human rights violation—we should expect to see the rise of a responsibility of legal nature for the corporation.

After dealing with the *why* component of the argument regarding corporate responsibility, the author analyzes the *what*: which obligations and standards should be applicable to multinational corporations? It has been identified in international human rights law and doctrine that the standards that could be applied are those in the home State, those of the host State, or international standards established in international law. The author doesn’t discuss this position, but rather emphasizes on the two different kinds of approach that could be taken regarding corporate obligations in the human rights field: the *business approach*, which focuses on profit maximization prior to human rights compliance, therefore subjecting the determination of standards to be applied through its operations to the

best advantage of the company in terms of profit (a relatively close argument to his ‘goodwill-nomics’); and the *human approach*, which considers corporations an integral part of society and expects them to balance the application of home or international standards depending on which set may offer a better protection and further the realization of human rights.

After analyzing the disadvantages and shortcomings that several theories in the field have and devising a departing point from the existing initiatives at the international level, while also challenging the responsive regulation theory developed by Ian Ayres and John Braithwaite—which contends that an effective way in which corporations can be regulated is through progressive enforcement, starting with persuasion and eventually moving in a hierarchical order to stricter sanctions—he proposes an integrated theory of regulation which should include different types of measures to respond to the challenge that regulating transnational corporations poses to both national and international law. In this sense, Professor Deva counters the Ayres and Braithwaite theory’s foundations (Tis-For-Tat strategy, progressive enforcement pyramid, tripartism and enforced self-regulation) with a model that includes regulation at the institutional, national and international levels, using two implementation strategies in the form of incentives and sanctions, and then adding the “social” sanction to the already largely explored alternatives of civil and criminal punitive measures.

In his explanations regarding his proposed model, the author argues that such theory is based on two fundamental principles, which are *coordinated multiplicity* (the use of diverse measures and methods in a simultaneous manner if needed) and *informality* (this is, the use of non-state based and non-institutional methods of coercion), and that are highly desirable—if not necessary- to ensure corporate compliance with its human rights responsibilities in a diversified manner, trying to attack the problem of regulation through all angles possible and with the intervention of stakeholders that may be affected by the acts of the corporation.

Surya Deva’s book on humanizing business is a stimulating legal work, which clarifies several of the conflicting positions and the arguments made by corporations regarding the impossibility of determining corporate human rights obligations, and shines a light on the ways in which they can be held accountable. On the other hand, his theory of integrated regulation takes into consideration all the advantages and difficulties currently found

in this international law dilemma, and while keeping intact the spirit of establishing an international scheme that can make corporations subject to international obligations, he provides a deeply thought alternative that sees changes at the institutional and national levels, an option that could use all the available tools in the internet era to ensure the respect of human rights, and more importantly, the availability of avenues that victims can use to obtain redress for damages caused by corporate activity. The most important lesson remains, however, the fact that his arguments denote a way that takes into consideration the hurdles and difficulties that corporations may face while having to determine what standards to apply and respect, and then gives realistic options as to how to overcome one of the most challenging *impasses* in international law in the 21<sup>st</sup> century.

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