

BOOK REVIEW

Ingrid Landau, *Human Rights Due Diligence and Labour Governance*, Oxford University Press, 2023

Opinions may vary on whether human rights due diligence (HRDD) has contributed positively to promoting transnational human rights. But what will be the verdict if one asks whether HRDD has contributed to the advancement of transnational ‘labour rights’; and if it has, how has it worked? This book will interest anyone who asks such questions because it purports to deal with ‘the rise to prominence of HRDD as a way of conceptualising and operationalising corporate responsibility for working conditions in global supply chains’ (p. 2). Although the author explicitly states that her purpose is not to empirically prove the merits of HRDD for transnational labour rights protection or to prove its failures and propose alternatives to cure them (p. 9; p. 19), the author’s position is obvious that HRDD has not helped to improve transnational labour governance. She even proposes alternative ways to overcome the stagnancy of HRDD for labour rights protection in global supply chains. Below, I have summarised the book’s content by chapter, followed by my impressions.

In the Introduction, after a brief overview of the book the author elaborates on how a transnational labour law approach differs from a general human rights approach to HRDD, thus showing the uniqueness of her study. She points out that transnational labour law, essentially as a countervailing force to the inequality of bargaining power inherent in the employment relationship, commits itself to values such as worker protection, worker agency and social justice, and that it emphasises collectivism over individualism, process rights over outcome standards, and negotiation and bargaining over law. Therefore, this book is an exploration of what HRDD means for these transnational labour law values and approaches.

Chapters 2 and 3 explain the context in which the concept of HRDD emerged and analyse its content. The author points out that HRDD at its inception was fraught with ‘strategic ambiguities’ and that, while it did succeed in bringing business and civil society together thanks to such ambiguities, it did not bridge the gap between their views. So, contests over the meaning of HRDD were doomed to emerge over time.

Chapter 4, drawing on document analysis and semi-structured interviews with key actors working on HRDD, including businesses, trade unions, non-governmental organisations (NGOs), intergovernmental organisations (IGOs), governments and intermediaries, identifies two ‘irreconcilable’ (p. 6) ways of interpreting HRDD: the transnational labour rights logic and the business (or managerialist) logic. The former emphasises labour and human rights and worker empowerment, while the latter focuses on risk management and managerial discretion. The former conceptualises HRDD as business regulation, whereas the latter does so as risk management.

Taking advantage of these findings, Chapters 5 and 6 describe how various actors within the transnational labour governance field have embraced and applied HRDD. Chapter 5 focuses on the Organization for Economic Cooperation and Development (OECD) and the International Labor Organization (ILO). The OECD, by aligning its Guidelines on

Multinational Enterprises with the United Nations Guiding Principles on Business and Human Rights (UNGPs) and actively promoting due diligence guidelines globally, has emerged as the authoritative interpreter of HRDD even in terms of labour rights, albeit through a strictly managerialist lens. In contrast, the ILO, despite its overwhelming expertise in labour rights, struggled to respond to HRDD from the labour law perspective due to internal disagreements, resulting in almost no influence on the global interpretation of HRDD.

Chapter 6 examines the legalisation of HRDD in Anglo-American countries and continental Europe, categorising these laws into two broad approaches: statutory deference and statutory elaboration. The former, observed in the United States, United Kingdom and Australia, reflects a managerialist interpretation of HRDD. Meanwhile, the latter, evident in continental European countries like France, Germany and the coming EU Directive, embodies a more worker-centric understanding of HRDD. The author points out, however, that the statutory approach remains largely untested, meaning there is 'a real possibility that HRDD's legislation will ultimately *reinforce* existing private governance approaches' (p. 188, italics added).

Chapter 7 explores emerging actors and institutions in the changed landscape of transnational labour governance, which includes courts, professional intermediaries and the OECD. The author has reservations about whether this development is desirable from a transnational labour law perspective.

Chapter 8 recommends several measures to strengthen HRDD initiatives for transnational labour rights. At the same time, the author warns us not to forget other arguably more effective mechanisms such as state enforcement of domestic and international labour law, transnational industrial relations agreements (TIRA), international labour arbitration and OECD National Contact Points. For the author, HRDD is simply one of multiple mechanisms for transnational labour protection, and it is not so promising.

In short, the book argues that while HRDD has been welcomed by transnational labour movements, and even legalised in part thanks to them, the actual conceptualisation and operationalisation of HRDD have been dominated by the managerialist logic rather than the transnational labour rights logic. The author sees this outcome as a major setback for the transnational labour movement.

The most important and unique achievement of this research in both academic and practical terms lies in the empirical validation of two distinct ways of HRDD interpretations: the transnational labour rights logic and the business logic. Though not specifically named, the methodology to coin these concepts amounts to phenomenological qualitative research, yielding Weberian ideal types. The utility of ideal types hinges on the extent to which they are useful in describing social phenomena. As seen in the above summary of this book, the proposed two concepts have demonstrated their high utility by successfully serving the description of the trajectory of HRDD practices. In the same way, they may prove to be useful in follow-up studies by the author or other researchers to describe further developments of HRDD at various levels and in different areas.

However, the proposed concepts seem to have exceeded their goals. While the ideal type is usually meant to help describe social realities in a value-neutral way, the concepts in the book are used not just as description tools but also as evaluation tools. The transnational labour rights logic is seen as the 'ideal' (good) type of HRDD, with the managerialist one being the opposite (evil) type. Thus, the author implicitly considers that HRDD is going in the wrong direction whenever it tilts towards the latter (Chapters 5 and 6). It is not clear to me why one of these ideal types derived from a few interviewees should be considered the best way for HRDD. And I wonder whether the transnational labour logic and the business logic are really 'irreconcilable'. We may well ask ourselves to reconcile, or at least strike a balance

between, the two seemingly conflicting understandings of HRDD. The ‘ideal’ type of HRDD may be found somewhere between the two distinct ideal types of HRDD understanding. I think the magic of HRDD lies in the fact that it allows us to be flexible and context-specific in conflicting situations without dogmatic insistence on one value over the others, in this case, labour rights law values over managerialist ones.

Another problem with the proposed ideal types is that they do not seem to capture the uniqueness of the transnational ‘labour law’ approach. The author explains in the introduction the difference between the human rights and labour law approaches and emphasises that this difference gives rise to the uniqueness of her study, but the concepts mobilised to evaluate HRDD from the transnational labour law perspective do not seem to take this difference seriously. This ends up obscuring what difference was found by applying the labour law perspective, rather than the human rights perspective, in evaluating HRDD in reality.

Despite certain shortcomings, anyone who believes in the ultimate importance of HRDD legislation in improving transnational labour governance will find this book interesting and relevant. It provides the reader with a very useful set of conceptual tools to describe how HRDD has been understood and operationalised to date, problems that have emerged due to such understandings (or misunderstandings), and solutions for stronger transnational labour rights protection.

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