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## **The Promise and Limits of Private Power**

**By Richard M Locke**

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*The Promise and Limits of Private Power* opens with the vignette of an electronics worker in Suzhou, China seeking compensation for chemical poisoning he suffered at work. His appeal was not to the factory owner who employed him or to the relevant Chinese government agency responsible for supervising his working conditions, but to the global brand whose goods he was working on: 'We hope Apple will heed to its corporate social responsibility' (Locke 2013, 1). It is this broader trend — the reliance on (and acceptance of, by some companies) the responsibilities of multinational companies to ensure humane working conditions for all those involved in the global production of their goods — that is the focus of Locke's compelling new book.

In 1984 in Bhopal, India, an industrial gas leak accident at a pesticide plant killed more than 3000 people and injured thousands more. The plant was operated by Union Carbide India Ltd, the Indian subsidiary of US-based Union Carbide Corporation. Litigation in response to the accident was pursued in both US and Indian courts, but with limited results.<sup>1</sup> The reaction of the principal companies involved was generally denial and a refusal to take responsibility for their role in this massive industrial accident. The matter lingered (and still lingers), with limited redress for the many victims.

Fast forward to April 2013, where public attention was focused on the collapse of a building in Dhaka, Bangladesh containing five garment factories. More than 1100 people were killed. Numerous global brands sourced clothing from these factories and widespread media interest quickly pinpointed the European and American brands involved and publicly queried the adequacy of their responses. Brands were put on notice that they had a responsibility (if not legal, then perhaps moral) to both prevent future tragedies and provide redress.

These are two very different tragedies, with different causes, but ultimately what both demonstrate — despite the nearly 30-year gap between the two — is that poverty continues to drive workers into situations where they can't say 'no' for fear of losing their jobs; that local and global companies around the world continue to

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<sup>1</sup>In re: Union Carbide Corporation Gas Plant Disaster at Bhopal, India in December 1984. MDL Docket No. 626, U.S. District Court, Southern District of New York, Ordered November 8, 1985. Interlocutory Application No. 19, Filed in Court of District Judge, Bhopal, in Regular Suit No. 1113 of 1986, Date, February 4, 1986; Order 05-04-1989 in Civil Appeal Nos. 3187-89, *Union Carbide Corporation v Union of India*, Supreme Court of India.

look the other way and ignore poor working conditions in order to optimise low production costs; and that there remain limited options for pursuing redress for the victims of such disasters. One glaring difference between Bhopal and Dhaka is how much greater global attention is now being paid to the responsibilities of multinational firms and the demand that companies find a 'solution' (Manik, Greenhouse and Yardley 2013). In both disasters, there is evident limited legal liability on the part of the global companies to act, but society's expectations have changed and there is now a greater understanding of a company's basic responsibility to respect the human rights of the workers in the factories that these global brands neither own nor operate.

In 2011, the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights, which highlight the need for effective remedies as an essential element of the international framework for these issues (Human Rights Council 2011). The 'protect, respect, remedy' framework endorsed by the Council assigns states the primary duty to protect rights; affirms that companies have a responsibility to respect rights; and calls on governments and companies to develop meaningful remedies when rights are violated. This is a useful foundation for future action and reaffirms the responsibility (if not the legal obligation) of companies to improve working conditions. But, well before 2011 and in the period between the Bhopal and Dhaka disasters, many global companies had already been involved in establishing or working within private compliance programs — with codes of conduct and audits of suppliers — to implement this responsibility. In some sectors and in some countries, the willingness of companies to either proactively or (more often) reactively improve working conditions in their supplier factories has outstripped the willingness of some national governments to confront and more clearly articulate their own understanding of what such corporate responsibility might entail.

Until recently, responsibility for protecting and advancing respect for human rights had been assumed to be the responsibility of the state. It is only quite recently that discussion has shifted to focus squarely on the human rights responsibilities of corporations. International human rights law and its state-centric framework for protecting rights is proving inadequate to stem (or redress) the rise of corporate rights violations, and is thus proving to be more of a backdrop for the development of private mechanisms to prevent and protect individuals from corporate rights violations, rather than being the prism through which accountability might be filtered. An obsession with maintaining the traditional state-focused status quo means that while the theoretical primacy of the state's protection obligations remains, the unwillingness and/or inability of many governments to fulfil this task with respect to companies has led to protection gaps.

The development of private compliance mechanisms (whose numbers have dramatically increased in the last 20 years or so) that directly involve corporations in

the protection of human rights attempts to fill such gaps. Locke's empirical study of various private initiatives to enforce fair labour standards within global supply chains is an important contribution to this field, both from an academic viewpoint and, more importantly, from a practical perspective. What works and what doesn't in an effort to protect the basic rights of workers? Locke uses unique data (including internal audit reports, access to more than 120 supply chain factories, and 700 interviews in 14 countries) from several major global brands (Nike, Hewlett Packard, Phillips-Van Heusen) and the International Labour Organization to examine both the promise and the limitations of these approaches to actually improving working conditions, wages and working hours for the millions of workers employed in today's global supply chains.

One has the sense that when Locke initiated this research about a decade ago, he might have started with the assumption that these private compliance mechanisms would be sufficient to improve working conditions and create safer supply chains. It was obvious that governments in many of the countries where the goods were being produced were unable or unwilling to legislate and, more importantly, enforce improved working conditions, so it seemed logical for the non-state sector (including companies, NGOs, unions, industry bodies and/or international organisations) to pick up the slack. However, over the years, Locke found that private intervention was not enough. This book asserts that for real change to occur, governments must get involved. Locke's empirical study demonstrates that the problem is not one that can simply be isolated or fixed by focusing on improvements at the factory level. Attention also needs to address the policies and practices that are being foisted on the factory from the *upstream* retailers and global buyers who place the orders in those factories. Last-minute changes to order size and styles reverberate at the factory level and contribute to poor working conditions, particularly impacting wages and overtime hours.

Locke's book is worth reading simply for access to the data he has gathered, but it is not a book of statistics. The book is valuable for its discussion on how regulation (both private voluntary regulation and state regulation) must be combined to tackle these inherent labour problems, and how this unfolds in a world of volatile consumer markets that require increased flexibility in production, rigid labour markets that do not allow flexibility, and rising costs that incentivise cost cutting. Locke's analysis does not provide a one-stop solution to the problem and, in some ways, raises more questions than answers — in particular, how to replicate a model for improved working conditions beyond specific sectors and countries, and how to reach those companies that are not brand or reputation focused. But what is most evident — not only from this book, but from Dhaka and almost any factory producing these goods today for the global market — is that we are facing an environment of increasing casualisation of the employment relationship all along the supply chain, short-term-ism and a zero-sum business model. The short-term and longer-term implications of this model for workers' rights are horrific, and Locke's

book provides some valuable insights on how we might avoid at least some of the human rights violations that are occurring every day in the global marketplace.

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## **References**

Amnesty International (2004) *Clouds of Injustice: Bhopal Disaster 20 Years On* [Online] Available: [www.amnesty.org/en/library/asset/ASA20/015/2004/en/fa14a821-d584-11dd-bb24-1fb85fe8fa05/asa200152004en.pdf](http://www.amnesty.org/en/library/asset/ASA20/015/2004/en/fa14a821-d584-11dd-bb24-1fb85fe8fa05/asa200152004en.pdf)

Baccaro L and Mele V (2011) 'For lack of anything better? International organizations and global corporate codes' 89(2) *Public Administration* 451–70

Cragg W (2012) 'Business and human rights: a principle and value-based analysis' in *Business and Human Rights*, ed W Cragg, Edward Elgar pp 3–46

Deva S (2012) *Regulating Corporate Human Rights Violations* Routledge

Human Rights Council (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework — Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises A/HRC/17/31*, 21 March

Locke R M (2013) *The Promise and Limits of Private Power* Cambridge University Press

Manik J A, Greenhouse S and Yardley J (2013) 'Western firms feel pressure as toll rises in Bangladesh' *New York Times* 25 April [Online] Available: [www.nytimes.com/2013/04/26/world/asia/bangladeshi-collapse-kills-many-garment-workers.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/04/26/world/asia/bangladeshi-collapse-kills-many-garment-workers.html?pagewanted=all&_r=0)

Pariotti E (2009) 'International soft law, human rights and non-state actors: towards the accountability of transnational corporations?' 10 *Human Rights Review* 139–55

Sobczak A (2006) 'Are codes of conduct in global supply chains really voluntary: from soft law regulation of labour relations to consumer law' 16(2) *Business Ethics Quarterly* 167–84

Viederman D (2013) 'Supply chains and forced labour after Rana Plaza: lessons learned' *The Guardian* 30 May [Online] Available: [www.guardian.co.uk/global-development-professionals-network/2013/may/30/rana-plaza-bangladesh-forced-labour-supply-chains](http://www.guardian.co.uk/global-development-professionals-network/2013/may/30/rana-plaza-bangladesh-forced-labour-supply-chains)