

# Regulation and Inequality at Work: Isolation and Inequality Beyond the Regulation of Labour

*Vanisha H Sukdeo*

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*Reviewed by Fenner L Stewart\**

## The Contested Grounds of Economic Order

*Regulation and Inequality at Work: Isolation and Inequality Beyond the Regulation of Labour* is Vanisha Sukdeo's first book. It presents an unnerving account of workers' rights today. The suggested culprits for this are state retrenchment and the "virtual sweatshops" at the center of today's economic order.<sup>2</sup>

The book provides a primer on the corporate social responsibility (CSR) movement and its evolution to the present. This period has witnessed the rise and fall of state-protected workers' rights, and the revival of classic liberalism.<sup>3</sup> Sukdeo traces how CSR has responded to the fall of worker protections by building an empire of non-state prohibitions on irresponsible business practices (for example, codes of conduct).<sup>4</sup> These prohibitions are backed by the watchful eye of civil society combined with the threat of retaliation from key stakeholders such as investors, creditors, and consumers.<sup>5</sup> Beyond the efficacy tied to doing the right thing,<sup>6</sup> these non-state regulations are effective because business

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1. Vanisha H Sukdeo, *Regulation and Inequality at Work: Isolation and Inequality Beyond the Regulation of Labour* (London, UK: Routledge, 2019) at 59.

2. See *ibid* at 15–18, 25–32, 46–50, 56–60, 64–72, 82–86, 141.

3. See *ibid* at 15–32.

4. See *ibid* at 83, 89, 96–111.

5. See *ibid* at 83–84, 97–103.

6. See *ibid* at 145.

takes seriously the power of such stakeholders to impose penalties upon the irresponsible by divesting from their organizations, refusing them credit, and reducing their market share.<sup>7</sup>

The book kicks off quickly from the starting blocks with a one-page preface, which introduces its general direction.<sup>8</sup> Chapter 1 describes the evolution of CSR mechanisms.<sup>9</sup> It explores historical struggles of workers and state responses to them,<sup>10</sup> ending with some thoughts on the plight of workers today.<sup>11</sup>

Chapter 2 focuses upon the emergence of the “gig economy”, and the exposure vulnerable populations have to it.<sup>12</sup> Sukdeo observes that new platforms for capital have emerged (for example, Uber), which entice workers with the promise of becoming independent, emancipating them from the drudgery of factory life.<sup>13</sup> However, Sukdeo reveals that not all is as it seems. The escape from the factory comes with a catch: workers must welcome a new virtual task master into their private lives.<sup>14</sup>

John Stuart Mill and Karl Marx offered insight into the threat of work’s intrusion into private life. Mill detailed the need for private sanctuary from the master. When he lamented the subjection of women, he declared even slaves are not subject to the master “at all hours and all minutes”; their “fixed task” allows for a barrier, beyond which “the master rarely intrudes”.<sup>15</sup> Marx warned that, if unchecked, technology would empower the agents of capital to erase the “bounds of the working day”.<sup>16</sup> Sukdeo echoes these concerns, fearing that the gig economy will further erode the distinction between work and home, which is so critical to health and human flourishing.<sup>17</sup>

In Chapter 2, Sukdeo also explains how innovations have caused a seismic shift in the nature of worker-management relations, replacing physical

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7. See Cynthia A Williams, “Corporate Social Responsibility and Corporate Governance” in Jeffrey N Gordon & Wolf-Georg Ringe, eds, *The Oxford Handbook of Corporate Law and Governance* (Oxford: Oxford University Press, 2018) 634 at 637–41.

8. See Sukdeo, *supra* note 1 at xiv.

9. See *ibid* at 18–26.

10. See *ibid* at 5–13.

11. See *ibid* at 15–32.

12. *Ibid* at 53–64.

13. See *ibid* at 65–67.

14. See *ibid* at 71–73.

15. John Stuart Mill, *The Subjection of Women* (Mineola, NY: Dover Publications, 1997) at 31.

16. Karl Marx, *Capital: A Critique of Political Economy—The Process of Capitalist Production*, vol 1, ed by Frederick Engels, translated from the 3rd ed by Samuel Moore & Edward Aveling (New York: International Publishers Co, 1967) at 265.

17. See Sukdeo, *supra* note 1 at 72.

proximities with virtual ones.<sup>18</sup> The result of replacing *workplaces* with *virtual spaces* has been new opportunities for management to escape the countervailing effects of organized labour.<sup>19</sup> Sukdeo asserts that these workers should be considered a “new proletariat”,<sup>20</sup> who are unorganized and unprotected, working in virtually-networked isolation from traditional forms of solidarity.<sup>21</sup> The chapter leaves one haunted with the image of workers, who unwittingly mask their last resort status by declaring their slide in social position as a “choice” to emancipate themselves from the workplace.<sup>22</sup>

Chapter 3 starts by questioning the merits of state-protected workers’ rights, identifying four central problems: (1) they can be time consuming to enact; (2) they can be difficult to reform after enacted; (3) yet, they have been repealed with ease; and (4) they can be compromised by slack enforcement.<sup>23</sup> She then details her anointed solution: non-state mechanisms that fill the gaps in the regulation of worker protections, providing “layers of governance” that rest “on top of mandatory legal requirements”.<sup>24</sup>

Chapter 4 is Sukdeo’s most personal and intimate chapter, where the reader is allowed to peak between the words to see the author’s frustration.<sup>25</sup> She outlines the superstructure of cultural institutions, including state law, which guides workers to “accept the inequalities” they suffer because “they feel that they will one day benefit” from them.<sup>26</sup> Her explanation largely mirrors Max Weber’s theory on how the “highly privileged” minority of a given society establishes a “stable distribution of power”.<sup>27</sup> Weber opined that they will generate a “myth”, which convinces the majority that their voluntary subjugation to said minority is primarily for their benefit.<sup>28</sup> Weber’s theory still rings true today. A normative cocktail—two parts liberalism and one part meritocracy—soothes workers with the promise that if they work hard and show initiative, they too will one day be in consumerism’s “winner’s circle”.<sup>29</sup>

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18. See *ibid* at 72–73.

19. See *ibid* at 56–57, 70–73.

20. *Ibid* at 58.

21. See *ibid* at 53–65.

22. *Ibid* at 53.

23. See *ibid* at 82–83.

24. *Ibid* at 89.

25. See *ibid* at 124–30.

26. *Ibid* at 120.

27. Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed by Guenther Roth & Claus Wittich (New York: Bedminster Press, 1968) vol 3 at 953. See also *ibid* at 952–54.

28. *Ibid*.

29. William W Bratton, “Welfare, Dialectic, and Mediation in Corporate Law” (2005) 2:1 Berkeley Bus LJ 59 at 73.

In Chapter 5, Sukdeo concludes the book with a declaration: “the rules of the game have changed” and the “past is unlikely to return”.<sup>30</sup> Certainly, the rules have improved. CSR is largely responsible for many new forms of “multiscalar” regulated spaces,<sup>31</sup> which have fortified compliance and business accountability weakened by state retrenchment from workers’ rights.<sup>32</sup> This regulatory experimentalism is reconstituting how “states, markets, civil society groups, and individuals interact”, transforming notions of both the public and the private within governance today.<sup>33</sup>

However, a reader might be forgiven for still feeling unsettled after closing the book. The book’s characterization of workers’ plight casts a long shadow over CSR’s achievements.<sup>34</sup> Indeed, much has changed,<sup>35</sup> but much remains the same. The normative base that inspired the resurrection of nineteenth century liberalism is still intact,<sup>36</sup> and significant ideological impediments to CSR remain embedded firmly in state and market functions.<sup>37</sup> Even the optimistic Sukdeo

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30. Sukdeo, *supra* note 1 at 145.

31. Cristie Ford, *Innovation and the State: Finance, Regulation, and Justice* (New York: Cambridge University Press, 2017) at 3.

32. Indeed, even traditional state regulation requires co-operation from companies to ensure adequate regulation. See Sukdeo, *supra* note 1 at 15–32, 82–83, 89–110; James W Coleman, “How Cheap is Corporate Talk? Comparing Companies’ Comments on Regulations with Their Securities Disclosures” (2016) 40:1 Harv Envtl L Rev 47 (defining the “Regulator’s Dilemma”, which forces the government to excavate the truth from dissembling company statements about what standards would be feasible at 49–56).

33. Kerry Rittich, “Functionalism and Formalism: Their Latest Incarnations in Contemporary Development and Governance Debates” (2005) 55:3 UTLJ 853 at 856. See also James W Coleman, “Energy Competition: From Commodity to Boutique and Back” in Klaus Mathis & Avishalom Tor, eds, *Economic Analysis of Law in European Legal Scholarship: New Developments in Competition Law and Economics* (Cham, Switzerland: Springer Nature Switzerland, 2019) vol 7, 321 (explaining how consumers, rather than companies, have begun to drive efforts to reduce pollution from international energy supply chains).

34. See Sukdeo, *supra* note 1 at 15–32, 53–65.

35. See *ibid* at 82–83, 89, 102–11. But see Fenner L Stewart & Anthony G Cioni, “Holistic Security Risk Management Strategies for E&Ps: Optimizing Performance by Reducing Surface Risk” (2018) 11 J World Energy L & Bus 49 at 65–79; Williams, *supra* note 7 at 637–41; Ford, *supra* note 31 at 116.

36. See David Harvey, “Neoliberalism as Creative Destruction” (2007) 610:1 Ann Am Acad 22 (arguing that “[n]eoliberalism has become a hegemonic discourse with pervasive effects on ways of thought and political-economic practices to the point where it is now part of the commonsense way we interpret, live in, and understand the world” at 22).

37. See Ford, *supra* note 31 at 127–28. For more on how market rationales revile CSR norms, see Fenner L Stewart, “Behind the Cloak of Corporate Social Responsibility: Safeguards for

shows hints of her frustration with how much of the *status quo ante* remains.<sup>38</sup> Time and again, liberalism’s “turn to rights”<sup>39</sup> has stymied state-provided worker protections,<sup>40</sup> sustaining the long-standing irony of celebrating gross inequality as freedom.<sup>41</sup>

Sukdeo’s frustration with the state is warranted, and probably reflects the hearts of many within CSR. Unfortunately, such frustrations can lead to the belief that the state is antithetical to CSR. This construction of the state as a foe to CSR may be factually accurate in some cases, but may have also lured some within CSR to become entangled within deregulatory “politics”,<sup>42</sup> forging

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Private Participation Within Institutional Design” (2018) 25:1 Ind J Global Leg Stud 233; Fenner L Stewart, “The Corporation, New Governance, and the Power of the Publicization Narrative” (2014) 21:2 Ind J Global Leg Stud 513. For more on the negative role liberalism plays and what civic republicanism can do to help, see Fenner L Stewart, “Dominion and the Empire of Laws” (2019) 36 Windsor YB Access Just [forthcoming in 2019] [Stewart, “Dominion”]; William W Bratton, “Enron and the Dark Side of Shareholder Value” (2002) 76:5/6 Tul L Rev 1275 at 1277–85 [Bratton, “Enron”]. See also John Roberts, “The Manufacture of Corporate Social Responsibility: Constructing Corporate Sensibility” (2003) 10:2 Organization 249; Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997).

38. See Sukdeo, *supra* note 1 at 15–32, 82–83, 124–26.

39. Helena Rosenblatt, *The Lost History of Liberalism: From Ancient Rome to the Twenty-First Century* (Princeton, NJ: Princeton University Press, 2018) at 272, 274. See also *ibid* at 262–64, 271–74.

40. See Harvey, *supra* note 36 at 22; Stewart, “Dominion”, *supra* note 37; Pettit, *supra* note 37 at 21. See also Isaiah Berlin, *Liberty: Incorporating Four Essays on Liberty*, ed by Henry Hardy (Oxford: Oxford University Press, 2002) (explaining that liberalism’s formula for legitimate state action is “the maximum degree of non-interference compatible with the minimum demands of social life” at 174).

41. See Morris R Cohen, “The Basis of Contract” (1933) 46:4 Harv L Rev 553 (arguing that a worker “who is under economic necessity is not really free” and without revision to the doctrine of free contract under such circumstances, few protections against “contracts of slavery” exist in practice at 587); Robert L Hale, “Bargaining, Duress, and Economic Liberty” (1943) 43:5 Colum L Rev 603 (pleading that the pattern of economic relationships could improve radically with “just as little governmental interference with freedom of contract” and that such intervention would be not “inimical to economic liberty, or . . . free enterprise” at 628).

42. Bratton, “Enron”, *supra* note 37 at 1278. Bratton details how Enron was celebrated as a model for CSR, but merely exploited deregulatory politics to defraud stakeholders of billions of dollars. In the aftermath, some tried to spin the scandal as the fault of a few rogue actors—just a couple of bad apples—in an attempt to hide how systemic deregulation blinded regulators to the ever-present risk of the spectrum of predatory behaviours employed by corporate actors. *Ibid* at 1278–85.

counterproductive alliances with those who are more concerned with avoiding the cost of regulation than with promoting socially responsible behaviour.<sup>43</sup>

Alternatively, the state should be conceived as a ground to be contested instead of as a foe. This shift in perspective may focus efforts, broadening them from targeted engagements at the organizational level (that is, business organizations and their networks<sup>44</sup>) to a broader engagement at the institutional one<sup>45</sup> (that is, the normative context at the foundation of today's economic order). I have argued elsewhere that this context, which enthrones the virtues of negative liberty within the social construction of our everyday life, presents the greatest challenge to CSR today.<sup>46</sup>

In sum, Sukdeo's passion for workers' rights is present from page one of *Regulation and Inequality at Work*, and it is well worth a read. Her book is a welcomed harbinger, declaring the arrival of the next generation of Canadian political economists.

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43. See Ford, *supra* note 31 (arguing how progressive scholars made a critical error when they assumed that a consensus existed between themselves and more market-minded actors around “decentralization, self-regulation, and knocking down rigid pre-existing regulatory apparatuses” at 128).

44. See e.g. Stewart & Cioni, *supra* note 35 at 65–79.

45. See John R Searle, “What is an Institution?” (2005) 1:1 J Institutional Economics 1 (arguing that the basis of an institution is the intersubjective negotiation of reality, which establishes some forms of knowledge as privileged, and that such privileged knowledge (e.g., law or the word of God) influences how people understand and navigate their environment).

46. See Stewart, “Dominion”, *supra* note 37.