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Uneven Development, Uneven Response: The Relentless Search for Meaningful Regulation of GVCs

Jonathan Morris,  Jean Jenkins 
and Jimmy Donaghey 

The regulation of employment in global value chains (GVCs) is a story of the interaction of corporation and state in transnational space, where uneven international development has allowed the commodification and exploitation of international labour. Global standards are well articulated by bodies such as the International Labour Organization (ILO) and UN. We know what ‘decent work’ should look like as well as what all workers should enjoy as basic employment and human rights. Yet, internationally, the different mechanisms of private and public regulation fail at the point of implementation and across the world we see no fundamental shift in the condition of labour in terms of its capacity for social or economic upgrading. This article examines the regulatory mechanisms, and outcomes of regulation, of industrial relations in GVCs. It commends a future research agenda to illuminate the interaction between different sources of standards and rules and the complexities of intersecting private and public regulation, in the pursuit of enforceable, meaningful regulation of work and employment in international supply chains.

1. Introduction

As engines of growth in contemporary capitalism, the dynamics of global value chains (GVCs) demand the attention of labour scholars. While early iterations of GVC theory (Gereffi 1994; Gereffi *et al.* 2005) and global production network (GPN) analysis (Dicken *et al.* 2001) focussed on inter-firm power relations (i.e. relations between capital) and largely ‘neglected or generally understated labour as an analytical category’ (Taylor *et al.* 2015: 5, emphasis in original, in recent years there has been a growing literature on conditions of work and employment in value chains. Latterly, no matter which analytical lens is used for analysis of the supply chain, be that GVC or GPN,

Jonathan Morris and Jean Jenkins are at Cardiff University. Jimmy Donaghey is at the University of South Australia.

the issue of labour's 'place' has become more central to the debate. In no small part, this is due to an intensifying focus on the human and environmental costs of failure to establish and enforce minimal labour standards across transnational space (e.g. Bartley 2018a; Newsome *et al.* 2015). However, as will be developed below, building industrial relations institutions with the capacity to fulfil the UN Guiding Principles on Business and Human Rights has come a poor second to vested interests in capital accumulation.

This article considers the regulation of employment in GVCs in the context of uneven international development and the premise that GVCs operate primarily in the interests of global capital. In particular, multinational corporations (MNCs) have taken advantage of deregulation and globalization to fragment production, while seeking out cheap sources of labour where possible (Peck 2004). This often takes the form of outsourcing production to legally independent suppliers, over whose actions the MNCs exert significant power but for whose action they have no legal liability. Alternatively, some have argued that as the key contemporary drivers of economic development, '[f]inding ways to improve working conditions in GVCs is a policy priority for governments, international organizations, unions, corporations and non-governmental organizations' (Robertson 2020: 1), but this is a view heavily contested in the GVC literature. While it may be claimed that absolute poverty has been addressed by the expansion of international capital (at least pre-Covid-19 pandemic), relative poverty persists and grows: the ordinary worker may only be made slightly *less poor* by their earnings. The predicted social and economic upgrading of workers through their work has largely failed to materialize (Barrientos *et al.* 2011) and, as Rani and Grimshaw (2019: 581) note,

the gap between richest and poorest is widening within countries, the labour share of income is declining; gender inequalities in earnings are persistent; inter-generational inequalities are accumulating; entire regions of the world are falling behind; and large portions of the world's workforce (in high- and low-income countries) have experienced real wage stagnation.

While GVCs are said to proffer a number of advantages for both host countries and labour in terms of employment opportunities, increased incomes, access to markets, intensified competition and technological upgrading (Bamber and Staritz 2016; Farole 2016) the line between exploitation and development is a fine one. For example, the ability of countries to upgrade has been shown to be limited and context-specific (Morris and Wilkinson 2004; Wilkinson *et al.* 2001) and if suppliers to international brands are to be able to survive (let alone upgrade) in highly competitive markets, then research shows that the terms of conditions for labour may have to be *downgraded* (e.g. Anner 2019; Hammer and Plugor 2019; Selwyn 2017). With labour's situation not substantially improved and persisting inequality both within and between states, there are a number of major questions to be addressed in relation to the rules that govern work and employment in GVCs.

This article utilizes the ‘Protect, Respect, Remedy’ framework embodied in the UN Guiding Principles on Business and Human Rights (also known as the Ruggie Framework, UN 2011) in structuring its analysis of the respective roles of the state and business, and the implications for labour, in the regulation of work in transnational space. It comprises four main sections. First, in terms of ‘Protect’, we consider the current state of rule-making and standard setting in the international arena. In Section 3, we evaluate the extent to which there has been protection and respect of statutory and private-sector commitments to labour standards, noting briefly how many of labour’s gains in the twentieth century have been lost and considering the various means by which twenty-first century institutions are being created. Section 4 of the article examines the potential effect of the multi-layering of private and public rules and regulation in terms of remedying extant wrongs. The final section considers a worthwhile future research agenda, with reference to issues raised by other papers in this volume and a comment on the profound, but as yet uncertain, implications of COVID-19 for global production.

2. Rule-making and standard setting in GVCs: the state’s duty to protect

The ‘rules of employment are shaped by their legal, political, economic, social and historical context’ (Edwards 1995: 5), and will be imposed unilaterally or agreed jointly by the various parties to the employment relationship. However, such context takes on new meaning in the case of the GVC, where fragmented employment relationships play out on a transnational scale. Since ‘a neoliberal free-market utopia [was] unleashed by globalisation’ in the 1980s, (Munck 2002: 5) global capital has expanded in the context of ‘falling regulatory barriers to international trade, significant advances in communication technologies and declining transportation costs, which facilitate[d] the dispersion of production activities across space’ (Gibbon *et al.* 2008). In this context, the ‘hypermobility of capital’ and attendant global shift in sites of production from what might be crudely called the ‘global north’ to the ‘global south’ has been implicated in a ‘race to the bottom’ in labour conditions ‘on a world scale’ (Silver 2003: 4).

This global shift has been associated with significant changes in the approach of actors. Take states, for example, where the international mobility of capital has led to a significant shift in terms of their regulatory role. As argued by Cerny (1997), the function of states may shift to being one of increasing competitiveness rather than protecting citizens as, in the context of uneven global development, attracting MNCs to source from their country is viewed as a mechanism for developing economically. Thus, states and governments often have incentives to maintain competitiveness by having low labour standards, weak regulation and being active or complicit in actions to suppress union organizing (e.g. Anner 2015; Bair *et al.* 2020; Barrientos *et al.* 2019). In this context, the premise that newly industrializing regions of the world lack the necessary statutory instruments to protect employment

rights and workers may therefore be better served by corporate-driven, private regulation, is highly contested. Bartley (2018a: 38–41) makes a crucial point when he argues that ‘regulatory voids’ and ‘governance gaps’ rarely exist on statute books unless deliberately created by weak implementation of standards and deliberate omissions that give the misleading appearance of ‘empty [regulatory] spaces’.

In such conditions, the weak associational and/or structural power of organized labour along a global chain of production is increasingly unlikely to provide the leverage necessary to pressure the employer to bargain collectively in a process of free and voluntary joint regulation (Reinecke and Donaghey 2015). Furthermore, it is clear that in the process of capturing value from production, corporations find compliance with some rules more important than others. While service or product specifications and standards may be observed, labour standards are far more vulnerable to non-compliance by states and corporations alike (Bartley 2018a: 2). That accountability for exploitative, poor conditions of work is evaded is due in no small part to there being ‘no government at the global level’ that can enforce universal international standards along the supply chain (see Ruggie 2014:5).

While there have been a number of intergovernmental efforts to increase MNC responsibility for employment in their suppliers, their efficacy has been limited, to say the least. As far back as 1976 the OECD published its Guidelines for Multinational Enterprises (revised and updated in 2000). This was followed in 1977, by the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multi-national Enterprises and Social Policy (last updated in 2017) and in 2000 the UN Global Compact was published. All contained provisions around the regulation of work within the supply chain but with no meaningful means of implementation or remedification (Compa 2004, 2008). More recently, the UN Guiding Principles on Business and Human Rights (Ruggie Framework) expressed clear responsibilities for states and corporations alike, irrespective of place, and provided universal standards to inform a system of international governance. This Ruggie (2014:5) defined as ‘the systems of authoritative norms, rules, institutions and practices by means of which any collectivity, from the local to the global, manages its common affairs’. In the Ruggie framework, the state is assigned a clear duty to *protect* workers from vested interests including business, the corporation has a duty to *respect* the human rights of their workers and the law of the land, and both state and corporations are enjoined to provide *access to remedy* in the case of a violation. However, in order that such voluntary standards may be taken up, it requires that private actors engage in voluntary restraint (Ruggie 2001, 2007). This does not always follow, though much effort is devoted by corporations in projecting just such an impression. As Wheeler (2015) argues, the lack of a meaningful transnational legal system means the approach may be dependent on whether public opinion is enough to move individual MNCs towards meaningful action.

Alongside and in tune with the Ruggie framework, stands the ILO with its 100 year history of aiming for a better world of work and higher standards of transnational regulation. The structures underpinning the ILO are a strong remnant from the economic and political models which dominated until the 1970s: employment regulation being based in broadly, social democratic nation states with encompassing representation by trade unions and employer associations. Since neoliberalism acquired hegemonic status and China's role in world trade changed and grew, that world no longer exists and former ILO staffer, Standing (2008), has been stinging in his criticism of the failure of the ILO to adapt to the changed environment under globalization. In particular, he highlighted the institutional design of the ILO was one which was based upon a European approach to labour issues, with the expectation that states would agree and implement new ILO conventions. The supply chain model poses huge questions for this model, and as Director General Ryder (2015:754) stated "It makes less and less sense for the ILO to supervise its standards nation state by nation state, on the basis of freely ratified Conventions, when supply chains are cutting across those nation states".

Thus, in addition to long-established conventions and their associated labour standards, the ILO has become increasingly focussed on its Decent Work agenda, defined as employment which,

involves opportunities for work that is productive and delivers a fair income; provides security in the workplace and social protection for workers and their families; offers better prospects for personal development and encourages social integration; gives people the freedom to express their concerns, to organize and to participate in decisions that affect their lives; and guarantees equal opportunities and equal treatment for all (ILO 2007).

In 2016, the theme of the ILO International Labour Conference was 'decent work in global supply chains' and under Guy Ryder's leadership the ILO has taken a more proactive role in relation to global supply chain governance (Thomas and Turnbull 2018). However, the core dilemma we return to, is that all the aforementioned initiatives lack mechanisms by which they may be easily enforced (Compa 2008).

3. Implementation of standards and rules and the corporation's duty to respect business and human rights at work: the story so far ...

The foregoing discussion suggests that standards of good practice are clearly articulated, the issue is how they operationalized in the rules that govern work and industrial relations. Value chains have been described as 'infrastructures for the flow of rules' (Bartley 2018a: 2), yet who makes the rules and what they govern is highly contested. In the context of highly competitive supply chain relationships, employers' hostility towards collective organization and joint decision-making is equaled only by their antipathy to statutory regulation. At different times and in different contexts, the corporation plays 'multiple roles

— sponsor, inhibitor, and provider [of different types of rules] — in the drama of global governance’ (Bartley 2018b: 158). Thus the proximity of business interests to political influence provides a range of opportunities for corporate intervention in the drafting and implementation of public regulation (Harvey 2005: 34) and supports the clear corporate predilection for unilateral private-sector rule-making over terms of employment (Fransen 2012).

As noted, even if insistent on making their own rules, corporations have an abundance of guidance to which to refer. The various international standards are remarkably consistent in intent, even if exact wording differs, and corporate commitments to the same broad principles regularly appear in MNCs’ voluntary codes of practice, which are generally called Codes of Conduct (CoC). CoCs are essentially corporate-driven, unilaterally determined codes of standards on a range of matters. These include social compliance which typically encompasses conditions of employment and commitment to freedom of association (FoA). FoA is defined by the ILO in its 1998 Declaration on Fundamental Principles and Rights at Work as an ‘enabling right’ that empowers workers to defend their own collective interests — just the thing, it seems, that employers, often with state silence if not overt support, typically seek to suppress or evade. It is important here to understand just how much opposition labour activists face on the ground. It ranges from low level daily intimidation to naked violence (Anner 2015; Bair *et al.* 2020; Jenkins 2013). For example, in 2018, at a first tier clothing factory in India, supplying major US and American brands, workers identified as having spoken to a local trade union were dragged in front of other workers by the management team, who then incited them to beat the trade union sympathizers as people whose activism would close the factory down (Jenkins 2020a). In this case, exposure through an independent investigation by the Worker Rights Consortium resulted in action by the brands supplied by the factory, yet to that point neither the state nor the standard voluntary corporate systems of auditing had addressed systemic violation of rights to freedom of association. Thus while in theory, CoCs define the standards to which many MNCs expect their subsidiaries and suppliers to adhere if they are to maintain business, in practice violations of first principles may be tolerated or overlooked in the value chain, or excused by ‘plausible deniability’ on the part of the lead firm.

Here the work of Locke (2013) is pertinent, though to some extent his assessment of CoCs has shifted in recent years. Using the case of Nike, Locke and colleagues initially argued that CoCs could be useful in terms of shifting suppliers from a compliance-based approach to a commitment-based approach (Locke *et al.* 2007). Locke’s initial optimism about the potential utility of CoCs was later tempered, as he concluded that as they mature, implementation can significantly weaken, and when faced with the competing demands of purchasing or procurement departments and the corporate social responsibility (CSR) departments, the economic bottom-line generally triumphs over social interests (Locke 2013). Distelhorst and colleagues (2017) perhaps get to the crux of CoCs: while they may raise the floor in terms of

basic standards, they quickly become an instrument of diminishing returns once this level has been reached.

Typically, the implementation of CoCs is predicated upon the ‘reputational investment’ of lead firms in the supply chain and the ‘assessment capacity’ of auditing and certification bodies to enforce them (Bartley 2018a: 2). While proponents of the CSR approach have suggested that lead firms play a positive role in establishing private governance where effective public regulation goes unenforced (Scherer and Palazzo 2007), such initiatives have proven equally unreliable in the absence of robust and binding mechanisms of enforcement (Locke 2013). Examples of transgressions are legion and appear in tier one firms with relatively close connections to the lead firm just as much as in second and third tier workplaces further down the supply chain (e.g. Anner 2019; Hammer and Plugor 2019; Jenkins 2020a,b; Jenkins and Blyton 2017; Kuruvilla *et al.* 2020; Mezzadri 2014).

As an example of systemic failure in enforcement, the Ali Enterprises factory fire in Pakistan in 2012 is as illuminating as it is distressing. Ali Enterprises was a tier one supplier of clothing to a European brand, Kik. The brand required its suppliers to be certified as compliant with the standard SA 8000. This is a recognized international standard promulgated by Social Accountability International — itself an international NGO — for social compliance and safety. The auditing of suppliers for the purposes of certification was delegated to an Italian auditing firm, RINA, which in turn charged local auditors in Pakistan with the local audit. The factory was duly certified as a safe and compliant workplace. Just a few short weeks after SA 8000 certification was approved at the factory, a fire erupted in which some 500 workers found themselves trapped with just one viable exit from the premises. While exact facts were contested by the brand and the employer, survivors claimed that factory doors and fire exits were either obstructed or locked, windows were barred and there was an absence of fire-fighting equipment. It is estimated that around 262 people died in the blaze and a further unspecified number of people (in the region of around 50) were injured as they tried to escape (Jenkins 2020b; Terwindt and Saage-Maas 2016). Small wonder that, at the grass roots, voluntary codes and auditing have little credibility left to lose.

Scholars such as Le Baron (Fransen and Le Baron 2019; Le Baron and Lister 2015) and Banerjee (2008) have argued that private regulation does little more than give business a veneer of respectability. As a key feature of the neoliberal environment, private governance constitutes initiatives led by corporations, with or without civil society input, supposedly to create systems of rules to constrain the actions of their suppliers (Donaghey *et al.* 2014; Fransen 2012). It is, in the last analysis, an example of top-down unilateral rule-making which *appears* to depoliticize labour standards while acting in a highly political manner to promote a positive image for lead firms — particularly those brands and retailers presiding over labour-intensive supply chains — who may have little meaningful engagement with either their suppliers or the workers for whom they refuse to accept liability (Banerjee

2008: 64; Bartley 2018b; Le Baron *et al.* 2017). In this topsy-turvy ‘fissured’ world (Weil 2014) of the lead firms’ creation, they themselves cause and police the problems that good supply chain governance might overcome. For example, in the case of the garment supply chain in Bangladesh, Reinecke and Donaghey (2020) highlight that while the CSR activities of MNCs did activate workplace representation on worker participation committees, many of the problems raised by workers in these forums originated in what have been termed the ‘predatory purchasing practices’ of those same lead firms (see also Anner 2019). Thus, MNCs are creating governance structures to deal with problems which they themselves generate, thereby privileging themselves as judge and jury in cases of their own violations.

The ‘story so far’ may seem an unduly pessimistic assessment of the contribution of GVCs to worker empowerment and enrichment. To be clear, it is not being disputed here that economic growth has emancipatory potential. Our critique, put simply, is that the gap between the hopes and concrete experience of labour has proved considerable. This is not a conclusion restricted to place or to be defined by the increasingly misleading conception of a global ‘north–south’ divide. The work of Pulignano, Hammer and Doerflinger (this volume, 2020), for example, analyses value chains across two countries in two beverages industries in Europe. These supply chains are essentially confined to production and labour markets in developed market economies. Nevertheless, despite their position in what might be understood a more privileged ‘global north’ location, Pulignano *et al.*’s pessimistic conclusion is that their case ‘illustrates a concomitant transnational trend of deteriorating working conditions, stemming from overall chain governance (2020, online copy page 1).

Gagliardi *et al.* (2020, this volume) strike a similar theme and further illuminate employment outcomes in general and the female wage gap in particular, by relating wages to the position of suppliers within the value chain. A well-established literature suggests that women have generally been exploited as a plentiful and easily replaceable source of ‘cheap labour’ rather than a unique or valued source of human capital in GVCs (e.g. Caraway 2007, Morris 1987; Munck 2002; Newsome *et al.* 2015). Internationally, female workforces all too often experience ‘a decent work deficit with few rights, limited protection, and a lack of voice or freedom to organize through independent unions’ (Barrientos *et al.* 2019: 732). However, Gagliardi *et al.* (2020) add to this general picture by demonstrating that it is not only ongoing traditions of gendered work but also the position of the firm in the value chain that affects employment outcomes for women in GVCs (Gagliardi *et al.* 2020: p. 1 in online version). The authors analysed the wages of workers dependent on their firm’s ‘upstreamness’ defined as its position in the value chain in relation to the ‘steps before the production of a firm meets final demand’. Using quantitative, macro-level data matching two datasets from employers and employees in Belgium, their study poses two fundamental questions, first, does upstreamness confer a wage premium upon workers in GVCs and second, does this differ between male and female workers? Their

findings suggest that even within a single country context, higher wages are found upstream in the GVC, which is perhaps unsurprising given the primary rationale for firms to outsource may be to achieve labour cost advantages (as well as harvesting favourable tariffs and state-driven incentives). The finding is nevertheless important, first for being quantitatively confirmed and second for revealing how much more it affects women, with females likely to suffer three times the disadvantage compared with males, being doubly disadvantaged by the position of the firm and their position *within* the firm. Indeed, the article contends that there are limited financial benefits of working in an upstream setting for women.

Thus despite myriad standards and stated intentions, it is difficult to come to any other conclusion than we have — hitherto at least — been unable to rely on the rule makers to enforce their rules in the absence of binding mechanisms of enforcement. Put simply, in serving vested interests in capital accumulation, those with sociopolitical-economic power, in government and in business, choose not to enforce rules and standards designed to protect the powerless. In the following section, we consider different and evolving sources of regulation in GVCs and their potential as sources of future remedy.

4. Twentieth century gains lost and twenty-first century institutions to build: the multi-layering of private and public rules and regulation as a source of remedy?

To this point in the debate, our observations suggest that standards of equal treatment and fair wages and bargaining institutions that were once established in so-called mature industrialized settings can no longer be taken for granted. Fine (2017: 359) gets to the crux of the matter when she says that the ‘decentralised structures of twenty-first century production ... [are] ... *explicitly designed to evade twentieth-century laws and enforcement capabilities*’ (emphasis added). Thus in so-called mature economies decades of ‘informalizing’, ‘modernizing’, ‘liberalizing’ and ‘flexibilising’ work has fissured employment relationships and dismantled labour’s limited gains (Standing 2011; Weil 2014), while in the newly industrializing regions that dominate today’s sites of production, formal employment relationships were rarely the norm. As Munck notes (2002: 5) ‘[w]ork has always been unstable for the majority of the world’s workers, and now this reality has become generalised due to globalisation’. Asymmetric power relations and a range of institutional barriers (e.g. Anner 2015; Bartley 2018a; Jenkins 2015) mean that collective bargaining is now a distant prospect for the majority of the world’s workers, as is the enforcement of employment rights predicated on some form of formality or non-binding principles of good practice.

In this context, scholars and campaigners have displayed an increasing interest in the multi-layering of private- and public-sector rules (Bair *et al.* 2020; Bartley 2011) and a range of transnationally focused initiatives such as legislation for corporate liability throughout the supply chain, plus other

binding instruments to make companies legally accountable for their extra-territorial activities outside their nation state. The list of endeavours to establish binding mechanisms is lengthening. For example, legislation in countries such as the United Kingdom (LeBaron and Rühkmorf 2017; Mantouvalou 2018) and Australia (Landau and Marshall 2018) aims to make firms accountable for forced labour and modern slavery transnationally. In addition, other similar types of legislation include the *Loi de Vigilance* in France (Evans 2020), US law covering conflict minerals contained in the Dodd–Franks Act (Reinecke and Ansari 2016), and EU and US laws that penalize the sale of illegally harvested wood and forestry products anywhere in the world (Bartley, 2018: 264). All the aforementioned examples represent legislative initiatives that contain as their core provisions liability for actions of MNCs for sourcing actions carried out in other countries. There are significant challenges involved in the enforcement of such legislation, however, and the process is generally lengthy, expensive and complex (see, e.g. Scherrer 2017), while all the while access to employment rights and independent freedom of association, which might deliver bargained concessions without recourse to the courts, is barred by a range of means.

The search for new ways of resolving timeless problems continues, and the institutions of industrial relations which we have formerly relied upon are being revisited in new contexts. Within the industrial relations approach, the focus has generally been placed on the extent to which workers have access to joint regulation and meaningful input to jointly agreed rules through representatives to whom they delegate their authority. One of the main aims of the ILO is to establish principles of social dialogue at the international level as one of the supportive conditions, or ‘pillars’ of decent work (Ryder 2015). This is no easy task where the broader context for trade unionism is generally hostile. Who, therefore, provides a voice for workers over their work? In the absence of associational and structural power at the point of the employment relationship, workers are increasingly forced to rely on international instruments in securing some bargaining foothold at the local level. One possibility is that the International Framework Agreements (IFAs), negotiated by the Global Union Federations (GUFs) can contribute to this end and may help secure agreements to develop industrial relations in supply chains. Since the first IFA was concluded in 1989 between Danone and the GUF the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations, the take up has been far from spectacular: the website Global Unions listed 113 IFAs in existence in January 2017. Where they are procedurally based, the emphasis is generally on issues around the rights of workers to organize and to take collective action in line with ILO Core Conventions. Those agreements which have more substantive comments generally are focused on establishing minimum floors of substantive conditions upon which local unions can build.

While they are voluntary in nature, IFAs are subject to the associational power of the GUF in terms of their enforcement (Niforou 2014). Due to the wide variety of countries covered by IFAs, they often take the form of

procedural agreements where focus is placed on companies agreeing with the GUFs that the ILO Fundamental rights are implemented throughout the company (Hammer 2005). Thus the aim of the IFA is to ‘extend labour rights within the global operations of a particular MNC’, yet the supply chain complicates things as within IFAs there is often ‘an incomplete conception of regulation through subcontractor chains’ (Davies *et al.* 2011: 124–25). While there are some exceptions, the scope of IFAs has generally been restricted to those *directly* employed by the corporation and its subsidiaries. In this circumstance, the local context is crucial (Davies *et al.* 2011: 125) as while subcontractors are more likely to offer worse conditions and be more in need of meaningful labour governance mechanisms, it may be these very subcontractors who are not covered by the IFA. To some extent, it could be said that the IFA approach to regulating work has as its focus the management of relations within MNCs, rather than the broader but concrete effects of supply chain models on work and employment (Wilkinson *et al.* 2001). Yet, there is scope in IFAs to develop the international leverage necessary to the establishment of tripartite agreements and perhaps legally binding due diligence in supply chains, a point to which the discussion will return as we consider future developments in GVCs.

A number of studies have recently emerged which look at the issue of labour leverage (Niforou 2014; Wright 2016). In particular, Wright (2016) highlights how brands have become key targets in implementing governance initiatives and this is of relevance for Gansemans *et al.*'s (2020, this volume) contribution to this volume, in which they highlight the major challenges of achieving ‘social dialogue’ in a hostile environment for trade unionism. Their case is set in the Costa Rican pineapple industry where there was no IFA to reference, but rather an international alliance of civil society organizations, including trade unions (EUROBAN), used a consumer campaign that highlighted poor working conditions and violations of trade union rights. Leverage resulting from the campaign was used to pressure the international buyer to exert its influence over its suppliers to establish social dialogue at the point of production. This contributed to the international buyer performing a brokerage role between local trade unions and employers, thereby highlighting the ways ‘institutions change through (inter)actions of multiple actors’ (Gansemans *et al.* 2020, p. 2 online version). Their article highlights the ways in which a multiplicity of actors — employers, workers, civil society, multi-stakeholder initiatives, trade unions and brands — in the international arena provide opportunities that may, ultimately, assist in the attainment of better work. The role of lead firm as broker in Gansemans *et al.*'s (2020) case is an example of the multiple, simultaneous functions undertaken by international capital (Bartley 2018a). However, it must be remembered that at the centre of the entire debate over the regulation of work in GVCs, particularly in labour-centred efficiency-driven GVCs, lies the predisposition of international buyers to avoid regulation and governance, particularly public regulation. Ganseman *et al.*'s (2020) example highlights the scope that now exists for the corporation to occupy different roles, in this case as a promoter of worker representation in

a price-sensitive supply chain over which they preside. While support for social dialogue might at first glance appear incompatible with corporate interests, there may be no contradiction in *operation* as having the discretion to occupy different roles may simply increase the scope for corporate power to choose priorities and mould behaviours throughout the supply chain.

In a similar agricultural setting, in this case tea plantation pickers in Sri Lanka, Thomas (2020, this volume) also charts the progress of social dialogue, characterized as relatively 'soft' regulation with a relatively low power base, that originates in an alliance between local unions and the ILO rather than the lead firm. Thomas (2020, 1) argues that trade union intervention allied with the engagement of the ILO, provides the basis of institutional power that allows unions to leverage not only international standards but also national regulation. In common with other critical studies, Thomas (2020) finds little direct evidence of the efficacy of consumer-driven, private, voluntary regulation in this context (e.g. through the Rainforest Alliance, UTZ Certified and the Ethical tea Partnership). Indeed, it is possible that such forms of consumer certification may have a negative impact on the potential of binding regulation as they offer a veneer of respectability to very poor labour practices. Rather, Thomas argues that conditions of work are defended via the strategic position of the plantations in the value chain and this, in turn, is linked with regulation enforced by associations with political parties and residual ethnic ties within and between nation states (in this case Sri Lanka and India). In Thomas's case, local tea sector unions, in collaboration with the ILO, have enabled workers to leverage institutional power through national and international labour standards to reinforce decent work for these workers who are at the bottom of the value chain. This is a specific (and possibly unusual) institutional context and contrasts with less favourable institutional, and anti-union contexts elsewhere. There are plentiful examples of political influence being far more malign, where conditions have been far less favourable for institutions such as the ILO, and private and public regulation has proved difficult to enforce, the Bangladeshi garment sector being one such case in point (Bair *et al.* 2020).

In contrast with the agricultural settings examined by Thomas and Gansemans *et al.*, Campling *et al.* (2020, this volume) present an examination of a relatively complex value chain, the Korean auto industry, where regulation is driven by a supranational governmental body, namely, the EU, in the form of an international free trade agreement (FTA). This context might seem to provide more fertile ground for regulation, in a sector with far higher profit margins, with the value chain primarily located in a medium waged economy (South Korea) and labour conditions (including wages) regulated at the political level of the EU. Specifically, Campling *et al.* (2020) focus on the production networks of the Hyundai Motor Group (HMG), the primary Korean auto group and the world's third largest group, and a trade agreement between the EU and South Korea. The FTA contained specific provisions to promote and protect labour standards. Such provisions might seem to provide a more favourable basis for decent work as the agreement is both

government-promoted and with an explicit intent. Despite this, Campling *et al.*'s (2020) meticulous analysis of the interaction of the trade agreement with the HMG production network and South Korea's wider political economy reveals the ways in which the possibilities of the FTA's labour provisions were limited in practical application. Drawing on multiple interviews with relevant stakeholders, Campling *et al.* (2020) advance a 'multiscalar conception of the labour regime as an analytical intermediary between GPNs and FTAs', showing how the FTA's provisions eroded HMG's domestic market and hence profitability, and thus had deleterious consequences for auto workers, and in particular peripheral immigrant workers.

5. Concluding thoughts and a future research agenda

Building institutions for the regulation of work is fraught with difficulties in the current neoliberal environment. The articles in this volume testify to the challenges of regulating transnational space, indicating that worker outcomes are a complex combination of national context and corporate positioning. Having considered the range of means, from CoCs to FTAs, currently utilized as mechanisms for international regulation, the outcomes suggest that prospects for labour do not look good. International standards of good practice in work and employment are clear and widely disseminated, yet without robust enforcement all forms of regulation fail in implementation (e.g. Bartley 2018; Kuruvilla *et al.* 2020; Locke 2013).

By its very nature, neoliberalism is about removing constraints on market activity and as Hathaway (2020) highlights, a defining feature of recent decades has been the endowment of power in corporations vis-à-vis citizens and government. In this context, corporations and states declare their commitment to principles of human rights yet continue to allow the exclusion of the independent voice of organized labour in society and at the workplace. While competitive tensions play out between capital at different points of the supply chain, the multiple roles of the lead firm allow them to act as the rescuer of locally situated labour while disclaiming responsibility for the squeezing of their suppliers' margins — a factor closely associated with labour's ills. The consequent contradictory cycle of leverage and power within the GVC may vary somewhat according to product, place and time, but with one clear continuity: this way of regulating the worker's lived experience of their workplace in an unequal world simply is not delivering decent work for the majority of the world's workers.

It is past time to accept that change is needed if we are to move forward into anything resembling a sustainable or equitable world of work. Uneven development and inequality mean that workers regularly encounter the problem Cohen (1988: 243–45) defined as the difference between 'being free to do something' and 'doing something freely'. Being free to take a job will depend on there being a 'reasonable or acceptable alternative course' and for many of the world's poorest workers, including those displaced by economic

distress, conflict or political repression, such an alternative is closed to them. It is a sad indictment of the international economy that in 2016 the ILO estimated 16 million people worldwide were in forced labour in the private economy. Of the 16 million, more than 51 per cent (57.6 per cent) were female and across all occupations, some 51 per cent of the total were in debt bondage, defined as a situation in which personal debt is used to coerce labour (ILO 2017: 11). Let us not be blind to the fact that many will be labouring in global supply chains, while millions of others — though perhaps marginally less disadvantaged and notionally ‘free’ — may nevertheless find that basic conditions of employment such as regular and reasonable hours of work, living wages and leave entitlements are increasingly out of reach. This is the world of work in 2020.

How may this be remedied? Of the various forms of regulation discussed in this article none is perfectly equipped to remedy all wrongs. However, while transnational regulation is as yet ineffective in guaranteeing business and human rights, it is increasingly difficult to conclude that the system doing anything but working exactly as intended: no rule can be taken to have serious intent without a corresponding mechanism of enforcement. Concrete experience shows that we cannot always rely on the state, nor on different modes of private regulation, or indeed philanthropic activity to emancipate and empower workers.

Real progress in international labour rights does not lie in top-down ‘gifting’ of better labour conditions but rather in the repositioning of labour. Our prescription for the future of work begins with the recognition that supply chain liability must be made easier to prosecute and workers must be seen as having a legitimate place in the process of bargaining and decision making, so that their collective voice is made audible through the ‘enabling right’ of freedom of association (Dawkins 2012) and has a legitimate and meaningful place in the workplace industrial relations of the GVC. There have been high-profile developments in binding tripartite forums and mandatory due diligence (though sadly such initiatives have typically been in response to tragedy and exposure of gross exploitation). For example, the Bangladesh Accord on Fire and Safety established post-Rana Plaza (Donaghey and Reinecke 2018; Reinecke and Donaghey 2015) and the ILO’s Better Work Lesotho (Pike 2020) programme were each created as binding forums whereby international capital afforded international and locally organized labour a place at the international bargaining table. As Donaghey and Reinecke (2018: 14) point out in the case of the Accord, which they argue is underpinned by an approach of trying to create transnational industrial democracy, ‘those affected by governance need to be part of it’ if it is to be meaningful.

The intersection of public and private regulation in this way (particularly with binding obligations enforceable in law) might offer a way forward to improving labour conditions as well as supporting rights to freedom of association (Barrientos *et al.* 2019; see also Pike 2020). That said, we should not be naïve about a new dawn. For example, research by Bair *et al.*

(2020: 1) suggests there are ongoing and concerted efforts on the part of the Bangladeshi state to undermine the Accord and its 'effective private regulation' because the state itself is 'opposed to pro-labour reforms'. Any hope of rigorous enforcement of labour standards, be they statutory or otherwise, is certainly forlorn where a key principle of the UNGP and ILO standards — the right to freedom of association — is denied, suppressed or systematically opposed in this manner by state power.

In conclusion, the relative merits of public and private regulation have been hotly contested, but are becoming a rather sterile debate as it is clear neither form of regulation works in the absence of robust enforcement. Rather, scholarly attention is turning to how these different streams of regulation intersect, how binding commitments may be established and how the regulatory capacity of international capital, labour and the state may vary, conflict and coalesce. It is clear that the role of the corporation as selective champion of some forms of regulation over others can take many forms, and that its relationship with the state matters. Thus the state remains an influential actor, even if the way that influence is felt is as a creator of regulatory absence, inaction or action, in favour of business interests (e.g. Bair *et al.* 2020; Bartley 2018a; Fine and Bartley 2019). We know what happens because we see the outcomes for labour, but detailed analysis of exactly how the diverse roles of state and corporation intersect in the politics of the GVC promises fruitful insights into how the rules that govern transnational industrial relations may continue to evolve.

Note on Covid-19

While these papers were written pre-COVID, as in many facets of life, it is impossible to ignore (and difficult to look beyond) the long- and short-term impacts of COVID-19 on global supply and value chains. As argued earlier, GVCs are essentially a response to neoliberal capitalism, to deregulation and to the incessant search for lower labour costs. One consequence is that they are extremely fragile. In both senses, they borrow from previous supply chain innovations of the 1980s and onwards, namely, the just-in-time/ Lean Production/ Toyota System (Morris and Imrie 1991). A central tenet of this system was to minimize labour costs by subcontracting production to lower cost producers and minimizing inventory. This lowered wages for those producing components in the supply chain, reduced union strength as these subcontractors were sometimes smaller and non-unionized (particularly in tier 2 and 3 suppliers) and introduced a degree of fragility. Indeed fragility (or rather agility) was a selling point of the system, at least from the perspective of consultants and business gurus.

The COVID-19 crisis has highlighted the problematic nature of this fragility, and its dramatic, negative, consequences for workers in these GVCs, both in mature and emerging industrialized economies. We will use an example from the authors' research as an illustrative example. Hassard and Morris's (2020) research on the impact of COVID-19 on work, included

several companies who were involved in relatively high-tech GVCs in software, telecoms and consulting. In the short term, the lockdown of their Indian workforce caused the IT and consulting firms problems, but very quickly, once it was apparent that face-to-face engagement with UK workers was no longer possible, they outsourced even more of their UK-based operations to India, where labour costs are far lower. Meanwhile, in India, the lockdown exposed the vast numbers of rural migrants labouring in cities who are creating value for international firms right at the heart of the GVC while employed through labour agents and other ‘middle-men’ on low wages and insecure contracts. Prior to the pandemic, such employment practices were obscured from scrutiny by the exercise of ‘plausible deniability’, defined as a process of ‘withholding or deliberately not acknowledging information by those in power ... [in order to] ... deny any involvement with certain actions or developments with a reasonable degree of believability’ (Srinivasan 2020). Such conditions are not restricted to place or product in the dynamics of today’s GVC.

The impact on the labour-intensive GVCs in east and south Asia has indeed been dramatic, in its consequences, in its context (with a lack of any national welfare support) and in its scale. For example, Anner (2020) carried out a survey of 316 Bangladeshi garment factories in March 2020, when the lockdowns were occurring in major western markets and retailers were closing. He found that nearly half of the lead firms, that is international brands and retailers, had cancelled not only future but also completed orders, three quarters were refusing to pay for raw materials already used on these orders and that 58 per cent of suppliers had shut down all or most of their factories. Such actions were widespread across the sector in producing countries such as Cambodia, Myanmar, China and Central America (Anner 2020) and involved suppliers to major UK retailers such as Primark and Matalan (Kelly 2020). Across the region, these actions led to millions of garment workers being sent home without pay and the fragility of low paid insecure work was laid bare by extreme economic distress. It is also clear that, as reported by the Business and Human Rights Resource Centre (2020) and the Clean Clothes Campaign, re-employment has been selective and has targeted union organizers at plants for dismissal. Similarly, in the United Kingdom, long-standing abuses in the garment sector — the subject of decades of research — were only fully brought to public attention when a spike in Covid-19 cases in Leicester were in part attributed to the garment workshops that had continued to operate through lockdown. The short-lived media attention embarrassed one of the main sourcing brands, Boo-hoo, but once more ‘plausible deniability’ had long hidden the abuse and exploitation that has been the subject of decades of painstaking research in the sector (Hammer 2020; Hammer and Plugor 2019).

Such examples highlight the interconnectedness of the value chain and serve to emphasize that the old global north–south or east–west divisions are increasingly inappropriate to our analysis. When it comes to conditions of work and employment, labour competes on an uneven international

stage where inequality generally drives exploitation. The risk is that far from being taken as an opportunity to create a better world, Covid-19 may exacerbate abuses. For example, in May 2020 the Indian state of Uttar Pradesh enacted the ‘Uttar Pradesh Temporary Exemption from Certain Labour Laws Ordinance, 2020’ in the interest of ‘reviving the economy’ in the wake of India’s first wave of Covid-19. Under this ordinance the Uttar Pradesh government has suspended 35 of its 38 labour laws for a period of three years. Statutes suspended included The Minimum Wages Act, The Maternity Benefit Act, The Equal Remuneration Act, The Trade Unions Act, The Industrial Employment Act, The Industrial Disputes Act and The Factories Act (Aswathi, 2020). If this is what it takes to be competitive in the international market-place for labour, it bodes very ill. In this context, it is essential to equality of opportunity, economic and social stability and the ethics of production, that we regulate and enforce rules for better work and employment in the GVC. The alternative is a dangerous spiral downward.

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