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The Disaster Chain: Counter-Mapping Global Value Chains

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The Disaster Chain: Counter-Mapping Global Value Chains

Peer Zumbansen *

Abstract: Prevailing accounts by consultancies and logistics scholars present global value chains [GVCs] as an expression of contemporary international economic integration and connectivity. As such, they are considered crucial to the pursuit of economic growth and prosperity. At the same time, GVCs are deemed susceptible to “disruptions” through natural catastrophes, restrictive trade policies or pandemics. Left out of the standard narratives, even in light of the experience of the global Coronavirus pandemic, is the actual, as such disruptive impact of global value chain capitalism on human and natural lives. Dominant depictions of global value chain governance treat labor, environment and local communities only peripherally, thus leaving the political economy of vulnerability, exploitation and destruction that is shaped by the chain in the dark.

Complementing a growing, interdisciplinary literature on global value chains, this paper focuses on the challenges that lawyers face in developing an adequate understanding of GVCs and their effect on the ground. The paper contrasts the standard management and operations narratives of GVCs with insights from labor and human rights activists, disaster law scholars as well as ethnographers, sociologists and geographers with the goal of drawing a counter-map of global value chain governance. The methodology of such a map draws on emerging trends in critical cartography and focuses, from a legal perspective, on identifying spaces of critical intervention and political-legal activism and reform.

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I. DISRUPTING THE DISRUPTION NARRATIVE

A. *The Prevailing Account of Norm and Exception*

An overwhelming literature on global supply/value chains has and continues to focus on the organizational and management dimensions that mark their infrastructure around production, distribution, trademarks and tariffs on the one hand, containerships and warehouse logistics on the other. Present-day assessments, including “post”-pandemic and war time analysis, seem to be driven by a limited number of central concerns, one being the actual organization of border-crossing economic exchanges and trade, while the other assesses the functionality of the support infrastructure in relation to countries’ participation (and rise and fall) in a competitive global marketplace.¹ This literature, from Harvard Business School² to INSEAD³ to McKinsey⁴ and the OECD,⁵ highlights the importance of “stress-testing” the system through ever-improving abilities to monitor and crisis-manage “disruptions” and “roadblocks” in what the global pandemic and the

¹ Gary Gereffi et al., *The Governance of Global Value Chains*, in GLOBAL VALUE CHAINS AND DEVELOPMENT: REDEFINING THE CONTOURS OF 21ST CENTURY CAPITALISM 108–34 (Gary Gereffi ed. 2018).

² Willy C. Shih, *Supply Chains Starting to Outweigh the Rewards?*, HARV. BUS. REV. (Mar. 21, 2022), <https://hbr.org/2022/03/are-the-risks-of-global-supply-chains-starting-to-outweigh-the-rewards>; Sean Silverthorne, *Has COVID-19 Broken the Global Value Chain?*, HARV. BUS. SCH. WORKING KNOWLEDGE (Apr. 16, 2020), <https://hbswk.hbs.edu/item/has-covid-19-broken-the-global-value-chain>.

³ Eric Buatois, *A Post-Covid Outlook: The Future of the Supply Chain*, INSEAD KNOWLEDGE (June 5, 2020), <https://knowledge.insead.edu/blog/insead-blog/a-post-covid-outlook-the-future-of-the-supply-chain-14311?vid=195> (highlighting three dimensions to focus on in the future: a return to regionalization and local sourcing, the creation of more risk-resilient financial, and organizational infrastructures and an assessment of the labor force working within the chain).

⁴ Brian Anstey et al., *Why Now Is the Time to Stress-Test Your Industrial Supply Chain*, MCKINSEY & COMPANY (July 27, 2020), <https://www.mckinsey.com/business-functions/operations/our-insights/why-now-is-the-time-to-stress-test-your-industrial-supply-chain> (identifying ‘natural disasters and escalating trade tensions between major economic blocks’ as key concerns).

⁵ OECD, *OECD Global Forum on Trade 2021: Stress Testing Global Supply Chain: Objectives, Roles and Approaches* (Oct. 26, 2021), <https://webfs.oecd.org/TADWEB/trade/events/agenda-oecd-global-forum-on-trade-2021.pdf> (urging for a shared assessment of supply chain disruptions by governments and firms); Christine Arriola et al., *Efficiency and Risk in Global Value Chains in the Context of COVID-19* 7, 33 (OECD Economics Department, Working Paper No. 1637, 2020), https://global-value-chains-in-the-context-of-covid-19_3e4b7ecf-en (assessing the pros and cons of re-regionalization versus subsequent losses of diversification); see also OECD, *Keys to Resilient Supply Chains: Policy Tools for Preparedness and Responsiveness*, <https://www.oecd.org/trade/resilient-supply-chains/> (last visited Nov. 3, 2022).

continuing Ukraine war again exposed as a highly fragile system.⁶

The following analysis seeks to disrupt these dominating narratives of exceptional events causing disruptions to an otherwise efficient and widely appreciated infrastructure of global economic exchange. By closely interrogating the mainstream discourse with regard to how it justifies what is normal and what counts as exception, disruption or catastrophe, we can challenge the routinized understanding of global value chains as the norm and events such as pandemic or war as the exception. Through contextual analysis, we may conclude that rather than a natural stage of global economic integration which may only occasionally come to an occasional halt or require adaptation,⁷ supply chains sustain and deepen a global practice of discrimination, exploitation and destruction. To continue, then, to only rarely contrast the prevailing infrastructures of global value chains with an exceptional event such as a factory fire⁸ or a stranded containership,⁹ is to turn a blind eye to the far-reaching negative impact that the current system has on human and natural life.¹⁰

As this paper will illustrate, GVCs as such are but an emblem and short formula for an intricate, multi-layered and historically evolving arrangement that encompasses far more than merely economic transactions around natural resource extraction, the production of goods and their world-wide dissemination.¹¹ Even from a legal perspective alone, the very architecture of

⁶ Elisabeth Braw, *What the Ever Given Taught the World*, FOREIGN POL'Y (Nov. 10, 2021), <https://foreignpolicy.com/2021/11/10/what-the-ever-given-taught-the-world/>.

⁷ José Pla-Barber, et al., *Governance of Global Value Chains After the Covid-19 Pandemic: A New Wave of Regionalization?*, 24 BUS. RSCH. Q. 204, 209 (2021).

⁸ Zia ur-Rehman et al., *More Than 300 Killed in Pakistani Factory Fires*, N.Y. TIMES, Sept. 12, 2012, <https://www.nytimes.com/2012/09/13/world/asia/hundreds-die-in-factory-fires-in-pakistan.html>.

⁹ Matt Leonard & Shefali Kapadia, *Timeline: How the Suez Canal Blockage Unfolded Across Supply Chains*, SUPPLYCHAINDIVE, (July 29, 2021), <https://www.supplychaindive.com/news/timeline-ever-given-evergreen-blocked-suez-canal-supply-chain/597660/>; Elisabeth Braw, *What the Ever Given Taught the World*, FOREIGN POL'Y, 1 (Nov. 10, 2021), <https://foreignpolicy.com/2021/11/10/what-the-ever-given-taught-the-world/> (“[T]he *Ever Given*’s fate mattered far beyond cybergawkers’ sudden interest in massive container ships in distress: It mattered because every day the *Ever Given* blocked the canal, dozens of ships carrying billions of dollars’ worth of cargo had to wait to enter the waterway.”).

¹⁰ See WTO, FUNG GLOB. INST., & TEMASEK FOUND. CTR. FOR TRADE & NEGOT., GLOBAL VALUE CHAINS IN A CHANGING WORLD 197 (Deborah K. Elms & Patrick Low eds., 2013), https://www.wto.org/english/res_e/booksp_e/aid4tradeglobalvalue13_e.pdf (“[W]e define sources of risk as variables whose future values are not known with certainty, either because of a lack of information regarding the underlying process, because they are the result of social, economic or political interactions that cannot be fully predicted, or both. We define risk events or outcomes as specific realizations of these uncertainties, for example a fire in a factory or a trade dispute between the United States and China.”).

¹¹ Anna Tsing, *Sorting Our Commodities: How Capitalist Value is Made Through Gifts*, 3 HAU: J. ETHNOGRAPHIC THEORY 21 (2013), <https://www.journals.uchicago.edu/doi/pdf/10.14318/hau3.1.003>.

GVCs is one that, for example, cannot be fully and adequately captured and mapped by contract or corporate law. The legal materiality of GVCs does not exhaust itself in the contractual agreements that business actors enter into with regard to the allocation of rights pertaining to extraction, production and distribution because what exist mostly outside the liberal contractual paradigm are the myriad entanglements of individuals, families, and communities in the tentacles of a transnational market-based assemblage which since the time of colonization has taken over every fiber of life even in the most remote parts of the world. Kish Parella recently reiterated that:

third parties ... are not hidden because they disguise themselves, but because we choose not to see them. And this oversight has real consequences in our legal system. Contracts do not endanger signatories only; they also pose risk of harm to third parties through a variety of externalities. These externalities are particularly evident in global supply chain contracts In the supply chain context, a variety of externalities arise implicating environmental, labor, and human rights harms.¹²

Corporate law has been another battleground over efforts to hold corporations accountable for human and labor rights violations occurring in owned or associated businesses, oftentimes operating in a location geographically distant from the headquarters of the parent company.¹³ As will be shown in greater detail below, today a large body of both domestic and international, “hard” and “soft”, regulatory instruments addresses the companies’ responsibility for rights violations in their subsidiaries or their supply chain.¹⁴ These norms are often associated with “corporate social

¹² Kishanti Parella, *Protecting Third Parties in Contracts*, 58 AM. BUS. L. J. 327, 329 (2021); Lyn K.L. Tjon Soei Len, *Hermeneutical Injustice, Contract, Law and Global Value Chains*, 16 EUR. REV. CONTR. L. 139, 141 (2020) (“While contract law can be described as the social institution of GVCs, it fails to capture the complex interconnections between private relations within GVCs. Contract law seems to obscure, rather than capture, the characteristic inter-connectedness between contractual relations in GVCs and between the experiences of various actors in such chains. In doing so, contract law may contribute to and perpetuate a particular form of systemic injustice. . .”).

¹³ See generally Emeka Duruigbo, *Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges*, 6 NW J. INT’L HUM. RTS. 222 (2008); Robert McCorquodale and Justine Nolan, *The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses*, 68 NETH. INT’L L. REV. 455, 456 (2021) (“In the rapidly developing area of business and human rights, the notion of prevention is a key element and relates to the prevention of the activities of businesses around the world from causing, contributing to or being linked to adverse human rights impacts. Business related human rights harms may take many forms and significant attention is often focused on global supply chains where too often these chains prize low cost and fast production over respect for basic labour rights.”).

¹⁴ Simon Chesterman, *Oil and Water: Regulating the Behavior of Multinational Corporations Through Law*, 36 N.Y.U. J. INT’L L. & POL. 307, 308 (2004) (“The recent turn to voluntary codes of conduct, such as the Global Compact and the idea of corporate social

responsibility” circumscribing largely voluntary, self-regulatory programs undertaken by corporate actors¹⁵ out of which overtime emerged today’s emphasis on “business and human rights” and the pursuit of detailing and implementing an effective system of “human rights due diligence.”¹⁶ Meanwhile, the evolution of these norms sheds light on the complex organizational infrastructures of global value chains and further underlines the challenges that arise until the present moment¹⁷ for attempts to overcome

responsibility, are an admission that efforts to regulate multinational corporations through such legal regimes have failed. Though there are reasons to be hopeful about the impact of these voluntary mechanisms, they shift the burden of compliance in large part from the legal division of a corporation to the marketing division.”).

¹⁵ Susan Margaret Hart, *Self-regulation, Corporate Social Responsibility, and the Business Case: Do they Work in Achieving Workplace Equality and Safety?* 92 J. BUS. ETH. 585, 586 (2010) (“This idea of self-regulation within legislative parameters can be interpreted as a move away from state responsibility and as a form of deregulation. . .] Criticisms of the self-regulatory approach in general include its inability to take account of relatively new forms of work, such as that associated with the private service sector, outsourcing, work intensification, and the casualization of work; its assumption of common interests in the workplace, which ignores unequal bargaining power between capital and labor. . . .”); Jean-Pascal Gond, Nahee Kang & Jeremy Moon, *The Government of Self-Regulation: on the Comparative Dynamics of Corporate Social Responsibility*, 40 ECON & SOC’Y 640, 646 (2011) (“CSR as a form of self-government operates alongside government, and conforms to a traditional, philanthropic view of CSR in which business makes discretionary contributions to society quite independently of government (...). [...] Within this configuration, CSR initiatives are defined and designed at the discretion of corporations. These initiatives are by nature ‘extra legal’ (...) and correspond to what McBarnet has described as ‘CSR beyond the law’ (...). Yet, they may complement governmental actions by filling institutional and legal voids in an ‘implicit’ understanding of what is required for business social legitimacy (...).”).

¹⁶ John F. Sherman III, *Human Rights Due Diligence and Corporate Governance* (Harv. Kennedy Sch. Mossavar-Rahmani Ctr. for Bus. and Gov’t Working Paper, Paper No. 79, 2021), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/CRI_WP_79_Final.pdf) Judith Schrempf- Stirling, Harry J. Van Buren III & Florian Wettstein, *Human Rights: A Promising Perspective for Business & Society*, 61 BUS. & SOC’Y 1282, 1283-84 (2022) (“Both BHR and CSR emerged in particular historical moments. CSR emerged from the perceived need of prosperous businesses to “give back” to and share their wealth with society (...). BHR, in contrast, emerged at a time in which the drawbacks of prosperous businesses—as experienced by victims of human rights violations—became increasingly evident, which in turn shifted the focus to the need for businesses not to inflict harm on people and the environment.”).

¹⁷ Nestlé USA, Inc. v. Doe, 141 S. Ct. 1931, 1937 (2021) (reiterating the Court’s recent line of argument to dismiss plaintiff’s assertion of an extraterritorial application of the Alien Tort Statute in cases where the domestically sued corporation ‘knew’ of human rights violations at one of its subsidiaries or suppliers.). *But see* the UK Supreme Court’s decision in Vedanta Resources PLC v Lungowe, [2019] UKSC 20 (where the Court based the recognition of the parent’s corporation’s “duty of care on a ‘sufficient level of intervention’ of the parent company into the conduct of the subsidiary, together with “published materials” of the parent company in which it assumed responsibility for diligent behavior of its subsidiaries.”). Gerhard Wagner, *Tort Law and Human Rights*, in TRANSNATIONAL LEGAL ACTIVISM IN GLOBAL VALUE CHAINS: THE ALI ENTERPRISES FACTORY FIRE AND THE STRUGGLE FOR JUSTICE 209, 226 (Miriam Saage-Maaß, Peer Zumbansen, Michael Bader & Palvasha Shahab eds., 2021), <https://library.oapen.org/handle/20.500.12657/50038>.

issues of separate legal personhood and jurisdiction.¹⁸ The obstacles that lawyers and activists face in their pursuit of remedy or even just recognition of corporate wrongdoing in individual lives, local communities and their natural environment, are a reflection on the level of economic integration and organizational networks that span the globe today. As Gereffi, Humphrey, Kaplinsky and Sturgeon remarked already in 2001: “In global capitalism, economic activity is not only international in scope, it is also global in organization.”¹⁹

Meanwhile, a key insight that emerges from labor and human rights activists’ efforts to improve working conditions and mitigate the detrimental effect that GVCs have on local communities²⁰ is the need to move away from the linear “cause-effect” or “perpetrator-victim” logic as a typical starting point for tort law litigation against multinationals and their subsidiaries and, instead, to focus on the *political economy* of global value chains. LeBaron and her collaborators, in an important study of 2018 on the root causes of forced labor in supply chains, define political economy as “the underlying social and political mechanisms and principles that structure systems of social organization.” These are the girders and tent poles propping up and giving shape to our everyday lives. Structures that matter for this discussion include race, gender, caste, legal systems, and the market economy. The study of political economy is the study of these structures. It examines the “rules of the game”, rather than the actions of any individual player. It is also the study of power and its unequal distribution, specifically the power to affect the shape of the global economy.²¹ And as Kate Meagher compellingly

¹⁸ Phillip I. Blumberg, *Asserting Human Rights Against Multinational Corporations Under United States Law: Conceptual and Procedural Problems*, 50 AM. J. COMP. L. 493, 495 (2002) (“The atomizing of the single enterprise of the integrated corporate group into hundreds of constituent corporation has serious implications for United States actions alleging violations of international human rights actions in the foreign operations of multinationals.”). Ekaterina Aristova, *Tort Litigation against Transnational Corporations in the English Courts: The Challenge of Jurisdiction*, 14 UTRECHT L. REV. 6, 8 (2018); Pierre-Hugues Verdier & Paul B. Stephan, *International Human Rights and Multinational Corporations: An FCPA Approach*, 101 B.U. L. REV. 1359 (2021).

¹⁹ Gary Gereffi, John Humphrey, Raphael Kaplinsky & Timothy J. Sturgeon, *Introduction: Globalisation, Value Chains and Development*, 32 INST. DEVELOPMENT STUD. BULL. at 1, <http://oro.open.ac.uk/8560/1/fulltext.pdf>.

²⁰ Aida Silvestri Tea, *Business and Human Rights*, EUROPEAN CENTRE FOR CONSTITUTIONAL AND HUMAN RIGHTS, 2021 ANNUAL REPORT 20-25 (2022), https://www.ecchr.eu/fileadmin/Jahresberichte/ECCHR_ANNUAL_REPORT_2021_EN.pdf; Andrea Hearon, Maysa Zorob & Stephanie Regalia, *Corporate Human Rights Litigation: Trends from 200 Seminal Lawsuits*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE, 8 December 2020, <https://www.business-humanrights.org/en/blog/corporate-human-rights-litigation-trends-from-200-seminal-lawsuits/>; Richard Howitt, *2021 a ‘Landmark’ for Corporate Human Rights Litigation*, SUSTAINABLE BRANDS, 30 November 2021, <https://sustainablebrands.com/read/walking-the-talk/2021-a-landmark-for-corporate-human-rights-litigation>.

²¹ Genevieve LeBaron, Neil Howard, Cameron Thibos & Penelope Kyritsis, *Confronting Root Causes: Forced Labour in Global Supply Chains*, OPEN DEMOCRACY & SHEFFIELD

shows, such a political economy analysis needs to proceed with keen attention to the actual realities on the ground and to the ways in which realities are too often wrongly depicted, labelled and categorized.²² This scrutiny is key to the approach taken by lawyers and legal activists in navigating the actual diversity of legal and non-legal efforts which is required to bring about concrete changes on the ground²³ as the political economy analysis of local dispositions towards, and communities' engagements with, corporate businesses draws our attention to the diversified and encompassing nature of GVCs as a transnational assemblage of non-homogenic spaces, actors and interests.

B. Global Value Chains, Globalization and Its Discontents

That said, efforts to address the negative impact of these global connections are anything but new. The alleged “shrinking of the world”, as suggested by slogans in the 1990s that celebrated the post-Cold War access to global resources, markets and opportunities,²⁴ was simultaneously critically thematized across the range of social sciences, highlighting the invasive and disruptive effect of globalization and integration for local, cultural and political life.²⁵ Today, more than three decades after the heyday

POLITICAL ECONOMY RESEARCH INSTITUTE, at 6 (2018), <https://core.ac.uk/download/pdf/145637779.pdf>.

²² Kate Meagher, *Working in Chains: African Informal Workers and Global Value Chains*, 8 AGR. SOUTH: J. POL. ECON. 64, 70 (2019) (“The reframing of decent work as the positive end of a continuum of ‘unfreedoms’ has destabilized the consensus about the nature of legitimate and illegitimate forms of work in globalizing market economies. (...) Only forced, bonded and child labor are framed as illegitimate forms of labor to be purged from GVCs. From this perspective, the use of informal labor in the value chains of modern capitalist firms has been recast as legitimate as long as workers are free to enter or leave, glossing over the question of whether the work meets minimum standards of remuneration and social protection.”).

²³ Miriam Saage-Maaß, *Legal Interventions and Transnational Alliances in the Ali Enterprises Case: Struggles for Workers’ Rights in Global Supply Chains*, in TRANSNATIONAL LEGAL ACTIVISM IN GLOBAL VALUE CHAINS: THE ALI ENTERPRISES FACTORY FIRE AND THE STRUGGLE FOR JUSTICE 25 (Miriam Saage-Maaß, Peer Zumbansen, Michael Bader & Palvasha Shahab eds., 2021), at 37-39; Angela Lindt, *Transnational Human Rights Litigation. A Means of Obtaining Effective Remedy Abroad?*, 4 J. LEGAL ANTHROPOLOGY 57, 70 (2020) (finding that local lawyers aim for a domestic rather than a foreign lawsuit to bring about effective legal change in the place of injury).

²⁴ Fred Bergsten, *The World Economy after the Cold War*, 69 FOREIGN AFF. 96 (1990) (suggesting four policy approaches to facilitate sustained global economic exchanges: “(1) elimination of all tariffs on all industrial trade; (2) a complete ban on all quantitative trade barriers including “voluntary export restraint agreements”; (3) a sharp expansion in the independence and mandate given the GATT to police the system; and (4) creation of an instrument similar to the GATT for investment issues to provide a stable framework for international corporate activities (and help resist protectionist pressures in this area, notably in the United States”).

²⁵ Arjun Appadurai, *Disjuncture and Difference in the Global Cultural Economy*, 7 THEORY CULTURE & SOC’Y 295 (1990) (introducing the conceptual frameworks of

of the “end of history,”²⁶ the critique of “globalization” fills entire libraries²⁷ and forms an important backdrop for the current analysis of global value chains in an effort of cautioning against simplifying assertions of “global political economy,” “world trade,” or “human rights.”²⁸ In other words, the

‘ethnoscape’, ‘technoscape’, ‘finanscape’, ‘mediascape’ and ‘ideoscape’ to theorize the newly emerging relational realities arising out of globalization); see also JAMES FERGUSON, *GLOBAL SHADOWS: AFRICA IN THE NEOLIBERAL WORLD ORDER*, 29 (2006) (“Looking at ‘globalization’ from the vantage point provided by recent research focused on Africa brings into visibility things that might otherwise be overlooked and forces us to think harder about issues that might otherwise be passed over or left unresolved.”); see also Terry Flew, *Globalization, neo-globalization and post-globalization: The challenge of populism and the return of the national*, 16 *GLOB. MED. & COMM’N* 19 (2020) (“At its core (...) are propositions that globalization ‘refers both to the compression of the world and the intensification of consciousness of the world as a whole’ (...), involves ‘the intensification of worldwide social relations which link distant localities’ (...) and ‘refers to the expansion and intensification of social relations and consciousness across world-time and world-space’ (...)”) (with references to Roland Robertson, Anthony Giddens and Manfred Steger). *Id.* at 21; see also Terry Flew & Petros Iosifidis, *Populism, Globalisation and Social Sedia*, 82 *INT’L COMM’N GAZETTE* 7, 16 (2020) (highlighting the enhanced direct communication streams between populist political leaders and their base through the reliance on social media).

²⁶ Francis Fukuyama, *The End of History?*, *NAT’L INT.* 3, 4 (1989) (“The triumph of the West, of the Western *idea*, is evident first of all in the total exhaustion of viable systematic alternatives to Western liberalism. What we may be witnessing is not just the end of the Cold War, or the passing of a particular period of postwar history, but the end of history as such: that is, the end point of mankind’s ideological evolution and the universalization of Western liberal democracy as the final form of human government.”); but see Paul Hirst, *Endism*, 11 *LONDON REV. BOOKS* (1989) <https://www.lrb.co.uk/the-paper/v11/n22/paul-hirst/endism>, republished in: *BOS. REV.*, 25 March 2019, <https://bostonreview.net/articles/maximillian-alvarez-end-end-history/> (“Fukuyama’s theme is also deeply congenial in the US, in that it both contradicts and yet follows swiftly upon the heels of another intellectual *cause célèbre*. The ‘endist’ thesis assures the USA that it faces no serious threats to its military predominance and that it will remain the leading power in a world economy dominated by free markets and free-trade policies.” But, Hirst continues, “The record of liberalism after 1945 needs serious critical attention. Western Europe, the United States and Japan all offer ample evidence of the failings of liberal political institutions. Democracy may now be dominant, but it is also deeply compromised in its major heartlands. Our liberal-democratic polities offer low levels of accountability and citizen influence when measured against democratic ideals, rather than against ailing autocracies.”); see also Louis Menand, *Francis Fukuyama Postpones the End of History*, *NEW YORKER*, 3 September 2018, <https://www.newyorker.com/magazine/2018/09/03/francis-fukuyama-postpones-the-end-of-history>.

²⁷ Huiwen Gong et al., *Globalisation in Reverse? Reconfiguring the Geographies of Value Chains and Production Networks*, 15 *CAMBRIDGE J. REGUL., ECON. & SOC’Y* 165, 166 (2015) (“Economic globalisation, it seems, is at a critical juncture (...). The international division of labour (...) and the unstoppable forces of capitalism are continually being juxtaposed with different forces and challenges and thus lead to the complex reconfiguration of global production and consumption.”).

²⁸ Frederick Cooper, *What is the Concept of Globalization Good for? An African Historian’s Perspective*, 100 *AFR. AFF.* 189 (2001); Dani Rodrik, *Why Does Globalization Fuel Populism? Economics, Culture, and the Rise of Right-Wing Populism*, 13 *ANN. REV. ECON.* 133, 134 (2021) (“specially in its post-1990s variant—which might be better called hyperglobalization—international economic integration seems to have produced domestic disintegration in many countries, deepening the divide between the winners and the losers of

scope of today's debates around the "discontents"²⁹ and the alleged "end" of globalization is as wide as it was when globalization first became an object of analysis.³⁰ While this complexity was and remains reflected in the range of disciplines, approaches and methodologies which continue to engage with globalization,³¹ the current moment reveals a widely shared and, quite literally, "mainstreamed" discontent with the optimistic promises that globalization allegedly had once held out. This discontent has for years been articulated across a range of concerns, including job insecurity, stagnant wages, marginalization, access to health care, housing and public security.³² A distinctive feature of the evolving critique is its trans-nationalization: attention has clearly shifted beyond the local and national confines in order to compare and to contrast structures of discrimination and marginalization in

exposure to global competition").

²⁹ See Saskia Sassen, *GLOBALIZATION AND ITS DISCONTENTS*, xxviii (1998); Michael Cox, *The Rise of Populism and the Crisis of Globalisation: Brexit, Trump and Beyond*, 28 *IRISH STUD. INT'L AFF.* 9 (2017); Andrés Rodríguez-Pose, *The Rise of Populism and the Revenge of the Places That Don't Matter*, 1 *LONDON SCH. ECON. POLY' REV.* 4 (2020) ("The inhabitants of cities, towns, and regions that have suffered long-term economic and industrial decline, often alongside employment and demographic losses, are faced with few opportunities to prosper and so have resorted to the ballot box to express their discontent, resentment, and anger with a system they perceive as offering them no future.").

³⁰ See, for example, Neil Brenner, *Beyond State-Centrism? Space, Territoriality, and Geographical Scale in Globalization Studies*, 28 *THEORY & SOC'Y* 39 (1999) ("Contemporary globalization research encompasses an immensely broad range of themes, from the new international division of labor, changing forms of industrial organization, and processes of urban-regional restructuring to transformations in the nature of state power civil society, citizenship, democracy, public spheres, national politico-cultural identities, localities, and architectural forms, among many others.") and, Deborah A. Thomas and M. Kamari Clarke, *Globalization and Race: Structures of Inequality, New Sovereignties, and Citizenship in a Neoliberal Era*, 42 *ANN. REV. ANTHROPOLOGY* 305 (2013) (arguing that critique of racialization and racism is not enough applied to studies of inequalities in the Global South). See also Charles R. Hale, *Neoliberal Multiculturalism: The Remaking of Cultural Rights and Racial Dominance in Central America*, 28 *POL. & LEGAL ANTHROPOLOGY REV.* 10 (2005) (interrogating the diversity and range of 'anti-globalization' constituencies).

³¹ Raka Shome, *Interdisciplinary Research and Globalization*, 9 *COMM. REV.* 1 (2006); ELAINE FAHEY, *INTRODUCTION TO LAW AND GLOBAL GOVERNANCE* 26 (2018). ("Globalisation is arguably an irritatingly broad and vague concept, because of its 'all-encompassing-ness.' It can refer to economic processes but can also embrace cultural, social and technological processes readily, although less usually law. Globalisation is understood in a variety of ways, but mostly never legal. The place of law nevertheless has value although legal scholars presumptively argue that legal theory must not just be influenced by social theory. Globalisation has arguably a contradictory and fragmentary core, which devalues or reduces conventional politics and processes.").

³² Anthony Mughan, C. Bean & Ian McAllister, *Economic Globalization, Job Insecurity and the Populist Reaction*, 22 *ELECTION STUD.* 617 (2003); Devah Prager & Hana Shepherd, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 *ANN. REV. SOCIOLOGY* 181 (2008); Guy Standing, *THE PRECARIAT: THE NEW DANGEROUS CLASS* 6 (2011); Lenore Palladino, *Financialization at work: Shareholder primacy and stagnant wages in the United States*, 25 *COMPETITION & CHANGE* 382, 388 (2021).

the Global South and North to identify connections and drivers. This manifests itself, for example, in the qualification of different forms and consequences of inequality not only in the investigation of the racializing impact of economic globalization projects in the Global South³³ but also in a heightened scrutiny of concrete political access and participation obstacles that arise from deepening inequality, discrimination and marginalization in the Global North.³⁴

The here proposed engagement with forms and processes of resistance and protest against the detrimental impact of global value chains is aimed at a concretization and illustration of a continuing critique of the conditions that perpetrate significant gaps between different parts of society—locally and globally. As not only the (continuing) Coronavirus pandemic suggests, a significant portion of people’s lives is inextricably implicated in the functioning but also the “unprecedented”³⁵ breakdown of global value chain connections.³⁶ This recent, dramatic reminder of global connectivity draws attention to a much larger and older tapestry of the global political economy and its evolution. While the specific analysis of global commodity, supply

³³ Thomas and Clarke, *supra*, note 30; Hale, *supra*, note 30.

³⁴ Thomas Kleven, *Systemic Classism, Systemic Racism: Are Social and Racial Justice Achievable in the United States?*, 8 CONN. PUB. INT. L. J. 37, 43 (2009); Phil Parvin, *Democracy Without Participation: A New Politics for a Disengaged Era*, 24 RES PUBLICA 31, 34 (2018) (“Broadly speaking, the more socially and economically unequal a society is, the less politically engaged is its citizen body, and the poorer one is relative to others in society, the less one will participate.”); Margaret Talev, “*Midnight is approaching*” to pass voting rights protections, AXIOS, (Nov. 21, 2021), <https://www.axios.com/2021/11/21/midnight-is-approaching-to-pass-voting-rights-protections>; Sujay Ghosh, *India and the Pandemic: Democratic Governance at Crossroads*, INT’L J. ASIAN STUD. 1 (2021); Carme Colomina, Héctor Sánchez Margalef & Richard Youngs, *The Impact of Disinformation on Democratic Processes and Human Rights in the World* (Apr. 22, 2021), [https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU\(2021\)653635](https://www.europarl.europa.eu/thinktank/en/document/EXPO_STU(2021)653635); Michael J. Klarman, *Foreword: The Degradation of American Democracy—And the Court*, 134 HARV. L. REV. 1, 16-17 (2020) (“To divert attention from difficult-to-solve problems, such as a failing economy, authoritarians deflect blame for their nation’s ills onto—and unify their citizens against—external agents, internal “traitors,” and “others” who differ from the majority in terms of race, ethnicity, or religion.”).

³⁵ Jennifer Castañeda-Navarrete, Jostein Hauge & Carlos López-Gómez, *COVID-19’s Impact on Global Value Chains, as Seen in the Apparel Industry*, 39 DEV. POL’Y REV. 953, 957 (2021).

³⁶ Remko van Hoek, *Research Opportunities For A More Resilient Post-COVID-19 Supply Chain—Closing the Gap Between Research Findings and Industry Practice*, EMERALD INSIGHT 341 (2020) <https://www.emerald.com/insight/publication/issn/0144-3577> (highlighting that, as of March 2020, 86% of supply chains and 95% of companies were impacted by the Coronavirus); Maria Grazia Attinasi et al., *Supply Chain Disruptions and the Effects on the Global Economy*, EUROPEAN CENTRAL BANK, EUR. CENT. BANK ECON. BULL. (2021) https://www.ecb.europa.eu/pub/economic-bulletin/focus/2022/html/ecb.ebbox202108_01~e8ceebe51f.en.html (discussing the “massive shifts in demand and supply triggered by the closing and reopening of economies” and constraints on consumer behavior due to COVID-19-related ‘lock down’ regulations).

chains and value chains by name reaches back only a few decades,³⁷ the underlying infrastructures of resource extraction, environmental destruction, off-shore manufacturing, and labor exploitation reach back much longer.³⁸ By studying global value chains in their transnational dimensions and their concrete local manifestations, sociologists, anthropologists, and geographers, many of whose work we will engage with in the following analysis, have been shining light on the respective regulatory and socio-economic conditions in which the chain takes hold, and which it impacts, transforms and disrupts. Using a focus on the social relations and power dynamics that shape, in particular, workplaces within GVCs, this kind of analysis sheds light on the historically evolved conditions that shape the interaction between companies, workers and their families and communities and reveals the actual ‘costs’ of participation. This, in turn, draws attention to the ethnographic and epistemic challenges in understanding the nature and social relations context of work—in both the Global South and North. The ethnographic study of workplaces in the foodstuffs, garment, or extractive industry sectors then sheds light on the global organization of work as such.³⁹

GVCs, thus, become an analytical and methodological framework and architecture, through which the current regulation—not only—of economic transactions, but also of evolving states of inequality and actually existing

³⁷ Clinton Free & Angela Hecimovic, *Global Supply Chains After COVID-19: The End of the Road for Neoliberal Globalisation?*, EMERALD INSIGHT 2 (2020), <https://www.emerald.com/insight/publication/issn/0951-3574> (“Especially since 1980, the world’s manufacturing production has been increasingly structured in what has become known as global supply chains (or global value chains). Raw materials and intermediate goods are now frequently shipped across the globe several times before final products are exported to final consumers around the world, coordinated by accounting technologies predicated on global labour arbitrage, cost minimisation, lean inventory management and tax avoidance.”).

³⁸ Intan Suwandi, R. Jamil Jonna & John Bellamy Foster, *Global Commodity Chains and the New Imperialism*, MONTHLY REV. SUSTAINABLE HUM. DEV. 1 (2019), <https://monthlyreview.org/2019/03/01/global-commodity-chains-and-the-new-imperialism/> (highlighting the role played by multinational corporations in the historical creation of supply chains, resource extraction and labor exploitation). *See also*, for another example of supply chain and value extraction from human labor, Kalindi Vora, *Intertwined Colonial Pasts and the Present in Global Fertility Chains*, CATALYST: FEMINISM, THEORY, TECHNOSCIENCE 1, 1 (2022) (“Transnational practices and markets in assisted reproductive technologies (ARTs) and fertility therapies have grown and spread since the liberalization of many postcolonial economies through coercive structural readjustments demanded by international loans from the International Monetary Fund and World Bank in the 1990s.”).

³⁹ Jennifer Bair & Marion Werner, *Commodity Chains and the Uneven Geographies of Global Capitalism: A Disarticulations Perspective*, 43 ENV’T & PLAN. 988, 993 (2011) (“[T]hinking through both the concrete work of historically particular sets of social relations to secure commodity production, and the related processes of devaluation and exclusion that facilitate the remaking of these networks and chains. The work of linking is both social and spatial. It is not only the work of linking up constructions of social difference with processes of valuation and capital accumulation, but also that of reproducing geographical difference by linking and delinking places to commodity chains that are formed and reformed through these moments of connection and severance.”).

possibilities and options to access public and political life become tangible. It is here where the critical analysis of what has been called ‘logistical resistance’⁴⁰ unfolds against the background of intensifying concerns with present-day democratic practices, precarious socio-economic conditions, and rising xenophobia and racism.⁴¹ In other words, the critical assessment of present-day capitalism and of its destructive and, arguably, unsustainable impact on people’s lives and the environment, as it unfolds around the scandalization and litigation of global value chain-related rights violations is exposes the growing crisis of equality and participation rights. A common thread that goes through the legacy of already existing litigation, activist and NGO work, as well as ethnographic and interdisciplinary scholarship on GVCs, is the concern with the extraordinary power differential between those who direct the affairs of chain-related operations and those who work in its mills, warehouses, factories, shipwrecking yards and on its lakes. The deep inequalities throughout the chain and the conditions that perpetuate and consistently deepen them are, at the heart, a political problem and this is where critical GVC scholarship and present-day analysis of democratic politics and its ability to offer the kind of public deliberation that is the

⁴⁰ Deborah Cowen, *THE DEADLY LIFE OF LOGISTICS 2* (2014) (“A more nuanced narrative would especially start to surface if we were to highlight the frequent disruptions that characterize supply chains and the violent and contested human relations that constitute the global logistics industry. To the everyday delays of bad weather, flat tires, failed engines, missed connections, traffic jams, and road closures, we would also need to add more deliberate interruptions. Just-in-time transport systems can be disrupted by the labor actions of transport workers at any one of the multiple links along the way. Workers, organized or not, may interfere with the packing and repacking of cargo at any of the transshipment sites.”). See also Andreas Folkers & Julian Stenmanns, *Logistical Resistance Against Operations of Capital: Security and Protest in Supply Chains and Finance*, 100 *GEOFORUM* 199 (2019) (providing concrete examples of protest and logistics disruptions in global value chains).

⁴¹ Michael Hout & Christopher Maggio, *Immigration, Race & Political Polarization*, 150 *DAEDALUS* 40, 50 (2021) (“The hallmark of this era is polarization, a combination of strong views, nearly even divide, and an unwillingness to compromise.”). See also Dorothy Estrada-Tanck, *Reclaiming Universal Economic and Social Rights in a Convulsed Legal and Economic Order*, MCGILL CENTRE FOR HUMAN RIGHTS & LEGAL PLURALISM (March 31, 2020), <https://www.mcgill.ca/humanrights/article/universal-human-rights/reclaiming-universal-economic-and-social-rights-convulsed-legal-and-economic-order> (arguing that socio-economic conditions act as “a ground for discrimination (...), being more vulnerable to human rights violations or discriminated against, because of living in poverty”); Leticia Bode, *Political News in the News Feed: Learning Politics from Social Media*, 19 *MASS COMMUN & SOC’Y* 24, 25 (2016) (“... learning from such information [social media] is likely contingent on the degree of control users exert over their networks, their perceptions of the information to which they are exposed, and the interest they have in politics”).

foundation of collective and inclusive decision-making⁴² come together.⁴³

This remainder of this paper will proceed as follows. To appreciate the historical dimension of the emergence of GVCs in the context of evolving colonialist, geopolitical and geoeconomic relations⁴⁴ we trace the changing concepts of chain-based trade relations against the background of the contested legacies of international economic integration (II). From a historical perspective, we then turn our attention to critical depictions of GVCs through the lenses of labor law and emerging ethnographical work on ‘supply chain capitalism’ (III) before proposing to reconceptualize the chain from the vantage points of transnational disaster law and critical legal

⁴² Wolfgang Streeck, *The Return of the Repressed*, 104 NEW LEFT REV. 5, 6 (2017) (“As a process of institutional and political regression the neoliberal revolution inaugurated a new age of *post-factual politics*. This had become necessary because neoliberal globalization was far from actually delivering the prosperity for all that it had promised.”); Manfred B. Steger & Erin K. Wilson, *Anti-Globalization or Alter-Globalization? Mapping the Political Ideology of the Global Justice Movement*, 56 INT’L STUD. Q. 439 (2012); Stefanie Walter, *The Backlash Against Globalization*, 24 ANN. REV. POL. SCI. 421, 430 (2021) (“Several studies show that adverse economic developments affect nonmaterial values and attitudes, such as authoritarian values (...), xenophobic beliefs (...), and cultural grievances (...), as well as trust in governments (...) and support for democracy (...).”).

⁴³ Compare Ross Levine, *International Financial Liberalization and Economic Growth*, 9 REV. INT’L ECON. 688, 697 (2001) (“...stock market liquidity tends to improve following the reduction of impediments to international capital and dividend flows”), and the 2006 assessment of an UNCTAD [United Nations Conference on Trade and Development], *Globalization for Development: The International Trade Perspective*, at ix, UNCTAD/DITC/2007/1 (2008), https://unctad.org/system/files/official-document/ditc20071_en.pdf (“Meanwhile, capital has become increasingly footloose, with even developing countries participating in the global movement of capital and its contribution to trade. Some of the most competitive and successful countries in trade and development are those that are able to make the best use of their assets in terms of their human and natural resource endowments, and bring into effect synergies between technology and capital in a dynamic way”), with Mary Bosworth, Ben Bowling & Maggy Lee, *Globalization, Ethnicity and Racism*, 12 THEORETICAL CRIMINOLOGY. 263, 263 (2008) (highlighting the post-9/11 surge in criminalization and surveillance of racialized communities on a global scale) (“...the ‘globalization of fear’ after 11 September 2001 heightened anxieties about the new ‘globally mobile’ dangerous classes (terrorists, traffickers, immigrants, asylum seekers, refugees, ‘illegal aliens’ and so on) and this has been coterminous with increased securitization of societies both within and without the borders of the State. The ‘new’ security agenda—focusing on ethnic conflict, terrorism, Islamic fundamentalism, drug trafficking and human smuggling—which supplanted Cold War ideology, has become seen as the ‘dark side’ of globalization linking migration to crime, smuggling, terrorism and the policy issues of ‘law and order’ across the globe.”). See also Michael O’Sullivan, *Globalization Dies and Gives Way to a Multipolar World Order*, 17 U. ST. THOMAS. L. J. 641, 643 (2021) (discussing the fragmentation of global politics under the impact of the coronavirus) (“The most disappointing aspect of the crisis so far, from the viewpoint of globalization, is the lack of international economic policy coordination.”).

⁴⁴ Jason Hickel et al., *Imperialist Appropriation in the World Economy: Drain from the Global South Through Unequal Exchange, 1990-2015* 73 GLOB. ENV. CHANGE 1 (2022); Anthea Roberts, Henrique Choer Moraes & Victor Ferguson, *Toward a Geoeconomic Order in International Trade and Investment*, 22 J. INT’L ECON. L. 655 (2019).

geography (IV). At the heart of this project is the adoption of a practice of *counter-mapping*. The goal of drawing a counter-map of the chain is to expose the distractive effect of the alleged ‘interruptions’ and organizational ‘challenges’ that the earlier quoted GVC management literature is foremost concerned with. What a counter-map will make more tangible are the actual lives within this chain and the conditions that shape their oftentimes perilous existence in the chain.

The here-adopted method of counter-mapping draws on the anthropology of what Welker, Partridge and Hardin call ‘corporate lives’⁴⁵ as a space of corporate-community interactions that are subjected to sustained ethnographic study and which reveal the multi-dimensionality and complexity of historically shaped local relations around multinationals’ operations around the world. In addition, it engages with the critical work around ‘logistics resistance,’ which brings together geographers, sociologists, and labor activists to unsettle the prevailing depictions of supply chains as efficiency-based infrastructures of production and distribution. The combination of those approaches sheds further light on the competing supply chain narratives and how these can, in turn, evoke bizarre images of a ‘normality’ of global consumption flows with occasional ‘disruption’ due to catastrophic, allegedly natural events or, by contrast, unpack and dissect supply chain infrastructures as spaces of contestation, resistance, and intervention. They can further help illuminate the distinctly spatialized nature of supply chain arrangements which, through the interpenetration of formalized and informal economic exchanges, infrastructures of control and imposition, and the radical asymmetries of social relations, manifest a particular organization of present-day, historically evolved capitalism.⁴⁶

II. CONTEXTUALIZING GLOBAL VALUE CHAINS

A. *Narratives of Growth, Prosperity, and Normality*

Today’s critical engagement with GVCs picks up on and concretizes a wider set of concerns with continuing and, in fact, deepening structures of

⁴⁵ Marina Welker, Damani J. Partridge & Rebecca Hardin, *Corporate Lives: New Perspectives on the Social Life of the Corporate Form: An Introduction to Supplement 3*, 52 CURRENT ANTHROPOLOGY S3 (2011).

⁴⁶ Martin Danyluk, *Capital’s Logistical Fix: Accumulation, Globalization, and the Survival of Capitalism*, 36 ENV. & PLAN. D: SOC’Y & SPACE 630 (2018); Michael Simpson, *The Annihilation of Time by Space: Pluri-temporal Strategies of Capitalist Circulation*, 2 ENE: NATURE & SPACE 110 (2019); Deborah Cowen, *Disrupting Distribution: Subversion, the Social Factory, and the “State” of Supply Chains*, VIEWPOINT MAG. (Oct. 29 2014), <https://viewpointmag.com/2014/10/29/disrupting-distribution-subversion-the-social-factory-and-the-state-of-supply-chains/>; Joshua R. Eichen, *Cheapness and (Labor-)Power: The Role of Early Modern Brazilian Sugar Plantations in the Racializing Capitalocene*, 38 EPD: SOC’Y & SPACE 35, 37 (2020) (“Every systemic cycle of accumulation (...) intensified capital’s environment-making spatio-temporal patterns.”).

economic as well as racial and gender-based inequality.⁴⁷ As such, the increasing attention to, say, the working conditions of laborers in the Global South,⁴⁸ is less and less an occupation merely for international labor and human rights lawyers but connects with discourses in advanced, post-industrial societies around domestic processes of marginalization and exclusion.⁴⁹ The critique of global value chains, specifically as an expression of contemporary capitalism, is embedded in an encompassing, critical assessment of the conditions—including the legal ones⁵⁰—that shape individuals’ and collectives’ access to services, political expression, and economic opportunity.⁵¹ The ambitious scope of the currently undertaken

⁴⁷ Thomas and Clarke, *supra* note 30; Sara Hupp Williamson, *Globalization as Racial Project: Implications for Human Trafficking*, 18 J INT’L WOMEN’S STUD. 74, 75 (2017) (highlighting the fact that globalization disrupts local economies, increases feminized poverty and makes women more susceptible to become victimized by trafficking).

⁴⁸ Lauren McCarthy, Vivek Soundararajan & Scott Taylor, *The Hegemony of Men in Global Value Chains: Why It Matters for Labour Governance*, 74 HUM. RELS. 2051 (2021); Yossi Dahan, Hanna Lerner & Faine Milman-Sivan, *Shared Responsibility and Labor Rights in Global Supply Chains*, J. BUS. ETHICS (2021), <https://link.springer.com/article/10.1007/s10551-021-04988-w> (discussing the responsibility of Northern buyers and retailers for working conditions in the Global South in light of the Coronavirus pandemic). *See also* Miriam Saage-Maaß, *Labour Conditions in the Global Supply Chain. What Is the Extent and Implications of German Corporate Responsibility?*, FRIEDRICH EBERT FOUNDATION INTERNATIONAL POLICY ANALYSIS (December 2011), <https://library.fes.de/pdf-files/iez/08822.pdf>; Don Wells, *Local Worker Struggles in the Global South: Reconsidering Northern Impacts on International Labour Standards*, 30 THIRD WORLD Q. 567, 569 (2009) (respectively identifying the responsibilities of German government and corporate actors for working conditions in the Global South and the challenges for developing countries to implement Northern CSR and labour standards).

⁴⁹ *See, e.g.*, Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L. J. 1784, 1796 (2020) (tracing the present-day critique of capitalism market organization back to the anti-formalist scholarship of the Legal Realists); *see also* Alessandra Mezzadri, Susan Newman & Sara Stevano, *Feminist Global Economies of Work and Social Reproduction*, REV. INT’L POL. ECON. 1 (2021); E. Tendayi Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, 134 HARV. L. REV. F. 378, 380 (2021) (highlighting the structural, systemic role that racial discrimination has been playing in the constitution of the liberal economic order).

⁵⁰ Complementing a long line of scholarly engagement with the market-building role played by law, KATHARINA PISTOR: *THE CODE OF CAPITAL 1-2* (2019), traces the particular impact that different, allegedly ‘technical’ and value- neutral legal instruments have had on differential social outcomes.

⁵¹ Valeria Piro & Devi Sacchetto, *Subcontracted Racial Capitalism: The Interrelationship of Race and Production in Meat Processing Plants*, 1 WORK GLOB. ECON. 33, 34 (2021) (“The atmosphere changes completely when we reach the killing sector. Here, the smell of blood and flesh is unbearable, as unbearable as the noise of the animals screaming. Almost all the workers are migrants, none of them wearing the coat marked with a pink circle. The heat increases when we enter the area called ‘dirty slaughterhouse’: migrant cooperative workers are washing guts, emptying tripe of faeces (one tripe every 3–4 minutes) or boning cow legs. . . .”) (Fieldnotes from a visit to a slaughterhouse, Modena, Italy, 23 April 2019.); *see also* Ronald W. Cox, *The Crisis of Capitalism Through Global Value Chains*, 7 CLASS, RACE &

critical work also explains the fact that GVC scholarship is and must be interdisciplinary as it operates from different vantage points and echoes the variety of globalization critique of which it is part today.⁵² Complementing and in some cases overlapping with the communities of globalization and law & political economy scholars we have referred to, GVC scholars come from organization studies, management scholarship, logistics studies as well as from law, gender studies, critical race theory, sociology, anthropology, and geography.⁵³ The contributions of these different disciplines to a better understanding of GVCs underline the need to treat them together rather than separately as is, for example, illustrated by the burgeoning ethnographic work that focuses on concrete experiences with supply chain structures.⁵⁴

To the degree that lawyers engage in critical GVC scholarship, they do so, for example, from the vantage points of labor and human rights, tort, contract or corporate law.⁵⁵ As we will see in more detail below, an emerging

CORP. POWER 1, 1 (2019) (“The increased class tension is a long-term byproduct of the contradictions of a neoliberal capitalist political project that has steadily increased the power of transnational interest blocs while reducing the political influence of workers and ordinary citizens, whose political marginalization and alienation have steadily increased.”).

⁵² Appadurai, *supra* note 25, at 298 (“[E]ven an elementary model of global political economy must take into account the shifting relationship between perspectives on human movement, technological flow, and financial transfers, which can accommodate their deeply disjunctive relationships with one another”); James Thuo Gathii & Olabisi D. Akinkugbe, *Introduction to the Inaugural Issue of the African Journal of International Economic Law*, 1 AFR. J. INT’L ECON. L. 5 (2020).

⁵³ Kevin B. Sobel-Read, *Global Value Chains: A Framework for Analysis*, 5 TRANSNAT’L. LEGAL THEORY 364 (2014); IGLP Law and Global Production Working Group, *The Role of Law in Global Value Chains: A Research Manifesto*, 4 LONDON REV. INT’L L. 57 (2016); Lauren Kaufmann, *Feminist Epistemology and Business Ethics*, 32 BUS. ETHICS Q. 546, 564 (2021); Stephanie Barrientos, Lara Bianchi & Cindy Berman, *Gender and Governance of Global Value Chains: Promoting Rights of Women Workers*, 158 INT’L LAB. REV. 729, 740 (2019); Liena Kano, Eric W. K. Tsang & Henry Wai-chung Yeung, *Global Value Chains: A Review of the Multi-Disciplinary Literature*, 51 J. INT’L BUS. STUD. 577 (2020); Jennifer Bair & Marion Werner, *Commodity Chains and the Uneven Geographies of Global Capitalism: A Disarticulations Perspective*, 43 ENV’T. & PLAN. 988 (2011).

⁵⁴ HANNAH APPEL, *THE LICIT LIFE OF CAPITALISM: US OIL IN EQUATORIAL* (2019); Laura Knöpfel, *Private Law, Anthropology and the Multinational Enterprise: Global and Local Negotiations of Corporate Responsibility 26-27* (Jul. 14, 2021) (Ph.D. thesis, King’s College London) (on file with author); LeBaron et al., *supra* note 21; Bertram Turner, *Legal Pluralism in Infrastructural Designs: Alternative Supply Chains in the Moroccan Argan Oil Export*, SCI., TECH. & HUM. VALUES 1 (2021); Geoffrey Aung, *A “Becoming Logistical” of Anthropology?*, 91 FOCAAL—J. GLOB. & HIST. ANTHROPOLOGY 115 (2021).

⁵⁵ IGLP Law and Global Production Working Group, *supra* note 53; Cees van Dam, *Tort Law and Human Rights: Brothers in Arms on the Role of Tort Law in the Area of Business and Human Rights*, 2 J. EUR. TORT L. 221 (2011); Klaas Hendrik Eller, *Is ‘Global Value Chain’ a Legal Concept?*, 16 EUR. REV. CONT. L. 3, 8 (2020) (“[I]t seems preferable to read the rise of GVCs more broadly as an epiphenomenon of the need to adjust private law’s toolkit to a global and networked society. In this perspective, the label of ‘global value chain’ can most helpfully serve as heuristic and provide guidance for the ambition to confer to private law—and contract law in particular—a more eminent position in the responses to struggles of distribution, participation and equality under globalization.”).

strain in legal GVC analysis is the study of political and socio-cultural economy in the concrete contexts in which GVCs have been created and are operating on the ground. This focus on context and on the different formal and informal relations, say, between companies and the communities but also between different workers and stakeholders, arises against the background of decades-long efforts to improve workplace safety, raise wages and mitigate the often-times disastrous environmental impact. These efforts, championed through local activism and law reform, transnational coalition-building as well as litigation, unfold in the present with the goal of changing conditions for a more equitable and sustainable practice in the future. But, as they also shed light on the historical, colonial, lineages of corporate supply chains in different parts of the world, the legal-analytical lens must be widened to capture the history and the continuities in present-day power dynamics between the haves and have-nots in GVCs. Litigation brought against corporations for human rights violations perpetrated at the level of their foreign subsidiaries⁵⁶ or against corporate buyers in the Global North for violating contractual terms with their manufacturer-suppliers in the Global South⁵⁷ continues to bring to light the long-standing, asymmetric power relations that govern the engagement between strong and weak parties throughout the chain.⁵⁸ And it is here where emerging research into the legal structures of GVCs reveals a distinct sensibility for the colonial inheritances

⁵⁶ See, e.g., Richard Meeran, *Multinational Human Rights Litigation in the UK: A Retrospective*, 6 BUS. HUM. RTS. J. 255 (2021); Ekaterina Aristova, *The Future of Tort Litigation against Transnational Corporations in the English Courts: Is Forum [Non] Conveniens Back?*, 6 BUS. HUM. RTS. J. 399 (2021).

⁵⁷ European Center for Constitutional and Human Rights, *International Laws Assisting Workers*; Workers Rts. Consortium, *Farce Majeure: How Global Apparel Brands are Using the COVID-19 Pandemic to Stiff Suppliers and Abandon Workers*, (September 2020), https://www.ecchr.eu/fileadmin/ECCHR_PP_FARCE_MAJEURE.pdf); Mark Anner, *Abandoned? The Impact of COVID-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains*, (Mar. 27, 2020), <http://www.workersrights.org/wp-content/uploads/2020/03/Abandoned-Penn-State-WRC-Report-March-27-2020.pdf>).

⁵⁸ Renata P. Brito and Priscila L. S. Miguel, *Power, Governance, and Value in Collaboration: Differences between Buyer and Supplier Perspectives*, 53 J. SUPPLY CHAIN MGMT. 61, 68 (2017) (providing evidence for buyers' "power to impose standards on suppliers with the threat of punishment or withdrawal of future business, reducing suppliers' volume" and instances of "[e]xploitation of power (...) in the negotiation and bargaining between buyers and suppliers (...) due to the fact that "buyers had information from several competing suppliers" and "were able to put pressure on suppliers in order to get the lower price and the best conditions." Their studies also revealed "the existence of coercive power (ability to punish) and reward power (ability to compensate with volume)..."); see also Gilbert N. Nyaga et al., *Power Asymmetry, Adaptation and Collaboration in Dyadic Relationships Involving a Powerful Partner*, 49 J. SUPPLY CHAIN MGMT. 42, 42 (2013) ("[T]he nature of power in supply chain relationships presupposes an asymmetrical distribution of power among partners because of differences in expertise, size, switching costs, dependence, contract structure, etc. The powerful partners may assume greater influence in the supply chain network, thereby providing some stability, or they may leverage their power advantage at the expense of weaker partners.").

within these structures, engaging private law, as it were, with the kind of post-colonial legal theory that international lawyers have been pursuing for some time now, namely by building on a longer lineage of anti-formalist jurisprudence that was historically oriented towards socio-economic relations in order to focus on structural inequities through the lenses of race, gender and colonialism.⁵⁹ With such sensitivities, it seems that legal scholarship today is particularly poised to elaborate an encompassing critique of what has been referred to as supply chain or value chain *capitalism*.⁶⁰ In different fields of law and in their respective engagements with other disciplines in the analysis of complex, societal arrangements,⁶¹ we can witness a distinct rejection of formalist abstraction and continuing efforts of interrogating law's ability not only to grasp both the evident and hidden structures of inequality but to develop effective means of conceptualizing law's complicity in those structures and to formulate concrete, transformative answers.

B. Reversing Norm and Exception

But, we are getting ahead of ourselves. The dominating account regarding global supply chains continues to keep most of the just mentioned dimensions of global commercial connectivity, labor exploitation and environmental degradation out of the public eye. It is only at the occasion of an extraordinary event and disruption that the underbelly of GVCs appears on the radar. And yet, almost a decade after the Rana Plaza building collapse, that killed more than 1,100 workers in the “deadliest disaster in the history

⁵⁹ James Thuo Gathii, *TWAIL: A Brief History of Its Origins, Its Decentralized Network, and a Tentative Bibliography*, 3 TRADE L. & DEV. 26, 38 (2001) (“[A] central project of TWAIL is to challenge the hegemony of the dominant narratives of international law, in large part by teasing out encounters of difference along many axes—race, class, gender, sex, ethnicity, economics, trade, etc. and in inter-disciplinary ways—social, theoretical, epistemological, ontological and so on. The approaches within TWAIL include critical, feminist, post-modern, Lat-Crit Theory (Latina and Latina Critical Theory Inc.), post-colonial theory, literary theory, modernist, Marxist, critical race theory and so on.); see also NTINA TZOUVALA, *CAPITALISM AS CIVILISATION: A HISTORY OF INTERNATIONAL LAW* 31-32 (2020) (discussing Marxist and socialist feminist international legal scholarship that emphasizes the role of racialization as part of capitalist accumulation and reveals the role of patriarchy in exploiting reproductive capacity).

⁶⁰ Jennifer Bair, Mathew Mahutga, Marion Werner & Liam Campling, *Capitalist Crisis in the “Age of Global Value Chains”*, 1253 ENV'T & PLAN. A: ECON. & SPACE (2021); Helen V. Milner, *Is Global Capitalism Compatible with Democracy? Inequality, Insecurity, and Interdependence*, 65 INT'L STUD. Q. 1097, 1101 (2021) (“Discontent with democracy and its functioning seem to be rising globally and this could spell trouble for its durability, as populist and extreme right and left parties gather momentum.”).

⁶¹ Gavin Sullivan, *Law, Technology, and Data-Driven Security: Infra-Legalities as Method Assemblage*, J. L. & SOC'Y 1 (2022); Peer Zumbansen, *Law's New Cartographies. Spatialization, Digital Borders and Spaces of Vulnerability*, TLI THINK! (Feb. 2022), <https://ssrn.com/abstract=4082327>. / 13 TRANSNAT'L LEG. TH. 1 (2023), *forthcoming*.

of garment manufacturing,”⁶² there is an even greater need to counter the prevailing disaster narrative that sets the exceptional event apart from a normality that stays itself unchallenged.⁶³ An analysis the exceptional nature of which is misrepresented and sold, in each and every minute, as the normal requires a delineation of the object of investigation and the context in which it stands.

But, how is this investigation to be carried out and what are the challenges, specifically, for law and legal doctrine? The engagement within such a contested discursive space poses difficult questions on various levels. Doctrinally, the commonly available, tried and tested instruments in contract, tort or corporate law remain in tension with the conceptualization of GVCs as assemblages of spatial organization which lack clearly identifiable hierarchies of control, let alone of legitimacy. Methodologically, GVCs as such are at the intersection of very different disciplinary approaches, not only because they invite an intriguing coming together of practical and theoretical considerations, but mainly because it is in their nature to be boundaryless, quite literally, in both a physical and conceptual sense. The absence of clear, that is judicially accessible demarcations between, say, a contract and a network, translates into the hollowing-out of a doctrinal category and its socio-cultural embeddedness⁶⁴ and into the growth of organizational frameworks that law might not yet be readily equipped to capture and translate into actionable doctrine.⁶⁵ Furthermore, there is the paradox of the chain’s actual location as being everywhere and nowhere that continues to exhaust existing conflict of laws foundations and resists assertions of border-

⁶² Rebecca Prentice, *Labour Rights from Labour Wrongs? Transnational Compensation and the Spatial Politics of Labour Rights after Bangladesh’s Rana Plaza Garment Factory Collapse*, 53 ANTIPODE 1767, 1769 (2021).

⁶³ Naomi Klein, *Disaster Capitalism: The New Economy of Catastrophe*, HARPER’S MAG., Oct. 2007; NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* (2007); Kevin Fox Gotham, *Disaster Inc: Privatization and Post-Katrina Rebuilding in New Orleans*, 10 PERSP. ON POL. 633, 638 (2012); Donald Houston, Alan Werritty, Tom Ball & Andrew Black, *Environmental Vulnerability and Resilience: Social Differentiation in Short- and Long-Term Flood Impacts*, 46 TRANSACTIONS OF THE INST. OF BRITISH GEOGRAPHERS 102; see also Susan L. Cutter, Bryan J. Boruff & W. Lynn Shirley, *Social Vulnerability to Environmental Hazards*, 84 SOC. SCI. Q. 242 (2003).

⁶⁴ Eller, *supra* note 55, at 8. See also Jakkko Salminen, *Towards a Genealogy and Typology of Governance Through Contract Beyond Privity*, 16 EUR. REV. CONT. L. 25, 28 (2020).

⁶⁵ Anna Beckers, *The Invisible Networks of Global Production: Re-Imagining the Global Value Chain in Legal Research*, 16 EUR. REV. CONT. L. 95, 115 (2020) (“While it seems now commonplace to deconstruct established legal distinctions and sub-disciplines, as public law and private law, and work on topics from an issue-specific functional perspective that encompasses the relevant legal rules, there seems to be less conversation in-between the different topics, ie between law and finance and law and logistics, between the burgeoning field of the law in the digital economy and the law in ‘global production’. Despite the difficulties in finding a common terminology and understanding, it is these cross-fertilizations between fields that would need to be intensified.”).

crossing responsibility and liability.⁶⁶ And finally, it is the chain's, for short, 'non-legal' dimensions that continue to confront lawyers with conceptual but also epistemological obstacles. It is not only that the types of arrangements and transactions within and around the chain crisscross in and out of the confines of contract, corporate or tort law, but it is the actual materiality of relations, experiences and practices across instances of asymmetric, exploitative and destructive situatedness which existing doctrine still has to articulate more adequately. As will become clearer in the following, the complexity of GVCs is already reflected in the discursive pluralism that marks the efforts by management and organization scholars, labor and human rights lawyers, as well as anthropologists and geographers to define GVCs. This diversity of definitions and approaches illustrates not so much the absence of an encompassing, conclusive definition but, instead, points to the need to treat GVCs with conceptual and epistemological caution.

Right at the outset of analyzing global supply chains ('GSCs'), one finds a myriad of different definitions, connotations and framings. Their provenance sheds some light on the stakes involved in this battle over the name and its meaning. The International Labor Organization (ILO), engaged in a more-than-a-century-long battle for workers' rights, has been deeply invested in GSC analysis and understands them, synonymously to "global production networks and global value chains," as "complex, diverse, fragmented, dynamic and evolving organizational structures." In taking a wide perspective, the ILO's definition highlights

the cross-border organization of the activities required to produce goods or services and bring them to consumers through inputs and various phases of development, production and delivery. This definition includes foreign direct investment (FDI) by multinational enterprises (MNEs) in wholly owned subsidiaries or in joint ventures in which the MNE has direct responsibility for the employment relationship. It also includes the increasingly predominant model of international sourcing where the engagement of lead firms is defined by the terms and conditions of contractual or sometimes tacit arrangements with their suppliers and subcontracted firms for specific goods, inputs and services.⁶⁷

The ILO's definition reveals important parallels to the definition used by pioneering organization and management theorists who describe global value chains thus:

The value chain describes the full range of activities that firms and workers perform to bring a product from its conception to end use and

⁶⁶ See, e.g., *Choc v. Hudbay Minerals Inc*, 2013 ONSC 1414, and *Das v. George Weston Ltd*, 2018 ONCA 1053 (CanLII).

⁶⁷ ILO Int'l Labour Off., Rep. IV: *Decent Work in Global Supply Chains*, U.N. Doc. ILC.105/IV, at n. 5 (2016).

beyond. This includes activities such as research and development (R&D), design, production, marketing, distribution and support to the final consumer. The activities that comprise a value chain can be contained within a single firm or divided among different firms (globalvaluechains.org, 2011). In the context of globalization, the activities that constitute a value chain have generally been carried out in inter-firm networks on a global scale.⁶⁸

The term supply chain and, eventually, value chain, succeeded that of “commodity chain”, which itself had emerged in the context of international development and decolonization debates in the 1960s and 1970s during which modernization and dependency theories competed over the explanatory and normative stakes of international economic integration.⁶⁹ While the former maintained that developing countries should seek to emulate developed countries’ approaches to economic regulation in order to “catch up” and succeed in the international economic market,⁷⁰ the latter critiqued not only the “stagist” assumptions of modernization theory but also its unapologetic, Eurocentric prescriptions.⁷¹ The ideological thrust behind the assertions of “progress” and “development”, however, ran deep: “The past might be a foreign country, as L. P. Hartley wrote, but for US modernization theorists foreign countries were the past.”⁷²

⁶⁸ GARY GEREFFI & KARINA FERNANDEZ-STARK, *GLOBAL VALUE CHAIN ANALYSIS: A PRIMER* 7 (2d ed. 2016).

⁶⁹ Gary Gereffi, et al., *The Governance of Global Value Chains*, in *GLOBAL VALUE CHAINS AND DEVELOPMENT: REDEFINING THE CONTOURS OF 21ST CENTURY CAPITALISM* 118-141, 134 (Gary Gereffi ed. 2018) (“The concept of commodity chains was first introduced by Hopkins and Wallerstein (...) as a heuristic to study the operation of global capitalism and the reproduction of a stratified and hierarchical world- system beyond the territorial confines of the nation-state.”).

⁷⁰ WALT W. ROSTOW, *THE STAGES OF ECONOMIC GROWTH* 7 (1960); Simon Reid-Henry, *US Economist Walt Rostow and his Influence on Post-1945 Development*, *THE GUARDIAN*, Oct. 8, 2012, at 2 (“The product of a decade’s work, the book gives us post-second world war development economics in a nutshell—or rather in the silver sweep of a DC-8 airliner cabin, since Rostow’s primary analogy was that of ‘take off’: an aeronautical rendering of the moment when, with sufficient capital and other preconditions in place, ‘the old blocks and resistances to steady growth are finally overcome’.”).

⁷¹ Theotonio Dos Santos, *The Structure of Dependence*, 60 *AM. ECON. REV.* 231, 236 (1970) (“By dependence we mean a situation in which the economy of certain countries is conditioned by the development and expansion of another economy to which the former is subjected. (...) The concept of dependence permits us to see the internal situation of these countries as part of world economy.”); Samir Amin, *Accumulation and Development: a theoretical model*, 1 *REV. AFR. POL. ECON.* 9, 13 (1974) (“[O]nce society is subjected to this new function—becoming in this sense dependent—it loses its traditional character since it is not the function of real, traditional societies (i.e. pre-capitalist) to supply cheap labour for capitalism.”). See also Ramón Grosfoguel, *Developmentism, Modernity, and Dependency Theory in Latin America*, 1 *NEPANTIA* 347 (2000).

⁷² Guy Ortolano, *The Typicalities of the English? Walt Rostow, The Stages of Economic Growth, and Modern British History*, 12 *MOD. INTELL. HIST.* 657, 658 (2015). See also the critique of the guiding notion and bias of ‘progress’ in the realm of international law and U.S.

An important early critique of commodity chain-based capitalism was that it further cemented colonial-era supremacy and control over former colonial territories and peoples, not least by instrumentalizing distinctions between “the ‘core’ countries and the ‘periphery’ in the international capitalist system.”⁷³ Herein, though, also lay one of the commodity chain theory’s central limitations in terms of developing a refined instrumentarium to capture the intricate capillaries of spatialized resource extraction, production, and dissemination systems. While importantly focusing on the respective, internal political economy of importing and exporting countries, the analytical framework was not designed to adequately map and conceptualize the ever-expanding clusters, assemblages, and organizational-symbolic infrastructures of cross-border trade.⁷⁴ Even where the focus shifted towards “industries” and, arguably, away from the state as the principal research target, the state and the political system of macro-economic organization still were seen as the key to countries’ success in the struggle for competitiveness.⁷⁵

Then and now, understanding the nature and function of supply chains requires a triple lens of macro-economic orchestration, micro-economic embeddedness, and organizational and anthropological organization. Internationally, they are part and parcel of and shaped by international trade flows and regulations, boycotts and compromises, while domestically they are constantly being renegotiated against changing domestic policy enactments regarding trade- and industry-specific tariffs, subsidies and wage- and production-related rules.⁷⁶ The chain as an organizational

foreign relations law: THOMAS SKOUTERIS, *THE NOTION OF PROGRESS IN INTERNATIONAL LAW DISCOURSE* (2009); *PROGRESS IN INTERNATIONAL LAW* (Russel A. Miller & Rebecca Bratspies eds., 2008); NTINA TZOUVALA, *CAPITALISM AS CIVILISATION: A HISTORY OF INTERNATIONAL LAW* 49 (2020), (“[T]his embrace of anthropology as a privileged partner in the collection of facts and the creation of knowledge about different societies also meant that international lawyers embraced its methodological choices, prejudices and ideological commitments. (...) what seemed (...) beyond doubt for international lawyers and other professionals of imperialism was that at that specific moment in time humanity stood divided. some peoples—or rather their white, male, middle-class or bourgeois representatives—had reached evolutionary maturity, while others stood (permanently or provisionally) at lower stages of human development.”).

⁷³ Gary Gereffi, et al., *Emergence of Global Value Chains: Ideas, Institutions, and Research Communities in GLOBAL VALUE CHAINS AND DEVELOPMENT: REDEFINING THE CONTOURS OF 21ST CENTURY CAPITALISM* 1-39, 3 (Gary Gereffi ed. 2018).

⁷⁴ *Id.* at 8: “One of the major limitations of dependency theory was the absence of an integrated global perspective on MNCs.”

⁷⁵ *Id.*

⁷⁶ UNCTAD, *Global Supply Chains: Trade and Economic Policies for Developing Countries*. POLICY ISSUES IN INTERNATIONAL TRADE AND COMMODITY STUDIES SERIES NO. 55 at 14 (2013) (“[T]he effectiveness of government institutions and their capacity to implement policies are critical. GSCs also often involve long-term investments that require equally long-term government commitments with regard to stable and predictable policies.”); Emily J. Blanchard, Chad P. Brown & Robert C. Johnson, *Global Supply Chains and Trade Policy*, WORLD BANK POLICY RESEARCH WORKING PAPER 7536 (2016) (highlighting the need for a

infrastructure itself remains a complex and intriguing space, the particularly violent quality of which is only too often hidden under the functionalist pronouncements of “production,” “distribution,” and “management.” So, in turn, even where international trade analysis recognized the significance of chain-based trade relations and their dependency on domestic economic regulation in production, host and incorporation countries, this account still omitted crucial dimensions of how chains operate and how dramatically they reconfigure not only global commerce but local life.⁷⁷

The “global *value* chain” emerged as a terminological qualification and was meant to capture the creation of economic and financial value beyond the physical processes of sourcing, production, transport, and distribution. “By focusing on the sequences of tangible and intangible value-adding activities, from conception and production to end use, GVC analysis provides a holistic view of global industries—both from the top-down (for example, examining how lead firms ‘govern’ their global-scale affiliate and supplier networks) and from the bottom-up (for example, asking how these business decisions affect the trajectory of economic and social ‘upgrading’ or ‘downgrading’ in specific countries and regions).”⁷⁸ As a comprehensive, refined framing of the economic connectivity that had previously been described through the labels of commodity and supply chains, the concept of “value chains” draws on the insight that, beyond the contractual organization of producer/buyer/distributor relations, the integration of a diverse set of actors in the creation of a product, its brand, and its marketing and dissemination centres around the creation of value. In a landmark contribution to the literature on GVC governance, Gereffi, Humphrey and Sturgeon explained the logic that drives the organization of cross-border economic exchanges as based on transaction costs economics, firm capabilities and learning as well as arguments related to scale economies.⁷⁹ “The key insight is that coordination and control of global-scale production systems, despite their complexity, can be achieved without direct

closer study of supply chain-driven trade for contemporary international trade analysis).

⁷⁷ Olabisi D. Akinkugbe, *Reflections on the Value of Socio-Legal Approaches to International Economic Law in Africa*, 22 CHI. INT’L L. J. 24, 24-36, 27-28 (2021) (“Whether in Europe, North America, Asia, Latin America, the Caribbean, or Africa, IEL involves a unique constellation of local conditions, forces, and factors that coalesce in the mantra: context matters.”).

⁷⁸ GEREFFI & FERNANDEZ-STARK, *supra* note 68, at 7.

⁷⁹ Gary Gereffi, John Humphrey and Timothy Sturgeon, *The Governance of Global Value Chains*, 12 REV. INT’L POL. ECON. 78, 81 (2005).

ownership.”⁸⁰ Originally introduced by Michael Porter in 1985,⁸¹ the concept of the “value chain” aimed at illuminating the range of factors that firms need to control in their effort of maintaining a competitive market position. Porter’s approach shed new light on the connections between firms’ strategic choices and governmental and international trade regulation, both of which had long been engulfed in imaginations of progress, development, and superiority. No longer merely an institutional manifestation of international economic trade the GVC emerged as the all-encompassing organizational principle.⁸² With that, it took on the form of the world along with its colonially inherited infrastructures and patterns of power.⁸³

At the same time, the disruptive impact and immense socio-political costs for developing countries and local communities remained hidden under an analytical lens of international political economy that was centered on growth and emphasized the ‘upgrading’ opportunities for developing countries once they became integrated in global value chains.⁸⁴ By switching the perspective from the North to the South, the standard narratives become questionable. The chain—in linking workers in the Global South with consumers in the Global North in the context of a hyper-structured interplay of branding, production and dissemination logistics, foreign direct investments, licensing and tariff settings—ties together the exploitation and destruction of human and natural life in the South with the maintenance of consumption, waste and high living standards as the norm. “Consumers’

⁸⁰ *Id.*; see also NAOMI KLEIN, *NO LOGO: TAKING AIM AT THE BRAND BULLIES* 20 (2000); Dan Hancox, *No Logo at 20: Have We Lost the Battle Against the Total Branding of our Lives?*, THE GUARDIAN, 11 August 2019, <https://www.theguardian.com/books/2019/aug/11/no-logo-naomi-klein-20-years-on-interview> (“Reading *No Logo* back then in my first year at university was hugely formative; the book, mixing eye-opening reportage with sharp-tongued analysis of consumer capitalism, was a bible for understanding the world my generation was growing up in and the motor behind a new kind of grassroots politics. The battle lines were clear, as ordinary citizens around the world stood in opposition to corporate greed, sweatshops, union-busting, ‘McJobs’, privatisation and environmental destruction: and the avatar for them all, the increasingly unavoidable logos of western ‘superbrands.’”).

⁸¹ MICHAEL E. PORTER, *COMPETITIVE ADVANTAGE. CREATING AND SUSTAINING SUPERIOR PERFORMANCE* 26 (1985) (“The basic tool for diagnosing competitive advantage and finding ways to enhance it is the value chain, which divides a firm into the discrete activities it performs in designing, producing, marketing, and distributing its product.”).

⁸² Blanchard et al., *Global Supply Chains*, *supra*, note 76, 1 (“In the modern global economy, final goods are typically produced by combining domestic and foreign value added via global supply chains.”).

⁸³ Anibal Quijano & Michael Ennis, *Coloniality of Power, Eurocentrism, and Latin America* 1 NEPLANTA 533, 553 (2000) (“Historical experience shows, however, that global capitalism is far from being a homogeneous and continuous totality. On the contrary, as the historical experience of America demonstrates, the pattern of global power that is known as capitalism is, fundamentally, a structure of heterogeneous elements as much in terms of forms of control of labor-resources-products (or relations of production) as in terms of the peoples and histories articulated in it.”).

⁸⁴ Jennifer Bair et al., *Capitalist Crisis in the “Age of Global Value Chains”*, 53 ENV’T. & PLAN. A: ECON. & SPACE 1253, 1256 (2021).

seemingly insatiable desires for the latest technology have supported a system of production that can deliver on these demands but does so by demanding an extreme degree of flexibility by production workers.”⁸⁵ As Anna Tsing observes, “[s]upply chains offer some of the most vivid images of our times: telephone operators assisting customers from across the globe; ‘traditional’ indigenous farmers growing specialty crops for wealthy metropolitan consumers; Chinese millionaires reaping the profits of Wal-Mart contracts; sweatshop workers toiling in locked rooms while brand-name buyers disavow responsibility.”⁸⁶

But, even dearly held beliefs in the permanency of developed and underdeveloped/developing nations eventually had to give way to the insight that due to the “specificities of technology, industry, society, and historical moment all [having] the potential of being decisive in shaping individual and aggregate outcomes for places, firms, and, workers” leads to the result that “the variety that can be observed in the global economy is effectively infinite.”⁸⁷ Instead of being able to rely on singular theories of linear development logics, it became clear that what was needed was a differentiated research analytics to capture the fast-evolving and -changing features of economic globalization. Calling into question earlier assessments of economic internationalization, “characterized by the simple geographic spread of economic activities across national boundaries”, geographers and value chain theorists have been highlighting the functional integration of internationally dispersed activities which stands distinctly from that earlier period.⁸⁸ To be sure, this organizational infrastructure and, in particular, the separation of product design and marketing, on the one hand, and outsourced production and distribution, on the other, has significant effects on the political economy of labor and trade. As is often noted, its fragmentation creates significant access barriers for collective organization and political resistance,⁸⁹ while the global differentiation of economic exchange, driven by corporate value chains shapes domestic anti-protectionist trade policies

⁸⁵ TIM BARTLEY ET AL., *LOOKING BEYOND THE LABEL: GLOBAL INDUSTRIES AND THE CONSCIENTIOUS CONSUMER* 181 (2015).

⁸⁶ Anna Tsing, *Supply Chains and the Human Condition*, 21 *RETHINKING MARXISM: J. ECON., CULT. & SOC’Y* 148, 149 (2009).

⁸⁷ Timothy J. Sturgeon, *From Commodity Chains to Value Chains: Interdisciplinary Theory Building in an Age of Globalization*, *INDUSTRY STUDIES ASSOCIATION WORKING PAPERS* 1, WP-2008-02, http://isapapers.pitt.edu/84/1/2008-02_Sturgeon.pdf.

⁸⁸ *Id.* at 2; *see generally* PETER DICKEN, *GLOBAL SHIFT: THE INTERNATIONALISATION OF ECONOMIC ACTIVITY* (1992).

⁸⁹ Gereffi et al., *supra*, note 19, at 6 (“Many ‘lead’ firms have narrowed their focus to product development and marketing while outsourcing production and production-related functions to suppliers.”); Mark Anner, *The Impact of International Outsourcing on Unionization and Wages: Evidence from the Apparel Export Sector in Central America*, 64 *IND. & LAB. REL. REV.* 305 (2011) (“Horizontal segmentation of the production process decreases labor’s strike leverage and economic power at the firm level, resulting in low levels of unionization and wages.”); DICKEN, *supra* note 88 at 306.

and eventually drives a wedge between business and workers as the former succeed in sourcing production elsewhere.⁹⁰ It is therefore interesting to explore how rarely workers actually surface on the radar of prevailing GVC management accounts.

III. WHERE ARE THE WORKERS?

Global value chains, much like contract and property,⁹¹ are regularly being presented as an obvious manifestation of thus normalized contemporary capitalism and as one of its defining technical tools.⁹² Meanwhile, they emerge out of complicated histories of economic, military, and political expansion and conflict.⁹³ We should thus expect that any study of GVCs would seek to maintain a certain perspective on the political economy dimension of its complex, transnational architecture. But what in fact characterizes the majority of descriptions of GVCs is a fragmentary, selective approach. Above all, it is the larger set of normative premises which drives the analytics of GVCs and which seems to determine what will become visible and what will remain dark. The Organization for Economic Cooperation and Development [OECD], for example, highlights the vulnerability of global value chains to restrictive trade policy and asserts that while “[t]he traditional view of international trade is that each country produces goods and offers services that are exported as final products to consumers abroad . . . [i]n reality, about 70% of international trade today involves global value chains (GVCs), as services, raw materials, parts, and components cross borders—often numerous times.”⁹⁴ We see a similar selectivity at work even at the present moment, but even now, when, for example, the “human dimension,” generally as a stand in for labor, seems to be moving closer into the spotlight, such attention appears momentary and

⁹⁰ Ari Van Assche & Byron Gangnes, *Global Value Chains and the Fragmentation of Trade Policy Coalitions*, 26 *TRANS. CORP.* 31, 32 (2019) (“In recent decades, firms have globalized their production processes as they have separated value chain tasks and moved them to different countries. Most international trade no longer involves exchanging finished goods but rather intermediate inputs, which firms increasingly use to produce their own exports. . . . this trend alters trade policy coalitions in ways that further disadvantage low-skilled workers and [may] explain how this . . . exacerbated populist anti-trade sentiment.”).

⁹¹ See Richard A. Posner, *Creating a Legal Framework for Economic Development*, 13 *WORLD BANK RES. OBS.* 1 (1998).

⁹² Ronald H. Ballou, *The Evolution and Future of Logistics and Supply Chain Management*, 16 *PRODUÇÃO* 375, 382 (2006) (Tracing the eventual emergence of logistics and distribution as a company concern from its military origins before the 1950s through the discovery of ‘distribution’ as a key element in the evolution towards supply chain management (SCM): “The contemporary view is that SCM is a new frontier for demand generation—a competitive weapon.”).

⁹³ Stephan Haggard et al., *The Rule of Law and Economic Development*, 11 *ANN. REV. POL. SC.* 205 (2008).

⁹⁴ OECD, *The Trade Policy Implications of Global Value Chains* <https://www.oecd.org/trade/topics/global-value-chains-and-trade/> (last visited Feb. 16, 2023).

not overly substantive as of yet. In a pandemic analysis of supply chain management strategies, Sweeney and Bahr observed that while

[e]xperience suggests that success in achieving higher levels of supply chain integration (SCI) depends on both physical and technical aspects (i.e., the so-called ‘hard-wiring’), as well as human and behavioral components (i.e., the so-called ‘soft-wiring’)[,] (...) [i]t would appear (...) that the latter has received relatively little attention in the LSCM academic literature. Furthermore, the empirical evidence suggests that the majority of supply chain improvement initiatives in companies have been primarily concerned with technological, structural and process issues.⁹⁵

In a McKinsey survey of 2010, the labor dimension of value chains only figured in relation to companies’ concerns with “increasingly global markets for labor and talent, including rising wage rates.”⁹⁶ In a 2013 study commissioned by the World Trade Organization, the need to factor “human behaviour into all future value chain designs” is identified as “non-negotiable” as “[u]nderstanding human behaviour is the elephant in the room, but, unfortunately, too many executives are in denial about its pivotal influence, presumably because they do not know how to factor it into the performance equation.” In a striking turn, then, the study illuminates who is included in this assessment of ‘human behaviour’, literally omitting workers altogether: “people are spread out along supply chains, in the form of customers, intermediaries, staff and management inside suppliers and the enterprise itself.”⁹⁷ The European Parliament, in a 2021 resolution, recognized that “the globalisation of economic activity has aggravated adverse impacts of business activities on human rights, including social and labor rights, the environment and the good governance of states; whereas human rights violations often occur at primary production level, in particular when sourcing raw material and manufacturing products.” And, in their 2022 contribution to the *Journal of Evolutionary Economics*, Gerdes, Rengs and Scholz-Wäckerle remind us that “[m]ost of these negative effects are happening far away from the place where the final good is eventually

⁹⁵ Edward Sweeney & Witold Bahr, *The Human Chain in Logistics and Supply Chain Management Research and Practice*, 2 J. SUPPLY CHAIN. MGMT., LOGISTICS & PROCUREMENT 72 (2019).

⁹⁶ McKinsey Global Survey Results, *The Challenges Ahead for Global Supply Chains*, cited in Donald Lessard, *Uncertainty and risk in global supply chains*, in GLOBAL VALUE CHAINS IN A CHANGING WORLD 195, 212 (Deborah K. Elms and Patrick Low eds., World Trade Organization, Fung Global Institute, Temasek Foundation Centre for Trade & Negotiations, 2013), https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/11423/2013-07_Elms%20%26%20Low%20eds_Global%20Value%20Chains%20in%20a%20Changing%20World_WTO.pdf?sequence=1.

⁹⁷ John Gattorna, *The Influence of Customer Buying Behaviour on Product Flow Patterns between Trading Countries, and the Implications for Regulatory Policy*, in Elms & Low, *supra* note 96, at 222.

consumed. The historical and geographical traces of multi-sectoral value chains become invisible once the final product finds its place in the shelves of local and international retailers. The impacts of production on labor and the environment often have to be carried by the producing countries, majorly the Global South, while profits are accumulated in the Global North.”⁹⁸

In an overwhelming number of related memos, policy statements and reports, labor appears as a line item on enumerative ‘stakeholder’ lists but without further engagement with workplace safety, perilous manufacturing processes or wages. In the OECD’s ‘Keys to resilient supply chains’ webtool, labor and workers do not even make any appearance.⁹⁹ Instead, the focus is, e.g., on ‘minimising exposure to shocks’, which translates into “investing in infrastructure, enabling digital trade, sound procurement management and regulatory flexibility (...).” Other reform tasks associated with (re-)building resilient value chains include the improvement of public-private collaboration and efforts to create international trade agreements. In a ‘White Paper’ by the World Economic Forum of July 2021—at a moment in time, where a first-grade student would have heard about ‘essential workers’—the authors identify companies and governments as key actors in building ‘resilient’ and stable value chains: “Companies are being forced to reconsider their global footprint, product portfolio and go-to-market strategies, along with their approach to planning, sourcing, production and distribution. Governments are having to redesign industrial strategies and policy to boost recovery and redefine competitiveness in a new, volatile global context.”¹⁰⁰

Such studies continue a long thread in value chain analysis and display a consistent disregard for labor and workers in this context.¹⁰¹ While it is certainly true that early supply chain analysis was already sensitive to power asymmetries, particularly “in buyer-driven apparel global supply chains (GSCs), where retailers and brands (‘buyers’ or ‘lead firms’) consolidated their power through mergers, acquisitions and market concentration . . .”¹⁰²,

⁹⁸ Lena Gerdes, Bernhard Rengs and Manuel Scholz-Wäckerle, *Labor and Environment in Global Value Chains: An Evolutionary Policy Study with a Three-sector and Two-region Agent-based Macroeconomic Model*, 32 J. EVOLUTIONARY ECON. 123, 124 (2022).

⁹⁹ OECD, *Keys to Resilient Supply Chains*, <https://www.oecd.org/trade/resilient-supply-chains/>.

¹⁰⁰ WORLD ECONOMIC FORUM, *The Resiliency Compass: Navigating Global Value Chain Disruption in an Age of Uncertainty, White Paper 4* (July 2021).

¹⁰¹ Andreas Wieland & Carl Marcus Wallenburg, *Dealing with Supply Chain Risks: Linking Risk Management Practices and Strategies to Performance*, 42 INT’L J. DIST. & LOGISTICS MGMT. 887, 891 (2012) (“SCRM can reduce vulnerabilities in both a reactive and a proactive manner: on the one hand, SCRM is reactive, because it helps to monitor changes in the supply chain, customer needs, technology, partner strategies, and competitors and to update the risk assessment correspondingly On the other hand, SCRM can also reduce vulnerabilities in a proactive manner: it helps identify a potential risk and to assess its impact and probability before it can occur. Then, the decision maker can implement actions that prevent the risk or, at least, minimize the impact when occurring.”).

¹⁰² Mark Anner, *Squeezing Workers’ Rights in Global Supply Chains: Purchasing*

the largest proportion of related research at business schools and by consultancies, at the World Bank, the World Trade Organization, or the OECD focused on management and on the organization of risk reduction. In striking parallel, then, to the absence of workers from the typical representation and, indeed, regulation of the business corporation,¹⁰³ labor and its material lives throughout the value chain, are largely in darkness.¹⁰⁴

Propelled onto the agnostic consumer's computer screen and fed into one's phone's news flash, factory accidents such as the already mentioned Ali Enterprise¹⁰⁵ and the 2013 Rana Plaza tragedies draw—if passing—attention to the reality of workplaces and their inhabitants in distant places,¹⁰⁶ and sometimes—as in the case of the swiftly coordinated and implemented Bangladesh Accord¹⁰⁷—a window opens up for a tangible regulatory intervention or, at a minimum, an eventually changing public perception of

Practices in the Bangladesh Garment Export Sector in Comparative Perspective, 27 REV. INT'L POL. ECON. 320, 320 (2020).

¹⁰³ Kate Andrias, *The New Labor Law*, 126 YALE L. J. 2, 44 (2016) (“Most notably, since the 1970s, a movement has emerged in support of corporate self-governance. That is, multinational corporations, whether on their own or when pushed by human rights groups, unions, and NGOs, have adopted corporate codes of conduct and agreed to let outside groups monitor their compliance with these codes.”); see also Monray Marsellus Botha, *The Different Worlds of Labour and Company Law: Truth or Myth?*, 17 POTCHEFSTROOM ELECTION L. J. 2042 (2014); Peter Zumbansen, *The Parallel Worlds of Corporate Governance and Labor Law*, 13 IND. J. GLOB. LEGAL STUD. 261 (2006); Douglas M. Branson, *The Very Uncertain Prospect of “Global” Convergence in Corporate Governance*, CORNELL INT'L L. J. 321, 326 (2001) (“Worker exploitation, degradation of the environment, economic imperialism, regulatory arbitrage, and plantation production efforts by the growing stable of gargantuan multinationals, whose power exceeds that of most nation states, is far higher on the global agenda than is convergence in governance.”).

¹⁰⁴ Welker, Partridge, and Hardin, *Corporate Lives*, *supra*, note 45, S9 (“Even many of the largest companies, such as Ford, are family run, and kinship metaphors also pervade corporations that are not structured around family, serving both workers and managers as mechanisms for classifying, interpreting, and enacting social relations; as ideological resources; and as moral claim-making devices . . .”).

¹⁰⁵ Clean Clothes Campaign, *On Eve of Deadly Factory Fire Anniversary, Pakistani Labour Activists Urge Action for Worker Safety*, 9 September 2021, <https://cleanclothes.org/news/2021/on-eve-of-deadly-factory-fire-anniversary-pakistani-labour-activists-urge-action-for-worker-safety>; SAAGE, MAAB, ZUMBANSEN, BADER & SHAHAB, *supra*, note 17.

¹⁰⁶ Jimmy Donaghay & Juliane Reinecke, *When Industrial Democracy Meets Corporate Social Responsibility: A Comparison of the Bangladesh Accord and Alliance as Responses to the Rana Plaza Disaster*, 56 BRITISH J. INDIAN REL. (2017); Chikako Oka et al., *Buyer Engagement and Labour Conditions in Global Supply Chains: The Bangladesh Accord and Beyond*, 51 DEV. & CHANGE 1306 (2020).

¹⁰⁷ Jakko Salminen, *The Accord on Fire and Building Safety in Bangladesh: A New Paradigm for Limiting Buyers' Liability in Global Supply Chains?*, 66 AM. J. COMPAR. L. 411 (2018); see also Anne Trebilcock, *The Rana Plaza Disaster Seven Years On: Transnational Experiments and Perhaps a New Treaty?*, 159 INT'L LAB. REV. 545 (2020).

where T-shirts¹⁰⁸ and iPads come from and who made them.¹⁰⁹ Amazingly, the exclusive economic bias that informs the regulation of international trade relations is permanently strong: “There is no doubt that advocates of neo-liberal policies were adamantly opposed to the social clause [to stop imports of garments produced through child labor] on the grounds that linking labor standards to trade agreements would distort market forces and erode the competitive advantage of labor-abundant, low-wage economies in the Global South.”¹¹⁰ In turn, critics find themselves—still in 2022—having to spell out the obvious in the form of a didactic exercise:

Many global and national unions have embraced the ‘worker-centered’ policy, whose name suggests recognition of their member constituencies’ needs and interests. Those unions fail to acknowledge the residual structural inequalities and asymmetrical relationships between capital and labor. After all, international economic law has been designed to regulate the flow of goods, services, and capital across borders, not to protect labor rights.¹¹¹

A. From Labor Law to Human Rights Due Diligence

The political economy of GVCs will become more tangible once we turn our attention to the evolution of transnational labor regulation, which bears important lessons regarding the comparative differences in national institutionalization and the continuing efforts to transpose labor and social protection regimes to the international level. Labor lawyers, human rights activists, and critical trade scholars have long been dissecting the global value chains to address and remedy the costs to humans and the environment that arise from “global supply chain capitalism.” A defining feature of such struggles over the past few decades, in particular, has been the interpenetration of initiatives rooted in labor and in human rights law, the latter having become a key concern for policies directed at and involving

¹⁰⁸ For a historical account of the globalization of garment production, see ANDREW BROOKS, *CLOTHING POVERTY: THE HIDDEN WORLD OF FAST FASHION AND SECOND-HAND CLOTHES* 39-71 (2015); see also the sketch on the website of the Principles for Responsible Investment, 1 November 2017: *Potential Human Rights Issues when Making a T-Shirt*: <https://www.unpri.org/social-issues/the-potential-human-rights-issue-companies-face-when-making-a-t-shirt/479.article>.

¹⁰⁹ SANCHITA BANERJEE SAXENA (ED.), *LABOR, GLOBAL SUPPLY CHAINS, AND THE GARMENT INDUSTRY IN SOUTH ASIA* 1-18 (2021); Christian Scheper, *Labour Networks under Supply Chain Capitalism: The Politics of the Bangladesh Accord*, 48 *DEV. & CHANGE* 1069, 1070 (2017).

¹¹⁰ Naila Kabeer, *The Evolving Politics of Labor Standards in Bangladesh: Taking Stock and Looking Forward*, in *LABOR, GLOBAL SUPPLY CHAINS, AND THE GARMENT INDUSTRY IN SOUTH ASIA* 231, 238 (Sanchita Banerjee Saxena ed., 2021) (with reference to Jagdash. Bhagwati, *Trade Liberalisation and Fair Trade Demands: Addressing the Environmental and Labour Standards Issue*, 18 *WORLD ECON.* 215 (1996)).

¹¹¹ Desirée LeClercq, *Invisible Workers*, 116 *AM. J. INT’L L. UNBOUND* (Symposium on International Economic Law and Its Others) 107, 107 (2022).

corporate actors themselves. This marks an important shift away from the traditional focus on domestic institutionalization of labor rights through employment law and industrial relations towards hybrid, public-private, domestic- international frameworks of “business and human rights,” “modern slavery,”¹¹² and “human rights due diligence.”¹¹³

The ILO’s century-long struggle over the “decommodification of labour” is illustrative of the political economy context in which the Organization has been operating. Taking its normative cue from the seminal 1891 Papal encyclica, “*Rerum Novarum*,”¹¹⁴ and drawing on the U.S. Clayton Antitrust Act of 1914 (“The Labor of a human being is not a commodity or article of commerce”),¹¹⁵ the ILO strove for a decommodification of labor, only to find itself engulfed in a prolonged contrast to national regulations that tied social protection rights to stable wage labor, effectively making them ancillary to pro-market economic

¹¹² Andrew Crane, et. al, *Hybrid (Un)freedom in Worker Hostels in Garment Supply Chains*, HUM. REL. 1 (2022) (describing the variations among different examples of a “dormitory labour regime” which “facilitates and accentuates worker exploitation by providing for the ‘temporary attachment or capture of labour by the firm’”).

¹¹³ INT’L ORG. OF EMPLOYERS [IOE] AND KONRAD ADENAUER STIFTUNG, KEY DEVELOPMENTS IN MANDATORY HUMAN RIGHTS DUE DILIGENCE AND SUPPLY CHAIN LAW: CONSIDERATIONS FOR EMPLOYERS (Sept. 2021) <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ce1bad43bfa8dbf9756245780a572ff4877a86d5>; ILO, *Briefing Note: The Linkages Between International Labor Standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights* (June 2021); Jilles L.J. Hazenberg, *Transnational Corporations and Human Rights Duties: Perfect and Imperfect*, 17 HUM. RTS. REV. 479 (2016); Radu Mares, *Regulating Transnational Corporations at the United Nations—The Negotiations of a Treaty on Business and Human Rights*, INT’L J. HUM. RTS. 1 (2022).

¹¹⁴ See Janko Zagar, *Justice and Charity in Rerum Novarum*, 68 ANGELICUM 149, 154-55, 164 (1991) (highlighting the tension between conservative and liberal Catholic fractions, the former arguing that the Church confined itself to charity and paternalism, while, for example, Felice de Lamennais, a representative of the latter, “used the expression ‘modern slavery’ to describe the condition of the workers”) and criticized “the political economy for its total neglect of the problem of distribution and demanded the emancipation of the working class.”) (In an effort to strike a balance between minimalist, law-abiding and maximalist, Augustinian concepts of justice, the Leo XIII’s encyclica embraced a *moral* conception of justice: “Justice is a moral virtue and as such it perfects the agent; but unlike other moral virtues it perfects the agent by perfecting the world, ‘ordo rerum,’ in which he lives in fellowship with others.”).

¹¹⁵ Oct. 15, 1914, ch. 323, § 6, 38 Stat. 731, <https://www.law.cornell.edu/uscode/text/15/17>; see also HIS HOLINESS POPE LEO XIII, *RERUM NOVARUM*, ENCYCLICAL LETTER ON THE CONDITION OF THE WORKING CLASSES NO. 6, (May 15, 1891) (“After the old trade guilds had been destroyed in the last century, and no protection was substituted in their place, and when public institutions and legislation had cast off traditional religious teaching, it gradually came about that the present age handed over the workers, each alone and defenseless, to the inhumanity of employers and the unbridled greed of competitors. A devouring usury, although often condemned by the Church, but practiced nevertheless under another form by avaricious and grasping men, has increased the evil; and in addition the whole process of production as well as trade in every kind of goods has been brought almost entirely under the power of a few, so that a very few rich and exceedingly rich men have laid a yoke almost of slavery on the unnumbered masses of non-owning workers.”).

regulation.¹¹⁶ To be sure, there was a certain inevitability in that, as the ILO was conceived as “a mechanism for shaping regulated national labour markets.”¹¹⁷

The ILO’s normative agenda, coupled with it being a contested institutional place as an international organization in a diversified arena of fragmented sovereignties,¹¹⁸ nevertheless constitute an important backdrop for the here outlined investigation into labor rights norm contestation and activism around supply chains. After being identified as one of the UN’s Sustainable Development Goals as part of the UN’s 2030 Agenda for Sustainable Development,¹¹⁹ the ILO highlighted its Decent Work program as a key instrument to promote more and better labor rights protection in global supply chains.¹²⁰ Building, inter alia, on its 2001 Tripartite Declaration of Principles Concerning Multinational Corporations¹²¹ and in timely proximity with the UN’s launch of the Global Compact in 2000, the

¹¹⁶ Sandrine Kott, *ILO: Social Justice in a Global World? A History in Tension*, 11 INT’L DEV. POL’Y 21 (2019) (with reference to Guy Standing, *The ILO: An Agency for Globalization?*, 29 DEV. & CHANGE 355, 358 (2008)).

¹¹⁷ Standing, *ILO, supra*, note 118 at 358 (“[T]he ILO stood for a model of national welfare capitalism, in which standard employees would be treated decently and protected, in return for their accepting the employers’ ‘right to manage’ and their ‘right’ to make and retain profits. Above all, it stood for tripartism, espousing organized collective bargaining at national and sector levels,” *id.* at 355-356, with its approach being “conducive to the persistence of several variants of capitalism, the intention being to limit labour-based competition so that systems based on different legal origins could co-exist.”).

¹¹⁸ This constellation continues to invite critical commentary, ranging from a more skeptical view in light of continued fragmentation, transnational functional differentiation and competition to the embrace of reconstitutionalization and repoliticization via cooperation and regime interaction: for the former, see Sivan Shlomo Agon, *Farewell to the F-word? Fragmentation of International Law in the Times of the Covid-19 Pandemic*, 71 UNIV. TORONTO L. J. 1 (2022), and for the latter see Anne Peters, *The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization*, 15 INT’L J. CONST. L. 671 (2017) and Margaret A. Young, *Fragmentation, Regime Interaction and Sovereignty in SOVEREIGNTY, STATEHOOD AND STATE RESPONSIBILITY: ESSAYS IN HONOUR OF JAMES CRAWFORD* (Christine Chinkin et al. eds., 2015). See also Pierre-Marie Dupuy, *A Doctrinal Debate in the Globalisation Era: On the “Fragmentation” of International Law*, 1, 27 EUR. J. LEGAL STUD. 25 (2007): (“[I]t is one thing to note the emergence of various sub-systems in international law, each possessing its own institutions and substantive law, according to the provisions of particular agreements. It is another to entertain the illusion that each sub-system is independent from the general normative framework constituted by the international legal order.”).

¹¹⁹ UNITED NATIONS, SUSTAINABLE DEVELOPMENT GOALS, NO. 8, (“Promote Sustained, Inclusive and Sustainable Economic Growth, Full and Productive Employment and Decent Work for All”), <https://sdgs.un.org/goals/goal8>.

¹²⁰ ILO INTERNATIONAL LABOUR OFFICE, REPORT IV: DECENT WORK IN GLOBAL SUPPLY CHAINS, n. 9.

¹²¹ ILO, TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTINATIONAL ENTERPRISES AND SOCIAL POLICY, ILO GB 279/12, Gov. Bod. 279th Sess. (3rd ed. 2001), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.

ILO underscored its commitment to address labor rights as human rights. It was soon after, that on the UN level out of the failed efforts to adopt the 2003 Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights¹²² emerged the mandate by then UN Secretary General for Harvard University's John Ruggie to assume the role of the United Nations Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises (SRSG) and to lead the working group which—in 2011—issued the now famous UN Guiding Principles (UNGP).¹²³

While, as soft law instruments, they lack inherent, institutionally backed enforcement power, their influence in transnational norm shaping and norm creation is undeniable.¹²⁴ Ten years after the UNGP's creation, their principal author assessed the Principles in the context of an emerging and increasingly international debate around the 'purpose of the corporation.'¹²⁵ As one of the key strategies guiding the design of the UNGP, Professor Ruggie identified a proposal of human rights due diligence (HRDD) that would not—as common in business transactions—merely be one of several boxes to be ticked off during a singular transaction. Instead, he conceived of the here

¹²² U.N., Economic & Social Council, Commission on Human Rights Sub-commission on the Promotion and Protection of Human Rights, U.N. Doc. E/CN.4/Sub.2/2003 (Aug. 26, 2003), <http://www1.umn.edu/humanrts/links/NormsApril2003.html>; David Weissbrodt and Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 AM. J. INT'L L. 901 (2003).

¹²³ GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK, UNHRCOR, 2011, UN Doc A/HRC/17/3. Ruggie reminded us in 2021 of the "modest" mandate, namely to "to identify and clarify standards and best practices in the area of business and human rights (BHR); to clarify such concepts as 'corporate complicity' in human rights abuses committed by a related party, as well as the 'corporate sphere of influence'; and to develop materials and methodologies for human rights impact assessments." See John G. Ruggie, Caroline Rees, and Rachel Davis, *Ten Years After: From the UN Guiding Principles to Multi-Fiduciary Obligations*, 6 BUS. & HUM. RTS. J. 179, 180 (2021).

¹²⁴ César Rodríguez-Garavito, *Business and Human Rights: Beyond the End of the Beginning* in 11 BUS. AND HUM. RTS: BEYOND THE END OF THE BEGINNING (César Rodríguez-Garavito ed., 2017) (highlighting the UNGP's "dynamic dimension" in pushing both governmental and business actors to elaborate protective instruments beyond the UNGPs own literal content). Notably, the UNGP have also been explicitly referred to in a number of recent supply chain due diligence and transparency legislative acts, for example in the case of the 2017 French loi de vigilance: see SOPHIE SCHILLER, LE DEVOIR DE VIGILANCE (2017)). See also Almut Schilling-Vacaflor, *Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?*, 22 HUM. RTS. REV. 109, 110 (2021); Elsa Savourey & Stéphane Brabant, *The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption*, 6 BUS. & HUM. RTS. J. 141 (2021).

¹²⁵ For background and recent analysis, see Peer Zumbansen, *Corporate Governance Choices and the Stakes of Stakeholderism*, OXFORD BUS. L. BLOG, (12 May 2022), <https://www.law.ox.ac.uk/business-law-blog/blog/2022/05/corporate-governance-choices-and-stakes-stakeholderism>.

pursued approach to HRDD as

an ongoing process that continues and evolves. This reflects the fact that human rights risks connected to a company's operations and value chain are themselves constantly changing, whether due to internal factors such as a new product development or evolving workforce composition, or due to external factors such as regulatory changes, moves into new markets or unexpected developments in their operating environments.¹²⁶

The second strategy in rendering the UNGP's approach to HRDD more effective was the wholesome embrace of stakeholder engagement. And, in fact, here the UNGP avoid the pitfalls of promoting an over-inclusive and, as a result, overgeneralizing constituency of stakeholders.

HRDD places the focus *specifically* on those people whose basic dignity and equality are at risk of harm from the ways in which business gets done. They may be employees or members of the wider workforce who are on low pay, low hour or unpredictable contracts or lacking access to benefits. They likely include low paid workers (often women) in supply chains, migrant workers with limited protections in local law and those unable to unionize. They are more likely to include poor, indigenous or minority communities displaced to make way for a new project or investment than wealthier communities. In many instances their livelihoods may be at risk from illegal land grabs, or their lives from the rogue conduct of public or private security forces.¹²⁷

The UNGP's aspiration to bring about changes in corporate conduct regarding the "day-to-day practices—what people *actually* do . . ." ¹²⁸ has shifted the attention on and the contestation of traditional 'CSR' (corporate social responsibility) to an impact-focused, consequentialist approach. As David Birchall noted:

Corporate control of global, transnational and national markets for

¹²⁶ Ruggie, Rees, Davis, *Ten Years After*, *supra*, note 123, at 186.

¹²⁷ *Id.* at 186-87.

¹²⁸ *Id.* at 188. See U.N. Guiding Principles Reporting Framework, with Implementation and Guidance, U.N. GUIDING PRINCIPLES REPORTING FRAMEWORK, WITH IMPLEMENTATION GUIDANCE, https://www.ungpreporting.org/wp-content/uploads/2015/02/UNGGuidingPrinciplesReportingFramework_withimplementationguidance_Feb2015.pdf, A2.1 (p. 37) ("Certain functions may have a particular kind of responsibility, for example, ethics, compliance or internal audit. In larger companies, there may be different leads in different business units, operating sites, or regional or country offices, as well as at the corporate level. There will typically be reporting lines between the individual(s) with operational responsibility and a more senior position with overall accountability for performance (that is, the most senior position with explicit decision-making responsibility). It will be particularly helpful to explain how the structure chosen by the reporting company fits its particular systems and culture.").

food, housing, healthcare and work, corporate power stemming from investment choices, the ability to avoid tax, to cause climate change, and much more, causes harm to human rights, and yet is very poorly captured by a deontological outlook. The UNGPs, by covering any action which results in harm, offer a uniquely structuralized, macro-orientation on BHR problems.¹²⁹

At the center of this approach is the monitoring and shaping of *how* corporations exist vis-à-vis their various stakeholders but also how they are governed internally, hereby significantly deepening the connection between a company's business & human rights responsibility and its corporate governance.¹³⁰ The arrival of and the continuing engagement with the UNGP, along with an expansion and further deepening of ethnographic studies of companies in both their transnational and very local contexts,¹³¹ marks an important moment in the assessment of private power and public authority. As a result, CSR continues to be caught up in time and energy consuming and—above all—predominantly ideological all-or-nothing battles, while it continues to risk being mainstreamed as part of a neo-liberal dissolution of the epistemological boundary between market and society: “The greater the drive to embed society in the market, the more socio-moral questions—traditionally the concerns of civic groups, liberal-democratic parliaments, trade unions and political parties—become reframed from within the market.”¹³² Others have complemented this critique from a critical political

¹²⁹ David Birchall, *The Consequentialism of the UN Guiding Principles on Business and Human Rights: Towards the Fulfilment of ‘Do No Harm’*, 24 ELEC. J. BUS. ETHICS & ORG. STUD. 28, 29 (2019).

¹³⁰ John F. Sherman III, *Human Rights Due Diligence and Corporate Governance*, HARV. KENNEDY SCHOOL, MOSSAVAR RAHMINI CTR. FOR BUS. & GOV'T WORKING PAPER NO. 79, 3 (June, 2021), https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/CRI_WP_79_Final.pdf (highlighting how human rights due diligence has become a key component of corporate governance since the unanimous endorsement of the 2011 UN Guiding Principles); Peter Muchlinski, *The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights*, 6 BUS. & HUM. RTS. J. 21, 2172 (202) (highlighting how Shell overhauled its corporate governance system to make it more responsive to CSR concerns). For a pre-UNGP perspective on the nexus between CSR and corporate governance, see Amiram Gill, *Corporate Governance as Social Responsibility: A Research Agenda*, 26 BERK. J. INT'L 452, 461 (2008) (referencing companies such as Coca-Cola and Walmart who declared their commitment to make the pursuit of profit compatible with efforts to protect the rights of workers and the environment).

¹³¹ Laura Knöpfel and Felix Lüth, *Bringing the Human Problem Back into Transnational Law: The Example of Corporate (ir)Responsibility*, 12 TRANSNATIONAL LEGAL THEORY 151, 154, 158 (2021); A. Erin Bass and Ivana Milosevic, *The Ethnographic Method in CSR Research: The Role and Importance of Methodological Fit*, 57 BUS. & SOC'Y. 174, 175 (2018) (“[I]t is through individual, voluntary behaviors that organizations strategically respond to institutional expectations of social responsibility (...). In other words, how individuals make sense of and enact CSR in their work shapes, at least partially, the organization's CSR practices.”).

¹³² Ronen Shamir, *Corporate Social Responsibility: Towards a New Market-Embedded Morality?*, 9 THEORETICAL INQUIRIES IN L. 371, 373 (2008).

economy perspective to investigate claims that supply chains—in the long run—will make countries more competitive while at the same time contributing to a race to the bottom in the maintenance or creation of social protection rights.¹³³ As Ioannis Kampourakis argues, “[T]he critique to CSR and to new forms of market regulation that rely on corporate ‘self-change’ should aim not only at their market-embedded nature but also at their structural inability to challenge the original institutional setup and how it generates market power and socio-economic inequalities.”¹³⁴

Meanwhile, most contemporary regulatory focus remains on the multinational firm as the alleged centerpiece through which to facilitate and implement the desired regulatory change. The most recent step in this development, to date, is the European Parliament’s Proposal for a Directive of the Council on Corporate Sustainability Due Diligence of February 2022, where the EP explicitly highlights EU’s corporations’ responsibility towards supply chain workers: “The connection of the EU economy to millions of workers around the world through global value chains comes with a responsibility to address adverse impacts on the rights of these workers.”¹³⁵ The other focus of concern in the Proposal is the environmental damage resulting from transnational corporate activity, significantly complementing the initiative’s proposition of unprecedented liability thresholds for ca. 13,000 EU companies and 4,000 third-country companies.¹³⁶ Complementing other EU instruments concerned with sustainable corporate governance, notably the 2014 Non-Financial Reporting Directive (NFRD)¹³⁷ which to date has received a mixed assessment¹³⁸, the recent proposal aims

¹³³ Layna Mosley, *Labor Rights in the Age of Global Supply Chains*, 116 CURRENT HISTORY 17, 18 (2017).

¹³⁴ Ioannis Kampourakis, *CSR and the Public/Private Divide*, 4 J. LEGAL ANTHROPOLOGY 116, 117 (2020).

¹³⁵ Eur. Comm’n, *Proposal for a Directive of the European Parliament of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937*, COM (2022) 71 FINAL (Feb. 23, 2022).

¹³⁶ Clare Connellan et al., *European Commission Issues Major Proposal on Due Diligence Obligations to Protect Human Rights and the Environment Across Supply Chains*, WHITE & CASE: ALERT (last visited Dec. 8, 2022) <https://www.whitecase.com/insight-alert/european-commission-issues-major-proposal-due-diligence-obligations-protect-human#article-content>.

¹³⁷ Directive 2014/95, of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups Text with EEA Relevance. 2014 O.J. (L 330) 1.

¹³⁸ Directive (EU) 2019/1937, COM (2022) 71 FINAL, *supra*, note 135, at 4; Constanze Z. Wagner, *Evolving Norms of Corporate Social Responsibility: Lessons Learned from the European Union Directive on Non-Financial Reporting*, 19 TRANSACTIONS: TENN. J. BUS. L. 619 (2018) (“A problem plaguing non-financial reporting, both voluntary and mandatory, is the lack of a consistent reporting standard that would permit internal benchmarking and comparison across companies.”); *see also* Tamás Szabados, *Multilevel hardening in progress—Transition from soft towards hard regulation in the EU*, 28 MAASTRICHT J. EUR. COMPAR. L. 83 (2021) (“The Directive does not determine which explanation is deemed to be

at filling a gap between the hitherto competing options of disclosure versus liability. At its core is an elaborate due diligence framework that draws on the six steps of the OECD's Due Diligence Guidance for Responsible Business Conduct of 2018¹³⁹ and encompasses covered companies to adopt a specific due diligence *policy* with concrete implementation documentation, to be updated annually. Furthermore, companies would be required to *identify* actual and potential adverse human rights and environmental impacts beyond the firm's boundaries and extended across their supply chain, take measures to *mitigate and prevent* such impact, *end* actual adverse impacts and establish a complaint procedure, monitor their operations on a regular basis and publicly communicate their due diligence.¹⁴⁰

B. Towards a Bottom-Up Analytics of Workers and Stakeholders

It is important to keep track of these continuing developments, as they illustrate the overlap of domestic and international norm and policy development which together form an important backdrop for the myriad of activist, resistance and disruption initiatives that unfold on the micro- levels of the chain. The challenge for labor law and its commitment to, say, a constitutionally institutionalized and protected infrastructure of social protection is how to adapt it to the differential landscape of a heterogenous, global political economy. While a critique of the transformation of work and the rise of precarious and other non-standard forms of work is pivotal to a democratic engagement with labor rights as part of a comprehensive system of social protection¹⁴¹ its translation to a transnational context remains an immense challenge.¹⁴²

Because what is still hidden from view under many of the lenses of traditional labor law and the transparency-focused approach that informs

sufficient if the company does not develop a CSR policy in a particular field.”).

¹³⁹ OECD *Due Diligence Guidance for Responsible Business Conduct*, 31 May 2018, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

¹⁴⁰ Directive (EU) 2019/1937, COM (2022) 71 final, *supra*, note 135, 31-40 (paras. 16-44).

¹⁴¹ Katherine Wetzel Stone & Harry W. Arthurs, *The Transformation of Employment Régimes: A Worldwide Challenge*, in RETHINKING WORKPLACE REGULATION: BEYOND THE STANDARD CONTRACT OF EMPLOYMENT 1-20 (Katherine Wetzel Stone and Harry W. Arthurs eds., 2013); Judy Fudge, *Blurring Legal Boundaries: Regulating for Decent Work*, in CHALLENGING THE LEGAL BOUNDARIES OF WORK REGULATION 1 (Judy Fudge, Shae McCrystal and Kamala Sankaran eds., 2012).

¹⁴² Harry W. Arthurs, *Making Bricks Without Straw: The Creation of a Transnational Labour Regime*, in OSGOODE COMPARATIVE RESEARCH IN LAW & POLITICAL ECONOMY REPORT NO. 28, 10 (2012) (“It is not just that employers hold the trump cards when unemployment is high and jobs can be exported pretty much at will; it is not just that legal protections for collective labour action have been repealed or become decrepit; and it is not just that employers and right-wing governments have repudiated the postwar social contract. It is that the decline in working class consciousness, identity, solidarity and power have made these things possible.”).

human rights due diligence are the micro processes of resistance, activism and ‘logistics disruption’ on the ground. And as ethnographic research shows, the struggle for better and safer workplaces, workers and social rights, is not confined to what in different countries is seen as the ‘traditional’ infrastructures of labor and employment law, collective bargaining and industrial relations.¹⁴³ The key here seems to be to focus on the concrete context of worker experience which reveals the workplace as both a physical location and a site of contestation. As Sara Stevano recently argued,

it is necessary to understand the nature of the workplace at the bottom of global supply chains. What is this workplace? In simple terms, the bottom, or origin, of global commodity chains is a site of materialization of global-local interrelations. The point of encounter between foreign investors and local workers is often the workplace, in the form of a farm or a factory. Further, the workplace does not have discrete boundaries—it can be defined as ‘fuzzy’. There are two main reasons for this. First, the wage alone is not sufficient to make a living [...]. Second, the imperatives of social reproduction shape how workers engage with wage work. [...] At the bottom of global supply chains, workers pursue multiple forms of productive and reproductive work due to an economic model based on low wages and the absence of public provision.¹⁴⁴

What becomes visible through this lens is not merely the singular factory or corporation as such and, say, the number of actual employees and the formalized frames of their employment, but the problematic space in which relations between companies and workers and communities unfold.¹⁴⁵

¹⁴³ See, e.g., ALAIN SUPIOT, *BEYOND EMPLOYMENT CHANGES IN WORK AND THE FUTURE OF LABOUR LAW IN EUROPE* (2001); INTERNATIONAL LABOR ORGANIZATION, *LABOUR PROTECTION IN A TRANSFORMING WORLD*, 59 ¶140K (Report VI, 2015): http://relconf/documents/meetingdocument/wcms_358295.pdf; Susan Bisom-Rappand and Urwana Coiquand, *The Role of the State towards the Grey Zone of Employment: Eyes on Canada and the United States*, 58 *REVUE INTERVENTIONS ECONOMIQUES: PAPERS IN POL. ECON.* 1 (2017), <https://journals.openedition.org/interventionseconomiques/355> (focusing on the challenges facing governments in regulating ‘contingent’ and ‘non-standard’ work, with no reference, however to other forms of workers’ rights organization; www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_358295.pdf); *id.* at 8-9 (focusing on the challenges facing governments in regulating ‘contingent’ and ‘non-standard’ work, with no reference, however to other forms of workers’ rights organization).

¹⁴⁴ Sara Stevano, *Global Supply Chains, Cashew Factories and Colonialism*, SOAS BLOG, (December, 29 2021), <https://study.soas.ac.uk/global-supply-chains-cashew-factories-colonial-relations/>; Sara Stevano, *The Workplace at the Bottom of Global Supply Chains as a Site of Reproduction of Colonial Relations: Reflections on the Cashew-Processing Industry in Mozambique*, *GENDER, WORK & ORG.* 1, 9 (2021) (“[T]hese power dynamics structure everyday relations in the workplace—the site of encounter between capital, the former colonizer, and labor, the former colonized people.”).

¹⁴⁵ Juliane Reinecke, Jimmy Donaghey, Adrian Wilkinson and Geoffrey Wood, *Global Supply Chains and Social Relations at Work: Brokering Across Boundaries*, 71 *HUM. REL.*, 459 (2018).

It is in this context that the actual social relations in and around global supply chains and the specific dynamics of impoverization, racialization, gender discrimination and exploitation come into light.¹⁴⁶ These are, in fact, all part of the ‘normal’ of GVCs, of a normal that cannot be captured by the prevailing supply chain management narrative that defines disruptions in relation to war, natural catastrophe or pandemic. The contextual analysis by ethnographers and labor and human rights activists paints a very different picture of supply chain infrastructures, of their power but also of the vulnerabilities that they generate and perpetuate.

In this regard, the growing anthropological and sociological analysis of global value chains underscores that law needs to find a better way to render the actual *facts* of GVC life tangible and arguable, not only in the context of litigation but as the foundation on which more responsive and sustainable structures can be developed. This turn to the concrete and actual dimension of supply chain life on the ground is not a mere esthetic move. Discursively, it undercuts the abstractions of prevailing disruption narratives that maintain the overall efficiency of global supply chains while cautioning companies and consumers against delays, shortfalls and other distribution-related risks. Factually, it upends the representations of numbers of goods distributed, miles travelled, and consumers satisfied by illuminating the architecture of logistics, surveillance and repression on which the chain’s efficiency rests.¹⁴⁷ And, finally, it is this *factualization of supply chain reality* that can lead to wider public awareness, which forms an important context factor for the institutional labor organization work that takes place on the ground.¹⁴⁸

The key here is a reversal of perspective on law making from the top to the bottom and the breaking up of exclusivist, dualist categorizations to

¹⁴⁶ Benjamin Selwyn, *Poverty Chains and Global Capitalism*, 23 *COMPETITION & CHANGE* 71, 87 (2018) (“While workers’ base wages in the electronics sector are insufficient for their individual reproduction requirements, they do appear to attain these through vast amounts of over-time.”); see also Jake Alimahomed-Wilson, *Racialized Masculinities and Global Logistics Labor*, *INTO THE BLACK BOX*, 4 July 2020, <http://www.intotheblackbox.com/articoli/racialized-masculinities-and-global-logistics-labor/> (“The production of gendered and racial difference in logistics also reinforces a global labor hierarchy by “naturalizing” a gendered- racialized ordering of workers between different racial groups of men. In this system, men of color remain concentrated in the most labor-intensive, precarious, dangerous, low wage, and surveillance-driven jobs in logistics; in contrast elite, white corporate men manage and control both workers and the movement of goods (i.e., the circulation of capital).”).

¹⁴⁷ John Logan, *Crushing Unions, By Any Means Necessary: How Amazon’s Blistering Anti-Union Campaign Won in Bessemer, Alabama*, 30 *NEW LAB. F.* 38, 43 (2021).

¹⁴⁸ John Logan, *Bravery, Not Blowout*, *AGAINST THE CURRENT*, May-June 2021, <https://againstthecurrent.org/atc212/bravery-not-blowout/> (highlighting how the “exhaustive coverage of Amazon’s vicious anti-union campaign in real time (...) exposed a much larger, more diverse and younger audience to the brutal reality of no-holds-barred anti-union campaigns. This might not have been news to seasoned observers—though some of Amazon’s anti-union tactics were new to everyone—but they are new to 95% of the U.S. public, who have never seen them covered in such detail.”).

appreciate the *in-between spaces* of norm creation and political action.¹⁴⁹ The displacement of simplifying juxtapositions of “corporations”/“employers” and “workers”/“employees” by scrutinizing the particular structure of local and transnational labor market organization along with its flanking regulatory frameworks¹⁵⁰ is a crucial step towards identifying opportunities from protest to implementing radical change.¹⁵¹ “Any labor market dynamic that increases workers’ sense of vulnerability, whether due to an increase in part-time work, short-term contracts, or outsourced labor—will also increase labor control. Workers in such contexts are inclined to put up with bad conditions and low wages rather than risk unemployment and poverty, out of fear that should they speak up they may lose their jobs as a result.”¹⁵² But it is not only through the transgression of dualist and exclusivist categories of capital/labor that the myriad forms and practices of work-related exploitation and repression will begin to come to light,¹⁵³ encompassing forced and slave labor, child labor and other practices that often constitute the realm of ‘informal work’.¹⁵⁴

This approach must be complemented by looking at the actual worker constituencies across different trades and industries and in different regions and localities which will make the particular contours of gendered, racialized, and cultured work more visible.¹⁵⁵ Methodologically, the

¹⁴⁹ Galit A. Sarfaty, *Corporate Actors as Translators in Transnational Lawmaking*, 115 AM. J. INT’L L. UNBOUND 278, 280 (2021) (“By applying an anthropological lens to the case of supply chain governance, we can uncover technologies of governance, relations of power, and chains of translation in the transnational lawmaking process. While disaggregating corporate actors into their legal, organizational, and social forms, ethnographic methods can reveal local variations and cultural contexts within which international legal norms circulate. They can offer insights into how international law is produced and operates on the ground—from how it is developed on a global scale to its localization on the micro-level.”).

¹⁵⁰ For an illustration of the Kafala regulatory framework applied to the majority of Middle Eastern migrant workers and in the Gulf region, see also Ray Jureidini & Said Fares Hassan, *The Islamic Principle of Kafala as Applied to Migrant Workers: Traditional Continuity and Reform*, in: MIGRATION AND ISLAMIC ETHICS: ISSUES OF RESIDENCE, NATURALISATION AND CITIZENSHIP 92 (Ray Jureidini and Said Fares Hassan eds., 2019); ILO POLICY BRIEF No. 2: REFORM OF THE KAFALA (SPONSORSHIP) SYSTEM (ILO, Migrant Forum on Asia, Geneva, <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>).

¹⁵¹ Mark Anner, *Worker Resistance in Global Supply Chains: Wildcat Strikes, International Accords and Transnational Campaigns*, 7 INT’L J. LAB. RSCH. 17, 18 (2015) (“...how workers protest is partially shaped by how they are controlled”).

¹⁵² *Id.* at 21.

¹⁵³ Beth Gutelius, *Disarticulating Distribution: Labor Segmentation and Subcontracting in Global Logistics*, 60 GEOFORUM 53 (2015).

¹⁵⁴ LeBaron et al, *Forced Labour*, *supra*, note 21, at 32. Jody Aked, *Supply Chains, the Informal Economy, and the Worst Forms of Child Labor*, CLARISSA [Child Labor: Action-Research-Innovation In South And South- Eastern Asia] WORKING PAPER 8 (July 2021), https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/16755/CLARISSA_Working_Paper_8.pdf?sequence=1&isAllowed=y.

¹⁵⁵ Caroline E. Ferguson, *A Rising Tide Does Not Lift All Boats: Intersectional Analysis Reveals Inequitable Impacts of the Seafood Trade in Fishing Communities*, 8 FRONTIERS IN

refocusing that is required here cuts across different disciplines and analytical lenses. Complementing existing and inherited conceptual and analytical frameworks in sociology, political science, and history of labor,¹⁵⁶ current research lenses are crafted through a direct engagement with the object of study and in response to the challenges of how to adequately identify and capture that object in the first place.¹⁵⁷ Unsurprisingly, then, some of the most insightful analysis of supply chain lives does not fit into the neat categories of traditional social science fields but, instead, explores and uses new approaches to engage with the unknown.

Which role does law play here? To answer that question, we must cut through and reach behind existing, interest-driven representations of ‘conflict’, for example by mobilizing the already alluded labor/union-side imagery of supply chains as sites of worker vulnerability, exploitation, and precarity of protective institutions¹⁵⁸ in an effort to disrupt dominant, managerial GVC narratives and, instead, to engage in an anatomy of the chain’s violent and deadly effect on humans but also the environment.¹⁵⁹ Such an approach promises key insights into the violent micro-infrastructure of GSCs in local contexts and has been informing and facilitating concrete, political activist engagement in resistance, protest, and change through the focus on so-called “choke points.”¹⁶⁰ As Ashley Carse et al. argue, “[F]or

MARINE SCI. 625389 (2021), <https://www.frontiersin.org/articles/10.3389/fmars.2021.625389/full>. *But see*, the use of a differential roster of “skilled” and “unskilled” workers in Ana Fernandes, Hiau Looi Kee & Deborah Winkler, *Determinants of Global Value Chain Participation. Cross-Country Evidence*, in WORLD BANK POLICY RESEARCH PAPER 9197 (March 2020), <https://openknowledge.worldbank.org/handle/10986/33519>.

¹⁵⁶ Ida Harper Simpson, *The Sociology of Work: Where Have the Workers Gone?*, 67 SOC. FORCES 563, 564 (1989) (“[T]he anthropologists’ influence gave way to economic concerns that stressed impersonal forces, one-sided managerial power, or capitalism acting on workers. Interests in work group solidarity, ethnic differentiation, and other social characteristics and behaviors of the workers themselves have receded . . . Economics has influenced the field since its early days; but what has changed is that now, in contrast to the early years, the economics is not used to inform sociological thinking. Instead, we lift economic ideas and treat them as if they were sociological.”).

¹⁵⁷ Eichen, *Cheapness*, *supra*, note 46.

¹⁵⁸ International Organisation of Employers [IOE] and Konrad Adenauer Stiftung, *Key Developments in Mandatory Human Rights Due Diligence and Supply Chain Law: Considerations for Employers*, IOE (September 2021) <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=156042&token=ee1bad43bfa8dbf9756245780a572ff4877a86d5>; Edna Bonacich, Sabrina Alimahomed and Jake B. Wilson, *The Racialisation of Global Labor*, 52 AM. BEHAV. SCIENTIST 342 (2008).

¹⁵⁹ Neethi Padmanabhan, *Globalisation Lived Locally: A Labour Geography Perspective on Control, Conflict, and Response Among Workers in Kerala*, 44 ANTEPODE 971 (2012); Charmaine Chua, Martin Danyluk & Deborah Cowen, *Introduction: Turbulent Circulation: Building a Critical Engagement with Logistics*, 36 ENV’T & PLAN. D: SOC’Y & SPACE 617 (2018).

¹⁶⁰ Martin Danyluk, *Seizing the Means of Circulation: Choke Points and Logistical Resistance in Coco Solo, Panama*, ANTIPODE, online pre-publication, April 26, 2022, <https://onlinelibrary.wiley.com/doi/full/10.1111/anti.12836>; Alberto Toscano, *Logistics and*

anthropologists and other scholars ... the chokepoint can serve as an analytic that renders unexpected and significant spatiotemporal connections and social relationships visible, recasting a range of contemporary problems, including: mobility, migration, logistics, trade, geopolitics, security, and statecraft. But ‘chokepoint’ is more than a description of a site or node conducive to scholarly analysis. It is also a concept that a range of actors—politicians, planners, managers, and military strategists—deploy in their own analyses, claims, and interventions.”¹⁶¹ And Charmaine Chua draws on Jasper Bernes’ idea of a “logistics against logistics” and states: “Chokepoints—the concentration of the circulation of commodities at certain key sites along the supply chain—might thus present the possibility for strikes and protests to articulate resistance not only symbolically but also materially, by literally grounding capitalist circulation to a halt.”¹⁶²

IV. TOWARDS A CRITICAL GEOGRAPHY OF LOGISTICS DISRUPTION

A. *The Promise of Disaster Justice*

The GVC, at that point, is not merely the site at which accidents just ‘happen’; factory workers get trapped behind locked doors or rivers and lands are contaminated. Instead, it emerges as encompassing an environment which can only be understood as part of an evolving transnational political economy. Trying to understand this environment against the foils of socio-economic, political, and cultural evolution leads to a dismissal of GVC functionalist designations and categorizations and, instead, prompts us to appreciate the actual organization of logistics on different scales between the local and the global, shedding new light on the different actors and stakeholders in this space.¹⁶³ Corporations no longer are mere defendants in

Opposition, META MUTE (August 9, 2011), <https://www.metamute.org/editorial/articles/logistics-and-opposition> (“But it is also possible, and indeed necessary, to think of logistics not just as the site of interruption, but as the stake of enduring and articulated struggles.”). See also Geoffrey Aung, *A “Becoming Logistical” of Anthropology?*, 91 FOCAAL—J. GLOBAL HISTORY ANTHROPOLOGY 115, 116 (2021), who notes in reference to recent scholarship: “By contrast, recent critical logistics scholarship from beyond anthropology turns away from this emphasis on exchange and connectivity. This work understands logistics not only as a site of social and economic integration, but also, and in some ways more urgently, as an often-turbulent locus of capital mobility, violence, and supply chain securitization, aggravating patterns of uneven development.”

¹⁶¹ Ashley Carse, Townsend Middleton, Jason Cons, Jatin Dua, Gabriela Valdivia & Elizabeth Cullen Dunn, *Chokepoints: Anthropologies of the Constricted Contemporary*, ETHNOS J. ANTHROPOLOGY (2020).

¹⁶² Charmaine Chua, *Logistics, Capitalist Circulation, Chokepoints*, THE DISORDER OF THINGS (September 9, 2014), <https://thedisorderofthings.com/2014/09/09/logistics-capitalist-circulation-chokepoints/>.

¹⁶³ Peer Schouten, Finn Stepputat and Jan Bachmann, *States of Circulation: Logistics off the Beaten Path*, 37 ENV'T & PLAN. D: SOC'Y & SPACE 779 (2019); Padmanabhan, *Globalisation Lived Locally*, *supra* note 160 at 974 (“Labour geography argues that workers

a singularly spectacular court case, and stakeholders are not just a ‘class’ of plaintiffs that a judge may choose to push out of his court room and jurisdiction for an alleged lack of ‘control’ by the multinational buyer over the manufacturer/supplier.¹⁶⁴ Corporations are variedly organized, institutionalized and regulated organizations that cross definitional, jurisdictional and functional boundaries. Rescued from their abstraction as shareholder value maximization vehicles,¹⁶⁵ it becomes possible to contextualize, historicize, and unpack the corporation.¹⁶⁶ In fact, it is by applying a wider lens on context and history of GVC relations that we can again appreciate the key role played by corporations in the long-term trajectory of political and economic consolidation of global value chain capitalism.

In the context of a collaborative, multi-year, in-depth study of the public-private regulatory framework as well as the actual working conditions and wages in the Bangladeshi and, beyond, the South Asian garment industry, Naila Kabeer recently argued for a moving away from a “spotlight” approach on exposing unsafe working conditions to a “flood light” approach which illuminates the broader political economy of supply chain capitalism within which these production processes are located.”¹⁶⁷ Extending this perspective to those particularly exposed to risks of environmental catastrophe, Robert Verchick suggests the concepts of ‘disaster justice’ and links it to developments in the environmental justice movement. Importantly differentiating such an approach from the habitual, *post*-catastrophe approach in disaster law, Verchick highlights the methodological challenges that present themselves to lawyers trying to understand the big picture and the fine detail: “... we in the legal community need to know more about the social science data underlying a community’s disaster risk. We must better understand the political and moral implications of a society that allows a “disaster underclass” to grow unnoticed in a nation committed to freedom

are not just historical agents but are also geographical ones; their lives are spatially embedded in the landscapes in which they live, that this spatial embeddedness may be enabling and/or constraining their social praxis and that thus workers will try to shape in particular ways the geographical structures and relationships within which they live.”)

¹⁶⁴ Das v. George Weston Limited, 2018 ONCA 1053.

¹⁶⁵ In fact, the still dominating view: Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L. J. 439 (2001); Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91 (2020).

¹⁶⁶ John W. Cioffi, *Review: State of the Art: A Review Essay on Comparative Corporate Governance: The State of the Art and Emerging Research*, 48 AM. J. COMP. L. 501 (2000); Martin Petrin, *Is Stakeholderism Bad for Stakeholders?*, CLS BLUE SKY BLOG (May 21, 2020), <https://clsbluesky.law.columbia.edu/2020/05/21/is-stakeholderism-bad-for-stakeholders/>; P.M. Vasudev, *Beyond Shareholder Value—A Framework for Stakeholder Governance* (Ottawa Faculty L. Working Paper No. 2021-03, 2021), <https://ssrn.com/abstract=3717968>; Peer Zumbansen, *Corporate Governance Choices and the Actual Stakes of Stakeholder Governance*, TLI THINK! (2022), <https://ssrn.com/abstract=4092148>.

¹⁶⁷ Kabeer, *supra* note 111, at 248–49.

and democracy.”¹⁶⁸ He uses a, on its face, quotidian, yet highly intricate example as an illustration of these challenges:

When a river leaps its banks and sweeps through an Iowa town, sending hundreds to homeless shelters, who or what do we attribute that to? The rain? The zoning board? The homeowners? Society at large? The answer will not necessarily draw the line between misfortune and injustice (we need perspective for that), but it is the first step in understanding the scope of the problem. If the flood of an Iowa town is only a story about rain, there is not much beyond meteorology to discuss. If the flood damage is traceable to “society at large,” nearly every policy consideration is on the table. For decades, the scholarly literature on disaster has been moving more toward the “socialization of disaster,” particularly stressing the role of social inequality. But expanding the scope of agency makes the policy work harder, demanding more knowledge in more fields and forcing us to confront the imbalance of social power.¹⁶⁹

Verchick further notes that it is the research on physical impacts that is particularly devastating. Studies consistently show that in a disaster, poor people and people of color are more likely to suffer property damage, injury, and death.¹⁷⁰ This finding echoes contentions of disaster law experts and sociologists, particularly in the course of trying to better understand the challenges of understanding and more appropriately responding to the conditions that will bring about disasters and their discriminatory effect on the most vulnerable.¹⁷¹ Robert Bullard’s concept of ‘differentiated vulnerabilities’ is particularly helpful in this regard, allowing for a finer distillation and mapping of contextual factors that lead to different types of structural risk exposure.¹⁷² What such a concept illuminates are the normal

¹⁶⁸ Robert R.M. Verchick, *Disaster Justice: The Geography of Human Capability*, 23 DUKE ENV’T L. & POL’Y F. 23, 25 (2012).

¹⁶⁹ *Id.* at 29.

¹⁷⁰ *Id.* at 42–43. Gerlinde Berger-Walliser, *Reforming International Human Rights Litigation Against Corporate Defendants after Jesner v. Arab Bank*, 21 U. PA. J. BUS. L. 757 (2019): “Consequently, MNCs have been responsible for, inter alia, the death of thousands of workers due to unsafe working conditions. Their operations have contaminated, forced, and sometimes violently relocated local communities. Private enterprises allegedly have and continue to be complicit in human rights abuses committed by oppressive governments or paramilitary groups. Firms have benefitted from forced labor, such as German companies under the Nazi regime. They have facilitated brutal civil wars and atrocities, e.g., in the Democratic Republic of Congo, or the violent displacement, extrajudicial killing, and torture of civilians in Sudan.” *Id.* at 764–65.

¹⁷¹ Shirley Laska & Betty Hearn Morrow, *Social Vulnerabilities and Hurricane Katrina: An Unnatural Disaster in New Orleans*, 40 MARINE TECH. SOC’Y J. 16 (2006); Jean Ait Belkhir & Christiane Charlemaine, *Race, Gender and Class Lessons from Hurricane Katrina*, 14 RACE, GENDER & CLASS 120 (2007).

¹⁷² Robert D. Bullard, *Differential Vulnerabilities: Environmental and Economic Inequality and Government Responses to Unnatural Disasters*, 75 SOC. RSCH. 753 (2008):

pre-conditions of what—in the case of an intervening ‘event’ in the form of a catastrophe—will be named a ‘disaster.’ We should begin to understand these pre-conditions as emerging transnational *sites of engagement and resistance*. By challenging the narratives of GVC management consisting of logistics/distribution and the navigation of trade restrictions, the spaces of vulnerability in and around GVCs require a different form of mapping. These spaces have to be understood as terrain of analysis and contestation. First by building on intensifying litigation work in the pursuit of exposing agency and accountability and, second, by looking towards patterns and materialities of non-agency and structures of power asymmetries and exploitation will it be possible to identify intervention and reform opportunities for the formation of alliances and the institutional empowerment of resistance. Only by unpacking the different constitutive elements of global value chains and transnational commercial interaction, can we identify alternative forms, narratives and activist practices of resistance against value chain-related dynamics of impoverishment, peripheralization and exploitation. Complementing the application of a disaster law to the pre-conditions of ‘disaster’ events, the use of critical cartography’s practice of ‘counter-mapping’ can illuminate the contextual, transnational spaces that GVCs appropriate, inhabit and control. Both coincide in an emerging methodology that aims at decentering a cause/effect and corporate ‘accountability-oriented foundation of a law of GVCs. On these new maps, previously hidden, silenced, and repressed beings will come into light. And it is on such a map that the chain itself can be identified and conceptualized *as a space of disaster*.

As Robert Verchick writes,

the heaviest burdens of disaster are borne by those with the least power—those who, for whatever social and economic reasons, are more exposed, more susceptible, and less resilient when disaster strikes. Social structures designed to protect people from discrimination often fracture under the mounting stress. Catastrophe is bad for everyone. But it is especially bad for the weak and the disenfranchised.¹⁷³

Emerging out of a long history of on-the-ground archaeological and anthropological studies of communities affected by civil war, political repression, environmental degradation, and natural resource extraction, more recent efforts in the context of transitional justice, on the one hand, and business and human rights, on the other, have significantly furthered public awareness and created mounting pressure on corporate and governmental

“Blacks were more vulnerable to hurricane damage due to residential segregation, location of their neighborhoods, and the conditions of their housing. Andrew marginalized the already marginalized.” *Id.* at 764.

¹⁷³ Verchick, *supra* note 169, at 23–24.

actors. It is in this hybrid context of evolving CSR (and “ESG” – environmental, social and governance) interventions from public actors on the international organizational level of OECD and UN, domestic actors as manifested in various, recent modern slavery¹⁷⁴ and supply chain liability legislations¹⁷⁵ and expanding and deepening activist practices, litigation and law reform movements that the complex architecture and impact of the chain come into light and into the mainstream’s public conscience.

The here outlined project of counter-mapping GVCs through the use of disaster law and critical cartography is inspired by and complements evolving work on transnational labor activism, feminist economic sociology, of law and feminist geography, as well as CSR ethnography as part of a comprehensive move towards a methodology of *transnational disaster law*. At its heart is the decentering of the existing preoccupation of disaster law as part of administrative ‘emergency’, post-facto governance, i.e., post-accident/disaster governance—and, instead, the visibilization of how law and regulation shape (‘code’) the conditions that already contain and embody the disaster—while only being able to hide it that long. Such a methodology is emerging between sociologists and anthropologists,¹⁷⁶ labor activists, feminist economic sociologists,¹⁷⁷ and geographers¹⁷⁸ who are mapping, charting and diagnosing the chain’s architecture and its concrete impact, and legal scholars and human rights activists who, in their own right, continue to push for the mainstreaming of those experiences in elaborating conceptual frameworks for legal transformation (say, as regards ‘Modern Slavery Law’) as well as in transnational litigation fora.¹⁷⁹

¹⁷⁴ Rose Broad & Nick Turnbull, *From Human Trafficking to Modern Slavery: The Development of Anti-Trafficking Policy in the UK*, 25 EUR. J. CRIM. POL’Y RES. 119 (2019).

¹⁷⁵ Genevieve LeBaron, *It’s Time to Get Serious About Forced Labour in Supply Chains*, in: FORCED LABOUR IN THE GLOBAL ECONOMY (Open Democracy, Genevieve LeBaron and Neil Howard eds., 2016).

¹⁷⁶ Ely L. Paiva & Priscila L.S. Miguel, *Overcoming Enduring Inequalities in Global Value Chains? Interpreting the Case of Brazil’s Covid-19 Vaccine Supply Through a Chess Metaphor*, 29 ORG. 414 (2021).

¹⁷⁷ Prabha Kotiswaran, *Do Feminists Need an Economic Sociology of Law?*, 40 J. L. & SOC’Y 115 (2013); Shazana Andrabi, *Decolonising Knowledge Production in Disaster Management: A Feminist Perspective*, 31 DISASTER PREVENTION & MGMT.: AN INT’L J. 202, 203 (2022).

¹⁷⁸ Verchick, *Disaster Justice*, *supra*, note 169; Robert R. M. Verchick, *Risk, Fairness, and the Geography of Disaster*, 10 UNIV. LOYOLA NEW ORLEANS ISSUES IN LEGAL SCHOLARSHIP (2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2214079; ALBERTO TOSCANO & JEFF KINKLE, *CARTOGRAPHIES OF THE ABSOLUTE* (2015); Jennifer Hyndman, *Unsettling Feminist Geopolitics: Forging Feminist Political Geographies of Violence and Displacement*, 26 GENDER, PLACE & CULTURE: A J. OF FEMINIST GEOGRAPHY 3, 6 (2019). See also Adam Loftén & Emmanuel Vaughan-Lee, *Counter Mapping, Global Oneness Project* (2018), <https://www.globalonenessproject.org/library/films/counter-mapping>.

¹⁷⁹ *Vedanta Resources PLC v Lungowe*, [2019] UKSC 20; *Okpabi and others (Appellants) v Royal Dutch Shell Plc and another (Respondents)*, [2021] UKSC 3; *Begum v Maran*, [2021]

B. Supply Chain Citizenship and Political Activism

Similar in method and as regards the driving normative concern of Verchick's concept of disaster justice is Damani James Partridge's use of the idea of 'supply chain citizenship' which offers an intriguing concept through which to articulate the aspirations as well as challenges to political emancipation within supply chains.¹⁸⁰ The idea of 'supply-chain citizenship' emerges against the background of a wholesome shift of political order structures from the state to non-state actors and processes from which emerges a deep hybridity of public and private actors and practices. And, it is in the context of this political economy of institutional and normative hybridity that platforms and sites for contestation and resistance must be created. One of the prerequisites in this context is to challenge the discursive framing so typical of neoliberalism's reshaping of political space as allegedly governed by free agents and autonomous decision-makers.¹⁸¹ As Ilana Gershon notes,

One is never 'in the moment'; rather, one is always faced with one's self as a project that must be consciously steered through various possible alliances and obstacles. This is a self that is produced through an engagement with a market, that is, neoliberal markets require participants to be reflexive managers of their abilities and alliances.¹⁸²

The here envisioned sites of engagement and resistance are key in pushing back against the commodification and individualization inherent to the normative foundation of global value chains. The framing of the self as an autonomous manager of one's abilities and choices that permeates the comprehensive shift to corporate self-regulation and voluntary initiatives, say, for workers, women and the environment¹⁸³ validates the state's role in promoting a privatized sphere of self-reliance under neoliberal premises.¹⁸⁴ It is important to fully appreciate the challenges for a critical engagement and resistance against the community-eroding impact of GVCs. For that, we should understand them as complex infrastructures and multidimensional spaces in which forces of economic and political restructuring and private

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¹⁸⁰ Damani James Partridge, *Activist Capitalism and Supply-Chain Citizenship*, 52 CURRENT ANTHROPOLOGY S97 (2011), Supp. 3.

¹⁸¹ Galen Watts, *Are You a Neoliberal Subject? On Uses and Abuses of a Concept*, EUR. J. SOC. THEORY 1, 8 (2021) ("Indeed, if one had to boil what it means to be a 'neoliberal subject' down to a single concept, 'responsibilization'—the process whereby individuals are 'made responsible' for their choices and actions, while the state increasingly surrenders responsibility for their health, economic security and well-being—would be a legitimate candidate.").

¹⁸² Ilana Gershon, *Neoliberal Agency*, 52 CURRENT ANTHROPOLOGY 537, 539 (2011).

¹⁸³ JANE LISTER, CORPORATE SOCIAL RESPONSIBILITY AND THE STATE: INTERNATIONAL APPROACHES TO FOREST CERTIFICATION 28 (2011).

¹⁸⁴ Kampourakis, *CSR*, *supra*, note 135. Gavin Fridell, *Fair Trade and Neoliberalism: Assessing Emerging Perspectives*, 33 LATIN AM. PERSP. 8, 15-16 (2006).

business-driven regulation come together and produce treacherous dynamics of human displacement, suffering, and environmental destruction. Chaumtoli Huq's recent proposal to capture this hybrid landscape and its transformative dynamics through the use of three lenses: organizing theory, legal mobilization theory, and decolonization theory¹⁸⁵ bears great promise in assisting in that regard. Applying this theory set to a close scrutiny of the textile retailer H&M's Global Framework Agreement (GFA), Huq offers pertinent insights into the concrete contextual challenges that face labor rights creation on the ground. Particularly by reaching beyond an analysis of the GFA's place within international (ILO conventions; ICCPR, 'Ruggie Principles', OECD MNE Guidelines), domestic (e.g. state labor and CSR transparency and Human Rights due diligence [HRDD] regulation), and corporate conducts (transnational private regulatory governance [TPRG]), Huq shows how through transnational coalitions of local initiatives GFAs can be concretized and strengthened into enforceable covenants between companies and their stakeholders. Huq's intervention resonates with Tsing's already cited analysis of supply chain capitalism as 'human condition' that penetrates the intricate materiality of the supply chain to show the merging of legal and socio-economic disciplinary structures, capturing the supply chain as an encompassing space of life, domination, exploitation, and death.¹⁸⁶

Central in Patridge's, Huq's and Tsing's analysis is the need to focus contemporary efforts to understand the institutional infrastructure on the material-immaterial structures of supply chain capitalism as condition, as practice, and space. These particular interventions arise in a context of important research by sociologists, anthropologists and critical geographers but also of visualizations of life and death in global supply chains being brought before the public eye through literature, film, and photography¹⁸⁷ and contributing to wider awareness creation and sensibilization.¹⁸⁸

Consider, finally, the questions raised by the following section taken from a famous opinion written by Judge Richard Posner. In the 2011 decision

¹⁸⁵ Chaumtoli Huq, *Interdisciplinary Perspectives on Global Labor Governance: Organizing, Legal Mobilization and Decolonization*, 43 MICH. J. INT'L L. 423 (2022).

¹⁸⁶ Tsing, *Human Condition*, *supra*, note 86, 148-149 ("Supply chain capitalism here refers to commodity chains based on subcontracting, outsourcing, and allied arrangements in which the autonomy of component enterprises is legally established even as the enterprises are disciplined within the chain as a whole. Such supply chains link ostensibly independent entrepreneurs, making it possible for commodity processes to span the globe. Labor, nature, and capital are mobilized in fragmented but linked economic niches; thus, supply chain capitalism focuses our attention on questions of diversity within structures of power.").

¹⁸⁷ Manohla Dargit, *Industrial China's Ravaging of Nature, Made Disturbingly Sublime*, N.Y. TIMES (Jun. 20, 2007), <https://www.nytimes.com/2007/06/20/movies/20land.html>.

¹⁸⁸ See, e.g., Zeynep Ozdamar-Ertekin, *The True Cost: The Bitter Truth Behind Fast Fashion*, 2 MARKETS, GLOBALIZATION & DEV. REV. 1, 1-9 (2017), <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1026&context=mgdr>; CHAIN REACTION (Wall Street Journal Documentary Mar. 23, 2022), <https://topdocumentaryfilms.com/chain-reaction/>.

of *Boimah Flomo, et al v. Firestone Natural Rubber Company*, Posner writes:

They can assure fulfillment by hiring other poor Liberians to help them; and because Firestone's Liberian employees are paid well by local standards, they can hire helpers cheaply. But alternatively they can dragoon their wives or children into helping them, at no monetary cost; and this happens, though how frequently we don't know. We can't tell from the record whether Firestone has adopted effective measures for keeping children from working on the plantation. The plantation covers 186 square miles, which is roughly the size of Chicago, and thousands of people live there—approximately 6500 employees of Firestone plus the members of their families. We don't know how many supervisors Firestone has deployed on the plantation, and hence whether there are enough of them to prevent employees from using their children to help them. We don't know the supervisors' routines, or how motivated they are to put a stop to any child labor they observe. Firestone claims that it now has a policy of firing employees who use their children as helpers, but it didn't have such a policy prior to 2005. The suit was filed that year (initially in California, but it was transferred to the district court in Indiana the following year, which is why the docket number in the district court has 06 in it), and though it is unclear when Firestone's alleged violation of international law began—because it is unclear when the principle of customary international law invoked (or imagined) by the plaintiffs came into existence—it certainly began before 2005. And there is evidence that some of the supervisors had observed child labor during the period (whatever exactly it is) of alleged liability and done nothing to stop it. There is also evidence that the company's decision makers were aware of, and may even have condoned, some child labor on the plantation.¹⁸⁹

The here displayed gap between what the court 'knows' and what it would like to know, is so prominent that questions of 'why not?' and 'how?' cannot be avoided. But, in fact, asking how to educate the court, how to enrich the narrative, and how to provide a deeper factual account is the better question. And that reiterates the gap this paper tried to address and illuminate—that between the prevailing and already alluded-to account of GVC governance and the critical discourses around the nature of GVCs, their historical and local embeddedness and the obstacles that continue to face efforts to advance labor, human, and political rights. By rejecting the standard account of GVCs as "normal" and as merely technical embodiments of global economic integration and, instead, by visibilizing and amplifying

¹⁸⁹ *Flomo v. Firestone Nat. Rubber Co., LLC*, 643 F.3d 1013, 1023-24 (7th Cir. 2011). See the commentary by Jessica Bergman, *The Alien Tort Statute and Flomo v. Firestone Natural Rubber Company: The Key to Change in Global Child Labor Practices?*, 18 IND. J. GLOB. LEGAL STUD. 455, 458-9 (2011) ("While past international regulatory mechanisms have failed to effectively regulate child labor, in part due to the difficulties in defining child labor, private parties may, be able to effectively regulate child labor practices through the judicial process.").

life and death under the premises of contemporary global value chain capitalism with the help of ethnography, disaster law, and critical cartography can we contribute to alternative accounts. And it is through such counter- narratives and counter-maps that we should identify points of intervention, resistance, and reform.