

Global Labor Rights as Duties of Justice

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I. Introduction

The dire working conditions in sweatshops, particularly in developing states, have been widely documented by critics of globalization. It is common knowledge that basic labor standards, such as safety and health regulations, limitation on weekly working hours, and prohibition on child labor, are often minimal or nonexistent for many workers in the developing world, as demonstrated most recently by the disasters in Bangladesh, Cambodia, and China.¹ Despite the increasing public attention paid to such disasters, the philosophical discussion on global justice has yet to address directly and thoroughly the question of whether ameliorating dire working conditions at the global level should be regarded as a moral duty of humanitarian assistance or rather be considered a duty of justice. The distinction between the two types of duties is important for two reasons. First, while duties of justice are grounded in principles of justice that establish individuals' rights, humanitarian duties (referred to sometimes also as charity duties or duties of assistance) are not correlative to rights and are thus considered less weighty. In other words, it can be argued that no rights are violated when actors fail to fulfill their humanitarian duties. Second, the distinction bears practical consequences. In contrast to humanitarian duties, duties of justice are regarded as enforceable in the sense that third parties may be justified in applying sanctions against those who default on them.²

Issues of global labor rights have not been ignored by philosophers and social scientists. Rather than treating it as an issue warranting separate consideration, the philosophical debate on global justice references workers' rights only in the context of the general discussion of whether principles of justice should extend beyond the political boundaries of a sovereign nation-state.³ Yet theories in this debate rely, by and large, on abstract normative arguments supporting either cosmopolitan or anti-cosmopolitan approaches, and tend to avoid concrete analysis of practical problems stemming from increasing global economic, political, environmental, and legal developments.⁴ Most of these works looked more generally at obligations of members of affluent societies toward the global poor rather than specifically at the issue of how labor rights should be addressed in the context of global justice. Some exceptional recent studies (e.g., by Christian Barry and Sanjay Reddy and by Iris Young⁵) have attempted to bridge the gap between the normative discussion on global justice and the

empirical reality of international labor by proposing political and institutional reforms to contend with violations of labor rights, particularly in the developing world. These works, however, tend to ignore the existing legal rules and regulations that underpin the contemporary international labor market.⁶ Alternatively, issues of labor standards at the global level have been addressed by economists and labor law experts. Yet most of the relevant studies have endeavored to improve the understanding of the existing economic and legal reality, and have little to say about the moral obligations of individuals and institutions toward workers outside the former's nation-state.⁷

The purpose of this article is to address this theoretical lacuna and analyze the field of *global labor* as a sphere of justice deserving of independent consideration. Its contribution to the global justice debate is twofold. First, by concretizing the discussion around the economic, political, and legal reality of global labor, we seek to overcome the theoretical cul-de-sac reached by the adherence to abstract cosmopolitan and anti-cosmopolitan argumentations.⁸ Our discussion provides a normative justification for a cosmopolitan approach to global labor rights, arguing that a minimum level of labor standards in global production chains should be regarded as a matter of justice rather than solely humanitarian assistance based on compassion. The analysis rests on the premise that questions regarding the scope of justice—whether they should be limited to the boundaries of the nation-state or extend beyond state borders—should be deliberated in reference to the specific area of rights under consideration. In other words, while labor standards are central to addressing problems of global poverty,⁹ obligations under principles of global justice in the case of labor may differ fundamentally from their application in other areas, such as health or hunger, and may be grounded on fundamentally different types of justification.

Second, the article proposes an innovative methodological approach to issues of global justice, based on a three-stage interpretation of concrete social and economic aspects of globalization. Our argument in support of global labor rights as duties of justice rests on a critical interpretation of the social practice of labor in this global era. By *social practice of labor* we mean the rules and regulations that govern labor relations between employers and employees, as they have developed over the past two centuries since the beginning of the Industrial Revolution. The methodology of critical interpretation stems from a practice-dependent conception of justice, under which principles of justice should be derived from the practice they presume to regulate.¹⁰ This approach is usually adopted by advocates of anti-cosmopolitanism, who maintain that a shared practice, understood in terms of national or political affiliation (i.e., the state), is a necessary condition for applying principles of justice.¹¹ Our analysis of labor as a social practice, however, weighs in favor of a cosmopolitan approach. Our central claim is that the various legal and political mechanisms that helped balance the power asymmetry between employers and employees in the nation-state era have been eroded in the age of globalization. As transnational chains of production expanded beyond the territory of the state, the norms

and regulations that constituted the practice of labor in the pre-globalization era ceased to achieve their central aim, namely to ensure workers a life in dignity. International capitalism has been understood as one of the main roots to labor's problems since the Industrial Revolution¹²; however, the new global economic conditions, we argue, have exacerbated the *exploitative* nature of labor relations within the global labor market¹³ and constituted what John Rawls termed "conditions of background injustice."¹⁴ This exploitation mandates the establishment of new legal and institutional tools to regulate working conditions within complex transnational chains of production.

We begin our discussion by situating our argument within the contemporary global justice debate and the theoretical framework of the practice-dependent approach. The three stages of critical interpretation of the practice of labor are then presented in Part III,¹⁵ followed, in Part IV, by some general guidelines that we propose in designing new rules and institutions for a global practice of labor. Part V concludes with suggestions for further conceptual and empirical investigation to advance our understanding of how labor is practiced in the global era and the normative implications of this practice.

II. The Global Justice Debate and Practice-Dependence Theories

Since it first emerged in the 1980s, the philosophical debate on global justice has centered on the question of extending principles of justice beyond state borders and whether they should be confined to the political boundaries of the sovereign nation-state. At the risk of oversimplification, the positions in this debate can be divided into two main competing approaches: the cosmopolitan approach and the anti-cosmopolitan approach. These differ mainly in the weight that each assigns to one's obligations toward fellow citizens as opposed to obligations toward individuals in other states.¹⁶ Cosmopolitan theories rest either on institutional arguments, that the emerging supranational institutional structure provides a sufficient common political and economic framework for implementing principles of justice,¹⁷ or on moral interpersonal arguments, that the overarching, guiding moral principle in matters of distributive justice is the concern for each person's welfare and dignity irrespective of his/her nationality, citizenship, or residence.¹⁸ In contrast, proponents of anti-cosmopolitanism make one of two claims: either they maintain that a shared national affiliation that underpins the state's political framework is a necessary condition for applying principles of justice, since national membership entails special moral obligations or "common sympathies," in Mill's words,¹⁹ toward our fellow countrymen²⁰; or else they take an institutional perspective, insisting that principles of justice can only be implemented under conditions of clear sovereignty capable of enforcing policies determined democratically, and that despite the growing reality of globalization such conditions exist at present only in the framework of the nation-state.²¹

In recent years, the theoretical discussion on the scope of justice seems to have reached a dead end.²² Moreover, criticism of the global justice debate is increasingly being voiced, arguing that in focusing on highly abstract philosophical argumentations, most theories fail to provide useful insights into the morality of existing institutional arrangements and social practices.²³ Partly in response to this criticism, a methodological debate has opened up, cutting across the cosmopolitan and anti-cosmopolitan camps, between a practice-dependent, or *relational*, approach and a practice-independent, or *non-relational*, approach to distributive justice.²⁴ Non-relational theories (practice-independent theories) reject the notion that principles of justice depend on practice-mediated relations between individuals. Proponents of this stance argue that principles of justice exist independently of shared practices, and they do not presuppose shared common institutions or involvement in certain unique cultural interactions or participation in shared institutions. Furthermore, the non-relational approach derives principles of justice from comprehensive moral theories that view human beings as the source of moral concern, as subjects of justice relationships.²⁵ These principles apply to all human beings, per se, and are not contingent on any particular practice or institution.

In contrast, under relational (practice-dependent) conceptions of justice, principles of justice cannot be articulated and justified independently of the practice they presume to regulate.²⁶ In Sangiovanni's words, "the practice mediated relations in which individuals stand condition the content, scope, and justification of those principles. Relational accounts vary regarding both which relations condition the content, scope, and justification of those principles as well as how they do so."²⁷ Relational theories do not restrict themselves to only relationships among people who participate in a common practice in the strict sense. Relationships between individuals that give rise to duties of justice can be based also on social, political, or institutional relationships.²⁸ All relational theories "share the idea that principles of distributed justice cannot be formulated or justified independently of the practices that they are intended to regulate."²⁹

Ironically, despite the recent resurgence of writing on practice-dependent theories, social practices themselves have been the subject of little analysis. Most work adopting a relational or practice-dependent approach tends to focus on relations that arise from sharing a common culture or common identity or participating in certain institutions. In contrast, our analysis, relating to the sphere of labor, shifts the focus to the idea of *social practice*.³⁰ Social practice is defined by Rawls as a "form of activity specified by a system of rules that defines offices, roles, moves, penalties, defenses, and so on, and that gives the activity its structure."³¹ We use the term "social practice" in the sphere of labor to refer to formal and informal rules, and institutions that regulate labor relations at the national and supranational levels.³² In the following part, we propose an interpretation of the social practice of *labor* that leads, in our view, to cosmopolitan conclusions and justifies extending the scope of justice beyond state borders.

III. Interpreting Labor as a Social Practice

The interpretation of labor as a social practice consists of three stages. In the first, or pre-interpretive, stage, we identify the contours of the practice of labor, namely the rules that govern the relationship between employees and their employers. These contours are ambiguous to begin with, as the definition of categories, such as “employee” and “employer,” is inherently controversial. Moreover, as we show in the later stages of the interpretation, these ambiguities have been exacerbated in the global era and have generated new dimensions of unjust labor conditions. The second stage of our interpretation presents the aim and justifications of the practice of labor from the perspective of those who take part in the practice, as well as their expression in national and international moral and legal norms. In other words, we present the commonly perceived aims of labor norms and regulations, as well as how they evolved during the nation-state era, mainly in developed states.³³ The final, post-interpretive stage is the critical one. Here we analyze the growing challenges to realizing the practice’s aims, as identified in the second interpretive stage. Our critical interpretation of the practice of labor at this point focuses on transformations in the practice of labor resulting from recent globalization processes, in particular the expansion of labor relations beyond the nation-state borders through global chains of production, outsourcing, and other changes in the global labor market.

While inspired by Ronald Dworkin’s interpretive framework,³⁴ our investigation differs in the distinctions we make between the second and third stages of interpretation. Whereas the aims of the practice are delineated in the second stage of interpretation on the basis of how labor was regulated during the nation-state era, the third stage focuses on the empirical reality of labor in the global era. We further elaborate on this distinction below.

A. Pre-interpretive Stage: The Contours of Labor

The social practice of labor encompasses relations between employers and employees and the rules governing these relations, rules that emerged over the last two centuries. In the eighteenth century, employment contracts and aspirations for freedom of employment replaced feudalism, guilds, and servanthood as the basis for the regulation of the labor market. Labor norms and regulations developed as industrialization expanded through the nineteenth century and evolved into the establishment of the welfare state in the mid-twentieth century. As a result, today’s labor relations at the state level are governed by legal rules stemming from various legal sources, such as constitutional provisions, legislation, executive directives, court decisions, customs, rules established in collective agreements that result from collective employer and employee negotiations, and contractual agreements agreed upon by individual employers and employees. At the supranational level, various types of organizations generate and regulate the practice of labor; these

include international organizations (e.g., the United Nations [UN] and the International Labor Organization [ILO]), and more recently regional supranational entities and agreements (e.g., the European Union [EU]), and nongovernmental organizations (e.g., the Fair Labor Association [FLA] and the Workers Rights Consortium [WRC]). In addition, labor relations are governed by regional and international framework agreements, reached by global and regional workers unions and transnational corporations (TNCs), as well as by voluntary corporate social responsibility codes, and multilateral, bilateral, and unilateral arrangements linking trade and labor.³⁵

The contours of the practice of labor are not unambiguous, with certain open questions such as the perpetual issue of who should be considered an “employee” and/or who an “employer.”³⁶ This particular matter is crucial as it impacts decisively who is protected by employment contract regulations.³⁷ As defined in most national labor law, typical labor relations involve subordinate contractual relations and a worker’s labor in exchange for wages. Yet, in recent decades, legal definitions of employees/employers have become increasingly blurry due to various economic developments, such as decentralization of production, labor externalization, as well as the emergence of new patterns of work (e.g., freelance workers) and labor intermediates (e.g., manpower agencies, contractors, and sub-contractors). This ambiguity in the definition of labor relations was addressed by labor law regulations, which attempted to perfect objective classifications and criteria for ascertaining labor contracts.³⁸

We will return to this point in the context of the third interpretive stage, below, when we discuss the way in which the increasing “defocusing of labor relations” in the global era has impeded the protection of workers’ rights using legal means.³⁹

B. The Interpretive Stage: Aims, Justifications, and Methods of the Practice of Labor

The second stage of our interpretative framework inquires into the objectives and justifications of the practice of labor and the possible reasons why its participants affirm its basic rules, procedures, and standards. We also discuss why and how these participants arrange their affairs to achieve the aims of the practice.

i. Aims of Labor: Life in Dignity

A variety of goals underlie the norms and regulations of labor in the modern capitalist state.⁴⁰ At the highest level of generalization, however, taking the practice as a whole, one of labor law’s fundamental aspirations is to reduce the commodification of labor relations in order to guarantee *life in dignity for all workers*. According to Sinzheimer, “To uphold human dignity is the special task of labor law [. . .] it brings into being a ‘real humanity,’ that is much more than some mere ideological humanism.”⁴¹ This idea is also expressed in the dictum

“labor is not a commodity and not a commerce clause,” which was incorporated into the Versailles Treaty as well as the 1946 ILO Declaration.⁴² In contrast to other types of economic exchanges, the exchange that characterizes the labor market is unique in that the object being sold (labor skills) cannot be separated from the subject selling his/her skills (the worker). If the body and personality of the worker are inseparable from the skills he/she is selling in return for a wage income, and if the notion that every person deserves dignity is universally shared, then every worker must be treated with dignity.

What constitutes *life in dignity* is an issue that has been the subject of intense dispute among moral and political philosophers.⁴³ The topic was particularly controversial in the context of labor.⁴⁴ Regardless, the twentieth century has witnessed the emergence of worldwide consensus on a minimal standard of labor rights intended to satisfy the aim of life in dignity for all workers. Despite great variation in how welfare and labor regimes have evolved in different modern industrial democracies,⁴⁵ the majority of states in the world recognize today the need to legally anchor fundamental labor norms and rights. This recognition is manifested in several key documents of international human rights law, including the Universal Declaration of Human Rights, International Convention on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Labor Organization Declaration on Fundamental Principles and Rights of Work, and UN Global Compact. It is also reflected in the growing similarities between normative commitments regulated at the national level. One of the clear expressions of the global consensus on minimal labor standards that guarantees workers’ life in dignity is the 1998 ILO Declaration on Fundamental Principles and Rights of Work. This document defines four core basic labor rights, namely protection against all forms of forced or compulsory labor, effective prohibition of child labor, freedom from discrimination in respect to employment and occupation, and the guarantee of freedom of association and the right to collective bargaining. In 2008, the ILO Declaration on Social Justice for Fair Globalization expanded this to include three additional strategic objectives to be adopted by member states: promoting access for all to freely chosen employment; developing measures of social security and labor protection, such as basic health-care (e.g., maternity leave), safety regulations at work, and minimum wage; and promoting social dialogue among workers, employers, and the state.⁴⁶

At the national level, the consensus is reflected in the fact that a significant majority of the labor standards legislated in 190 different countries guarantee comparable basic norms, such as a weekly day of rest, paid sick leave, paid annual leave, and a wage premium for mandatory overtime.⁴⁷ Clearly not all states live up to their international legal commitments, nor do they always enforce existing national labor laws. Nevertheless, the overlap in basic labor regulations is clear evidence of a cross-cultural and cross-economic developmental accord on the minimal labor standards essential for ensuring decent working conditions.

Yet, despite this international declarative consensus on universal labor standards, existing labor laws often do not guarantee life in dignity, even in developed

states. Such is the situation of the “working poor”—a large group of workers who are deprived of the minimal income that would allow them a life in dignity.⁴⁸ We do not identify the international consensus of labor standards as sufficient guarantee for life in dignity, but for the purpose of this article we regard international labor norms as a necessary condition for such a life.

ii. Balancing Asymmetrical Power Relations and Preventing Exploitation

The labor market in a capitalist system, where scarcity of jobs is a common reality, is characterized by asymmetry in bargaining power between employers and employees.⁴⁹ Under such conditions, an individual worker is often compelled to accept the terms of employment contract dictated by the employer, since any objection may lead to his/her loss of employment. From the worker’s perspective, unemployment means a lack of the means of subsistence. It also means the failure to secure other advantages usually associated with work, such as social status and a source of identity, and various psychological benefits. The power asymmetry in employment relations extends beyond the pre-contractual stage and is manifested throughout the period of work relations. For example, workplaces are typically organized hierarchically, featuring an unequal distribution of knowledge, expertise, and power between employers and employees.

In an unregulated labor market, this structural asymmetry in bargaining power between employers and employees generates labor contracts that are inherently *exploitative*. Exploitation in labor relations occurs at both a substantive and a procedural level. Accordingly, preventing the emergence of such relations requires both substantive and procedural regulatory measures.

A substantive definition of exploitation usually addresses the disparity between the return that a laborer receives for the contribution of labor and the value that he/she adds to the end product or service. In modern complex economies, such an outcome-based conception of exploitation is difficult to measure, partly because the total output of labor is usually the result of various types of contributions made by many members of the society. National legal norms, therefore, do not adopt a comprehensive outcome-based conception of exploitation. Rather, a sufficientarian approach is taken in defining exploitation in the practice of labor. Namely, under this definition, a threshold of employment conditions is set, expressed in protective labor regulations. From this minimalistic perspective, employment relations that fail to meet the protective threshold are to be considered exploitative.⁵⁰

From a procedural perspective, exploitative relations exist when one person takes advantage of another person’s bargaining weakness due to the latter’s state of desperate neediness. This is considered exploitation because the exploiter derives a benefit from the exploited person’s “difficulty in advancing her interests in interactions in which both participate, in a process that shows inadequate regard for the equal moral importance of her interests and her capacity for choice.”⁵¹ Under this conception, exploitation may occur even if the exploited person benefits as a result of the interaction with the exploiter.⁵² Thus, an employment

contract is considered exploitative if the worker's ability to bargain and object to the contract terms was limited during the negotiation phase. This limitation often stems from the power asymmetry between the worker and employer, and is common in negotiations that occur on an individual rather than collective basis. From this procedural point of view, employment contracts may thus be regarded as exploitative even if they benefit the workers.

Regulations that guarantee freedom of association, the right to collective bargaining, and the right to strike are among the instruments intended to correct the unequal balance of power between employers and workers, and in this context to protect from exploitative relationships in the procedural sense.⁵³ The presence of labor unions in the workplace is instrumental to the enforcement of workers' rights, with empirical evidence indicating that collective agreements tend to guarantee better working conditions than individual labor contracts.⁵⁴

Overall, the state has played a central role in undermining both substantive and procedural exploitation and promoting justice in the labor market by enacting and enforcing minimum standards of working conditions for employers to satisfy (regarding, e.g., limits on working hours, safety standards, minimum wages, and holiday and sick leave).⁵⁵ In so doing, the state in fact has taken a stance of *legal paternalism* toward workers and recognized them as a *status*, by imposing limitations on their freedom of contract so as to guarantee them a minimum of inalienable labor rights.⁵⁶ This process began with the first English Factory Act (1802), which set the workday of pauper apprentices at twelve hours and forbade night work.⁵⁷ Since then, legislatures in industrialized countries have gradually expanded the scope and requirements of labor standards.

Another central legal mechanism developed in most Western countries to contend with the problem of substantive exploitation in labor relations is the classification of labor contracts under the unique category of "relational contracts." In contrast to neoclassical contracts, whose aim is to advance the self-interests of the parties, relational contracts seek to promote cooperative social behavior. Relational contracts regulate long-term relations rather than insular interactions and are characterized by a heightened level of mutual responsibility between employers and employees. Accordingly, labor contracts in most states set out the relations between employer and employee in a way that requires them to behave in good faith and fairly to one another. Moreover, the long-term nature of labor relations means that the full terms of labor contracts cannot be completely defined in advance, and therefore it may well be that certain changes will be made to the contract without dissolving it all together.

From a normative perspective, the legal category of relational contracts acknowledges a specific type of relations between employers and employees beyond the commitments that characterize a one-time interaction involving an exchange of goods and services for money. Labor law thus recognizes labor relations as instituting a type of association that generates mutual commitments and normative duties between its participants. From this perspective, associations based on a shared practice of labor may imply "associative duties" from the same

category of duties usually mentioned in the context of nation or state membership. In other words, labor relations institute associative duties between participants in the labor practice.⁵⁸ To clarify, we are not referring here necessarily to labor unions, where membership in the association requires a formal act of registration. Rather, by association based on a shared practice of labor we mean workers and employers who are associated through a joint project that involves work.

In sum, in contrast to the Marxist approach that perceives employer–employee relations as structurally exploitative and seeks the total elimination of the capitalist system, modern labor law strives to balance the inherent asymmetry in these power relations as well as guarantee a minimum standard of life in dignity for workers. As such, the legal norms and regulations governing the practice of labor are grounded on the assumption that state intervention can balance this asymmetry and prevent unacceptable conditions of work through using legal and political tools.⁵⁹

The practice of labor described above evolved, by and large, during the nation-state era and relates to a labor market that generally functions within state boundaries. However, economic globalization over the past three decades has generated new conditions of exploitation that cannot be addressed by the traditional practice of labor described above.⁶⁰ In our presentation of the next, final, stage of interpretation, we argue that in the current global reality, the existing state-based institutional and regulatory arrangements cannot achieve the aims and purposes of the practice of labor as described in the first and second stages of interpretation.

C. Post-Interpretive Stage: Critical Analysis of Labor in the Global Era

Two of the global transformations that have most significantly intensified the challenges faced in the practice of labor are the emergence and growth of new actors in the global labor market—TNCs—and the increasing complexity of production chains. The term “production chain” is generally used in reference to a network of businesses collectively cooperating to achieve the procurement, manufacture, and distribution of a family of related products.⁶¹ It encompasses all actors who participate in the endeavor to bring a product to the marketplace, including manufacturers and distributors. Global production chains are most common in the apparel and toy industries, but have become increasingly more prevalent in other industries, such as electronics. These TNCs could, conceivably and under certain conditions, become the driving force behind a “race to the top” in labor standards, harnessing the power of the market to improve labor conditions,⁶² so that enhancing international trade becomes a tool for development. However, these conditions have yet to materialize in most developing countries.⁶³

The unprecedented growth of global trade and the increased global competition over capital and jobs in the last four decades has revived the debate as to the relationship between international trade and labor standards. Whereas in the past the Global North produced high value-added production and the Global South supplied mostly raw materials and low value-added production, currently the South competes directly in high value-added production. Low labor costs and

harsh limitations on core labor rights, in particular the restrictive policies on worker organization, have allegedly given the Global South a comparative advantage, setting labor costs at the heart of the debate on international trade.⁶⁴ Although the academic debate over the validity of the “comparative advantage” paradigm continues,⁶⁵ certain sectors, such as the textile industry, have witnessed a clear movement of production from the North to the South, a trend that intensified when protectionist trade measures, such as quotas, could no longer be maintained. Furthermore, as further discussed below, the International Monetary Fund (IMF) and World Bank brought significant pressure on developing countries to adopt policies of structural adjustment and market deregulation, including in the labor market. This pressure, coupled with the imbalance in power between certain TNCs and the weakest developing states, generated in certain sectors either a “race to the bottom” or “regulatory chill” in labor standards. This reality set the conditions wherein workers who reside in developing countries sell their labor power very cheaply in order to produce products and services for TNCs located mostly in developed states.

TNCs are the main benefactors of this type of labor practice, indirectly employing many production workers in sweatshops under devastating conditions, working unlimited hours, and lacking minimum safety and health standards.⁶⁶ The horrific labor conditions of workers, particularly women, in sweatshops in developing countries have been widely documented and acknowledged.⁶⁷ In many cases, even full compliance with the low labor standards set in developing states does not ensure workers adequate living conditions.⁶⁸ Moreover, local producers and factory owners in these states commonly disregard the inadequate legal protections because the enforcement mechanisms are often ineffective. Even when, in absolute terms, the labor conditions of workers employed by factories that are part of a production or supply chain are preferable to the horrendous conditions they endured in agriculture, this does not, as will be explained below, alter the exploitative nature of the relations.

The exploitative nature inherent to labor relations became evident in the global era due to the limited scope of national regulations that do not apply beyond state borders.⁶⁹ As noted above, in an unregulated labor market, labor relations may be exploitative because of the bargaining power asymmetry between employers and employees. This asymmetry is exacerbated in the global labor market by the inability of existing legal means to adequately capture and effectively regulate transnational production chains. To be clear, national labor laws in the pre-globalization era were not meant to protect workers outside national borders. However, we argue in this article that the changing nature of production has created the problem of the de-territorialization of labor, law and hence the need for the expansion of labor protection to workers beyond state territory. The problem is particularly salient in the labor relations that have been developed by TNCs.

The deficiency of international and national labor law allows TNCs, which are based in developed states, to exploit cheap labor force in developing countries without directly employing the workers. From a legal point of view, TNCs are

connected to workers who produce their products through contractual obligations within the global production chains rather than through employment contracts. Legally, TNCs are not considered the “employers” of these workers and are thus not considered responsible, in the eyes of the law, for the workers’ labor conditions or well-being. Local workers in global production chains are often employed indirectly by manpower agencies or have the legal status of self-employed despite their economic dependence on the supplier. For example, in the apparel industry, women are required to produce sections of future assembled clothing in their homes, and thus are regarded as self-employed and not employees of the subcontractors who sell the products to the brands.

Some proponents of the existing global labor arrangements recognize the severity of labor conditions for many workers in developing countries but refrain from assigning actors outside these countries any moral duty to improve the conditions. Two claims are commonly raised in defense of the lack of such action. First, workers who work in demeaning sweatshop conditions have agreed to do so voluntarily; no one has forced them to accept these terms of employment.⁷⁰ Moreover, given the meager alternatives to workers in developing countries, they in fact benefit from the employment opportunities created by the global expansion of manufacturing. Second, many advocates of globalization argue that the dire working conditions in developing countries are the unfortunate yet unavoidable consequences of a free market economy, and any attempt to control this will result in lower growth rates in the developing world, reduced business investments, and greater unemployment in these countries.⁷¹

The problem with these two arguments is that they tell only part of the story.

In reply to the first claim, one could argue that exploitation may occur despite the apparent voluntary consent of workers to terms of employment that fail to ensure them a life in dignity. As discussed above, the fact that workers may benefit from their work arrangements, compared with their alternatives (e.g., unemployment or worse working conditions offered by local employers), does not diminish the exploitative nature of labor relations. This is because exploitation, in the procedural sense, occurs when the employer takes advantage of the worker’s bargaining weakness, regardless of the benefits he/she may obtain as a result of the work agreement. As Richard Miller contends, “to derive benefits from another’s bargaining weakness through an arrangement that is stultifying is only compatible with adequate respect for her interests and capacity for choice on account of special, exclusionary reasons.”⁷² These reasons do not include “voluntary consent by employees and her improvements as compared with opportunities available to her.”⁷³

The procedural exploitation of workers in the global labor market is even more acute when the asymmetry in negotiating power between employers and employees has a geographic dimension. The disadvantage of workers in the developing world is structural. As economist Prakash Sethi has argued, standard trade theory requires that both capital and labor have maximum mobility to allow equitable distribution of benefits from free trade, so that each side can maximize

the reward from its efforts. While TNCs currently enjoy all of the advantages of moving capital between different sectors and nations to maximize their return on investment, workers lack such mobility. Workers cannot migrate easily, if at all, to countries with labor shortages, and consequentially they are prevented from eliminating inefficiencies in the labor market.⁷⁴ According to Sethi, “the imbalance between the mobility of capital and goods and the immobility of labor are more characteristic of neomercantilism than of truly free markets. TNCs use both the fact and threat of capital mobility to extract maximum productivity gains from cheap and abundant labor. The control of overseas markets provides the TNCs with monopoly-like power, which they use on local manufacturers to extract the lowest prices possible and thus put extreme downward pressure on local wage rates. Local manufacturers, in their turn, cooperate among themselves by not competing for workers on the basis of higher wages—a situation that is easily maintained because of abundant labor.”⁷⁵

Sethi’s analysis concerning the limited mobility of workers in the international economic structure suggests that a complete understanding of the exploitative nature of labor relations in the global era must take into account not only exploitation of workers that occurs at the interactional level—that is, exploitative relationship between the various actors in transnational production chains—but also the exploitative conditions of workers in developing countries that occur at the institutional level—namely, the exploitation that stems from unequal global trade and investment framework agreements shaped by intergovernmental negotiations between developing and developed countries.

At the institutional level, globalization has generated exploitative relationships, where developed countries exploit developing countries through an international institutional framework and intergovernmental agreements regulated by the World Trade Organization (WTO), General Agreements of Tariffs and Trade (GATT), IMF, World Bank, and others. The imbalance in international trade regulation is particularly striking. Following the failure to establish an international trade organization in the framework of the Breton Woods agreements, multilateral trade agreements were negotiated in the framework of GATT in 1947. The absence of most developing countries from the 1947 negotiations has enabled developed countries to perpetuate a trading system that favors their interests.⁷⁶ Another prime example of institutional-level exploitation can be found in the Uruguay Round, which led to the establishment of the WTO. During the negotiations, between 1981 and 1994, major developing countries took advantage of developing states’ urgent need for access to developed markets, and used threats of exclusion and discrimination among other “bullying” methods to achieve a trade regime that benefits the developed states’ markets.⁷⁷ According to critics, the WTO prohibits what could be seen as infant industries’ promotional tools, such as tariffs and subsidies; this policy is considered, by many, to be detrimental to the developing countries, as such measures are seen as appropriate to their stage of development.⁷⁸ While economists agree that enhancing free trade could promote development,⁷⁹ many deem the particular set of norms currently in place as unfair,

skewed in favor of the developed world, and in need of reform.⁸⁰ The IMF and World Bank, for example, are two of the most prominent international institutions designed in Bretton Woods to bring about the new economic world order by lending and investing in developing countries, yet they have been subject to criticism for making loans and investments conditional on the adoption of uniform economic policies, known as the “Washington Consensus.”⁸¹ These policies, which called, among other things, for the limitation of the role of the state in the economic and social sphere, privatization of public enterprises, and the reduction of social services, did not take into account the particular social and economic circumstances of the developing states in which the policies were implemented. There is evidence to suggest that after several decades of globalization, regional inequality is on the rise, and the income gap between the richest and poorest countries widening.⁸²

In sum, the three stages of interpretation discussed above expose how various legal and political means that helped balance the power asymmetry between employers and employee in the nation-state era have eroded in the era of globalization. As the practice of labor expanded beyond the borders of the state, labor norms and regulations that constituted the practice of labor in the pre-globalization era failed to achieve the central aim of the practice—namely, to secure for workers a life in dignity. In the next part, we present the normative implications of this failure to realize the aims of the practice of labor in the global economy, and argue that advancing workers’ rights outside state borders should be regarded as a *duty of justice*.

IV. New Institutional Arrangements as a Duty of Justice

The failure to realize the aims of the practice of labor in the global era, at both the interactional and institutional levels, can be described as constituting conditions of “background injustice,” a term first coined by John Rawls and which has recently begun to emerge as part of the global justice discourse. By background injustice, Rawls meant the absence of just rules as well as political and social institutions that constrain people’s decisions and actions. In the absence of a “just background,” the accumulated results of many separate and fair agreements between individuals can, over the course of time, lead to a situation whereby conditions of free and fair agreements no longer hold.⁸³ This may be due to social trends and historical contingencies. Rawls limited the scope of principles of justice only to the state level, namely to those people who live under the same basic structure. However, in recent separate publications, Miriam Ronzoni and Arash Abizadeh relied on Rawls’s underlying assumptions to derive cosmopolitan conclusions, arguing that the existence of background injustice at the global level mandates the establishment of institutions and rules that correct the unjust reality. According to Ronzoni, if problems of background injustice arise at the global level, we have a duty to alter the global institutional structure in order to end the

conditions of injustice. Some of these institutions may be completely new and different from the institutional arrangements that characterized the basic structure of the nation-state, yet they do not necessarily need to constitute a world state.⁸⁴ Abizadeh reached a similar, concurring conclusion based on his analysis of Rawls's notion of "fair terms of cooperation." According to Abizadeh, when a group of individuals are engaged in a mutually advantageous enterprise, the creation of a basic structure is required to realize just background conditions.⁸⁵

The background injustice argument is particularly pertinent in the context of global labor. In a brief comment, Rawls used the example of labor contracts to illustrate his claim regarding the role of sociopolitical institutions in preserving certain patterns, and thus securing just background conditions. He wrote, "[W]hether wage agreements are fair rests, for example, on the nature of the labor market: excess market power must be prevented and fair bargaining power should obtain between employers and employees. But, in addition, fairness depends on the underlying social conditions, such as fair opportunity, extending backward in time and well beyond any limited view."⁸⁶

As demonstrated in the previous part, the global labor market is characterized by background injustice. This reality makes the implementation of principles of justice in the global sphere imperative, since the unjustness of the practice of labor at this level undermines the very aims and justifications that are at the foundation of the practice of labor. In other words, rectifying the unjust conditions of global labor requires, as a matter of justice, the establishment of new institutions and rules, or else the strengthening of existing global institutions.

Outlining the particular rules and institutions that should govern the practice of labor at the global level or the practical details of their design is beyond the parameters of the discussion in this article. This notwithstanding, in the remainder of this part, we will present two general guidelines that we deem crucial for designing just rules and institutions for a global practice of labor.

The first guideline relates to the matter of uniformity. In our view, the rules and institutions that should govern the practice of labor at the global level could conceivably differ from those operating at the national level, as they are shaped by the kinds of problems they are intended to address. The regulation of the practice of labor in the global sphere might require supranational institutions or international rules that diverge in substance and form from the labor rules and institutions that secure just background conditions for workers at the national level.⁸⁷ Furthermore, the regulation and enforcement of global labor standards will not necessitate uniform content across all labor norms, rules, and regulations throughout the world. For example, the norm of minimum wage could vary across states depending on various factors, such as productivity, standard of living, and the welfare regime in the different states. However, there should be some minimal uniform level of labor standards (e.g., prohibition of the worst forms of child labor). The level at which this minimum is set is a matter for political and legal debate.

The second guideline concerns the question of responsibility. In recent years, scholarly attempts at tackling the problem of background injustice in the area of

global labor have proposed new institutional arrangements for generating and enforcing labor standards at the international level. For example, Archon Fung, Dara O'Rourke, and Charles Sabel suggested promoting labor standards in sweatshops by incentivizing corporations through coordinated actions by consumers, monitoring agencies, and nongovernmental organizations.⁸⁸ Another leading example is Christian Barry's and Sanjay G. Reddy's call to establish a worldwide system of linkage between trade agreements and labor standards.⁸⁹ These proposals assign responsibility for workers' welfare either by emphasizing the interactional perspective, focusing on individual actors in global production chains (e.g., à la Fung et al.), or by underscoring the institutional perspective by concentrating on the reform of global and international rules and institutions (e.g., Barry and Reddy). These and other proposals aimed at the amelioration of unjust labor conditions are based on different principles of responsibility allocation between the different actors in the global labor market.⁹⁰ Thus, for example, Fung, O'Rourke, and Sabel stress the centrality of Western consumers in the remedying of unjust labor conditions, partly because they are one of the main benefactors of this situation; Barry and Reddy, in contrast, allocate the responsibility to the WTO, since they regard it as the institution most capable of protecting labor rights.⁹¹

In contrast, we propose a multilevel approach to remedying injustice in the global labor market.⁹² As shown in this article, problems of background injustice in the area of global labor exist at the interactional and institutional levels. Therefore, any proposed arrangement for guaranteeing workers' rights should address the exploitative labor conditions and assign responsibility to ameliorate them at both these levels as well.⁹³

A new legal and political concept of shared responsibility is required to assign responsibility to secure just labor conditions not only to the individual actors and TNCs that participate in global labor. Responsibility to remedy unjust labor conditions should also be assigned to international institutions that govern the global economic order (such as the WTO, ILO, World Bank, and IMF) and especially to those governments that wield the greatest influence in the institutions that shape the regulation of labor at the global level.⁹⁴ In other words, a new international governance structure should satisfy the conditions of background justice.

To prevent exploitation in labor relations at the interactional level, reformed institutional arrangements should strengthen the right of freedom of association and the bargaining power of workers. One option would be to bolster and reinforce framework agreements signed between supranational labor organizations and European-based TNCs.⁹⁵ In addition, new legal tools should be developed to hold TNCs responsible toward the labor rights of production workers at the end of their global production chains. Although TNCs are not legally considered the formal "employers" of the production workers within the global production chains, they do exhibit "employer-like" features that are often used to legally define employers in national labor markets. For example, a commonly used criterion in

well-regulated national labor markets for determining employment relations is the degree to which the employer can exert substantial control in regulating the production process. TNCs wield control over the quality of products produced for their brand by local laborers. This suggests that TNCs have the capacity to regulate additional aspects of the terms under which these workers operate.⁹⁶ Furthermore, by controlling the price paid for the products produced by workers, the corporations in fact exercise considerable control over the wages and many of the working conditions of the workers and marginalized subcontractors.⁹⁷

Clearly, in practice, labor reforms at the global level will be motivated not only by considerations of justice but also by some degree of self-interest of the part of the workers in the developed world as well as of other actors in the global labor market.⁹⁸ How to create the political will for generating global labor reforms, and to overcome the powerful political forces that impede such reforms, is a separate question requiring a different kind of investigation.

V. Conclusion: Global Labor Rights as Associative Duties of Justice

In this article, we have drawn on the empirical reality of global labor to introduce a new dimension into the discussion of global justice. Our analysis of the practice of labor has demonstrated that moral obligations toward workers are not determined only by geographic location, membership in a particular nation/culture, or participation in effective political institutions. Rather, they rest on participation in the practice of labor itself, which, over the past two centuries, has been increasingly regulated mainly at the national level. This regulation has been grounded on the normative perception of labor relations as a type of association that implies moral commitments among its participants. The fact that labor relations transcend state borders in today's economy does not diminish the moral obligations among the parties to such relations. In other words, if TNCs and other actors in the global production chain (e.g., subcontractors and vendors) exhibit "employer-like" characteristics (such as impacting the work conditions of all production workers within the chain and deriving benefit from their labor), there is no reason to exempt them from duties toward workers who take part in this shared practice of labor.

Given the unique type of association that characterizes labor relations, the main argument developed in this article can be theoretically framed as "associative duties of justice," which are at the heart of the global justice debate. Associative duties of justice usually refer to duties that we owe to people with whom we are associated in some way, such as family members, friends, neighbors, or compatriots.⁹⁹ Proponents of anti-cosmopolitanism tend to rely on associative duties arguments and restrict the scope of such duties to members in associations based on national identity or state citizenship. However, the philosophical discussion of the concept of associative duties neglects to acknowledge an additional type of social association of great significance to individuals in the modern

economy: associations that exist in the workplace, both among workers and between workers and their employers. Our main claim is that associations based on a shared labor practice generate normative duties toward workers within the nation-state as well as beyond state borders, and moreover the obligation to ameliorate the dire conditions of workers outside the state borders should be regarded as “associative duties.”

By extending the concept of associative duties to labor relations, our argument overcomes one of the main points of criticism raised against the anti-cosmopolitan camp. According to what is known as the voluntarist objection,¹⁰⁰ being in a relationship with others is insufficient to create associative duties toward them, since moral duties arise only through voluntary acts (e.g., by entering into contractual agreements). While the voluntarist objection may seem a persuasive argument against nationalist and statist conceptions of associative duties, it is not applicable when it comes to associative duties of actors who voluntarily enter into the labor practice since their duties toward workers are created voluntarily.

A critical interpretation of the practice of labor in the global era not only leads to normative conclusions regarding global justice theory but also yields some practical implications. First, our analysis shows that the current legal framework defining the employers–employees relationship is anachronistic and is unsuited to the actual exploitative conditions of such relationships in the contemporary global labor market. Thus, we call for the development of a new legal framework, one that reallocates moral and legal responsibilities to actors in the global labor market, and reflects just labor relations in the age of globalization. In the course of this process, international labor law should redefine the terms “employees” and “employers” within global production chains. For example, employers should be considered as such legally to the extent that they control the working conditions of workers in their chain of production, benefit from the product of the latter’s labor, participate with the workers in joint activities, or have the capacity to change existing work conditions.

One possible counterargument to our claim is that it is applicable only to global chains of production, and therefore implies that the duties of justice to guarantee labor standards do not apply *vis-à-vis* workers who work outside global production chains (e.g., workers who provide local services or work in local agriculture). This is, indeed, an important limitation of our analysis of labor relations at the interactional level (i.e., between various actors in the global labor market who take part in the practice of labor). However, this criticism does not apply to the analysis of exploitation of workers at the institutional level, as this prong of the analysis relates to the dominance and privileged position enjoyed by developed states in global economic institutions, such as the IMF, World Bank, and WTO. The second practical implication of this article, then, is that new institutional arrangements are needed to ameliorate the current conditions of background injustice in the sphere of global labor. Since global economic institutions, such as the IMF and WTO, shape the global economic reality and

influence the way that the global labor market is regulated, their reform would potentially impact all workers in the developing and developed world. Guaranteeing just working conditions for workers, within and beyond global production chains, requires establishing new forms of global governance to replace the existing unjust institutional reality.

Finally, by highlighting the need to address labor standards as a matter of justice, our approach has significant practical implications for the general global goal of poverty reduction. By shifting the practical discussion of global justice away from direct questions of poverty reduction to issues of labor rights and wages, our approach overcomes one of the main lines of criticism against proposals for direct financial assistance to the world's poor: namely, that direct assistance requires intermediary institutions, which reduce the actual resources that eventually reach those people most in need of assistance in the developing world. Such intermediary institutions include corrupt governments or other forms of administrative expenses (many of which recycle resources back to the developed world). In our view, focusing on normative duties toward workers rather than toward poor people in general and striving for a redesign of global institutions that legally enforce labor standards would indirectly and perhaps more efficiently contribute to the general goal of facilitating global justice and reducing economic inequality across the globe.

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Notes

¹ Julfikar Ali Manik and Jim Yardley, "Building Collapse in Bangladesh Leaves Scores Dead," *The New York Times* (April 24, 2013), A1; "Death Toll in Bangladesh Passes 1,100," *The New York Times* (May 11, 2013) A14; "Cambodia Shoe Factory Collapse Kills Workers," *The Guardian* (May 16, 2013); Gathin Chamberlain, "Apple Factories Accused of Exploiting Chinese Workers," *The Guardian* (April 30, 2011).

² See David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 248.

³ See, for example, Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity Press, 2002); Miller, *National Responsibility and Global Justice*; Darrel Moellendorf, *Global Inequality Matters* (London: Palgrave Macmillan, 2009).

⁴ See Christian Barry and Thomas Pogge, "Introduction," in *Global Institutions and Responsibilities: Achieving Global Justice*, ed. C. Barry and T. W. Pogge (Oxford: Blackwell, 2006), 1–2. See also Chios C. Carmody, Frank J. Garcia, and John Linarelli, Introduction to "Global Justice and International Economic Law: Opportunities and Prospects," in *Boston College Law School Legal Studies Research Paper 246* (2011). Retrieved from <http://ssrn.com/abstract=1934864>.

- ⁵ Christian Barry and Sanjay G. Reddy, *International Trade and Labor Standards: A Proposal for Linkage* (New York: Columbia University Press, 2008); Iris Young, "Responsibility and Global Labor Justice," *The Journal of Political Philosophy* 12, no. 4 (2004): 365–88.
- ⁶ For elaborate criticism along these lines, see Yossi Dahan, Hanna Lerner, and Faina Milman-Sivan, "Global Justice, Labor Standards and Responsibility," *Theoretical Inquiries in Law* 12, no. 2 (2010): 117–42.
- ⁷ Mark Barenberg, "Sustaining Workers' Bargaining Power in an Age of Globalization," *EPI Briefing Paper* 246 (2009); S. Prakash Sethi, *Setting Global Standards: Guidelines for Creating Codes of Conduct in Multinational Corporations* (New York: John Wiley, 2003).
- ⁸ Kok-Chor Tan, "Global Justice and Global Relations," *Social Theory and Practice* 36, no. 3 (2010): 499–514.
- ⁹ The importance of employment and decent labor standards in poverty reduction has been recognized as one of the Millennium Development Goals. *The Millennium Development Goal Report* (United Nations, 2010), 8–11.
- ¹⁰ Arguments in support of such an interpretative methodology have recently emerged in political theory literature. See, for example, Miriam Ronzoni, "The Global Order: A Case of Background Injustice? A Practice Dependent Account," *Philosophy and Public Affairs* 37, no. 3 (2009): 229–56; Andrea Sangiovanni, "Justice and the Priority of Politics to Morality," *The Journal of Political Philosophy* 16, no. 2 (2008): 137–64.
- ¹¹ Andrea Sangiovanni, "Justice and the Priority of Politics." See also Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983).
- ¹² The international dimension of the causes of labor's plight is documented in Marx's *Manifesto*, as cited in Mathias Risse, *On Global Justice* (Princeton, NJ: Princeton University Press, 2012), 247.
- ¹³ The international integration of markets and goods that has accelerated since the 1980s has increased workers' economic insecurity, see Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York: W. W. Norton, 2011), 86–87.
- ¹⁴ Ronzoni, "The Global Order: A Case of Background Injustice?"; see also Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion: On the Scope (Not Site) of Distributive Justice," *Philosophy and Public Affairs* 35, no. 4 (2007): 318–48.
- ¹⁵ In a nutshell, the three stages are, first, a delineation of the contours of the practice of labor; second, an exploration of the practice's aims and justifications for existing labor norms and regulations; and third, a critical analysis of the failure to attain the practice's goals in the global labor market.
- ¹⁶ The literature on global justice is vast. In this part, we mention only a few of the leading examples representing the competing approaches. For a general overview of the debate, see Thom Brooks, "Introduction," in *The Global Justice Reader*, ed. Thom Brooks (Oxford: Blackwell, 2008).
- ¹⁷ See, for example, Charles R. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1999); Thomas Pogge, *World Poverty and Human Rights*.
- ¹⁸ Peter Singer, *One World: The Ethics of Globalization* (New Haven, CT: Yale University Press, 2002); Darrel Moellendorf, *Global Inequality Matters*.
- ¹⁹ John Stuart Mill, *Considerations on Representative Government* (1972), 359–60.
- ²⁰ Avishai Margalit and Joseph Raz, "National Self-Determination," *The Journal of Philosophy* 9 (1990): 439–61; David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000); Michael Sandel, "The Procedural Republic and the Unencumbered Self," in *Communitarianism and Individualism*, ed. Shlomo Avineri and Avner de-Shalit (Oxford: Oxford University Press, 1992), 81–96; Samuel Scheffler, *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford: Oxford University Press, 2003), 66–82.
- ²¹ Thomas Nagel, "The Problem of Social Justice," *Philosophy and Public Affairs* 2 (2005): 113–47; Jon Mandle, *Global Justice* (Cambridge: Polity Press, 2006).
- ²² Kok-Chor Tan, "Global Justice and Global Relations."
- ²³ Among the notable exceptions, one can count Thomas Pogge, "Human Rights and Global Health: A Research Program," *Metaphilosophy* 36, no. 1 (2005): 182–209; Simon Caney, "Justice and the

- Distribution of Greenhouse Gas Emissions,” *Journal of Global Ethics* 5, no. 2 (2009): 125–46; Eszter Kollar, “Locating Injustice in Transnational Health-Worker Migration,” paper presented at the conference *Global Ethics: 10 Years into the Millennium*, Bristol, UK, 2010.
- ²⁴ See Aron James, “Constructing Justice for Existing Practice: Rawls and the Status Quo,” *Philosophy and Public Affairs* 33 (2005): 281–316. For an anti-cosmopolitan position grounded on a practice-dependent approach, see Andrea Sangiovanni, “Global Justice, Reciprocity and the State,” *Philosophy and Public Affairs* 35, no. 1 (2007): 318–58. By contrast, for a cosmopolitan critique resting on a practice-dependent approach, see Laura Valentini, “Global Justice and Practice-Dependence: Conventionalism, Institutionalism, Functionalism,” *The Journal of Political Philosophy* 19, no. 4 (2011): 399–418.
- ²⁵ A non-relational approach is adopted by theorists who may hold different moral views. See, for example, Peter Singer, “Famine, Affluence and Morality,” *Philosophy and Public Affairs* 1, no. 3 (1972): 229–43; G. A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906–44.
- ²⁶ In Rawls’s words, “the correct regulative principle for a thing depends on the nature of that thing.” John Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999), 25.
- ²⁷ Andrea Sangiovanni, “Global Justice, Reciprocity and the State,” 5.
- ²⁸ In the context of the present discussion on relational and non-relational theories of justice, we use the term “practice dependent” in a broad sense to include all possible relationships that give rise to duties of justice.
- ²⁹ Sangiovanni, “Global Justice, Reciprocity and the State,” 5.
- ³⁰ An important exception is Iris Young, “Responsibility and Global Labor Justice.”
- ³¹ John Rawls, “Two Concepts of Rules,” *The Philosophical Review* 64, no. 1 (1955): 3–32.
- ³² See also Laura Valentini, “Global Justice and Practice-Dependence,” 5. Our definition of social practice resembles what Sangiovanni calls a “regime.” Andrea Sangiovanni, “Justice and Priority of Politics,” 142.
- ³³ The distinction between “the nation-state era” and the “global era” is, of course, controversial and is open to different interpretations. For the practical purpose of this article, we draw the line roughly around the 1970s.
- ³⁴ Ronald Dworkin, *Law’s Empire* (Cambridge, MA: Harvard University Press, 1986), chap. 2.
- ³⁵ For an overview, see, for example, Arturo Bronstein, *International and Comparative Labour Law: Current Challenges* (London: Palgrave Macmillan, 2009), chap. 4.
- ³⁶ Bruno Veneziani, “The Evolution of the Contract of Employment,” in *The Making of Labour Law in Europe: A Comparative Study of Nine Countries up to 1945*, ed. Bob Hepple (Oxford: Hart Publishing, 2010), 31–72. Other major controversies regarding the exact contours of labor include the division between formal and informal sectors and the debate over housework as paid work.
- ³⁷ We address here the main legal tools that are traditionally considered part of labor law. However, alternative views of the scope of labor law suggest it to include additional fields of regulations, such as tariff protections and industrial policies. See, for example, John Howe, “The Broad Idea of Labor Law: Industrial Policy, Labour Market and Decent Work,” in *The Idea of Labor Law*, ed. Guy Davidov and Brian Langille (New York: Oxford University Press, 2011), 295–313.
- ³⁸ Alain Supiot, *Beyond Employment: Changes in Work and the Future of Labour Law in Europe* (Oxford: Oxford University Press, 2001).
- ³⁹ Arturo Bronstein, *International and Comparative Labour Law*, chap. 2.
- ⁴⁰ Our analysis ignores the practice of labor as it has developed in non-market state-centralized economies in the Soviet Bloc. For a detailed discussion of the plurality of ideas of labor law, see Davidov and Langille, *The Idea of Labor Law*.
- ⁴¹ Hugo Sinzheimer, cited in Thomas C. Kohler, “The Disintegration of Labor Law: Some Notes for a Comparative Study of Legal Transformation,” *Notre Dame Law Review* 73 (2005): 1311–32, 1322.
- ⁴² *International Labor Organization’s Declaration Concerning the Aims and Purposes of the International Labour Organisation* (Philadelphia Declaration) (1946).
- ⁴³ For a recent analysis of the meaning of life with dignity, see George Kateb, *Human Dignity* (Cambridge, MA: Harvard University Press, 2011).

- ⁴⁴ Nien-he Hsieh, "Survey Article: Justice in Production," *The Journal of Political Philosophy* 16, no. 1 (2008): 72–100; Russell Muirhead, *Just Work* (Cambridge: Harvard University Press, 2004); Jon Elster, "Self-Realization in Work and Politics," in *Alternatives to Capitalism*, ed. Jon Elster and Karl Moene (New York: Cambridge University Press, 1989), 97–126; Richard Arneson, "Meaningful Work and Market Socialism," *Ethics* 97 (1987): 517–45; Michael Walzer, *Spheres of Justice*; Adina Schwartz, "Meaningful Work," *Ethics* 92 (1982): 634–46.
- ⁴⁵ Gosta Esping-Andersen, *Three Worlds of Welfare Capitalism* (Princeton, NJ: Princeton University Press, 1990).
- ⁴⁶ This Declaration introduced the ILO Decent Work agenda. The legal status of the Declaration is ambiguous, and states demonstrate varying degrees of commitment toward this consensus on labor rights, with some declaratory in nature and others with stronger legal implications. See Francis Maupain, "New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for Fair Globalization," *European Journal of International Law* 20 (2009): 823–52.
- ⁴⁷ Jody Heymann and Alison Earle, *Raising the Global Floor* (Stanford, CA: Stanford University Press, 2010), 89–120.
- ⁴⁸ David K. Shipler, *The Working Poor: Invisible in America* (New York: Knopf, 2004); Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America* (New York: Metropolitan Books, 2008); ILO, *Unemployment, Working Poor and Vulnerable Employment to Increase Dramatically Due to Global Economic Crisis* (2009), retrieved from http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_101462/lang-en/index.htm#1.
- ⁴⁹ This asymmetry in bargaining power may be overcome if the worker has unique or rare capabilities that strengthen his or her bargaining position vis-à-vis the employer. These cases, however, are not usual.
- ⁵⁰ We set aside for the moment the vast body of critical discussion on the inadequacy of such minimal standards for securing human dignity and whether this sufficientarian minimalist approach is morally justified.
- ⁵¹ Richard Miller, *Globalizing Justice: The Ethics of Poverty and Power* (Oxford: Oxford University Press, 2010), 60. In this article, we do not distinguish between exploitation and wrongful exploitation, a distinction that was emphasized, for example, in Allen W. Wood, "Exploitation," *Social Philosophy and Policy* 12, no. 2 (1995): 136–58; Joel Feinberg, *Harmless Wrongdoing* (Oxford: Oxford University Press, 1988).
- ⁵² A common illustrative analogy is the story of a man lost in the desert, about to die of thirst, when another man appears on a camel and convinces the thirsty man to let him lead him to a well in return for lifelong servitude in the camel rider's household. Although the thirsty man benefited from the agreement, the camel rider exploited him since he took advantage of the latter's state of dire need, benefiting from his inferior capacity to advance his interests. See, for example, Richard Miller, *Globalizing Justice*, 60–62; see also Chris Meyers, "Wrongful Beneficence: Exploitation and Third World Sweatshops," *Journal of Social Philosophy* 35, no. 3 (2004): 319–33. One should note that the "man in the desert" illustration represents a single interaction between two individuals, whereas labor relations are characterized by long-term relationships. Nevertheless, it is helpful to explain the type of exploitation typical to unregulated labor relations.
- ⁵³ Janice R. Bellace, "The Role of the State in Industrial Relations," in *The Future of Industrial Relations: Global Change and Challenges*, ed. J. R. Milend, R. D. Lansbury, and C. Verevis (London: Sage, 1994), 19–40.
- ⁵⁴ Roy J. Adams, "Regulating Unions and Collective Bargaining: A Global Historical Analysis of Determinants and Consequences," *Comparative Labor Law Journal* 14 (1992/1993): 272–301.
- ⁵⁵ In the context of labor relations, the state wears two hats. First, it plays the role of a sovereign authority that legislates and enforces labor rules. Second, the state also functions as an employer, usually a major one in modern states.
- ⁵⁶ An analogous group that is recognized as a status is children, who enjoy protection of special rights in return for limitations on their basic freedoms. S. Simitis, "The Juridification of Labor Relations," *Comparative Labor Law Journal* 7, no. 2 (1986): 93–142.

- ⁵⁷ Stanley L. Engerman, "The History and Political Economy of International Labor Standards," in *International Labor Standards: History, Theory and Policy Options*, ed. K. Basu, H. Horn, L. Román, and J. Shapiro (Oxford: Blackwell, 2003), 9–83.
- ⁵⁸ We elaborate on this point in the concluding part of this article.
- ⁵⁹ Paul Davies and Mark Freedman, *Kahn-Freund's Labour and the Law* (London: Stevens, 1983).
- ⁶⁰ For a similar argument, see Richard M. Locke, "Can Global Brands Create Just Supply Chains?" *Boston Review* (May–June 2013) (<http://www.bostonreview.net/forum/can-global-brands-create-just-supply-chains-richard-locke>). Richard Locke, *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy* (New York: Cambridge University Press, 2013).
- ⁶¹ Vincent A. Mabert, "Special Research Focus on Supply Chain Linkages: Challenges for Design and Management in the 21st Century," *Decision Sciences* 29, no. 3 (1998): 537–52; Jeffrey Henderson, "Global Production Networks and the Analysis of Economic Development," *Review of International Political Economy* 9, no. 3 (2002): 436–64, 446.
- ⁶² Bob Hepple, *Labor Laws and Global Trade* (Oxford: Hart, 2005), 20–21.
- ⁶³ Moreover, there is little political will to promote this scenario, see Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in an Historical Perspective* (London: Anthem Press, 2003). See also more details below.
- ⁶⁴ See Arturo Bronstein, *International and Comparative Labour Law*, 86–90.
- ⁶⁵ The negative effects of the cross-border movement of capital and trade on labor regulation have been long debated, but the empirical evidence is mostly lacking and highly speculative. See Bob Hepple, *Labor Laws and Global Trade*, 13–24. Despite this, however, the race to the bottom remains a key argument in the labor–trade linkage debate; see Katherine V. W. Stone, "Three Challenges for Labor Rights in Our Time," *Regulating Labor in the Wake of Globalization*, ed. Cynthia Estlund and Brian Bercusson (Portland, OR: Hart, 2008), 115, 119–21 (bringing evidence from developed countries); Christopher McCrudden and Anne Davies, "A Perspective on Trade and Labor Rights," *Journal of International Economic Law* 3 (2000): 43, 49. However, several scholars have denied the existence of such a race to the bottom. See Brian A. Langille, "Re-Reading the Preamble to the 1919 ILO Constitution in Light of Recent Data on FDI and Worker Rights," *Columbia Journal of Transnational Law* 42 (2003): 87; Alan Hyde, "A Stag Hunt Account and Defense of Transnational Labor Standards—A Preliminary Look at the Problem" *Cornell Law School Legal Studies Research Paper*, No. 06-008 (2006), 1, 11 n. 28, retrieved from <http://ssrn.com/abstract=896362>.
- ⁶⁶ Gross profit margins earned by TNCs such as Nike and Reebok reach around 40 percent. At the same time, direct labor costs typically range between 2 percent and 5 percent of all costs involved in manufacturing branded products in developing countries. "Global Labor: A World of Sweatshops," *Business Week* (November 6, 2000); S. Prakash Sethi, "Corporate Codes of Conduct and the Success of Globalization," *Ethics and International Affairs* 16, no. 2 (2002): 95.
- ⁶⁷ Denis Arnold and Norman Bowie, "Sweatshops and Respect for Persons," *Business Ethics Quarterly* 13, no. 2 (2003): 221–42; Pierta Rivoli, *The Travels of a T-Shirt in the Global Economy: An Economist Examines the Markets, Power and Politics of World Trade* (Hoboken, NJ: John Wiley, 2006), chap. 6; Pamela Varley, ed., *The Sweatshop Quandary: Corporate Responsibility on the Global Frontier* (Washington DC: Investor Responsibility Research Center, 1998); Jill Esbenshade, *Monitoring Sweatshops: Workers, Consumers and the Global Apparel Industry* (Philadelphia: Temple University Press, 2004); Denis G. Arnold, "Working Conditions: Safety and Sweatshops," in *The Oxford Handbook of Business Ethics*, ed. George G. Brenkert and Tom L. Beauchamp (Oxford: Oxford University Press, 2010), 628–57.
- ⁶⁸ Xiaomin Yu, "Impact of Corporate Code of Conduct on Labor Standards: A Case Study of Reebok's Athletic Footwear Supplier Factory in China," *Journal of Business Ethics* 81 (2008): 513–29, 521. On the gap between minimum wages and living wages in global supply chains, see Denis Gordon Arnold and Laura Pincus Hartman, "Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops," *Human Rights Quarterly* 28 (2006): 676–700, 692–94.

- ⁶⁹ This problem has been termed the de-territorialization of labor law. See Guy Mundlak, "De-territorializing Labor Law," *Journal of Law and Ethics of Human Rights* 3, no. 2 (2009): 189–222.
- ⁷⁰ Ian Maitland, "The Great Non-Debate over International Sweatshops," *British Academy of Management Annual Conference Proceedings* (1997): 240–65.
- ⁷¹ Jadishe Bhagwati, *In Defense of Globalization* (New York: Oxford University Press, 2004).
- ⁷² Richard Miller, *Globalizing Justice*, 66.
- ⁷³ Ibid.
- ⁷⁴ S. Prakash Sethi, "Corporate Codes of Conduct and the Success of Globalization," 90.
- ⁷⁵ Sethi, *ibid.*, 90–91. "MNCs," which stands for multinational corporations, is a synonym for TNCs (transnational corporations).
- ⁷⁶ Adelle Blackett, *Trade Liberalization, Labour Law, and Development: A Contextualization* (Geneva: International Labour Organization, International Institute for Labour Studies, 2007), 1–3.
- ⁷⁷ For a more radical approach to the structural exploitation of workers in the capitalist system, see Lea Ypi, "On the Confusion between Ideal and Non-Ideal in Recent Debates on Global Justice," *Political Studies* 58, no. 3 (2010): 536–55.
- ⁷⁸ See, for example, Ha-Joon Chang, "Kicking Away the Ladder: 'Real History' of Free Trade," in *Globalization and the Myth of Free Trade*, ed. Anwar Shaikh (New York: Routledge, 2007), 23, 42.
- ⁷⁹ Joseph Stiglitz, *Making Globalization Work* (New York: W. W. Norton, 2006), 3–25; Joseph Stiglitz and Andrew Charlton, *Fair Trade for All* (Oxford: Oxford University Press, 2005), 11–41.
- ⁸⁰ Darrel Moellendorf, "The World Trade Organization and Egalitarian Justice," in *Global Institutions and Responsibilities: Achieving Global Justice*, ed. Christian Barry and Thomas Pogge (Oxford: Blackwell, 2005), 141–58; Joseph Stiglitz and Andrew Charlton, *Fair Trade for All*, v ("The world trading system has protected the interests of the rich countries, at the expense of the poor, and entrenched inequalities.").
- ⁸¹ Dani Rodrick, "Goodbye Washington Consensus, Hello Washington Confusion? A Review of the World Bank's Economic Growth in the 1990s: Learning from a Decade of Reform," *Journal of Economic Literature* 44 (2006): 973–87; Sanjay G. Reddy, "Just International Monetary Arrangements," in *Global Institutions and Responsibilities*, ed. C. Barry and T. W. Pogge (Oxford: Blackwell, 2005), 218–34 ("international monetary arrangements that more fully cohere with the interests of justice are both possible and different from those that currently exist").
- ⁸² Kaushik Basu, *Beyond the Invisible Hand* (Princeton, NJ: Princeton University Press, 2003), 161–64.
- ⁸³ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 265–66.
- ⁸⁴ Miriam Ronzoni, "The Global Order: A Case of Background Injustice?" 230, 245.
- ⁸⁵ Arash Abizadeh, "Cooperation, Pervasive Impact, and Coercion."
- ⁸⁶ John Rawls, *Political Liberalism*, 267.
- ⁸⁷ Here we follow the main lines of Ronzoni's argument. Our argument departs from hers, however, in that we regard chains of production to constitute a practice in need of the creation of new institutions and rules for achieving the goals of the practice of labor, whereas in her terminology background injustice requires the establishment of new practices.
- ⁸⁸ Archon Fung, Dara O'Rourke, and Charles Sabel, *Can We Put an End to Sweatshops?* (Boston: Beacon Press, 2001).
- ⁸⁹ Christian Barry and Sanjay G. Reddy, *International Trade and Labor Standards*.
- ⁹⁰ Some point to consumers as additional participants in labor exploitation and argue that consumers in developed countries should bear responsibility toward labor conditions in developing countries. See, for example, Iris Young, "Responsibility and Global Labor Justice."
- ⁹¹ It is beyond the purposes of this article to articulate in detail the principles of responsibility allocation among the different actors, principles that should guide us in identifying the right institutional arrangement to ensure basic labor rights. See Yossi Dahan, Hanna Lerner, and Faina Milman-Sivan, "Global Justice, Labor Standards and Responsibility."

- ⁹² For a good multilevel proposal for reforming international labor law, see Mark Barenberg, "Sustaining Workers' Bargaining Power."
- ⁹³ Yossi Dahan, Hanna Lerner, and Faina Milman-Sivan, "Global Justice, Labor Standards and Responsibility."
- ⁹⁴ Iris Young has developed a new concept of a social connection model of responsibility, which is similar in some ways to the model articulated in this article. Yet we disagree with her emphasis on civil society and political activity as the only avenue for remedying the unjust conditions of labor around the world today. See Iris Young, "Responsibility and Global Labor Justice."
- ⁹⁵ Tonya A. Novitz, "Promoting Sustainable Development through Transnational Collective Bargaining: The Local Implications of International Framework Agreements," *Studies in Labour Law and Social Policy* (2009): 403–16.
- ⁹⁶ Kate MacDonald, "Social Justice beyond Bounded Societies, Unraveling Statism within Global Supply Chains?" in *Social Justice, Global Dynamics*, ed. Ayelet Banai et al. (Oxford: Routledge, 2011), 200, 204 ("A large empirical literature has documented the ways in which large retailers and branded merchandisers based in industrialized countries (for example, 'brands' and retailers in the garment industry and roasting companies in coffee) coordinate and control many important aspects of the production process within 'buyer-driven' supply chains.").
- ⁹⁷ While controlling prices could yield substantial results, monitoring schemes could also produce improvements in labor conditions within supply chains. Empirical evidence suggests, however, that such monitoring schemes produce mixed results, and in some cases improving working conditions proves to be more difficult than in others, even under such monitoring. See Richard M. Locke, "Does Monitoring Improve Labor Standards? Lessons from Nike," *Industrial and Labor Relations Review* 61 (2007): 403–16; Kevin Kolben, "Trade, Monitoring, and the ILO: Working to Improve Conditions in Cambodia's Garment Factories," *Yale Human Rights and Development Law Journal* 7 (2004): 79.
- ⁹⁸ Protectionism is another potential barrier to labor reform at the global level. See, for example, Thomas Friedman, "Knight Is Right," *The New York Times* (June, 20, 2000).
- ⁹⁹ Jonathan Seglow, "Associative Duties and Distributive Justice," *Journal of Moral Philosophy* 7, no. 1 (2010): 54–73; Niko Kolodny, "Do Associative Duties Matter?" *The Journal of Political Philosophy* 10, no. 3 (2002): 250–66.
- ¹⁰⁰ Samuel Scheffler, *Boundaries and Allegiances*, chap. 1.