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## Labor Rights, Associate Duties, and Transnational Production Chains

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## Labor Rights, Associate Duties, and Transnational Production Chains

### Abstract

[Excerpt] In this article we propose to contribute to the philosophical debate on global justice by viewing labor relations as a type of association which implies moral commitments among its participants. We argue that such a view of associative duties justifies a cosmopolitan approach to labor standards, calling for the regulation and enforcement of labor rights beyond the limited borders of the nation-state. Since the 1980s, the debate on global justice has by and large focused on the question of whether the principles of justice should be extended beyond the political boundaries of a sovereign nation-state.<sup>[1]</sup> Current theories of global justice rely heavily upon abstract normative arguments in support of either cosmopolitan or anti-cosmopolitan approaches and tend to avoid concrete analysis of practical problems stemming from increasing global economic, political, environmental, or legal developments. <sup>[2]</sup> The field of labor has been either neglected or marginalized in this debate.<sup>[3]</sup> In this article, we propose to overcome the disciplinary gap between the empirical reality of global labor and the normative discussion of global justice by drawing on a theoretical analysis of associative duties as well as the empirical study of transnational corporations (TNCs) production practices.

### Keywords

HR Review, Human Resources, labor rights, duties, transnational production chains

### Disciplines

Human Resources Management | International and Comparative Labor Relations | International Business | Labor Relations

### Comments

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# CORNELL HR REVIEW

## LABOR RIGHTS, ASSOCIATE DUTIES AND TRANSNATIONAL PRODUCTION CHAINS

*Yossi Dahan, Hanna Lerner, Faina Milman-Sivan*

### I. Introduction

In this article we propose to contribute to the philosophical debate on global justice by viewing labor relations as a type of association which implies moral commitments among its participants. We argue that such a view of associative duties justifies a cosmopolitan approach to labor standards, calling for the regulation and enforcement of labor rights beyond the limited borders of the nation-state. Since the 1980s, the debate on global justice has by and large focused on the question of whether the principles of justice should be extended beyond the political boundaries of a sovereign nation-state.<sup>1</sup> Current theories of global justice rely heavily upon abstract normative arguments in support of either cosmopolitan or anti-cosmopolitan approaches and tend to avoid concrete analysis of practical problems stemming from increasing global economic, political, environmental, or legal developments.<sup>2</sup> The field of labor has been either neglected or marginalized in this debate.<sup>3</sup> In this article, we propose to overcome the disciplinary gap between the empirical reality of global labor and the normative discussion of global justice by drawing on a theoretical analysis of associative duties as well as the empirical study of transnational corporations (TNCs) production practices.

Our main argument is that moral obligations towards workers should not depend solely on geographical location, membership in a particular nation/culture, or participation in effective political institutions. Rather, they should depend on participation in the practice of labor itself, which in the past two centuries has been increasingly regulated at the national level. These regulations address the normative perception of labor relations as an association that implies moral commitments among its participants. The fact that labor relations extend beyond state borders in today's economy does not reduce the moral obligations among the parties in such relations. In other words, if TNCs and other actors within the global production chain (e.g. sub-contractors and vendors) demonstrate "employer-like" characteristics such as influencing the working conditions of all production workers within their chain and gaining benefit from their work, there is no reason to exempt them from their duties of justice towards workers who take part in their shared practice of labor.

The notion of *associative duties of justice* stands at the heart of the on-going global justice debate. This usually refers to duties owed to people based on an established association, such as family members, friends, neighbors or compatriots.<sup>4</sup> Advocates of anti-cosmopolitanism tend to rely on associative duties arguments in order to restrict the scope of such duties to members in associations based on national identity or state

citizenship. In particular, they claim that a shared national affiliation which underpins the political framework of a state is a necessary condition for employing principles of justice, since national membership creates special moral obligations or “common sympathies,” in Mill's words,<sup>5</sup> towards our fellow countrymen.<sup>6</sup> From an institutional perspective, advocates of anti-cosmopolitanism also insist that principles of justice can only be implemented under conditions of clear sovereignty in which policies are decided democratically and enforced despite the growing reality of globalization. At present such conditions exist only within the framework of the nation-state.<sup>7</sup>

The philosophical discussion of the associative duties concept tends to neglect associations that exist in the modern workplace, namely among workers and between workers and their employers, relationships which have great importance for individuals in the modern economy. Our main claim is that associative duties based on shared labor practice should extend beyond nation-state and state borders in order to ameliorate the dire conditions of workers outside of these boundaries.

In what follows we will first briefly delineate current economic conditions, which have exacerbated the exploitive nature of labor relations in the global era. We then describe the associative duties between TNCs and their production chain, which generate duties of justice towards all workers that take part in the global production chain. Lastly, we offer some general guidelines for designing new rules and institutions for a global practice of labor.

## **II. Global Labor Conditions and Legal Regulation**

In recent years, a growing number of economists have recognized that globalization—namely, the international integration of markets and goods that has accelerated since the 1980s—has increased economic insecurity for workers.<sup>8</sup> Many believe that economic globalization has enhanced global competition among states over capital and jobs and, consequentially, has generated a “race to the bottom” or “regulatory chill” of labor standards in various sectors, especially, in developing countries.<sup>9</sup>

The liberalization of trade and greater global integration has translated into competitive pressure on individual states, and has facilitated the entry of new actors (mainly TNCs) into the global labor market. Indeed, recent years have witnessed the increasing complexity of production chains.<sup>10</sup> The term ‘production chain’ usually refers to a network of businesses collectively cooperating to achieve the procurement, manufacturing, and distribution of a family of related products.<sup>11</sup> It encompasses all actors that 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 toys industries, but have become increasingly more prevalent in other industries, such as electronics.

Many of these TNCs utilize a cheap labor force, particularly in the developing world, in order to produce products and services that serve mostly members of developed states. Interstate competition over foreign investment and the internationalization of production

chains have reduced the will of national governments to enforce labor regulations.<sup>12</sup> In developed states, hyper-globalization has resulted in greater insecurity for working people and an ever-increasing income gap among workers, as well as between workers and management/investors.<sup>13</sup>

Consequently, only a minority of the world's working people hold jobs for which they are not only well paid, but which also respect their fundamental rights and ensure them some security in the event of job loss, personal or family illness, or other crises.<sup>14</sup> The dire working conditions in sweatshops, particularly for women and in developing countries, have been described and acknowledged in numerous studies.<sup>15</sup> Many of these production workers are employed under devastating conditions, working unrestricted hours and lacking the most minimum safety and health conditions.<sup>16</sup> Indeed, the scope of the problem is appalling. In 2011, 30% of the world's workforce—more than 910 million workers—earned less than \$2 a day, which is defined as the global poverty line, and an estimated 456 million workers (14.8% of the world's workforce) earned less than \$1.25 a day, which is defined as the extreme poverty line.<sup>17</sup> In Sub-Saharan Africa and South Asia, around four-fifths of the employed are classified as “working poor.”<sup>18</sup> The lack of labor standards is most common in but not limited to developing regions.<sup>19</sup> The 2008 economic crisis demonstrated that sizeable economic sectors are equally vulnerable to economic shock, further challenging the implementation of decent work conditions worldwide.<sup>20</sup>

In an attempt to mitigate this harsh reality, today's labor relations are governed at the state, national, and international levels. At the state level, legal rules stem from sources such as constitutional provisions, legislation, executive directives, court decisions, customs, and rules established in collective agreements and individual employment contracts between employers and employees. On the supranational level, various types of organizations generate and regulate the practice of labor; these include international organizations (e.g. UN and ILO), and more recently regional supranational entities and agreements (e.g. EU), as well as non-governmental organizations (e.g. FLA and WRC). In addition, labor relations are governed by regional and international framework agreements reached by global and regional workers unions and TNCs, as well as voluntary corporate social responsibility codes and multilateral, bilateral, and unilateral arrangements linking trade and labor.<sup>21</sup>

However, the protection of workers' rights through legal means has not been entirely effective. National labor laws, being a domestic project, operating within the state's territory, are no longer adequate to tackle cross border production. Regulation on the international level, such as by the ILO is frequently rendered ineffective by the ILO's lack of sanctions, and other factors.<sup>22</sup> Protecting labor rights via trade instruments is yet to be an accepted practice, mostly due to concerns of protectionism.

In addition, the protection of workers' rights has been impeded by what has been termed the growing “defocusing of labor relations” in the global era.<sup>23</sup> One crucial question that must be examined is who should be considered an “employee” and/or “employer,” as<sup>24</sup> this classification determines who is protected by employment contract regulations.<sup>25</sup> As

commonly defined in national labor law, typical labor relations entail subordinate contractual relations and the exchange of a worker's labor in return 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 and labor externalization as well as the growth of new patterns of work (e.g. freelance workers) and labor intermediates (e.g. manpower agencies, contractors and subcontractors).

### **III. Extending Associative Duties to Labor Relations**

The inherent exploitive nature of labor relations has re-emerged in the global era due to the limited scope of national regulations that do not apply beyond state borders, coupled with the increasing growth of TNCs.<sup>26</sup> In an unregulated labor market, labor relations may be exploitive because of the inherent asymmetry in bargaining power between employers and employees. This power asymmetry is exacerbated by the inability of existing legal means to adequately capture and effectively regulate transnational production chains. Indeed, legal protections of workers who work at the end of the production chain are often minimal or nonexistent. In many cases, even full compliance with the low labor standards prevailing in developing states does not provide workers with adequate living conditions. Moreover, it is common for local producers and factory owners to disregard these inadequate legal protections provided by developing countries as their enforcement mechanisms are often ineffective.

This deficiency in international and national labor law allows TNCs based in developed states to utilize cheap labor without directly employing them. From a legal point of view, TNCs are connected to workers that produce their products through contractual obligations within the global production chains rather than thorough employment contracts. Legally, TNCs are not considered as "employers" and are thus not considered responsible, in the eyes of the law for the workers' labor conditions or well-being. Locally, workers in global production chains are often employed indirectly by manpower agencies or are legally considered to be self-employed despite their economic dependence on the supplier. In the apparel industry, for example, women are required to produce sections of clothing in their homes and are thus regarded to be self-employed and not employees of the sub-contractors who sell the final product to the brands.

Our key argument is that the TNCs and other actors within the global production chain (e.g. sub-contractors and vendors) demonstrate "employer-like" characteristics, such as the capacity to impact their work condition, or the fact that they directly benefiting from their work. If this is true, there is thus no reason to exempt them from their duties of justice towards workers who take part in their shared practice of labor. For example, a criterion commonly used to determine employment relations is the degree to which an employer may exert substantial control in regulating the production process. TNCs exert control over the quality of products produced for their brand, which suggests that TNCs have the capacity to regulate additional aspects of the terms under which such workers

operate.<sup>27</sup> Moreover, by controlling the price paid for the products produced by workers, they in fact exercise considerable control over the wages and much of the working conditions of these marginalized workers and subcontractors.<sup>28</sup> Finally, in addition to influencing the working conditions of all production workers within their chain, they also gain benefits from their work.

As mentioned above, labor relationship between employers and their workers may be described as a type of association, which entails associative duties of justice toward each other. In other words, acknowledging the “employer-like” characteristic of TNCs and other actors within global production chains entails the acknowledgment of associative duties of justice between TNCs, sub-contractors, vendors and other actors in transnational production chains and workers on all levels of production, regardless of their geographical location. Extending associative duties to global production chains would cause TNCs to owe the workers at the end of the production chain duties of justice. It would provide 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 mere humanitarian assistance based on compassion.

By extending the concept of associative duties to labor relations, our argument overcomes one of the main points of criticism usually raised against the anti-cosmopolitan camp. According to what is known as the *voluntarist* objection,<sup>29</sup> a relationship with others is insufficient to create associative duties towards them since moral duties are acquired only by voluntary acts (e. g., by entering into contractual agreements). While the voluntarist objection may be considered a persuasive argument against nationalist and statist conceptions of associative duties, it is not applicable as an argument against associative duties of actors who voluntarily enter into the labor practice since their duties towards workers are created voluntarily.

#### **IV. Practical Implications**

Our argument herein has three practical implications. First, our analysis reveals that the current legal framework that defines employers-employees relationship is anachronistic and does not correspond to the actual exploitive conditions of such relationships in contemporary global labor market. As a result, our argument calls for the development of a new legal framework which reallocates moral and legal responsibilities to TNCs within the global labor market and reflects just labor relations. In doing so, international labor law should redefine the terms ‘employees’ and ‘employers’ within global production chains.<sup>30</sup> For example, an employer should be legally considered as such to the extent that such employer controls the working conditions of workers in the chain of production, benefits from the product of their work, participates with the workers in joint activities, or has the capacity to change existing work conditions. Human resources professionals will play a crucial role in supporting and ensuring compliance with such new legal framework.

The second practical implication of this article is that new institutional arrangements are needed in order to ameliorate the current conditions of background injustice in the sphere of global labor. The Uruguay Round administered by the World Trade Organization (WTO) during 1981-1994 is a prime example of exploitation in the institutional level. During these negotiations, 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 benefited the developed states' markets.<sup>31</sup> Since global economic institutions such as the IMF and WTO shape global economic reality and influence the way the global labor market is regulated, their reform would potentially affect 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 that will replace the existing unjust institutional reality.<sup>32</sup>

Finally, by highlighting the need to address labor standards as a matter of justice, our approach has significant practical implications for the global goal of poverty reduction. By shifting the practical discussion of global justice from questions of poverty reduction to issues of labor rights and wages, our approach makes it possible to overcome one of the main criticisms usually raised 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.<sup>33</sup> 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 towards workers rather than towards poor people in general and seeking a re-design of global institutions that enforce labor standards by law 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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<sup>1</sup> E.g. THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS: COSMOPOLITAN RESPONSIBILITIES AND REFORMS* (Cambridge Polity Press 2002); MILLER, *supra* note 2; DARELL MOLENDORF, *GLOBAL INEQUALITY MATTERS* (PALGRAVE MACMILLAN 2009).

<sup>2</sup> See CHRISTIAN BARRY & THOMAS POGGE, *GLOBAL INSTITUTIONS AND RESPONSIBILITIES: ACHIEVING GLOBAL JUSTICE 1-2* (Blackwell 2006). See also: CHIOS C. CARMODY, FRANK J. GARCIA & JOHN LINARELLI, *GLOBAL JUSTICE AND INTERNATIONAL ECONOMIC LAW: OPPORTUNITIES AND PROSPECTS* 246 (2011) Available at SSRN: <http://ssrn.com/abstract=1934864>. For exceptions, see, CHRISTIAN BARRY & SANJAY G. REDDY, *INTERNATIONAL TRADE AND LABOR STANDARDS: A PROPOSAL FOR LINKAGE* (Columbia University Press 2008). Iris Young, *Responsibility and Global Labor Justice*, 12 *THE JOURNAL OF POLITICAL PHILOSOPHY* 365 (2004).

<sup>3</sup> Dahan, Lerner, Milman-Sivan ---

<sup>4</sup> Jonathan Seglow, *Associative Duties and Distributive Justice*, 7 *JOURNAL OF MORAL PHILOSOPHY* (2010). Niko Kolodny, *Do Associative Duties Matter?*, 10 *THE JOURNAL OF POLITICAL PHILOSOPHY* 250 (2002).

<sup>5</sup> JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 359-360 (1972).

<sup>6</sup> Avishai Margalit & Joseph Raz, *National Self-Determination*, 9 *THE JOURNAL OF PHILOSOPHY* 439 (1990). DAVID MILLER, *CITIZENSHIP AND NATIONAL IDENTITY* (Polity Press, 2000). Michael Sandel, *The Procedural Republic and the Unencumbered Self*, in *COMMUNITARIANISM AND INDIVIDUALISM* (Shlomo Avineri & Avner de-Shalit ed., Oxford University Press, 1992). SAMUEL SCHEFFLER, *BOUNDARIES AND ALLEGIANCES: PROBLEMS OF JUSTICE AND RESPONSIBILITY IN LIBERAL THOUGHT* 66-82 (Oxford University Press, 2003).

<sup>7</sup> Thomas Nagel, *The Problem of Social Justice*, 2 *PHILOSOPHY AND PUBLIC AFFAIRS* 113 (2005). JON MANDLE, *GLOBAL JUSTICE* (Polity Press 2006).

8. **Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy*** 86–87 (2011).

9. See, Org. for Econ. Co-operation & Dev. [OECD], [International Trade and Core Labour Standards](#), at 39-42 (Oct. 10, 2000); Robert J. Flanagan, [International Labor Standards and Decent Work: Perspectives from the Developing World](#), in [International Labor Standards](#) 16 (Robert J. Flanagan & William B. Gould IV eds., 2003).

<sup>10</sup> We refrain from the more general debate of whether market power has indeed transcended the power of the state more generally. See, e.g., Susan Strange, *THE RETREAT OF THE STATE* (1996).

<sup>11</sup> Vincent A. Mabert, *Special Research Focus on Supply Chain Linkages: Challenges for Design and Management in the 21st Century*, 29 *DECISION SCIENCES* 537 (1998). Jeffrey Henderson, *Global production networks and the analysis of economic development*, 9 *REV. INT'L POL. ECON.* 436, 446 (2002).

<sup>12</sup> Jagdis h Bhagawati, *Trade Liberalisation and 'Fair Trade' Demands: Addressing the Environmental Standards and Labour Issues*, 6 *The World Economy* 745, 755 (1995); **Rodrik**, [supra](#) note 8, at 86–87.

<sup>13</sup>. [Id.](#)

14. ILO, [Global Employment Trends 2011](#), at 21 (2011).

15. For a few examples, see **Pietra Rivoli, *The Travels of a T-Shirt in the Global Economy: An Economist Examines the Markets, Power, and Politics of World Trade*** 89 (2d ed., 2009); Denis G. Arnold & Norman E. Bowie, [Sweatshops and Respect for Persons](#), 13 **Bus. Ethics Q.** 221, 231-33 (2003).

16. Denis G. Arnold, [Working Conditions: Safety and Sweatshops](#), in [The Oxford Handbook of Business Ethics](#) 628, 629 (George G. Brenkert & Tom L. Beauchamp eds., 2010). Further, it

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is estimated that currently 20.9 million persons are the victims of forced labor worldwide. ILO, 2012 Global Estimate of Forced Labour: Results and Methodology, at 11 (June 1, 2012) [hereinafter ILO 2012 Global Estimate], available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf).

17. Global Employment Trends, supra note 14, at 71.

18. Id.

19. It is estimated that the majority of workers in the world today work in the informal economy, with most of those workers coming from developing countries. **Kaufman**, supra note **Error! Bookmark not defined.**, at 5. Within the informal economy, atypical employment includes a wide range of working conditions, from the relatively mild harms of low wages and unsteady job security, to conditions of extreme exploitation, slavery, and abuse.

20. See World Trade Organization [WTO] & ILO, Globalization and Informal Jobs in Developing Countries, at 10 (2009).

<sup>21</sup> For an overview see, e.g., ARTURO BRONSTEIN, INTERNATIONAL AND COMPARATIVE LABOUR LAW: CURRENT CHALLENGES Ch. 4 (Palgrave Macmillan 2009).

<sup>22</sup> See, e.g., Francis Maupin, Is the ILO Effective in Upholding Workers' Rights?: Reflections on the Myanmar Experience, in **Labour Rights as Human Rights** 85 (Philip Alston ed., 2005)

<sup>23</sup> BRONSTEIN, supra note 36 at Ch.2.

<sup>24</sup> BRUNO VENEZIANI, THE EVOLUTION OF THE CONTRACT OF EMPLOYMENT, THE MAKING OF LABOUR LAW IN EUROPE: A COMPARATIVE STUDY OF NINE COUNTRIES UP TO 1945 (Bob Hepple ed., Hart Publishing 2010).

<sup>25</sup> 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 includes 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 295 (Guy Davidov & Brian Langille eds., Oxford University Press 2011).

<sup>26</sup> This problem was termed the de-territorialization of labor law. See: Guy Mundlak, *De-Territorializing Labor Law*, 3 J. L. & ETHICS HUM. RTS. (2009).

<sup>27</sup> Quality seems to override concerns of workers conditions, see, e.g., Pun Ngai, *Global Production, Company Codes of Conduct, and Labor Conditions in China: A Case Study of Two Factories*, 54 The China Journal 101 (2005); Jeroen Merk, *Jumping Scale and Bridging Space in the Era of Corporate Social Responsibility: cross-border labour struggles in the global garment industry*, 30 Third World Quarterly 599, 601 (2009)

<sup>28</sup> Don Well, *Too Weak for the Job: Corporate Codes of Conduct, Non-Governmental Organizations and the Regulation of International Labour Standards* 7 Global Social Policy 51, 55 (2007) (“Die to their control over the manufacturers, the manufacturers have ‘basically no pricing power’ in relation to major TNC clients...large retailers retain considerable influence over labor standards in supplier factories while avoiding legal responsibilities to labor that inhere to factory ownership”)

<sup>29</sup> SCHEFFLER, supra note 19 at Ch. 1.

<sup>30</sup> For the need to redefine “employer-employee” relations in global production chains see, Hyde, A. (2011). *Legal Responsibility for Labour Conditions Down the Production Chain*. Forthcoming **Error! Main**

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**Document Only.** in Fudge, J., McCrystal, S. & Sankaran, K. (Eds.) *Regulating Work: Challenging Legal Boundaries*. Oxford: Hart Publishing.

<sup>31</sup> For a more radical approach to structural exploitation towards 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 (2010).

<sup>33</sup> Concerns have also been raised as to the ability of the developing economy to absorb aid. See, generally, *The Macro Economic Management of Foreign Aid* (2006, Peter Isard at all, Eds.)