# Beyond GVCs as clockworks: The constitutive role of law, power and the way(s) ahead

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Global Value Chains (GVCs) are the main form of contemporary transnational capitalism. They are complex legal and financial structures that challenge traditional international-national and public-private dichotomies. They shape and define the speed of work and extraction, build bridges, raise walls, and transform lives and nature in each place where they touch base around the globe. Covid-19, a biological shock that has triggered a legal and economic reconsideration of global markets, has revealed the ecological backbone of value chains and highlighted the need to rethink the premises of competitiveness and cheapness around which they are imagined.

From one day to the other, workers in Bangladesh that had fought for better working conditions lost their employment in global garment chains. Flower

producers in Kenya that had received large-scale concessions of land to the detriment of local populations destroyed fresh roses because global demand had plummeted and they did not have access to any passenger flights to ship their roses to Europe. Their GVCs had suddenly collapsed. On the other side of the exploitation and subordination coin, thousands of prisoners, women and unemployed people from all over the world were pushed into newly created chains to produce Personal Protective Elements (PPEs) to satisfy a new and increasing demand. New sources of dividends were identified, new geographies of production constructed, and new 'inequality chains' put in place so that rent could continue flowing into investors' pockets.

Forms and places of extraction are also changing. When consumption crashed, excess crude oil that was financially inefficient but environmentally wise to keep in the ground got pumped into tanks anchored all across the world, suddenly multiplying the amount of environmentally hazardous sites on the planet and increasing the stock that will have to be burned. Simultaneously, the Covid-19 shock reinvigorated calls for a green energy transition. However, these calls entailed neither a rethinking of current patterns of global competitiveness nor the distribution of value and power along the nodes of the chain. When governments and financiers responded to Covid-19 with fiscal stimulus and support for green investments, countries all over the world started competing to seize the new economic opportunity represented by the extraction of rare earth and the sale of cutting edge technologies.

**Beyond processes and logistics** Public and private interventions alike are looking for alternative patterns of global capitalism characterised by environmental sustainability and resilient supply. Governments and boards of directors alike are contributing to the redefinition of the geographical and distributive character of value extraction and distribution. They are at the same time in search for logistic resilience; and scared that another global economic or biological threat may cause a tilt in the continuous cycle of indebtedness, production, distribution and accumulation. On the one hand, official speeches, decrees and executive decisions are used to re-shore and regionalize economic resources by construing them as matters of national security or capital remuneration. On the other hand, lobbyists and governments in the North push for further liberalization and intensification of the global reach of chains that

provide what cannot be sourced locally. The EU calls it ‘strategic autonomy’.

When GVCs are presented as a combination of processes and logistics, public interventions take the form of due diligence, standards, borders’ adjustments, controls, procedures, practices and tasks. However, such mechanistic vision of global production—proper of business schools and diagrams—makes the social and the local invisible, promoting fetishist solutions based on global value chains as mere processes and interactions that are perceived only in their materiality rather than in their ecological entanglement with lives, places and nature. As a consequence, quick-fix solutions obliterate power and history, along with the fact that capitalism is not just a way of organizing people and nature, but is inherently dependent on them and transforms them – often irreversibly.

**Bargaining power, structure and the constitutive role of the law**

We thus need to move beyond processes and focus on the power dynamics within GVCs. This leads to asking not only ‘who regulates GVCs?’ and ‘what behaviours are allowed?’, but also how power is distributed, how bargaining power is exercised in the daily negotiations within and across firms, and what the socio-environmental implications of such power allocation are. From a critical law and global value chains perspective, it is essential to focus not only on the role of law as a sanctioning tool but also to recognize the constitutive role that legal structures play both with regards to the shape of the chains and their power dynamics. The two are closely intertwined but are analytically different.

The transactions that MNCs enter with their suppliers can also be another critical site of intervention, which may allow us to increase the bargaining power of a variety of actors, from medium or small firms to individual freelancers, who work for GVCs. These chains of production consist of a large number of transactions that coordinate the production process. As we know, unchecked negotiation often leads to agreements favourable to the more powerful actor, in this case, one-off or short-term flexible contracts that the lead firm can adapt, re-adjust or cancel with little consequence. This suits MNCs. Suppliers, however, rarely have time to calculate or make plans for the

future as a result.

But there is no reason why the international community should grant lead firms so much leverage over the transactions that make GVCs. Workers in Bangladesh and flower producers in Kenya have suffered not only because of Covid-19, but also due to the contractual terms that plug them into GVCs: most risks have been shifted to the weaker parties. This situation can be changed. Basic standards to govern the transactions that make GVCs could be developed and geared to preventing contractual clauses that shift most costs and risks to the weakest parties. These standards could operate as the fair and equitable standard in international investment law: their purpose would be to protect workers' legitimate expectations, ensuring that lead firms behave in a reasonable and proportionate manner. Obviously, the question is whether there is a political space and a legal imagination to develop such basic standards.

The law and global value chains issue looks differently if we focus on the MNC, instead of the multiple relations that GVCs create. Taking the corporation as our unit of analysis is the standard approach to business and human rights. The argument is that properly implemented sanctions will lead to a higher level of internalization of the social and environmental costs of contemporary capitalism. Global or state regulation of MNCs within GVCs is of paramount importance to provide top-down tools, in addition to appropriate bargaining rules, in the fight against the most detrimental behaviours.

**Within and beyond the horizon of possibility**

But there is no reason why we should stop there. Lawyers will be aware of the limits and drawbacks of any approach that legitimizes and recognizes the corporate form whether to regulate it or to guarantee spaces of self-regulation. Moreover, legal scholars and activists need to recognize that GVCs are just one of the ways in which trade is organized, often the one that benefits national champions and low-hanging producers. Political economy, distributive considerations and the construction of alternatives must be part of the picture.

The ecological violence of transnational production was visible long before Covid-19. The pandemic has proved that the state-capital nexus makes global capitalism much more resilient than the people and natural elements that it

depends on. So, let’s try to use law and legal structures to curb, limit, regulate, improve and address the imbalances and inequalities that are proper of contemporary commodity capitalism. Particularly, the focus should be put on changes capable of addressing unequal bargaining power and serving as catalyst for trans-local organization and deeper reforms. We should not be blind to the constitutive role of law, the historical patterns of GVCs and to the fact that the ‘new normality’ cannot be structured around the same unbearable premises of the ‘old one’.

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