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Eller, K.H.

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CRACKING THE CODE OF GLOBAL VALUE CHAINS

KLAAS HENDRIK ELLER

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Global Value Chains (GVCs) form a backbone of our global economy that eludes easy characterization. In media or policy reports, corporate brochures or academic publications, the image of choice is generally [logistics hubs](#) or factory sites. Yet no single site can capture the inner dynamics of GVCs, which, by definition, emerge from the *connection* between seemingly unconnected places, norms, actors and social dynamics. The same is true for the common visualization of value chains in linear schematics or organizational charts. Despite their suggestive power, these do

not offer a full picture.

L'essentiel est invisible pour les yeux—especially for lawyers, GVCs offer little stable ground for departure and pose crucial problems of choosing the right lens. As highlighted in the '[Research Manifesto on the Role of Law in GVCs](#)', current modes of production have come adrift of legal conceptualization, unmoored from the legal dichotomies and discourses that condition the mind of the modern lawyer. In dealing with a phenomenon that plays with the [niches of modernity](#), legal scholarship constantly runs the risk of finding itself in the same loops, paradigms and path-dependencies that give the illusion of movement without forward progress.

To leave a mark, any inquiry into the role of law in GVCs therefore needs to start with the legal imaginary of global production. What exactly does law conceive of when dealing with GVCs? Are they chains of contracts that can be governed more or less efficiently or a drastic transformation of the legal face of world trade relations? It is this double nature of GVCs, as both an organizational arrangement between firms and as an [evolutionary stage](#) in the development of capitalism that is so challenging to account for, especially in law. From an angle of Law & Political Economy, GVCs form a paradigm case for a necessary and constant translation between micro- and macro-level analysis, between local and global, now and then, individual and systemic.

A Private Law Imaginary of Global Production

Most legal conceptualizations of GVCs—and those stemming from an individualistically oriented private law most notably—defy such translations and rest firmly with the micro. In this perspective, GVCs are cobbled together with contractual building blocks, giving rise to narrow conceptions of [governance](#) as an emergent property of unplanned bilateral exchanges. Following the formal logics of contract allows little (if any) inroads for political economy and the multiple connections between chains and their material and ideological environment. Moreover, it falls drastically short of seeing how GVCs amount to societally pervasive social institutions that cut across many social spheres and reconfigure individual lifeworlds as well as political economy. GVCs have, for instance, become the actual precondition for the exercise of many rights—including both worker and consumer rights. They [limit](#) national regulatory leverage and channel transnational debates around participation, distribution and equality.

With growing complexity of GVCs, a focus on the legal form of its constituent parts

becomes increasingly problematic, both analytically and normatively. Take for instance the semiconductor chip manufacturer Intel that uses no less than [19,000 suppliers](#) in over 100 countries to provide the raw material, tools, machines, logistics and packaging it uses. Here, any classical ascriptions of linear control and steerability through the lead firm seem hopelessly reductionist. As much as this complexity can be critiqued as partly fabricated to evade regulation, it is a dominant feature of global production. Only an institutional understanding that takes GVCs as a unit of analysis in its own right can fully apprehend the dynamics that animate GVCs and that make them distinctively hard to regulate.

In this respect, the regulatory elusiveness of GVCs bears many similarities with other fields of transnational regulation. At the same time, it becomes clear that the normative and deeper political stakes of GVCs cannot be wiped away by whichever legislative act or doctrinal innovation as such—they are inherently linked to the well-curated division of labor between legal subfields and the legal geography at large. In current hasty debates around liability along value chains, this is all too often the ‘elephant in the room’.

Blind Spots of Regulation

In some areas, calls for accountability are essentially a matter of mobilizing political will. Legal technicalities of implementation seem secondary. International criminal law works this way, for instance. For GVCs, though, a mere call to ‘fight impunity’ is not enough if disconnected from the legal structures that bring them into being. Many regulatory initiatives have had disappointingly little effects on the ground—this holds true for increasingly discredited [private governance](#) like certification schemes, but similar accounts becloud public or hybrid attempts like the French duty of vigilance law or the [Bangladesh Accord](#) for which there has been such recent enthusiasm.

A shared blind spot of these initiatives is an insufficient consideration of the intertwinement of micro- and macro-level aspects. This lacuna is deplorable all the more since the theorization of production chains actually [commenced](#) at the macro-level drawing on Wallerstein’s World Systems Theory and embedded in a fully-fledged theory of globalization. Today’s debate around GVC regulation concerns almost exclusively the micro-level: supply chain liability, due diligence or transparency regulation target identifiable interfirm relations, the ‘formal side’ of supply chains. What is more, once any of the initiatives are enacted, they give rise to new auxiliary private services of quantification and assessment. The industry of compliance verification becomes a lucrative [additional layer](#) to the actual supply

chain and provides data to lead firms, investors and consumers. Complex social issues are further narrowed down until they are finally submitted to the binary logic of a box-ticking exercise of audits. In other words, most regulatory initiatives reinforce, rather than question, a decontextualizing perspective on supply chain wrongs. They focus on the agency of actors within the chain without accounting for [root causes](#), among them the socio-legal structures and institutional forms that make the chain both profitable and predatory.

One might think human rights law would provide tools to ground an alternative, but it has an inverse set of inadequacies. Since human rights place larger emphasis on the *justification* of obligations—not their operationalization—they are mostly unconcerned with the actual structure of GVCs. Through their historic state-centrism, human rights claims had a clear addressee and, since the state was vested with overarching powers and financial means, such claims were normative postulates imperturbable by complex reality. In modern parlance: The founding norms of liberal constitutionalism lack a (reflexive) governance dimension for [economic power relations](#). For GVCs, therefore, the normative power of human rights comes at the price of a [detachment](#) from the essentially private legal infrastructure that brings GVCs into being.

No 'Law of the Horse'

To overcome this detachment, it is necessary to map the diverse legal arrangements that uphold GVCs in their current form. This links chain and sector peculiarities to the global political economy. The result is often a scattered and sometimes eclectic array of legal regimes that are however—just like in Lessig's argument for [Cyberspace](#)—powerfully intertwined. Together, they form the 'Code of Global Value Chains', a dense mesh of legal and extra-legal arrangements. This brings to mind, of course, Katharina [Pistor's](#) recent and masterful deciphering of the legal underpinnings of capital. Moreover, it alludes to Lessig's earlier [lesson](#) that normativity can be deeply ingrained in technical, logistical or managerial processes. This can be supply chain management software animated by algorithmic governance, tracing devices, or giant infrastructure along major trade routes.

Thinking through 'code' hence simultaneously refers us to the macro and the micro and reminds us of the need of an ongoing translation. Ultimately, only an intervention that can impact on the 'code' of GVCs can purport to leave a mark.

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Klaas Hendrik Eller (@KlaasEller) is Minerva Post-Doctoral Fellow at the Edmond J. Safra Center for Ethics at Tel Aviv University.