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The role of law in global value chains: a research manifesto

The IGLP Law and Global Production Working Group*

Most scholars attribute the development and ubiquity of global value chains to economic forces, treating law as an exogenous factor, if at all. By contrast, we assert the centrality of legal regimes and private ordering mechanisms to the creation, structure, geography, distributive effects and governance of Global Value Chains (GVCs), and thereby seek to establish the study of law and GVCs as rich and important terrain for research in its own right.

Across a growing number of sectors and industries, value production is not just transnational in scope; it is organised and coordinated via global networks that link activities across as well as within firms and nations. These networks are increasingly referred to as 'Global Value Chains', or GVCs. The asserted causes of this phenomenon are multiple, and scholars debate which deserves designation as primary.[1] We

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1 Among the most frequent causes cited are the dominance of shareholder value theory—W Milberg & D Winkler, *Outsourcing Economics: Global Value Chains in Capitalist Development* (Cambridge UP, 2013)—trade liberalization and new regional and bilateral trade and investment agreements—UNCTAD, *Global Value Chains and Development: Investment and Value Added Trade in the Global Economy*, UN Doc. UNCTAD/DIAE/2013/1 (2013)—and technologies enabling

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begin from the premise that GVCs are not only the product of shifting economic conditions. They also arise as firms engage dynamically with multiple, overlapping and often conflicting local, national, regional and transnational legal regimes, soft-law normative orders and private ordering mechanisms (hereinafter collectively described as 'law').[2]

This article seeks to establish the importance for both scholars and policymakers of investigating some of the complex ways in which the law shapes and is shaped by GVCs. The research agenda articulated here emerged from a series of ongoing conversations among a group of legal scholars, sociologists and political economists that first met in June 2014 under the auspices of the IGLP at Harvard University. For the most part, legal scholarship has only summarily or incidentally analysed GVCs, and similarly, GVCs scholars outside law have not made law a focal point of their theoretical or empirical analyses. We believe that placing law at the centre of the analysis of what have historically been treated as primarily 'economic structures' will not only enrich our understanding of the shape, nature and dynamic character of GVCs, but will also help to illuminate the complex inter-relationship between law and global political economy more broadly.

We begin with a broad description of the question at the heart of our collective inquiry: how does law shape the structure and organisation of production globally and how is law impacted through this process? To make this meta-question more concrete, we articulate three thematic starting points for exploration of the relationship between law and GVCs: law and the geography of GVCs; law and the production and distribution of value and power in GVCs;

cheaper and faster transportation and logistics—D Cowen, *The Deadly Life of Logistics: Mapping Violence in Global Trade* (University of Minnesota Press, 2014).

2 At first blush, the areas of law most implicated in GVCs could include company, contract, employment and tax law, as well as international trade law, commercial and investment law. Yet, when one begins to consider the diverse impacts of GVCs economically, socially, politically, environmentally and so forth, it is hard to think of a field of law that might not be relevant to them, from human rights law to environmental law to laws governing the behaviour of firms in elections or upon the legislative process. In addition, soft law regimes, including guidelines on corporate social responsibility, technical standards, fair trade and other ethical certification standards, and customary rules of business practice will also likely be significant to the extent that they shape the behaviour of firms individually or collectively in GVCs. Moreover, the practices of firms as they deal with each other commercially, through trade or industry associations or in influencing behaviour of other firms in the chain—what might be loosely termed 'private ordering mechanisms', will also be important if we are trying to understand how GVCs are coordinated or how risk and reward are distributed through chain structures. We recognise that the boundaries between these diverse normative orders, at least in terms of their effects, is becoming increasingly difficult to maintain, and observation of business practices quickly reveals that a contractual term might be as significant as a public law regulation in shaping the behaviour of actors in global commerce. For these reasons, we use 'law' as a shorthand for hard and soft law regimes and private ordering mechanisms.

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and law and the coordination of GVCs (the latter being a process referred to in the GVC literature as 'governance'). We focus our research inquiry into the role of law in global structures of production on GVCs both because of their ubiquity in modern capitalism and the rich variety of extant scholarship (largely outside the field of law) exploring GVCs in a variety of industries and contexts. This combination of factors makes GVCs a rich source for research both empirically and theoretically. In an effort to suggest, albeit in a highly preliminary way, what a legal analysis of GVCs might entail, and what insights this line of inquiry might yield, we include brief descriptions of several ongoing research projects initiated by group members. Our goal is to invite scholars in law and related disciplines to begin to view the study of law and global production as an important and worthy field of research in its own right.

THE CENTRAL RESEARCH QUESTION

We are hardly the first to acknowledge the significance of GVCs as a feature of modern capitalism. Former Director-General of the World Trade Organization (WTO) Pascal Lamy recently observed that GVCs, as the 'face of the modern global economy', are creating a 'new world of trade'.[3] The United Nations Conference on Trade Development (UNCTAD) recently dedicated its annual flagship publication, the *World Investment Report,* to the topic of GVCs. It includes a definition of GVCs and a quantitative estimate of their importance in the world economy:

> Global investment and trade are inextricably intertwined through the international production networks of firms investing in productive assets worldwide and trading inputs and outputs in cross-border value chains of various degrees of complexity. Such value chains (intra-firm or inter-firm, regional or global in nature, and commonly referred to as Global Value Chains or GVCs) shaped by TNCs [transnational corporations] account for some 80% of global trade.[4]

While references to GVCs have proliferated rapidly in recent years, in both academic and policy circles, our intervention is motivated by the puzzling fact that there is as yet no well-developed account of the role of law in the structure, operation or governance of GVCs.[5] In fact, we observe that law has, for the most

3 P Lamy, 'Global Value Chains and the New World of Trade', Keynote address, Duke GVC Global Summit, 20 October 2014, available at https://globalvaluechains.org/video/duke-global-summit-keynote-address (last visited 7 January 2016).

4 UNCTAD (2013) iii.

5 One notable exception is Kevin Sobel-Read's recent article 'Global Value Chains: A Framework for Analysis' 5 *Transnational Legal Theory* (2014) 364, which seeks to bring the insights of GVC

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part, been neglected by the political economists, sociologists, economic geographers and other social scientists that have pioneered GVCs as a field of study. To the extent that law is recognised in the GVC literature, it is generally treated as exogenous rather than an endogenous factor—an institutional backdrop against which the economic and inter-organisational dynamics driving the globalisation of production play out. This lacuna is all the more striking because in recent years the GVC framework has gained considerable reach beyond academic circles to business consultancies, legislators, international organisations, unions and activists.[6]

It seems possible that this externalisation of law and the 'legal' from GVC analysis to date may derive from an understanding of capitalism as a process of profit-oriented, mutually beneficial exchange undertaken in (relatively) free markets. In such a vision, the function of law is primarily to provide market-facilitating institutions (such as property, contract and the corporation) and rules to correct informational and other asymmetries in the market rather than as a tool and terrain for struggle over the terms through which value will be generated and distributed or power exercised in global production systems. Most considerations of law in GVCs take the former more minimal conceptualisation of law's role in capitalism as a given, without interrogating what role law might play in bringing this particular form of GVC capitalism into being. For instance, spurred on by management studies, early business law scholarship addressing GVCs was concerned with the design of supply contracts in order to enhance efficiency and surmount informational asymmetries.[7] In general, the GVC literature continues to treat economic units (or firms) with different national origins and varied sizes, productive capacities and bargaining power as an analytical given, rather than as a product of legal arrangements that could be organised differently.

In our view, law is more than an 'external' or contextual factor shaping the strategic decision-making of firms 'inside' GVCs.[8] *Rather, we argue that*

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scholarship to the attention of legal scholars, and perhaps more ambitiously, to consider the scholarly value and potential of exploring law and GVCs in relation to one another.

6 For a summary of the various contexts, groups and institutions that make use of the GVC framework, see Global Value Chains Initiative, 'Institutions', available at https://globalvaluechains.org/institutions (last visited 7 January 2016) and, recently, OECD & World Bank Group, 'Inclusive Global Value Chains', Report prepared for submission to G20 Trade Ministers Meeting Istanbul (2015), available at http://www.oecd.org/trade/OECD-WBG-g20-gvc-report-2015.pdf (last visited 7 January 2016).

7 For an overview cf. M Hoehn, *Relational Supply Contracts* (Springer 2009) 19-34.

8 Cf. G Gereffi, 'Global Production Systems and Third World development', in B Stallings (ed.), *Global Change, Regional Response: The New International Context of Development* (Cambridge UP, 1995) 100 and A Stewart, *Gender, Law and Justice in a Global Market* (Cambridge UP, 2011).

law resides at the heart of the GVC phenomenon—it is the vehicle through which value is generated, captured and distributed within and between organisational and jurisdictional domains, and diverse and geographically disparate business operations are coordinated and governed.[9] This recognition of the significance of law is important for a richer understanding of modern capitalism as well as the formulation and critique of policy programmes and interventions. For example, rather than asking how firms can use law to upgrade a particular chain configuration, we aim instead to understand how the *possibilities* for upgrading are already structured in and through law—that is, how law constitutes the power relations between actors that give rise to particular forms of governance and engender particular distributive effects. This focus on the role that legal frameworks play at different levels of a particular chain, and on the politico-economic power dynamics that operate behind competing legal norms, can help facilitate a critical assessment of the structural and distributional dimensions of GVCs—and the global economy more broadly—that are often taken for granted or normalised. Such an imaginative legal exercise can then help to elucidate alternative and potentially more progressive sites of intervention by scholars, policymakers and civil society groups.

Research on law and GVCs undertaken in this spirit also suggests that the proliferation of GVCs has implications for law and legal scholarship more broadly. Many fields of legal inquiry are organised around distinctions that are blurred or confounded by the global organisation of GVCs. The study of GVCs may aid legal scholars in formulating alternatives to traditionally recognised disciplinary boundaries between local and global, law and non-law, public regulation and private ordering, form and substance, rules and norms, firm and contract and firm and state.[10] In addition, because GVCs frequently traverse legal forms, geographic and jurisdictional boundaries and multiple layers of potentially applicable law, mapping GVCs from a legal perspective also poses complex challenges for basic questions of positive legal analysis, including

9 'Governance' is a genuinely interdisciplinary concept. In the legal literature, it is generally used as a shorthand for the public (municipal, state, supranational) and private (e.g., through private standard-setting and certification) regulation of, in this case, the GVC. Here, 'governance' is used to refer to the shift from traditional towards more sophisticated regulatory techniques which gain traction through knowledge and markets rather than legal sanctions. Cf. for a comparative view P Zumbansen, 'Governance from an Interdisciplinary Perspective', in D Levi-Faur (ed.), *Oxford Handbook on Governance* (Oxford UP, 2012). The GVC literature speaks of the 'governance' or management/coordination by the lead firm of the chain. Unless reference is made to the multiple normative layers shaping GVCs, this article will use the term in the latter meaning.

10 Cf. Sobel-Read (2014) 404.

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matters of territorial jurisdiction, governing law, private regulation through contract and sovereign authority.[11]

Moreover, just as the boundaries between legal subfields are increasingly hard to draw, so too are the boundaries between what is hard law and what is soft law, or what legal significance is to be given to private ordering mechanisms. We find the study of GVCs is particularly fruitful for forcing a re-examination of these complex questions regarding the boundaries of law itself.[12] For example, GVCs often generate unique inter-firm and cross-border norms of business practice such as chain-wide corporate codes that, albeit of private origin, shape parties' behaviour as powerfully as legal commands emanating from legislation.[13] Also, both public and private norms surrounding GVCs are entangled with rapidly changing business practice and policies giving rise to novel public/private regulatory arrangements such as the Bangladesh Accord on Building and Fire Safety.[14] As such, GVCs are an important source of norm-creation contributing to global legal pluralism, and this scholarship's inquiry into the co-existence and collision of different normative orders provides a helpful tool to analyse the complexity of normative assemblages at play.[15]

Our analysis of law and GVCs draws on and aims to contribute to several strands of contemporary legal thought. For instance, Marxist legal scholars have theorised the relationship between capital and law as symbiotic,[16] and the

11 Cf. David Kennedy, 'The Mystery of Global Governance' 34 *Ohio Northern University Law Review* (2008) 827, 832: '[A]s the world is re-ordered, law will be there, imagining it, making it, writing it down, consolidating and contesting the new arrangements.'

12 Cf. D Schneiderman, 'Power and Production in Global Legal Pluralism: An International Political Economy Approach', in A Perry-Kessaris (ed.), *Socio-Legal Approaches to International Economic Law* (Routledge, 2013) 98.

13 Cf. L Catá Backer, 'Economic Globalization and the Rise of Efficient Systems of Global Private Lawmaking: Wal-Mart as Global Legislator' 37 *University of Connecticut Law Review* (2007) 1739 and A Beckers, *Enforcing Corporate Social Responsibility Codes* (Hart, 2015).

14 For the text, see Bangladesh Accord on Building and Fire Safety, available at http://bangladeshaccord.org (last visited 7 January 2016). For an analysis, cf. M Anner, J Bair & J Blasi, 'Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks' 35 *Comparative Labor Law and Policy Journal* (2013) 1 and B ter Haar & M Keune, 'One Step Forward or More Window-Dressing? A Legal Analysis of Recent CSR Initiatives in the Garment Industry in Bangladesh' 30 *International Journal of Comparative Labour Law and Industrial Relations* (2014) 5.

15 Cf. G Teubner, 'Global Bukowina: Legal Pluralism in the World Society', in G Teubner (ed.), *Global Law Without a State* (Dartmouth, 1997), 3 and PS Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge UP, 2012). For an illustration from the global toy industry, cf. F Snyder, *The EU, the WTO and China: Legal Pluralism and International Trade Regulation* (Hart, 2010) 44-88.

16 See, e.g., E Pashukanis, *Law and Marxism: A General Theory* (Inklinks, 1978) [1924] 37-45 (arguing that the very form of law follows the commodity form); P Ireland, 'History, Critical Legal Studies

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analysis of the constitutive role of law in GVCs provides the opportunity to deepen our understanding of the complex dynamics of this relationship. While systems theory has been used to describe co-evolutionary processes of law and production regimes,[17] and institutional views explore the reciprocal relation between chain structures and regulatory strategies essentially as a matter of choice,[18] the role of law in GVCs foregrounds questions of power and distribution. At the same time, a comprehensive analysis of law in GVCs would harness tools developed by contemporary socio-legal[19] and pluralist[20] inquiries into law. Our investigation of law and global production shares much with legal work that questions the territorial and statist preoccupations of legal regimes, and the separation of economic activity from political contestation. Hence, the tension between a territorial logic of law and the transnational logic of capital as it is expressed in GVCs becomes productive in nature. Theorising the constitutive role of the present legal landscape in the proliferation of GVCs thus immediately invites reflections on the adequacy of this legal paradigm, both at the conceptual level and at the level of legal reform. It is in this sense that GVCs appear as a salient and highly topical field of research for contemporary critical legal scholarship.

DEVELOPING A CRITICAL LEGAL APPROACH TO GLOBAL VALUE CHAINS: INITIAL RESEARCH PROJECTS

The research agenda developed by the IGLP Law and Global Production Working Group proceeds from our collective sense that GVCs take a peculiar shape provoked by the incongruity between the apparent territoriality of the law

and the Mysterious Disappearance of Capitalism' 65 *The Modern Law Review* (2002) 120; C Miéville, *Between Equal Rights: A Marxist Theory of International Law* (Pluto, 2005); G Baars, 'Reform or Revolution: Marxian vs Polanyian Approaches to the Regulation of "the Economic"' 17 *Northern Ireland Legal Quarterly* (2011) 415.

17 Cf. G Teubner, 'Idiosyncratic Production Regimes', in J Ziman (ed.), *The Evolution of Cultural Entities* (Oxford UP, 2002) 161 (using evolutionary theory to explain institutional divergence in the law of just-in-time manufacturing and leasing).

18 Cf., e.g., F Cafaggi & P Iamiceli, 'Private Regulation and Industrial Organization: Contractual Governance and the Network Approach', in S Grundmann, F Möslein & K Riesenhuber (eds), *Contract Governance* (Oxford UP 2015) 343.

19 See, e.g., C Tan, 'Navigating New Landscapes: Socio-legal Mapping of Plurality and Power in International Economic Law', in Perry-Kessaris (ed.) (2013) 19.

20 Cf. Teubner (1997); Berman (2012); B de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization and Emancipation*, 2nd ed. (Cambridge UP, 2004); and, recently, H Dedek & S van Praagh (eds), *Stateless Law. Evolving Boundaries of a Discipline* (Ashgate, 2015).

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and the transnational logic of capital. Through this collective research effort, we hope to better understand how the legal landscape is negotiated and exploited by firms, both in their relationships with the state and with other firms. In short, we aim to heed Dan Danielsen's call to 'study the ways in which this form of [GVC] capitalism impacts relations among firms and states as individual firms and the chain as a whole navigate and transform the multiple states, regulators and legal regimes with which they interact in the pursuit of their business objectives . . . and to broaden our notions of political economy to encompass the multiplicity of firm/state relations that global value chains entail'.[21]

To study the extent and implications of the mutual dependence and co-evolution of law and GVCs, members of the Law and Global Production Working Group have initiated projects that illuminate some of the ways in which our research questions and methods can be pursued. These projects cluster along three broad themes: the legal geography of GVCs; the relation between law, value and bargaining power in GVCs; and the role of law in GVC governance. In the remainder of this manifesto, we provide an overview of these overarching themes using examples from group members' projects where appropriate to suggest how these themes might begin to be productively explored.

Legal geography of GVCs

The creation and operation of GVCs involve immense complexity in terms of the legal norms, tools and institutions involved. This complexity is multi-layered, and has both organisational and geographic dimensions. Accordingly, it will be crucial to develop techniques to study these phenomena in ways that illustrate the particularity of diverse legal and GVC structures, while remaining cognisant of the broader complexity of the contexts in which these structures operate. For this reason, we focus here on mapping the legal geography of GVCs as a vital subfield in our broader research field of law and global structures of production.

It is by mapping the legal geography of GVCs that we can show what the traditional division of law into discrete subfields misses or conceals, and how domestic and international hard and soft law and private ordering mechanisms intermingle in ways that challenge efforts to maintain clear distinctions between them. At the same time, mapping can help to make visible the constitutive role of law to non-legal scholars.

21 D Danielsen, 'Beyond Corporate Governance: Why a New Approach to the Study of Corporate Law is Needed to Address Global Inequality and Economic Development', in U Mattei & JD Haskell (eds), *Research Handbook on Political Economy and Law* (Edward Elgar, 2015) 195.

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To get a sense of what such a mapping project could entail, consider a hypothetical multinational corporation (MNC) of the type that is, according to the UNCTAD report cited above,[22] shaping 80 per cent of world trade. In organising their productive activities, MNCs first face the classic 'make versus buy' decision. These options already point in the direction of two different traditionally demarcated fields of law—corporate law for the institutional form through which business is conducted, and contract law for the interface between legal entities. If the firm decides to make the product abroad, it must also decide where to locate its subsidiary, perhaps provoking a comparison of the domestic laws and enforcement practices of contending and competing potential host countries, as well as the relative impact on those hosts' applicable trade, investment and intellectual property rules. By contrast, a 'buy' decision from a foreign supplier may implicate international commercial law, various public and private industry standards, international commercial arbitration rules or domestic dispute resolution regimes, as well as the domestic contract law of both the MNC's and the foreign supplier's home jurisdictions.

This radically simplified example becomes all the more complex when we consider that diverse forms of productive activity will involve multiple kinds of law, and different business actors pursuing the same business activity may make different choices based on their assessment of the legal and economic terrain with which they seek to engage and the distributive effects they seek to achieve. Such choices will have significant impact on firms' bargaining power, for example, and exposure to commercial risk.

Or, to take another example, organising global production through networks of independent firms that coordinate exchanges via contract rather than ownership might have as much to do with mitigating tort or other legal liability risks and the degree of enforcement in a particular locale as it does with economic productivity.[23] A firm makes decisions on where to site production based on a mixture of factors such as the legal requirements it will face, how likely it is that such requirements will be policed and enforced by public authorities, as well as an assessment of the likelihood that labour unions, or other external forces such as social movements, NGOs or public interest lawyers, may challenge its actions. Of course, the relative significance of particular legal

22 Cf. Milberg & Winkler (2013); UNCTAD (2013); Cowen (2014).

23 Cf. A Ruhmkorf, *Corporate Social Responsibility, Private Law and Global Supply Chains* (Edward Elgar, 2015); P Rott & V Ulfbeck, 'Supply Chain Liability of Multinational Corporations?' 23 *European Review of Private Law* (2015) 415; M Conway, 'A New Duty of Care? Tort Liability from Voluntary Human Rights Due Diligence in Global Supply Chains' 40 *Queen's Law Journal* (2015) 741.

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regimes on the organisation and operation of particular chains will vary and is ultimately an empirical question.

Within our working group, initial efforts at mapping the legal geographies of GVCs have focused on extractive industries. This is because some group members have found that the ways in which such industries are often, though not always, rooted in particular jurisdictions offer particular insights into the articulations of law in GVCs. First, soil and mineral resources form the bases of the production networks of all goods and services, beginning with the food that fuels human labour, and the energy that drives global production and powers global transportation. Second, natural resource industries have immense global (geo)political significance. The firms engaged in these industries are among the largest in the world[24] and the geo-politics of resource extraction shape intimately the inter-state system, most prominently in the case of hydrocarbon resources. Finally, extractives are not only profoundly important to international trade; they are also critical for socio-economic development, especially in the global South. Law plays a central role in structuring the conditions under which such resources are accessed, traded, extracted, monetised and consumed.[25] Legal systems also critically shape the distributive dynamics—and conflicts over—the value produced in these GVCs.

As in all sectors, in extractive industries multiple interest groups, including multinational firms, states and labour, seek to extract various kinds of wealth from the GVCs of which they are a part, while conservation and human rights groups seek to structure chains in ways that they believe improve the ecological and human condition. Several projects explore the role of law and legal regimes in ordering these contests in extractive sectors. For example, Liam Campling and Elizabeth Havice illustrate how interlocking and sometimes contradictory global, regional and national legal systems combine with the material features of highly migratory fisheries to shape the geographies of extraction, production and consumption in the global tuna industry. Jesse Salah Ovadia explores the role of local content policies[26] in leveraging the unique nature of the petroleum value chain in 'upgrading' schemes that create the possibility of what he calls

24 Cf. G Bridge, 'Global Production Networks and the Extractive Sector: Governing Resource-Based Development' 8 *Journal of Economic Geography* (2008) 389.

25 Cf. L Campling & E Havice, 'The Problem of Property in Industrial Fisheries' 41 *The Journal of Peasant Studies* (2014) 707.

26 JS Ovadia, 'Local Content and Natural Resource Governance: The Cases of Angola and Nigeria' 1 *The Extractive Industries and Society* (2014) 137.

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'the petro-developmental state',[27] while Lucie E. White is working with a team of law students and scholars to analyse how political contests over Ghana's petroleum revenue management priorities are embedded in the intricacies of its petroleum management laws. These debates over national petro-spending priorities are in turn nested within geo-political contests over whether Ghana's extraction rents should be (re)distributed at local, national or supra-national levels. Each response to this geo-political question is configured through a different nexus of laws. By integrating critical legal scholarship and GVC analysis, the projects seek to explore nodes of power in extractive industries and bring attention to prominent policy questions, especially around intersecting questions of materiality, geopolitics and 'development'.

Law, value and power

A second theme that merits serious scholarly attention is the role of law in the creation, recognition and distribution of value among actors in GVCs, as well as the relationship between legal entitlements and bargaining power in chain structures. In particular, we believe a focus on the constitutive role of law in the production process and in the economy poses serious challenges for notions of 'value' and 'value-added' commonly held by scholars of GVCs.

In most 'orthodox' or policy-oriented literature on GVCs, value is defined as 'value-added'—that is, simply the value of the output at each link minus the value of inputs. The assumption underlying this metric is that some value is added at each successive stage in the chain. However, because the amount of value-added may vary significantly from link to link, the benefits of participating in the chain are often unevenly distributed.[28]

For mainstream GVC analysts, 'value-added' is the recognition, in economic terms, of productive innovation. Innovation generates new products and/or processes, which, when protected by barriers to entry, generate Schumpeterian profits, or what Kaplinsky[29] refers to as 'rent'. This concept of value-added underlies much of the appeal of the GVC framework. For firms it provides a straightforward prescription: create proprietary innovations. For developing countries, it suggests a policy imperative: encourage not just innovation, but the integration of firms into those global chains which provide the best returns on innovation. This process of 'moving up the value chain', or

27 JS Ovadia, *The Petro-Developmental State in Africa: Making Oil Work in Angola, Nigeria and the Gulf of Guinea* (Hurst & Co., 2016).

28 J Dedrick, KL Kraemer & G Linden, 'Who Profits from Innovation in Global Value Chains? A Study of the iPod and Notebook PCs' 19 *Industrial and Corporate Change* (2010) 81.

29 R Kaplinsky, *Globalization, Poverty and Inequality: Between a Rock and a Hard Place* (Polity Press, 2005).

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capturing an ever greater share of the value generated along it, is described in the GVC literature as 'upgrading'.[30]

While, at an intuitive level, value-added through upgrading in GVCs may seem a straightforward proposition, researchers face multiple practical and conceptual difficulties in accessing, systematising and measuring relevant data on value and value-adding processes.[31] Some development scholars have questioned the implications of firm-level upgrading for workers or its consequences more broadly for the processes of productivity growth and (human) capital formation traditionally associated with macro-level development.[32] Recent work has even tried to expand the concept of firm-level upgrading, beyond a narrow focus on value-added, to incorporate a 'social upgrading' dimension that addresses the quantity and quality of employment generated at particular links in a value chain.[33] These efforts reveal underlying tensions around this notion of value and the application of GVC thinking in its pursuit. Yet, these tensions have not, thus far, led to a conceptual reassessment among most GVC scholars of 'value' and 'value-added'.

We have found that bringing critical legal insights to the analysis of the production and distribution of value in chain structures opens a range of new avenues for promising research. Following the tradition of Robert Hale, Morris Cohen, Duncan Kennedy, David Kennedy and other critical legal theorists, scholars have long recognised that legal entitlements impact the relative power of social actors, and as a consequence, the distribution of present and future resources among such actors.[34] The most accessible example of this

30 G Gereffi, 'International Trade and Industrial Upgrading in the Apparel Commodity Chain' 48 *Journal of International Economics* (1999) 37; P Gibbon, 'Upgrading Primary Production: A Global Commodity Chain Approach' 29 *World Development* (2001) 345.

31 Cf. TJ Sturgeon, PB Nielsen, G Linden, G Gereffi & C Brown, 'Direct Measurement of Global Value Chains: Collecting Product- and Firm-level Statistics on Value Added and Business Function Outsourcing and Offshoring', in A Mattoo et al. (eds), *Trade in Value Added: Developing New Measures of Cross-Border Trade* (World Bank, 2013) 289.

32 Cf. Milberg & Winkler (2013); F Palpacuer, 'Bringing the Social Context Back In: Governance and Wealth Distribution in Global Commodity Chains' 37 *Economy and Society* (2008) 393; B Selwyn, *Workers, State and Development in Brazil: Powers of Labour, Chains of Value* (Manchester UP, 2012); J Heintz, 'Low-wage Manufacturing and Global Commodity Chains: A Model in the Unequal Exchange Tradition' 20 *Cambridge Journal of Economics* (2006) 507.

33 S Barrientos, G Gereffi & A Rossi, 'Economic and Social Upgrading in Global Production Networks: A New Paradigm for a Changing World' 150 *International Labour Review* (2012) 319.

34 Cf. R Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' 38 *Political Science Quarterly* (1923) 470. See also M Cohen, 'Property and Sovereignty' 13 *Cornell Law Review* (1927) 8; Duncan Kennedy, *A Critique of Adjudication (fin de siècle)* (Harvard UP, 1998); David Kennedy, 'Some Caution about Property Rights as a Recipe for Economic Development' 1 *Accounting, Economics, and Law* (2011) 1.

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insight might be a property entitlement that gives one actor the right to exclude all others from use of the subject's property. If the resource to which the property right attaches is something others need, the right holder will have the power to demand concessions from the others to gain access to it. If access to the thing is crucial to the others' survival, the right holder's power to extract concessions may extend to complete servitude by the others. By contrast, if the property is of relatively little use to the others or access to similar property is readily available, the ability to exact concessions for its use will be accordingly more limited. At a simple level, a focus on legal entitlements can help clarify how the 'value' in a GVC is distributed among the actors participating in it, while also focusing attention on numerous background legal regimes that undergird and structure market ordering in the first instance.

To be clear, we see the relationship between law and value as more than a matter of how value is *distributed*. Our research agenda calls for opening the 'black box' of value-added in order to interrogate, more precisely, what role the law might play in the *production* of value. As a group we acknowledge—but do not claim to resolve—the theoretical tensions among us and the orthodox approach to GVCs with regard to the question of value. Such tensions, for instance, reside ineluctably at the interface between the Marxian theory of value, Schumpeterian conception of rents and Hale-ian analysis of coercion and bargaining power. We recognise this tension because we have found it a source of intellectual energy that enriches understanding and that is preferable to neat formulations that gloss over internal theoretical inconsistencies.[35]

Despite these theoretical tensions, it is a shared interest in how power-laden social relations construct systems of production, exchange and distribution that has allowed the legal scholars among us to talk so effectively with the political economists and sociologists. More specifically, we share a common interest in the following kinds of questions: What role does law play in creating barriers to entry at particular links in the chain, and thus in creating and protecting rents? How do legal dynamics with regard to the appropriation of rent influence how chains are organised, including their geographic configuration? Since legal entitlements shape the relative bargaining power of actors to extract concessions from each other, in what way do changes in legal entitlements affect the distribution of bargaining power and hence the distribution of resources?

35 One such inconsistency can be found in the GPN literature of the so-called Manchester school of economic geography. Falling within the broad domain of GVC studies, the GPN (or Global Production Network) approach also investigates questions of value, but within this collectively-authored body of work, there is no explicit discussion or recognition of the fact that a (class-relational) Marxian theory of surplus value is melded with a technical-economic theory of rent. Cf. J Henderson, P Dicken, M Hess, N Coe & H Wai-Chung Yeung, 'Global Production Networks and the Analysis of Economic Development' 9 *Review of International Political Economy* (2002) 436.

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What tools (legal and otherwise) enable which actors to define what constitutes value and/or reshape the conditions under which it is generated and distributed?

Issues of legal entitlements and their role in the creation and distribution of value pervade GVCs, including tax law, IP law, labour law and the plethora of legal structures that have enabled financialisation.[36] For example, the ubiquitous practice of tax structuring for the purpose of maximising post-tax profitability brings into stark relief how the existence, recognition and location of value may be as much a function of legal rules as production processes.[37] Or as an example from intellectual property law reveals, under the global patent regime established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), multinational pharmaceutical companies have been able to maintain higher prices globally for their patented drugs than under the previous nationally divergent patent regimes that allowed India, Brazil, Egypt and other nations to develop competing drugs based on identical pharmaceutical compounds.[38] While one might debate the economic or moral justifications for this change in global patent regulation, its impact on the legal distribution of value among pharmaceutical producers and nations around the world is indisputable.

Labour law is practically defined by questions of value. Thinking through labour law vis-à-vis GVCs opens space for rethinking value and value-added processes. For example, looking at the variegated application of law across a single value chain could spur research into, for example, the 'low' value-added attributed to low-wage workers in export processing zones and the ways that the 'value' that these workers 'add' is constrained, in part, by legal limitations on the scope of productive activities permissible in the zones (such as, e.g., limiting workers in the zones to processing imported foreign inputs for re-export and prohibiting the formation of trade unions and/or collective bargaining).[39] Or how the value produced by workers in one part of a value chain may be limited

36 Cf. P Miller & M Power, 'Accounting, Organizing, and Economizing: Connecting Accounting Research and Organization Theory' 7 *The Academy of Management Annals* (2013) 557.

37 Cf. recently A Cobham & P Jansky, 'Measuring Misalignment: the Location of US Multinationals' Economic Activity Versus the Location of their Profits', ICTD Working Paper 42 (Nov 2015), available at http://www.ictd.ac/publications (last visited 7 January 2016).

38 Cf. for different country studies H Löfgren & OW Williams (eds), *The Palgrave Macmillan New Political Economy of Pharmaceuticals. Production, Innovation and TRIPS in the Global South* (Palgrave Macmillan, 2013) and generally M Carolan, 'Making Patents and Intellectual Property Work. The Asymmetrical "Harmonization" of TRIPS' 21 *Organization & Environment* (2008) 295.

39 Cf. on these dynamics C Hennig, 'Free Trade Zones/Export Processing Zones', in DT Cook & JM Ryan (eds), *The Wiley Blackwell Encyclopedia of Consumption and Consumer Studies* (Wiley Blackwell, 2015) 310.

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by firms elsewhere in the chain, and the ways in which legal control over certain key elements in the production chain, such as intellectual property, may enhance a firm's power over other parts of the chain. It also opens space for analysis of how the right to organise, the right to strike and the right to protest against unsafe and exploitative working conditions, and a resulting ability for workers to command higher wages, might affect not just the value they 'add' to the production process, but also the distribution of that value in terms of the amount that they capture. Similarly, the pricing practices of powerful buyers in one part of a chain may produce significant effects on the existence or enforcement of labour standards in other parts of the chain.[40] This discussion of labour highlights the many ways in which what might seem identifiable as 'economic' or 'legal' factors interact dynamically, making attributions of which factor is producing what effect hard to discern. At the same time, recognising that differences in bargaining power among chain actors may be as much a function of legal and policy choices as of 'market forces' suggests that different legal or policy choices could produce profoundly different (and perhaps much more equitable) distributions of power and rents across the chain.

Important additional insights into the relationship between law and value can be found in exploring finance in the context of GVCs. For example, although the impact of financialisation on the globalisation of production is widely acknowledged, there is surprisingly little research on the significance of financialisation on the creation or destruction of value within GVCs.[41] Since legal systems (or the arbitrage of gaps in or among legal systems) often define the parameters of risk and reward in financial structures,[42] some members of our research group are focusing on the role of financial capital and finance law in structuring GVCs, and, conversely, on how GVCs impact and/or undermine systems of financial regulation.[43] For example, Liam Campling and

40 See Anner, Bair & Blasi (2013); C Dolan, 'On Farm and Packhouse: Employment at the Bottom of a Global Value Chain' 69 *Rural Sociology* (2004) 99.

41 Cf. W Milberg, 'Shifting Sources and Uses of Profits: Sustaining US Financialisation with Global Value Chains' 37 *Economy and Society* (2008) 420. For a synopsis of the phenomenon, cf. G Epstein, 'Financialization and the World Economy', in G Epstein (ed.), *Financialisation and the World Economy* (Edward Elgar, 2005) 3.

42 See, e.g., for a discussion of shareholder activism in labour law S Jacoby, 'Finance and Labor: Perspectives on Risk, Inequality, and Democracy' 30 *Comparative Labor Law and Policy Journal* (2008) 17 and B Rogers, 'Complexities of Shareholder Primacy: A Response to Sanford Jacoby' 30 *Comparative Labor Law and Policy Journal* (2008) 95.

43 Development policy and practice at the international financial institutions represents one potentially interesting research topic along these lines, particularly with regard to the possible intersection of the GVC turn in development policy—cf. M Werner, J Bair & VR Fernández, 'Linking Up to Development? Global Value Chains and the Making of a Post-Washington Consensus' 45 *Development and Change* (2014) 1219 and J Neilson, 'Global Value Chains, Neoliberalism and

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David Quentin draw on Marx's theory of value to support their argument that financial flows resulting from GVC structures and disparate tax systems reinforce global inequalities between firms, countries, classes and genders, as well as how these inequities might be alleviated through tax reform at the national and transnational levels. In another project, Tomaso Ferrando is analysing recent reports on the financialisation of food chains and the effect of financial crises on food security in the global South[44] in order to explore how law is implicated in creating or permitting recent food shortages.

It seems important to note that law is not only relevant to issues of value and power when it is directed expressly to the sphere of market exchange. For example, family law regimes and gender norms shape the distribution of labour market opportunities as well as how unpaid reproductive labour is performed.[45] Welfare regimes enable workers to enter or exit the labour market and help determine workers' bargaining power vis-à-vis employers and each other. Permissive and restrictive norms surrounding the treatment of ethnic, racial and religious groupings establish hierarchies of access that structure the ability of these groups to create and extract 'value' through participation in GVCs.[46]

Finally, it is also significant that law can impact GVCs both by what it permits or omits as well as what it affirmatively requires. As has been discussed, a lack of legal entitlements (such as property rights or a right to organise), the absence of formal regulation, a policy or practice of selective or

Development Practice: The Indonesian Experience' 21 *Review of International Political Economy* (2014) 38—and the emphasis on 'financial development' as a central plank of the contemporary international development agenda—cf. S Soederberg, 'The Emperor's New Suit: The New International Financial Architecture as a Reinvention of the Washington Consensus' 7 *Global Governance* (2001) 453.

44 Cf., e.g., L Russi & T Ferrando, '"Capitalism A Nuh' Wi Frien": The Formatting of Farming into an Asset, from Financial Speculation to International Aid' 6 *Catalyst, A Social Justice Forum* (2015), available at http://trace.tennessee.edu/catalyst/ (last visited 7 January 2016); L Russi, *Hungry Capital: The Financialization of Food* (Zero Books, 2013); Oxfam, 'Don't Gamble with Food. How the German Financial Industry is Making a Business Out of Hunger' (2011), available at https://www.oxfam.de/sites/www.oxfam.de/files/englische_zusammenfassung_final.pdf (last visited 7 January 2016); S Murphy, D Burch & J Clapp, 'Cereal Secrets: The World's Largest Grain Traders and Global Agriculture', Oxfam Report (August 2012), available at https://www.oxfam.org/sites/www.oxfam.org/files/rr-cereal-secrets-grain-traders-agriculture-30082012-en.pdf (last visited 7 January 2016).

45 S Barrientos, 'Gendered Global Production Networks: Analysis of Cocoa-Chocolate Sourcing' 48 *Regional Studies* (2014) 791; M Werner, 'Beyond Upgrading: Gendered Labor and the Restructuring of Firms in the Dominican Republic' 88 *Economic Geography* (2012) 403.

46 M Carr & M Chen, 'Globalization, Social Exclusion and Gender' 143 *International Labour Review* (2004) 129; M Werner & J Bair, 'Commodity Chains and the Uneven Geographies of Global Capitalism: A Disarticulations Perspective' 43 *Environment and Planning* (2011) 988.

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non-enforcement, or a failure to enforce may be as powerful in shaping the behaviour of firms or the welfare of particular chain actors as formal rules regularly enforced.[47] Moreover, the decision by a state not to regulate or enforce a legal rule (e.g., a local content requirement) may result from an effort to comply with another conflicting legal obligation (such as a bilateral investment treaty or a trade agreement).[48] Law shapes power and value both when it seems to be acting and when it appears to be absent.

In sum, the ways in which law creates and distributes value and bargaining power are numerous and pervasive. We have found a focus on these dynamics in GVCs to be particularly fruitful both for enhancing our understanding of the background legal norms that are shaping the relative bargaining positions of actors in the global economy, as well as of the relative ability of such actors to participate in chain structures or to capture an equitable share of chain surplus. This strand of law and GVC research also seems important in helping to identify which legal and policy tools might be most useful to shift power and resources more equitably across chains.

Law and GVC governance

In GVC literature, governance refers to the process of coordinating the relationships among actors at different links in a value chain and it has been a core preoccupation.[49] Stefano Ponte and Timothy Sturgeon explain that '[t]he idea of governance in GVCs rests on the assumption that, while both disintegration of production and its re-integration through inter-firm trade have recognizable dynamics, they do not occur spontaneously . . . . Instead these processes are "driven" by the strategies and decisions of specific actors. The relevance of GVC governance is that it examines the concrete practices, power dynamics, and organizational forms that give character and structure to cross-border business networks.'[50]

Gary Gereffi's original formulation of governance in what were then called commodity chains identified both a 'producer-driven' logic and a 'buyer-

47 Cf. A Santos & D Trubek (eds), *The New Law and Economic Development: A Critical Appraisal* (Cambridge UP, 2006); A Santos, 'Labor Flexibility, Legal Reform and Economic Development' 50 *Virginia Journal of International Law* (2009) 43.

48 E.g. K Tienhaara, 'Regulatory Chill and the Threat of Arbitration: A View from Political Science', in C Brown & K Miles (eds), *Evolution in Investment Treaty Law and Arbitration* (Cambridge UP, 2011) 606.

49 On the narrower meaning of 'governance' in the legal discourse and generally on the competing interpretations, cf. Zumbansen (2012).

50 S Ponte & T Sturgeon, 'Explaining Governance in Global Value Chains: A Modular Theory-building Effort' 21 *Review of International Political Economy* (2014) 195, 200.

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driven' logic.[51] The criterion for differentiating between buyer- and producer-driven chains was *who* had the power to control the organisation of activities and the distribution of value along the chain: manufacturers (i.e., those who make) or retailers (i.e., those who buy). Subsequent literature shifted towards a concern with *how* governance was exercised and *why* it takes the form that it does.[52] At a general level, then, the primary focus of governance within the GVC literature has been elaborating typologies of, and developing explanations for, the ways in which coordination is achieved in geographically dispersed and organisationally fragmented production networks.

While the insights of GVC scholars on lead firms and their role in chain governance tell us much, we are only at the beginning of understanding law's role in GVC governance. More research is needed in order to better understand the circumstances under which firms assume chain coordinating functions, and in particular, about the tools (legal or otherwise) at their disposal for carrying out those functions. This is because, although the assumption of coordinating functions may be motivated by technical or managerial imperatives or pressure from competitors or consumers, not surprisingly, it may also result from legal regulation or arbitrage. A research focus on law and the distribution of power among chain actors is important not only with regard to developing a richer analysis of the mechanisms through which value is created and rent captured, but also for the purpose of elaborating the means through which chain activities are, or could be, coordinated and controlled.

A central plank of this research project is to examine the legal (as well as commercial) mechanisms through which coordination and control are exercised among actors within chains. For example, why do some chain actors coordinate some relationships through ownership and others through contract? A Coasian analysis highlighting the incentive structure set by

51 G Gereffi, 'The Organization of Buyer-driven Global Commodity Chains: How U.S. Retailers Shape Overseas Production Networks', in G Gereffi & M Korzeniewicz (eds), *Commodity Chains and Global Capitalism* (Praeger, 1994) 95.

52 The GVC literature now offers multiple conceptualisations of governance; some conceive it as sector-wide patterns of coordination that are produced by specific industry-level characteristics: see, e.g., G Gereffi, J Humphrey & T Sturgeon, 'The Governance of Global Value Chains' 12 *Review of International Political Economy* (2005) 78; T Sturgeon, 'Modular Production Networks. A New American Model of Industrial Organization' 11 *Industrial and Corporate Change* (2002) 451. Others draw from convention theory, arguing that diverse forms of governance can be found within an industry because multiple conceptualisations of quality can be used to justify or distinguish products in the market: cf. L Boltanski & L Thévenot, *On Justification: Economies of Worth* (Princeton UP, 2006) and S Ponte & P Gibbon, 'Quality Standards, Conventions and the Governance of Global Value Chains' 34 *Economy and Society* (2005) 1. Still others continue to find the most analytical value in the producer- and buyer-driven distinction, even as the proportion of value-adding activities conducted outside the organisational boundaries of the lead firm are increasing in the more capital-intensive, manufacturer-centred industries associated with producer-driven governance.

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transaction costs[53] suggests that the consolidated firm is necessary when the transaction costs of efficient coordination of independent economic actors through contract are too high. More recent firm theory focuses attention on controlling the agency costs associated with the monitoring and control of management by owners.[54] One might expect that agency costs associated with coordination and monitoring of large, globally disaggregated GVCs might be quite high. What legal mechanisms help to reconcile these costs and tensions in GVCs? In the absence of any sovereign with jurisdiction over the GVC, or any system of law binding on the GVC as a whole and each of its constituent actors, how are norms of coordination and behaviour transnationalised through the chain?

For example, four of the five types of governance proposed by Gereffi, Humphrey and Sturgeon in their influential theory of GVC governance—market, relational, captive and modular—fall under the broad category of contract.[55] To what extent are legal conceptions of contract, built within national frameworks, able to accommodate multiple, legally independent actors in networked but not necessarily arm's length relationships with one another? Might supplier contracts, for instance, provide the legal basis for liability for actors across the chain?[56] To what extent are current conceptions of contract able to evolve in order to deal with the public and regulatory functions that lead firms exercise, and sometimes delegate?[57] How does law affect who has the ability to set the terms of exchange in a GVC? And which legal forum has authority to adjudicate disputes arising either between participants in the GVC or between

53 Cf. R Coase, 'The Nature of the Firm' 4 *Economica* (1937) 386 (suggesting markets and firms as competing model types in the organisation of production).

54 See, e.g., J Armour, H Hansmann & R Kraakman, 'Agency Problems and Legal Strategies', in R Kraakman et al. (eds), *The Anatomy of Corporate Law*, 2nd ed. (Oxford UP, 2009) 35.

55 Cf. Gereffi, Humphrey & Sturgeon (2005).

56 See J Salminen, 'Contract Boundary Spanning Governance Mechanisms: Conceptualizing Fragmented and Globalized Production as Collectively Governed Entities' forthcoming in 23 *Indiana Journal of Global Legal Studies* (2016) (using comparative law insights to establish a transnational discourse in law and value chain governance which goes beyond national conceptualisations of contract and tort).

57 Suggestions acknowledging the public and regulatory function of contracts include relational contracting—cf. as *locus classicus* S Macaulay, 'Non-Contractual Relations in Business: A Preliminary Study' 28 *American Sociological Review* (1963) 1 and I Macneil, 'Relational Contract Theory: Challenges and Queries' 94 *Northwestern University Law Review* (2000) 877—as well as, more recently, 'contract networks'—cf. G Teubner, *Networks as Connected Contracts* (Hart, 2011)—'organisational contracts'—cf. S Grundmann, F Cafaggi & G Vettori (eds), *The Organizational Contract. From Exchange to Long-Term Network Cooperation in European Contract Law* (Ashgate, 2013)—and 'contracting for innovation'—cf. R Gilson, C Sabel & R Scott, 'Contracting for Innovation: Vertical Disintegration and Interfirm Collaboration' 109 *Columbia Law Review* (2009) 431.

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participants and third parties external to the GVC?[58] Or even more fundamentally, what distinguishes a GVC from a series of disarticulated commercial (or market) transactions and what is the role of law in the distinction?

Several projects have been initiated by members of our group around the theme of *law and governance*. In one, Jennifer Bair, Jason Jackson and Brishen Rogers trace the emergence of a new form of labour regulation that they identify as '*supply chain liability*'. Prior private regulatory efforts such as transnational tort litigation and unilateral codes of conduct laid the groundwork for such new legal regimes, but states have begun to push beyond the limitations of norm-based governance. For example, Israel, the Netherlands and various states within the US have begun to hold domestic firms jointly liable for their overseas contractors' and suppliers' labour law violations. While those laws are embedded in national legal systems, and accordingly vary in many ways, they share a common core: they establish a duty of care rooted in tort doctrines requiring party A to prevent party B from causing harms to party C. Bair, Jackson and Rogers examine the degree to which the legal logics underlying this emergent regulatory form rest on claims about the nature of lead firm governance in specific GVCs and its effects. Specifically, they suggest three dimensions which they believe will prove critical for developing the jurisprudence of supply chain liability: the specific labour practices for which lead firms should be responsible; what standards of liability should apply so as to differentiate firms based upon their capacity to ensure decent work and whether those standards should vary based upon the geographic location of production work; and provisions for private or public enforcement, whether in domestic or new transnational tribunals.

Additional projects by Dez Farkas and Jaakko Salminen explore the theme of law and governance through contract. Farkas's project draws on examples from the recent financial crisis and the electronics sector and uses recent developments in corporate governance to interrogate the structural and distributional dimensions of GVCs and their underlying assumptions of value. His project pays particular attention to how complex inter-firm relations, often linked by contract alone, can undermine efforts to hold domestic firms liable for violations by the foreign affiliates over whom they exercise governance, and

58 Legal scholarship on international commercial arbitration, for example, thus far almost completely fails to recognise or analyse the origins and deeper effects of variance in bargaining power, treating disputing parties as formal legal equals despite vast material differences. Cf. G Baars, *The Corporation, Law and Capitalism* (Brill, forthcoming); K Amaeshi, O Kingsley Osuji & P Nnodim, 'Corporate Control and Accountability in supply chains of Multinational Corporations: Clarifications and Managerial Implications', ICCSR Research Paper No. 46-2007, available at http://www.nottingham.ac.uk/business/ICCSR/research.php?action=download&id=34 (last visited 7 January 2016).

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explores the legal mechanisms that enable internal firm governance to influence other value chain actors.

Salminen's work involves bringing together research in GVC governance with research into the legal mechanisms used for governing complex contractual structures. Turning towards comparative law, this project aims to elaborate a transnational discourse on law and value chain governance that transcends different national conceptualisations of contract, tort and other relevant legal relationships.

From here we can see that law is not, or not only, an exogenous factor that firms confront in making decisions about where and how to do business, nor can it be reduced to an external force that 'guides', 'drives', 'pulls' and 'pushes' the value chain. This is because, while the legal environment undoubtedly shapes firm-level decisions, the large corporations that coordinate many of the most expansive and consequential GVCs are not simply 'context-takers'. They also help to produce the rules that govern their operations through, among other things, the pursuit of their business objectives.

In his work on transnational corporations, Dan Danielsen has sought to catalogue some of the ways in which corporate actors create and shape local, national, regional and transnational legal regimes. He states:

> Sometimes [corporations] contribute through interpretations of or reactions to a legal rules scheme. Sometimes they supply rules where none exist. Sometimes they shape a rule scheme through direct political or economic pressure on regulators. Sometimes they shape it by evading the rule scheme and doing business elsewhere. Sometimes to satisfy other business purposes they adopt more stringent practices than the applicable rules require. Sometimes they act on their own to get a market edge or exploit an opportunity. Sometimes they act in groups to create a harmonized regulatory environment or to prevent regulation. These diverse forms of corporate actions and decisions are related to the applicable legal rules and the acts and decisions of regulators, but are not wholly determined by them. When corporations create or shape the content, interpretation, efficacy, or enforcement of legal regimes, and, in so doing, produce effects on social welfare similar to the effects resulting from rulemaking and enforcement by governments, corporate actors are engaged in governance.[59]

59 D Danielsen, 'How Corporations Govern: Taking Corporate Power Seriously in Transnational Regulation and Governance' 46 *Harvard Journal of International Law* (2005) 411, 412.

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Deborah McBarnet has argued that the work of lobbyists, lawyers, accountants and strategists is a fundamental component of GVCs. This work, which she calls 'transnational legal work', is

> not just about playing with the different laws of different jurisdictions, finding tax—or regulatory—havens, set up precisely for that purpose. It is about playing with law per se, even within one jurisdiction. It is about constructing 'creative compliance', finding legal forms which fall outside disadvantageous or inside advantageous legal categories. . . . It is about concocting legal forms as yet undreamt of by legislators and regulators.[60]

From this perspective, law not only acts upon firms, delimiting or regulating their global activities; it is also a resource that corporate actors mobilise and innovate to produce certain value chain configurations and effects as well as a product of the organisational and business choices undertaken by chain actors in and through chain activities.

Our research agenda on the theme of chain governance, then, not only calls for additional consideration of how states, directly and indirectly, shape value chains specifically by and through law, but also how firms and chains shape law and sovereignty. Perhaps more than any other, this conundrum crystallises the central problem orienting our project: how to better understand the productive tension between the territorial organisation of law and the jurisdictional boundaries that demarcate distinct legal regimes on the one hand, and the global logic of value chains that operate across, but also through, these regimes, transforming them in the process, on the other.

CONCLUSION

By now it should be clear that our research ambition extends well beyond exploring the impact of GVCs on legal scholarship or of law on GVCs. Rather, we aim for nothing less than a legal ontology of the GVC, which under conditions of contemporary capitalism, should take us some distance towards a richer theoretical and empirical understanding of the global economy *tout court*. Doubtless, bringing law into the centre of GVC analysis will add substantial complexity to a field already rife with complexity. Yet, as we hope we have demonstrated, the continued relegation of law to 'exogeneity' or 'context' misses a great deal of the constitutive role of law in the structure, geography and function of GVCs; the creation, recognition and distribution of value in GVCs;

60 DM McBarnet, 'Transnational Transactions – Legal Work, Cross-border Commerce and Global Regulation', in M Likosky (ed.), *Transnational Legal Processes* (Butterworths, 2002) 369, 385.

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and the mechanisms through which GVCs are coordinated and controlled. In other words, simplifying law out of the GVC story leaves many of the core explanatory aspirations of the traditional GVC analytic unmet. Through this intervention, and our future work, we hope to begin to address this gap.

At the same time, we remain cognisant that the GVC is not an objective fact but a heuristic for helping to understand the world. And, like any such heuristic, the GVC cannot begin to capture the complexity and contingency characterising real-world global production. For this reason, we must remain attuned to the ways in which different theoretical conceptions of the GVC are being deployed by or gaining traction with different scholars and institutions and the purpose(s) to which those conceptions are being put. After all, the claim that GVCs are the 'face of the world economy' can work to naturalise specific ways of organising international economic activity, and legitimate particular modes of incorporating developing country firms into global trade. From this critical perspective, the GVC construct might itself be seen as a discursive resource that is being deployed to present as self-evident or inevitable developments that result from specific political and economic decisions.[61] At the same time, the GVC concept is also being mobilised by activists to 'name and shame' corporations;[62] by global union federations seeking to organise a set of workplaces that are linked to the same lead firm;[63] and by environmental activists that lobby supermarkets to exclude genetically modified products from their supply chain.[64]

In laying out this research agenda, then, we approach GVCs as the terrain from which we can construct (hopefully) more useful maps of a rapidly changing and complicated global political economy, yielding a deeper understanding of the relationship between law, value and power and the global political economy more generally. At the same time, we acknowledge that people (including us) generally make maps with a particular destination in mind if not in view. Thus, even as we pursue our individual and collective projects of value chain mapping, we aim to highlight the necessarily political or normative implications of our renderings–an aspiration we hope our attention to law, value and power will help us to keep squarely in view.

61 See Neilson (2014) 38; Werner, Bair & Fernández (2014).

62 T Bartley & C Child, 'Shaming the Corporation: The Social Production of Targets and the Anti-Sweatshop Movement' 79 *American Sociological Review* (2014) 653.

63 M Helfen & M Fichter, 'Building Transnational Union Networks across Global Production Networks: Conceptualising a New Arena of Labour–Management Relations' 51 *British Journal of Industrial Relations* (2013) 553.

64 R Schurman & W Munro, 'Targeting Capital: A Cultural Economy Approach to Understanding the Efficacy of Two Anti-Genetic Engineering Movements' 115 *American Journal of Sociology* (2009) 155.

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