

# Global Justice, Labor Standards and Responsibility

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*In this Article we propose an analytical framework for allocating responsibility for the protection of worker's rights in the global labor market. Since production and services have expanded globally, and the state's ability to protect worker's rights on the national level has been undermined, the main challenge today is to find the appropriate institutional arrangements that allocate responsibility in a manner that realizes basic labor standards. The Article argues that in the context of a global labor market, responsibility should be perceived in terms of "shared responsibility," whereby responsibility is shared by a complex network of agents and institutions that take part in global production and services. Within these global social networks and connections, labor relations generate a unique type of social connection which implies a special type of commitment and obligation towards workers. We propose four principles to guide the allocation of responsibility for remedying the unjust conditions of workers in the world, based on measures of connectedness (between people in joint activity), capacity (to relieve workers' hardship), benefit (from the unjust conditions), and contribution (to bringing the hardship about).*

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## INTRODUCTION

Who is responsible, in this age of globalization, for remedying workers' unjust conditions?<sup>1</sup> This key question underpins contemporary debates regarding existing as well as proposed institutional arrangements for the promotion of workers' rights, such as, for example, various types of corporate and social codes, provisions linking labor rights and trade, and norms generated by international organizations such as the International Labor Organization (ILO). The inquiry rests on two general assumptions. One is that workers' conditions in the global era are unjust. A second assumption is that the transition from the nation-state era to the globalized era mandates a new evaluation of the agents and institutions responsible for workers' rights. In this Article we will examine and clarify these two assumptions. Although the emerging economic global reality, in which production and services have expanded globally, has undermined the ability to protect workers' rights,<sup>2</sup> the moral commitments towards labor rights have not been diminished. Thus, we argue, the responsibility for alleviating the dire conditions of workers around the world is part of a duty of justice. Therefore, currently the main challenge is to find the appropriate institutional arrangements that would allocate responsibility in a way that realizes basic labor standards.

The Article proposes an analytical framework for allocating responsibility for the protection of workers' rights in the global labor market. One of the main purposes of such an analysis is to bridge the existing gap in the current literature between normative theories of global justice and empirical discussions of global labor standards. Despite the crucial role that labor has played in recent processes of economic, legal and political globalization, and the devastating consequences of global transformations on work conditions around the world, global justice theories have by and large failed to seriously engage with the sphere of labor and provide a normative examination of contemporary regional and global labor institutions.<sup>3</sup>

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1 For a detailed description of unjust conditions of workers in the world, see *infra* Part I.

2 In this Article we use the terms "workers' rights" and "labor standards" interchangeably.

3 In recent years, a number of scholars have recognized the need to bridge the gap between the normative paradigm of global justice and the empirical reality of various aspects of global development. See, e.g., Simon Caney, *Markets, Morality and Climate Change: What, if Anything, Is Wrong with Emissions Trading?*, 15 *NEW POL. ECON.* 197 (2010) (in the area of the environment); Thomas Pogge, *Access to Medicines*, 1 *PUB. HEALTH ETHICS* 73 (2008) (in the area of health); Eszter Kollar,

In seeking to apply principles of justice to the empirical field of global labor, this Article adopts a relational approach to justice, which rests on the assumption that principles of distributive justice cannot be formulated or justified independently of the practice they regulate.<sup>4</sup> Thus, principles of global justice should be strongly connected to the subject matter and policies that they are supposed to regulate. The Article thus goes beyond the traditional global justice debate of past decades, which has tended to focus on the question of the scope of justice, but has

failed to illuminate difficult and pressing questions concerning specific responsibilities with respect to the design and conduct of such existing organizations as the World Bank, the International Monetary Fund, the United Nations, and the World Trade Organization, or the justice of such institutional arrangements as rules governing taxation, labor market, and the use of force.<sup>5</sup>

As Christian Barry and Thomas Pogge have noted, "this has led, unsurprisingly, to accounts of normative responsibilities with respect to global justice that have tended to be thin, obscure and sometimes rather unrealistic."<sup>6</sup>

The centrality of the concept of responsibility to the discussion on labor in the global market is necessary and useful for both normative and empirical reasons. First, as David Miller suggested, investigating responsibility in discussions of global justice allows for a distinction between two different kinds of duties: duties which are a matter of justice, for which reason we are required to perform them, and humanitarian duties, which are less weighty.<sup>7</sup> This distinction has practical implications, especially if we consider the costs that agents can reasonably be expected to bear while discharging their moral obligations. Moreover, "duties of justice are enforceable, in the sense that third

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Locating Injustice in Transnational Health-Worker Migration, paper presented at Univ. W. Eng. Conf. on Global Ethics, Bristol, U.K. (July 1, 2010) (in the area of migration).

4 Andrea Sangiovanni, *Global Justice, Reciprocity, and the State*, 35 PHIL. & PUB. AFF. 318 (2007); see also JOHN RAWLS, *A THEORY OF JUSTICE* 25 (1979); MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 6 (1983).

5 Christian Barry & Thomas Pogge, *Introduction*, in *GLOBAL INSTITUTIONS AND RESPONSIBILITIES: ACHIEVING GLOBAL JUSTICE* 1, 2 (Christian Barry & Thomas Pogge eds., 2006).

6 *Id.*

7 DAVID MILLER, *NATIONAL RESPONSIBILITY AND GLOBAL JUSTICE* 248 (2007).

parties may be justified in applying sanctions to those who default on them. Not so with humanitarian duties."<sup>8</sup>

Second, a clearer and more detailed exploration of the concept of responsibility in the normative sense will facilitate a more nuanced understanding of the scope and methods of enforcement of international labor law, which is one of the major problems in the transnational labor law arena today. The analysis of responsibility allocation (which will follow in Part IV) presents reasons for different patterns of assigning responsibility to various agent institutions regarding workers rights.<sup>9</sup> However, a concrete application of the proposed analytical framework of responsibility allocation to particular labor standards requires a much more nuanced and comprehensive empirical research. We therefore refrain from assigning detailed responsibility to particular agents. Such a task goes beyond the scope of this Article.

In what follows we will first clarify the claim that the hardship suffered by many workers in the world today is unjust and requires alleviation as a matter of justice (Part I). We then turn to the question of responsibility. In Part II we argue that in the context of the global labor market, responsibility should be perceived in terms of "shared responsibility." Following Iris Young's social connection model of responsibility, we agree that the global production of services and products should be seen as involving a complex network, including a variety of agents that are socially connected. However, in contrast to Young, we emphasize that labor relations generate a unique type of social connection, which implies special types of commitment and obligation towards workers (Part III). Lastly, in Part IV, we propose a set of four principles for guiding the allocation of responsibility for remedying the unjust conditions of workers in the global labor market. While this set of principles draws heavily on Christian Barry's model, we further refine and illuminate them to clarify their applicability in the sphere of global labor.

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<sup>8</sup> *Id.*

<sup>9</sup> The concept of responsibility is also internal to the discourse of transnational labor law and evident in the notion of corporate social responsibility (CSR). It is therefore inherently linked to the activities of transnational corporations (TNCs) as related to labor law, and thus particularly appropriate for normative investigation. For a critical discussion of the discourse of "responsibilization," see Ronen Shamir, *The Age of Responsibilization: On Market-Embedded Morality*, 37 *ECON. & SOC'Y* 1 (2008).

## I. UNJUST CONDITIONS OF WORLD'S WORKERS

Only a minority of working people today hold jobs that are well paid, where their fundamental rights are respected, and which ensure them some security in case of job loss, personal or family illnesses, or other difficulties.<sup>10</sup> In 2008, thirty-nine percent of the world workforce, 1.183 million workers, earned less than \$2 a day, defined as the poverty line; twenty-one percent of these workers earned less than \$1.25, defined as the extreme poverty line.<sup>11</sup> In sub-Saharan Africa and South Asia, around four-fifths of the employed are classified as "working poor."<sup>12</sup> This dire situation is most common in — but not limited to — developing regions. The 2008 economic crisis has demonstrated that sizeable economic sectors are equally vulnerable to economic shocks, further diminishing hopes for decent work conditions.<sup>13</sup>

It is estimated that the majority of workers in the world today work in the informal economy, and most of those workers come from the developing countries.<sup>14</sup> 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. Atypical or non-standard work is prevalent, although less salient, in developed countries as well, accounting, for example, for twenty-five percent of the workforce in the United States.<sup>15</sup> Atypical jobs are taken on by the most vulnerable social groups, including migrants, minorities, women and children. It is estimated that 12.3 million persons are the victims of forced labor at any given time around the world.<sup>16</sup> Among them, 2.5 million are trafficked.<sup>17</sup> About forty-three percent of the trafficked victims are subjected to forced

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10 ILO, GLOBAL EMPLOYMENT TRENDS 14 (2009).

11 ILO, GLOBAL EMPLOYMENT TRENDS 22 (2010).

12 ILO, *supra* note 10, at 13. "Working poor" are defined here as earning two dollars a day or less.

13 See ILO & WTO, GLOBALIZATION AND INFORMAL JOBS IN DEVELOPING COUNTRIES: A JOINT STUDY OF THE INTERNATIONAL LABOUR OFFICE AND THE SECRETARIAT OF THE WORLD TRADE ORGANIZATION 10 (2009), available at <http://www.ilo.org/public/english/bureau/inst/download/globalinform.pdf>.

14 CHRISTINE KAUFMAN, GLOBALIZATION AND LABOUR RIGHTS 5 (2007).

15 Andreas Bieler, Ingemar Lindberg & Devan Pillay, *The Future of the Global Working Class: An Introduction*, in LABOUR AND THE CHALLENGES OF GLOBALIZATION 1, 10 (Andreas Bieler et al. eds., 2008).

16 Roger Plant, *Forward*, in FORCED LABOR: COERCION AND EXPLOITATION IN THE PRIVATE ECONOMY, at vii (Beate Andrees & Patrick Belser eds., 2009).

17 U.N. GIFT, GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING (2007), available at [http://www.unglobalcompact.org/docs/issues\\_doc/labour/Forced\\_labour/HUMAN\\_](http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_)

commercial sexual exploitation and ninety-eight percent of them are women.<sup>18</sup> Despite signs of progress in gender equality over the past fifteen years, all states still exhibit a significant gap between women and men in terms of job opportunities and quality of employment. Women consistently receive lower wages, as they work in segregated sectors that are generally characterized by low pay, long hours, and oftentimes informal working arrangements.<sup>19</sup>

These dire conditions of so many workers in the world are unjust. The characterization of these conditions as unjust rests on several justifications. First, it rests on a widespread shared moral intuition that people who work deserve to live in dignity.<sup>20</sup> Even those who believe that moral obligations towards the poor do not extend beyond state borders are still willing to acknowledge that working people deserve a minimal standard of living. Such an intuition is expressed by the controversial distinction between the "deserving poor" and "un-deserving poor," namely, the contention that only those who exhibit a willingness to participate in the workforce are entitled to social benefits. This distinction has been central in the workfare reform debates in many Western countries in the last twenty-five years.<sup>21</sup>

Second, labor is instrumental to poverty reduction. A commitment to the goal of poverty reduction usually entails the demand to raise employment rates or to provide a minimum standard of living wage to workers. Achieving "full and productive employment and decent work for all" was recognized

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TRAFFICKING\_-\_THE\_FACTS\_-\_final.pdf; *see also* UNICEF, U.K. CHILD TRAFFICKING INFORMATION SHEET (2003).

18 ILO, FORCED LABOUR STATISTICS FACTSHEET (2007) (claiming as well that each year more than 1.2 million children are trafficked worldwide).

19 ILO, WOMEN IN LABOUR MARKETS: MEASURING PROGRESS AND IDENTIFYING CHALLENGES 5 (2010), *available at* [http://www.ilo.org/wcmsp5/groups/public/-ed\\_emp/-emp\\_elm/-trends/documents/publication/wcms\\_123835.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_emp/-emp_elm/-trends/documents/publication/wcms_123835.pdf).

20 This intuition is expressed in key documents of international human rights law, such as the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc A/810 (Dec. 10, 1948); International Convention on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966); and International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

21 This distinction constituted the main justification for U.S. president Bill Clinton's welfare policies "From welfare to workfare," and has also played a prominent part in the third way policies of Tony Blair in Britain. *See* ROBERT SOLOW, WORK AND WELFARE (1998).

as one of the targets to be achieved in order to meet the first goal of the Millennium Developmental Goal: reducing poverty and hunger.<sup>22</sup>

Third, work constitutes a main source of human dignity.<sup>23</sup> Employment has essential psychological functions such as personal fulfillment and self-expression, opportunities for social interaction, a sense of status and prestige. Working under dire and humiliating conditions undermines human dignity and contributes to social exclusion.<sup>24</sup>

Lastly, the dire conditions of workers in the world today are the result of a continuous state of exploitation. By exploitation, we mean a situation where someone takes unfair advantage of others. In such unfair relationships, the exploiters gain more than they deserve, while the exploited parties receive less than they deserve. The judgment regarding what each of the parties deserves depends on some standard of fairness by which we assess the relationships.<sup>25</sup> It is important to note that the fact that victims of exploitation may gain more under their exploitative conditions than they did in their previous situation does not reduce the level of exploitation in their current relationship. Thus, for example, the fact that many sweatshop employees earn more money when working for a transnational corporation than they would have earned in any other alternative does not make the relationship between the transnational corporations and their workers any less exploitative.<sup>26</sup>

In the sphere of global labor, exploitation can occur on either an interactional or institutional level. On the interactional level, exploitation

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22 U.N., THE MILLENNIUM DEVELOPMENT GOAL REPORT 8-11 (2010).

23 The achievement of "decent work" for all, i.e., work that is based on conditions of freedom, equity, security and human dignity, was recognized as the primary goal of the ILO. See ILO, REPORT OF THE DIRECTOR-GENERAL: DECENT WORK (1999), available at <http://www.ilo.org/public/english/standards/reln/ilc/ilc87/rep-i.htm>; see also Economic and Social Council, ICESCR General Comment No. 18: Article 6 (The Right to Work), U.N. Doc. E/C.12/GC/18 (Nov. 24, 2005), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.GC.18.En](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.GC.18.En) (a recent statement, according to which, "the right to work is part of human dignity").

24 GUY STANDING, GLOBAL LABOR FLEXIBILITY SEEKING DISTRIBUTIVE JUSTICE (1999); see also Nancy C. Morse & Robert S. Weiss, *The Function and Meaning of Work and the Job*, 20 AM. SOC. REV. 191 (1955).

25 For criticism of the global economic order from an exploitation-based argument, see RICHARD MILLER, GLOBALIZING JUSTICE: THE ETHICS OF POVERTY AND POWER 58-83 (2010); see also Chris Meyers, *Wrongful Beneficence: Exploitation and Third World Sweatshops*, 35 J. SOC. PHIL. 319 (2004); Lea Ypi, *On the Confusion Between Ideal and Non-ideal in Recent Debates on Global Justice*, 58 POL. STUD. 536 (2010); Aaron James, *How to Defend Sweatshop Labor: Fairness in the Global Economy*, in FAIRNESS IN PRACTICE: A SOCIAL CONTRACT FOR A GLOBAL ECONOMY (unpublished manuscript) (on file with author).

26 MILLER, *supra* note 25, at 61 (illustrating this by an example: A person that agrees

occurs in the relationship between workers and different actors in the chain of production. On the institutional level, exploitation occurs due to the global regulation of trade and labor and the roles and relationships between developed states and developing states. This last distinction is useful when addressing the main query of this Article, namely who is responsible for remedying the unjust conditions of workers in the age of globalization.

If the current conditions of many workers in the world today are unjust, two questions arise: First, what would be considered just conditions of workers? Second, who is responsible for bringing these just conditions about? The aim of this Article is to focus on the second question. Hence, we will bypass the longstanding debate as to what constitutes justice in the sphere of labor, and whether just conditions of labor should be defined in terms of reduction of sharp inequalities among individual workers across states, or understood in terms of a minimal basic set of standards and rights. Instead, we adopt, as a working assumption, a minimalist definition of just conditions of labor that requires that certain basic labor standards be met.<sup>27</sup> Thus, the main question we wish to explore in the rest of this Article is: Who is responsible for making sure that all workers in the world enjoy this basic level of standards?

Until recent years, the nation-state was considered the main agent responsible for legislating and enforcing labor standards, to be applied within state borders. In the age of globalization, which is characterized by a decrease in state governance, various labor institutional arrangements have been called upon to assume responsibility for workers' rights. Among them are standards prescribed by the International Labor Organization (ILO), private modes of regulation included under the umbrella of Corporate Social Responsibility, as well as unilateral, bilateral and multilateral agreements that link together trade and labor standards. Each of these institutional arrangements is underpinned by a different conception of responsibility towards workers and different principles for allocating responsibility among the various actors in the global labor market. In order to morally evaluate

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to pay exaggerated sums for water in the desert is better off, as she has avoided dying of thirst, but this transaction is still exploitative).

<sup>27</sup> Our minimalist definition includes the four ILO core rights, as well as basic healthcare and safety regulations, and protection of a minimum wage. The four core ILO labor rights were specified in the ILO, DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (1998) and include: elimination of all forms of forced or compulsory labor; effective abolishment of child labor; elimination of discrimination in respect of employment and occupation; and ensuring freedom of association and the right to collective bargaining.



both the existing and the proposed arrangements for promoting international labor standards, one needs to develop a theoretical framework for allocating responsibility in the sphere of labor. In the next Part, we take a first step in this direction, clarifying what we mean by the term "responsibility," particularly "shared responsibility."

## II. RESPONSIBILITY

The concept of responsibility has proven to be slippery and confusing, encompassing diverse meanings that are sometimes mistakenly used interchangeably.<sup>28</sup> While we by no means intend to provide an encompassing theory of responsibility here, it is essential to clarify what we mean by the term. In what follows we therefore provide a conceptual toolbox, which will be applied later in our analysis of responsibility in the sphere of the global labor market.

David Miller distinguishes between two types of responsibility: *outcome responsibility*, which determines whether an agent produced an outcome, and thus is required to compensate for the damage it caused; and *remedial responsibility*, which determines whether an agent has the obligation to remedy a harm caused not necessarily by the agent itself.<sup>29</sup> The two types of responsibility are not completely separate. One of the factors that are taken into account in the allocation of remedial responsibility is who bears outcome responsibility.

In discussing global justice and labor, remedial responsibility is our main concern, since, as Miller explains, "the idea of remedial responsibility potentially applies whenever we encounter a situation in need of remedy."<sup>30</sup> As mentioned above, such need of remedy characterizes the conditions of many workers in the world today. Their hardship warrants our consideration as to whose responsibility it is to remedy it.

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28 On the problematic nature of the concept of responsibility, see MILLER, *supra* note 25, at 82-83; *see also* DARREL MOELLENDORF, *GLOBAL INEQUALITY MATTERS* 143 (2009).

29 MILLER, *supra* note 7, at ch. 4; *see also* Toni Erskine, *Assigning Responsibility to Institutional Moral Agents: The Case of States and 'Quasi-States,'* in *CAN INSTITUTIONS HAVE RESPONSIBILITIES? COLLECTIVE MORAL AGENCY AND INTERNATIONAL RELATIONS 1* (Toni Erskine ed., 2003) (making a similar distinction between *prospective* and *retrospective* responsibility). For a different classification of types of responsibility, see MOELLENDORF, *supra* note 28, at 143.

30 MILLER, *supra* note 7, at 98.

The starting point of any consideration of remedial responsibility is "a state of affairs in need of remedy . . . and we then ask whether there is anyone whose responsibility it is to put that state of affairs right."<sup>31</sup> In the context of labor, when the goal is defined in terms of achieving a minimum of basic rights and standards, considerations of remedial responsibility focus on the question whose responsibility it is to ensure that workers receive these basic rights and standards.

Remedial responsibility may be allocated to individuals or to collectives. What types of collectives are capable of acting as moral agents is a question much debated in the philosophical literature. For the purpose of this discussion, we consider entities that may bear collective responsibility those that have the capacity to deliberate morally and to decide collectively on a purposive action.<sup>32</sup> Such entities may include identity groups such as nations or organized religious groups, as well as institutions such as corporations, political parties, international institutions, etc.

An additional relevant theoretical distinction is that between the concepts of individual and shared responsibility. The former identifies a single actor or agent, whether an individual or a collective, as the bearer of responsibility, whereas according to the latter, responsibility is allocated among various actors or agents. While the former characterizes the traditional model of legal liability, the latter is more compatible with current global legal, social and economic realities.<sup>33</sup> We believe that under the new complex conditions

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31 MILLER, *supra* note 25, at 98. Our understanding of remedial responsibility is broader than Miller's. We accept Moellendorf's criticism of Miller, asserting that "Miller focuses on simple interactional problems in which the assignment of costs for remediating an event should be guided by the assumption that before the tort-like events holdings were just. That assumption cannot guide us when the background institutions, which establish holdings, are in question." MOELLENDORF, *supra* note 28, at 146. Thus, for example, the current legal distribution of benefits and burdens between employers and workers should not necessarily be considered a just distribution.

32 Erskine, *supra* note 29.

33 From a legal perspective, the need to address the new complex economic and social realities by extending the scope of responsibility has been recognized recently by several court decisions, which have attempted to introduce various innovative doctrines in the area of tort law and environmental law, on both national and transnational levels of litigation. See OREN PEREZ, *ECOLOGICAL SENSITIVITY AND GLOBAL LEGAL PLURALISM* 191 (2004) (regarding the doctrine of "direct liability" introduced by the U.K. supreme court); see also MARGOT SALOMON, *GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT ON INTERNATIONAL LAW* (2007); Ariel Porat, *Ahrayut Kibutzit Bedinei Nezikin [Collective Responsibility in Tort Law]*, 23 MISHPATIM [HEBREW UNIV. L.J.] 311

that characterize the global era, responsibility for the current global state of affairs, particularly in the sphere of global labor, can no longer be attributed exclusively to a single actor or agent. Furthermore, the growth of global trade and the internationalization of production chains have increased the number and variety of actors that may be seen as bearing some responsibility for remedying the unjust conditions of workers.<sup>34</sup> Finally, it is doubtful whether any one actor is capable of remedying the situation single-handedly. We therefore adopt the notion of shared responsibility, following Iris Young,<sup>35</sup> as a central concept for analyzing responsibility in the realm of global labor.

Iris Young is among the few who have attempted to link the normative question of justice and responsibility allocation with the empirical reality of the global labor market. Using a cosmopolitan perspective of global justice, Young developed an original theory that rests on the concept of "shared responsibility" as a basis for her "social connection model of responsibility."<sup>36</sup> Young attributes the grim state of many of the world's laborers to a state of global structural injustice. Moral agents who are part of the social structure share moral responsibility for remedying the unjust conditions of workers. Our responsibility stems from our position in what Young terms "the social connection model of responsibility." According to this model, responsibility is assigned to and shared by all actors who contribute by their actions to the processes that produce unjust outcomes. "Our responsibility derives from belonging together with others in a system of interdependent processes of cooperation and competition through which we seek benefits in aim to realize projects."<sup>37</sup> The structure and relationship of the global apparel industry are used by Young as an example of a structural connection that exhibits structural injustice.<sup>38</sup>

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(2004) (Isr.) (regarding the doctrines of "market share liability" and "enterprise liability" in U.S. tort litigation).

34 We will further elaborate this point in Part III.

35 Iris Young, *Responsibility and Global Labor Justice*, 12 J. POL. PHIL. 365 (2004) [hereinafter Young, *Responsibility and Global Labor Justice*]; Iris Young, *Responsibility and Global Justice: A Social Connection Model*, 23 SOC. PHIL. & POL'Y 102 (2006) [hereinafter Young, *Responsibility and Global Justice*].

36 Young, *Responsibility and Global Justice*, *supra* note 35.

37 *Id.* at 119.

38 Social connections are viewed by Young as prior to political institutions both ontologically and morally. Like Locke and other social contract philosophers, as well as more modern theorists such as Charles Beitz and O'Neill, Young argues that political institutions arise because people need them to regulate their social connections. According to Young, "the moral status of political institutions arises from the obligations of justice generated by social connection. Such institutions are instruments through which these obligations can be discharged." *Id.* at 105. In this

Young's model of shared responsibility is sharply distinguished from the standard individualistic legal understanding of responsibility, exemplified by what she terms "the liability model."<sup>39</sup> Young specifies five main differences between her social connection model of shared responsibility and the liability model, which is paradigmatic to legal thinking and practice. First, in contrast to the liability model, which isolates specific perpetrators, the social connection model of responsibility rests on the understanding that harm resulting from structural injustice is a consequence of the participation of millions of people in institutions and practices that produce unjust results. Second, the social connection model of responsibility judges background conditions, such as norms and institutions, and seeks to morally evaluate conditions which might be considered a normative baseline in legal liability terms. Third, it is more forward than backward looking. In Young's words, "The point is not to blame, punish, or seek redress from those who did [wrong], but rather to enjoin those who participate by their actions in the process of collective action to change [the injustice produced through structures]."<sup>40</sup> Fourth, responsibility is not borne merely by those who are isolated as liable, but rather is shared by all those who contribute by their actions to the structural processes producing injustice. Each of them is partially responsible for the outcome.<sup>41</sup> Fifth, responsibility, in the social connection model, can be discharged only through collective actions, defined in political terms.<sup>42</sup>

In Young's model, millions of agents who contribute by their actions to the process that produces unjust outcomes in the apparel industry share the responsibility for remedying the structurally unjust conditions that the industry produces and is based on. These include, according to Young, unskilled workers, immigrant workers and potential workers, as well as entrepreneurs, investors in large exporting firms, executives in the multinational corporations, factory owners, city governments, consumers,

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sense, the nationalist global position makes prior what is posterior from a moral point of view.

39 *Id.* at 115-25.

40 *Id.* at 122.

41 Young's sense of shared responsibility in the social connection model is different from other models of shared responsibility, for example, the one provided by SALOMON, *supra* note 33. While Young's shared responsibility is assigned only within the chain of social connection, Salomon's shared responsibility is understood in more global terms, independent of any social connection. It is assigned on the international level, to all states, even if they do not belong to the chain, because globalization affects everyone.

42 Young, *Responsibility and Global Justice*, *supra* note 35, at 123-25.

universities, members of the fashion industry, such as designers and fashion journals' editors, and others.

These actors do not share equal responsibility. Young provides four parameters for allocating responsibility, based on the actor's position in the social structure.<sup>43</sup> These parameters are: (a) *power*, actual or potential, to influence the unjust process at hand; (b) *privilege*, i.e., the level of benefit from the structural injustice; (c) *interest* in the transformation of the structural injustice, which, as she notes, unfortunately tends to coincide with minimal power to affect such a transformation; and (d) *collective ability*, i.e., the relative ability to remedy the situation by joining others in taking collective actions to change unjust structures. Political collective actions can be achieved by influencing state institutions to change this reality, but the goal can also be attained through global interaction, as in the case of the anti-sweatshop movement.

While we recognize the advantages of Young's model of social connection, we part ways with her in respect to two central points. First, we argue that one of the main drawbacks of Young's model is that it ignores the special type of social connection embedded in labor relations, as these have been regulated in the past two hundred years. She uses the sweatshop conditions as an example to illustrate one type of structural injustice among others in various areas of life, or fields of law, yet she disregards the special moral and legal implications of the traditional triangular relationship that characterizes labor relations — between the state, the employer and the employee. This unique type of social connection carries with it a special distribution of responsibilities. In the next Part we will elaborate on the main characteristics of a unique type of social connection constituted by labor relations, which we term the "thick labor connection."

Our second criticism of Young's model concerns her principles of responsibility allocation. While we agree with Young that all actors linked through the social connection share some responsibility for the unjust outcomes and that assigning responsibility among these actors should be based on their social position, we argue that the unique features of labor relations generate a special kind of commitment and responsibility that should be taken into account in any system of responsibility allocation in the global labor sphere. As we shall attempt to show in Part IV, a more accurate and detailed understanding of labor relations points to different parameters for allocating responsibility for remedying workers' unjust conditions.

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43 *Id.* at 125-30.

### III. THE THICK LABOR CONNECTION

The traditional model of labor relations represents the common perception of responsibility allocation in democratic industrial societies in the nation-state era. The history of labor standards is usually divided into three general phases. In the early stage of the Industrial Revolution, labor relations were based on a free contractual relationship between employers and employees. However, as industrialization progressed during the nineteenth century, and as labor relations became recognized as a site of structural injustice, the need to regulate labor standards was increasingly accepted by legislatures. Since the first English Factory Act of 1802,<sup>44</sup> which set the workday of pauper apprentices at twelve hours, forbade night work and included provisions regarding education and religious instruction, legislatures in industrial countries gradually expanded the coverage and requirements of labor standards throughout the nineteenth and twentieth centuries.<sup>45</sup> The increasing regulation of the labor market rested on the recognition that in the market economy, negotiations between employers and employees over their contractual arrangements are imbalanced, and the workers' bargaining power is inherently inferior. The acceptance of this crucial and basic assumption led to the recognition of workers as a *status* and to the development of *legal paternalism* towards them. The typical result in most democratic industrial societies was the juridification of labor relations, which included legal restrictions and limitations on working conditions, as well as judicial intervention in settling industrial disputes.<sup>46</sup>

Despite the great variety in the ways welfare and labor regimes have developed in different modern industrial democracies,<sup>47</sup> the majority of the states in the world today recognize the need to legally regulate employment relations in order to protect basic norms and rights in the labor sphere, on the

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44 Factory Act, 42 Geo. 3, c. 73 (1802) (Eng.).

45 Stanley L. Engelman, *The History and Political Economy of International Labor Standards*, in INTERNATIONAL LABOR STANDARDS: HISTORY, THEORY AND POLICY OPTIONS 9 (Kaushik Basu et al. eds., 2003).

46 Janice R. Bellace, *The Role of the State in Industrial Relations*, 10 J. MGMT. INFO. SYS. 19, 23 (1994); see also Roy J. Adams, *State Regulation of Unions and Collective Bargaining: An International Assessment of Determinants and Consequences*, in THE FUTURE OF INDUSTRIAL RELATIONS IN A CHANGING WORLD 41 (John Niland, Raymond Lanburt & Chrise Verevis eds., 1994); Spiros Simitis, *The Juridification of Labor Relations*, 7 COMP. LAB. L.J. 93 (1986).

47 GOSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* (1990).

ground that "labor is not a commodity."<sup>48</sup> A minimum level of labor standards usually includes the four ILO core rights,<sup>49</sup> health and safety regulations, and some protection of a minimum wage. The widely accepted recognition of the need to legally protect such minimal standards is manifested in several key documents of international labor law and international human rights law, including ILO Conventions, The Universal Declaration of Human Rights, The International Convention on Civil and Political Rights, and The International Covenant on Economic, Social and Cultural Rights.<sup>50</sup>

In many societies, the state assumed institutional responsibility for promoting justice in labor relations.<sup>51</sup> The 1945 Breton-Woods agreements reconstituted the central role of the state in guaranteeing workers' standards. These agreements established that the social welfare of the citizens of each state — unlike international trade, which was to be promoted transnationally — was to be guaranteed separately by each state. Generally, each state has the responsibility to guarantee justice for its own workers in two senses. First, in the substantive sense, justice has been guaranteed by minimum standards of working conditions that employers are required to satisfy (e.g., limits of working hours, safety, minimum wages, holidays and sick leaves) and it is the state's duty to enforce these standards.<sup>52</sup> Second, in the procedural sense, the state has been responsible for remedying the power imbalance between employers and employees by guaranteeing workers' freedom of association, which includes the right to join workers' associations, the right to bargain collectively, and the right to strike.<sup>53</sup> The state's responsibility to intervene

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48 ILO, DECLARATION CONCERNING THE AIMS AND PURPOSES OF THE INTERNATIONAL LABOUR ORGANIZATION (DECLARATION OF PHILADELPHIA) (1946). Currently 183 states are members in the ILO.

49 See ILO, *supra* note 27.

50 Universal Declaration of Human Rights, *supra* note 20; International Covenant on Economic, Social and Cultural Rights, *supra* note 20; International Covenant on Civil and Political Rights, *supra* note 20.

51 To what extent state actions represent the common good or the interest of rent seekers is a question we do not intend to discuss in this Article.

52 The state is wearing two hats in the context of labor relations: It is, first, a sovereign authority that legislates and enforces labor rules; second, the state also functions as an employer, usually the major employer in every modern state.

53 This is by contrast to the early stages of industrialization, which were characterized by hostility of the state towards workers and towards workers' unions. See Bellace, *supra* note 46. In welfare states, the state also bears responsibility for those workers who find themselves outside the labor market, by providing them with a safety net through mechanisms such as social security, unemployment benefits, and the like. This type of responsibility goes beyond the "thick" labor/social connection we discuss here.

in the labor market should be perceived first and foremost as a remedial responsibility, because it is premised on the recognition that an unregulated labor market would yield unjust consequences, leaving workers unprotected and unable to provide a minimum standard of living conditions and dignity for themselves.

According to the traditional perception of labor relations, employers hold either individual responsibility (as individual employers) or collective responsibility (as institutions such as corporations) toward their workers. Legally, employers' responsibility is determined by state laws and regulations, and the collective agreements they have signed. Employers have been obligated to abide by certain substantive standards relating to wages and work conditions. In addition, employers have been obligated to maintain procedural standards, namely by respecting workers' rights to organize and to bargain collectively in order to remedy the initial unequal balance of bargaining power between employees and employers. The traditional acknowledgment of workers as a *status* that requires legal paternalism implies that individual workers could not be held completely responsible for the outcome of the labor contract signed with their employers. However, once effective procedural norms were established, employees bore the responsibility to associate and to bargain collectively for the improvement of their working conditions.<sup>54</sup>

In the global era — the third phase in the history of labor standards — the traditional allocation of responsibility has been undermined, and thus the question of who is responsible for protecting workers' rights has reemerged with full force. Globalization has increased the number and variety of actors who may be viewed as sharing some kind of responsibility for the current global state of affairs, while simultaneously undermining the state's ability to enforce labor rights.

The international challenges to state sovereignty and the rise of transnational corporations as major economic players have reduced the state's ability to discharge its responsibility towards workers and to regulate the balance of power between employers and employees. This reality has been enhanced by the growth of global trade, particularly the entrance of low-wage countries into the international economic arena at the end of the Cold War, which arguably has resulted in a regulatory chill or a "race to the bottom" of labor standards. Moreover, the scope of labor law and its ability to respond to workers' needs has been narrowed by the continuous shifting

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54 In many cases, workers' ability to organize is a precondition for the enforcement of labor regulation.



of traditional Fordist organizational patterns (upon which labor law was founded), and is being further undermined by the neo-liberalist ideological attacks on existing labor laws. From the employees' perspective, freedom of association has been weakened and labor unions have lost power.

One of the most contentious and challenging questions in the legal labor sphere today is who should be considered an employer and how to identify workers. The emergence of new models of employment relationship, such as indirect employment of workers by manpower agencies, work provided by subcontractors, self-employment, and long-distance work relationships (work from home), challenges the traditional definition of employee-employer relations. In recent years, with the rise of the informal economy, the ILO and several states have endorsed an approach that includes even informal workers within the scope of workers protected by state regulation.<sup>55</sup> Production chains have become more complex, comprising a network of businesses that cooperate collectively to achieve the procurement, manufacture and distribution of a family of related products.<sup>56</sup> Global production chains are most common today in the apparel and toy industries, but are becoming increasingly more prevalent in other industries such as electronics, etc. Within such complex networks, marginalized producers and workers find themselves in what is referred to as "structural disempowerment," as they are unable to control opportunities and resources or compel external decision-makers to share the responsibility for maintaining their wellbeing.<sup>57</sup>

In addition, the increasing use of outsourced employment, which breaks the direct link between transnational corporations' (TNCs') managements and production-line workers, challenges the definition of employer. The traditional legal formulation of employer-employees is replaced in many cases by a long and complicated chain of various types of contracts. Nevertheless, this changing legal reality should not affect the substantial

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55 ILO, *supra* note 23.

56 Vincent A. Mabert, *Special Research Focus on Supply Chain Linkages: Challenges for Design and Management in the 21st Century*, 29 DECISION SCI. 537 (2007). Supply chains are also termed by some scholars "Global Production Networks" (GPNs). See Jeffrey Henderson, *Global Production Networks and the Analysis of Economic Development*, 9 REV. INTL. POL. ECON. 436 (2002). The term Global Network indicates that production is increasingly global, and the interaction within such structures is not linear, as the term "chain" suggests. We acknowledge these advantages, but continue to use the more commonly known terminology.

57 Kate McDonald, *Globalizing Justice Within Coffee Supply Chains? Fair Trade, Starbucks and the Transformation of Supply Chain Governance*, 28 THIRD WORLD Q. 793 (2007).

allocation of moral responsibility within the labor connection model. Relations between various components of the global production chain — brands, vendors and other subcontractors — may be considered as labor relations, characterized by features that have been traditionally attributed to employer-employee relations.<sup>58</sup>

Our underlying premise is that despite recent global, economic and political transformations, the principle of commitment to protecting workers' dignity and their right to lead a decent life should not be undermined. The justification for legal paternalism with respect to workers still remains valid in the global era, primarily because the inherent imbalance in bargaining power between employers and unorganized employees has not vanished, but rather has intensified. The resulting structural imbalance in today's global economy makes the need to fulfill our commitment towards workers all the more urgent. As Arturo Bronstein, a former senior ILO consultant, aptly summarizes: "dependent work continues to exist and the vulnerability of the worker . . . continues to be an unchallenged fact, [and thus] the essence of the problems that gave birth to labor law is still there." The international community must respond to the challenges of the twenty-first century "in order to avoid the return to the social injustices of the nineteenth [century]."<sup>59</sup>

#### IV. PRINCIPLES OF RESPONSIBILITY ALLOCATION IN THE GLOBAL LABOR MARKET

So far we have argued, following Iris Young, that all actors that partake in the *social connection* bear some responsibility towards workers' rights. These include actors, whether agents or institutions, that do not have a role in the production chain (e.g., consumers, municipalities, fashion designers). However, we argue, greater responsibility for remedying the unjust conditions of workers is held by actors who partake in the *labor connection*, which is defined either in legal terms of employer-employee relations, or in substantial terms, i.e., actors who contribute to the production chain and participate in bringing a product to the marketplace (including

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58 ALAIN SUPIOT, BEYOND EMPLOYMENT: CHANGES IN WORK AND THE FUTURE OF LABOUR LAW IN EUROPE (2001). In recent years there have been attempts to include even informal workers within the scope of workers protected by state regulation. The ILO's position on the question of who should be protected by labor law is that informal workers are also included among those who deserve to have their rights protected through state regulation. ILO, *supra* note 48.

59 ARTURO BRONSTEIN, INTERNATIONAL AND COMPARATIVE LABOUR LAW 258 (2009).

manufacturers and distributors).<sup>60</sup> In this Part, we will attempt to provide a framework for the allocation of responsibility among the various types of actors who are involved in the global labor sphere. We will begin our analysis with a criticism of Young's principles of responsibility allocation, and then present an alternative set of four principles for responsibility allocation, drawing on Christian Barry's work. We will propose a preliminary framework for applying Barry's four principles to the sphere of global labor.

As detailed above (in Part II), Iris Young proposed four principles for responsibility allocation among all actors who are part of the social connection. However, her four principles conflate two types of criteria. The first two principles, *power* and *privilege*, are appropriate for determining the degree of responsibility according to the actor's position within the social structure, and will be further addressed below.<sup>61</sup> By contrast, Young's remaining two principles, *interest* and *collective ability*, are parameters of a different nature. The principle of interest refers to the agent's interest in maintaining or transforming structures that produce injustice. For example, people who are victims of structural injustice have a greater interest in transforming the system. This may be true; nevertheless, the victims' interest in transforming an unjust structure does not necessarily imply that they should bear greater responsibility than those with less of an interest in such a transformation. Applying Young's principle might produce the improbable result of assigning greater responsibility to victims of injustice than to those who have been fortunate enough to benefit from the unjust system. Lastly, the principle of *collective ability* refers to the effective way in which people should fulfill their responsibility to remedy injustice through collective action. This principle, we believe, can be subsumed under Young's principle of *power*. The relative ease with which people can organize a collective action should be considered another form of power, which enables them, as a collective, to remedy injustice.

In related fashion, Young disregards the connection between outcome and remedial responsibility. In many cases, remedial responsibility, namely, the responsibility to remedy an unjust situation, is connected to outcome responsibility, which seeks to identify the person that produces the unjust

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<sup>60</sup> Indeed, the line that separates those who are included in the "thick labor connection" and thus hold special duties and commitments from those who are part of the broader "social connection" is not clear-cut. For example, it is debatable to what extent fashion designers are part of the apparel industry "labor connection" and thus have a greater responsibility towards workers for their conditions. In this Article we propose a theoretical framework which may be further refined and discussed.

<sup>61</sup> See Young, *Responsibility and Global Justice*, *supra* note 35, at 127-28

outcome. In the commonsense meaning of *responsibility*, those who contributed more to the outcome should bear greater responsibility. The problem with Young's description of the social connection is that it disregards the different levels of outcome responsibility.

An alternative set of principles for allocating responsibility for achieving global justice is presented by Christian Barry.<sup>62</sup> We find his proposal clearer and more fruitful. Barry identifies four principles: the first principle, *connectedness*, asserts that responsibility should be allocated on the basis of connectedness, participation in joint activity, common membership in institutions or solidarity among communities. The idea is that strong and intimate connections between people create moral reasons to care for them and alleviate their hardship. The second principle for allocating responsibility is *capacity*, according to which the capacity of an agent to relieve hardship or unjust conditions establishes her responsibility. "If I am the only person walking along a riverbank when a child falls in, then it is my responsibility to rescue the child."<sup>63</sup> The third principle, *beneficiary*, asserts that one's ethical reason for remedying unjust social rules or conditions depends on the extent to which one has benefited from the injustice. The fourth and last principle of allocating responsibility is *contribution*, according to which agents are to be held especially responsible when and to the extent that they have contributed to bringing these situations about.<sup>64</sup>

Barry's principles for responsibility allocation are framed in broad and general terms.<sup>65</sup> For these principles to have practical implications, one needs to take into account the unique features of the practice where the principles are to be applied. In the area of global labor, the investigation of responsibility

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62 Christian Barry, *Global justice: Aims, Arrangements, and Responsibilities*, in CAN INSTITUTIONS HAVE RESPONSIBILITIES? COLLECTIVE MORAL AGENCY AND INTERNATIONAL RELATIONS, *supra* note 29, at 218.

63 MILLER, *supra* note 7, at 105.

64 David Miller draws quite a parallel set of principles for allocating remedial responsibility: (1) moral responsibility, (2) outcome responsibility, (3) causal responsibility, (4) benefit, (5) capacity, and (6) community. Miller's first three principles are parallel to Barry's principle of "contribution." The latter three correspond, respectively, to Barry's principles of benefit, capacity and connectedness. *Id.* at 97-107.

65 Also, each of these principles requires a detailed investigation concerning its relationship with the other principles. We will not pursue this kind of analysis in this Article. For such an analysis, see Christian Barry, *Understanding and Evaluating the Contribution Principle*, in REAL WORLD JUSTICE: GROUNDS, PRINCIPLES, HUMAN RIGHTS, AND SOCIAL INSTITUTIONS 103 (Andreas Follesdal & Thomas Pogge eds., 2005).

allocation is analytically dependent on the identification of the goals and tasks to be fulfilled. The four principles of responsibility allocation could be measured and compared only given uniform and well defined standards. For example, in the case of the principle of capacity, having a certain capacity to effectively meet standard A might not guarantee the effective achievement of standard B. Thus, agent X could have a greater capacity than agent Y to meet standard A, but less capacity than agent Y to meet standard B.

A complete and comprehensive investigation, regarding all norms and standards in the area of labor, goes beyond the scope of this Article. Thus, in what follows we delineate a preliminary analytical framework for the application of Barry's four principles in the sphere of global labor.

### A. The Connectedness Principle

The principle of connectedness has special significance in the sphere of labor. Connectedness, i.e., the existence of a special relationship between people, creates special moral obligations. Compared to obligations to anonymous others, these obligations carry extra moral weight.<sup>66</sup> In Barry's definition, the principle of connectedness may be understood in two different ways: first, in terms of shared identity, for example membership in a community, nation, or tribe; second, in terms of participating in a joint activity, for example, a factory. When the principle of connectedness is applied in the sphere of labor, the latter meaning of joint activity becomes a key factor in determining the allocation of responsibility towards workers. As our discussion of the thick labor connection above demonstrated, labor relations are characterized by an intricate web of mutual responsibilities and rights, in which workers enjoy special protection and status. This unique character of labor relations is expressed in the legal discourse by treating labor contracts as relational contracts, which are distinguished from transactional contracts. A transactional contract is of short duration, describes a precise transaction of money and goods, usually a onetime exchange of an easily commoditized good for cash, and includes no element of altruism and little or no future cooperation. Parties to relational contracts, however, develop long-term relationships that are based on trust and solidarity, relationships that far exceed the terms of the original document.<sup>67</sup>

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<sup>66</sup> SAMUEL SCHEFFLER, *BOUNDARIES AND ALLEGIANCES: PROBLEMS OF JUSTICE AND RESPONSIBILITY IN LIBERAL THOUGHT* 48-65 (2001).

<sup>67</sup> Robert. C. Bird, *Employment as a Relational Contract*, 8 J. LAB. & EMP. L. 343 (2005); Ian R. Macneil, *Contracting Worlds and Essential Contract Theory*, 9 SOC. & LEGAL STUD. 431 (2000).

The extension of the chain of production beyond the nation-state borders and the emergence of new modes of production have created a new reality, in which the traditional legal definition of employer-employee relations can no longer serve as the sole criterion for determining the level of connectedness. The question regarding which actors should be regarded as partaking in the joint activity that we have termed "the labor connection" is one of the central dilemmas of global labor today. For example, one could argue that manufacturers, subcontractors or investors should be considered as actors in the thick labor connection. Others, such as Young, argue that participants in the "joint activity" of sweatshops should include additional actors, such as consumers, fashion designers and local municipalities. While we agree with Young that such actors should bear some degree of responsibility for remedying the unjust conditions of workers, it is less than that of actors who we define as taking part in the *labor connection*. In the labor connection, responsibility of agents/actors is greater because the level of connectedness among actors — i.e., among workers and their employers (defined either in legal or substantive terms) — is greater.<sup>68</sup>

While by and large the connectedness between employer and employee generates special commitments and responsibilities in the sphere of labor, sometimes other types of connectedness are relevant to determining the allocation of responsibility. For example, when the central goal is to achieve the standard of child labor abolition, family plays a crucial role in reducing practices of child labor and in negotiating with the employers over the terms of employment. In this example, considerations of connectedness refer both to the natural affinity of family for each other and to the role the family plays in formulating the labor relationships involving children.

## B. The Capacity Principle

There are various factors in determining the capacity of agents to remedy unjust conditions of workers. One factor in the understanding of "capacity" is the scope of influence, i.e., the number of workers whose work conditions may be improved by the actions of an agent or an institution.<sup>69</sup> Actors operating on the interactional level may generally have a lesser scope of influence than powerful actors on the institutional level. A local factory owner

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<sup>68</sup> Determining the level of connectedness requires an elaborated theory which includes criteria for measuring proximities and interconnections between actors both inside and outside the labor chain.

<sup>69</sup> This use of the term is different than that of John Ruggie, *Clarifying the Concepts of "Sphere of Influence" and "Complicity,"* U.N. Doc. A/HRC/8/16 (May 15, 2008).

who has the capacity to remedy the unjust work conditions of several workers in one textile factory in Indonesia has a smaller scope of influence than an international institution such as the WTO, which could link trade benefits to working conditions in that industry and thus has the capacity to ameliorate the conditions of many workers in it.

One of the main criticisms raised against the corporate social responsibility (CSR) approach concerns TNCs' limited scope of influence. CSR points to TNCs as the primary agents who bear the remedial responsibility for workers' rights within their production chains. While TNCs may be perceived as having the greatest capacity to remedy the unjust conditions of workers within their own global production chains, they affect only fifteen percent of the world's labor force employed in export industries.<sup>70</sup>

By contrast, the ILO regards its member states as the main agents bearing remedial responsibility for the work conditions of each state's citizens. The presumption that despite recent global economic transformations, states still have the greater capacity to influence work conditions in the global labor market can be inferred from several features of the ILO's legal structures. For example, the ILO conventions address states as the bearers of the binding legal obligations it establishes. Furthermore, the ILO's structure is state-based in the sense that the delegates that represent the social partners are chosen according to a state-based framework. The scope of influence of the ILO, measured in terms of the number of workers influenced, is then significantly broader.

Capacity could be measured by the level of political and economic power to operate on the institutional level. Both interactional and institutional actors may influence the rules of global trade, to change the structure of global institutions in a way that would remedy unjust work conditions around the world: for example, the power of each of the G8 states to determine the structure and rules of the global economy, or the ability of various states to determine rules and policies by which the IMF, the WTO or the World Bank operate. Strong economies could also impose unilateral sanctions linked to labor standards. In this context, one might conclude that according to the principle of capacity, the powerful states have a greater responsibility than the weaker states to remedy unjust work conditions. TNCs should be examined with respect to the leverage they can exercise in these forums.

Lastly, the capacity of agents or institutions depends on the definition

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<sup>70</sup> Jill Murray, *The Sound of One Hand Clapping? The "Ratcheting Labour Standards" Proposal and International Labour Law* (Pub. L. & Legal Theory, Working Paper No. 24, 2002).

of the desired standards and norms to be implemented. Moreover, the capacity to meet a certain standard varies according to the nature of the agent that is supposed to remedy the unjust conditions. Take the capacity of TNCs and of states to promote health and safety standards, or to eliminate child labor. TNCs may have the capacity to enforce health and safety regulations throughout their global production chains. Considering, for example, the standard of child labor, the TNCs' first and most salient ability is to refrain from employing children in their factories.<sup>71</sup> However, under certain circumstances, the non-employment of children in factories might worsen children's conditions, if the only alternative is to work in the informal sector, where working conditions might be substantially worse. States, rather than TNCs, are generally considered to be the main agents able to undertake such responsibilities. Under certain conditions, states may have the capacity to adopt comprehensive social and economic policies, such as the establishment of a comprehensive schooling system and other social services (child allowances, pensions, access to credit, etc.), which give children access to education and thus free them from the need to work for their subsistence.<sup>72</sup>

### C. The Beneficiary Principle

The principle of benefit may be understood in different terms. In the context of global labor, benefit primarily means economic benefit. For example, in the international chain of production, the TNCs, more than subcontractors or managers of local factories in developing states, benefit from production that is carried out under unjust conditions. S. Prakash Sethi presents evidence on the earnings of different corporations and workers' pay. Corporations such as Nike and Reebok earn nearly forty percent of gross profit margins. The cost of making a pair of Reebok shoes is thirteen dollars, paying only one dollar for labor, while the shoes typically sell for sixty to seventy dollars per pair.<sup>73</sup> In this sense, if we distribute responsibility only according to the principle of benefit, the TNC has a greater responsibility for remedying the unjust work conditions than does the subcontractor.

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71 Another option is part-time employment of children, which affords them some income, but also frees them to attend school part-time. See Debra Satz, *Child Labor: A Normative Perspective*, 17 *WORLD BANK ECON. REV.* 297 (2003).

72 The question of which policies are effective for combating child labor is hotly debated. See, e.g., Drusilla K. Brown, Allan V. Deardorff & Robert M. Stern, *Child Labor: Theory, Evidence, and Policy*, in *INTERNATIONAL LABOR STANDARDS* 195 (Kaushil Basu et al. eds., 2003).

73 S. PRAKASH SETHI, *SETTING GLOBAL STANDARDS* 58-59 (2003).



Economic benefit can be direct or indirect. While TNCs may be considered to benefit directly from cheap labor under unjust conditions, the governments of developed states, as recipients of taxes paid by the TNCs whose management is located in their territories, may be considered indirect beneficiaries.

Benefit can be understood not only in economic terms, but also in political terms. Considering the right of freedom of association, for example, non-democratic regimes stand to benefit from an un-unionized labor market, since unions may present a threat to their political dominance and authority. Similarly, neo-liberal governments treat unions as obstacles to the economic efficiency of the laissez-faire market and regard their actions as interfering with property rights and contractual freedoms.

#### **D. The Contribution Principle**

As for the principle of contribution, Christian Barry provides a possible analysis for the application of this principle. The principle of contribution, according to his definition, asserts that "agents are to be held especially responsible for series deprivations when, and to the extent that, they have contributed to bringing those situations about."<sup>74</sup> Similarly, in the area of labor, agents are responsible for remedying the unjust conditions of workers when they have contributed, or are contributing, to bringing them about. Barry proposes a detailed and complex methodology for measuring the degree of contribution of agents or institutions to unjust situations. Following his analysis, by contributing to unjust conditions of workers we mean that an agent or institutional conduct was causally *relevant* to it. It was a necessary condition in a set of actual antecedent conditions that was sufficient for its occurrence. "A's conduct did not merely allow a causal sequence that had antecedently put B under threat of acute deprivation to play out, but rather *initiated, facilitated and substantiated* it."<sup>75</sup>

The application of the principle of contribution to unjust conditions of workers would require a detailed empirical investigation of activities and interactions between actors within the global labor market, and their influence on the creation of an unjust situation.

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<sup>74</sup> Barry, *supra* note 62, at 228.

<sup>75</sup> Barry, *supra* note 65, at 112; *see also* Christian Barry, *Applying the Contribution Principle*, 36 METAPHILOSOPHY 212 (2005).

## CONCLUSION

The responsibility for remedying the unjust conditions of workers in the global era does not lie with one agent or institution, but rather is shared, although unequally, among the various actors participating in the global labor market. These include, to use Richard Miller's terminology, actors on the interactional level (e.g., employers, private companies, consumers) and on the institutional level (e.g., states, international institutions).<sup>76</sup>

On both levels, assigning responsibility for workers' welfare is an intricate and complex task. In this Article we hope to have outlined a theoretical framework for conducting such an investigation in the sphere of labor. The allocation of responsibility depends not only on the circumstances under which labor standards are violated and on the relationship between the various actors involved, but also on the nature of the labor standards and policy goals whose achievement is desired. Thus, further and more detailed investigation should apply these principles of responsibility allocation to the various labor standards.

This Article represents one small step in a long theoretical journey. While we have argued for shared responsibility and delineated the appropriate principles for its allocation, many issues are left for further empirical and conceptual research. For example, what should the relative weight of each of the four principles of responsibility allocation be? Should they all weigh equally or should one of them have greater significance in assigning responsibility? Christian Barry, for example, argues that the principle of contribution should be given more weight than the principles of capacity and connection.<sup>77</sup> Furthermore, what are the legal and political implications of normative responsibility allocation? What new legal and political tools should be developed in order to enforce the discharging of responsibility towards workers' rights? These questions will hopefully be addressed by future investigations combining normative theories of global justice and the empirical world of international labor law.

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<sup>76</sup> MILLER, *supra* note 25.

<sup>77</sup> Barry, *supra* note 75.