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George P. Politakis
Tomi Kohiyama
Thomas Lieby

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Is Globalization Finally Re-balancing? Novel Ways of Levelling the Playing Field for Labour

Joost Pauwelyn

I. Introduction

At a time when the World Trade Organization (WTO) as well as the regime of investor-State dispute settlement (ISDS) are under serious review – some would say 'falling apart' – or at least in a period of backlash and self-doubt,[1] this paper makes the point that for too long globalization has been unbalanced and that what we are witnessing today may be part of a re-balancing exercise: somewhat less integration in cross-border trade and investment, a limited form of economic decoupling; combined with novel ways to close the governance gap in labour and environmental protection, that is, some strengthening of social protection.

Let me present this hypothesis – and it is a hypothesis, it may be proven wrong – in two steps. Firstly, I will offer some context and a practical example (sections 2 and 3). Secondly, I will provide a brief catalogue, a summary overview, of some (relatively) recent examples of what I call 'novel ways of levelling the playing field for labour' (sections 4, 5 and 6). Section 7 draws some conclusions.

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[1] On WTO backlash, see, for instance, Joost Pauwelyn, 'WTO Dispute Settlement Post 2019: What To Expect? What Choice To Make?' Journal of International Economic Law (2019), forthcoming. On ISDS backlash, see, for example, Simon Lester, 'The ISDS Controversy: How We Got Here and Where Next' (2016) Cato Institute <https://www.cato.org/publications/commentary/isds-controversy-how-we-got-here-where-next>.

II. Re-balancing globalization: It may be happening

Let me start with some context. Globalization is based on 'arbitrage'.[2] Capital moves across borders to seek the highest return. Goods and services are out-sourced to places where they can be produced or traded more cheaply. Only labour is, by nature and regulation, largely immobile. Most workers cannot migrate to places where wages would be higher. In this sense, globalization is partial, a-symmetric, un-balanced. Scholars often ask the question whether labour is a commodity. From this perspective, labour is treated worse than a commodity.

International law adds to this imbalance. The 'hyper-globalization' in capital, goods and services that was unleashed especially since the 1990s is backed-up by relatively strong rules, and international tribunals, at the WTO and under preferential trade and investment protection treaties. In contrast, most workers are not only denied cross-border movement; when I am harmed as a worker, I generally have recourse only to domestic law and domestic courts, not international law or tribunals. In this sense, globalization is unbalanced, and there is a global governance gap. Here again, labour is treated worse than capital or commodities.

In 2017, John Ruggie presented the problem and the solution as follows:

> an enormous governance gap has been created: between the scope and impact of economic forces and actors [think of the WTO or investment treaties], and the capacity of societies to manage the adverse consequences [think of labour or environmental impacts]. The gap will be narrowed one way or another: either through effective cooperation [on, say, labour] or through rollback, otherwise known as protectionism.[3]

Basically, something needs to give. Re-balancing is inevitable. And it can happen either by 'levelling the playing field' for labour – this will be my focus here; and my point is that this is happening, in unorthodox, hard-law, market-based ways – or through a rollback on cross-border trade

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[2] Richard Baldwin, *The Great Convergence: Information Technology and the New Globalization* (Harvard UP 2016).

[3] John Ruggie, *Making Economic Globalization Work For All: Achieving Socially Sustainable Supply Chains*, Keynote Address (2017) G20 Labour and Employment Meeting Hamburg <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/programs/cri/files/Hamburg%2BG20%2B2017.pdf>.

and investment. And that as well is happening, think of the rise in trade protectionism and foreign investment screening,[4] signs of 'peak trade',[5] 'slowbalisation'[6] or 'decoupling'[7] of the US and Chinese economies, as well as the backlash against the WTO Appellate Body and investor-State arbitration.[8] Ironically, therefore, after many years of other fields 'envying' the hardness of trade and investment treaties, what we are witnessing today is more legalization in labour protection, albeit in novel ways; and a softening or less legalization when it comes to efforts to liberalize trade or protect foreign investments.

III. The 'true cost' of a t-shirt and the failure to protect labour locally

Let me make this a little more concrete. Think of the last t-shirt you bought. The shop you bought it from probably got it made in a low-wage country like Bangladesh or Ethiopia. Fierce competition amongst the Walmart's and H&M's of this world means that brands put enormous price pressure on the garment factory in Bangladesh to stitch the t-shirt for, say, 50 cents instead of 55 cents. If not, the brand will just source elsewhere, say, Ethiopia, where wages may be lower. Capital and goods move swiftly across borders. So the garment factory must cut costs. It may also cut corners on worker safety. Unlike capital or goods, the Bangladeshi worker cannot 'exit the market'. The end result is that, too often, workers in poor countries are 'subsidizing' consumers in rich countries. Indeed, the garment worker in Dhaka, Bangladesh, is probably 'subsidizing' me, a well-off consumer, when I go by a t-shirt in Geneva for, say, 'only' 10 Swiss francs. These 10 Swiss francs may not internalize the 'fair labour' cost, not to speak of the actual environmental cost, of what I bought. Yet, traditionally, and from an ILO perspective, we would expect price correction to come from domestic law (here, Bangladeshi and Ethiopian labour law), collective bargaining, worker

[4] See, for instance, Philip Blenkinsop, 'With Eyes on China, EU Lawmakers Back Investment Screening' 2019 Reuters.

[5] See, for instance, Shawn Donnan, 'IMF and World Bank Warn of Peak Trade' 2014 Financial Times.

[6] The Economist, 'Slowbalisation: The Steam Has Gone Out of Globalisation' 2019.

[7] Finbarr Bermingham, ''Decoupling of US and Chinese Economies Is Inevitable and Is Being Accelerated by Trade War, Author Says' 2018 South China Morning Post.

[8] Pauwelyn (n 1); Lester (n 1).

safety norms etc., forcing the local garment factory to comply with, at least, minimum ILO standards. In reality, too often, this has failed.[9]

Indeed, it is now well documented that there has been a downward trend in the labour (as opposed to capital) share of global income since the early 1990s.[10] And this in both developed and developing countries, for a variety of reasons including technological progress and, especially for emerging markets, global integration and the expansion of global value chains that contributed to raising the overall capital intensity in production. Trade and investment treaties that focus on the protection of capital rather than labour (e.g. via intellectual property protection and ISDS) may have contributed to this trend.[11] In turn, ILO worker rights conventions have not been able to buck the trend. One study, based on data analysis for the period 1981–2011, goes as far as finding that 'the ratification of core ILO conventions is negatively associated with the level of respect for worker rights'.[12] The authors of the study argue that States 'have an incentive to ratify ILO Conventions, as they provide a visible signal of support for these standards' but that since 'the ILO has no mechanism to enforce labour standards' ratification may end up to 'relieve pressure for real change in performance [...] and give States a shield to tolerate further labour rights violations'.[13]

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[9] For more on this example, see National Public Radio, 'Planet Money Makes a T-Shirt' <https://apps.npr.org/tshirt/#/title> and the documentary 'The True Cost' <https://truecostmovie.com>.

[10] See, for instance, Mai Chi Dao, Mitali Das, Zsoka Koczan and Weicheng Lian, 'Why is Labour Receiving a Smaller Share of Global Income? Theory and Empirical Evidence' IMF Working Paper WP/17/169 2017 and UNCTAD, 'Trade and Development Report 2018, Power, Platforms and the Free Trade Delusion' 2018 50-58.

[11] Dani Rodrik, 'What Do Trade Agreements Really Do?' (2018) 32 Journal of Economic Perspectives 73.

[12] Dursun Pekse and Robert G. Blanton, 'The Impact of ILO Conventions on Worker Rights: Are Empty Promises Worse Than No. Promises?' (2017) 12 The Review of International Organizations 75.

[13] ibid 77. New initiatives within the ILO have also stalled or not materialized; Paul van der Heijden, 'The ILO Stumbling Towards Its Centenary Anniversary' (2018) 15 International Organizations Law Review (2018) 203 ('in the past 10-15 years the impact of the [ILO] ... has decreased. Its legislative machinery seems to have come to a standstill [...]. The ILO's monitoring system via the Committee of Experts is in danger to be weakened [...] The boat that passed by flying the corporate social responsibility ('CSR') flag, has been missed'). For a broader ILO critique, see Jan Klabbers, 'Marginalized International Organizations: Three Hypotheses Concerning the ILO' in Ulla Liukkunen, and Yifeng Chen (eds), *China*

IV. Levelling the playing field focusing on the multinational company

What I would like to do now, in my second step, is to highlight a couple of new, unorthodox ways of 'levelling the playing field', of closing Ruggie's 'governance gap', basically, mostly indirect ways to induce employers to pay and respect 'fair market value' wages and standards. Three things stand out: (i) most of these instruments are hard law mechanisms, (ii) outside of the ILO, especially taken unilaterally or bilaterally, and (iii) they are often market-based or market correcting using market principles (treating labour at least as good as commodities).

My aim is descriptive. I am not advocating for or against any of these instruments. The point I do want to make though is that a multitude of creative, unorthodox, approaches is emerging, some of them cooperative, others unilateral. And this raises systemic questions of (i) fragmentation and coherence; (ii) balance between economic and non-economic integration; and (iii) the relative roles of international organizations, like the ILO or WTO, versus regional, bilateral and unilateral initiatives.

I will divide some of these 'levelling' instruments into three broad clusters, realizing that these may overlap and are not mutually exclusive, nor exhaustive of what is happening:

(i) instruments focusing on the multinational parent/sourcing company (in my t-shirt example, say, H&M; further discussed in this section);
(ii) instruments focusing on the traded product (e.g., the t-shirt shipped from Bangladesh to Switzerland or the US, discussed in section 5);
(iii) instruments focusing on the worker (in my example, the Dhaka-based garment worker, stitching together what will become my t-shirt, discussed in section 6).

Let us start with efforts that have shifted attention away from the local (garment) producer, i.e. the local contract manufacturer or subsidiary, and tried instead to force or incentivize the multinational sourcing or parent

and ILO Fundamental Principles and Rights at Work (Kluwer 2014) 181: 'the ILO has turned from a well-respected and highly successful international organization into an organization that has become somewhat marginalized'.

company (e.g. H&M or Walmart) to internalize the 'true cost' of labour. Some efforts are focused on domestic law and courts in the home state where the multinational company is based. Other efforts stem from international instruments or arbitration. For each, here are some examples.

1. Domestic developments in home States

In 2017, France enacted the 'duty of vigilance' law which forces large multinationals with substantial operations in France to establish mechanisms to prevent human and labour rights violations and environmental impacts throughout their chain of production, including for their subsidiaries and supplying companies under their control operating outside France.[14] These mechanisms must be reported each year as part of a 'vigilance plan'. Violations may eventually lead to civil liability in French courts. Another development at the domestic level is *Vedanta v. Lungowe*, where the jurisdiction of English courts was confirmed in a case filed by over 1,000 Zambian villagers against UK-based Vedanta and its Zambian subsidiary for environmental harm caused in Zambian mining operations.[15] The substantive question of whether, under the English law of negligence, parent company Vedanta should be liable for the operations of its subsidiary in Zambia still needs to be decided. However, confirming jurisdiction in this case has already opened doors to 'pierce' the corporate veil between parent and subsidiary. Like the French 'duty of vigilance' law (variations of which have been enacted in several countries), this should incentivize multinational companies to double-check labour standard compliance throughout their operations; if not, they risk having to pay themselves for violations. This, in turn, may improve wages and labour standards in producing or supplying countries, like Bangladesh.

[14] Sherpa, Vigilance Plan Reference Guide 2019 <https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-ilovepdf-compressed.pdf>.

[15] Norton Rose Fulbright, 'UK Supreme Court Clarifies Issues on Parent Company Liability in Lungowe v Vedanta' (2019) <https://www.nortonrosefulbright.com/en/knowledge/publications/70fc8211/uk-supreme-court-clarifies-issues-on-parent-company-liability-in-lungowe-v-vedanta>.

2. *International developments*

Worker claims have recently been heard also directly before an international tribunal. Following the 2013 Rana Plaza building collapse, where over 1'000 garment workers perished, trade unions and global fashion brands concluded the so-called Bangladesh Accord. Under this Accord, labour standard compliance, in particular fire and building safety, was made subject to international arbitration, before the Permanent Court of Arbitration in The Hague. In 2016, two global labour unions commenced arbitration against two unnamed global fashion brands and in 2018 obtained a settlement.[16] As multinational companies realize that they may be held liable before domestic courts, as confirmed in cases such as *Vedanta* discussed above, companies may start to regard international arbitration, which has the advantages of confidentiality, speed and specialized arbitrators, as the 'lesser evil' or 'least unattractive option'. In June 2019, a team of legal experts issued Draft Arbitration Rules on Business and Human Rights that affected stakeholders and companies can use to settle disputes.[17] Labour and corporate social responsibility provisions are also increasingly included in State-to-State investment treaties, but mainly to bind host States and, at times, to reduce host state liability (e.g. by means of counterclaims) in case claimant investors have violated labour standards.[18] However, so far, these investment treaties (or trade agreements, further discussed below) do not allow workers or worker unions to file arbitration claims directly against companies.

On the legislative front, and this since 2015 (instigated by Ecuador and South Africa), negotiations are ongoing in the context of the UN Human Rights Council to adopt a legally binding treaty on business and human rights. In July 2019, a second draft was released entitled 'Legally binding instrument to regulate activities of transnational corporations and other

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[16] Permanent Court of Arbitration, '*Settlement of Bangladesh Accord Arbitrations*' (Press release 17 July 2018) <https://pca-cpa.org/en/news/pca-press-release-settlement-of-bangladesh-accord-arbitrations/>.

[17] The Hague Rules on Business and Human Rights Arbitration (Draft of June 2019) <https://www.cilc.nl/cms/wp-content/uploads/2019/06/Draft-BHR-Rules-Final-version-for-Public-consultation.pdf>.

[18] See, for instance, International Institute for Sustainable Development, *Harnessing Investment for Sustainable Development: Inclusion of investor obligations and corporate accountability provisions in trade and investment agreements* (IISD 2018). <https://www.iisd.org/sites/default/files/meterial/harnessing-investment-sustainable-development.pdf>.

business enterprises'.[19] The draft instrument imposes obligations on home and host States to implement domestic legislation providing for certain types of corporate liability for human rights violations. All of these international efforts may put further pressure on multinational companies and, in turn, their local operations, to pay the 'true price' for what they produce or source.

V. Levelling the playing field focusing on the traded product

Instead of forcing or incentivizing either the local producer or multinational company to internalize the 'true cost' of labour (e.g. by awarding damages in case of failure to comply with labour standards), price adjustments could also be made at the level of the traded product. Two examples come to mind: (i) in the field of trade, higher import duties based on a failure to comply with labour standards; (ii) in the field of taxation, an income tax adjustment to account for the 'fair market value' of labour.

1. Higher tariffs on imports

When imported into Switzerland from Bangladesh, import duties on our t-shirt could be increased on the ground of 'social dumping'.[20] Unlike awarding damages to workers (or worker unions), discussed in section 4, labour-related tariffs are paid by importers into the budget of the importing country, not the pocket of workers. Still, imposing this cost, albeit downstream, can provide incentives to increase wages or labour standards upstream.

The EU has recently adopted new trade defense instruments and anti-dumping methodologies that, though not directly allowing for duties on the ground of 'social dumping', allow authorities to take into account the cost of (or lack of compliance with) labour or environmental standards.[21] For the first time, trade unions will also be able to participate in trade defense investigations. The United States, in turn, has threatened to use section 301 of

[19] <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf>.

[20] Gregory Shaffer, 'Retooling Trade Agreements for Social Inclusion' (2019) Illinois Law Review 1.

[21] EU Commission, *EU Trade Defence:* Stronger *and More Effective Rules Enter Into Force*, (EU 2018) <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1859>.

the US 1974 Trade Act to increase duties on Chinese imports on the ground of failure to comply with labour standards in China.[22] The United States preferential trading scheme for developing counties (GSP) also includes a conditionality related to labour standards. In June 2019, India was stripped of its GSP tariff benefits for imports into the United States, but labour standards were not invoked as a reason.[23] Also under recently concluded preferential trade agreements, such as the US-Mexico-Canada Agreement (USMCA, bound to replace NAFTA), the United States has insisted on stronger enforcement of labour standard which are now routinely made subject to strict dispute settlement. This means that certain failures to comply with labour standards in, for example, Mexico, may allow the United States to impose retaliatory import duties or to collect a so-called monetary assessment.[24] The USMCA also softened certain legal requirements to file and win labour cases which in 2017 had led the United States to lose its first labour dispute (against Guatemala) under a free trade agreement.[25] Yet, at this stage, even the USMCA only provides for State-to-State enforcement of labour commitments. No private standing is given to workers themselves or their unions, even though US trade unions and certain Democrats in the United States Congress would want to take that next step.[26] Another prominent feature of the USMCA is that car imports will only benefit from zero duties

[22] Isabelle Hoagland, 'USTR mulling Sec. 301 investigation into Chinese labour practices' (2018) Inside US Trade <https://insidetrade.com/inside-us-trade/sources-ustr-mulling-sec-301-investigation-chinese-labour-practices>.

[23] Amiti Sen, 'India Says US Decision To Withdraw GSP Unfortunate' (2019) The Hindu Business Line <https://www.thehindubusinessline.com/economy/india-says-us-decision-to-withdraw-gsp-unfortunate/article27399669.ece>.

[24] US-Mexico-Canada (USMCA) Agreement, Chapter 23 (Labour) and Chapter 31 (Dispute Settlement) <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

[25] Inu Manak, 'In USMCA Ratification Race It's Much Ado About Labour' (2019) International Economic Law and Policy Blog <https://worldtradelaw.typepad.com/ielpblog/2019/04/in-usmca-ratification-fight-its-much-ado-about-labour.html>. Most importantly, footnote 9 to USMCA article 23.5 makes it much easier to demonstrate that failure to effectively enforce domestic labour laws is 'in a manner affecting investment or trade between the Parties'. For more on the (unsuccessful) United States labour case filed against Guatemala <https://ustr.gov/issue-areas/labour/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr>.

[26] Doug Palmer, Megan Cassella and Adam Behsudi, 'Trump Courts Democratic Support with USMCA counteroffer' (2019) Politico <https://www.politico.com/story/2019/09/13/trump-usmca-trade-1733491>. (Trump's counteroffer is, however, reported

under the agreement in case 75 per cent of the car's value is made in North-America and at least 40 per cent by workers earning at least 16 dollars per hour.[27] This is meant to increase wages in Mexico or at least to shift some car production back to the United States or Canada where wages are higher. The EU as well has been using its free trade agreement with Korea to seek improvements in Korean labour standards.[28]

2. Income tax adjustments

A completely different avenue to address the gap between the 'market price' of our t-shirt and its 'fair market value', resulting from labour exploitation in the production of the t-shirt, is a tax instrument that could, according to professors Christians and van Apeldoorn, already be implemented under the prevailing tax laws of many countries.[29] The idea is relatively intuitive. Assume our t-shirt is imported and sold in the United States by Walmart, the US parent company ('Walmart parent'). Assume also that the t-shirt was produced by a Walmart subsidiary in, say, Bangladesh ('Walmart sub'). For purposes of calculating income taxes, a decision must be made as to what part of the profits made on the t-shirt to allocate to Walmart parent (in the United States) as opposed to Walmart sub (in Bangladesh). To do so, the core step is to fix an arm's length price for the t-shirt sale between Walmart sub and Walmart parent, under the assumption that they would be unrelated, under so-called transfer pricing rules. Suppose the t-shirt was sold or booked from sub to parent at 5 dollars, but that this price is only 5 dollars and not 5.50 because it was produced in Bangladesh with worker wages below what is in Bangladesh a 'fair market wage'. Suppose, indeed, that had 'fair wages' been paid, the t-shirt's price would have been 5.50 dollars. In

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to include procedures 'allowing the U.S. and Mexico to jointly inspect and verify that specific factories are complying with USMCA's labour standards'; in the case of noncompliance 'the U.S. could revoke tariff benefits on the factories' products').

[27] Carrie Kahn, 'Will NAFTA 2.0 Really Boost Mexican Wages?' (2018) National Public Radio <https://www.npr.org/2018/10/17/657806248/will-nafta-2-0-really-boost-mexican-wages>.

[28] EU Commission, 'EU and the Republic of Korea launch government consultations over labour commitments under the trade agreement' (Press release 21 January 2019) <https://eeas.europa.eu/delegations/south-korea/56833/eu-and-republic-korea-launch-government-consultations-over-labour-commitments-under-trade_en>.

[29] Allisson Christians and Laurens van Apeldoorn, 'Taxing Income Where Value is Created' (2018) 22 Florida Tax Review 1.

that case, US tax authorities could reject the 5 dollar transfer price as not being arm's length, reduce the profit to be allocated to Walmart parent (as it should have paid 5.50 dollars, not 5 for the t-shirt) and cut the income tax due by Walmart parent (as it now made a lower profit).

Note that even if this were to happen, Walmart's US income taxes would go down, but it would be for Bangladeshi authorities to correspondingly increase the income tax of Walmart sub in Bangladesh (as sub's profit is now 50 cents higher). Moreover, even if this second step were to happen, it would increase Bangladeshi tax revenues, not increase worker wages in Bangladesh (although some redistribution could occur). That said, whereas higher import duties discussed above, make the importing or consuming country better off (in our example, the United States), if a Bangladeshi tax adjustment is made, the extra money at least goes to the producing country Bangladesh.

VI. Levelling the playing field focusing on the worker or work

A third and final cluster of instruments to level the playing field in favour of labour focuses not on the local producer or multinational company, nor on the traded product, but on the worker or work itself. A first example stems from anti-trust or competition law where it is increasingly realized that market concentration may not only lead to higher product prices (as when only one or two companies compete in a relevant market), but also reduce wages. Indeed, when in a relevant market only a limited number of employers remain, wage competition between these employers may go down, and as a result wages may drop. In other words, low wages may be grounds for an anti-trust violation which, in turn, may force wages to go up.[30]

A second example can be found in the technology sector, where data is key and determines the revenue stream of tech companies such as Google or Facebook. Even though Google and Facebook can, until now, be used for free, use creates data for the company and, in turn, revenues. This raises the question of whether data is like 'capital' (in the hands of Google, to be

[30] Cass Sunstein, 'A New View of Antitrust Law That Favors Workers', 14 May 2018, Bloomberg <https://www.bnnbloomberg.ca/a-new-view-of-antitrust-law-favors-workers-eass-r-sunstein-1.1076563>.

used to maximize return) or rather more like 'labour'.[31] In the latter event, users 'make' data and their 'labour' should be compensated. Doing a Google search should then not only be free, but Google should actually pay us when using it. Through this lens, commentators have complained about 'technofeudalism' and 'data slavery' and are calling for data 'labour unions' or their equivalents to protect users, not only in terms of data privacy but also in order to share the value of data between users creating it and companies monetizing it.[32] Though far from implemented, any move in this direction would benefit 'labour', that is tech users/consumers (which would then be regarded as 'labour' or workers), to the detriment of Google or Facebook (that is, companies or 'capital').

A third and final example is what Richard Baldwin has called 'tele-migration', which would eventually allow (more) labour to cross borders, without workers having to physically move and thus comply with strict migration policies.[33] The first wave of globalization, as Baldwin describes it, allowed for goods to cross borders more easily, because of massively reduced trade costs (e.g. lower shipping costs thanks to containers). The second wave of globalization, in turn, enabled ideas to move more freely between countries, allowing global production along value chains in different countries (e.g. because of lower telecommunication and investment costs). The next wave of globalization, finally, may enable people (or at least their skills or services) to cross borders more easily, because face-to-face costs go down (e.g. thanks to videoconferencing or freelancing platforms like WeWork). If, indeed, labour becomes more mobile and can engage in the (wage) 'arbitrage' that only goods and services production and the free flow of capital have exploited so far, the share of global income that goes to labour may increase, and with it globalization's imbalance to the detriment of labour, described in section 2, may be reduced.

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[31] Eric Posner and E. Weyl, 'Radical Markets, Uprooting Capitalism and Democracy for a Just Society' and Imanol Arrieta Ibarra, Leonard Goff, Diego Jiménez Hernandez, Jaron Lanier and E. Glen Weyl, 'Should We Treat Data as Labour? Moving Beyond "Free"' (2018) American Economic Association, Papers and Proceedings <https://www.aeaweb.org/conference/2018/preliminary/paper/2Y7N88na>.

[32] The Economist, 'Data Workers of the World, Unite – If People Were Paid for Their Data' (2018) <https://www.economist.com/the-world-if/2018/07/07/data-workers-of-the-world-unite>.

[33] Richard Baldwin, *The Globotics Upheaval: Globalization, Robotics and The Future of Work* (Oxford UP 2019).

VII. Conclusion

Globalization as well as global governance, especially since the 1990s, has suffered from an imbalance to the detriment of labour, and in favor of the free flow of goods, services and capital (benefitting disproportionately capital as compared to labour). More recently, however, some re-balancing may be occurring: less liberalization and protection of cross-border trade and investment flows; more protection of labour. This contribution has offered a number of novel, unorthodox instruments that have emerged or have been discussed or proposed that may slowly 'level the playing field' in favor of labour. Some are (i) focused on liability of multinational parent or sourcing companies (based in the home State, as opposed to local producers based in the host State, and this at both the domestic and international level), others (ii) target the traded product (be it by means of import duties or income tax adjustments), yet others (iii) concentrate on work or the worker him or herself (anti-trust enforcement in favor of workers; construing 'data as labour' or putting in place mechanisms allowing for 'tele-migration'). These avenues are novel in that they are not focused on employers in the production country, nor centered around ILO conventions with labour commitments on host States and relatively soft compliance mechanisms. Indeed, most of these instruments are market- or technology-based, hard-law instruments embedded in domestic law or arbitration, or in international organizations or treaties outside of the ILO (e.g. the UN Human Rights Council, tax treaties or trade and investment agreements such as the USMCA). As the Global Commission on the Future of Work concluded in its 2019 report *Work For A Brighter Future*, 'there are strong, complex and crucial links between trade, finance, and economic and social policies. The success of this human-centred growth and development agenda depends heavily on coherence across these policy areas'.[34]

[34] Global Commission on the Future of Work, *Work for a Brighter Future* (ILO 2019) 14.