



Novitz, T. (2020). Past and Future Work at the International Labour Organization: Labour as a Fictitious Commodity, Countermovement and Sustainability . *International Organizations Law Review*, 17(1), 10-40. <https://doi.org/10.1163/15723747-01701002>

Peer reviewed version

Link to published version (if available):
[10.1163/15723747-01701002](https://doi.org/10.1163/15723747-01701002)

[Link to publication record in Explore Bristol Research](#)
PDF-document

This is the author accepted manuscript (AAM). The final published version (version of record) is available online via Brill Academic Publishers at https://brill.com/view/journals/iolr/17/1/article-p10_10.xml?rskey=3CLyZY&result=2 . Please refer to any applicable terms of use of the publisher.

University of Bristol - Explore Bristol Research

General rights

This document is made available in accordance with publisher policies. Please cite only the published version using the reference above. Full terms of use are available:
<http://www.bristol.ac.uk/red/research-policy/pure/user-guides/ebr-terms/>

**Past and Future Work at the International Labour Organization:
Labour as a Fictitious Commodity, Countermovement and Sustainability**

Tonia Novitz

Forthcoming (2019/20) *International Organizations Law Review*

Abstract

This article analyses past and future work at the International Labour Organization (ILO) with reference to the transformational analysis offered by Karl Polanyi, examining how constitutional statements made through ILO Declarations reflect countermovement to market dominance. These policy shifts at the ILO are also analysed in relation to the three pillars of sustainability (environmental, economic and social), which arguably map onto Polanyi's three fictitious commodities (with a focus on labour as emblematic of social concerns). It is argued that the emphasis on social justice and sustainability in the 2019 ILO Global Commission Report, including the proposal for a Universal Labour Guarantee, provides significant resistance to the economic orthodoxy regarding the future of work promoted by the World Bank Group and the Organization for Economic Cooperation and Development (OECD). However, this narrative of ILO countermovement also exposes a lack of balanced regulation which requires more inclusive voice on the global stage.

Keywords

ILO, Future, Work, Sustainability, Labour, Fictitious Commodities, Countermovement, Voice

1. Introduction

As we consider new roles for private and public authority governing labour standards in this special issue, it is also timely to reflect on the more established International Labour Organization (ILO), which has been seeking a recipe for effective governance since 1919. At the date of its creation, the ILO offered a unique experimental form of tripartite participation, which tempered state control of its activities. In this way, voice was given to the representatives of management and labour on the international stage in unprecedented ways, leading to the innovative adoption of international labour standards both recommendatory and formally binding under international law.¹ Yet, at the same time, finding appropriate enforcement mechanisms for the standards the ILO sought to create was far from straightforward. The Permanent Court of International Justice (PCIJ), initially envisaged by the ILO Constitution as a source of recourse,² was too powerful and stringent a source of authority to be let loose on what was to be a collaborative governance process. Instead, experimentation with suitable tripartite and expert supervisory procedures led to the complex matrix of operations at play in the ILO today.³ These internal dynamics of the ILO (and, its secretariat, the International Labour Office) also have to be juxtaposed with its external influence.⁴ The ILO's journey over the past century will be traversed below, alongside the attempt to look forward to a new future (or 'futures') of work.⁵

¹ Albert Thomas, 'The International Labour Organization: Its Origins, Development and Future' (1921) 1 *International Labour Review* 5; for comment, see Tonia Novitz and Phil Syrpis, 'Assessing Legitimate Structures for the Making of Transnational Labour Law: The Durability of Corporatism' (2007) 36 *Industrial Law Journal* 367.

² See ILO Constitution, Article 29, utilised only in a series of references to the PCIJ between 1922 and 1926.

³ Anne Trebilcock, 'The International Labour Organization' in Michael Bowman and Dino Kritsiotis (eds), *Conceptual and Contextual Perspectives on the Modern Law of Treaties* (Cambridge University Press, 2018).

⁴ Huw Thomas and Peter Turnbull, 'From Horizontal to Vertical Labour Governance: The International Labour Organization (ILO) and Decent Work in Global Supply Chains' (2018) 71(4) *Human Relations* 536.

⁵ Cf. Katie Bales, Harry Pitts and Huw Thomas, 'Editorial: From the Future of Work to Futures of Work' (Web Page, 3 May 2019) <<https://futuresofwork.co.uk/2018/09/05/editorial-from-the-future-of-work-to-futures-of-work/>>.

This article puts forward the argument that the ILO's future role need not be viewed in terms of a dramatic break with the past, but rather in Polanyian terms as the continued attempt to navigate (and reconcile insofar as this is ever possible) conflicting market and social pressures.⁶ It is argued that the ILO still has an important role to play as a navigator, but that the rapidity of attempts to achieve constitutional change in recent years, alongside the emergence of other countermovements, whether those associated with populism or sustainability, are indicative of an economic system which is failing the complex global society in which it should be embedded.

The next part of this article examines a Polanyian theoretical frame as a starting point for understanding regulation of labour markets.⁷ The third part argues that the treatment by Polanyi of countermovement is helpful in understanding attempts by the ILO to resist market pressures at various junctures and offer constitutional (albeit declaratory) solutions embedded in an idea of 'social justice'. The fourth part considers how Polanyi's account of the fictitious commodities of 'land', 'labour' and 'money'⁸ may be mapped onto contemporary concerns with 'three pillars' of sustainability: 'environmental', 'social' and 'economic'.⁹ The final part examines the ILO Global Commission Report published on 22 January 2019,¹⁰ which provided a basis for the Centennial Declaration adopted on 26 June 2019, alongside the Report of the International Labour Office on

⁶ The primary source being Karl Polanyi, *The Great Transformation: The Political and Economic Origins of our Time* (Beacon Press, 2001, 2nd paperback ed).

⁷ For eg see Ronaldo Munck, 'Globalization, Labor and the "Polanyi" Problem' (2004) 45(3) *Labor History* 252; Judy Fudge, 'The New Discourse of Labor Rights: From Social to Fundamental Rights' (2007) 29 *Comparative Labor Law and Policy Journal* 29; Guy Standing, 'The International Labour Organization' (2010) 15(2) *New Political Economy* 307.

⁸ *Ibid.*, chapter 6.

⁹ Building on observations made by Thomas Wanner, 'The New "Passive Revolution" of the Green Economy and Growth Discourse: Maintaining the "Sustainable Development" of Neoliberal Capitalism' (2015) 20(1) *New Political Economy* 21; and Fikret Adaman, Pat Devine, and Begum Ozkaynak, 'Reinstituting the Economic Process: (Re)embedding the economy in society and nature' (2003) 13(2) *International Review of Sociology/Revue Internationale de Sociologie* 357.

¹⁰ International Labour Organization (ILO) Global Commission on the Future of Work, *Work for a brighter future* (ILO, 2019), Report issued 22 January, 2019 (online report, 18 June 2019)

<https://www.ilo.org/global/publications/books/WCMS_662410/lang--en/index.htm>.

Time to Act for SDG 8: Integrating Decent Work, Sustained Growth and Environmental Integrity issued on 10 July 2019.¹¹ These developments can be distinguished from (and may act as a corrective to) reports on the future of work also issued in this ILO centenary year by other international institutions, namely the Organization for Economic Cooperation and Development (OECD)¹² and the World Bank Group,¹³ which focus on economic objectives. The article concludes by contending that it remains important for the ILO to articulate sustainable alternatives to a dominant market-led perspective on the future of work. Yet, the ILO's recent history, punctuated by constitutional instruments which reflect repeated resistance to economic injustice and societal destruction, also exposes the failure of global economic governance to promote and engage representative and participatory voice.

2. Polanyi's Identification of 'Fictitious Commodities' and 'Counter-movement'

Polanyi's book, *The Great Transformation: The Political and Economic Origins of Our Time*, first published in 1944 was, as its subtitle indicates, very much concerned with a specific historical period.¹⁴ Yet, his work has contemporary relevance as we seek to understand the contemporary relationship between 'productive forces' and human politics. His writing remains a recurrent reference point.¹⁵

¹¹ ILO International Labour Office, *Time to act for SDG 8: Integrating decent work, sustained growth and environmental integrity* (ILO, 2019), Report issued 10 July 2019 (online report, 2 August 2019) <https://www.ilo.org/global/publications/books/WCMS_712685/lang--en/index.htm>.

¹² OECD, *Policy Responses to New Forms of Work* (OECD Publishing, 2019), Report issued 21 March 2019 (online report, 24 April 2019) <<http://www.oecd.org/els/policy-responses-to-new-forms-of-work-0763f1b7-en.htm>>.

¹³ World Bank, *World Development Report 2019: The Changing Nature of Work* (World Bank, 2019) (online report, 24 April 2019) <<https://openknowledge.worldbank.org/handle/10986/30435>>.

¹⁴ For some of this history, see Fred Block, 'Karl Polanyi and the Writing of *The Great Transformation*' (2003) 32 *Theory and Society* 275; also Fred Block and Margaret Somers, *The Power of Market Fundamentalism: Karl Polanyi's Critique* (Harvard University Press, 2014). Note also Polanyi's other writings, including 'The Economy as Instituted Process' in Mark Granovetter and Richard Swedberg (eds), *The Sociology of Economic Life*, 3rd ed. (Routledge, 2018).

¹⁵ See for eg in relation to the European Union (EU), Diamond Ashiagbor, 'Unravelling the Embedded Liberal Bargain: Labour and Social Welfare Law in the Context of EU Market Integration' (2013) 19(3) *European Law*

Polanyi was concerned with what he described as ‘fictitious commodities’: land, labour and money.¹⁶ These are not ‘produced for sale’ like other commodities. Land (or nature) exists independently of human commerce and cannot be completely tamed; labour is a human activity which cannot neatly be detached from the rest of life or be ‘stored’; while money is a mere ‘token’ or representation of purchasing power created by banking or state finance.¹⁷ These features make them inappropriate subjects for exposure to fluctuating market value: ‘To allow the market mechanism to be sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society.’¹⁸

While others claimed that the market could self-correct in response to such a threat,¹⁹ Polanyi considered that assumption flawed.²⁰ Instead, markets need regulation through a political process, or re-embedding in our complex society. Every period of market building or ‘economic reconstruction’ would according to Polanyi’s analysis induce a countermovement which would offer new systems of social protection compatible with the changes:²¹ “human society would have been annihilated but for protective counter-moves which blunted the action of this self-destructive mechanism”.²² Indeed, this could be understood as a form of “double movement”, such that “the extension of market organization in respect to genuine commodities was accompanied by its restriction in respect of fictitious ones”.²³ However, *The Great*

Journal 303; and Richard Hyman, ‘Three Scenarios for Industrial Relations in Europe’ (2015) 154(1) *International Labour Review* 5.

¹⁶ Block (n 14), 281.

¹⁷ Polanyi (n 6), 75.

¹⁸ *Ibid.*, 76.

¹⁹ See Friedrich A. Von Hayek, ‘Economics and Knowledge’ (1937) 4(13) *Economica* 33; and Frederich A. Hayek, *The Road to Serfdom* (Dymock’s, 1944) discussed in Damien Cahill, ‘Polanyi, Hayek and Embedded Neoliberalism’ (2018) 15(7) *Globalizations* 977, 985 - 991.

²⁰ *Ibid.*, 3.

²¹ Summarised by Fudge (n 7), 32 - 33.

²² Polanyi (n 6), 79.

²³ *Ibid.*

Transformation was vague as to the form such countermovement might take. Polanyi referred to “a network of measures and policies... integrated into powerful institutions designed to check the action of the market relative to land, labor and money”.²⁴ The protective countermovement instantiated in law and regulation can also be seen as a reflection of societal voice stemming from a wide range of groups in society.²⁵

There remain contradictions in Polanyi’s approach,²⁶ not least because state action which he viewed as a potential restriction on markets can also be co-opted for market-led purposes. In this, he himself cited the design of the British ‘Speenhamland’ wage subsidies (linked to the price of bread) that were aimed at providing a “right to live”,²⁷ but which ultimately acted as a disincentive for achieving meaningful independent employment. When this species of the ‘poor laws’ was abolished, an already vulnerable workforce, having been subjected to “degradation” and “pauperization”, was easily manipulated and commodified for nineteenth century industrial production.²⁸

A further uncertainty in Polanyi’s writing is what we are to understand by ‘disembeddedness’,²⁹ for it is not possible for a market to exist without some form of state support.³⁰ Rather, there may be different ways (and degrees) of embeddedness, which can be mapped onto the identification of distinct varieties of capitalism operating at national, regional and international levels.³¹ There is also a perhaps even more interesting question of what is the ‘society’ that the economy is to be

²⁴ Ibid.

²⁵ Fred Block, ‘Introduction’ to Polanyi (n 6), xviii.

²⁶ Block (n 14), 289 – 294.

²⁷ Polanyi (n 6), 82 and 85.

²⁸ Ibid., 86 – 87; also chapters 8 and 9 See further the historical analysis offered by Simon Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (Oxford University Press, 2005), chapter 3.

²⁹ Block (n 14), 294 - 295; Block and Summers (n 14), 73 – 4.

³⁰ Bernard Barber, ‘All Economies are “Embedded”’: The Career of a Concept and Beyond’ (1995) 62(2) *Social Research* 387; and Cahill (n 19), 980 who notes that this point is made emphatically in Polanyi (n 14), 250.

³¹ Ashiagbor (n 15), 306 citing Peter A. Hall and David Soskice, *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford University Press, 2001). See also Adaman et al (n 9), 360.

embedded within. Is this to be understood as society operating a domestic, regional or even global level? And who is to be represented through societal voice?³²

As Nancy Fraser has pointed out, Polanyi seems to idealise society in an almost communitarian fashion, which can itself be a source of injustice.³³ The answer to this objection may lie in Polanyi's appreciation that, as the market becomes more disembedded from society, we can expect protest that entails rejection of market forces, but also more dynamic challenges to forms of injustice as they become recognised. We might understand countermovement now, in an era of complex global commodity and supply chains, in terms of "multiple public and private actors" interacting in a variety of ways.³⁴ Fraser suggests that it should be possible for actors to "integrate social protection with emancipation".³⁵ Contemporary examples may include demands for corporate social responsibility and emergent green movements which lead to regulatory changes among private and public actors.³⁶

Polanyi further conceded that the process of 'double movement' (pressure for market expansion, alongside societal resistance requiring some market contraction) can have negative effects. For example, it can lead to limitations being placed on even beneficial market operations in extreme and unexpected ways. Polanyi gave the example of rising tariff barriers in response to national protectionist interests, which are disadvantageous for everyone in terms of the higher costs of

³² Diamond Ashiagbor, Prabha Kotiswaran, Amanda Perry-Kessaris, 'Introduction: Moving towards an Economic Sociology of Law' (2013) 40 *Journal of Law and Society* 1.

³³ Nancy Fraser, 'Can Society be Commodities All the Way Down? Post-Polanyian reflections on capitalist crisis' (2014) 43(4) *Economy and Society* 541, 544.

³⁴ See Ernst Langthaler and Elke Schüßler, 'Commodity Studies with Polanyi: Disembedding and Re-Embedding Labour and Land in Contemporary Capitalism' (2009) 44(2) *Österreichische Zeitschrift für Soziologie* 209, 213. See Janelle Diller (this volume).

³⁵ Fraser (n 33), 554.

³⁶ Lilian Moncrieff, 'Karl Polanyi and the Problem of Corporate Social Responsibility' (2015) 42(3) *Journal of Law and Society* 434, 446 – 450; Ronaldo Munck, *Globalization and Contestation: The New Great Counter-Movement* (Routledge, 2006); and Diana Stuart, Ryan Gunderson, and Brian Petersen, 'Climate Change and the Polanyian Counter-movement: Carbon markets or degrowth?' (2019) 24(1) *New Political Economy* 89.

goods.³⁷ He was also aware “of reactionary forces striving for a re-embedding of markets, fascism framed as ‘national socialism’ being a prime example of the latter”.³⁸ Contemporary populism and authoritarian government may be understood as one such problematic manifestation of this process.³⁹

So, while countermovement is valuable as a corrective, it would be better to avoid the extremity of such responses through more consistent democratic and egalitarian forms of ongoing institutional governance of markets.⁴⁰ Polanyi advocated that, in a complex society, we accept some regulatory constraints in order to achieve “more abundant freedom for all”, which cannot be realized by a mere market structure concerned only with profits.⁴¹ Separation of politics and economics was seen by Polanyi as dangerous.⁴² Instead, he sought a system of “integration in society” which also entailed greater rights (or freedom) for the individual.⁴³ He even provided an early vision of regulation occurring not only through states, but by states acting within international organizations.⁴⁴

3. Countermovement in the ILO over the Past Century

Polanyi welcomed creation of a League of Nations, although he was concerned by the relationship established by the Treaty of Versailles between the victor and vanquished states and

³⁷ Block (n 14), 296 – 8.

³⁸ Langthaler and Schüßler (n 34), 214.

³⁹ Alan Bogg and Mark Freedland, ‘Labour Law in the Age of Populism: Towards Sustainable Democratic Engagement’ in Julia Lopez Lopez (ed), *Collective Bargaining and Collective Action: Labour Agency and Governance in the 21st Century?* (Hart, 2018). Tonia Novitz, ‘Freedom of Association: Its emergence and the case for prevention of its decline’ in Janice Bellace and Beryl Ter Haar (eds), *Business, Labour and Human Rights* (Edward Elgar, 2019).

⁴⁰ Block (n 14), 300-301.

⁴¹ Polanyi (n 6), 268.

⁴² *Ibid.*, 263.

⁴³ *Ibid.*, 264.

⁴⁴ Gareth Dale, ‘In Search of Karl Polanyi’s International Relations Theory’ (2016) 42 *Review of International Studies* 401 at 419.

he foresaw problems with the focus on “Peace through Gold”.⁴⁵ By 1944, his hope was that a new ‘international economic order’ would emerge.⁴⁶ In 1982, John Ruggie coined the term ‘embedded liberalism’ to reflect the compromise that was reached after the Second World War between domestic sovereign economy and multilateral institutions, which entailed “a combination of global currency regulations and domestic commitments to welfare capitalism”.⁴⁷ More recently, it has been suggested that this compromise has (following a variety of reforms to international institutions) embedded ‘neo-liberalism’, whereby transnational global markets have been able to prevail over domestic assertion of social values.⁴⁸ This section of the article charts the ILO’s roles in promoting and resisting these developments, with reference to four key constitutional instruments adopted by the ILO. The 1919 Treaty of Versailles established the initial objectives and governance structure of the ILO, the 1944 Declaration of Philadelphia encapsulated the Organization’s human rights credentials and preoccupation with freedom of association,⁴⁹ the 1998 Declaration on Fundamental Principles and Rights at Work instantiated Director-General Michel Hansenne’s determination to focus on ‘core labour standards’,⁵⁰ and the 2008 Declaration on Social Justice for a Fair Globalization was intended to give effect to

⁴⁵ Ibid, referring at 404 – 405 and 413 to Polanyi’s original writings in translation from 1924 – 1937. See also Polanyi (n 6), chapters 16, 17 and 18; discussed by Dale (n 44) at 416-17 and 420.

⁴⁶ Dale (n 44), 407 (again citing an unpublished paper on ‘The Theory of Politics’).

⁴⁷ Cahill (n 19), 978 and Dale (n 44), 402. Both citing John Ruggie, ‘International Regimes, Transactions and Change: Embedded liberalism in the post-war economic order’ (1982) 36(2) *International Organization* 385.

⁴⁸ Cf. Joo-Cheong Tham and Keith Ewing, ‘Labour Provisions in Trade Agreements: Neoliberal regulation at work?’ (this issue); Bastiaan Van Apeldoorn, ‘Transnationalization and the Restructuring of Europe’s Socioeconomic Order’ (1998) 28(1) *International Journal of Political Economy* 12; Philip G. Cerny, ‘Embedding Neoliberalism: The evolution of a hegemonic paradigm’ (2008) 2(1) *The Journal of International Trade and Diplomacy* 1; Cahill (n 19) and also Damien Cahill, *The End of Laissez-Faire? On the Durability of Embedded Neoliberalism* (Edward Elgar, 2014).

⁴⁹ J. D. French, ‘The Declaration of Philadelphia and the Global Social Charter of the United Nations 1944- 45’ in Werner Sengenberger and Duncan Campbell (eds), *International Labour Standards and Economic Interdependence* (ILO, 1996).

⁵⁰ Janice Bellace, ‘The ILO Declaration of Fundamental Principles and Rights at Work’ (2001) 17 *International Journal of Comparative Labour Law and Industrial Relations* 269.

Director-General Juan Somavia's "Decent Work Agenda".⁵¹ The aim is to assess the extent to which each can be understood as a manifestation of a countermovement challenging market dominance. Before proceeding, it may be helpful at the outset to outline two prominent opposing views on the evolution of ILO governance and regulation.

Guy Standing has asserted that "[t]he story of the ILO can be told in four acts, or periods: 1919-44, 1944-69, 1970-98 and 1999-2009". His view is that the first two map onto Polanyi's "Great Transformation", that is, "establishment of a regulated national market society based mainly on industrial labour"; while the latter two periods witnessed its collapse and the "painful forging of a global market society".⁵² In so doing, Standing has alleged that the International Labour Office has gone from a "professional secretariat" to a "populist gadfly", succumbing to external pressures and losing relevance.⁵³ From a Polanyian perspective, Standing considers that the ILO has become normatively 'disembedded', offering no meaningful constraint on the practices of international economic institutions.⁵⁴ Standing is not alone in seeing international institutions as privileging flexible markets at the expense of people and of their environment.⁵⁵ However, he stands out by pointing to the ILO, and what he sees as its failures, as a contributing cause.

The other ongoing staunch critic of the ILO, Brian Langille, does not use a Polanyian analysis, but argues (in stark opposition to Standing) that the Organization is now trying to do too much to control the conduct of its member states, following an outdated "Geneva consensus" when it should be more sensitive to the needs of developing countries, facilitating rather than obstructing markets.⁵⁶ Langille has charted ILO history with reference to 'key' and 'significant' moments,

⁵¹ Francis Maupain, 'New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization' (2009) 20(3) *European Journal of International Law* 823.

⁵² Standing (n 8), 307.

⁵³ Guy Standing, 'The ILO: An Agency for Globalization' (2008) 39(3) *Development and Change* 355, 374 – 378.

⁵⁴ *Ibid.*, at 361-365.

⁵⁵ See Van Apeldoorn (n 48) and Cahill (n 19) above.

⁵⁶ Brian Langille, "'Hard Law Makes Bad Cases": The International Labour Organization (Nervously) Confronts New Governance Institutions' (2016) 32(4) *International Journal of Comparative Labour Law and Industrial Relations* 407; and Brian Langille, 'Imagining Post Geneva Consensus Labor Law for Post Washington Consensus Development' (2009) 31 *Comparative Labor Law and Policy Journal* 523.

such as the ILO Declaration on Fundamental Principles and Rights at Work.⁵⁷ Taking the liberty of reconstructing Langille's arguments along Polanyian lines, he contends essentially that the ILO is currently *overly* concerned with 'embedding' the market in the social. Its international labour standards are unduly coercive, providing unwarranted constraints on market activities, when its concern should lie with building (his conception of) capabilities of workers.⁵⁸ It should be added that Langille's conception of capabilities as primarily concerned with individual freedoms has been widely contested by scholars who draw on the work of Polanyi and Amartya Sen.⁵⁹ In particular, Deakin and Wilkinson have argued that it may be more important to provide scope for the collective realization of capabilities through both devotion of targeted state resources and procedural means such as collective bargaining and corporate governance.⁶⁰

There is an alternative view of ILO activities which lies somewhere between the perspectives offered by Standing and Langille. This involves recognition of the ILO as an international institution trying to navigate longstanding tensions between the market and the social in ways that never have or will be wholly reconciled. The ILO lacks the economic power of the Bretton Woods institutions; it does not possess the weapon of financial conditionality manifested notoriously through the Washington Consensus and more recently in austerity policies following the global financial crisis.⁶¹ Despite Langille's allegations that the ILO has overreached its constitutional capacities, it has only been able in a soft sense to name and shame constituent member states and only then to the extent that its tripartite constitution of norm-making and

⁵⁷ Brian Langille, 'Core Labour Standards – The True Story (Reply to Alston)' (2005) 16 *European Journal of International Law* 409, at 410 and 420 respectively.

⁵⁸ *Ibid.*, and Langille (ed), *The Capability Approach to Labour Law* (Oxford University Press, 2019).

⁵⁹ See Fudge (n 7), 58 – 63; and Pascal McDongall, 'Keynes, Sen and Hayek: Competing Approaches to International Labor Law in the ILO and the WTO, 1994 – 2008' (2017) 15 *Nw U.J. Int'l Hum. Rts.* 32, 66-70.

⁶⁰ Deakin and Wilkinson (n 28), 351-2.

⁶¹ See concern expressed by the UN Independent Expert on the effects of foreign debt and other financial obligations of States, see the reports issued in 2017 available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/57 and on the EU http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/57/Add.1

supervisory bodies will allow.⁶² Harry Arthurs has notably described the institution as an “archetypal discursive community”, which promotes discussion in a tripartite assembly, granting audience also to key transnational actors and non-governmental organizations”.⁶³ It is with a sense of these limitations in mind, imposed at the outset, that we may best understand the ILO as a regulatory navigator in the international economic order.

3.1 The Original ILO Constitution of 1919

Polanyi contemplated that the ILO, as an international regulator of labour standards, would take its place in the new international economic order alongside the Bretton Woods institutions, namely the International Monetary Fund (IMF) and the World Bank, and of course within the broader framework of the United Nations (UN).⁶⁴ Indeed, he referred to the International Labour Office (the ILO’s Secretariat) in *The Great Transformation* as having been created “in order to equalize conditions of competition between states”.⁶⁵ Of course, from a Polanyian perspective, the ILO had been created to do more than this.

The ILO was not merely concerned with setting terms of trade which applied equally to everyone. That ambition was to be reflected in the Most Favoured Nation principle embedded in Article 1 of the General Agreement on Tariffs and Trade (GATT) provisionally adopted in 1948 and still in force as amended after creation of the World Trade Organization (WTO). The ILO’s aim was to set *fair* terms of competition. The rallying cry in the Preamble to the first Constitution of the ILO (to be found in Part XIII of the Treaty of Versailles) was “social justice”. The first general principle in Section II (Article 427) was that “labour should not be regarded merely as a commodity or article of commerce”, an idea on which Polanyi drew himself decades later.

⁶² Janice Bellace, ‘The ILO and Tripartism: The Challenge of Balancing the Three-Legged Stool’, paper presented at ILO Law for Social Justice conference, Geneva, 16 April 2019; forthcoming in George Politakis (ed), *Law for Social Justice* (ILO, 2019).

⁶³ Harry Arthurs, ‘Extraterritoriality by Other Means: How Labor Law Sneaks Across Borders, Conquers Minds, and Controls Workplaces Abroad’ (2010) 21 *Stanford Law and Policy Review* 527 at 539.

⁶⁴ Dale (n 44), 420 - 422.

⁶⁵ Polanyi (n 6), 27-28.

The tripartite structure of the ILO⁶⁶ was an important innovation, which enabled connection with both the social concerns of organised labour and the commercial interests of employers; this was both an enabling device but also a constraint requiring compromise.⁶⁷ Representation of worker and employer interests in a collective form within the ILO could be achieved by the constitutional protection of ‘the right of freedom of association’. This was also a way to ensure reference to socially embedded understandings of what was acceptable behavior in the context of labour markets.⁶⁸

3.2 Revitalisation after the Second World War through the Declaration of Philadelphia 1944

The 1944 Declaration of Philadelphia precipitated the end of the Second World War by incorporating a human rights competence into the ILO; reflecting reactions to the labour abuses experienced during wartime.⁶⁹ Notably, Article I reiterated that:

- (a) labour is not a commodity;
- (b) freedom of expression and of association are essential to sustained progress;
- (c) poverty anywhere constitutes a danger to prosperity everywhere...

The right of collective bargaining and for workers and employers to be given voice “in the preparation and application of social and economic measures” was recognised in Article III(e). Also impressive was a statement in Article II (c) of the Declaration to the effect that economic and financial policies, whether national or international, should be accepted “only insofar as they may be held to promote and not to hinder” the achievement of the Organization’s fundamental objective, namely ‘social justice’. This was arguably Polanyian ‘embedding’ *par excellence*,

⁶⁶ Established by the Treaty of Versailles, Articles 389 – 391 (relating to the International Labour Conference) and Article 393 (regarding the constitution of the Governing Body).

⁶⁷ See today’s ILO Constitution, Articles 3, 4 and 7 (Web Page, 28 April 2019)

https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO.

⁶⁸ Harold Butler, *The International Labour Organization* (Oxford University Press, 1939), 7-8.

⁶⁹ Eddy Lee, ‘The Declaration of Philadelphia: Retrospect and Prospect’ (1004) 133 *International Labour Review* 467.

although tussles remained (and continue) regarding the interpretation of the idea of ‘social justice’ when manifested in concrete ILO Conventions, the supervision of constitutional and Convention standards, and their implementation through subsequent technical assistance and other programmes.

What was left out of the post-1944 ILO constitutional equation, and arguably never adequately addressed, were the extreme differentials in wealth and thereby the balance of power between states. There was an obvious divide between the so-called ‘developed states’, consisting of the previous colonial and industrial powers in what has been termed the ‘Global North’, and the decolonized ‘developing states’ of the ‘Global South’.⁷⁰ Before the United States (US) joined the ILO in 1934, the concern was that: “Above all else, the International Labour Organization must justify itself to the European organised industrialised democracies.”⁷¹ Fraser has observed that: “What Polanyi did not anticipate was that the ‘embedded liberalism’ established after the War would serve some states much better than others.”⁷² Responding to entrenched disadvantage and injustice, the Group of 77 became a dominant force within the ILO, leading to more overt engagement in global politics; but the United States then rebelled, withdrawing with considerable budgetary costs (both short and long term) from 1977 – 1980.⁷³

3.3 Protection of ‘Core Labour Standards’ in the ILO Declaration on Fundamental Principles and Rights at Work

During the Cold War, the ILO had an important role to play as a bridge between East and West, so the US was always likely to return to the fold. From 1994 onwards, when capitalism emerged

⁷⁰ Branko Milanovic, *Global Inequality: A New Approach for the Age of Globalization* (Harvard UP, 2016); Miriam Ronzoni, ‘Global Labour Injustice: A Critical Overview’ in Yossi Dahan, Hanna Lerner and Faina Milman-Sivan (eds), *Global Justice and International Labour Rights* (Cambridge University Press, 2016).

⁷¹ George Barnes, *History of the International Labour Office* (Williams and Norgate, 1926), 79.

⁷² Fraser (n 33), 553.

⁷³ Victor-Yves Ghebali, *The International Labour Organization: A case study on the evolution of UN specialised agencies* (Martinus Nijhoff Publishers, 1989), 41-2 and 110 – 116; Stephen L. Schlossberg, ‘United States Participation in the ILO’ (1989) 11 *Comparative Labor Law Journal* 48, 65 – 71.

victorious, the ILO had to work harder to convince the international community of its significance.⁷⁴ The ILO accordingly devised a Declaration on Fundamental Principles and Rights at Work 1998 designed to appeal to all constituent members. Article 2 set out four ‘core labour standards’ to which all States were obliged to describe by virtue of their prior obligations under the extant ILO Constitution (as supplemented by the Declaration of Philadelphia which had been appended to the original text of the Treaty of Versailles). These consisted of:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.

The Declaration was built on the ILO Governing Body campaign of 1995 to ratify certain select ‘core’ Conventions: Convention Nos. 87 and 98 on freedom of association and collective bargaining (1948 and 1949); Conventions Nos. 29 and 105 on the elimination of all forms of forced and compulsory labour (1930 and 1957); ILO Convention No. 138 on the minimum age for admission to employment (1973); and ILO Conventions Nos. 100 and 111 on the elimination of discrimination in respect of employment and occupation (1957 and 1958). In 1999, an eighth ‘core’ Convention was adopted, the 1999 ILO Convention No. 182 on the worst forms of child labour, which supplemented the pre-existing ILO Programme for the Elimination of Child Labour (IPEC).

The Declaration did not merely ‘recognise’ these existing constitutional rights and principles, but also set out a ‘follow-up’ procedure. This consisted of annual review of the extent to which Member States who had not ratified ‘core’ ILO Conventions could be said to comply with the core labour standards (ratifying states being covered by existing supervisory machinery) and a global report on each of the core labour standards every four years, which exposed non-compliance by developed as well as developing states.⁷⁵

⁷⁴ Discussed in Tonia Novitz, *International Protection of the Right to Strike* (Oxford University Press, 2003), chapter 5.

⁷⁵ For the most recent reports, see (Web Page, 28 April 2019) <<https://www.ilo.org/declaration/lang--en/index.htm>>.

The list of entitlements in Article 2 of the 1998 Declaration fell short of those listed in the Preamble or General Principles section II of Part XIII of the Treaty of Versailles; nor did they even reflect all those set out in the 1944 Philadelphia Declaration. Where was health and safety, or even freedom of expression?⁷⁶ Langille stated that he saw no harm in this reduced ambit for ILO activities, which protected process rights rather than substantive outcomes and so were more achievable for developing countries, and the building of capabilities therein.⁷⁷ Notably, this selection of standards had also been endorsed by OECD studies as compatible with the trade aspirations of developing countries.⁷⁸ Others however saw this change as an unwarranted and unprecedented limitation of ILO competence, reducing this merely to promotion of civil and political rights (and even just a selection of these), while moving away from insistence on broader socio-economic entitlements and compliance with the actual text of ILO Conventions.⁷⁹ Philip Alston expressed concern that the core labour standards would reflect “those labour practices in relation to which developed countries are thought to perform well and on which at least some of the major exporting developing countries are thought to perform poorly”.⁸⁰

On the one hand, the 1998 Declaration can be seen as a form of construction of market flexibility. For just as national governments can be complicit in such construction, as Polanyi had noted in his ‘Speenhamland’ example, so too can international organizations.⁸¹ On the other

⁷⁶ See Bob Hepple, ‘New Approaches to International Labour Regulation’ (1997) 26 *ILJ* 353 at 358.

⁷⁷ Langille (n 57), 431.

⁷⁸ See for discussion, Steve Charnovitz, ‘Trade, Employment and Labour Standards: The OECD Study and Recent Developments: The OECD Study and Developments in the Trade and Labour Standards Debate’ (1997) 11 *Temple International and Comparative Law Journal* 131.

⁷⁹ Philip Alston, “‘Core Labour Standards’ and the Transformation of the International Labour Rights Regime’ (2004) 15 *EJIL* 457; Philip Alston, ‘Facing Up to the Complexities of the ILO’s Core Labour Standards Agenda’ (2005) 16 *EJIL* 457; Philip Alston and James Heenan, ‘Shrinking the International Labour Code’ (2004) 36(2/3) *International Law and Politics* 221; Standing (n 53), 367-8. See also Jill Murray, Taking Social Rights Seriously: Is there a Case for Institutional Reform of the ILO?’ in Colin Fenwick and Tonia Novitz (eds.), *Human Rights at Work: Perspectives on Law and Regulation* (Hart Publishing, 2010).

⁸⁰ Alston, ‘Core Labour Standards’ (n 79), 466 and 487.

⁸¹ See Polanyi (n 6), chapter 6, discussed above at ns 27-28.

hand, the 1998 Declaration can be viewed as establishing a basis for social standard-setting in trade. Notably, ILO core labour standards were then utilised by the European Union (EU) in construction of its trade conditionality in the EU Generalised System of Preferences and labour (and sustainability) chapters in trade agreements,⁸² although this was done by reference to actual ILO Conventions. In this way, it can also be argued that the 1998 Declaration became part of “a network of measures and policies... integrated into powerful institutions”, designed to resist untrammelled market forces,⁸³ or in another words a Polanyian countermovement in an era of globalization when capitalism was otherwise dominant.

3.4 Recognition of a ‘Decent Work Agenda’ in ILO Declaration on Social Justice for a Fair Globalization 2008

The next incoming ILO Director-General, Juan Somavia, sought to pursue a broader ‘decent work agenda’. This agenda was so broad that Francis Maupain viewed ‘decent work’ as “a kind of normative potluck” from which everyone can bring anything to the table and take away whatever they want.⁸⁴ Standing considered that too much was spent on the slogan ‘decent work’ and that Somavia’s “personalised commitment ... marked a costly diversion from the need to forge a renewed role for the ILO in responding to the changing world of work in the twenty-first century ...”.⁸⁵ However, the Declaration might also be viewed as an attempt to engage in that process of renewal, even if it was not wholly successful.

⁸² See on GSP Council Regulation 978/2012; and chapter 22 of the EU-Canada Comprehensive Economic Trade Agreement (CETA), provisionally applied from 2016 (regarding which see COM(2016) 443 final and 444 final and COM(2016)470 final). Discussed in Tonia Novitz, ‘Labour Standards and Trade: Need We Choose Between “Human Rights” and “Sustainable Development”?’ in Henner Gött (ed.), *Labour Standards in International Economic Law* (Springer, 2018).

⁸³ See text accompanying n 24 above.

⁸⁴ Francis Maupain, *The Future of the International Labour Organization in the Global Economy* (Hart, 2013), 54.

⁸⁵ Standing (n 7), 314.

Following the Report of a World Commission on the Social Dimension on Globalization in 2004,⁸⁶ the ILC adopted the ILO Declaration on Social Justice for a Fair Globalization 2008. The 2008 Declaration left ‘decent work’ out of its title, seemingly resisting the constitutionalisation of the term, but the return to an emphasis on “social justice” was not unwelcome.⁸⁷ This was an explicit response by the ILO to the effects of global trade. Article IA set out what was to be understood as the ‘decent work agenda’ consisting of “four equally important strategic objectives”:

- (i) promoting employment ...
- (ii) developing and enhancing measures of social protection – social security and labour protection –which are sustainable and adapted to national circumstances...
- (iii) promoting social dialogue and tripartism...
- (iv) respecting, promoting and realizing the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realization of all the strategic objectives...

There are certainly various facets of the ‘decent work agenda’ that are unclear from this text, such as how tripartism and social dialogue protected in para. (iii) can be distinguished from ‘freedom of association and the effective right to collective bargaining’ in para (iv). Surely one depends on the other and they should be seen as mutually reinforcing rather than distinct? Also, the focus of enforcement in this context was not to be the constituent member states, or the employers which as commercial entities in the context of globalisation were causing havoc, but instead the gaze was to be pointed inward to the ILO to reform its procedures (Article II: “review” and adaptation of institutional practices).

⁸⁶ ILO World Commission on the Social Dimension of Globalization, *A Fair Globalization, Creating Opportunities for All* (ILO, 2004) Report issued 24 February 2004 (online report, 8 August 2019) <https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221154262_EN/lang--it/index.htm>.

⁸⁷ Maupain (n 84), 58.

This seems to have been a prompt for the employers' group to challenge ILO supervisory systems, such as the findings of ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) through the 2012 walkout of the tripartite Conference Committee on the Applications of Standards (CAS).⁸⁸ Others have observed that, despite the formal accommodation now reached on recognition of the right to strike by the ILO in 2015, the employers' group has an upper hand in the process of the 'Standards Review Mechanism' put in place by the 2008 Declaration.⁸⁹ There have been long standing concerns within the ILO that its internal practices regarding standard setting and supervision are flawed for a variety of reasons;⁹⁰ but the Office's startling use of casualized staff contracts⁹¹ does not however seem currently up for review under this process. While reform might be needed, there is an outstanding question as to whether review can be achieved in ways that revitalize the International Labour Office and its activities, or whether the mechanism will be used opportunistically by the employer's group and some disgruntled states, ranging from the US Trump and Brazil Bolsonaro administrations to outliers in the Global South, which wish to promote unimpeded market forces in the hire of labour.

The other feature of the 2008 Declaration was the ambition stated in Article II(C) of policy coherence and cooperation with "[o]ther international and regional organizations with mandates in closely related fields" so as to attain "an integrated approach" to decent work in Article II(C).

⁸⁸ On the legitimacy of supervision of a right to strike under ILO Convention No 87. See Report of the CCAS, ILC Record of Proceedings (2012), 19/Part I/13-19; also Lee Swepston, 'Crisis in the ILO Supervisory System: Dispute over the Right to Strike' (2013) 29(2) *The International Journal of Comparative Labour Law and Industrial Relations* 199; Claire La Hovary, 'Employers' Group 2012 Challenge to the Right to Strike' (2013) 42(4) *ILJ* 338; Janice Bellace, 'The ILO and the Right to Strike' (2014) *International Labour Review* 29.

⁸⁹ Claire La Hovary, 'The ILO's Employers' Group and the Right to Strike' (2016) 22(3) *Transfer: European Review of Labour and Research* 401, 404; Paul van der Heijden, 'The ILO Stumbling towards Its Centenary Anniversary' (2018) 15(1) *International Organizations Law Review* 203, 219; Francis Maupain, 'A Second Century for What?: The ILO at a Regulatory Crossroad' (2019) *International Organizations Law Review*, forthcoming (Web Page, 3 May 2019) <<https://brill.com/view/journals/iolr/aop/article-10.1163-15723747-2019009.xml>>, at 26.

⁹⁰ Dating from the classic advocacy by Sean Cooney, 'Testing Time for the ILO: Institutional Reform for the New International Political Economy' (1999) 20 *Comparative Labor Law and Policy Journal* 365.

⁹¹ Thomas and Turnbull (n 4), 540; and Standing (n 53), 371-2.

This provision stated that: “As trade and financial market policy both affect employment, it is the ILO’s role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies.” This offered something of a partial return to the aspirations of Article III(e) of the Declaration of Philadelphia and the desire for ‘re-embedding’.

However, little reference was made to the 2008 Declaration in the wake of the global financial crisis, when the IMF and EU institutions in some cases demanded and in others entreated austerity measures designed to make labour markets more flexible. This entailed direct reform of national collective bargaining systems,⁹² but also exclusion of those not deemed ‘employees’ or ‘workers’ from the coverage of national labour law and social security.⁹³ Such reforms constituted a significant challenge to the forms of social protection promoted in the past by the ILO which had been understood (at least in the Global North)⁹⁴ as fundamental to ‘embedded liberalism’.⁹⁵ It was not only states that were complicit in this process, for employers also pursued new form of hiring to evade legal constraints, utilising online platforms and hiring through ‘apps’, in what has become known as the ‘gig economy’.⁹⁶ Over the past decade, migrant labour has also been commodified further in its movement through what have been

⁹² Stefan Clauwaert and Isabelle Schömann, *The Crisis and National Labour Law Reforms: A mapping exercise* ETUI Working Paper 2012.04; and Aristeia Koukiadaki, Isabel Tavora, Isabel and Miguel Martinez Lucio, *The Transformation of Joint Regulation and Labour Market Policy in Europe during the Crisis: Comparative Project Report* (University of Manchester/The European Commission 2014).

⁹³ Tonia Novitz, 'Changes in Employment Status under austerity and Beyond – Implications for freedom of association' (2016) 39(1) *Dublin University Law Journal* 27.

⁹⁴ Ronaldo Munck, ‘The Precariat: A view from the South’ (2013) 34(5) *Third World Quarterly* 747; see also Milanovic (n 70).

⁹⁵ Guy Standing, *The Precariat: The New Dangerous Class* (Bloomsbury, 2011); David Weil, *The Fissured Workplace: Why work has become so bad for so many and what can be done to improve it* (Harvard UP, 2014); Lisa Rodgers, *Labour Law, Vulnerability and the Regulation of Precarious Work* (Edward Elgar, 2016); Leah Vosko, *Managing the Margins: Gender, citizenship and the international regulation of precarious employment* (OUP, 2010).

⁹⁶ Jeremias Prassl, *Humans as a Service: The promise and perils of work in the gig economy* (Oxford University Press, 2018).

described as “human supply chains”,⁹⁷ compounded by increasing restrictions on lawful immigration and employment status.⁹⁸ The ILO responded to the financial crisis by creating a ‘Global Jobs Pact’ aimed at preserving employment in the short term and enhancing labour standards and social protection in the longer term.⁹⁹ Its application seems to have been partial and its impact limited.¹⁰⁰

The creation of increasingly precarious work had the effect also of indirectly removing access to voice through trade unions. A “representation gap”¹⁰¹ between those who wish to be represented by a trade union and those who can be has widened, despite concerted efforts by trade unions to recruit workers hired under so-called ‘atypical’ work contracts. In the UK an attempt to utilise statutory channels for trade union recognition was treated as illegitimate, on the basis that substitution clauses in the contracts of ‘gig’ workers meant they did not comply with the legislative definition of ‘workers’ for such purposes.¹⁰² Notably, key sites of resistance have been the ILO Committee on Freedom of Association (CFA) and CEACR, which have found that freedom of association rights, including the right to effective collective bargaining and the right to strike, are rights of every one and not to be demarcated by employment status.¹⁰³ This makes

⁹⁷ Jennifer Gordon, ‘Regulating the Human Supply Chain’ (2017) 102 *Iowa Law Review* 445; Rutvica Andrijasevic and Devi Sacchetto, “‘Disappearing workers’: Foxconn in Europe and the changing role of temporary work agencies’ (2017) 31(1) *Work, Employment and Society* 54.

⁹⁸ Judy Fudge, ‘Illegal Working, Migrants and Labour Exploitation in the UK’ (2018) 38(3) *Oxford Journal of Legal Studies* 557.

⁹⁹ See (Web Page, 6 June 2019) < <https://www.ilo.org/jobspact/about/lang--en/index.htm> >.

¹⁰⁰ Stephen McBride and Scott Smith, ‘In the Shadow of Crisis: Economic Orthodoxy and the Response of Global Labour’ (2013) 4(3) *Global Labour Journal* 206, 217.

¹⁰¹ Brian Towers, *The Representation Gap: Change and Reform in the British and American Workplace* (Oxford University Press, 1997); Edmund Heery, ‘The Representation Gap and the Future of Worker Representation’ (2009) 40(4) *Industrial Relations Journal* 324.

¹⁰² *R (The Independent Workers Union of Great Britain) v Central Arbitration Committee and Rooffoods Ltd* [2018] EWHC 3342 (Admin) 5 December 2018 available at: <https://www.11kbw.com/wp-content/uploads/CO-810-2018-R-IWUGB-v-Deliveroo-05-12-2018-APPROVED.pdf>.

¹⁰³ See *Case 2888 (Poland)* Report No 363, March 2012 available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3057194; and CEACR Observation on Poland 2015 regarding preparation of a draft Act which had not, as at that date, been

sense, for the very tripartite constitutional structure of the ILO comes under threat if the worker delegates are not representative of those hired under precarious terms in new forms of work.

4. Sustainability and Fictitious Commodities: Decent Work and Voice

An interesting question is how the ILO can link its social justice mission to another emerging countermovement in the international sphere, namely that concerned with ‘sustainability’, which also stresses the importance of access to voice. The notion of ‘sustainability’ (of which ‘sustainable development’ may be understood as a subset) emerged in the 1970s.¹⁰⁴ Ostensibly an idea designed to promote longer term environmental protections, ‘sustainability’ has also been understood to encompass two other ‘pillars’, economic and social.¹⁰⁵ There is an interesting parallel here with Polanyi’s observation that land (nature), labour (including social welfare which affects its availability) and money are fictitious commodities. They cannot be traded on markets merely as if they were any other kind of saleable item, since their value (or its lack) can have stark social effects, which is a reason for regulation. Using a Polanyian analysis, we can see sustainability as an attempt to recognize the significance of these pillars for society.

adopted:

http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3256747,102809,Poland,2015. For discussion of this

human rights approach, see Valerio De Stefano, ‘Non-standard Work and Limits on Freedom of Association: A human rights-based approach’ (2016) 46(2) *Industrial Law Journal* 185.

¹⁰⁴ UN, Declaration of the United Nations Conference on the Human Environment (1972) U.N. Doc. A/Conf.48/14; discussed in Margherita Pieraccini and Tonia Novitz, ‘Sustainability and Law: An historical and theoretical overview’ in Margherita Pieraccini and Tonia Novitz (eds), *Legal Perspectives on Sustainability* (University of Bristol Press, 2019).

¹⁰⁵ International Union for the Conservation of Nature in *The World Conservation Strategy: Living Resource Conservation for Sustainable Development* (1980): for “development to be sustainable it must take account of social and ecological factors, as well as economic ones; of the living and non-living resource base; and of the long term as well as the short- term advantages and disadvantages of alternative actions”.

In Agenda 2030 adopted by the UN General Assembly in 2015, which like Polanyi's foundational text also refers to 'transformation',¹⁰⁶ it was declared that these environmental, economic and social facets of sustainability have to be viewed holistically as interdependent.¹⁰⁷ Just as the sustainability pillars are understood as interconnected, so too it has been asserted that Polanyi's "fictitious commodities are not separated from each other but closely interlinked", for example in the context of contemporary supply chains which are a notable feature of global capitalism and exploitation of labour.¹⁰⁸

Sustainability has an appeal because it is an ambition designed to meet "the needs" of present and future generations and hence stresses the importance of durable environmental, economic and social policies.¹⁰⁹ Some environmentalists have been concerned by the emphasis in a sustainability discourse on the Anthropocene, as opposed to the preservation of plant and animal life on the planet.¹¹⁰ Others have resisted the prominence of protection of economic 'growth' and a 'green economy' in the name of 'sustainability' in ways that serve capitalist dominance.¹¹¹ However, the synonym of 'sustainability' is 'durability', which at least confronts the so-called 'logic' of short term capitalism.¹¹² In particular, critical environmentalists from a post-development perspective point to the need for both attention to expert scientific advice but also broader sources of knowledge, requiring radical social engagement with the pluriverse in policy-

¹⁰⁶ United Nations (UN) (2015) General Assembly (GA) Resolution *Transforming our world: the 2030 Agenda for Sustainable Development*, 25 September 2015 A/Res/70/1 available at <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>.

¹⁰⁷ Ibid., at para 2: "We are committed to achieving sustainable development in its three dimensions – economic, social and environmental – in a balanced and integrated manner."

¹⁰⁸ Langthaler and Schüßler (n 34), 221. See also ns 97-98 above.

¹⁰⁹ See World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987), 51.

¹¹⁰ Alexander Gillespie, *The Illusion of Progress: Unsustainable Development in International Law and Policy* (Earthscan, 2001); cf. Anna Grear, 'Deconstructing Anthropos: A Critical Legal Reflection on "Anthropocentric" Law and Anthropocene "Humanity"' (2015) 26(3) *Law and Critique* 225.

¹¹¹ Wanner (n 9).

¹¹² Brett Clark, Daniel Auerbach, and Stefano B. Longo, 'The Bottom Line: Capital's production of social inequalities and environmental degradation' (2018) 8(4) *Journal of Environmental Studies and Sciences* 562.

making.¹¹³ They seek to build on the acknowledgement in the Aarhus Convention to build wider inclusion, representativity, transparency and participation; thereby embedding sustainability policies in society.¹¹⁴

In the sense of offering “a network of measures and policies... integrated into powerful institutions designed to check the action of the market relative to land, labor and money”,¹¹⁵ the Sustainable Development Goals (SDGs) recognized in Agenda 2030¹¹⁶ may be regarded as a potential countermovement to the pursuit of ever more flexible global markets. While the enforcement mechanisms for their implementation rely on softer ‘orchestration’ than harder supervisory forms of enforcement under international law,¹¹⁷ they have multi-level (or polycentric) influence through the national plans envisaged in the 2008 ILO Declaration, regionally (for example, in an EU context),¹¹⁸ and have engaged attention from all UN agencies, including the ILO.

The ILO has played its role by being instrumental in promoting “green jobs”¹¹⁹ and “just transitions”. The latter has been of particular significance, responding to ecological objectives but simultaneously managing redundancies and transfers of undertakings in responsible ways,

¹¹³ Arturo Escobar, *Designs for the Pluriverse: Radical interdependence, autonomy, and the making of worlds* (Duke University Press, 2018); and Federico Demaria and Ashish Kothari, ‘The Post-Development Dictionary agenda: paths to the pluriverse’ (2017) 38(12) *Third World Quarterly* 2588.

¹¹⁴ See United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) 1998.

¹¹⁵ See n 24 above.

¹¹⁶ UN Resolution A/Res/70/1 (n101).

¹¹⁷ See Kenneth Abbott and Steven Bernstein, ‘The High-level Political Forum on Sustainable Development: Orchestration by default and design’ (2015) 6(3) *Global Policy* 222; and Tonia Novitz and Margherita Pieraccini, ‘Agenda 2030 and the Sustainable Development Goals: “Responsive, inclusive, participatory and representative decision-making”?’ in Pieraccini and Novitz (n 104).

¹¹⁸ See (Web Page, 6 May 2019) <http://ec.europa.eu/environment/sustainable-development/SDGs/implementation/index_en.htm>.

¹¹⁹ See (Web Page, 6 May 2019) <<https://www.ilo.org/global/topics/green-jobs/lang--en/index.htm>>.

leading to the adoption of 2015 Guidelines.¹²⁰ The ILO also successfully lobbied for an addition to the first of the Millennium Development Goals in 2007, so as to include a target which emphasized the significance of access to jobs for alleviation of poverty, a crucial socio-economic aspect of sustainable development.¹²¹

Agenda 2030 goes even further by acknowledging more specifically “decent work” under SDG 8, which also seeks to promote “economic growth”. This is obviously not entirely ideal, since the two are not always readily reconcilable, but SDG 8 and its associated targets and indicators do for the first time place labour standards squarely within a sustainability frame. Moreover, the term ‘decent work’ seems to be deliberately used in deference to ILO expertise. There is a commitment in paragraph 67 of the UN Resolution to protect “the labour standards of the International Labour Organization”, and there is specific reference to the ILO “Global Jobs Pact” in target 8.b.¹²² Certain core labour standards, particularly non-discrimination (specifically highlighting disability and equal pay in 8.5) and prevention of child labour and forced labour (target 8.7) are identified as a vital aspect of sustainable development. SDG 8 also goes further in the promotion of job creation (target 8.3), with a focus on youth employment (targets 8.5, 8.6 and 8.b), and highlights the plight of “those in precarious employment” (target 8.8). This highly inclusive idea of protection suggests there may be scope for the ILO to do more to protect those outside the standard employment relationship, hired in what are ironically increasingly common ‘atypical’ forms of work.

Notably omitted from the SDG 8 targets are freedom of association and the effective right to collective bargaining (perhaps due to the strength of the employer lobby also within the UN).¹²³

¹²⁰ ILO *Guidelines for a just transition towards environmentally sustainable economies and societies* (2015) (Web Page, 6 May 2019) <https://www.ilo.org/global/topics/green-jobs/publications/WCMS_432859/lang--en/index.htm>.

¹²¹ Providing the aim to ‘achieve full and productive employment for all, including women and young people’. See for critical comment, Diane F. Frey and Gillian MacNaughton, ‘A Human Rights Lens on Full Employment and Decent Work in the 2030 Sustainable Development Agenda’ (2016) *Journal of Workplace Rights* 1, at 6.

¹²² See ns 99 and 100.

¹²³ Thomas Pogge and Mitu Sengupta, ‘The Sustainable Development Goals: A plan for building a better world?’ (2015) 11(1) *Journal of Global Ethics* 56; and Regina Scheyvens, Glenn Banks, and Emma Hughes, ‘The Private

These entitlements, usually recognized in an ILO context as one of four core labour standards, only serve as an indicator of protection of those involved in the most precarious forms of work (under SDG target 8.8 as indicator 8.8.2). The right to strike is, perhaps unsurprisingly, not mentioned at all. However, SDG 16 arguably provides some scope for bolstering trade union engagement in sustainability discourse. This may be done firstly, through trade union representation within an international institution like the ILO, as target 16.6 which seeks to “develop effective, accountable and transparent institutions at all levels”. Trade unions may also have scope to participate in vital social policy debates regarding the manifestation of sustainability under target 16.7 which aspires to “responsive, inclusive, participatory and representative decision-making”. Additionally, target 16.10 which refers to protection of “fundamental freedoms”, must be taken to incorporate freedom of association, including trade union rights.¹²⁴ Maupain suggests that SDG 16 could usefully be imbued with more normative content and might draw on ILO experience and standards for this purpose.¹²⁵

Moreover, SDG 8 and SDG 16 have to be read in tandem with other SDGs which have a bearing on welfare in the world of work, such as those seeking to “end poverty” (SDG 1), “ensure healthy lives” (SDG 3), “promote lifelong learning opportunities for all” (SDG 4), “achieve gender equality and empower all women and girls” (SDG 5), and “reduce inequality within and among countries” (SDG 10). SDG 17 refers to the need to reform regulation of international finance and trade to create policy coherence in the form of a “Global Partnership for Development”.

5. The ‘Future of Work’ Reports and Future Countermovement at the ILO

Sector and the SDGs: The need to move beyond ‘business as usual’ (2016) 24(6) *Sustainable Development* 371. For concern expressed in this regard, see Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, 7 August 2018, A/73/279, para. 6 and paras 87- 89.

¹²⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, 7 August 2018, A/73/279, paras 6 and 58.

¹²⁵ Maupain (n 89), 37 - 38.

The final part of this article considers the flurry of activity generated by conceptions of ‘the future of work’ generated in 2019 by the ILO, the OECD and the World Bank Group. There is a shared notion that this is, as is said in Article 1 of the ILO Centenary Declaration, “a time of transformative change in the world of work, driven by technological innovations, demographic shifts, environmental and climate change, and globalization...” In the 2019 Declaration, the ILO Global Commission Report, and indeed in the OECD and World Bank reports, the role of human agency in these developments (and the actors which have been responsible for many of them) have been neglected.¹²⁶ However, the ILO Report differs from the other international institutions by arguing for a “social contract” with the explicit (and repeated) reference point of “social justice”,¹²⁷ offering some significant resistance to the dominance of global market systems.

The ILO Future of Work Initiative was launched as a centenary celebration by Director-General Guy Ryder.¹²⁸ A Global Commission was appointed with a notable breadth of membership, including members from government, worker and employer backgrounds (as is typical in ILO tripartism), but also academics, representatives of NGOs (including an organization of self-employed women) and the UN Secretary General’s Envoy on Youth.¹²⁹ That diverse membership arguably prompted collaboration addressing problems beyond the mainstay of ILO preoccupations, but was likely to limit agreement to a few key issues on which there was genuine overlapping consensus. The Commission’s mission was supported by research outlined in two

¹²⁶ World Bank (n 13), at 19: “technology is disrupting the demand for skills.... technology has the potential to improve living standards... technology may prevent Africa and South Asia from industrializing in a manner that moves workers to the formal sector”. See OECD (n 12), regarding the almost impersonal discussion of “megatrend” in the “Editorial” from the OECD Director for Employment, Labour and Social Affairs, Stefano Scarpetta. See ILO (n 10) at 6, which states that its aim is “to portray the urgency of the changes that the world of work is facing and to provide ideas on how to manage and leverage these transformations.”

¹²⁷ ILO (n 10), at 10 - 14, 21 - 23, 38 and 54 - 56.

¹²⁸ See *Report of the Director General: ILO Future of Work Centenary Initiative*, ILC 104th Session (ILO, Geneva, 2015), at 11, para. 47 (Web Page, 6 May 2019): https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_369026.pdf.

¹²⁹ (Web Page, 6 May 2019) <https://www.ilo.org/global/topics/future-of-work/WCMS_569528/lang--en/index.htm>.

International Labour Office Reports: an *Inception Report for the Global Commission on the Future of Work*¹³⁰ and a *Synthesis Report of the National Dialogues on the Future of Work*.¹³¹

Attention was paid in the Global Commission Report to environmental needs,¹³² technology, the informal economy and the phenomenon of women’s unpaid work,¹³³ with key pronouncements on lifelong learning, social security and a “Universal Labour Guarantee”.¹³⁴ Lifelong learning is to be for all and support people through transitions. It was recommended that social protection be universal (extended “to workers in all forms of work, including self-employment”) and available from birth to old age, “complemented by contributory social insurance schemes that provide increased levels of protection”.¹³⁵ Notably, the focus of the Global Commission was on “increasing investment in people’s capabilities”, but in this respect is less reminiscent of Langille’s narrow approach based on individual functionings, reflecting more that envisaged by Deakin and Wilkinson who have signalled the importance of both resources and procedural means such as collective bargaining and corporate governance.¹³⁶ The Global Commission Report further emphasised a human-centred approach, focussing on access to voice as a facet of ‘social justice’.¹³⁷ The Report repeated three times that “labour is not a commodity”,¹³⁸ referring not only to the SDGs, but to a broader vision of sustainability and, repeatedly, the idea of “sustainable work”.¹³⁹

¹³⁰ (Web Page, 6 May 2019) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_591502.pdf>.

¹³¹ (Web Page, 6 May 2019) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_591505.pdf>.

¹³² (ILO n 10), 45 et seq.

¹³³ *Ibid.*, at 50.

¹³⁴ ILO (n 10), 38-39.

¹³⁵ ILO (n 10) 35 – 36.

¹³⁶ Deakin and Wilkinson (n 28), 351-2.

¹³⁷ ILO (n 10), at 10 - 14, 21 – 23, 38 and 54 – 56.

¹³⁸ *Ibid.*, at 23, 38 and 48.

¹³⁹ *Ibid.*, for eg at 10 – 13 and 44 – 48.

Appreciating the diversity and likely further transformation of working lives, the Global Commission's arguably most radical proposal was a new "Universal Labour Guarantee" to apply to everyone engaged in work, which would have two aspects. One is (as would be expected) universal protection of the core labour standards instantiated by the 1998 ILO Declaration, namely "fundamental workers' rights: freedom of association and the effective recognition of the right to collective bargaining and freedom from forced labour, child labour and discrimination".¹⁴⁰ The second more controversial aspect is universal entitlement to "a set of basic working conditions: (i) 'adequate living wage', (ii) limits on hours of work and (iii) safe and healthy workplaces".¹⁴¹ This proposal was manifested in Article III(B) of the 2019 Declaration which stated that:

All workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account:

- (i) Respect for their fundamental rights;
- (ii) An adequate minimum wage, statutory or negotiated;
- (iii) Maximum limits on working time;
- (iv) Safety and health at work.

This Guarantee could offer protection of both personal autonomy and material needs. It was said by the Global Commission to be aimed at "renewing the democratic underpinnings of our labour markets, and strengthening social dialogue, giving everybody a voice in shaping the changes underway and the quality of their working lives".¹⁴² That Report was not, however, fulsome on how worker 'voice' is to be provided,¹⁴³ chiming with the scant acknowledgement in 2015 Director-General's Report of controversy over the right to strike.¹⁴⁴

This limitation was, however, at least partially overcome by the terms of the Centenary Declaration and the 2019 Office SDG 8 Report for the High Level Political Forum, which made

¹⁴⁰ Ibid., 39.

¹⁴¹ Ibid.

¹⁴² Ibid., 28.

¹⁴³ ILO (n 10), 41-42.

¹⁴⁴ See ILO Director-General (n 128) at 16, para. 78.

important statements of intent regarding the status of freedom of association and collective bargaining.¹⁴⁵ Article II(A)(vi) of the 2019 Declaration, for example, stressed that ILO must “direct its efforts” to “promoting workers’ rights as a key element for the attainment of inclusive and sustainable growth [using the wording of SDG 8] with a focus on freedom of association and the effective recognition of the right to collective bargaining as enabling rights”; while Article IIB made clear that “social dialogue” includes “collective bargaining and tripartite cooperation” which is to “provide an essential foundation of all ILO action and contributes to successful policy and decision-making in its member states”. In Article III(A), *inter alia*, stress was placed on “effective lifelong learning and quality education for all” and “universal access to comprehensive and sustainable social protection” as well as “effective measures to support people through the transitions they will face throughout their working lives”. Article IV(C) envisaged that the ILO would “strengthen the capacity of its tripartite constituents to ... encourage the development of strong and representative social partner organizations” and provide “strong, influential and inclusive mechanisms of social dialogue”. Article IV(F) acknowledged the need for action on “policy coherence” by the ILO, which “on the basis of its constitutional mandate must take an important role in the multilateral system”. The International Labour Office, determined not merely to be a “popular gladfly”,¹⁴⁶ in *Time to Act for SDG 8*, utilized the ‘transformative’ language of Polanyi.¹⁴⁷ The Office both appreciated the overlap of SDG 8 with other SDGs,¹⁴⁸ and stressed that social dialogue and collective bargaining are vital to achievement not only of SDG 8 but Agenda 2030 as a whole, envisaging an expansion in trade union membership and representation.¹⁴⁹ The Office Report was, however, again weak on the details of how this is to be achieved.

If a countermovement based on universal worker voice is to be made manifest, the ILO may have to re-engage with standard setting and supervision relating to collective voice and action. Indeed, the ILO constitutionally needs such reform to establish the representative legitimacy of

¹⁴⁵ See ILO (n 11).

¹⁴⁶ See Standing (n 53).

¹⁴⁷ ILO (n 11), 2 and 28 – 30.

¹⁴⁸ *Ibid.*, for e.g. at 2 and figures at 29 and 32.

¹⁴⁹ *Ibid.*, at 33 – 34; and 70 – 75.

its own internal governance (and thereby its survival) as well as social justice within constituent member states. Here lies scope for rebalancing the market and the social in Polanyian terms, which is not achieved by developments at the ILO in 2019 but could be built on their foundations.

These ILO recommendations differed from those issued in 2019 by the World Bank and the OECD. The World Bank Report, *The Changing Nature of Work*, was the culmination of a long and troubling drafting process. In the spring of 2018, a Civil Society Policy Forum taking place alongside the World Bank and IMF Annual Meetings in Bali had expressed concerns regarding the deregulatory tenor of the draft report, as did the International Trade Union Confederation and the ILO.¹⁵⁰ The result was a public letter asking for the draft report's amendment.¹⁵¹ The ILO followed up with further written comments and a meeting in Geneva.¹⁵²

The final World Bank Report published in 2019 was less overtly concerned with deregulation of labour markets. Indeed, it superficially shared some of the same concerns and language as the ILO Global Commission. For example, the World Bank Report also recommended supporting education, using the term “life-long learning” alongside “human capital”.¹⁵³ This reflects the introduction by the Bank in 2018 of a ‘Human Capital project’,¹⁵⁴ which articulates ways in which investment in health care and education can aid human productivity and sets up a matrix for its measurement. The Bank also advocated improvements in social security to manage transitions caused by changes in technology,¹⁵⁵ endorsing a Universal Basic Income (UBI) paid

¹⁵⁰ See (Web Page, 10 May 2019) <<https://www.brettonwoodsproject.org/2018/12/world-banks-vision-of-work-leaves-it-isolated-from-the-international-community/>>.

¹⁵¹ See (Web Page, 10 May 2019) <<https://www.brettonwoodsproject.org/wp-content/uploads/2018/07/WDR-Letter.pdf>>.

¹⁵² See (Web Page, 10 May 2019) <https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS_646884/lang--en/index.htm>.

¹⁵³ World Bank (n 13), chapters 3 and 4.

¹⁵⁴ “World Bank. 2018. The Human Capital Project (World Bank, 2018). Available at (Web Page, 5 June 2019) <<https://openknowledge.worldbank.org/handle/10986/30498>> and <<http://hdl.handle.net/10986/30498>>.

¹⁵⁵ The World Bank Report focuses almost exclusively on technology as a source of “the changing nature of work”. See World Bank (n 13), chapter 2.

for by state taxation; but taking the view that contribution-based social security (drawing on employer contributions) is impossible in the context of the growth in non-standard employment relationships. Only the most minimal version of social security, with sizeable cuts to employer contributions, was found to be viable.¹⁵⁶

The International Labour Office has observed that the Bank's new Human Capital Index¹⁵⁷ is problematic because it fails to address achievement of individual capability as an ongoing rather than finite endeavour.¹⁵⁸ Further, the Office doubts that the UBI could fulfil a "social minimum" and considers that reduced contributions along the lines of the "minimum social insurance" envisaged by the Bank "would result in hardship and increased poverty, especially for low wage earners".¹⁵⁹ Here, one is arguably reminded of Polanyi's concern with the Speenhamland system.¹⁶⁰ A system which seems to protect "the right to live", but simultaneously deprives people of control over their labour, agency and voice, should (from past experience) be suspect. While the World Bank, like the ILO, uses the term "social contract";¹⁶¹ this is of a very different species to that advocated by the 2019 ILO Report; for example, trade unions and collective bargaining are mentioned only once in the World Bank Report and in the context of their decline;¹⁶² and the World Bank Report mentions "sustainable economic growth",¹⁶³ but not the SDGs or Agenda 2030. To this extent, the Bank continues contemplating labour as a commodity (or "human capital"), instrumental to the achievement of productivity goals.

The World Bank idea of "human capital" can be compared and contrasted with the approach taken in a much earlier ILO Convention No. 142 on Human Resources Development which

¹⁵⁶ Ibid., chapter 6, especially at 109 – 112.

¹⁵⁷ (Web Page, 6 June 2019) <<https://datacatalog.worldbank.org/dataset/human-capital-index>>. The statistical data currently runs from 2017.

¹⁵⁸ See (Web Page, 10 May 2019) <https://www.ilo.org/global/about-the-ilo/newsroom/statements-and-speeches/WCMS_646884/lang--en/index.htm>.

¹⁵⁹ Ibid.

¹⁶⁰ See Polanyi (n 6), chapter 7.

¹⁶¹ World Bank (n 13), chapter 7.

¹⁶² Ibid., 118.

¹⁶³ Ibid., 9.

refers in Article 1(3) to the “ability of the individual to understand and, individually or collectively, to influence the working and social environment” and in Article 1(4) to encouraging and enabling all persons without discrimination “to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society”. Productivity is not mentioned as an aspiration in the ILO Convention, but individual and collective autonomy are, in a way which chimes with Polanyi’s prescriptions for effective regulation.¹⁶⁴

The *OECD Employment Outlook 2019* (titled *The Future of Work*) is an even more lengthy and technical report when compared to the ILO and Bank offerings (running to 345 pages). Summarising every aspect of its content is therefore not possible in this context. Its chief concern was to address changes to the labour market and their regulation, focussing on the need to narrowly define non-standard work, but also extend certain rights and protections to such workers.¹⁶⁵ The OECD Report addressed and advocated adult learning,¹⁶⁶ departing from the World Bank’s more critical approach.¹⁶⁷ The OECD also has recommended modifying social protection systems to aid labour market transitions.¹⁶⁸ In respect of the latter, the OECD considered a range of options with a degree of technical sophistication pointing out pros and cons, being less prescriptive than the Bank. However, notably the concern of the OECD was repeatedly with “fiscal sustainability” of social security systems rather than sustainable development per se.¹⁶⁹

The OECD Report did contain a chapter relating to collective bargaining; another stark contrast to the World Bank Report.¹⁷⁰ However, its concerns were not so much with providing the universal access to collective bargaining which the ILO Universal Labour Guarantee

¹⁶⁴ See n 43 above.

¹⁶⁵ OECD (n 12), chapter 4.

¹⁶⁶ *Ibid.*, chapter 6.

¹⁶⁷ World Bank (n 12), 81 – 86.

¹⁶⁸ OECD (n 12), chapter 7.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*, chapter 5.

contemplates, but giving marginal workers (“in the grey zone”) rights to collective bargaining.¹⁷¹ Further the OECD seemed to advocate using collective bargaining as a way of gaining greater flexibility, so that approval to derogate from statutory labour standards could be encouraged.¹⁷² Unsurprisingly, the Trade Union Advisory Committee to the OECD was concerned, and in its response stressed the importance of collective and individual safeguards against deviation from statutory standards and the importance of sectoral bargaining as a way of improving labour market regulation.¹⁷³ When compared to the OECD Report, it is again evident that the 2019 ILO Report offers much more from the perspective of re-embedding the market in the social sphere; resisting the commodification of labour by seeking to revitalise the voice of everyone, regardless of the types of work they do or how they are hired.

6. Conclusion

This article has investigated how a Polanyian narrative may be relevant to an understanding of ILO activities and its processes of reinvention and reform. It has outlined the fundamental tenets of Polanyi’s overarching analysis and sought to explain their relevance to past and future work at the ILO. A broad understanding of Polanyi’s idea of countermovement is vital for this purpose, for it helps us to understand the ways in which, at various junctures, ILO Declarations have sought to re-embed a dominant global market economy in the social realities of those affected, especially workers, with reference to the idea of ‘social justice’. This article has also identified ways in which contemporary sustainability discourse seems to mirror Polanyi’s concerns with the fictitious commodities of land, labour and money. Indeed, the SDGs might constitute a broader global countermovement to which the ILO could meaningfully contribute. Finally, considering recent reports on the future of work from a variety of international institutions, it emerges that the ILO has retained its own distinctive message regarding the importance of a social justice approach which enables wide-ranging labour protections and access to voice. The ILO continues to offer a corrective to the aspirations of more market-driven objectives evident in

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ See (Web Page, 5 June 2019) <<https://tuac.org/news/oecls-employment-outlook-calls-for-a-transition-agenda-that-works-for-all-and-to-tackle-the-misclassification-of-workers/>>.

the positions taken by other international institutions regarding future dynamics and regulation of labour markets.

That said, the acceleration in the use of constitutional declaratory instruments within the ILO as a means of resistance, to instantiate repeated countermovements as a response to the globalization and commercialization of labour markets, is also indicative of a larger failure in international economic governance. There is a notable division between the political communications of the ILO grounded in tripartism (even if its representative quality is becoming questionable) and the economic system based on productivity and profit objectives. Polanyi saw such countermovements as an inevitable response to the disembedding of market structures from societal concerns, but their reactive quality also made them sometimes inappropriate and unpredictable. He cited fascism;¹⁷⁴ today we might think of other authoritarian and populist regimes, whether in Brazil and the US (as noted above) or indeed Hungary, Italy and Turkey.¹⁷⁵ Trump's trade wars with China¹⁷⁶ and the threats against Mexico¹⁷⁷ are also arguably reminiscent of "the disintegration of the world economy" and "failure of the international system" that caused such hardship and triggered catastrophic effects in the 1930s.¹⁷⁸

Polanyi advocated that a 'complex society' (and here he was predominantly talking about the nation state, but we might recognize our society as global) required ongoing responsible regulation to promote human freedom. This could ultimately be achieved by inclusive voice within sustainable participatory representative systems. This is what the ILO must now seek to embed, in even more proactive ways than is evident in the 2019 Reports and Declaration.

¹⁷⁴ Polanyi (n 6), 245.

¹⁷⁵ Ronald Inglehart and Pippa Norris, 'Trump and the Populist Authoritarian Parties: The silent revolution in reverse' (2017) 15(2) *Perspectives on Politics* 443; see also Pippa Norris and Ronald Inglehart, *Cultural Backlash: Trump, Brexit, and Authoritarian Populism* (Cambridge University Press, 2019).

¹⁷⁶ Jim Tankersley and Keith Bradsher, 'Trump hits China with Tariffs on \$200 billion in Goods, Escalating Trade War' *New York Times*, 17 September 2018.

¹⁷⁷ CBS News, 'Trump says U.S. lawmakers "should be ashamed" for resisting his "beautiful" Mexico tariffs' (Web Page, 7 June 2019) <https://www.cbsnews.com/news/trump-tariff-on-mexico-beautiful-president-blasts-republican-opponents-migrant-invasion/>.

¹⁷⁸ Polanyi (n 6), 256.