Globalization and Workplace Regulation

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I would like to sincerely thank the Conference organizers for this invitation to speak to you.

This short presentation and paper will consider the impacts of globalization on the nature and permanence of employment, and some practical implications for employers. Being a legal scholar, and speaking to a gathering of legal counsel, I will focus on implications for the legal regulation of workplace relations. In order to do this, I will need to reflect on the policy and political considerations mediating the relationship between globalization and workplace regulation.

I will begin by briefly outlining key findings from the literature on the impacts of globalization on the nature and permanence of employment. I will then consider whether it makes sense for Canadian jurisdictions to seek competitive advantage through deregulation, and how policy makers should take into account the costs of regulation in light of globalization. Next I will briefly reflect political trends associated with globalization, including increased demand for social protection, and the potential for politics of fear, resentment and backlash. Finally, I will present brief conclusions on the implications for employers in the here and now.

1. Impacts of Globalization on Employment

Globalization of goods and services markets has changed where and how many Canadians are employed. More Canadians work in traded sectors: according to the World Bank the value of trade (imports and exports) stood at 64% in 2016, following a jagged but steady upward trend since 1960 when it stood at 35%,[1] and exports as a percentage of GDP followed a similar path, rising from 17% to 31% during that time.[2]

With increasing international economic integration, the sectoral composition of the Canadian economy shifted in response to international competitive pressures. Much of this restructuring took place early in globalization's "second wave", that is, in the 1980s

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[1] "Trade (% of GDP)", online: <http://data.worldbank.org/indicator/NE.TRD.GNFS.ZS?locations=CA>.
[2] "Exports of goods and services (% of GDP)", online: <http://data.worldbank.org/indicator/NE.EXP.GNFS.ZS?locations=CA>.

and 1990s. Those decades witnessed the shuttering of many labour-intensive manufacturing employers, for example in textiles and clothing.

Trade and foreign direct investment have created opportunities for the creation of good, high-paying jobs. Canada's leading export sectors are now very capital-intensive, with labour costs representing about one fifth of total production costs.[3] Research indicates that, at least in manufacturing, foreign ownership in and exporting from Canada are associated with significantly higher rates of pay. This is due in part to the scale, technology and skills of the workforce in such production facilities.[4]

However, increased exposure to international competition is probably also in part responsible for stagnating incomes in the middle of Canada's income distribution. Many Canadian firms must now compete with foreign producers for market share in Canada. In internationally integrated industries, employers are often in a position to reproduce both the technological sophistication of production facilities and the training of their workforce in many locations around the world. Compensation costs may matter a great deal at the margin in determining market share and the location of production. The offshoring/de-localization of manufacturing is, of course, well advanced in the industrialized world. The offshoring/de-localization of services has only just begun, and is likely to accelerate with increased Internet connectivity.[5] The growing mobility of investment and production thus enhances employer bargaining power. These mobility effects are amplified by changes in the relative scarcities of capital and labour in the internationally traded economy. As Richard Freeman points out, the integration of China, India and the former communist *bloc* countries into the international trading system effectively doubled the global labour supply while adding relatively little capital.[6] Emerging economies in which labour is relatively abundant often have significant unit labour cost advantages in particular economic sectors. The forces of supply and demand can, therefore, exert downwards pressure on wages in traded industries. The weight of research indicates that globalization of production appears to be, in part, responsible for the stagnation of middle class incomes, increased income inequality and an increase in capital's share of national income in the industrialized world.[7] It is also important to note that workers displaced from jobs as a result of restructuring (because of trade or for other reasons), especially older and long-service workers, tend to experience significant declines in real income over the long term.[8]

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[3] Kevin Banks, "Must Canada Change its Labour and Employment Laws to Compete with the United States?" (2013) 38:2 Queen's LJ 419 at 446-447 [Banks].

[4] Sébastien Breau and W Mark Brown, "Exporting, Foreign Direct Investment, and Wages: Evidence from the Canadian Manufacturing Sector" (2011) 42:3 Growth and Change 261.

[5] Alan S Blinder, "Offshoring: The Next Industrial Revolution?" (2006) 85:2 *Foreign Affairs* 113.

[6] Richard Freeman, "The Challenge of the Growing Globalization of Labor Markets to Economic and Social Policy" in Eva Paus, ed, *Global Capitalism Unbound: Winners and Losers from Offshore Outsourcing* (New York: Palgrave MacMillan, 2007) 23.

[7] International Labour Organization, *Global Wage Report 2012/13: Wages and equitable growth* (Geneva: International Labour Office, 2013) at 49-50, online: < http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_194843.pdf>; Martin Wolf, *Why Globalization Works* (New Haven: Yale University Press, 2004) at 166-170.

[8] W Craig Riddell, "Economic Change and Worker Displacement in Canada: Consequences and Policy Responses" (Paper prepared for the Festschrift and conference in honour of David Dodge, Bank of Canada,

Furthermore, increased exposure to trade has also brought increased exposure to volatility in product and service markets. The success of many exporters is tied to the fluctuating value of the Canadian dollar, and/or to unstable commodity prices. The appreciation of the Canadian dollar during the first decade of the 21st century was associated with a marked shift in the composition of Canadian exports from manufacturing to energy products.[9] That trend has largely reversed itself in recent years with falling energy prices and the depreciation of the Canadian dollar.[10]

The increased exposure of manufacturing to currency fluctuations may account in part for the greater cyclical variation in job stability that Statistics Canada has observed in that sector, and for significantly lower job stability in that sector in the depths of the most recent recession.[11]

There is however no evidence in the available research that globalization of goods and services markets has otherwise caused any erosion in the permanence of Canadian employment. The limited research available on job stability in Canada indicates that it changed little between the mid-1970s and 2008,[12] the period during which the export share of Canada's GDP increased most dramatically (after which it declined and has more recently began to recover). Researchers have found that job retention rates in Canada (the likelihood that a worker will remain in his or her job for a given period of time, say one year, or four years) fell somewhat in the 1980s, particularly for the less well educated and for younger men, but since then have increased (subject to fluctuations associated with the business cycle) for workers at all levels of job tenure, from junior employees to the most senior ones.[13] This secular trend appears in part due to the ageing of the workforce (older workers are statistically less likely to seek or obtain new employment), increased educational attainment, and increased attachment of women to the labour force.[14] Whatever its causes, it is not consistent with the proposition that international trade has eroded the permanence of employment. Once researchers control for age, gender and education, Canadian job stability measures are remarkably stable over the decades in which our exposure to trade grew.

This observation might seem to contradict the view, often expressed in public policy discourse, that precarious employment is on the rise. But it does not necessarily. Job retention statistics measure the likelihoods of actual durations of employment, not

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November 2008) at 223-235, online:<
https://pdfs.semanticscholar.org/8d71/93bc420f063734b35959459bf22e1a4282fc.pdf> [Riddell].

[9] Banks, *supra* note 3 at 424-425.

[10] Statistics Canada, "Exports of goods on a balance-of-payments basis, by product", online: <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/gblec04-eng.htm>.

[11] "Trends in Manufacturing Employment", by André Bernard, Statistics Canada Perspectives, Catalogue No 75-001-X (Ottawa: Statistics Canada, February 2009), online:< http://www.statcan.gc.ca/pub/75-001-x/2009102/pdf/10788-eng.pdf> [Bernard]; Pierre Brochu, "The Source of the New Canadian Job Stability Patterns" (2013) 46:2 Canadian Journal of Economics 412 at 422 [Brochu].

[12] Andrew Heisz, "The Evolution of Job Stability in Canada: Trends and Comparisons with U.S. Results" (2005) 38:1 Canadian Journal of Economics 105 [Heisz]; Brochu, *supra* note 11.

[13] See Heisz, *supra* note 12 and Brochu, *supra* note 12.

[14] See Brochu, *supra* note 12.

whether employees are offered an assurance of continued employment or conversely whether an employer expressly disclaims such assurance. So it is quite possible that more employees may experience the precariousness of lack of assurance, for example by being hired on temporary contracts, while most employees tend to remain in their jobs as long as ever.

There was in fact a significant increase in precarious employment during the period of advancing international economic integration. Research indicates that between the mid-1980s and the early 2000s the proportion of Canadians holding temporary or part-time jobs, or self-employed on their own account, rose from about 25% to about 32%.[15] Since that time, self-employment, temporary employment and part-time employment have held relatively steady as a percentage of overall employment in Canada, fluctuating inversely with the business cycle.[16]

To what extent, if any, does globalization account for increased precariousness in Canada? Existing research does not provide a clear answer to this question. On the one hand, temporary employment may provide a buffer against costs of restructuring in response to market instability created by currency exchange rate volatility, or the threat that a new international competitor will emerge to claim some of a firm's market share. Temporary and part-time employment may also serve as a cost containment strategy, given the apparently widespread practice of paying such employees significantly less than permanent, full-time employees.[17] But there appears to be no research indicating that the use of temporary and part-time workers is more widespread in traded than in non-traded sectors. In manufacturing, a heavily traded sector, part-time employment is less widespread than elsewhere in the economy.[18] The literature suggests that the many drivers of precarious employment include opportunities to "fissure" employment relationships to drive down costs and avoid liability through new forms of business organization, new just-in-time staffing technologies permitting cost reductions, pressures for profitability on a quarterly basis resulting from financialized ownership structures, and of course competitive and fast moving pressures in markets for products and services.[19] While globalization of goods and services markets may further incentivize or reinforce the use of such strategies or ownership structures, there is no evidence indicating that it mandates them in industrialized countries like Canada, or that it is a primary driver behind their use.

To sum up, globalization of good and services markets has shifted the sectoral composition of the Canadian economy and reinforced the capital intensity of our leading

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[15] Canada, Federal Labour Standards Review Commission, *Fairness at Work: Federal Labour Standards for the 21st Century* (Gatinea: Human Resources and Skills Development Canada, 2006) Harry Arthurs at 27, online:< http://publications.gc.ca/collections/collection_2008/hrsdc-rhdsc/HS24-31-2006E.pdf>.

[16] Brian DePratto and Randall Bartlett, "Precarious Employment in Canada: Does the Evidence Square with the Anecdotes?", Special Report, TD Economics (26 March 2015), online:< http://www.td.com/document/PDF/economics/special/PrecariousEmployment.pdf>.

[17] *Ibid* at 3 and 6.

[18] Bernard, *supra* note 11 at 8.

[19] See generally David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It (*Cambridge: Harvard University Press, 2014)

export industries. It has created relatively high paying jobs in leading export sectors, while also contributing to downward pressures wages in import competing sectors, especially manufacturing. These pressures have contributed to the stagnation of real incomes in the Canadian middle class. Globalization does not appear to have affected job stability at the level of the length of time that jobs last or the likelihood that an employee will be laid off or quit. There has long been considerable job creation and destruction each year in the North American economy - with about 10% of jobs per year being destroyed by restructuring or insolvency[20] - but globalization does not appear to have significantly changed the rate at which these things take place. Globalization may have contributed to increased precariousness in the form of increased use of part-time or temporary employment, but the primary drivers of such increases in North America appear to lie elsewhere.

2. Policy Considerations - Globalization and Workplace Law

In light of these observations, how should those responsible for regulating Canadian workplaces respond to globalization? Does it make sense for Canadian jurisdictions to seek competitive advantage through deregulation? How should policy makers take into account the costs of regulation in light of globalization?

I have argued elsewhere, and continue to maintain, that globalization should not play a major role in driving the direction of Canadian workplace regulation today. I do not think that it makes sense to pursue competitive advantage through deregulation of workplaces. In my view the costs of workplace regulation should continue to be balanced against potential benefits, using evidence-based policy analysis and according to the preferences of the electorate. Globalization continues to leave Canadian labour and employment policy makers with considerable room to maneuver.

Here are four reasons why I think this.

First, we cannot compete with developing countries on the basis of labour costs, so deregulating for that purpose would be a futile gesture. When production is located in or outsourced to developing countries it is most often because of significant unit labour cost advantages grounded in a relatively abundant supply of labour, and because of the relative unimportance of other potential sources of locational advantage, like the quality of infrastructure or governance. To the extent that Canadian workplace laws add to Canadian labour costs, the addition is generally a relatively small fraction of total labour costs, let alone of total production costs.[21] Reducing that additional cost will not make a significant difference to the unit labour cost advantages of the developing world. (Note that the same can be said about raising labour standards in the developing world, a topic for another day.)

Second, Canada's main competitive advantages, like those of the most competitive economies in the world, far outweigh any advantage that could be secured by

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[20] Riddell, *supra* note 8 at 223.
[21] Banks, *supra* note 3 at 446-447.

deregulation of workplaces, and position us well to compete with both developing and industrialized economies.

One way to put Canadian competitiveness into perspective is by looking at the annual international competitiveness rankings of the World Economic Forum (WEF),[22] which are derived from surveys of business leaders around the world. These rankings are not based on the actual causes of competitive success in investment and trade markets, but they are useful because they measure perceptions of competitive advantage and disadvantage held by international investment decision-makers.[23]

According to those rankings, some of the most competitive economies in the world rely upon advantages similar to Canada's: good government, the quality of health and education systems, and a sound financial sector. They enjoy considerable room to set their own labour and employment laws. In fact, on at least three of the WEF's five labour and employment law-related indicators of competitiveness, four of the ten most competitive countries in the world ranked lower than Canada.[24]

These observations are consistent with the fact that most international trade and investment continues to flow between wealthy industrialized countries. Foreign direct investment flows into those countries to gain access to large markets, resource and technological endowments, good infrastructure, a skilled workforce, political stability, and the rule of law.[25] In comparison to these advantages, the unit labour cost impacts of most labour and employment laws are modest. Similar advantages probably account for the continued competitiveness of industrialized countries in international trade.[26] Of course, all other things being equal, one might still expect that trade and investment flows will be driven by unit labour cost differences. There is some evidence that certain labour standards adversely affect competitiveness in supply chain contracting for labour-

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[22] World Economic Forum, *The Global Competitiveness Report 2016-2017* by Klaus Schwab (Geneva: World Economic Forum, 2016), online: < https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1>. All rankings discussed herein are contained in Part 2: Country and Economy Profiles at 91-369 [*Global Competitiveness Report, 2016-2017*].

[23] The factors treated by the WEF as relevant to competitiveness are consistent with those identified in other surveys that ask investors what is most important in international investment decision-making. The perceptions recorded in WEF rankings are therefore likely to be good predictors of such decisions. Another survey of business leaders conducted by the Harvard Business School confirms WEF perceptions of the strengths and weaknesses of the US. See e.g. Michael E Porter & Jan W Rivkin, *Prosperity at Risk: Findings of the Harvard Business School's Survey on U.S. Competitiveness* (2012), online: <http://www.hbs.edu/competitiveness/pdf/hbscompsurvey.pdf>.

[24] These five indicators are: (1) cooperation in labor-employment relations, (2) flexibility of wage determination, (3) hiring and firing practices, (4) redundancy costs and (5) pay and productivity. For a quick look at where all 138 countries rank, see *Global Competitiveness Report, 2016-2017, supra* note 22 at xiii. Three of those countries (Germany, Finland and Sweden) ranked below Canada on at least four of the labour market regulation indicators, and had among the lowest rankings in the world (bottom 40 of 138) on at least one of the WEF labour market indicators. See *Global Competitiveness Report, 2016-2017, supra* note 22 at 177 (Finland), 187 (Germany) and 331 (Sweden).

[25] Bruce A Blonigen, "A Review of the Empirical Literature on FDI Determinants" (2005) 33:4 *Atlantic Economic Journal* 383 at 393.

[26] Banks, *supra* note 3 at 86.

intensive goods production.[27] But the point is that all other things are very often not equal, particularly in attracting foreign direct investment.

One might object that our main competitor is the United States, a highly competitive industrialized country with relatively weak labour and employment laws by industrialized country standards, so that other things are relatively equal. Indeed the first thing that emerges from comparing the 2016-2017 WEF competitiveness rankings of Canada and the US is their similarity on many criteria: infrastructure, technological readiness and goods market efficiency.[28]

Looking beyond those similarities, however, each country has a series of distinct and important advantages that are likely to make competition for investment between the two countries complex and multifaceted. The US has advantages in business sophistication (nine top-twenty rankings versus Canada's four, and higher rankings than Canada on each indicator), in innovation (six top-ten rankings versus one, with much higher rankings on five of seven indicators),[29] in market size (not surprisingly), and in labour market efficiency (seven top-twenty rankings versus six, with large differences on three of ten indicators).

On the other side of the scorecard, Canada had a pronounced advantage in perceptions of the quality of its macroeconomic environment (ranked 41st, compared to the US 71st place ranking), as well its institutional environment – that is, government law-making, regulation, and enforcement processes. Here Canada held thirteen indicator rankings in the top twenty countries in the world, compared to six for the US, and ranked significantly higher on ten of the twenty-one indicators. Canada also held an advantage in perceptions of the quality of its health and primary education systems, with Canada outpacing the US on life expectancy and quality of primary education – the two indicators of greatest relevance in comparisons between industrialized countries. Canada was also significantly ahead in perceptions of the quality of its post-secondary math and science education and ranked slightly above the US in perceptions of the general quality of its post-secondary education.[30] It is also worth noting that for employers who provide health insurance benefits to their employees, Canada's public health care system significantly reduces total labour costs.[31]

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[27] Banks, *supra* note 3 at 92.

[28] Infrastructure: Canada is ranked 15th, US is ranked 11th. Technological readiness: Canada is ranked 21st, US is ranked 14th. Goods market efficiency: Canada is ranked 17th, US is ranked 14th. *Global Competitiveness Report, 2016-2017, supra* note 22 at 139 (Canada) and 356 (US).

[29] For the purposes of this paper, a difference in ranking of ten or more is considered to be significant.

[30] Quality of math and science education: Canada is ranked 13th, US is ranked 33rd. Quality of higher education: Canada is ranked 15th, US is ranked 17th. *Global Competitiveness Report, 2016-2017, supra* note 22 at 139 (Canada) and 356 (US).

[31] Government of Ontario, News Release, "Ontario Maintains Health Cost Advantage over U.S." (12 November 2010), on file with author (citing a KPMG study estimating an average annual cost advantage of $524,000 for a company of almost 100 employees—working out to savings of approximately $5240 per employee).

Of course, such rankings present only a snapshot in time. In the longer term, productivity growth is probably the most important determinant of competitive advantage.[32] In this respect, Canadians have reason for concern. Canada's productivity growth rate has lagged behind that of the US for many years, and the gap in those rates shows no sign of narrowing.[33] The reasons for it have proven somewhat elusive, despite much study,[34] but the existing research does not suggest that Canada's productivity problems stem from its regulatory environment.[35] Current thinking points elsewhere, toward aspects of private sector business decision-making that lead to low levels of investment in research and development, keep Canadian firms disproportionately small, and avoid creative destruction in highly competitive markets.[36] While some of these phenomena may be related to Canada's internal trade rules or its tax law and policy, there is no suggestion in the literature that labour and employment law is to blame.

All of this suggests that Canada need not compete for investment on the basis of US-style labour and employment laws. Any competitive disadvantage that Canada's labour and employment laws might create in relation to the US in attracting international investment is probably small in relation to other differences between the two countries.

Third, some regulations are productivity enhancing, despite the costs that they impose. Labour and employment laws can foster productivity in a number of ways. Some laws correct for well-documented market failures that lead to relatively unproductive work practices. For example, occupational safety and health laws often correct for employee information failures and optimism bias, and keep employers from externalizing the costs of injuries and illnesses[37] which may reduce the productivity of individual enterprises and harm the overall productivity of an economy, by depriving them of the skills and talents of workers who would otherwise be available to continue in productive employment.[38] Mandated, universal standards such as access to maternity leave or to reasonable accommodation of disabilities may eliminate adverse selection problems faced by individual employers who, in the absence of a universal requirement, would be inclined

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[32] Andrew Sharpe, "Unbundling Canada's Weak Productivity Performance: The Way Forward" (2010) Centre for the Study of Living Standards, online: CSLS http://www.csls.ca/reports/csls2010-02.pdf [Sharpe]; Someshwar Rao, "Cracking Canada's Productivity Conundrum" (2011) Montreal: Institute for Research on Public Policy, Study 25.

[33] According to Rao, labour productivity growth in Canada in the 2000s slowed to an average of just 0.7 % per year: less than half the rate in the 1990s and far below the 2.7 % annual growth in the US. See *ibid* at 7-11.

[34] Sharpe, *supra* note 32; Don Drummond, "Confessions of a Serial Productivity Researcher" (2011) 22 International Productivity Monitor 3.

[35] *Ibid* at 7.

[36] *Ibid* at 7–10.

[37] Christine Jolls, "Employment Law" (2006) Yale Law School, Public Law Working Paper No 132 at 10–14, online: <http://ssrn.com/abstract=959453> [Jolls].

[38] See Human Resources and Skills Development Canada, "Occupational Injuries and Diseases in Canada, 1996 – 2008: Injury Rates and Cost to the Economy" by Jaclyn Gilks & Ron Logan (Ottawa: HRSDC, 2010) at 13, online: <http://www.hrsdc.gc.ca>. Human Resources and Skills Development Canada estimates the annual costs of occupational injuries and diseases in Canada to be more than $19 billion. These costs include medical, compensation and rehabilitation costs, as well as time lost from uninjured workers trying to help injured workers, lower staff morale, damage to materials and equipment and productivity losses from injured or alternate workers, *ibid*.

to offer such benefits in order to recruit from the widest possible talent pool and to foster employee commitment.[39] Such mandated standards can also enhance the efficiency of labour markets by supporting greater labour force participation by women and minority groups.[40] As for wrongful dismissal and employment protection provisions, such as termination notice or severance pay requirements, they may (if appropriately designed) eliminate adverse selection problems for employers while giving employees an incentive to acquire firm-specific skills and to put forth more effort.[41] Advance notice requirements can enhance labour market efficiency in the event of layoffs by helping workers find jobs that make full use of their skills and experience.[42] The introduction of minimum wages and occupational safety and health laws have at times had a “shock effect”, improving productivity by providing incentives to eliminate low productivity practices based on piece rate systems.[43] Collective bargaining has at times had similar effects, leading to modernization of production systems and to higher levels of worker commitment and training.[44]

Of course, to the extent that they directly or indirectly increase costs to employers or slow adjustment to markets or technological innovations, labour and employment laws may impede investment in productivity-enhancing organizational or technological changes.[45] Laws, for example, that impose excessive costs upon employers for terminating the employment of redundant employees or stipulate outdated and inefficient means of achieving health and safety protection can have this effect.

Whether workplace laws help or hinder productivity will therefore depend upon their design—whether they strike the right balance between competing incentives.

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[39] Jolls, *supra* note 37 at 22–23 (in the absence of legislation mandating employee benefits, employer offers of benefits related to illness or to propensity to take time off work will disproportionately attract less productive employees).

[40] Kevin Banks, Richard P Chaykowski & George A Slotsve, “The Disability Accommodation Gap in Canadian Workplaces: What Does It Mean for Law, Policy and an Aging Population?” (2013) 17:2 CLELJ 295.

[41] David I Levine, “Just-Cause Employment Policies in the Presence of Worker Adverse Selection” (1991) 9:3 Journal of Labor Economics 294; Michele Belot, Jan Boone & Jan Van Ours, “Welfare Improving Employment Protection” (2007) 74 Economica 381 [Belot, Boone & Van Ours].

[42] Morley Gunderson, “Social and Economic Impact of Labour Standards” (December 2005) at 31-31, online: Human Resources and Skills Development Canada <http://www.hrsdc.gc.ca>. ,

[43] Michael Piore, “International Labor Standards and Business Strategies” in *U.S. Department of Labor, International Labor Standards and Global Integration: Proceedings of a Symposium* (Washington, DC: US Dept of Labor, 1994)

[44] Mark Barenberg, “Democracy and Domination in the Law of Workplace Cooperation: from Bureaucratic to Flexible Production” (1994) 94:3 Colum L Rev 753 at 921–926; William Lazonick, *Competitive Advantage on the Shop Floor* (Cambridge: Harvard University Press, 1990) (describing how collective bargaining facilitated by the National Labor Relations Act in the United States led to greater effort by workers and better use of human capital by management in the post-World War II period); Wolfgang Streeck, *Social Institutions and Economic Performance: Studies of Industrial Relations in Advanced Capitalist Economies* (London: SAGE Publications, 1992) (describing how German collective bargaining structures provide incentives to employers to train employees and invest in advanced production methods); Lowell Turner, *Democracy at Work: Changing World Markets and the Future of Labor Unions* (Ithaca: Cornell University Press, 1991) (comparative industrial relations in the US and West German auto industries).

[45] Gunderson, *supra* note 42 at 33.

Additionally, especially in the case of collective bargaining laws, the effects may depend upon national histories of labour relations which affect the capacity of parties to trust each other and cooperate over the longer term.[46]

Fourth, as I will discuss immediately below, it may be bad politics to deregulate workplaces in response to globalization, deepening social divisions and undermining support for an open international trading system.

3. The Politics of Globalization and Workplace Change

As discussed in Part 1, globalization brings with it both opportunities for growth and the creation of good jobs, and risks associated with market volatility and heightened international competition. It creates winners and losers, and the gains and losses have not been evenly distributed. On the one side of the ledger are increased export opportunities, especially for leading enterprises that tend to create good jobs in Canada, and increased foreign direct investment in advanced production facilities in Canada. There is also the fact that Canada is a trading nation, with a very significant share of its employment dependent on access to foreign markets. On the other side of the ledger, displaced employees tend to suffer significant and long-term income loss, while globalization contributes to the stagnation of real incomes for the middle class. The latter issue has taken on growing political salience in recent years, not only in Canada, but throughout the industrialized world. Given the great doubling of the global labour supply and the coming wave of global outsourcing of service provision, those issues are only likely to take on greater importance in coming years.

It is not surprising that globalization and trade have long been and are currently subject to ambivalent and even contradictory political impulses. Political scientists have observed for quite some time that increased international economic integration is associated with increased political pressure for social protection in industrialized countries.[47]

The post-World War II international trading system was designed with a solution to these tensions in mind: a grand bargain form of "embedded liberalism" in which states would seek to ensure full employment and provide social protection and fair labour standards to their working people, and in which states would not compete on the basis of low labour standards.[48] While embedded liberalism did operate more or less as intended for many years, there is a growing awareness within industrialized country electorates that this "postwar bargain" has come undone. This sense has, over the past two decades, gradually returned to industrialized country politics a volatile, contradictory mix of stances towards trade openness. The trend represented by the anti-trade rhetoric of Donald Trump is not a

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[46] See e.g. Belot, Boone & Van Ours *supra* note 41 (discussing conditions under which employment protection laws can enhance welfare); Aidt & Tzanatos, *supra* note **Error! Bookmark not defined.** (discussing conditions affecting the relationship between collective bargaining and economic performance).
[47] See for example Geoffrey Garrett, Partisan Politics in the Global Economy (Cambridge: Cambridge University Press, 1998)
[48] Kevin Banks, Trade, Labor and International Governance (SJD Dissertation, Harvard University, 2003), at 428-459; and Ethan Kapstein, "Workers and the World Economy: Breaking the Postwar Bargain Foreign Affairs" (1996) 75:3 Foreign Affairs 16 [Kapstein].

momentary aberration. In an important article written for Foreign Affairs in 1996, Ethan Kapstein said the following:

> It is hardly sensationalist to claim that in the absence of broad-based policies and programs designed to help working people, political debate in the United States and many other countries will soon turn sour. Populists and demagogues of various stripes will finds "solutions" to contemporary problems in protectionism and xenophobia. Indeed, in every industrialized nation, such figures are on the campaign trail. Growing income inequality, job insecurity, and unemployment are widely seen as the flip side of globalization. That perception must be changed if Western leaders wish to maintain the international system their predecessors created. After all, the fate of the global economy ultimately rests on domestic politics in its constituent states.[49]

Sound familiar? Kapstein was pointing to a wave of reaction against unevenly distributed gains and losses associated with the global economy (and many other things) in the mid-1990s. But the underlying economic trends producing those reactions have changed little since that time. Today's recurrences are hardly surprising.

Seeking to deregulate workplaces in response to globalization is not only likely to arouse resentment among those adversely affected by globalization. It may extend some of that resentment to the rest of the population, since labour and employment legislation applies broadly to the working population, and workers tend to believe that they benefit from it.

The main problem here is not that this may create pressure to reform the international trading system. (In my view at least, there is certainly a lot of room for improvement.) The problem is that such politics may undermine support for a basic political orientation towards openness to international trade. Canada has long depended on this pillar of the post-World War II economic order. The architects of that order saw it as fundamental to the economic and political stability of the international economic system. Experience suggests that they were right about this.

Given these risks of resentment and reaction, and that workplace deregulation is not required to compete internationally, it is perhaps not surprising that Canadian governments have not responded systematically to international economic integration with a "race to the bottom" in workplace legislation. My earlier research indicates that in the first decade of the 2000s Canadian governments acted more in accordance with their political stripes than any constraint imposed by globalization. [50] That is, in my view, as it should be.

But political parties and governments have at times sought to justify deregulation as a required response to globalization. I think that this line of argument needlessly confuses and inflames political discourse.

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[49] Kapstein, *supra* note 47 at 17.
[50] Banks, *supra* note 3 at 453-459.

4. Some Implications for Employers in Canada Today

The implications of this analysis for employers can be stated quite briefly. Globalization will continue to create cost competitiveness pressures for many employers. My respectful suggestion is that employers respond to those pressures through market mechanisms: at the bargaining table and in the boardroom, and not by lobbying politicians to deregulate or not to regulate in the interests of international competitiveness. Arguments about workplace regulation or deregulation should and can be made on other grounds. Shaping Canadian labour and employment law as a defensive response to globalization would be bad policy, and may fuel a divisive and counterproductive politics.