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Toward A Feminist Analytics of the Global Economy

SASKIA SASSEN*

Economic globalization has reconfigured fundamental properties of the nation-state, notably territoriality and sovereignty. There is an incipient unbundling of the exclusive territoriality we have long associated with the nation-state. The most strategic instantiation of this unbundling is probably the global city, which operates as a partly denationalized platform for global capital. Sovereignty is being unbundled by these economic and other non-economic practices and new legal regimes. At the limit this means that the State is no longer the only site for sovereignty and the normativity that comes with it, and further, that the State is no longer the exclusive subject for international law. Other actors, from NGOs and minority populations to supranational organizations are increasingly emerging as subjects of international law and actors in international relations.

Developing a feminist analytics of the global economy today will require us to factor in these transformations if we are to go beyond a mere updating of the economic conditions of women and men in different countries. Much of the feminist scholarship on women and the economy and women and the law has taken the nation-state as a given or as the context within which to examine the issues at hand. And this is a major and necessary contribution. But now, in view of the distinct impacts that globalization is having on the systemic properties of the State--i.e., exclusive territoriality and sovereignty--it becomes important to subject these to critical examination.

The purpose here is to contribute to a feminist analytics that allows us to re-read and reconceptualize major features of today's global economy in a manner that captures strategic instantiations of gendering, and formal and operational openings that make women visible and can lead to greater

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presence in representation and participation. My effort, then, is to expand the analytic terrain within which we need to understand the global economy, to render visible what is now evicted from the account.

Here I specify two strategic research sites for an examination of the organizing dynamics of globalization and begin examining how gendering operates in order to develop a feminist reading. These two sites are derived from two major properties of the modern State, exclusive territoriality and sovereignty, and their unbundling under the impact of globalization. In the first section I discuss what I see as the strategic instantiations of gendering in the global economy. In the second and third sections, I focus on the unbundling of State territoriality through one very specific strategic research site, the global city, and try to lay out the implications for empirical and theoretical work on the question of women in the global economy. In the fourth section, I examine the unbundling of sovereignty in an age of globalization to understand the implications for the emergence of other actors in international relations and subjects of international law. While in many ways each of these represent distinct research and theorization efforts encased in very separate bodies of scholarship, both focus on crucial aspects of the broader process of globalization and its impact on the organization of the economy and of political power which we need to factor into a feminist analytics of the global economy.

The current phase of the world economy is characterized by significant discontinuities with the preceding periods and radically new arrangements.¹ This phase becomes particularly evident when one examines the impact of globalization on the territorial organization of economic activity and on the organization of political power. Economic globalization has reconfigured fundamental properties of the nation-state, notably territoriality and sovereignty. There is an incipient unbundling of the exclusive territoriality we have long associated with the nation-state.² The most strategic instantiation of this unbundling is the global city, which operates as a partly de-nationalized platform for global capital. At a lower order of complexity, the transnational corporation and global finance markets can also be seen as having this effect through their cross-border activities and the new legal regimes that frame these activities. Sovereignty is also being unbundled by these economic practices, other non-economic practices, and new legal regimes. At the limit this means the State is no longer the only site of sovereignty and the normativity that accompanies it. Further, the State is no longer the exclusive subject for international law. Other actors, from Non-Governmental Organizations and First-Nation people to supranational organizations are increasingly emerging as subjects of international law and actors in international relations.

Developing a feminist analytics of today's global economy will require us to factor in these transformations if we are to go beyond merely updating the economic conditions of women and men in different countries. Much of the feminist scholarship examining the issue of women and the economy and the issue of women and the law has taken the nation-state as a given or as the context within which to examine the issues at hand. This approach is a major and necessary contribution. But now, considering the distinct impact of globalization on key systemic properties of the State--i.e., exclusive territoriality and sovereignty--it becomes important to subject these properties to critical examination.

1. The notion of a global economy is increasingly used to distinguish the particular phase of the world economy that began to emerge in the 1970s. It is characterized by a rapid growth of transactions and institutions that are outside the older framework of inter-State relations. See generally GLOBALIZATION: CRITICAL REFLECTIONS (James H. Mittelman, ed., 1996). For a broader historical perspective, see generally GIOVANNI ARRIGHI, THE LONG TWENTIETH CENTURY: MONEY, POWER, AND THE ORIGINS OF OUR TIMES (1994); ERIC HOBBSBAWM, NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY (1991).

2. By unbundling I do not mean dissolution, but rather a form of disarticulation. For a more detailed discussion, see SASKIA SASSEN, LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION (1996) [hereinafter LOSING CONTROL].

The purpose here is to contribute to a feminist analytics that allows us to reread and reconceptualize major features of today's global economy in a manner that captures strategic instantiations of gendering as well as formal and operational openings that make women visible and lead to greater presence/participation. This rereading differs markedly from mainstream accounts of the global economy. These mainstream accounts emphasize only technical and abstract economic dynamics and proceed as if these dynamics are inevitably gender neutral yet rarely, if ever, address this matter.

My effort is to expand the analytic terrain within which we need to understand the global economy in order to render visible what is now evicted from the account. My starting point is based on my studies of the global economy over the last twenty years. Through these studies I have determined that the mainstream account of economic globalization is confined to a very narrow analytic terrain. The mainstream account operates like a "narrative of eviction," because it excludes a whole range of workers, firms, and sectors that do not fit the prevalent images of globalization. And, in that sense, the rhetoric of international relations, and its most formal instance, international law, can also be seen as a narrative of eviction. This rhetoric traces the State as its exclusive subject and has excluded other actors and subjects. These narratives are male; they are centered in a vast array of micropractices and cultural forms enacted, constituted, and legitimized by men and/or in male-gendered terms. Furthermore, on the operational level, one could say that notwithstanding the growing number of top level women professionals in global economic activities and in international relations, both these worlds can be specified as male-gendered insofar as each in its distinct way has the cultural properties and power dynamics that we have historically associated with men of power, or at least some power.

Here, I specify two strategic research sites for an examination of the organizing dynamics of globalization and begin examining how gendering operates in order to develop a feminist reading. These two sites are derived from two major properties of the modern State, exclusive territoriality and sovereignty, and their unbundling under the impact of globalization. The purpose is not an all-encompassing enumeration of gender inequalities. The purpose is to specify sites for the strategic instantiation of gendering and for new forms of women's presence. This paper is a mere beginning--an analytic stage on which we need to place the details contributed by ethnographic research, cultural critiques, sociological surveys, and legal scholarship on men and women in their many specific conditions and subjectivities.

In the first section, I review some of the literature pertinent to this project. In the second and third sections, I focus on the unbundling of State territoriality through one very specific strategic research site, the global city, and try to lay out the implications for empirical and theoretical work on the question of women in the global economy. In the fourth section, I examine the unbundling of sovereignty in an age of globalization in order to explain the implications of the emergence of other actors in international relations and subjects of international law. While in many ways each of these represent distinct research and theorization efforts encased in very separate bodies of scholarship, both focus on crucial aspects of the broader globalization process and its impact on the organization of the economy and of political power. We must factor both of these aspects into a feminist analytics of the global economy. Here, I can only touch on many of these issues and hence this paper is inevitably an incomplete account.

I. STRATEGIC INSTANTIATIONS OF GENDERING IN THE GLOBAL ECONOMY

We can identify two older phases in the study of gendering in the recent history of the world economy, both concerned with longer-standing processes of internationalization, and a third phase focused on very recent transformations, often involving an elaboration of the categories and findings of the previous two phases. The research and theorization effort of the first two phases was largely engaged in recovering the role of women, to balance the excessive focus, typically unexplicated, on men in international economic development research.

A first phase is the development literature about the implantation of cash crops and wage labor generally, typically by foreign firms, and its partial dependence on a dynamic whereby women subsidized the waged labor of men through their household production and subsistence farming. Boserup,³ Deere,⁴ and many others produced an enormously rich and nuanced literature showing the variants of this dynamic. Far from being unconnected, the subsistence sector and the modern capitalist enterprise were shown to be articulated through a gender dynamic that veiled this articulation.

3. See generally E. BOSERUP, *WOMAN'S ROLE IN ECONOMIC DEVELOPMENT* (1970).

4. See generally C.D. DEERE, *Rural Women's Subsistence Production in the Capitalist Periphery*, in 8 *REVIEW OF RADICAL POLITICAL ECONOMY* 9 (1976).

A second phase was the scholarship on the internationalization of manufacturing production and the feminization of the proletariat that came with it.⁵ The key analytic element in this scholarship was that off-shoring manufacturing jobs under pressure of low-cost imports mobilized a disproportionately female workforce in poorer countries which had hitherto largely remained outside the industrial economy. In this regard it is an analysis that also intersected with issues of national economies, such as why women predominate in certain industries, notably garment and electronics assembly, no matter what the level of development of a country.⁶

Together these two analytics have produced an enormous literature, impressive in its detail and its capacity to illuminate.⁷ It is impossible here to do justice to these two bodies of scholarship and their contribution to new frameworks for empirical analysis and theorization. The quality of the empirical studies and theoretical formulations these two bodies of scholarship produced helps us understand how much work we need to do in order to theorize the current phase, which contains both of these two longer-standing dynamics and a whole new one.

A third phase of scholarship on women and the global economy is emerging around processes that underline transformations in gendering, in women's subjectivities, and in women's notions of membership. These represent many different literatures. Among the richest and most promising is the new feminist scholarship on women immigrants, which focuses, for example, on how international migration alters gender patterns and how the formation of transnational households can empower women.⁸ There is also an

5. See, e.g., MARIA PATRICIA FERNANDEZ-KELLY, *FOR WE ARE SOLD, I AND MY PEOPLE: WOMEN AND INDUSTRY IN MEXICO'S FRONTIER* (1982); HELEN I. SAFA, *THE MYTH OF THE MALE BREADWINNER: WOMEN AND INDUSTRIALIZATION IN THE CARIBBEAN* (1995); SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL: A STUDY IN INTERNATIONAL INVESTMENT AND LABOR FLOW* (1988); Linda Y.C. Lim, *Women Workers in Multinational Corporations: The Case of the Electronics Industry in Malaysia and Singapore, in TRANSNATIONAL ENTERPRISES: THEIR IMPACT ON THIRD WORLD SOCIETIES AND CULTURES* 109 (Krishna Kumar ed., 1980).

6. See generally RUTH MILKMAN, *GENDER AT WORK* (1987); WOMEN, HOUSEHOLDS AND THE ECONOMY (Lourdes Benería & Catharine Stimpson eds., 1987).

7. For some recent collections and lengthy bibliographies, see generally PERSISTENT INEQUALITIES: WOMEN AND WORLD DEVELOPMENT (Irene Tinker ed., 1990); WOMEN AND CHANGE IN LATIN AMERICA (June Nash & Helen Safa eds., 1986); WOMEN IN THE LATIN AMERICAN DEVELOPMENT PROCESS (Christine E. Bose & Edna Acosta-Belén eds., 1995); WOMEN WORKERS AND GLOBAL RESTRUCTURING (Kathryn Ward ed., 1990).

8. See, e.g., SHERRI GRASMUCK & PATRICIA R. PESSAR, *BETWEEN TWO ISLANDS: DOMINICAN INTERNATIONAL MIGRATION* (1991); PIERRETTE HONDAGNEU-SOTELO, *GENDERED TRANSITIONS: MEXICAN EXPERIENCES OF IMMIGRATION* (1994); Monica Boyd, *Family and Personal Networks in International*

important new scholarship which focuses on the household as a key analytic category to understanding global economic processes⁹ and on new forms of cross-border solidarity, experiences of membership and identity formation that represent new subjectivities, including feminist subjectivities.¹⁰

There are many studies which, though not focused on international or cross-border issues, or lacking such a perspective, contribute much needed empirical detail: they range from studies on gendered spaces¹¹ to studies on women and the liberal State.¹² Many studies of the economic conditions of women and men in the current era, of which there are a very large number in all the major social sciences, are essential to advancing my effort here, and I will be referring to some of these throughout the paper. Finally, particularly useful is the literature that examines the absences in feminist analysis and the differentiations that still need to be developed.¹³

Most of the studies focusing on gendering in contemporary economic and political processes tend to begin with detailed accounts about women, or comparisons of women and men. For me, this inquiry begins with the specification of the strategic dynamics and transformations that mark the current phase. Both approaches are necessary. The position I take is partly predicated on my reading of the contemporary phase of the world economy as one that has been constituted through major transformations and a new set of dynamics that are strategic (i.e., while not accounting for the majority of processes they are regime-making). Thus, export-oriented manufacturing is

Migration: Recent Developments and New Agendas, 23 INT'L MIGRATION REV. 638; Mary Garcia Castro, *Work Versus Life: Colombian Women in New York*, in WOMEN AND CHANGE IN LATIN AMERICA, *supra* note 7, at 231; Mirjana Morokvasic, *Birds of Passage Are Also Women*, 18 INT'L MIGRATION REV. 886 (special issue on women immigrants).

9. See, e.g., CREATING AND TRANSFORMING HOUSEHOLDS: THE CONSTRAINTS OF THE WORLD-ECONOMY (Joan Smith & Immanuel Wallerstein eds., 1992).

10. See, e.g., LINDA BASCH ET AL., NATIONS UNBOUND: TRANSNATIONAL PROJECTS, POSTCOLONIAL PREDICAMENTS, AND DETERRITORIALIZED NATION-STATES (1994); YASEMIN NUHOGLU SOYSAL, LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE (1994); Zillah Eisenstein, *Stop Stomping on the Rest of Us: Retrieving Publicness from the Privatization of the Globe*, 4 IND. J. GLOBAL LEG. STUD. 59 (1996). But see Aiwaha Ong, *Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia*, 4 IND. J. GLOBAL LEG. STUD. 107 (1996).

11. See, e.g., DAPHNE SPAIN, GENDERED SPACES (1992); Corrine Stoewsand, *Women Building Cities* (1986) (unpublished Ph.D. dissertation, Columbia University).

12. See, e.g., CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989); Jean Bethke Elshtain, *Sovereign God, Sovereign State, Sovereign Self*, 66 NOTRE DAME L. REV. 1355 (1991).

13. See, e.g., MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW (1990); ELIZABETH SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT (1988); Elshtain, *supra* note 12; Joan Williams, *Restructuring Work and Family Entitlements Around Family Values*, 19 HARV. J. L. & PUB. POL'Y 753 (1996).

a strategic dynamic, by no means accounting for most manufacturing jobs; gender is a strategic nexus in this development. My approach entails, in a way, constructing “the difference,” theoretically and empirically, so as to specify the current period.¹⁴ The purpose is to understand whether there is gendering in these strategic dynamics and transformations, and if so, what a feminist analytics would be. I relate to this inquiry as a mathematical problem, in its certainty of a solution but its lack of self-evidence. It would diminish the theoretical, empirical, and political importance of the question of gendering to assume that we have understood it by noting discrimination in pay for women and the high incidence of gender-typed occupations.

One important methodological question is what are the strategic sites where current processes of globalization can be studied. In export-oriented agriculture it is the nexus between subsistence economies and capitalist enterprise, and in the internationalization of manufacturing production it is the nexus between the dismantling of an established “labor aristocracy” in major industries with shadow effects on an increasing sector of developed economies and the formation of an off-shore proletariat.

What are the strategic sites in today’s leading processes of globalization? Among these, few are as important as global cities--strategic sites for the valorization of leading components of capital and for the coordination of global economic processes. Global cities are also sites for the incorporation of large numbers of women and immigrants in activities that service the strategic sectors; but it is a mode of incorporation that renders these workers invisible, therewith breaking the nexus between being workers in a leading industry and the opportunity to become--as had been historically the case in industrialized economies--a “labor aristocracy” or its contemporary

14. I have always rather explicitly positioned myself as someone who wants to construct the difference. I do not deny the existence of many continuities, but my effort has been to understand the strategic discontinuities. This is clearly a partial account, and it must be read alongside many other types of accounts. For an example of scholarly efforts to capture differences, see the work by historians to conceptualize “global history.” See, e.g., *CONCEPTUALIZING GLOBAL HISTORY* (Bruce Mazlish & Ralph Buultjens eds., 1993). For a more theorized effort to re-read an earlier period characterized by massive shifts, see Nathaniel Berman, *Economic Consequences, Nationalist Passions: Keynes, Crisis, Culture, and Policy*, 10 AM. U. J. INT’L L. & POL’Y 619 (1995); Rosemary J. Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 AM. U. J. INT’L L. & POL’Y 791 (1995).

equivalent.¹⁵ In this sense “women and immigrants” emerge as the systemic equivalent of the off-shore proletariat.¹⁶

A second strategic site pivots on the question of sovereignty and its transformation under the impact of globalization, the subject of the fourth section. International law, a particularly formalized arena where one can capture the impact of this change, has had the nation-state as its main and fundamentally, i.e., foundationally, only subject. It has also been described as basically male.¹⁷ The strategic nexus for my inquiry is the transformation of sovereignty and the openings this has created for women (and other hitherto largely invisible actors) to become visible participants in international relations and subjects of international law. It is no longer simply a matter of the unified State as the exclusive subject of international law and exclusive actor in international relations representing its people and thereby rendering them invisible as individuals and as particular collectivities.

II. TOWARD AN ALTERNATIVE NARRATIVE ABOUT GLOBALIZATION¹⁸

The master images in the currently dominant account about economic globalization in media and policy circles, as well as in much economic analysis, emphasize hypermobility, global communications, and the neutralization of place and distance. Key concepts in that account—globalization, information economy, and telematics—all suggest that place no longer matters and that the only type of worker that matters is the highly

15. See Professor Gracia Clark’s comments on how “women and immigrants” comes to replace “women and children” in my account. Gracia Clark, *Implications of Global Polarization for Feminist Work*, 4 *IND. J. GLOBAL LEGAL STUD.* 43, 46 (1996). It is, in my reading, a new topos which replaces the Fordist-family wage topos of women and children. I return to this subject in the next two sections.

16. See generally SASSEN, *supra* note 5.

17. See generally Elshtain, *supra* note 12; MACKINNON, *supra* note 12.

18. It is impossible to provide a detailed discussion here of the mainstream account and its critique. For more detailed research materials and bibliographies, see generally TRANSNATIONAL CORPORATIONS AND MANAGEMENT DIVISION, U.N. CENTRE ON TRANSNATIONAL CORPORATIONS, *WORLD INVESTMENT REPORT: TRANSNATIONAL CORPORATIONS AND INTEGRATED INTERNATIONAL PRODUCTION*, U.N. Doc. ST/CTC/156, U.N. Sales No. E.93.II.A.14 (1993); *COMPETITION AND CHANGE: THE JOURNAL OF GLOBAL BUSINESS AND POLITICAL ECONOMY* (1996); *FREE TRADE AND ECONOMIC RESTRUCTURING IN LATIN AMERICA: A NACLA READER* (Fred Rosen & Deidre McFadyen eds., 1995); *GLOBALIZATION: CRITICAL REFLECTIONS*, *supra* note 1; REBECCA MORALES, *FLEXIBLE PRODUCTION: RESTRUCTURING OF THE INTERNATIONAL AUTOMOBILE INDUSTRY* (1994); MICHAEL STORPER & RICHARD WALKER, *THE CAPITALIST IMPERATIVE: TERRITORY, TECHNOLOGY, AND INDUSTRIAL GROWTH* (1989); *WORLD CITIES IN A WORLD-SYSTEM* (Paul L. Knox & Peter J. Taylor eds., 1995). For my particular critique and supporting bibliographic materials see, e.g., SASKIA SASSEN, *CITIES IN A WORLD ECONOMY* (1994); *LOSING CONTROL*, *supra* note 2.

educated professional. This account privileges the capability for global transmission over the material infrastructure that makes transmission possible; information outputs over the workers producing those outputs, from specialists to secretaries; and the new transnational corporate culture over the multiplicity of work cultures, including immigrant cultures, within which many of the “other” jobs of the global information economy take place. In brief, the dominant narrative concerns itself with the upper circuits of capital, not the lower ones; and particularly with the hypermobility of capital rather than place-bound capital.

Massive trends toward the spatial dispersal of economic activities at the metropolitan, national, and global level represent only half of what is happening. Alongside the well-documented spatial dispersal of economic activities, new forms of territorial centralization of top-level management and control operations have appeared. National and global markets, as well as globally integrated operations, require central places where the work of globalization gets done. Further, information industries require a vast physical infrastructure containing strategic nodes with hyperconcentration of facilities. Finally, even the most advanced information industries have a production process.

Once this production process is brought into the analysis, we see that secretaries are part of it, and so are the cleaners of the buildings where the professionals do their work. An economic configuration very different from that suggested by the concept information economy emerges. We recover the material conditions, production sites, and place-boundedness that are also part of globalization and the information economy.

There is a tendency in the mainstream account to take the existence of a global economic system as a given, a function of the power of transnational corporations and global communications. But the capabilities for global operation, coordination, and control contained in the new information technologies and in the power of transnational corporations need to be produced. By focusing on the production of these capabilities we add a neglected dimension to the familiar issue of the power of large corporations and the new technologies. The emphasis shifts to the *practices* that constitute what we call economic globalization and global control: the work of producing and reproducing the organization and management of a global production system and a global marketplace for finance, both under conditions of economic concentration.

A focus on practices draws the categories of place and work process into the analysis of economic globalization. These are two categories easily overlooked in accounts centered on the hypermobility of capital and the power of transnationals. Developing categories such as place and production process does not negate the importance of hypermobility and power. Rather, it brings to the fore the fact that many of the resources necessary for global economic activities are not hypermobile and are, indeed, deeply embedded in place, notably places such as global cities and export processing zones. Global processes are structured by local constraints, including the composition of the workforce, work cultures, and political cultures, and other processes within nation-states.

Further, by emphasizing the fact that global processes are at least partly embedded in national territories, such a focus introduces new variables in current conceptions about economic globalization and the shrinking regulatory role of the State. That is to say, the space economy for major new transnational economic processes diverges in significant ways from the duality global/national presupposed in much analysis of the global economy. The duality "national versus global" suggests two mutually exclusive spaces--where one begins the other ends. Nation-states play a role in the implementation of global economic systems, a role that can assume different forms depending on development levels, political culture, and mode of articulation with global processes.¹⁹ Reintroducing the State in analyses of globalization creates a conceptual opening for an examination of how this transformed State, specifically the growing power of certain agencies, articulates the gender question. One instantiation of this reconfigured State is the ascendance of Treasury and the decline of departments dealing with the social fund, from housing to health and welfare.²⁰

Recapturing the geography of places involved in globalization allows us to recapture people, workers, communities, and more specifically, the many different work cultures, apart from the corporate culture, involved in the work

19. See generally LOSING CONTROL, *supra* note 2; Leo Panitch, *Rethinking the Role of the State, in* GLOBALIZATION: CRITICAL REFLECTIONS, *supra* note 1, at 83; ROBERT COX, PRODUCTION, POWER, AND WORLD ORDER: SOCIAL FORCES IN THE MAKING OF HISTORY (1987); Ong, *supra* note 10.

20. For example, the U.S. Treasury was in charge of the rescue package for Mexico's economic crisis, a crisis which twenty years ago would have fallen under the authority of the Department of State as an "international economic security crisis." Similarly, the U.S. Treasury was in charge of security and participation for the 1995 U.N. Beijing Women's Conference. See generally LOSING CONTROL, *supra* note 2.

of globalization.²¹ The global city can be seen as one strategic research site for the study of these processes. This type of city is a structure that contributes to the differentiation of culture and of the many forms of localization of global processes.²²

One of the central concerns in my work has been to look at cities as production sites for the leading information industries of our time and to recover the infrastructure of activities, firms, and jobs necessary to run the advanced corporate economy.²³ These industries are typically conceptualized in terms of the hypermobility of their outputs and the high levels of expertise of their professionals rather than in terms of the production process involved and the requisite infrastructure of facilities and non-expert jobs that are also part of these industries. A detailed analysis of service-based urban economies shows that there is considerable articulation of firms, sectors, and workers who may appear as though they have little connection to an urban economy dominated by finance and specialized services, but in fact fulfill a series of

21. Today's global cities are in part the sites of postcolonialism and contain conditions for the formation of a postcolonialist discourse. *See generally* ANTHONY D. KING, *URBANISM, COLONIALISM, AND THE WORLD-ECONOMY: CULTURAL AND SPATIAL FOUNDATIONS OF THE WORLD URBAN SYSTEM* (1990); Stuart Hall, *The Local and the Global: Globalization and Ethnicity*, in *CULTURE, GLOBALIZATION AND THE WORLD-SYSTEM: CONTEMPORARY CONDITIONS FOR THE REPRESENTATION OF IDENTITY* (Anthony D. King ed., 1991). An interesting question concerns the nature of internationalization today in ex-colonial cities. King's analysis about the distinctive historical and unequal conditions in which the notion of the "international" was constructed is extremely important. King shows us how during the time of empire, some of the major old colonial centers were far more internationalized than the metropolitan centers. Internationalization as used today is assumed to be rooted in the experience of the center. This brings up a parallel contemporary blindspot well captured in Hall's observation that contemporary post-colonial and post-imperialist critiques have emerged in the former centers of empires which are silent about a range of conditions evident today in ex-colonial cities or countries. Hall, *Id.* Similarly, the idea that the international migrations now directed largely to the center from former colonial territories in the case of Europe, and neo-colonial territories in the case of the United States and Japan, might be the correlate of the internationalization of capital that began with colonialism is simply not part of the mainstream interpretation of that past and the present. *See generally* SASSEN, *supra* note 5.

22. *See generally* *MANAGING DIVIDED CITIES* (Seamus Dunn ed., 1994); *RESEAUX PRODUCTIFS ET TERRITOIRES URBAINS* (Michel Peraldi & Evelyne Perrin eds., 1996); John Friedmann, *Where We Stand: A Decade of World City Research*, in *WORLD CITIES IN A WORLD SYSTEM*, *supra* note 18, at 21; *FUTUR ANTERIEUR* (Thierry Pillon & Anne Querrien eds., 1995) (special issue entitled *LA VILLE-MONDE AUNOURD'HUI: ENTRE VIRTUALITE ET ANCRAGE*); *PUBLIC CULTURE*, Winter 1996 (special issue entitled *CITIES AND CITIZENSHIP*); *SOCIAL JUSTICE*, Fall-Winter 1993 (special issue entitled *GLOBAL CRISES, LOCAL STRUGGLES*).

23. Methodologically speaking, this is one way of addressing the question of the unit of analysis in studies of contemporary economic processes. "National economy" is a problematic category when there are high levels of internationalization. And "world economy" is a problematic category because of the impossibility of engaging in detailed empirical study at that scale. Highly internationalized cities such as New York or London offer the possibility of examining globalization processes in great detail, within a bounded setting, and with all their multiple, often contradictory aspects.

functions that are an integral part of that economy. They do so, however, under conditions of sharp social, earnings, and, often, sex and racial/ethnic segmentation.²⁴

In the day-to-day work of the leading services complex dominated by finance, a large share of the jobs involved are low pay and manual, many held by women and immigrants. Although these types of workers and jobs are never represented as part of the global economy, they are in fact part of the infrastructure of jobs involved in running and implementing the global economic system, including such an advanced form of it as international finance.²⁵ The top end of the corporate economy--the corporate towers that project engineering expertise, precision, "techne"--is far easier to mark as necessary for an advanced economic system than are truckers and other industrial service workers, even though these are a necessary ingredient.²⁶ We see here at work a dynamic of valorization that has sharply increased the distance between the devalorized and the valorized, indeed overvalorized, sectors of the economy.

Some of the developments described above can be read as constituting a new geography of centrality and marginality. This new geography partly reproduces existing inequalities but also is the outcome of a dynamic specific to current modes of economic growth. It assumes many forms and operates in many arenas, from the distribution of telecommunications facilities to the

24. For me as a political economist, addressing these issues has meant working in several systems of representation and constructing spaces of intersection. There are analytic moments when two systems of representation intersect. Such analytic moments are easily experienced as spaces of silence, of absence. One challenge is to see what happens in those spaces, what operations (analytic, of power, of meaning) take place there. One version of these spaces of intersection is what I have called analytic borderlands. Why borderlands? They are spaces that are constituted in terms of discontinuities; in them discontinuities are given a terrain rather than reduced to a dividing line. Much of my work on economic globalization and cities has focused on these discontinuities and has sought to reconstitute them analytically as borderlands rather than dividing lines. This produces a terrain within which these discontinuities can be reconstituted in terms of economic operations whose properties are not merely a function of the spaces on each side (i.e., a reduction to the condition of dividing line), but also, and most centrally, of the discontinuity itself, the argument being that discontinuities are an integral part of the economic system.

25. A methodological tool I find useful for this type of examination is what I call circuits for the distribution and installation of economic operations. These circuits allow me to follow economic activities into terrains that escape the increasingly narrow geography of mainstream representations of "the advanced economy" and to negotiate the crossing of socio-culturally discontinuous spaces.

26. This is illustrated by the following event. When the acute stock market crisis happened in 1987 after years of enormous growth, there were numerous press reports about the sudden and massive unemployment crisis among high-income professionals on Wall Street. The other unemployment crises on Wall Street, affecting secretaries and blue collar workers, were never noticed nor reported. And yet, the stock market crash created a very concentrated unemployment crisis, for instance, in the Dominican immigrant community in northern Manhattan where a lot of the Wall Street cleaners live.

structure of the economy and of employment. Global cities accumulate immense concentrations of economic power while cities that were once major manufacturing centers suffer inordinate declines; the downtowns of cities and business centers in metropolitan areas receive massive investments in real estate and telecommunications while low-income urban and metropolitan areas are starved for resources. Highly educated workers in the corporate sector see their incomes rise to unusually high levels while low- or medium-skilled workers see their incomes sink. Financial services produce superprofits while industrial services barely survive. This is not a fixed geography; some of its components are quite volatile and some of its spaces are contested. Yet, there are also strong forces contributing to reproduce these configurations, though not necessarily all elements within them.²⁷

III. VALORIZATION AND DEVALORIZATION PROCESSES: A FIRST STEP TOWARD LOCATING GENDERING

Alongside these new global and regional geographies of centrality is a vast territory that has become increasingly peripheral, increasingly excluded from the major economic processes that are seen as fueling economic growth in the new global economy. Formerly important manufacturing centers and port cities have lost functions and are in decline, not only in the less developed countries but also in the most advanced economies. Similarly in the valuation of labor inputs, the overvaluation of specialized services and professional workers has marked many of the “other” types of economic activities and workers as unnecessary or irrelevant to an advanced economy.²⁸ The corporate work culture is overvalued while other kinds of work cultures are devalued.

There are other forms of this segmented marking of what is and what is not an instance of the new global economy. For example, the mainstream account about globalization recognizes that there is an international professional class of workers and highly internationalized business environments due to the

27. For instance, see the case of Miami which over the last three years has emerged as a new international corporate center for North American, European, and Asian firms doing business with Latin America and the Caribbean. *See generally* SASSEN, *CITIES IN A WORLD ECONOMY*, *supra* note 18.

28. We can see this effect, for example, in the unusually sharp increase in the beginning salaries of MBAs and lawyers hired in the corporate sector, and in the precipitous fall in the wages of low-skilled manual workers and clerical workers. We can see the same effect in the retreat of many real estate developers from the low- and medium-income housing market in the wake of the rapidly expanding housing demand by the new highly paid professionals and the possibility for vast overpricing of this housing supply. *See generally* SUSAN FAINSTEIN, *THE CITY BUILDERS* (1994).

presence of foreign firms and personnel. What has not been recognized is the possibility that we are seeing an internationalized labor market for low-wage manual and service workers and internationalized business environments in immigrant communities. These processes continue to be couched in terms of immigration, a narrative rooted in an earlier historical period.

This signals that there are representations of the global or the transnational which have not been recognized as such or are contested representations.²⁹ Similarly, in the social sciences the most common way to proceed is to study such categories as economic power, leading industries, or economic globalization from the top down. I agree with Janet Abu-Lughod that we also need to proceed from the bottom up.³⁰ The central assumption in much of my work has been that we learn something about power through its absence and by moving through or negotiating the borders and terrains that connect powerlessness to power. Power is not a silence at the bottom; its absence is present and has consequences. The terms and language of the debate force particular positions and preempt others. Among these is the question of immigration, as well as the multiplicity of work environments it contributes in large cities, often subsumed under the notion of the ethnic economy and the informal economy.³¹ Much of what we still narrate in the language of immigration and ethnicity is actually a series of processes having to do with: (1) the globalization of economic activity, cultural activity, and of identity formation; and, (2) the increasingly marked racialization of labor market segmentation so that the components of the production process in the advanced global information economy that take place in immigrant work environments are components not recognized as part of the global information economy. Immigration and ethnicity are constituted as otherness. Understanding them as a set of processes whereby global elements are *localized*, international labor markets are constituted, and cultures from all over the world are de- and re-

29. We need to recognize the specific historical conditions for different conceptions of the international or the global. There is a tendency to see the internationalization of the economy as a process operating in the highly developed countries, embedded in the power of the multinational corporations today and colonial enterprises in the past. One could note that the economies of many periphery countries are thoroughly internationalized due to high levels of foreign investments in all economic sectors and of dependence on world markets for "hard" currency. What center countries have is strategic concentrations of firms and markets that operate globally, the capability for global control and coordination, and power. This is a very different form of the international economy from that which we find in periphery countries.

30. Janet Lippman Abu-Lughod, *Comparing Chicago, New York and Los Angeles: Testing Some World Cities Hypotheses*, in *WORLD CITIES IN A WORLD-SYSTEM*, *supra* note 18.

31. REPRESENTING THE CITY: ETHNICITY, CAPITAL AND CULTURE IN THE 21ST- CENTURY METROPOLIS (Anthony D. King ed., 1996).

territorialized, placing them right there at the center along with the internationalization of capital as a fundamental aspect of globalization.³²

What we see at work here is a series of processes that valorize and overvalorize certain types of outputs, workers, firms and sectors, and devalorize others. Does the fact of gendering, e.g., the devaluing of female-typed jobs, facilitate these processes of devalorization? We cannot take devalorization as a given: devalorization is a produced outcome.

The forms of devalorization of certain types of workers and work cultures I have described here are partly embedded in the demographic transformations evident in large cities. The growing presence of women, immigrants, and people of color in large cities along with a declining middle class have facilitated the operation of devalorization processes. This is significant insofar as these cities are strategic sites for the materialization of global processes and for the valorization of corporate capital.³³

How have these new processes of valorization and devalorization and the inequalities they produce come about? The implantation of global processes and markets in major cities has meant that the internationalized sector of the economy has expanded sharply and has imposed a new set of criteria for

32. The post-1945 period, especially beginning in the 1960s, has distinct conditions for the formation and continuation of international flows of immigrants and refugees. In *THE MOBILITY OF LABOR AND CAPITAL: A STUDY IN INTERNATIONAL INVESTMENT AND LABOR FLOW*, *supra* note 5, I sought to show that the specific forms of internationalization of capital we see over this period have contributed to mobilize people into migration streams and build bridges between countries of origin and the U.S. The implantation of western development strategies, from the replacement of small-holder agriculture with export-oriented commercial agriculture to the westernization of educational systems, has contributed to mobilize people into migration streams—regional, national, and transnational. At the same time the administrative, commercial, and development networks of the former European empires and the newer forms these networks assumed under the Pax Americana (international direct foreign investment, export processing zones, and wars for “democracy”) did not only create bridges for the flow of capital, information, and high level personnel from the center to the periphery but, I argue, also for the flow of migrants. See generally SARAH J. MAHLER, *AMERICAN DREAMING: IMMIGRANT LIFE ON THE MARGINS* (1995); 11 *JOURNAL FÜR ENTWICKLUNGSPOLITIK, SCHWERPUNKT: MIGRATION* (1995) (special issue on migration); Douglas S. Massey et al., *Theories of International Migration: A Review and Appraisal*, 19 *POPULATION & DEV. REV.* 431 (1993). Hall describes the post-war influx of people from the Commonwealth into Britain and how England and Englishness were so present in his native Jamaica as to make people feel that London was the capital where they were all headed to sooner or later. Hall, *supra* note 21. This way of narrating the migration events of the post war era captures the ongoing weight of colonialism and post-colonial forms of empire on major processes of globalization today, and specifically those binding emigration and immigration countries. The major immigration countries are not innocent bystanders; the specific genesis and contents of their responsibility will vary from case to case and from period to period.

33. See generally Saskia Sassen, *The Informal Economy: Between New Developments and Old Regulations*, 103 *YALE L.J.* 2289 (1994) (explaining the parallel dynamic in the case of the growth of informalization in advanced urban economies).

valuing or pricing various economic activities and outcomes. This has had devastating effects on large sectors of the urban economy. It is not simply a quantitative transformation; we see here the elements for a new urban regime.³⁴

These tendencies towards polarization assume distinct forms in: (1) the spatial organization of the urban economy; (2) the structures for social reproduction; and (3) the organization of the labor process. In these trends towards multiple forms of polarization lie conditions for the creation of employment-centered urban poverty and marginality, and for new class formations.

The ascendance of the specialized services-led economy, particularly the new finance and services complex, engenders what may be regarded as a new economic regime because, although this specialized sector may account for only a fraction of a city's economy, it imposes itself on the entire economy. One of these pressures is toward polarization, because of the possibility for superprofits in areas like finance. This, in turn, contributes to devalorize manufacturing and low-value added services insofar as these sectors cannot generate the superprofits typical in much financial activity. Low-value added services and urban-based manufacturing are the sectors where women and immigrants predominate.

The super profit-making capacity of many leading industries is embedded in a complex combination of new trends: (1) technologies that make possible the hypermobility of capital on a global scale and the deregulation of multiple markets allowing the implementation of that hypermobility; (2) financial innovations, such as securitization, which create liquid capital and allow it to circulate and make additional profits; and (3) the growing demand for increasingly complex and specialized services in all industries, which contributes to these services' valorization and often over-valorization, as illustrated in the unusually high salary increases beginning in the 1980s for top-level professionals and CEOs.³⁵ Globalization further adds to the

34. See generally *id.*; WORLD CITIES IN A WORLD-SYSTEM, *supra* note 18; M. Frost & Nigel Spence, *Global City Characteristics and Central London's Employment*, 30 URB. STUD. 547 (1993); LE DEBAT, Summer 1994 (special issue entitled LE NOUVEAU PARIS).

35. The high profit-making capability of the new growth sectors also rests partly on speculative activity. The extent of this dependence on speculation can be seen in the crisis of the early 1990s that followed the unusually high profits in finance and real estate in the 1980s. The real estate and financial crisis, however, seems to have left the basic dynamic of the sector untouched. The crisis can thus be seen as an adjustment to more reasonable, i.e., less speculative, profit levels. The overall dynamic of polarization in profit levels in the urban economy remains in place, as do the "distortions" in many markets.

complexity of these services, their strategic character, their glamour, and to their over-valorization.

The presence of a critical mass of firms with extremely high profit-making capabilities increases the prices of commercial space, industrial services, and other business needs, and thereby makes survival for firms with moderate profit-making capabilities increasingly precarious. And while firms with moderate profits are essential to the operation of the urban economy and for the daily needs of residents, their economic viability is threatened in a situation where finance and specialized services can earn super-profits. High prices and profit levels in the internationalized sector and its ancillary institutions, such as top-of-the-line restaurants and hotels, make it increasingly difficult for other sectors to compete for space and investments. Many of these other sectors have experienced considerable downgrading and/or displacement, for example, the replacement of neighborhood shops tailored to local needs by upscale boutiques and restaurants catering to new high income urban elites. There are some interesting research questions to pursue here to understand whether this reconfiguration of economic spaces has had differential impacts on women and men, on male and female-typed work cultures, on male and female-centered forms of power and empowerment.³⁶ The remainder of this section is a brief discussion of some of these areas for research.

Inequality in the profit-making capabilities of different sectors of the economy has always existed. But what we see happening today takes place on another order of magnitude and is engendering massive distortions in the operations of various markets, from housing to labor. For instance, the polarization among firms and households and in the spatial organization of the economy results in the informalization of a growing array of economic activities in advanced urban economies. When firms with low or modest profit-making capacities experience an ongoing, if not increasing, demand for their goods and services from households and other firms in a context where a significant sector of the economy makes super-profits, they often cannot compete even though there is an effective demand for what they produce.

36. See, e.g., SPAIN, *supra* note 11; Leonie Sandercock & Ann Forsyth, *A Gender Agenda: New Directions for Planning Theory*, 58 J. AM. PLAN. ASS'N 49 (1992); Alma H. Young & Jyaphia Christos-Rodgers, *Resisting Racially Gendered Space: The Women of the St. Thomas Resident Council, New Orleans*, in 5 COMPARATIVE URBAN AND COMMUNITY RESEARCH: MARGINAL SPACES 95 (Michael Peter Smith ed., 1995); see also Roger Waldinger & Greta Gilbertson, *Immigrant's Progress: Ethnic & Gender Differences Among U.S. Immigrants in the 1980's*, 37 SOC. PERSP. 431 (1994) (finding that among immigrants with a high level of education, immigrant men did significantly better in the labor market than their co-national women with similar levels of education).

Operating informally is often one of the few ways in which such firms can survive. This operation may entail using spaces not zoned for commercial or manufacturing uses, such as basements in residential areas, or space that is not up to code in terms of health, fire, and other such standards. Similarly, new firms in low-profit industries entering a strong market for their goods and services may only be able to do so informally. Another option for firms with limited profit-making capabilities is to subcontract part of their work to informal operations. Informalization often reintroduces the community and the household as an important economic space. This question follows: Does the growth of informalization in advanced urban economies reconfigure some types of economic relations between men and women?

More generally, we are seeing the formation of new types of labor market segmentation. Two characteristics stand out. One is the weakening role of the firm in structuring the employment relation, which leaves more to the market. A second form in this restructuring of the labor market is what could be described as the shift of labor market functions to the household or community. These emerge as sites that should be part of the theorization about particular types of labor market dynamics today.³⁷

The recomposition of the sources of growth and of profit-making entailed by these transformations also contribute to a reorganization of some components of social reproduction or consumption. While the middle strata still constitute the majority, the conditions that contributed to their expansion and politico-economic power in the post-war decades--the centrality of mass production and mass consumption in economic growth and profit realization--have been displaced by new sources of growth. Is the "systemic abandonment," i.e., radical economic marginalization, of a growing segment of households--specifically, low-income female-headed households--completely unconnected to this reorganization of consumption and social reproduction? We need research and theorization that examines the possible articulations of these two types of processes, each the subject of separate bodies of scholarship.

The rapid growth of industries with strong concentrations of high and low income jobs has assumed distinct forms in the consumption structure, which in turn has a feedback effect on the organization of work and the types of jobs being created. The expansion of the high-income work force in conjunction

37. See generally Saskia Sassen, *Immigration and Local Labor Markets*, in *THE ECONOMIC SOCIOLOGY OF IMMIGRATION* (Alejandro Portes ed., 1995).

with the emergence of new cultural forms has led to a process of high-income gentrification that rests, in the last analysis, on the availability of a vast supply of low-wage workers. This has reintroduced--to an extent not seen in a very long time--the whole notion of the "serving classes" in contemporary high-income households. The immigrant woman serving the white middle class professional woman has replaced the traditional image of the black female servant serving the white master.

To some extent, the consumption needs of the low-income population in large cities are met by manufacturing and retail establishments which are small, rely on family labor, and often fall below minimum safety and health standards. Cheap, locally produced sweatshop garments, for example, can compete with low-cost Asian imports. A growing range of products and services, from low-cost furniture made in basements to "gypsy cabs" and family daycare, is available to meet the demand for the growing low-income population. There are numerous instances of how the increased inequality in earnings reshapes the consumption structure and how this in turn has feedback effects on the organization of work, both in the formal and in the informal economy.³⁸

There is, to some extent, a joining of two different dynamics in the condition of women described above. On the one hand, they are constituted as an invisible and disempowered class of workers in the service of the strategic sectors constituting the global economy. This invisibility keeps them from emerging as whatever would be the contemporary equivalent of the "labor aristocracy" of earlier economic organizational forms, when a worker's position in leading sectors had the effect of empowering them--a dynamic articulating the corporate and the labor sector in a manner radically different from today's.³⁹ On the other hand, the access to wages and salaries (even if low), the growing feminization of the job supply, and the growing feminization of business opportunities brought about with informalization alter the gender hierarchies in which they find themselves.⁴⁰

38. See generally Sassen, *supra* note 33.

39. See generally SASSEN, *supra* note 5 (showing how this concept worked in the United States and in the case of the offshoring of leading sectors such as electronics).

40. See generally Heidi Hartmann, *Changes in Women's Economic and Family Roles in Post-World War II United States*, in WOMEN, HOUSEHOLDS AND THE ECONOMY, *supra* note 6, at 33; Alice Kessler-Harris & Karen Brodtkin Sacks, *The Demise of Domesticity in America*, in WOMEN, HOUSEHOLDS AND THE ECONOMY, *supra* note 6, at 65.

This is particularly striking in the case of immigrant women. There is a large literature showing that immigrant women's regular wage work and improved access to other public realms have an impact on their gender relations.⁴¹ Women gain greater personal autonomy and independence while men lose ground.⁴² Women gain more control over budgeting and other domestic decisions and greater leverage in requesting help from men in domestic chores. Also, their access to public services and other public resources gives them a chance to become incorporated in the mainstream society—they are often the ones in the household who mediate in this process. It is likely that some women benefit more than others from these circumstances; we need more research to establish the impact of class, education, and income on these gendered outcomes.⁴³

In addition to the relatively improved empowerment of women in the household associated with waged employment, there is a second important outcome—their greater participation in the public sphere and their possible emergence as public actors. There are two arenas where immigrant women are active: institutions for public and private assistance and the immigrant/ethnic community. The incorporation of women in the migration process strengthens the settlement likelihood⁴⁴ and contributes to greater immigrant participation in their communities and vis-a-vis the State. For instance, Hondagneu-Sotelo found that immigrant women come to assume more active public and social roles which further reinforces their status in the household and the settlement process.⁴⁵ Women are more active in community building and community

41. See, e.g., GRASMUCK & PESSAR, *supra* note 8; HONDAGNEU-SOTELO, *supra* note 8; LOUISE LAMPHERE, FROM WORKING DAUGHTERS TO WORKING MOTHERS: IMMIGRANT WOMEN IN A NEW ENGLAND COMMUNITY (1987); Boyd, *supra* note 8; Castro, *supra* note 8; Nancy Foner, *Sex Roles and Sensibilities: Jamaican Women in New York and London*, in INTERNATIONAL MIGRATION: THE FEMALE EXPERIENCE 133 (Rita James Simon & Caroline B. Brettell eds., 1986). But see, e.g., FERNANDEZ-KELLY, *supra* note 5; Yolanda Prieto, *Cuban Women in New Jersey: Gender Relations and Change*, in SEEKING COMMON GROUND: MULTIDISCIPLINARY STUDIES OF IMMIGRANT WOMEN IN THE UNITED STATES 185 (Donna Gabaccia ed., 1992).

42. See generally WOMEN, HOUSEHOLDS AND THE ECONOMY, *supra* note 6; Hartmann, *supra* note 40; Kessler-Harris & Sacks, *supra* note 40.

43. See generally GRASMUCK & PESSAR, *supra* note 8 (finding that Dominican women wanted to settle in New York precisely because of these gains, while men wanted to return). They found women spending large shares of earnings on expensive durable consumer goods such as appliances and home furnishings which served to root the family more securely in the United States and deplete the funds needed for organizing a successful return, while men preferred to spend as little as possible to save for the return. *Id.* Castro had similar results in her study on Colombian women in New York City. Castro, *supra* note 8.

44. See generally EUGENIA GEORGES, THE MAKING OF A TRANSNATIONAL COMMUNITY: MIGRATION, DEVELOPMENT, AND CULTURAL CHANGE IN THE DOMINICAN REPUBLIC (1990); Castro, *supra* note 8.

45. See generally HONDAGNEU-SOTELO, *supra* note 8; NAZLI KIBRIA, FAMILY TIGHTROPE: THE

activism, and they are positioned differently from men regarding the broader economy and the State. They are the ones that are likely to have to handle the legal vulnerability of their families in the process of seeking public and social services for their families.⁴⁶ This greater participation by women suggests the possibility that they may emerge as more forceful and visible actors and may make their role in the labor market more visible as well.⁴⁷

IV. THE UNBUNDLING OF SOVEREIGNTY: IMPLICATIONS FOR A FEMINIST ANALYSIS

Economic globalization represents a major transformation, not only in the territorial organization of economic activity, but also in the organization of political power, notably sovereignty as we have known it. Today the major dynamics at work in the global economy have the capacity to undo the intersection of sovereignty and territory embedded in the modern State and the modern inter-State system.⁴⁸ As with the discussion above, the main concern

CHANGING LIVES OF VIETNAMESE AMERICANS (1993).

46. See generally HONDAGNEU-SOTELO, *supra* note 8; MAHLER, *supra* note 32; IDA SUSSER, NORMAN STREET: POVERTY AND POLITICS IN AN URBAN NEIGHBORHOOD (1982).

47. Scholarship on immigrant women contributes to the broader agenda for feminist scholarship aimed at recognizing differences among women—in this case, ethnic, racial, and national differences. See, e.g., Patricia Pessar, *On the Homefront and in the Workplace: Integrating Immigrant Women into Feminist Discourse*, 68 ANTHROPOLOGICAL Q. 37 (1995).

48. There is an enormous literature that is of direct and indirect pertinence here. It is impossible to do justice to the variety of foci and perspectives in this short article. See, e.g., IDEAS AND FOREIGN POLICY: BELIEFS, INSTITUTIONS AND POLITICAL CHANGE (Judith Goldstein & Robert O. Keohane eds., 1993) (on the impact of the international human rights regime on sovereignty); LOSING CONTROL, *supra* note 2 (on general questions about the state and international/cross-border processes); JESWALD W. SALACUSE, MAKING GLOBAL DEALS: NEGOTIATING IN THE INTERNATIONAL MARKETPLACE (1991) (on more specific regulatory and legal issues, and representing very different perspectives); Kenneth W. Abbott, *GATT as a Public Institution: The Uruguay Round and Beyond*, 18 BROOK. J. INT'L L. 31 (1992); Gerald Aksen, *Arbitration and Other Means of Dispute Settlement*, in INTERNATIONAL JOINT VENTURES: A PRACTICAL APPROACH TO WORKING WITH FOREIGN INVESTORS IN THE U.S. AND ABROAD 287 (David N. Goldsweig & Roger H. Cummings eds., 2d ed. 1990); Yves Dezalay & Bryant Garth, *Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Disputes*, 29 L. & SOC'Y REV. 27 (1995); Myres S. McDougal & W. Michael Reisman, *International Law In Policy-Oriented Perspective*, in THE STRUCTURE AND PROCESS OF INTERNATIONAL LAW 103 (R. St.J. Macdonald and Douglas M. Johnston eds., 1983); Joel R. Paul, *Free Trade, Regulatory Competition and the Autonomous Market Fallacy*, 1 COLUM. J. EUR. L. 29 (1995); James N. Rosenau, *Governance, Order, and Change in World Politics*, in GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS 1 (James N. Rosenau & Ernst-Otto Czempiel eds., 1992); John Gerard Ruggie, *Territoriality and Beyond: Problematizing Modernity in International Relations*, 47 INT'L ORG. 139 (1993); Kathryn Sikkink, *Human Rights, Principled Issue-Networks, and Sovereignty in Latin America* 47 INT'L ORG. 411 (1993); Joel P. Trachtman, *International Regulatory Competition, Externalization, and Jurisdiction* 34 HARV. INT'L L.J. 47 (1993); DAVID M. TRUBEK ET AL., GLOBAL RESTRUCTURING AND THE LAW: THE INTERNATIONALIZATION

in this section is to capture strategic instantiations, in this case, the transformation of political power.

Along with the unbundling of territoriality, represented in the discussion above by the ascendance of global cities, there is an unbundling of sovereignty. We are seeing the relocation of various components of sovereignty into supranational, non-governmental, or private institutions. This brings with it a potential strengthening of alternative subjects of international law and actors in international relations, for example, the growing voice of nongovernmental organizations and minorities in international fora.⁴⁹ It also carries implications for conceptions of membership.⁵⁰ Both can facilitate the ascendance of women, whether individuals or collectives, as subjects of international law and the formation of crossborder feminist solidarities. Notwithstanding these implications for women, most of the critical analyses of sovereignty have not had a particularly feminist perspective,⁵¹ though there is the beginning of a feminist reading of the State in international relations.⁵²

There is an emerging feminist scholarship on international law, but it is not focused on the question of sovereignty and its transformation. Central concerns in this feminist critique are the notion that an ethic of care should prevail among States⁵³ and that the principle of non-intervention in the internal affairs of States leaves women vulnerable to abuse and injustice.⁵⁴ Each of

OF LEGAL FIELDS AND CREATION OF TRANSNATIONAL ARENAS (University of Wisconsin Global Studies Research Program Working Paper Series on the Political Economy of Legal Change No. 1, 1993); Friedrich Kratochwil, *Of Systems, Boundaries and Territoriality: An Inquiry into the Formation of the State System*, *WORLD POL.*, Oct. 1986, at 27. I discuss many of these in my 1996 book, *LOSING CONTROL*, *supra* note 2.

49. See generally LOUIS HENKIN, *THE AGE OF RIGHTS* (1990); SOYSAL, *supra* note 10; Dr. Erica-Irene A. Daes, *Equality of Indigenous Peoples Under the Auspices of the United Nations--Draft Declaration on the Rights of Indigenous Peoples*, 7 *ST. THOMAS L. REV.* 493 (1995); David Kennedy, *Some Reflections on "The Role of Sovereignty in the New International Order,"* in *STATE SOVEREIGNTY: THE CHALLENGE OF A CHANGING WORLD: NEW APPROACHES AND THINKING ON INTERNATIONAL LAW 237* (1992) (Proceedings of the 21st Annual Conference of the Canadian Council on International Law, Ottawa); Karen Knop, *The "Righting" of Recognition: Recognition of States in Eastern Europe and the Soviet Union*, in *STATE SOVEREIGNTY: THE CHALLENGE OF A CHANGING WORLD: NEW APPROACHES AND THINKING ON INTERNATIONAL LAW 36*, *supra*.

50. See generally SOYSAL, *supra* note 10; RAINER BAUBÖCK, *TRANSNATIONAL CITIZENSHIP: MEMBERSHIPS AND RIGHTS IN INTERNATIONAL MIGRATION* (1994).

51. See, e.g., Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 *AM. J. OF INT'L L.* 46 (1992); McDougal & Reisman, *supra* note 48; Rosenau, *supra* note 48; Ruggie, *supra* note 48.

52. See, e.g., *GENDERED STATES: FEMINIST (RE)VISIONS OF INTERNATIONAL RELATIONS THEORY* (V. Spike Peterson ed., 1992); *RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW 143* (American Society of International Law Series, Studies in Transnational Legal Policy No. 25, 1993) (Dorinda G. Dallmeyer ed.) [hereinafter *RECONCEIVING REALITY*].

53. See, e.g., Williams, *supra* note 13.

54. See, e.g., Hilary Charlesworth, *The Public/Private Distinction and the Right to Development in*

these represents a transfer to the relations among States of the critique of liberal democratic norms prescribing, respectively, the relation between the individual and the State and the distinction between private and public spheres.⁵⁵ In the classical liberal tradition, the State does not intervene in home and family.⁵⁶ Similarly, according to international law, States do not intervene in the internal affairs of other States. The feminist response is that the State should intervene in the home and in the internal affairs of other States if abuse is occurring.⁵⁷ “Feminist approaches to international law may be understood as seeking to personalize and personify its normative constructs.”⁵⁸ Elshstain’s sovereign State/sovereign self—which has the effect of personifying the State—shows us that international law is male.⁵⁹

The particular form that the feminist critique of international law is taking has the effect of avoiding the question of sovereignty, and the implications of its unbundling for the emergence of new actors in cross-border relations and as subjects of international law. In a critical review of the feminist scholarship on international law, Knop notes that personifying the State has the effect of denying the individual and collective identity of women within a State and across States.⁶⁰ Women are confined to the realm of the given State and rendered invisible from the perspective of international law insofar as they are subsumed under the State’s sovereignty. Her central argument is that we need

International Law, 12 AUSTL. Y.B. INT’L L. 190 (1992); Elshstain, *supra* note 12; Karen Engle, *After the Collapse of the Public/Private Distinction: Strategizing Women’s Rights*, in RECONCEIVING REALITY: WOMEN AND INTERNATIONAL LAW, *supra* note 52, at 143.

55. See generally Karen Knop, *Re/Statements: Feminism and State Sovereignty in International Law*, 3 TRANSNAT’L L. & CONTEMP. PROBS. 293 (1993).

56. See generally Carole Pateman, *Feminist Critiques of the Public/Private Dichotomy*, in PUBLIC AND PRIVATE IN SOCIAL LIFE 281 (S.I. Benn and G.F. Gaus eds., 1983); Williams, *supra* note 13.

57. See generally Charlesworth, *supra* note 54; Christine Chinkin, *A Gendered Perspective to the International Use of Force*, 12 AUSTL. Y.B. INT’L L. 279 (1992); Elshstain, *supra* note 12; Judith G. Gardam, *The Law of Armed Conflict: A Feminist Perspective*, in HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY: A GLOBAL CHALLENGE 419 (Kathleen E. Mahoney & Paul Mahoney eds., 1993). The notion is that States should intervene in the private sphere because women often are at risk in homes; extending this notion to the relations among States entails a call for greater mutual responsibilities among States, as is illustrated by the advantages of cross-border collaboration in the environmental field. For radical feminists, the dissolution of borders between the public and the private is not necessarily desirable insofar as any kind of intervention/penetration is a threat to women.

58. Knop, *supra* note 55, at 294. Knop finds the analogy between individual and State analytically restricting. It may simply lead the emerging feminist international law scholarship to transport the feminist debate on the nature of the self and the relationship to others *onto* the level of the State. Further, it can easily treat the State as a unified entity.

59. See generally Elshstain, *supra* note 12.

60. See generally Knop, *supra* note 55.

both a critical examination of sovereignty and of the assumption that it pertains exclusively to the State.⁶¹

The impact of globalization on sovereignty has been significant in creating operational and conceptual openings for other actors and subjects.⁶² Feminist readings that personify the State leave sovereignty unexamined; the State remains the exclusive subject for international law. This is not to deny the importance of the types of critiques evident in this feminist scholarship. But when it comes to a critique of international law, leaving out the issue of sovereignty and taking its confinement to the nation-state as a given represents a fall-back on statism--the legitimacy of the State as the subject of international law regardless of whether it is representative of the people's will, or more fundamentally, rigorous in its adherence to the precepts of democratic representation.⁶³

Why does it matter that we develop a feminist critique of sovereignty today in the context of globalization? It matters because globalization is creating new operational and formal openings for the participation of non-State actors and subjects. Once the sovereign State is no longer viewed as the exclusive representative of its population in the international arena, women and other non-State actors can gain more representation in international law; contribute to the making of international law; and give new meaning to older forms of international participation, such as women's longstanding work in international peace efforts.⁶⁴ Beyond these issues of participation and representation is a question about the implications of feminist theory for alternative conceptions of sovereignty.⁶⁵

61. *See generally id.*; Elshtain, *supra* note 12, at 137 (noting that gender is not part of many recent critical treatments of sovereignty).

62. *See generally* LOSING CONTROL, *supra* note 2.

63. *See, e.g.*, Franck, *supra* note 51.

64. *See e.g.*, GENDERED STATES, *supra* note 52 (presenting feminist scholarship concerned with equality for women in the participation of international law-making and implementation). This focus still entails working through the State, although it may incorporate the notion, developed in the national context, that equality means taking account of the specific needs of women. *See generally* MINOW, *supra* note 13.

65. According to several feminist scholars there is today no feminist theory of the State. *See, e.g.*, Knop, *supra* note 55; Denise G. Réaume, *The Social Construction of Women and the Possibility of Change: Unmodified Feminism Revisited*, 5 CANADIAN J. WOMEN & L. 463 (1992)(reviewing CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989)). In her critique, Réaume finds that MacKinnon's text does not contain such a theory notwithstanding its title. *See generally id.* It seems to me that at this point a feminist theory of the State would have to factor in the major transformations of the State brought about by globalization, most particularly, what I think of as the decentralization of sovereignty onto non-State actors and the corresponding formation of other sites for normativity beyond that embedded in the nation-state. *See generally* LOSING CONTROL, *supra* note 2.

Here I will confine myself to a brief examination of the transformation of sovereignty under the impact of globalization. This effort parallels that of the first part of this paper—to expand the analytic terrain within which we conceptualize key properties, in this case sovereignty. I see this as one step in the broader agenda of specifying a gendered feminist analytics for understanding the global economy today. But, the major task clearly lies ahead and is collective and cross-border in character.

Two kinds of developments in this new transnational, spatial, and economic order matter for my discussion of sovereignty. One is the emergence of what I will call new sites of normativity, and the other, at a more operational level, is the formation of new transnational legal regimes and regulatory institutions that are either private or supranational and have taken over functions until recently located in governmental institutions.⁶⁶ I argue that two institutional arenas have emerged as new sites for normativity alongside the more traditional normative order represented by the nation-state: the global capital market and the international human rights regime. The global capital market now concentrates sufficient power *and legitimacy* to command accountability from governments regarding their economic policies, as was illustrated by the recent crisis in Mexico. So does the international human rights regime, as is particularly evident in matters involving immigration and refugees, where courts have invoked international human rights instruments even when this overrides decisions taken by their national legislatures.

What matters for the purposes of the discussion here is that both contain a *de facto* transnationalizing of State policy which in turn creates practical and formal openings for the participation of non-State actors. This represents a transformation of sovereignty as we have known and formalized it.⁶⁷ I will confine myself to a brief discussion of sovereignty and the impact of, respectively, the new international human rights regime that came into its own in the 1970s, and the privatization of regulatory regimes for global business.

1. International Human Rights and State Sovereignty

66. See generally LOSING CONTROL, *supra* note 2.

67. The complicating twist, which I examine in my 1996 book, is that both the global capital market and the human rights regime need the State for the enforcement of, respectively, the global rights of capital—guarantees of contract and property— and the human rights of any person regardless of nationality and legal status. See generally LOSING CONTROL, *supra* note 2.

International human rights, while rooted in the founding documents of nation-states, are today a force that can undermine the exclusive authority of the State over its nationals and thereby contribute to transform the inter-State system and international legal order. Membership in nation-states ceases to be the only ground for the realization of rights. All residents, whether citizens or not, can claim their human rights.⁶⁸ Human rights begin to impinge on the principle of nation-based citizenship and the boundaries of the nation.

In the early 20th century there were several legal instruments that promoted human rights and made the individual an object of international law. But, it was not until after the second world war that we see an elaboration and formalization of such rights.⁶⁹ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights legislated much of what the Universal Declaration called for.⁷⁰ In 1976, a Protocol to the Covenant on Civil and Political Rights was opened for ratification; it enables private parties to file complaints to the U.N. Human Rights committee if a State that has ratified the protocol is involved. There is a growing number of other U.N. human rights agreements.⁷¹

Some of the human rights provisions that go the farthest in supporting needs strongly associated with the current condition of women can be seen as marginalized within the human rights regime. Barbara Stark finds that of the two instruments that constitute the International Bill of Rights, it is The International Covenant on Economic, Social, and Cultural Rights which could make the most difference for women. It is also "the marginalized half of the international human rights law."⁷²

68. DAVID JACOBSON, *RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP* 9 (1996); see generally W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866 (1990).

69. The covenants and conventions that guarantee human rights today are derived from the Universal Declaration of Human Rights adopted by the United Nations in 1948. JACOBSON, *supra* note 68, at 2; see *Universal Declaration of Human Rights*, G.A. Res. 217 A (III), U.N. Doc. A/810 (1948). The Universal Declaration is not an international treaty, and thus does not have the legally binding character of treaties. But, many view the Declaration to have the status of customary international law, because it is so often referred to—an international and general practice that is accepted and observed as law.

70. See *International Covenant on Civil and Political Rights*, G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966) (entered into force Mar. 23, 1976); *International Covenant on Economic, Social and Cultural Rights*, Jan. 3, 1976, 993 U.N.T.S. 3. It took ten years after ratification procedures started in 1966 before 35 States ratified the covenants, the number required to make them legally binding.

71. See generally HENKIN, *supra* note 49; Farooq Hassan, *The Doctrine of Incorporation*, 5 HUM. RTS. Q. 68, 68; JACOBSON, *supra* note 68.

72. Barbara Stark, *The "Other" Half of the International Bill of Rights as a Postmodern Feminist Text*, in *RECONCEIVING REALITY*, *supra* note 52, at 20 (1993). The Economic Covenant demands positive

From an emphasis on the sovereignty of the people of a nation and the right to self-determination, we see a shift in emphasis to the rights of individuals regardless of nationality. Human rights codes can erode the legitimacy of the State if that State fails to respect such human rights. It is no longer just a question of self-determination, but of respect of international human rights codes. It is not clear to what extent the pertinent organizations and instruments are likely to be implemented. One possibility is that international law today basically makes the individual and non-State groups subsidiary to the laws between States. There is a growing body of cases signaling that individuals and non-State groups are making claims on the State, particularly in Western Europe, where the human rights regime is most developed.⁷³

In the United States this process has been much slower and less marked. This has been seen partly as a result of American definitions of nationhood, which has led courts in some cases to address the matter of undocumented immigrants within American constitutionalism, notably the idea of inalienable and natural rights of people and persons, without territorial confines. The emphasis on persons makes possible interpretations about undocumented immigrants, in a way it would not if the emphasis were on citizens. It was not until the mid-1970s and the early 1980s that domestic courts began to consider human rights codes as normative instruments in their own right. The rapid growth of undocumented immigration and the sense of the State's incapacity to control the flow and to regulate the various categories in its population was a factor leading courts to consider the international human rights regime. It allows courts to rule on basic protections of individuals not formally accounted in the national territory and legal system, notably undocumented aliens and unauthorized refugees.⁷⁴

commitment from governments to secure the basic standards of material existence for its citizens. The Civil Covenant, on the other hand, tends to reproduce existing male hierarchies and to address familiar "negative rights", such as the freedom of religion and expression. It should be noted that the United States has ratified the Civil Covenant (in April 1992) but not the Economic Covenant.

73. Provisions in the European Convention and rules in the Court of Human Rights authorize individuals and non-State actors to petition. Such petitions have increased rapidly in the 1970s and 1980s. Several States have incorporated many of the Convention's provisions into their domestic law—Germany, The Netherlands, France, Spain, Switzerland and Turkey. In this case, decisions by the Court have a direct effect on domestic judiciaries, which emerge as a key organ for the implementation of human rights provisions. This pattern has grown markedly since the early 1980s with the growth of case law coming out of the Court.

74. For instance, the Universal Declaration was cited in 76 federal cases from 1948 through 1994; over 90 percent of those cases took place since 1970, 59 of which occurred since 1980. JACOBSON, *supra*

In both Western Europe and the United States it is interesting to note that immigrants and refugees have been key claimants, and in that sense, mechanisms for the expansion of the human rights regime. Several court cases show how undocumented immigration creates legal voids which are increasingly filled by invoking human rights covenants.⁷⁵ In many of these cases, we can see the individual or non-State actors bringing the claims based on international human rights codes as expanding international law. The State, in this case the judiciary, “mediates between these agents and the international legal order.”⁷⁶ Courts have emerged as central institutions for a whole series of changes.⁷⁷

The growing accountability of States under the rule of law to international human rights codes and institutions, together with the fact that individuals and non-State actors can make claims on those States based on those codes, signals a development that goes beyond the expansion of human rights within the framework of nation-states. It contributes to redefine the bases of legitimacy of States under the rule of law and the notion of nationality. Under human rights regimes States must increasingly take account of *persons qua persons*, rather than *qua* citizens. The individual is now an object of law and a site for rights regardless of whether a citizen or an alien.⁷⁸

Immigrants, in accumulating social and civic rights and even some political rights in countries of residence, have diluted the meaning of citizenship and the specialness of the claims citizens can make on the State.⁷⁹ When it comes to social services such as education, health insurance, welfare, and unemployment benefits, citizenship status is of secondary importance in

note 68, at 97. Of the 76 cases since 1970, 49 percent involved immigration issues; this figure increases to 54 percent if cases involving refugees are added to that figure. *Id.* Jacobson also found that the term “human rights” was “referred to in 19 federal cases prior to the twentieth century, 34 times from 1900 to 1944, 191 cases from 1945 to 1969, 803 cases in the 1970’s, over 2,000 times in the 1980’s, and, at the present rate, will be cited in over 4,000 cases through the 1990’s.” *Id.* at 160 n.11.

75. See JACOBSON, *supra* note 68, at 98-100; see generally Hassan, *supra* note 71; Martin Heisler, *Transnational Migration as a Small Window on the Diminished Autonomy of the Modern Democratic State*, 485 ANNALS AM. ACAD. POL. & SOC. SCI., May 1986, at 153.

76. JACOBSON, *supra* note 68, at 100.

77. See generally Martin Shapiro, *The Globalization of Law*, 1 IND. J. GLOBAL LEGAL STUD. 37 (1993) (commenting on a range of other concerns that are played out in the judiciary).

78. See generally Henry J. Steiner, *Political Participation as a Human Right*, HARV. HUM. RTS. Y.B. 7, (Spring 1988); IDEAS AND FOREIGN POLICY: BELIEFS, INSTITUTIONS AND POLITICAL CHANGE, *supra* note 48; Sikkink, *supra* note 48.

79. See generally JACOBSON, *supra* note 68; SOYSAL, *supra* note 10; BAUBÖCK, *supra* note 50; LOSING CONTROL, *supra* note 2, at ch. 3.

the United States and Western Europe.⁸⁰ What matters is residence and legal alien status.⁸¹ Most of these countries pay retirement benefits even if recipients no longer reside there. Some countries, such as Sweden and the Netherlands, have also granted local voting rights. Aliens are guaranteed full civil rights either constitutionally or statutorily.

Even unauthorized immigrants can make some of these claims. Schuck and Smith have noted that new “social contracts” are negotiated in the United States every day between undocumented aliens and U.S. society, contracts that cannot be nullified through claims about nationality and sovereignty.⁸² Courts have had to accept the fact of undocumented aliens and to extend to these aliens some form of legal recognition and guarantees of basic rights. Various decisions have conferred important benefits of citizenship on undocumented aliens.⁸³ This clearly undermines older notions of sovereignty.

The growing ability of non-governmental organizations and individuals to make claims on the basis of international human rights instruments has implications beyond the boundaries of individual States. It affects the configuration of the international order and strengthens the international civil arena. The concept of nationality is being partly displaced from a principle that reinforces State sovereignty and self-determination (through the State’s right/power to define its nationals), to a concept which emphasizes that the State is accountable to all its residents on the basis of international human rights law.⁸⁴ The individual emerges as an object of international law and institutions. International law still protects State sovereignty and has in the State its main object; but it is no longer the case that the State is the only subject of international law.

80. See generally Linda S. Bosniak, *Exclusion and Membership: The Dual Identity of the Undocumented Worker Under United States Law*, 6 WIS. L. REV. 955 (1988); but see generally Linda S. Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047 (1994).

81. Though the recently passed immigration bill in the United States affects the claims of legal resident immigrants. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 142 CONG. REC. 11,787 (daily ed. Sept. 28, 1996).

82. PETER H. SCHUCK & ROGERS M. SMITH, *CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY* (1985).

83. See generally Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, *supra* note 80.

84. This is clearly not an irreversible trend, as current events in the former Yugoslavia indicate, but it does create a new set of conditions that any international legal order must take account of. Matters are sufficiently advanced to the point that even strong nationalist or ethnic resistance must confront the existence of the international human rights regime.

2. *The Privatizing of Transnational Legal Regimes*

The particular forms of legal innovation that have been produced, and within which much of globalization is encased and framed, have had distinct impacts on the sovereignty of the State. Many of these legal innovations and changes are often summarized under the notion of “deregulation” and taken as somewhat of a given—though not by legal scholars.⁸⁵ In much social science, deregulation is another name for the declining significance of the State.⁸⁶ There is a more specific process contained in these legal changes, one that along with the reconfiguration of territory may signal a more fundamental transformation.

Firms operating transnationally need to ensure the functions traditionally exercised by the State in the national realm of the economy, such as guaranteeing property rights and contracts.⁸⁷ Insofar as economic globalization extends the economy beyond the boundaries of the nation-state, and hence its sovereignty, this guarantee would appear to be threatened. But in fact, globalization has been accompanied by the creation of new legal regimes and legal practices, and the expansion and renovation of some older forms that bypass national legal systems. Globalization and governmental deregulation have not meant the absence of regulatory regimes and institutions for the governance of international economic relations. Among the most important ones in the private sector today are international commercial arbitration, and the variety of institutions which fulfill rating and advisory functions that have become essential for the operation of the global economy.

International commercial arbitration, which aims at by-passing national courts, is today the most important mechanism for solving cross-border

85. See, e.g., SALACUSE, *supra* note 48; Abbott, *supra* note 48; Aksen, *supra* note 48; Dezalay & Garth, *supra* note 48; Paul, *supra* note 48; Trachtman, *supra* note 48.

86. In chapter one of my 1996 book, I examine whether the impact of economic globalization on national territory and State sovereignty is yet another form of extraterritoriality, only larger. My discussion about territory in the global economy posits that much of what we call global, including some of the most strategic functions necessary for globalization, is embedded in national territories. Is this a form of extraterritoriality that leaves the sovereignty of the State fundamentally unaltered? Or is this a development of a different sort, one wherein the sovereignty of the State is engaged, and where territoriality, as distinct from territory, is partially transformed? I conclude that the materialization of global processes in national territories is not a mere expansion of older concepts of extraterritoriality to the realm of the economy, but rather a process of incipient denationalization, though of a highly specialized institutional, rather than geographic, sort. See generally LOSING CONTROL, *supra* note 2.

87. See generally, GLOBALIZATION: CRITICAL REFLECTIONS, *supra* note 1; COX, *supra* note 19; Panitch, *supra* note 19.

business disputes. Dezalay and Garth describe it as a delocalized and decentralized market for the administration of international commercial disputes, connected by more or less powerful institutions and individuals who are both competitive and complementary.⁸⁸ It is in this regard far from a unitary system of justice, “organized perhaps around one great *lex mercatoria*--that might have been envisioned by some of the pioneering idealists of law.”⁸⁹

The World Trade Organization has the authority to override local and national authority if there is a violation of the terms of the Agreement, and hence can discipline sovereign States. International commercial arbitration is basically a private justice system, and credit rating agencies are private gate-keeping systems. We are also seeing the formation of transnational legal regimes and their penetration into national systems hitherto closed.⁹⁰ Further, national legal systems are becoming more internationalized in some of the major developed economies. Some of the old divisions between the national and the global are becoming weaker, and to some extent, neutralized. Along with others, these various institutions have emerged as important governance mechanisms whose authority is not centered in the State. They contribute to the maintenance of order at the top of the economic system.

These and kindred transnational institutions and regimes raise questions about the relation between State sovereignty and the governance of global economic processes. Does the ascendance of such institutions and regimes entail a decline in State sovereignty? We are seeing a relocation of authority that has transformed the capacities of governments and can be thought of as an example of what Rosenau has described as governance without government.⁹¹ In many ways, the State is involved in this emerging

88. See generally Dezalay & Garth, *supra* note 48; YVES DEZALAY, *MARCHANDS DE DROIT* (1992).

89. Dezalay & Garth, *supra* note 48, at 58; see generally *LEX MERCATORIA AND ARBITRATION: A DISCUSSION OF THE NEW LAW MERCHANT* (Thomas E. Carbonneau ed., 1990). Anglo-American practitioners tend not to support the continental, highly academic notion of a *lex mercatoria*. See generally *id.* The so-called *lex mercatoria* was viewed by many as a return to an international law of business independent of national laws. See generally *id.* Insofar as they are “Americanizing” the field, they are moving it further away from academic law and *lex mercatoria*.

90. These transnational regimes could, in principle, have assumed various forms and contents. But they are, in fact, assuming a specific form, one wherein the States of the highly developed countries play a strategic geopolitical role. The hegemony of neo-liberal concepts of economic relations, with its strong emphasis on markets, deregulation, and free international trade, has influenced policy in the 1980s in the United States and United Kingdom and now increasingly also in continental Europe. See generally Coombe, *supra* note 14. This has contributed to the formation of transnational legal regimes that are centered in Western economic concepts. See generally *GLOBALIZATION: CRITICAL REFLECTIONS*, *supra* note 1; Panitch, *supra* note 19.

91. See generally Rosenau, *supra* note 48.

transnational governance system.⁹² But, it is a State that has itself undergone transformation and participated in legitimating a new doctrine about the role of the State in the economy.⁹³ Central to this new doctrine is a growing consensus among States to further the growth and strength of the global economy.⁹⁴

An important question running through these different developments is whether the new transnational regimes and institutions are creating systems that strengthen the claims of certain actors (corporations, the global capital market, the large multinational legal firms) and correspondingly weaken the position of smaller players and of States.⁹⁵ Global capital has made claims on nation-states and these have responded through the production of new forms of legality. The new geography of global economic processes, the strategic territories for economic globalization, had to be produced, both in terms of the practices of corporate actors and the requisite infrastructure, and in terms of the work of the State in producing or legitimizing new legal regimes.⁹⁶

92. See generally BOB JESSOP, *STATE THEORY: PUTTING THE CAPITALIST STATE IN ITS PLACE* (1990); *LOSING CONTROL*, *supra* note 2. For a broader historical overview of the State and sharp change see generally ANTHONY GIDDENS, *THE NATION-STATE AND VIOLENCE* (1987); CHARLES TILLY, *THE FORMATION OF NATIONAL STATES IN WESTERN EUROPE* (1975). Even if the State is not as autonomous as the sovereignty rhetoric suggests, its consent to non-State actors being subjects of international law remains foundational. But States may increasingly no longer be the only entities whose consent is essential. See generally McDougal & Reisman, *supra* note 48.

93. There is a growing consensus among States to further the goals of economic globalization, to the point that some see in this a constitutionalizing of this new role of states. See generally Panitch, *supra* note 19; COX, *supra* note 19; *GLOBALIZATION: CRITICAL REFLECTIONS*, *supra* note 1.

94. This combination of elements is illustrated by some of the aspects of the Mexican crisis of December 1994, defined rather generally in international political and business circles, as well as in much of the press, as the result of a loss of confidence by the global financial markets in the Mexican economy and government leadership of that economy. A “financial” response to this crisis was but one of several potential choices. For instance, there could conceivably have been an emphasis on promoting manufacturing growth and protecting small businesses and small homeowners from the bankruptcies now faced by many.

95. Ruggie, *supra* note 48, at 143 (pointing out that the issue is not whether such new institutions and major economic actors will substitute national States, but rather the possibility of major changes in the system of States: “global markets and transnationalized corporate structures . . . are not in the business of replacing states” even when they can have the potential for producing fundamental change in the system of States).

96. There is another issue here that I cannot develop, but see *LOSING CONTROL*, *supra* note 2, at 6-12. This issue has to do with the fact that representations that characterize the nation-state as simply losing significance fail to capture this very important dimension, and reduce what is happening to a function of a global-national duality—what one wins, the other loses. I view deregulation not simply as a loss of control by the state, but as a crucial mechanism to negotiate the juxtaposition of the inter-State consensus to pursue globalization and the fact that national legal systems remain as the major, or crucial, instantiation through which guarantees of contract and property rights are enforced.

There is a larger theoretico/politico question underlying some of these issues that has to do with which actors gain the legitimacy for governance of the global economy and the legitimacy to take over rules and authorities hitherto encased in the nation-state. It also raises a question about the condition of international public law. Do the new systems for governance that are emerging, and the confinement of the role of nation-states in the global economy to furthering deregulation, markets, and privatization, indicate a decline of international public law?⁹⁷

The ascendance of an international human rights regime and of a large variety of non-State actors in the international arena signals the expansion of an international civil society.⁹⁸ This is clearly a contested space, particularly when we consider the logic of the capital market--profitability at all costs--against that of the human rights regime. But it does represent a space where women can gain visibility as individuals and as collective actors, and come out of the invisibility of aggregate membership in a nation-state exclusively represented by the sovereign. The practices and claims enacted by non-State actors in this international space may well contribute to creating international law, as is most clearly the case with both the international human rights regime and the demands of firms and markets with global operations.⁹⁹ For women, this means at least partly working outside the State, through non-State groups and networks. The needs and agendas of women are not necessarily defined exclusively by State borders;¹⁰⁰ we are seeing the formation of cross-border solidarities and notions of membership rooted in gender, sexuality, and feminism, as well as in questions of class and country status, i.e., First vs. Third World, which cut across all of these membership notions.¹⁰¹

97. *But see generally* Alfred C. Aman, Jr., *A Global Perspective on Current Regulatory Reform: Rejection, Relocation, or Reimvention?* 2 *IND. J. GLOBAL LEGAL STUD.* 429 (1995).

98. *See generally* Richard Falk, *A New Paradigm for International Legal Studies: Prospects and Proposals*, in *REVITALIZING INTERNATIONAL LAW* (1989). *See also* Elshtain, *supra* note 12.

99. For instance, individuals and groups can become limited subjects of international law; non-State forums outside the framework of the United Nations can be used to represent their interests. *See generally* Douglas M. Johnston, *Functionalism in the Theory of International Law*, 26 *CAN. Y.B. INT'L L.* 3 (1988); Chinkin, *supra* note 57.

100. *See generally* Isabelle R. Gunning, *Modernizing Customary International Law: The Challenge of Human Rights*, 31 *VA. J. INT'L L.* 211 (1991); Elshtain *supra* note 12.

101. *See generally* Knop, *supra* note 55 (noting that if non-governmental organizations (NGOs) are to be a channel for women's positions to be heard outside the State, then it is important to develop an international legal basis independent of the consent of the State for NGO participation in the making of international law); Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 *AM. J. INT'L L.*, 613 (1991); Chinkin, *supra* note 57 (focusing on giving power to women's NGOs generally).

CONCLUSION

There is not much purpose in writing a conclusion since the effort here was not to gain closure but to open up an analytic field within which to understand the question of gendering in the global economy today. I selected for examination two key features of the organization of economic and political power: exclusive territoriality and sovereignty. I operationalized these in terms of two strategic instantiations which capture the impact of globalization. These are the global city, as emblematic of the incipient unbundling of the exclusive territoriality of the nation-state, and international law (including customary law and certain international human rights codes), as emblematic of the emergence of subjects for international law other than the nation-state. The purpose was to open up an analytic terrain for a feminist inquiry of issues that are highly abstract--whether it is international finance or international public law--and have remained inhospitable to feminist examination.