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Women, Globalization, and Law: A Change of World

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WOMEN, GLOBALIZATION, AND LAW: A CHANGE OF WORLD

Barbara Stark†

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I. INTRODUCTION

Everyone knows the story of the Lost Boys of Sudan, thousands of children who lost their families and villages to brutal civil war.¹ They fled across East Africa to Kenya, where they survived in a desolate refugee camp. Their story spread and hundreds of the Lost Boys resettled in the United States.² By all accounts, girls as well as boys had joined in the exodus. While the Boys were lost - and then found - the Girls were forgotten.

As the UN High Commissioner for Refugees (UNCHR) discovered, the Girls lost their collective identity when they arrived at the refugee camp.³ They were quickly absorbed into foster families where they functioned as unpaid servants.⁴ Marie Claire, a women's fashion magazine, picked up the story.⁵

The traditional forces which had long kept women invisible within the family hid the Girls, but the forces of globalization, including technology, human rights law,⁶ and growing feminist consciousness, eventually brought their story to worldwide attention. The story illustrates the thesis of this Article, which is that globalization is driving a gendered "change of world" with far-reaching and often unexpected consequences. "Globalization" refers to the free flow of capital through the removal of trade barriers between states, as well as to the accompanying

¹ Sara Corbett, *The Lost Boys of Sudan: The Long, Long, Long Road to Fargo*, N.Y. TIMES, Apr. 1, 2001, § 6 (Magazine), at 28 (describing "a group of roughly 10,000 boys who arrived in Kenya in 1992 . . . having been homeless and parentless for the better part of five years.").

² *Id.*

³ Emmanuel Nyabera, *The "Lost Girls" of Sudan*, in 126 REFUGEES 4 ("Following Sudanese cultural traditions, many of the girls were absorbed into foster homes and left to a very uncertain fate, overlooked and forgotten by the outside world.")

⁴ Ishbel Matheson, *The Lost Girls of Sudan*, at <http://news.bbc.co.uk/1/hi/world/africa/2031286.stm> (June 7, 2002) (describing chores of seventeen-year old Grace Anyieth, "cooking, cleaning, washing, fetching water from the distant standpipe, looking after her guardians' children. In other words, she is an unpaid servant.")

⁵ Tara McKelvey, *Help Rescue Sudan's Lost Girls*, MARIE CLAIRE, Oct. 2002 at 196.

⁶ This is not to suggest that human rights were not important before globalization. See Arvonne S. Fraser, *Becoming Human: The Origins and Development of Women's Human Rights*, in WOMEN, GENDER AND HUMAN RIGHTS: A GLOBAL PERSPECTIVE 15 (Marjorie Agosin ed., 2001) [hereinafter WOMEN, GENDER AND HUMAN RIGHTS].

cultural exchanges and transformations. As economist Joseph Stiglitz explains:

Fundamentally, it is the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) people across borders.⁷

Globalization affects the social and political construction of a gendered “change of world” in four distinct but overlapping ways. First, globalization propels women into the public sphere of the marketplace. Like men, women need cash to survive in a global economy. Second, related but distinct, globalization weakens the public/private distinction. Traditional boundaries between the workplace and the home, the public sphere of the market and the private sphere of the family, become increasingly porous. Third, globalization increases women’s visibility—through media exposure and through a growing body of sex-disaggregated UN data and its dissemination through the Internet.⁸ Researchers have noted and begun to correct the relative lack of such data and the resultant economic invisibility of the world’s women, especially the most marginalized.⁹ Fourth, and finally, as a function of the first three factors and as an independent phenomenon, globalization engenders “feminist” consciousness. Women increasingly see themselves as women; that is, gender – like nationality or race – is explicitly recognized as an aspect of identity.¹⁰

⁷ JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 9 (2002). The topic of globalization has generated voluminous literature. Other noteworthy contributions include: MICHAEL HARDT & ANTONIO NEGRI, *EMPIRE* (2000); JAGDISH BHAGWATI, *IN DEFENSE OF GLOBALIZATION* (2004). See also WILLIAM TWINING, *GLOBALISATION AND LEGAL THEORY* (2000).

⁸ Felice D. Gaer, *Mainstreaming a Concern for the Human Rights of Women*, in *WOMEN, GENDER, AND HUMAN RIGHTS*, *supra* note 6, at 98-99 (“The greatest struggle has been simply to make the human rights of women visible, whether it is with regard to the use of violence against women, or in issues of employment, education, health care, or other rights.”).

⁹ See MARILYN WARING, *IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS* (1988); *WOMEN WORKERS AND GLOBAL RESTRUCTURING* (Kathryn Ward ed., 1990).

¹⁰ GERDA LERNER, *THE CREATION OF FEMINIST CONSCIOUSNESS: FROM THE MIDDLE AGES TO EIGHTEEN-SEVENTY* (1993).

The title of this Article comes from Adrienne Rich's poem of the same name, which appeared in her first book, winner of the Yale Younger Poets award in 1951.¹¹

A Change of World

Fashions are changing in the sphere.
Oceans are asking wave by wave
What new shapes will be worn next year;
And the mountains, stooped and grave,
Are wondering silently range by range
What if they prove too old for the change.

The little tailors busily sitting
Flashing their shears in rival haste
Won't spare time for a prior fitting—
In with the stitches, too late to baste.
They say the season for doubt has passed:
The changes coming are due to last.

Rich describes a radical global change in the deliberately inconsequential - and gendered - terms of "fashion."¹² In the poem, however, "fashion" transforms mountains and oceans more venerable than patriarchy itself. Historically inconsequential women, similarly, are shaping globalization even as globalization transforms their lives. This "change of world" is profound and deeply contested.¹³

This Article first provides an overview and then analyzes this "change of world" in three specific contexts. It is not intended to be comprehensive; rather, I simply hope to suggest a few of the ways in which globalization affects the world's women and how they in turn affect globalization. I am particularly interested in the ways in which human rights law

¹¹ ADRIENNE C. RICH, *A CHANGE OF WORLD* 65 (W.H. Auden ed., 1951).

¹² "Fashion" remains suspect, notwithstanding the postmodern embrace of other forms of "low" culture. See, e.g., Roberta Smith, *Images of Fashion Tiptoe Into the Modern*, N.Y. TIMES, Apr. 16, 2004, at E31. See also Cheryl B. Preston, *Fashioning Women in Law* (Brigham Young University Law School 2004) (film by a law professor "framing the startling incongruence between women cultural imagery and the supposedly empowered product of decades of women's liberation."); Christopher Merrill, *Before the Mirror*, in WOMEN, GENDER, AND HUMAN RIGHTS, *supra* note 6, at 312-313 (quoting a woman in Sarajevo during the siege, "Applying makeup . . . is how we tell the primitives we will not surrender.").

¹³ See, e.g., Pippa Norris & Ronald Inglehart, *It's the Women, Stupid*, Ms., Spring 2004, at 47 (data showing that the "cultural fault line that *does* divide the world - and deeply - is the one labeled 'gender equality' (emphasis added)).

legitimizes and furthers women's multiple, often conflicting, agendas and how feminist theories can be used to interrogate them and expose their complexity.

By drawing on both the rhetoric of social change and the metaphor of geological time, Rich playfully juxtaposes hopeful energy, like that of human rights law, and ironic detachment, like that of postmodern feminist theory. International human rights law, with its fundamental insistence on gender equality, is a crucial part of this "change of world." At the same time, human rights law should be regarded with some skepticism, especially when it is conflated with "free market democracy."

Feminist theory is similarly central here. As Regenia Gagnier explains, "The bottom line of feminism is that the oppression of women exists, and its normative project is to make the world better for women."¹⁴ But feminist theory also requires some skepticism, especially when it fails to recognize phrases like "make the world better for women" as problematic.

II. AN OVERVIEW OF GLOBALIZATION

Globalization is the "constant revolutionizing of production" and the "endless disturbance of all social conditions."¹⁵ It is "everlasting uncertainty."¹⁶ Everything "fixed and frozen is swept away" and "all that is solid melts into air."¹⁷ As these quotations from *The Communist Manifesto*, written 150 years ago, indicate, globalization is nothing new. For most of Western history, capital has flowed freely.¹⁸ But the end of the Cold War

¹⁴ Regenia Gagnier, *Feminist Postmodernism: The End of Feminism or the Ends of Theory?* in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 21, 24 (Deborah L. Rhode ed., 1990). As Gagnier continues, "On this point feminists agree, although many of us would extend the emancipatory project beyond women." *Id.*

¹⁵ Josef Joffe, *One Dollar, One Vote*, N.Y. TIMES, Apr. 25, 1999, § 7 (Book Review), at 14 (citing KARL MARX & FREDERICK ENGELS, *THE COMMUNIST MANIFESTO*).

¹⁶ *Id.*

¹⁷ *Id.* Santos defines globalization as "the process by which a given local condition or entity succeeds in expanding its reach over the globe and, by doing so, develops the capacity to designate a rival social condition or entity as local." Boaventura de Sousa Santos, *Oppositional Postmodernism and Globalizations*, 23 LAW & SOC. INQUIRY 121, 135 (1998).

¹⁸ Not until the Great Depression did most governments impose constraints to prevent capital flight. See Nicholas D. Kristof & David E. Sanger, *How U.S. Wooded Asia to Let Cash Flow In*, N.Y. TIMES, Feb. 16, 1999, at A1. In the 1960's, the

and developments in finance and technology combined to qualitatively change the game during the past fifteen years. The failure of Soviet communism became the triumph of "free market democracy"¹⁹ as formerly closed markets opened and capital poured in at a previously unimaginable rate.²⁰ As a fund manager in Hong Kong observed, "[i]t's no longer the real economy driving the financial markets, but the financial markets driving the real economy."²¹

As then Deputy Treasury Secretary, now President of Harvard University, Lawrence H. Summers noted:

When history books are written 200 years from now about the last two decades of the [C]old [W]ar will be the second story. The first story will be about the appearance of emerging markets - about the fact that developing countries where more than three billion people live have moved toward the market and seen rapid growth in incomes.²²

Globalization has dramatically increased world income, but it has also increased the polarization between the "haves" and the "have-nots." This is part of a longer-term trend, beginning after World War II. As the United Nations Development Program (UNDP) summarizes:

During the past five decades, world income has increased seven-fold (in real GDP) and income per person more than tripled (in per capita GDP) [b]ut this gain has been spread very unequally - nationally and internationally - and the inequality is increasing. Between 1960 and 1991, the share of world income for the richest 20% of the global population rose from 70% to 85%. Over the same period, all but the richest quintile saw their share of world

United States limited rights of citizens and corporations to invest overseas. *See id.* In the 1970's and 1980's, however, the free flow of capital again began to look like a good idea. Presidents Reagan and Bush both supported free trade, for example, and thus contributed to the transformation of the global economy. *See id.*

¹⁹ For an insightful analysis, see Jeffrey D. Sachs, *Globalization and the Rule of Law*, Yale Law Sch. Occasional Papers, 2d Series, No. 4, Oct. 16, 1998.

²⁰ "In a typical day the total amount of money changing hands in the world's foreign exchange markets alone is \$1.5 trillion—an eightfold increase since 1986 and an almost incomprehensible sum, equivalent to total world trade for four months." Nicholas D. Kristof & Edward Wyatt, *Who Went Under in the World's Sea of Cash*, N.Y. TIMES, Feb. 15, 1999, at A1.

²¹ *Id.*

²² *Id.*

income fall - and the meager share for the poorest 20% declined from 2.3% to 1.4%.²³

Even "while the tide was still rising, it was not taking all boats with it. Many of those in the leakiest, smallest boats, not surprisingly, were being swamped."²⁴

III. WOMEN IN THE GLOBAL ECONOMY

A. Money

While women are obviously a diverse group, compared to men they are overwhelmingly economically disadvantaged.²⁵ This is shown starkly and redundantly in UN data. As Dr. Noeleen Heyzer, Executive Director of United Nations Development Fund for Women (UNIFEM), observed at the Beijing Conference on Women in 1995:

It is not acceptable for women to constitute 70 percent of the world's 1.3 billion absolute poor. Nor is it acceptable for women to work two-thirds of the world's working hours, but earn only one-tenth of the world's income and own less than one-tenth of the world's property.²⁶

As Nobel prize-winning economist Amartya Sen has demonstrated, the data both overstates and understates women's economic subordination.²⁷ First, such statistics understate women's economic subordination because they omit the women presumably born who never appear in the statistics. Sen summarizes the research showing a substantial biological

²³ HOLLY SKLAR, *CHAOS OR COMMUNITY: SEEKING SOLUTIONS, NOT SCAPEGOATS FOR BAD ECONOMICS* 162 (1995).

²⁴ Barbara Stark, *Women and Globalization: The Failure and Postmodern Possibilities of International Law*, 33 VAND. J. TRANSNAT'L L. 503, 512 (2000).

²⁵ See Martha Chen, *A Matter of Survival: Women's Right to Employment in India and Bangladesh*, in *WOMEN, CULTURE, AND DEVELOPMENT: A STUDY OF HUMAN CAPABILITIES* 37, introduction at 16-34 (Martha C. Nussbaum & Jonathan Glover eds., 1995) [hereinafter *WOMEN, CULTURE, AND DEVELOPMENT*] (tables showing that no country treats women as well as it treats its men).

²⁶ See UNIFEM Australia, at www.unifem.org.au/message.html (last visited Dec. 6, 2004). See also *Now with Bill Moyers: Rich World, Poor Women* (PBS television broadcast, Sept. 5, 2003), available at <http://www.pbs.org/now/politics/womenpoverty.html> (last visited Dec. 6, 2004).

²⁷ Amartya Sen, *Capability and Well-Being*, in *THE QUALITY OF LIFE*, 30 (Martha Nussbaum & Amartya Sen eds., 1993).

component favoring women.²⁸ If women are treated as well as men – that is, if they receive a proportionate amount of food, health care, and other resources – there should be more women than men. Using the sub-Saharan African ratio (1.02) of females to males, Sen estimates the number of “missing women” at “more than 100 million.”²⁹ These are the abandoned infant girls in China, the brides who die in “kitchen fires” in India, the baby girls in Africa who are not taken to the clinic to be treated for diarrhea as quickly as their brothers — the women and would-be women who have been unable to claim enough of the world’s resources to survive.³⁰

Second, the picture shifts depending on whether, like Heyzer, we focus on commodities and income or whether we focus on what Sen calls “functionings and capabilities.”³¹ In China, Sri Lanka, and Costa Rica, for example, communal health services, medical care and basic education produce a quality of life superior to that which would be expected by the income indicators.³² The example of the Indian state of Kerala is illuminating: “While incomes within this Indian state are among the lowest, residents have the highest life expectancy at birth, a comparatively very low infant mortality rate, and a higher level of general literacy (especially female literacy, eighty-seven percent compared to the national average of thirty-nine percent).”³³

Globalization both improves women’s situation and makes it worse. While a recent study by economists at the International Center for Research on Women concludes that “women have generally benefited from improvements in the world econ-

²⁸ AMARTYA SEN, *INEQUALITY REEXAMINED* 123-24 (1992).

²⁹ Amartya Sen, *More Than 100 Million Women Are Missing*, N.Y. REV. BOOKS, Dec. 20, 1990, at 61 (cited in STEINER & ALSTON, *infra* note 116, at 896). In India, 36.7 million are missing, in China 44 million, in South-east Asia 2.4 million and in Latin America 4.4 million. See WOMEN, CULTURE AND DEVELOPMENT, at 3.

³⁰ Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES* 111, 124 (Stephen Shute & Susan Hurley eds., 1993).

³¹ See SEN, *supra* note 28, at 31.

³² *Id.* at 126.

³³ See *id.* at 126-27. See ARUNDHATI ROY, *THE GOD OF SMALL THINGS* (1998). See Stark, *supra* note 24 (comparing the depictions of globalization in *THE GOD OF SMALL THINGS* and *THE LEXUS AND THE OLIVE TREE*, *infra* note 108).

omy,"³⁴ the experts in another symposium describe "the overall negative effects of globalization on women."³⁵ Everyone agrees, however, that globalization affects men and women differently.³⁶ This is attributable, in part, to their very different roles in most cultures, and the fact that men, in general, have much higher incomes and much greater access to capital. For many women, globalization has been a mixed blessing, and for some it has been a disaster.³⁷

Women earn less than men everywhere.³⁸ They are paid less than men for doing the same work, and they are limited to low-income sectors by widespread sex-based occupational segregation.³⁹ In Brazil, for example, income earned by women is equivalent to fifty-four percent of that received by men.⁴⁰ Globalization, however, seems to be narrowing the gap. Drawing on the first British survey of wages in 1886, and data available from the first half of the twentieth century as well as post-war annual surveys, economist Zafiris Tzannatos shows that women's pay remained:

remarkably stable at around two-thirds of male pay until 1970. Then, female earnings increased to three-quarters of men's earnings in a period of less than ten years Compared to [the]

³⁴ Rekha Mehra & Sarah Gammage, *Trends, Countertrends, and Gaps in Women's Employment*, 27 *WORLD DEVELOP.* 533 (1999); Zafiris Tzannatos, *Women and Labor Market Changes in the Global Economy: Growth Helps, Inequalities Hurt and Public Policy Matters*, *id.* at 551, 567. See also Susan Horton, *Marginalization Revisited: Women's Market Work and Pay, and Economic Development in id.* at 571.

³⁵ Alfred C. Aman, Jr., *Introduction: Feminism and Globalization: The Impact of the Global Economy on Women and Feminist Theory*, 4 *IND. J. GLOBAL LEGAL STUD.* 1, 4 (1996). See also Saskia Sassen, *Toward a Feminist Analytics of the Global Economy*, 4 *IND. J. GLOBAL LEGAL STUD.* 7, 10 (1996).

³⁶ Mehra & Gammage, *supra* note 34, at 534.

³⁷ See, e.g., Kenneth G. Dau-Schmidt, *Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of Cooperative Production?* 4 *IND. J. GLOBAL LEGAL STUD.* 51, 56 (1996) (noting that "the effect of globalization on women will be both positive and negative").

³⁸ According to the United Nations, women's wages are less than those of men in thirty-seven countries for which data are available. See Mehra & Gammage, *supra* note 34, at 545.

³⁹ "Nearly half of all working women in developed countries are in clerical, sales or service jobs and just a fourth in professional and managerial jobs." *Id.*

⁴⁰ ORGANIZATION OF AMERICAN STATES, REPORT OF THE INTER-AMERICAN COMMISSION ON THE STATUS OF WOMEN IN THE AMERICAS 28-9, OEA/Ser.L/V/11.100, Doc. 17, Oct. 13, 1999 [hereinafter STATUS OF WOMEN IN THE AMERICAS].

century-long scenario for industrialized countries, the evidence . . . suggests that in many developing countries significant changes have taken place within the last few decades.⁴¹

In Costa Rica, for example, the average monthly salary of women was eighty-two percent of that of men in 1990.⁴² In Uruguay women earned seventy-five percent of the income received by men.⁴³ Even as globalization increases economic polarization in general, it seems to decrease the earning gap between men and women.

B. *Culture*

It is not just dollars that are flowing freely around the world, but Western culture — constitutionalism and Coca Cola, free market ideology and Janet Jackson.⁴⁴ The impact of globalization on cultures is complex, and the impact on women within these cultures is especially so. As Nathan Glazer concedes, "We are all multiculturalists now."⁴⁵ It is generally recognized and accepted that there are many different ways of perceiving and living in the world, and that these are culturally and socially constructed. Indeed, international human rights law explicitly recognizes and protects a right to culture.⁴⁶ At the same time, as American feminist Katha Pollitt observes, "In its demand for equality for women, feminism sets itself in opposition to virtually every culture on earth. You could say that multiculturalism demands respect for all cultural traditions, while feminism interrogates and challenges all cultural traditions."⁴⁷

⁴¹ Tzannatos, *supra* note 34, at 552.

⁴² *Id.*

⁴³ STATUS OF WOMEN IN THE AMERICAS, *supra* note 40, at 28-29.

⁴⁴ "The most widely recognized instance of Americanization is seen, of course, in the profound influence U.S. popular culture exerts on global culture." Sassen, *supra* note 35, at 19.

⁴⁵ NATHAN GLAZER, WE ARE ALL MULTICULTURALISTS NOW 1-21 (1997) (discussing explosion of multiculturalism in American society and its influence on education).

⁴⁶ International Covenant on Civil and Political Rights, Mar. 23, 1976, art. 27, 999 U.N.T.S. 171 [hereinafter Civil Covenant]; International Covenant on Economic, Social, and Cultural Rights, art. 15, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter Economic Covenant].

⁴⁷ Katha Pollitt, *Whose Culture?*, in IS MULTICULTURALISM BAD FOR WOMEN? 27 (Joshua Cohen et al. eds., 1999).

IV. A CLOSER LOOK AT WOMEN AND GLOBALIZATION IN THREE SPECIFIC CONTEXTS

This section applies the theoretical model proposed above⁴⁸ in three specific contexts. In each, it shows how globalization: (1) propels women into the public sphere; (2) weakens the public/private distinction; (3) increases women's visibility; and (4) engenders feminist consciousness. Each context involves women's relations with their families, because for women everywhere, families are at the center of their lives.⁴⁹ Regardless of their geographic location, most women live in families.

The family is both women's traditional domain and a major site of women's historical oppression. It is not surprising, accordingly, that it is also a profoundly contested site in which to observe the ways in which globalization plays out. The family is also a site of ongoing feminist ambivalence. As globalization has brought different cultures into closer proximity, sometimes even into the same families, this ambivalence has become deeper, more complex, and more nuanced. Some of the premises of feminist theory, for example, have been exposed as the premises of *liberal* feminist theory as they come into contact with "other" cultural premises. Human rights law, similarly, has traditionally focused on the relation between the State and the persecuted, silenced, wrongly-detained (male) "prisoner of conscience."⁵⁰ As globalization has facilitated the spread of the "human rights' idea," human rights have increasingly come into contact, and conflict, with family laws.⁵¹ In each of the following contexts, globalization drives a gendered change of world. However, in each context, it does so very differently, with very different implications.

⁴⁸ See *supra* notes 7-10 and accompanying text.

⁴⁹ Fraser, *supra* note 6, at 59 ("Women have moved from the private sphere of home and family into the public sphere as citizens and workers . . . Yet reconciling family obligations with political and economic responsibilities remains a challenge for most women of the world.").

⁵⁰ See, e.g., HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW* 231-37 (2000); Temma Kaplan, *Women's Rights as Human Rights: Women as Agents of Social Change*, in *WOMEN, GENDER, AND HUMAN RIGHTS*, *supra* note 6, at 191.

⁵¹ Kaplan, *supra* note 50, at 191.

A. *Baby Girls from China in the United States*

The adoption of baby girls from China by American parents illustrates the ways in which the four factors of globalization, identified above, interact and reinforce each other.⁵²

1. *The One-Child Policy (OCP)*

Historically, large families were the ideal in China, especially for the vast majority of the population that lived in rural areas.⁵³ As in most agrarian, pre-industrial societies, children were valued as laborers as well as family members.⁵⁴ Since girls joined their husbands' families upon marriage, boys were more important to their parents.⁵⁵ Sons were their parents' social security and old-age insurance.⁵⁶ The birth of a boy was regarded as a "big happiness"; the birth of a girl was viewed as a "small happiness."⁵⁷

⁵² For a more comprehensive description of these adoptions, see Barbara Stark, *Baby Girls from China in New York: A Thrice-Told Tale*, 2003 UTAH L. REV. 1231 (2003).

⁵³ As Chow explains, "Confucian ideology emphasized social relationships that created duties not rights. The paramount virtues of a person . . . were the duties of filial piety in the family and the general duty of obedience to authority in society." DANIEL C.K. CHOW, *THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA* 46 (2003). See Neil Gotanda, *Chen the Chosen: Reflections on Unloving*, 81 IOWA L. REV. 1585, 1592 (1996) (noting the "strong orientalist impulse, in a discussion about American race, of interpreting Asian American through ancient Asian themes."). See generally Keith Aoki, *The Scholarship of Reconstruction and the Politics of Backlash*, 81 IOWA L. REV. 1467 (1996) (citing Jim Chen, *Unloving*, 81 IOWA L. REV. 145 (1994) (critiques by eight scholars, with a response from Jim Chen, *Untenured but Unrepentant*, 81 IOWA L. REV. 1609, 1609-12 (1996))).

⁵⁴ As Mao-Tse-Tung observed, "of all things in the world, people are the most precious." Rachel A. Bouman, *China's Attempt to Promote Domestic Adoptions: How Does China's One-Child Policy Affect Recent Revisions in China's Adoption Law and Measure Up to the Hague Convention?*, 13 TRANSNAT'L LAW. 91, 95 (2000) (quoting Mao-Tse-Tung).

⁵⁵ Celia W. Dugger, *Modern Asia's Anomaly: The Girls Who Don't Get Born*, N.Y. TIMES, May 6, 2001, § 4, at 4.

⁵⁶ The 1980 Law imposed a duty to support family members, including the obligation of children to support their parents. "These extended support obligations were designed to supplement China's poor public welfare system." CHOW, *supra* note 53, at 359. See Gerrie Zhang, Comment, *U.S. Asylum Policy and Population Control in the People's Republic of China*, 18 Hous. J. INT'L L. 557, 564 n.41 (1996).

⁵⁷ Barbara Jones, *A Small Happiness*, GOOD HOUSEKEEPING, Dec. 1995, at 116, available at <http://www.fwcc.org/smallhappiness.html> (last visited Mar. 10, 2004).

By 1980, however, China's Communist leadership viewed the rapidly increasing population as a major national crisis,⁵⁸ putting all other national policies, including those regarding modernization and economic stability, at risk.⁵⁹ Fertility rates of over five live births per woman would make it impossible to maintain, let alone improve, an already dismal standard of living. The country faced imminent disaster, including widespread famine.⁶⁰ Although the statistics compiled by the government were challenged by demographers outside of China at the time,⁶¹ and later by Chinese demographers,⁶² the state mobilized its vast bureaucracy to cope with the perceived emergency.⁶³ The infamous "one-child policy" (OCP), which limited couples to one child, was born.

2. *Weakening the Public/Private Distinction*

The Chinese government intruded into the private sphere of the family in order to stop the continued high population growth that it believed precluded modernization. State propa-

⁵⁸ Staff of Joint Econ. Comm., 97th Cong., China Under the Four Modernizations, Part I: Selected Papers 172 (Comm. Print 1982).

⁵⁹ See generally JUDITH BANISTER, CHINA'S CHANGING POPULATION 184 (1987). See also Edwin A. Winckler, *Re-inforcing State Birth Planning, in TRANSITION FROM COMMUNISM IN CHINA: INSTITUTIONAL AND COMPARATIVE ANALYSES* 181 (Edwin A. Winckler ed., 1999).

⁶⁰ "In the Chinese way of thinking, personal problems are by definition trivial ones. 'People simply would not think to question the government's assessment of the size and seriousness of the population problem.'" Susan Greenhalgh, *Fresh Winds in Beijing: Chinese Feminists Speak Out on the One-Child Policy and Women's Lives*, 26 SIGNS: J. WOMEN CULTURE & SOC'Y 847, 866 (2001) (citation omitted). See also STEPHEN C. ANGLE, HUMAN RIGHTS AND CHINESE THOUGHT: A CROSS-CULTURAL INQUIRY 239-49 (2002) (describing Chinese emphasis on economic rights).

⁶¹ Joint Econ. Comm., *supra* note 58, at 202 (noting that "[f]alsification of economic data had been exposed and denounced The [family planning] data reported by Sichuan Province particularly strained foreign credulity.").

⁶² *Id.* at 203 (noting that "statistical authorities in China are also becoming concerned about the problem of falsification of birth data.").

⁶³ In 1978, the Chairman of the Chinese Communist Party set a definite numerical limit on population growth. Mark Savage, *The Law of Abortion in the Union of Soviet Socialist Republics and People's Republic of China: Women's Rights in Two Socialist Countries*, 40 STAN. L. REV. 1027, 1081 (1988) (urging the National People's Congress to "strive to lower the annual rate of growth of China's population to less than 1 per cent within three years." *Id.* at 1082, n.283 citing Hua Guofeng, *Unite and Strive to Build a Modern Powerful Socialist Country!*, translated, in 4 POPULATION & DEV. REV. 167, 177 (1978)).

ganda posters explicitly linked "modernization" to Westernization.⁶⁴ These posters showed happy, prosperous young Chinese families, with only one child, all wearing Western clothes. The breakdown of cultural barriers that signals globalization was directly linked to the OCP. Thus, globalization weakened the public/private distinction.

3. *Propelling Women Into the Public Sphere*

Women's equality was expressly linked with modernization as an objective of the OCP. Under Communism, Chinese women are equal to men.⁶⁵ This represents a radical departure from the traditional view, which considered women as men's inferiors and subordinates.⁶⁶ The official state narrative of women's equality both supported the narrative of population control and was supported by it.⁶⁷ Women would no longer be expected to spend their most productive years birthing and caring for children. Rather, after one or two children, women would take their places beside their husbands in the fields, factories, universities, and laboratories of the new China.⁶⁸ Mod-

⁶⁴ See Stefan Landsberger's Poster Pages, available at <http://www.iisy.nl/~landsberger/pop.html> (last visited Nov. 18, 2004).

⁶⁵ Article 53 of the new Constitution adopted in March 1978 provided in pertinent part: "Women enjoy equal rights with men in all spheres of political, economic, cultural, social, and family life. . . . Men and women shall marry of their own free will. The state protects marriage, the family, and the mother and child. The state advocates and encourages family planning." Savage, *supra* note 63, at 1081, n.282, citing ZHONGGUO XIANFA art. 53 (1980), translated in 1 LAWS AND REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA 14 (1984). See Greenhalgh, *supra* note 60, at 851 (describing "two foundational narratives of nation – the narrative of national crisis and salvation and the narrative of women's liberation"). See generally RICHARD H. SOLOMON, MAO'S REVOLUTION AND THE CHINESE POLITICAL CULTURE 341 (1971) (describing intended effects of women's "liberation").

⁶⁶ See CHOW, *supra* note 53, at 359 ("[T]he first marriage law of the PRC, promulgated in 1950, sought to promote socialist ideology and modern family structure by eliminating the many inequities of the traditional Chinese family structure that recognized few rights in women, the 1980 Law had the much more pragmatic aim of developing marriage as a social institution creating the stability necessary for modernization and economic development.").

⁶⁷ "[I]n China, as in many third world countries, the feminist movement for women's liberation first arose in conjunction with the nationalist movement against colonialism and imperialism, only to be subordinated once political power was reconsolidated." Greenhalgh, *supra* note 60, at 850.

⁶⁸ See Savage, *supra* note 63, at 1083 ("Family planning also helps liberate women from onerous household chores to enable them to take a direct part in socialist construction.") (quoting Tso, *Family Planning in Jutung [Rudong] County*

ernization, the first stirrings of globalization in China, propelled Chinese women into the public sphere.

4. *Women's Increased Visibility*

Women have become a very visible part of Chinese public life. The same forces that led China to a new era in trade, foreign investment, and educational exchanges,⁶⁹ guided the country to develop relations with western adoption agencies. Baby girls from China began coming to the United States in the 1990s; in 1991, only 61 infants from China received orphan visas and were admitted to the United States.⁷⁰ This number more than tripled to 206 in 1992.⁷¹ In 1993, despite a moratorium on adoption as the Ministries of Justice and Civil Affairs jostled for authority, 330 orphans were admitted.⁷² In 1994, foreign adoptions surged to 787, as China permitted second adoptions and adoptions by families with other children.⁷³ By 1995, China was the main source of infant orphans coming to

(pts. 1-3), PEKING REV., Apr. 7, 1978, at 18, 19-20). "Although it failed to fulfill its promises to women, Maoism at least championed the goal of gender equality. In the post-Mao era, the advance of global capitalism coupled with the retreat of the state from direct intervention in many areas of life have been accompanied by a backlash against (state) feminism." Greenhalgh, *supra* note 60, at 875.

⁶⁹ See Pittman B. Potter, THE CHINESE LEGAL SYSTEM: CONTINUING COMMITMENT TO THE PRIMACY OF STATE POWER, in THE PEOPLE'S REPUBLIC OF CHINA AFTER 50 YEARS 111, 113 (Richard Louis Edmonds ed., 1999). Many of these exchanges targeted women. The Ford Foundation, for example, brought together a group of Chinese women who translated *Our Bodies, Ourselves* into Chinese with the cooperation of the Boston Women's Health Collective. Greenhalgh, *supra* note 60, at 860.

⁷⁰ See, RICHARD TESSLER ET AL., WEST MEETS EAST: AMERICANS ADOPT CHINESE CHILDREN 89 (1999) (Table 4.1, Statistics on Number of Adoptions by Year: Counts by Immigration and Naturalization Service (INS) Immigrant Visas as Reported by the Department of State by Government Fiscal Years (October 1- September 30)). The United States opened its doors to foreign orphans after World War II. Stephanie Zeppa, "Let Me In, Immigration Man": An Overview of Intercountry Adoption and the Role of the Immigration and Nationality Act, 22 HASTINGS INT'L & COMP. L. REV. 161, 164 (1998) (noting that in the Displaced Person's Act of 1948, 50 U.S.C. § 1950, Congress included a provision to admit 3,000 displaced orphans, in addition to over 200,000 refugees from Germany, Austria, and Italy).

⁷¹ TESSLER ET AL., *supra* note 70, at 89.

⁷² *Id.*

⁷³ *Id.*

the United States.⁷⁴ In 2003, more than 6,000 visas were issued.⁷⁵

5. Increased "Feminist" Consciousness

Feminist consciousness has increased in China, but not in the traditional liberal Western sense. While the OCP is viewed as a great success, almost one million baby girls are missing every year; these are the girls predicted to be born who never appear in official statistics.⁷⁶ Few people in China focus on the "baby girl" problem as such. Rather, there is growing concern about future bride shortages.⁷⁷

More important, in the view of many Chinese feminists, are the educational and employment opportunities that girls will have as adults. The impact on the larger society is more important than the rights of individuals. It is unclear, moreover, whether the rights of infant girls are, in fact, being violated. Sex-selective abortion may be illegal in China, but this practice is not generally recognized as a human rights issue.⁷⁸ In addi-

⁷⁴ *Id.* at 91.

⁷⁵ U.S. Department of State, *Immigrant Visas Issued to Orphans Coming to the U.S.*, at http://travel.state.gov/family/adoption_resources_02.html (last visited Sept. 30, 2004). For a chart showing the dramatic growth of such adoptions since 1985 (twenty children), see Families with Children from China, *Statistical Information on Adoptions from China*, at <http://fwcc.org/statistics.html> (last visited Oct. 28, 2004).

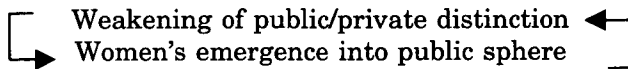
⁷⁶ See Colorado Parent Information & Resource Center, *China Sees a High Gender Ratio of New-borns*, at <http://www.cpirc.org.cn/en/enews20020514.htm> (last visited Oct. 28, 2004) (noting growing disparity between predicted sex proportions of 103-107 newborn boys for every 100 newborn girls, and actual sex proportions since 1982; sex proportions reached 116.9% in 2000). See also Greenhalgh, *supra* note 60, at 872 n.26 (noting that in 1989-1990, 979,943 infant girls were missing).

⁷⁷ See Greenhalgh, *supra* note 60, at 872. "Scholars are already investigating the sociological impact of the looming 'bride shortage' in China. One augurs that 'forced marriages, girls stolen for wives, bigamy, visiting prostitutes, rape, adultery . . . homosexuality . . . and weird sexual habits appear to be unavoidable.'" See also Mary H. Hansel, Note, *China's One-Child Policy's Effects on Women and the Paradox of Persecution and Trafficking*, 11 S. CAL. REV. L. & WOMEN'S STUD. 369, 377 (2002) ("China is now waking up to the aftermath of these practices. This aftermath includes a dire shortage of women . . . [t]o deal with the women shortage, men are buying and trading for wives from women traffickers."). See generally Ann Scott Tyson, *Chinese 'People Mongers' Prey on Women and Children*, CHRISTIAN SCI. MONITOR, Mar. 29, 1990, at 1.

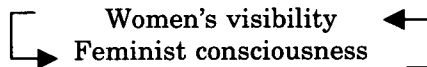
⁷⁸ Julie H. Levison & Sandra P. Levison, *Women's Health and Human Rights*, in WOMEN, GENDER, AND HUMAN RIGHTS, *supra* note 6, at 125, 139 (discussing sex-selective abortion). But see Julia Chill & Susan Kilbourne, *The Rights of the Girl*

tion, as Penny Kane suggests, many of the missing baby girls may be informally adopted.⁷⁹ Thus, Chinese and Western feminists disagree about the OCP and its impact on Chinese women. This is one of the ways in which, as noted above, feminists disagree about what it means to “make the world better for women.”⁸⁰

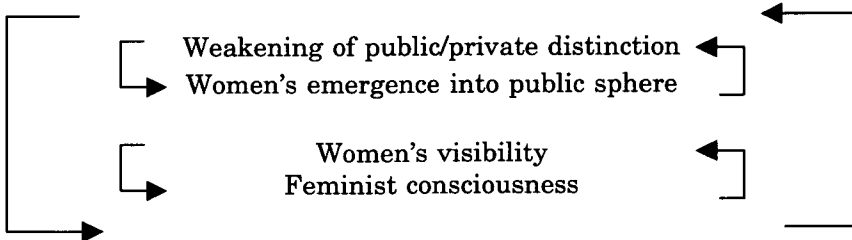
By propelling women into the work force, globalization weakens the public/private distinction. At the same time, by weakening the public/private distinction, globalization propels women into the work force. This becomes a self-perpetuating loop:



By making women more visible, similarly, globalization engenders feminist consciousness, and by engendering feminist consciousness, globalization makes women more visible. This, too, becomes self-perpetuating:



Finally, the two self-perpetuating loops also reinforce each other. That is, emerging feminist consciousness and women's visibility support women's participation in the public sphere and the ongoing erosion of the public/private distinction.



Child, in WOMEN, GENDER AND HUMAN RIGHTS, *supra* note 6, at 152, 159 (noting that the CRC committee “has unambiguously called on States Parties to challenge attitudes and practices allowing the continuation of infanticide and other customs . . . harmful to the girl child.”).

⁷⁹ See generally, ELISABETH CROLL ET AL., CHINA'S ONE-CHILD FAMILY POLICY (1985).

⁸⁰ See *supra* notes 14-17 and accompanying text.

Chinese feminists, however, report a counter-trend, a "post-feminist" interest in domesticity and fashion.⁸¹ This, too, is related to globalization, which is mutable and drives a gendered "change of world" in complex and shifting ways.

B. *The Self-Employed Women's Association (SEWA)*

Globalization has transformed labor. As economist Martha Chen points out: "The concept of regular, full time wage labor . . . has been giving way to a more diverse pattern, characterized by the 'informalization' of employment through more out-working, contract labor, casual labor, part-time labor, homework and other forms of labor beyond the protection of labor laws."⁸² Sixty-one percent of the world's workers are employed in the "informal sector."⁸³ This term includes "farming, cottage industries, tool-making and garment-making, and in urban areas, petty trading . . . [fruit and vegetable selling] and small-scale manufacturing enterprises."⁸⁴ More concretely, it includes "street vendors in Bogota, shoeshine workers in Calcutta, garbage collectors in Cairo, textile waste recyclers in Manila, homebased garment workers in Buenos Aires, and homebased electronics workers in West Yorkshire."⁸⁵ As Chen concludes, "80% of workers in low-income countries and more than 40% of workers in middle-income countries operate in informal and rural labor markets, beyond the reach of trade unions and direct government intervention."⁸⁶ In every country, more women than men are employed in these informal markets.⁸⁷

⁸¹ See Greenhalgh, *supra* note, 60.

⁸² Guy Standing, *Global Feminization Through Flexible Labor: A Theme Revisited*, 27 *WORLD DEVELOP.* 583, 584, 587 (1999).

⁸³ Martha Chen et al., *Counting the Invisible Workforce: The Case of Homebased Workers*, 27 *WORLD DEVELOP.* 603, 603 (1999).

⁸⁴ Mehra & Gammage, *supra* note 34, at 542.

⁸⁵ Chen et al., *supra* note 70, at 603.

⁸⁶ Chen et al., *supra* note 83, at 603 (citing WORLD DEVELOPMENT BANK, *WORLD DEVELOPMENT REPORT* (Oxford University Press 1995)).

⁸⁷ See generally INTERNATIONAL LABOUR ORGANISATION, *SOCIAL PROTECTION OF HOMEWORKERS* (1991) [hereinafter ILO DOCUMENTS]. For a provocative analysis, questioning the institutional capacity of the ILO to address the interests of homeworkers, see Sean Cooney, *Papers of the Joint Japan-U.S.-E.U. Project on Labor Law in the 21st Century: Testing Times for the ILO: Institutional Reform for the New International Political Economy*, 20 *COMP. LAB. L. & POL'Y J.* 365, 370 (1999).

This is a major benefit, according to some women, enabling them to care for their families and earn money.⁸⁸ It allows them more control over their time and greater flexibility than that afforded in the traditional factory, where they are expected to work constantly except for two fifteen minute breaks. It also allows them to save money on child care, transportation and work clothes.⁸⁹

Opponents counter that home work prevents women from organizing and allows employers to treat them as "subcontractors," avoiding benefits like insurance and pensions.⁹⁰ More insidiously, it supports the notion that unpaid work in the home is in fact "women's work."⁹¹ For growing numbers of the world's women, however, there is not much choice. Given the limited opportunities for unskilled or semi-skilled women or even women with clerical and computer skills, home work has become a way of life. The question is only whether it is a way of life with dignity or another form of egregious exploitation.

For the past twenty years, self-employed women in India have organized to assure the rights of home workers to decent wages and working conditions. The SEWA was organized in 1972 under the leadership of Ela Bhatt.⁹² It has grown to become the pre-eminent international organization of homebased workers and its efforts culminated in 1996 in the International Labour Organisation Home Work Convention.⁹³

⁸⁸ ILO DOCUMENTS, *supra* note 87, at 11.

⁸⁹ See generally ILO DOCUMENTS, *supra* note 87.

⁹⁰ *Id.*

⁹¹ See, e.g., Eileen Boris, *Homework and Women's Rights: The Case of the Vermont Knitters, 1980-85*, in AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY 229 (Martha A. Fineman & Nancy Sweet Thomadsen, eds. 1991). As Eileen Boris concludes, "A feminist analysis recognizes [that home work] may be the best option for individuals but not for women as a group because it supports a traditional division of labor." *Id.* at 232.

⁹² Renana Jhabvala, *SEWA'S Programmes for the Organization of Home-based Workers-India*, in ILO, ACTION PROGRAMMES FOR THE PROTECTION OF HOME-WORKERS: TEN CASE-STUDIES FROM AROUND THE WORLD 15 (Ursula Huws ed., 1995).

⁹³ See, e.g., SEWA's Campaigns, at <http://www.sewa.org/aboutus/index.htm> (last visited Sept. 30, 2004). See also HomeNet, at <http://www.homenetww.org.uk/> (last visited Jan. 28, 2001) (describing development of international network for home based workers and their organizations).

1. *Propelling Women Into the Public Sphere*

The informal sector is as crucial to the economic survival of poor women⁹⁴ as it is to the economies of developing states. Informal workers subsidize capitalist growth "by providing infrastructure, tools, equipment and often working below minimum wages in highly insecure and contingent employment."⁹⁵ In addition, as Saskia Sassen observes, women subsidize the "waged labor of men through their household production and subsistence farming."⁹⁶

Home work is an important part of the informal sector because it enables women to participate in the market economy, however marginally, and still do their unpaid work, including reproductive work, in the home. Homeworkers comprise a large and growing segment of the labor force in many countries.⁹⁷ Wherever sex-aggregated data is available, it shows that more women than men are employed in home work. In Greece, Ireland, Italy, and the Netherlands, for example, up to 95% of home workers are women.⁹⁸

Women are also playing a larger role in agriculture.⁹⁹ Because of expanding opportunities for men outside agriculture, land degradation, drought, and other factors that reduce farm yields, men have abandoned their farms, leaving the women in charge in Honduras, Nepal, southern and eastern Africa, and Yemen.¹⁰⁰ Women farmers, however, generally have less access to resources such as credit and farm implements.¹⁰¹ They have also historically been neglected by agricultural extension services.¹⁰²

Some economists theorize "that it is the spread of more flexible and informal employment that accounts for most of the upward trend in the female share of the labor force," noting that women predominate "[in] industries where profit margins are

⁹⁴ See Mehra & Gammage, *supra* note 34, at 541.

⁹⁵ *Id.* at 535.

⁹⁶ Sassen, *supra* note 34, at 11.

⁹⁷ Mehra & Gammage, *supra* note 34, at 541.

⁹⁸ *Id.* See also ILO DOCUMENTS, *supra* note 87, at 9.

⁹⁹ Mehra & Gammage, *supra* note, at 534.

¹⁰⁰ *Id.* at 539.

¹⁰¹ *Id.* (noting extensive literature developed over the past 20 years documenting difficulties faced by women farmers).

¹⁰² *Id.*

protected by reducing labor costs, extending hours and decreasing the numbers of formal production workers”¹⁰³ As economist Guy Standing notes, flexibility means opportunity, but it also means insecurity.¹⁰⁴

Traditional human rights law addressing fair and safe working conditions in the workplace has not been helpful for these women. Such rights are often predicated on a male model of what Joan Williams calls an “ideal worker,” that is, a worker with a wife.¹⁰⁵

2. *Weakening the Public/Private Distinction*

Home work blurs the distinction between reproductive and productive work. The ILO Home Work Convention¹⁰⁶ is a preliminary strategy to counter the exploitation of home workers. It addresses the concrete needs of women in the proliferating informal sectors of globalized economies. At the same time, like those informal sectors themselves, it undermines the traditional industrial worker model. This model, with its emphasis on the right to organize and conditions in the work place, is incorporated in international human rights in Articles 6-8 of the Economic Covenant as well as in the innumerable conventions promulgated by the ILO.¹⁰⁷

The women of the SEWA are what neo-liberal Thomas Friedman would describe as “turtles,” those left behind in a high-tech, knowledge-based global economy.¹⁰⁸ Yet these women are creating alternatives that enable them to work at home (like First World telecommuters), while avoiding the worst traditional abuses of home work.

¹⁰³ *Id.* at 534.

¹⁰⁴ Standing, *supra* note 82, at 584-86.

¹⁰⁵ JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 15 (2001).

¹⁰⁶ C177 Home Work Convention, adopted June 6, 1996, *available at* www.ilo.org/ilolex/cgi-lex/convde.pl?C177 (last visited Oct. 28, 2004).

¹⁰⁷ See Economic Covenant, *supra* note 46.

¹⁰⁸ THOMAS FRIEDMAN, THE LEXUS AND THE OLIVE TREE 270 (1999).

3. *Women's Increased Visibility*

The women of the SEWA were a major force in promoting the adoption of the Home Work Convention.¹⁰⁹ By doing so, they have increased their own visibility as well as that of similarly situated women in other countries. At the same time, the Home Work Convention makes women's needs, as opposed to the needs of the traditional male unionized industrial worker, more visible.¹¹⁰ By doing so, the SEWA has shown how the traditional union shop has in fact neglected women's needs.

4. *Feminist Consciousness*

The SEWA is a political organization and it has skillfully appropriated the rhetoric of progress. From the SEWA's perspective, each of the ways in which globalization drives a gendered "change of world" may be understood as an opportunity for expanding the organization, increasing its influence and ultimately improving women's lives.

Weakening the public/private distinction



Propelling women into the public sphere



Increasing women's visibility



Growing feminist consciousness

Feminist consciousness here is grounded less in Western notions of autonomy, and more in post-colonial notions of economic rights. The Home Work Convention is similarly problematic for Western feminists. It reflects and reinforces the traditional division of labor, in which women are responsible for the home and the family. This reinforces their traditional economic subordination and dependence on men. At the same

¹⁰⁹ See SEWA's campaigns, *supra* note 93. See also Women in Informal Employment Globalizing and Organizing, *Trade Unions and the Informal Sector*, at http://www.global-labour.org/trade_unions_and_the_informal_sector_wiego.htm (last visited Nov. 22, 2004).

¹¹⁰ See, e.g., ILO DOCUMENTS, *supra* note 87, at 26 (describing trade union views on home work.)

time, it *increases* women's economic independence by enabling them to support themselves and their children. Perhaps, some suggest, it is more of a "feminist" solution than requiring women to leave their children in daycare while they report to a childfree workplace.¹¹¹

C. Domestic Violence "Honor Killings"

A gendered "change of world" may have harsh, even lethal, consequences for some women already at risk. Where globalization is perceived as the latest form of Western imperialism, and women's equality a sinister subversion of local culture, a powerful backlash may develop. Women seeking relatively minor reforms are perceived as challenging fundamental values. The ways in which globalization promotes a gendered "change of world" are equated with the ways in which colonial powers historically subjugated other cultures.

1. Weakening the Public/Private Distinction

There is probably no context in which the weakening of the public/private distinction is more dramatic, or more contested, than the context of domestic violence. Historically, domestic violence was not viewed as a violation of women's human rights because it is not perpetuated by the state.¹¹² Rather, it occurs

¹¹¹ It should be noted, however, that child-care facilities are one of SEWA's objectives. Jhabvala, *supra* note 92, at 26.

¹¹² For a useful introduction, see Symposium, *Reconceptualizing Violence Against Women by Intimate Partners: Critical Issues: Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119 (1995) ("At best . . . manifestations of violence against women are considered unfortunate cultural practices outside of the state's or the international systems' responsibilities.") Mary K. Meyer, *Negotiating International Norms: The Inter-American Commission of Women and the Convention on Violence Against Women*, in GENDER POLITICS IN GLOBAL GOVERNANCE 58, 60 (Mary K. Meyer & Elizabeth Perügl eds., 1999) [hereinafter GENDER POLITICS IN GLOBAL GOVERNANCE]. In addition, the marginalization of economic rights, and the corresponding focus on civil and political rights, has lead to the neglect of "women's experience of gender specific violence . . . and [to] exclude such experiences from the very definition of 'human' rights and state responsibility." *Id.* at 61. Jutta Joachim has described the ways in which the Cold War blocs (West/North, East, and South) impeded efforts to recognize violence against women. Jutta Joachim, *Shaping the Human Rights Agenda: The Case of Violence Against Women*, in GENDER POLITICS IN GLOBAL GOVERNANCE, at 144. The West, for example, introduced resolutions on the subject of domestic violence in 1980. These received no support from the other blocs. *Id.*

in the "private" sphere of the family. But international consciousness has been raised in recent years.¹¹³

This raised consciousness is grounded in the work of women's groups on several fronts.¹¹⁴ Some women's groups lobbied for recognition of rape as a war crime before the *ad hoc* criminal tribunals in Rwanda and the former Yugoslavia.¹¹⁵ Others urged the international community to mobilize against female genital surgeries.¹¹⁶ Still others explicitly focused on vi-

¹¹³ Joachim, *supra* note 112, at 143. After the Nairobi Conference, gender violence was placed on the agenda by the Commission on the Status of Women, a subsidiary body of the UN Economic and Social Council. *Id.* at 148. See also Joan Fitzpatrick, *The Use of International Rights Norms to Combat Violence Against Women*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 532, 536 (Rebecca J. Cook ed., 1994) (discussing the World Conference of the U.N. Decade for Women in 1980, which concluded that women "must be protected from domestic violence," consideration of domestic violence within the Commission on the Status of Women and the Economic and Social Council, as well as various criminal law initiatives, and the 1986 Expert Group Meeting on Violence in the Family with special emphasis on its effect on women). See also Donna Sullivan, *Current Developments: Women's Human Rights and the 1993 World Conference on Human Rights*, 88 AM. J. INT'L L. 152, 155-57 (1994) (describing consideration of gender specific violence at the conference). Women were relatively late arrivals in the human rights community. LOUIS HENKIN ET AL., HUMAN RIGHTS 383 (2000). The Women's Rights Project of Human Rights Watch and the Women's Rights Advocacy Program of the International Human Rights Law Group were not established until 1990 and 1992, respectively. *Id.*

¹¹⁴ Fitzpatrick, *supra* note 113, at 532 ("cataloging the myriad international norms that relate to gender-based violence against women"). See, e.g., Meyer, *supra* note 112, at 66 (noting that there were 379 separate women's organizations working on gender violence issues in Latin America in the early 1990s); Katherine M. Culliton, *Finding a Mechanism to Enforce Women's Right to State Protection from Domestic Violence in the Americas*, 34 HARV. INT'L L.J. 507, 509 (1993) (describing steps in developing consensus).

¹¹⁵ HENKIN ET AL., *supra* note 113, at 380. "Media attention to atrocities in Bosnia, Rwanda, and other war-torn areas where rape was used as a strategy of warfare has also helped to raise the question of violence against women at the international level." Meyer, *supra* note 112, at 65. See also KELLY D. ASKIN, WAR CRIMES AGAINST WOMEN: PROSECUTION IN INTERNATIONAL WAR CRIMES TRIBUNALS (1997); Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 AM. J. INT'L L. 97 (1999) (discussing gender-based violence in Yugoslavia and Rwanda).

¹¹⁶ See, e.g., THIRD WORLD-SECOND SEX: WOMEN'S STRUGGLES AND NATIONAL LIBERATION 217 (Miranda Davis ed., 1983), reprinted in HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 418-19 (2d ed. 2000); The Convention on the Elimination of all Forms of Discrimination against Women, General Recommendation No. 14, 9th Session, 1990, U.N. Doc. A/45/38/1 Int. Hum. Rts. Re. 21 (No. 1 1994), reprinted in STEINER & ALSTON, *supra*, at 416.

olence within families.¹¹⁷ On virtually every issue, women's groups worked on the regional¹¹⁸ and national¹¹⁹ as well as the international level.

Their work has led to the appointment of the Special Rapporteur on Violence Against Women, Radhika Coomaraswamy.¹²⁰ The Special Rapporteur, through a series of fact-finding missions and over two dozen reports, brought international consciousness to a new level. A State's acquiescence, or failure to take effective measures to combat domestic violence, is now broadly recognized as a violation of women's human

¹¹⁷ See Kenneth Roth, *Domestic Violence as an International Human Rights Issue*, in HUMAN RIGHTS OF WOMEN 326 (discussing some of the methodological problems that the Human Rights Watch Women Rights Project has encountered in addressing domestic violence against women).

¹¹⁸ For a comprehensive report on women in the America, see STATUS OF WOMEN IN THE AMERICAS, *supra* note 40. For an account of the work of the Inter-American Commission on Women (CIM) in identifying the problem, calling for national reports on existing and model legislation, national measures to eliminate violence against women and statistical information on its incidence, making recommendations and, finally, calling for an international convention, see Meyer, *supra* note 112, at 66-67. Chapter 3 of the Inter-American Convention for example, creates "the path-breaking international human rights norm of state responsibility in the prevention, punishment, and elimination of violence against women." *Id.* at 69

¹¹⁹ For a description of women's efforts to organize around the issue of violence on the national level, see Joachim, *supra* note 112, at 146 (describing "women only" police stations established in Brazil, programs to encourage whistle-blowing against batterers in Peru, campaigns against dowry death and police rape in India, the establishment of rape crisis centers and transition houses from Trinidad to Toronto, and opposition to sex tourism in the Philippines). National legal systems are often unable or unwilling to effectively address the problem. In Brazil, for example, only two percent of those convicted of domestic violence actually serve sentences. See U.N. ESCOR, REPORT ON THE MISSION OF THE SPECIAL RAPPORTEUR TO BRAZIL ON THE ISSUE OF DOMESTIC VIOLENCE P9, U.N. Doc. E/CN.4/1997/47/Add.2 (1996). China has recently revised its criminal code to deal with domestic violence in a more rigorous manner. Michael Palmer, *Caring for Young and Old: Developments in the Family Law of the People's Republic of China, 1996-98*, in THE INTERNATIONAL SURVEY OF FAMILY LAW, 95 (Elena Urso ed., 2000). See also Satoshi Minamikata & Teiko Tamaki, *Developments in Japanese Family Law During 1998—Domestic Violence Reforms*, in THE INTERNATIONAL SURVEY OF FAMILY LAW, *supra* at 231 (describing the recent emergence of law addressing domestic violence in Japan).

¹²⁰ Commission on Human Rights resolution appointing a Special Rapporteur on violence against women, Commission on Human Rights resolution 1994/45 ESCOR, 1994 Supp. No. 4, at 140, 11 Mar. 1994, reprinted in THE UNITED NATIONS AND THE ADVANCEMENT OF WOMEN 1945-96, at 492 (1996). Coomaraswamy was the first woman appointed to such a post, although over twenty such posts have been established. Gaer, *supra* note 8 at 104.

rights. In 1993, UN General Assembly unanimously adopted the Declaration on the Elimination of Violence Against Women.¹²¹

The Declaration explicitly recognizes that violence against women violates their "human rights and fundamental freedoms."¹²² "Violence against women" has been defined by the Committee on Human Rights as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats, domestic violence, crimes committed in the name of honor."¹²³ The Declaration requires States to pass domestic law prohibiting violence against women.¹²⁴

2. *Propelling Women Into the Public Sphere*

Globalization has propelled women in Pakistan into the public sphere by increasing women's participation in the work force¹²⁵ and by enabling local women's groups to obtain international support and recognition.¹²⁶ Entry into the public sphere has also increased women's awareness of their human rights, although, according to a recent report by the Pakistani Human Rights Commission, "almost 90 percent of women . . . did not realize they had any rights at all, such as those of divorce."¹²⁷

But it is the brutal increase in violence against women, especially in the form of honor killings and acid-throwing,¹²⁸ iron-

¹²¹ *Declaration on the Elimination of Violence against Women*, G.A. Res. 48/104, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/104 (1993), available at <http://www.un.org/Depts/hl/res/resa48.htm> (last visited Oct. 20, 2004) (indicating that the resolution was adopted without vote).

¹²² *Id.* at introduction. Cf. Meyer, *supra* note 112, at 60 (describing the "marginalization of women-specific abuses from the international human rights regime").

¹²³ *Id.* art. 1.

¹²⁴ *Id.* art. 4(d).

¹²⁵ See Amnesty Int'l, *Violence Against Women Continues: Pakistan*, available at http://www.amnestyusa.org/women/interact/women_pakistan.html (last visited Nov. 30, 2004). [hereinafter AI Pakistan].

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Acid-throwing refers to the intentional burning and scarring of women by throwing acid at them. The Government has failed to effectively restrict its sale or punish the throwers. AI Pakistan, *supra* note 102. See Amnesty Int'l, *Pakistan: Violence Against Women on the Increase and Still No Prosecution*, available at <http://www.amnestyusa.org/women/document.do?id=6B2265E7IFDEE47A80256898003A469F> (last visited Oct. 28, 2004).

ically, that has generated the most international attention. Honor killings refer to the murder of a woman by a man – usually her husband or brother – who feels that his honor has been sullied by her behavior. In 2001, at least 226 women were killed in Sindh and another 227 in the Punjab, according to the Pakistani Human Rights Commission.¹²⁹ In these regions, a woman's assertion of basic human rights – such as the right to choose her own husband or to reject marriage – is often perceived as a challenge to, and a betrayal of, her entire family and the larger community.¹³⁰ But as the Pakistan Council of Islamic Ideology has conceded, although “sexual immorality is one of the major sins according to Islam . . . nobody is allowed to take the law into his [own] hands.”¹³¹ Honor killing is murder, and the state's failure to punish it is a violation of women's human rights.

3. *Women's Increased Visibility*

We are more aware of women in Pakistan because women are more aware of their rights, in large part because of Pakistani women's groups. In addition, Pakistani women's greater participation in the workforce, courtesy of globalization, exposes them to the human rights movement. But women's visibility in Pakistan has fueled a backlash. Acid throwing is increasing, according to Amnesty International, and honor killings are on the rise, with increasing numbers reported from areas where they had once been unknown according to a 2002 Report of the Pakistani Human Rights Commission.¹³²

¹²⁹ *Honor Killings Leave Pakistani Women Fighting Own War on Terror*, Daily Times, http://www.dailytimes.com.pk/default.asp?page=story_25-11-2002_pg7_22 (last visited Oct. 3, 2004).

¹³⁰ Cf. Marjorie Agosin, *Introduction*, in WOMEN, GENDER AND HUMAN RIGHTS 1, 8 (explaining how the question, “What was she doing there?” is used to blame victims of violence against women). See generally Sally Engle Merry, *Women, Violence, and the Human Rights System*, in WOMEN, GENDER AND HUMAN RIGHTS 83, 86 (discussing tensions between women's rights and cultural rights.).

¹³¹ See *Al Pakistan*, *supra* note 125.

¹³² See also *Honour Killings Leave Pakistan's Women Fighting Own War on Terror*, Daily Times, November 25, at 7, 2002, available at http://www.dailytimes.com.pk/default.asp?page=story_25-11-2002_pg7_22.

4. *Feminist Consciousness*

The well-meaning question of human rights activists, "What can we *do*?" does not always have an easy answer, especially where, as Coomaraswamy has pointed out, "women's equality" is equated with Western imperialism.¹³³

For example, in a recent case in Nigeria, human rights groups inundated Nigerian officials with petitions protesting the sentence of a woman convicted of adultery and sentenced to death by stoning. Nigerian feminists emailed their erstwhile supporters and begged them to desist because their petitions were making it impossible for religious leaders to modify their positions without losing face. In this context, globalization is driving a gendered change of world that is in turn fueling a dangerous backlash. This does not necessarily mean that outsiders must stay out, but it might mean that outsiders should start by recognizing the complexity of the situation, and deferring to local groups. That is, rather than imposing solutions from without, we should support those who are creating them from within, perhaps simply by asking, "How can we help?"¹³⁴

V. CONCLUSION

A Change of World was written in 1951. The Universal Declaration of Human Rights had been drafted three years earlier.¹³⁵ It was a time of new beginnings and great hopefulness, a belief in human progress, whether through civil and political rights in the West, or economic and social programs of the Soviets and the Chinese. New international institutions, spearheaded by the UN, assured that "never again" would the

¹³³ Radhika Coomaraswamy, *Identity Within: Cultural Relativism, Minority Rights and the Empowerment of Women*, 34 GEO. WASH. INT'L L. REV. 483, 484 (2002).

¹³⁴ See, e.g., Revolutionary Association of the Women of Afghanistan, <http://rawa.fancymarketing.net/help.htm> (last visited Apr. 3 2004). See generally Merry, *supra* note 130, at 91-92 (explaining why it may be incorrect to assume that violence against women is "part of 'culture' and that there are no debates within any society about [its] acceptability."); Mahnaz Afkhami, *Gender Apartheid, Cultural Relativism, and Women's Human Rights in Muslim Societies*, in WOMEN, GENDER, AND HUMAN RIGHTS, *supra* note 6, at 234, 243 (noting that the "efficiency of approach [in promoting human rights] usually is geared to the prevailing cultural and political conditions.").

¹³⁵ *Universal Declaration of Human Rights*, G.A. Res. 217(III)A., U.N. Doc. A/810 (1948).

world be at war. Never again would the world tolerate genocide or horrific violations of human rights.¹³⁶ Fifty years ago, like Rich's "little tailors / flashing their shears in rival haste," the Soviets and the Americans had competing visions of future fashions, but both believed that, "The season for doubt has passed / The changes coming are due to last."¹³⁷

Fifty years and many genocides later, however the phrase "never again" has become ironic. Few believe in the inevitability of human progress. As Jean-Francois Lyotard defines it, "postmodernism is simply 'incredulity toward metanarratives.'"¹³⁸ We have become skeptical toward the metanarratives of modernism, including the metanarrative of gender equality. The "gendered change of world" driven by globalization is complicated and ambiguous. For some of us, like the urban women in China,¹³⁹ it means new opportunities and better jobs. For others, it means watching our jobs outsourced out from under us.¹⁴⁰ For international lawyers, it means asking "wave by wave, what new shapes will be worn next year."¹⁴¹ For those of us over 15, it means "Wondering silently range by range / What if [we] prove too old for the change."¹⁴² But for far too many of the world's women and girls, like the women ostensibly "sully" their brothers' honor or in Pakistan the abandoned baby girls waiting to be found in a field outside Beijing, the real question is simply one of survival, life and death — not whether "the changes coming are due to last,"¹⁴³ but whether they are going to live to see any changes.

The concrete meaning of the factors identified in this paper, as well as the relationship among them, varies according to the context — international adoption, home-based work, or honor

¹³⁶ *Id.* at Preamble.

¹³⁷ RICH, *supra* note 11.

¹³⁸ JEAN-FRANCOIS LYOTARD, *Introduction to THE POSTMODERN CONDITION* xxiv (1984).

¹³⁹ *See id.* pt. III.A.

¹⁴⁰ Diane E. Lewis, *Outsourcing Trend's Impact on US Worries Workers*, BOSTON GLOBE, June 20, 2004, at J2 (citing study predicting that 588,000 white-collar jobs will be shipped overseas this year).

¹⁴¹ RICH, *supra* note 11.

¹⁴² *Id.* *See, e.g.*, United Nations, *The Aging of the World's Population*, available at <http://www.un.org/esa/socdev/ageing/agewpop.htm> (last visited Aug. 4, 2004) (discussing that life expectancy has increased and will continue to increase).

¹⁴³ RICH, *supra* note 11.

killings, for example – and is always in flux. In some contexts, such as SEWA, they appear to take the form of a neat progression.

Weakening the public/private distinction



Propelling women into the public sphere

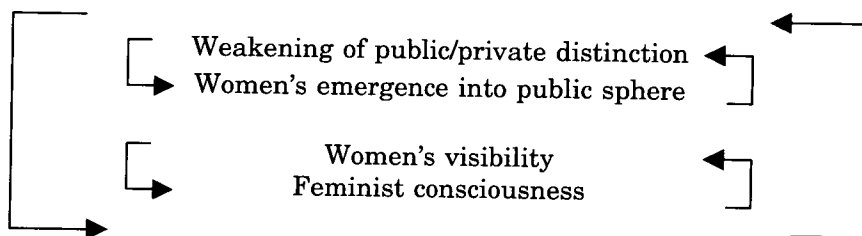


Increasing women's visibility



Growing feminist consciousness

In other contexts, such as China's OCP, they look more like self-perpetuating loops.



In still other contexts, these factors may become easy targets, or fuel for a backlash, by those who equate women's rights with attacks against the family, immorality, or Western imperialism.

Weakening the public/private distinction		Threats to the family
Propelling women into the public sphere	=	and national honor,
Increasing women's visibility		Western imperialism
Growing feminist consciousness		

Read fifty years later, surprisingly, Rich's poem captures this complexity. It does so, first because its subject is the possibility of change, and its always-open substance. The subtle but pervasive allusions to gender reflected the contemporary *zeitgeist*. Previously unquestioned assumptions about gender

were being interrogated on both sides of the Atlantic.¹⁴⁴ But “A Change of World” may have more to do with what Audre Lourde explained as poetry’s peculiar ability to illuminate “what we don’t know we don’t know.”¹⁴⁵ Whether Rich’s poem is a poet’s prescience or wishful thinking is an open question.

¹⁴⁴ See, e.g., SIMONE DE BEAUVOIS, *THE SECOND SEX* (1952); BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963). This was reflected in international instruments, including *The Universal Declaration of Human Rights*, *supra* note 135.

¹⁴⁵ Audre Lorde, *Poetry is Not a Luxury*, in *SISTER OUTSIDER* 36 (1984).