

SYMPOSIUM ISSUE

THIRD ANNUAL RUTH BADER GINSBURG LECTURE: THE GLOBAL IMPACT OF FEMINIST LEGAL THEORY

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It is a pleasure to be here today and to have the opportunity to pay tribute to Justice Ruth Bader Ginsburg. It certainly isn't news to anyone here that Justice Ginsburg has been a towering figure in feminist legal advocacy, particularly in securing women's equal access to the world of work. Learning from her own experiences of being uniformly rejected by New York City law firms (despite graduating first in her class at Columbia), of being hired for a fraction of her male colleagues' salaries at Rutgers, and of hiding her pregnancy under the larger-sized clothes of her mother-in-law for fear of losing her job, Ruth Bader Ginsburg began a transformative decade of legal work on women's equality, which focused importantly on employment. She helped bring the legal case that ultimately led to a pay increase for the women faculty at Rutgers; she assisted the New Jersey American Civil Liberties Union in bringing a case on behalf of school teachers forced to forfeit their jobs because they were pregnant; she also brought *Struck v. Secretary of Defense*,¹ a challenge to the discharge of pregnant Air Force officers; and,

* Herma Hill Kay Distinguished Professor of Law, University of California, Berkeley (Boalt Hall). I am grateful to Susan Bisom-Rapp, Martha Fineman, and Linda Keller for giving me the occasion to address this vast and exciting topic; to Anne Joseph, Goodwin Liu, and Martha Minow for pointing me toward work that would be illuminating; and to Susan Bisom-Rapp for valuable comments on an early draft.

1. 460 F.2d 1372 (9th Cir. 1971), *vacated and remanded* 409 U.S. 1071 (1972). *Struck* was mooted before it could be heard by the Supreme Court; Ginsburg then authored an amicus brief in *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974), in which the Court held that mandatory maternity leave violates Due Process.

perhaps most famously, she litigated *Weinberg v. Wiesenfeld*,² which established the right of a widower to receive social security benefits based on his late wife's salary, something widows had long been able to do.

Now, Justice Ginsburg might not come as readily to mind as an orienting figure for a conference on global impacts, but in fact she has been vitally interested in directing American jurists to what she calls the world "beyond our borders." In fact, her interest, expressed in a speech to the American Constitution Society, in having American lawmakers, including judges, abandon their "island or lone-ranger mentality" and learn from "comparative and international law perspectives" on constitutional and statutory law³ prompted conservative pundit Joseph Farah to charge her with "undermining the principle of American sovereignty" and call for her impeachment for, among other things, addressing a "political extremist organization."⁴ If that's what Mr. Farah would make of a gentle exhortation by a Supreme Court justice to the American Constitution Society (a mainstream progressive organization if ever there was one), I can only imagine the poor man's response to the directions we propose to pursue here over the next two days.

As I considered Ginsburg as an orienting figure for this talk, one thought that came to me was that if her exhortation to look beyond our borders has been taken up by feminists, her primary focus on the world of work has not been taken up in this effort, at least not to the same degree. If work was the first place second-wave feminists (and first-generation *legal* feminists) turned, this has not been true for their descendants who have ventured into international, comparative, and transnational arenas. In my talk today, I'd like to consider why work has not been the orienting principle of the internationalization of feminist legal theory; to think about what kinds of issues and insights—both for global contexts and for feminist legal theorizing more generally—might emerge from such efforts; and to ask about particular challenges this agenda might present.

2. 420 U.S. 636 (1975).

3. Justice Ruth Bader Ginsburg, Keynote Address at the American Constitution Society National Convention (Aug. 3, 2003), in 22 *YALE L. & POL'Y REV.* 329, 335 (2004).

4. Joseph Farah, *Ginsburg, the Politician*, *WORLDNETDAILY*, Aug. 13, 2005, http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=34105.

I want to add just one caveat before I begin: I approach this question as somewhat of a novice, at least compared with many of you. Although I've been writing about gender and feminism for more than a decade now, the vast majority of my work has had a domestic focus. I accepted this invitation to attend the conference, and pay tribute to Justice Ginsburg, as an incitement to learn more about the global futures of feminist legal theory. And, taking heart from the feminist insight that a view from the margins of a field can often illuminate aspects of its center, I'm going to describe what I've seen in my recent ventures into this area. But I'm particularly eager to learn from all of you, so I hope you'll take these comments as an invitation to further conversation and point me in new directions wherever necessary. I would also add, because I'm talking to an international audience here, that my *initial* exposure to what has or hasn't been done in feminist legal theory as it looks internationally is an exposure to American feminist legal theory. I haven't had as much exposure to the literatures of legal feminists in other countries, and I'm very eager to learn if there are confluences with or distinctions from the American patterns I'm going to be describing.

To be clear: We are by no means lacking in valuable and provocative scholarship on women, gender, and work in global contexts. There's been a steady and illuminating stream of it, particularly by activists and by feminists writing in other disciplinary fields. There have been investigations of the impacts of globalization on women's labor,⁵ comparative studies of the relations between women's family and market work in different national and sub-group contexts,⁶ expositions of the "mothering

5. See CHANDRA TALPADE MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* (2003); RHACEL SALAZAR PARRENAS, *SERVANTS OF GLOBALIZATION: WOMEN, MIGRATION AND DOMESTIC WORK* (2001); Robert F. Schoeni, *Labor Market Assimilation of Immigrant Women*, 51 *INDUS. & LAB. REL. REV.* 483 (1998); Uche U. Ewelukwa, *Women and International Economic Law: An Annotated Bibliography*, 8 *L. & BUS. REV. AM.* 603 (2002); Kerry Rittich, *Transformed Pursuits: The Quest for Equality in Globalized Markets*, 13 *HARV. HUM. RTS. J.* 231 (2000); Martha Chen, et al., *U.N. Dev. Fund for Wom.*

6. See, e.g., Duane F. Alwin et al., *The Separation of Work and the Family: Attitudes towards Women's Labour-Force Participation in German, Great Britain, and the United States*, 8 *EUROP. SOC. REV.* 13 (1992); Harriet Orcutt Duleep & Seth Sanders, *The Decision to Work by Married Immigrant Women*, 46 *INDUS. & LAB. REL. REV.* 677 (1993); Arlie Russell Hochschild, *The Nanny*

chains” and related migrations occasioned by the impoverishment of women in South Asian, Central American, and African contexts,⁷ and inquiries into the needs of Western professional women.⁸ But these questions, and the broader challenge of work as an organizing frame for international or transnational analysis by feminists, have not frequently been taken up by feminist *legal scholars* in the way that, for example, violence (and sexual violence) against women has organized global interventions among feminist legal scholars, or in the way that family and reproduction are beginning to animate feminist legal scholars such as those involved with some of Martha Fineman’s ongoing comparative projects.⁹ Work is of course implicated in both of these inquiries and has been discussed in those contexts: sex as work in the context of international trafficking debates,¹⁰ and the relation between control over reproduction and participation in public life including market employment.¹¹ Yet those feminist legal scholars whose

Chain, 5 J. GENDER RACE & JUST. 197 (2000); Berta E. Hernandez-Truyol, *Book Review: Law is Not Enough: Gender Injustice: An International Comparative Analysis of Equality in Employment*, 37 GEO. WASH. INT’L L. REV. 1031 (2005); Gwen Moore, *Mommies and Daddies on the Fast Track in Other Wealthy Nations*, 596 ANNALS 28 (2004).

7. See, e.g., GRACE CHANG, DISPOSABLE DOMESTICS: IMMIGRANT WOMEN WORKERS IN THE GLOBAL ECONOMY (2000); Pierette Hondagneu-Sotelo & Ernestine Avila, “I’m Here, but I’m There”: The Meanings of Latina Transnational Motherhood, 11 GENDER & SOC.’Y 548 (1997); Orly Lobel, *Class and Care: The Roles of Private Intermediaries in the In-Home Care Industry in the United States and Israel*, 24 HARV. WOMEN’S L.J. 89 (2001); Katherine Kaufka, *The Commodification of Domestic Care: Illegitimacy of Care Workers and the Exploitation of Migrant Workers*, 18 GEO. IMMIGR. L.J. 159 (2003).

8. See, e.g., Pamela Stone & Meg Lovejoy, *Section One: Overviews: Fast-Track Women and the “Choice” to Stay Home*, 596 ANNALS 62 (2004); Joan Williams, *Symposium: From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition*, 76 CHI.-KENT L. REV. 1441 (2001).

9. These are centered in the Feminism and Legal Theory Project, which Fineman founded in 1984. See <http://www.law.emory.edu/flt/>. For further description of the project, see Martha L. Fineman, *Introduction to the Papers: The Origins and Purpose of the Feminism and Legal Theory Conference*, 3 WIS. WOMEN’S L.J. 1 (1987).

10. See Kara Abramson, *Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol*, 44 HARV. INT’L L.J. 473 (2003); Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN’S L.J. 137 (2004).

11. In *Casey*, Justice Blackmun stated that “because motherhood has a dramatic impact on a woman’s educational prospects, employment

scholarship is most strongly focused on work have not yet turned their attention to global, or even comparative, contexts; feminist legal scholarship addressed to work is more episodic, or the product of individual interests, than part of a larger professional dialogue.

A key question I'd like to ask is why the issues related to women's work in the global context haven't attracted as sustained or mobilized a response thus far. Some of the factors, quite legitimately, may have to do with the affirmative claims of the issue of violence against women. There is something properly compelling about the goal of preventing women's bodily violation or oppression. Moreover, this focus may have been supported by the types of feminist legal theory that were exerting the most influence over feminist agendas during the period of internationalization. At the moment when precipitous changes in the external world (the fall of Berlin Wall, ethnic cleansing in the former Yugoslavia, the end of Apartheid in South Africa) and internal scholarly exhortations to look beyond our own solipsism first turned American feminist legal theorists in large number outward, they weren't pursuing the liberal equality theory advocated by Justice Ginsburg in the early employment access cases. Dominance theory was a (if not the) leading feminist conceptualization, and its concern with violence against women helped to organize these early extraterritorial American feminist ventures.¹² Moreover, the basic imperative of preventing violence, including sexualized violence, may have seemed (and I would put the emphasis here on *seemed*) to promise the possibility of unity or consensus across geographical, national, and cultural difference.

opportunities and self-determination, restrictive abortion laws deprive her of basic control over her life." *Planned Parenthood v. Casey*, 505 U.S. 833, 928 (1992) (Blackmun, J., concurring in part, dissenting in part). *See also* Amicus Brief, 11 UCLA WOMEN'S L.J. 3, 7 (2000) ("The legalization of abortion has permitted women to participate more fully in society. Since abortion was legalized, women have made unprecedented strides in employment and education as they have gained a significantly greater capacity to make personal choices outside of the traditional maternal role and attained positions of leadership in every field of endeavor.").

12. Indeed, MacKinnon herself began to litigate claims that rape was being used as an instrument of genocide in the former Yugoslavia, and to write about the application of her dominance theory in a variety of international settings. *See, e.g.*, Catharine MacKinnon, *Turning Rape into Pornography: Postmodern Genocide*, MS., July/August 1993, at 24, 24-30.

Work, in contrast, means a dozen different things in our own national context, from the devaluation and erasure of dependency work to the reconfiguration of traditional workplaces under Title VII. Trying to grasp what it might mean across a range of national contexts, not to mention the rapidly emerging context of a globalized labor force, could seem truly daunting. In the long run, I'd argue that this variousness is not necessarily a disadvantage; the presumed unity of the imperative of preventing violence against women has triggered the objections of feminists in a variety of countries, feminists who have argued that the apparent unity is partly a product of analyses of that violence that obscure or underplay contextual differences. It may be that having differences that implicate class, nation, immigration status, and a variety of other factors on the very surface of debates about work in the global context proves to be a good thing. But it nonetheless seems possible that it deterred feminist legal theorists in the first instance.

A second difference that may have favored the agenda of preventing violence against women was that this agenda, in at least an important subset of cases, could be served by fairly straightforward prohibitions comparatively well-suited to legal enactment. I should be clear that this "comparatively straightforward implementation" involved a lot of infinitely skillful work that had to be devoted to characterizing freedom from gender-based violence as the kind of international human right which could be protected by international conventions, and vindicated in hearings before emerging international criminal tribunals (which had themselves to be authorized and created). But one could classify various examples of violence against women as acts that are subject to prohibition, and prohibitions of this type could productively be addressed to state actors and to private individuals and could be punished by the imposition of various forms of sanctions. These kinds of prohibitions are capable of addressing only a small fraction of the gender issues that arise in connection with labor. Feminist and labor advocates might use them, for example, to address the discouragingly prevalent incidence of sexual and other abuse of women who migrate to the global north to perform domestic work. But broad-based prohibitions are not a viable solution to many of the programs, practices, and assumptions that make women's labor devalued, underpaid, and performed under

exploitative conditions in a variety of sites across the globe.

Now here, too, there may be a silver lining in this apparent disadvantage. The availability of a straightforward prohibitive solution, like the apparent unity of the imperative to prevent violence against women, has proven in some ways to be a mixed blessing. The legal prohibitions in the area of gender-based violence seem to assume, or in some cases rest on, the demonstration of a victimized or paradigmatically injured female subject. Thus, some feminists argue that they are implicated in the production of that paradigmatically injured female subject or, more recently, in what Ratna Kapur and others have identified as the production of a paradigmatically injured *third-world* female subject—a particularly troubling consequence given the colonial legacies that shape many of these contexts.¹³ Work may have the advantage of foregrounding women's agency—an agency that women actually demonstrate, I might add, with respect to both employment and sexuality—a little more transparently. But be that as it may, there can be little doubt that addressing the devaluation, exploitation, depressed wages, and—in addition to all this—the scarcity and uneven distribution of work available to women, is a challenge that will require plural and often not-straightforwardly legal responses.

Moreover, global problems relating to women and work must be addressed by recourse to a whole variety of actors: international organizations (including aid granting organizations like the WB and IMF, trade organizations such as the WTO, and labor organizations such as the ILO), individual sending and receiving states, capitalist entities and investors, and even individual women and men in developed countries who serve as employers of migratory domestic workers. State-based remedies may not reach international organizations; remedies directed to public entities may make the acts of private capital elusive; hortatory conventions may not entail effective enforcement; the acts of individual families may be subject to little beyond the most banal exhortations.

These issues can be daunting to feminist legal scholars becoming acquainted with the stark factual details of this area. As legal scholars, we have a particular kind of relation to

13. See, e.g., Ratna Kapur, *Post-Colonial Economies of Desire: Legal Representations of the Sexual Subaltern*, 78 *DENV. U.L. REV.* 855, 880 (2001).

normativity: we tend to gravitate to areas where we can see readily applicable, often familiar or identifiably conventional legal solutions. This is even true—in fact, it may be particularly true—of those of us who are feminist legal scholars: adhering to identifiable forms of legal normativity may seem to give us purchase on the “real world,” which we appropriately value, and may also seem to promise us legitimacy in the palpably ambivalent gaze of our advocacy colleagues who seem to be perpetually asking of our work what it has to do with *law*. In addition, as feminists writing in the opening years of the twenty-first century, we have a complicated relation to problems that foreground differences among women, whether it be the range of different contexts that implicate women’s work in global settings, or the tensions between the positions, say, of professional American women and migrating Filipina women regarding the performance of care work in American homes. We have learned to see many kinds of differences among women; we can trace them to distinctions among contexts, to intersecting constitutive influences of race, class, or nation. But when we see practical problems with these configurations, we don’t automatically gravitate to those areas.

In the remainder of my comments today, I want to illustrate and to resist these tendencies by talking about two areas of globalized work around which feminist legal scholars might orient themselves: women’s work at the low end of newly globalizing sectors of the economy, and the migration of women from the global south to the global north to perform dependency work for professional women and men. Even the brief examination I have undertaken here will demonstrate that these problems have all the difficulties I’ve identified as posing a deterrent to engagement by American feminist legal scholars otherwise motivated by issues of work. But we shouldn’t view these characteristics as arguments for disciplinary hesitancy. On the contrary, I want to suggest that these are areas in which *feminist legal* scholars bring distinctive resources to bear—or, to take the ubiquitous rhetoric of the market, display a professional comparative advantage—so long as we conceive of our legal role with a kind of breadth and flexibility that aren’t yet a regular part of our repertoire.

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So let's turn to the first problem of work in the transnational context: processes of "globalization" have created thousands of jobs (some in globalized industries themselves and some in support industries of "global cities") with oppressive working conditions, depressed salaries, and few employment protections—jobs which are disproportionately performed by women, particularly women of color in poorer countries. The emergence of this low-end global workforce is notably multi-causal. One factor is the increased mobility of capital, shaped by forces ranging from the fall of the Berlin Wall and the breakup of the former Soviet Union, to technological change, making it possible for firms to receive inputs from and conduct operations in many far-flung geographical settings at once. This mobility has, in some contexts, produced a "race to the bottom" as countries establish "free trade" or "free export" zones, vying for capitalist enterprises by offering up their populations as cheap labor inputs—in other words, by agreeing to forego the kinds of labor protections that might make work in these globalizing industries less exploitative or onerous.¹⁴ The multi-causal and often structural character of these developments is complicated by the fact that many of them may be characterized as arising from "choice" or "free markets." Host countries calculatedly adopt labor policies in an effort to lure capital; prospective trade partners enter into transnational agreements such as NAFTA; individual women make calculated decisions—which may involve migration—to work in these global industries because of a desire for work and for the salary which, despite its depressed state, may compare favorably with more localized industries. But official explanations tend to obscure this by emphasizing the

14. The empirical evidence on the emergence of a race or races "to the bottom" to lure transnational capitalist enterprises remains mixed. For example, two OECD studies, in 1996 and 2000, found that "countries where core labor standards are not respected continue to receive a very small share of global investment flows." *ORG. FOR ECON. COOPERATION & DEV., INTERNATIONAL TRADE AND CORE LABOUR STANDARDS* 13 (2000). However, a conspicuous exception to this conclusion is the case of China. In the end, however, the actual existence of a race to the bottom may matter less than the effect of arguments about international "competitiveness"—about the risk of capital flight or the failure to lure capital—on the rhetoric and direction of policymaking in many (prospective) host nations. I want to thank Susan Bisom-Rapp for this point.

free will or choice of a variety of players.

The work that has been done already by feminists in this area—scholars working in fields from economics to sociology and women’s studies—has been aimed at highlighting and disentangling the many strands of this problem. Uncovering the character of this labor has been challenging in part because of its increasing informalization through the use of such vehicles as sweatshops and homework arrangements. Making this work visible has also been difficult, as Saskia Sassen has pointed out, because this notion of proliferating work in low-end industrial and support sectors is contrary to the dominant images of globalization, which focus on the transnational professional, technologically-enabled opportunities at the high end of the spectrum.¹⁵ Beyond highlighting the nature of the work itself, some scholarship has been devoted to tracing its emergence to a range of disparate factors, some of which I alluded to above. Another particularly interesting body of work has explored some of the factors that explain the feminization of this emerging workforce.¹⁶ This includes some of the gendered, racialized assumptions that lead employers to see women, particularly Latina or Asian women, as distinctively suited to the ongoing, highly repetitive work in this sector, as well as the gendered assumptions about the primacy of family work for women that have made home-based piece work a very attractive option for women in host economies.

But this work has, quite strikingly, been done with comparatively little participation by feminists writing in the legal field. And, were it to become more integrally involved, there are a variety of distinctive resources that feminist legal theorists could bring to the analysis of this exceptionally challenging problem.

One set of resources is analytic and rhetorical. One factor that has made globalization such a formidable adversary is its

15. See Saskia Sassen, *Toward A Feminist Analytics of the Global Economy*, 4 *IND. J. GLOBAL LEG. STUD.* 7, 15-16 (1996).

16. See, e.g., Mary Romero, *Symposium: Beyond Belonging: Challenging the Boundaries of Nationality: Nanny Diaries and Other Stories: Imagining Immigrant Women’s Labor in the Social Reproduction of American Families*, 52 *DEPAUL L. REV.* 809 (2003); Grace Chang, *The Global Trade in Filipina Workers*, in *DRAGON LADIES: ASIAN AMERICAN FEMINISTS BREATHE FIRE* 137 (Sonia Shah ed., 1997).

saturation with the rhetoric of choice and free competition. Legal analysts in general, and feminist legal analysts in particular, have professional advantages in unpacking or deconstructing this powerful rhetoric, which can be illuminating for political participants in general and useful in the deliberations of NGOs, international bodies, and individual state governments. As long-time occupants of a liberal legal domain structured by claims of choice and informed by a tradition that is generally deferent but occasionally, productively, skeptical about the claims of free markets, we've come to be particularly skilled at laying bare the more complicated institutional social dynamics underlying such claims of market and individual freedom. For example, experience extending back to *Lochner* and the analysis of legal realists have helped critical legal analysts to expose the governmental decisions and institutional supports that help to establish the "free markets" that supposedly spring full-blown from the head of Zeus. This is work we might continue as we seek to clarify the institutional and political environment in which globalized "free markets" have emerged.

Feminist legal scholars in particular have become adept at analyzing the operation of constraints on choice.¹⁷ We have done this from two different directions. At the macro level—work in the area of reproductive choice is one example here—we've tried to demonstrate how the rhetoric of choice can elide the subtle and not-so-subtle constraints that many forms of material inequality can impose on ostensibly free decision-making. At the micro or individual psychological level, we've learned to oppose reductive claims of women's victimization by arguing that these constraints aren't innate or static, and analyzing in precise, minute ways the manner in which governmental and other institutional decisions, as well as social practices and norms, can constrain agency and choice. In this area, this form of legal feminist expertise can be deployed not simply to highlight women's agency, but to suggest the areas in which political mobilization or legal change might have

17. For a superb example of an effort to do this in the context of the "choice" between domestic labor connected with childrearing and participation in the labor market for US women, see JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT*, ch. 1 (1999).

purchase.

To see how these kinds of analyses might work, let's think about a claim made by Chandra Mohanty that the amenability of many women in the global south to performing homework has to do with its compatibility with traditional norms assigning women responsibility for a range of dependency-related tasks in the home, and the fact that it can be performed without being understood as unfamiliar or gender non-conforming market work.¹⁸ While some analysts might ascribe such patterns to innate, gender-differentiated conservatism of these "cultures," legal feminists (and Leti Volpp is a good example here,¹⁹ though her work doesn't deal directly with globalization) have learned to ask about the forces that created them. What factors have contributed to a pronatalism, for example: might U.S. aid policies have curtailed the availability of abortions? Or strengthened the hand of religiously-based NGOs in these countries? And while an orientation toward home might be a product of traditional gender roles, it might also be a product of the impoverishment of the public sphere under repressive regimes, or the prevention of women's political participation. As Nanette Funk has observed with respect to women in the former Soviet Union, intensive investment in the familial sphere may be conditioned by the impoverishment of, or the absence of opportunities for women in, the public sphere.²⁰ And the tendency of many women to understand homework as "not work": legal feminists might be inclined to ask about the extent to which this understanding has been conditioned by governments eager to cooperate with globalizing industrialists by supplying this labor, or by representatives of global capital

18. Chandra Talpade Mohanty, *Cartographies of Struggle*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* (Chandra Talpade Mohanty et al. eds., 1991).

19. Some of Leti Volpp's recent works include *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 *UCLA L. REV.* 405 (2005); *Symposium: On Culture, Difference, and Domestic Violence*, 11 *AM. U. J. GENDER SOC. POL'Y & L.* 393 (2003); *Critical Race Studies: The Citizen and the Terrorist*, 49 *UCLA L. REV.* 1575 (2002); *Feminism versus Multiculturalism*, 101 *COLUM. L. REV.* 1181 (2001); and *Blaming Culture for Bad Behavior*, 12 *YALE J.L. & HUMAN.* 89 (2000).

20. Nanette Funk, *Feminism: East and West*, in *GENDER POLITICS AND POST-COMMUNISM: REFLECTION FROM EASTERN EUROPE AND THE FORMER SOVIET UNION* 323 (Nanette Funk & Magda Mueller eds., 1993).

themselves. Alternatively, they might ask whether, if this work were construed as work by emerging organizations or mobilizations among the women performing it and increasingly associated with demands for fair wages and other labor protections, it might begin to be understood differently by those women.

As the trajectory of this last discussion suggests, a second important area of contribution for feminist legal scholars in this area is institutional. Distinctive challenges of this problem are its multi-causal character and the fact that not all decision-makers may be susceptible to pressure from conventional kinds of legal authorities. For one thing, we may need recourse to transnational or international forms of remediation, as the problem—by definition—crosses a range of national borders. However, international conventions on economic rights, for example, have sometimes proved more controversial than comparable conventions on political and civil rights. In some cases, international agreements may foreclose national action aimed at protecting laboring populations. And many of the responsible players are not sovereign nations at all, but international organizations providing aid, global capitalists, and international investors.

Yet our training as lawyers and legal scholars may equip us with a pragmatic, normative orientation and an experience with different kinds of remedial expedients, any or all of which might be of use in such a complex and comparatively unexplored environment. NGOs and informal organizations of women workers—both transnationally and within individual host countries—reflect two emerging expedients that have achieved some purchase both politically and within international organizations. Feminists with legal expertise may be valuable in supporting such organizations and creating the conditions for their successful emergence and voice. We may also have recourse to legal and political strategies used domestically to try to counter potentially exploitative movements of capital. Fran Ansley, to take a particularly promising example, has written about the lessons for progressive legal scholars interested in globalization that might be provided by the plant-closing movement in the United States: these include litigation

strategies and strategies for political organization and mobilization.²¹ Feminist legal scholars may undertake the comparative work that helps us develop a fund of expertise about what kinds of initiatives have worked in different national settings.

A second issue involving work in the global context is the emergence of “care chains,” which Judith Baer referred to in her “Five Minutes” earlier.²² Here we have streams of women migrating from the Philippines, from Mexico and Latin America, from various nations in Africa, to the United States, to the wealthier nations of the Middle East, to Hong Kong, and to the developed nations of Western Europe. These women are inhibited from being able to support their families in their own countries: inhibited by structural adjustment policies entered into as a condition of foreign aid in the 1970s and 1980s; by the struggling character of the national economies in their countries of origin. They are encouraged to migrate (or they have been encouraged, until very recently) by governments interested in obtaining foreign currency through their remittances. And they are given the opportunity to migrate because of a series of social and economic transitions in wealthier countries that create substantial, widespread new needs for care/dependency work in particular: processes of globalization creating wealthy urban professionals located in “global cities” who are accustomed to the attentions of personal servants and care providers; movement of well-educated women into the full-time workforce without their male partners or employers or other social institutions picking up the slack in terms of their family responsibilities; the emergence of “intensive, competitive parenting” that treats children as goods in which parents invest through particular activities, and the resultant need (arising from limited time, new parenting tastes) to divest themselves of more menial tasks associated with parenting;²³ increased needs for dependent care at the other end of the spectrum as elderly adults

21. See Fran Ansley, *Symposium: Social Movements and Law Reform: Inclusive Boundaries and Other Impossible Paths Toward Community Development in a Global World*, 150 U. PA. L. REV. 353 (2001).

22. See Judith Baer, *Five Minutes of Global Feminism*, 28 T. JEFFERSON L. REV. 93 (2005).

23. Dorothy Roberts observes this phenomenon in her article *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51 (1997).

live longer with less familial care.

What these patterns produce is a large group of poor to middle-class women from the economic south who migrate to the economic north to care for the dependents of families—in particular women whose professional priorities have left them less time and taste for dependency work. These women leave in their countries of origin children and elders of their own who need to be cared for either by family members or by paid caregivers in those countries. This separation of the migrating dependency workers from their own families itself creates great hardship. But because of the informal, isolated character of the work they undertake in their new countries, they are often subject to strenuous conditions and an apparently irresistible potential for exploitation by their employers. We see exceedingly long days structured around the demands of small children and the professional needs of their parents, with few breaks, social isolation, lack of predictability, starkly inadequate pay, and failures of basic human respect. There are also, in a subset of cases, emerging patterns of physical or sexual coercion or abuse. This vulnerability is exacerbated by the restrictive visas and tenuous ability to claim social or civil rights that is associated with the immigration status of these workers.

Beyond being economically and institutionally complicated, this phenomenon of “care chains” is also normatively complicated, particularly for feminist analysts. What we have is a relationship of interdependence, in which women of the global north may be actively engaged or subtly complicit in the social and economic subordination of women of the global south. Women who have suffered as a result of what Martha Fineman calls the “autonomy myth,”²⁴ including the devaluation, erasure, and privatization of care work, have displaced or privatized their burden onto other, poorer, immigrant women.²⁵ Social

24. MARTHA ALBERTSON FINEMAN, *THE AUTONOMY OF MYTH: A THEORY OF DEPENDENCY* (2004).

25. It should be acknowledged that these relations are complicated along many different dimensions. Women as employers may be abusive, neglectful or unnecessarily hierarchical. For a discussion of these problems, see Donna E. Young, *Working Across Borders: Global Restructuring and Women's Work*, 2001 UTAH L. REV. 1, 9 (2001). Such women may also—or may simultaneously—be mentors and supporters, who assist women hired as caregivers with difficult features of the geographic and cultural transition, or with challenges related to their immigration status. And while mother/employers may tend to

understandings of dependency work are shot through—even for women—with devaluation, with not only gendered but raced understanding of what qualities contribute to this work being done well.²⁶

Much of the work that has been done so far in this area is aimed at making the phenomenon of care chains visible. The informal character of the work, its isolation in the home, the precarious immigration status of those who perform it, the relation between the invisibility or apparent naturalness of the work and the ability of those it benefits to preserve the myth of their autonomy, and the cultural erasure of the racialized dimensions of this occupationally-based inequality, have all conspired to make this pattern invisible. Bringing it into visibility has been the first goal of feminists, mostly in fields like sociology but also in law, who have approached the problem.²⁷

There remains, however, a *huge* amount of work to be done, much of it particularly appropriate to the analytic strengths of feminist legal theorists. One portion is of analytic work. For example, feminist legal scholars, led importantly by Martha Fineman, have analyzed the way that the construction of dependency work as a private problem has permitted governments and employers to free ride on women's partly erased or obscured labor, even as those whose productivity is based on it are permitted to claim autonomy.²⁸ The phenomenon of migrant care workers represents yet another stage in this displacement or privatization of dependency work: as professional women of the global north privatize this work

delegate the most menial labors first, preserving to themselves those most connected to interpersonal engagement or to the flourishing of the child's personality, see Dorothy Roberts, *Menial and Spiritual Housework*, *supra* note 23, caregivers retain a kind of power because of their sustained proximity to, and responsibility for, the children of their employers. Thanks to Susan Bisom-Rapp for encouraging me to reflect further on this complicated terrain.

26. Examples of such assumptions are that Latinas are more loving, while Filipinas are more clean, organized, and reliable. Both of these assumptions are heavily raced; they're also gendered in a way Sara Ruddick tried to explain: dependency care is a natural feminine impulse rather than a kind of work/practice with its own epistemology, interior logic, etc. See generally SARA RUDDICK, *MATERNAL THINKING: TOWARDS A POLITICS OF PEACE* (1995).

27. Mary Romero is an excellent example here. See Mary Romero, *Unraveling Privilege: Workers' Children and the Hidden Costs of Paid Childcare*, 76 CHI.-KENT L. REV. 1651 (2001).

28. See, e.g., FINEMAN, *supra* note 24.

onto migrant women of the global south in order to achieve—and in some situations claim through erasure of such work—their own autonomy as workers or as participants in the public sphere.²⁹

Another aspect of the work that feminist legal scholars can provide might be classified as community organizing work. Instrumental to the resolution of this problem—particularly the performance of dependency work by migrant women under oppressive, exploitative circumstances—is the cultivation among women of a shared interest in the visibility of domestic labor, dependency work, and its performance under non-exploitative conditions. Feminist legal scholars who have helped to expose the hidden economies on which claims to autonomy are based might be well-suited to cultivate these shared interests.³⁰ But there is also important organizing work that is being done among communities of migrant women themselves—the political activity of Filipina migrants might be a starting point.³¹ Thinking about how such organizations might be supported, legally and logistically, is a potentially valuable role.

Finally, feminist legal scholars could play a series of more distinctively institutional or legal roles. Both the push and pull factors that affect migration for domestic labor might be addressed, institutionally, in ways that could serve to limit the vulnerability to exploitation of these women workers. For example, we might explore the prospects for exerting influence over aid-granting international organizations, to try to prevent successors to recent structural adjustment policies that by reducing the welfare net or increasing the need for foreign currency, contribute to the incentive for nationals of recipient countries to leave, or for governments to try to encourage them to leave. There might also be areas in which legal feminists

29. Such work may help professional women who employ migrant women to understand more clearly the choices they are making. It may also help other feminists to see and comprehend the recalcitrant attitudes that prevent dependency work from being addressed as a public problem.

30. See, e.g., Lucie E. White, *Facing South: Lawyering for Poor Communities in the Twenty-First Century*, 25 *FORDHAM URB. L.J.* 813 (1998); Lucie E. White, *On the "Consensus" to End Welfare: Where are the Women's Voices?*, 26 *CONN. L. REV.* 843 (1994).

31. LIGAYA LINDIO-MCGOVERN, *FILIPINO PEASANT WOMEN: EXPLOITATION AND RESISTANCE* (1997).

could try to cultivate control over the domestic contexts in which migrant labor is employed. The passage of a convention on migrant labor in July 2003 might be one legal point of entry.³² There may also be changes in immigration laws—for example, creation of greater protections in connection with work visas—that would assist this group of workers.

* * *

Pursuing these issues, in even only some of the ways I suggest above, would give us a vital and varied scholarly agenda. But I also want to step back, in conclusion, and ask about the character of the scholarly movement that a focus on such issues would create. In other words, what would be the orienting, theoretical commitments of a movement among feminist legal scholars that was directed to the challenges of specifically gendered work in a globalizing environment?

It would be a movement that was prepared to tease apart (or analyze in their interrelation) the complex patterns of social production in the relations between labor and capital in host countries, in the relations among professional women and their caregivers in “global cities,” in women’s disempowerment at many sites of employment activity (including the home), and in the divergent subjectivities of different categories of workers.

It would be a movement that embraced a looser, more contingent view of commonalities among women, and that was prepared to see sex and gender in their continuous, varied interpenetration with race, nation, socioeconomic location, and immigration status. It would be a movement that regarded the sexualized subordination of women as a present possibility in many contexts of their lives, including their work, but was prepared to see women as workers, mothers, daughters, sisters, migrants, bearers of various forms of citizenship, and not simply or even primarily potential sexual objects.

It would be a movement that was disinclined to embrace unitary views of women as paradigmatically injured. Although it

32. For a discussion of the American Convention of Human Rights and its impact, see Beth Lyon, *Colloquium: The Inter-American Court of Human Rights Defines Unauthorized Migrant Workers’ Rights for the Hemisphere: A Comment on Advisory Opinion 18*, 28 N.Y.U. REV. L. & SOC. CHANGE 547, 590-591 (2004).

would be alert to the many practices and influences that impede their self-direction and/or position them as hierarchized, gendered subjects, it would be capable of seeing and highlighting women's agency—both in resisting their own oppression and in participating in oppression, including of subgroups of women.

As I think about these orienting commitments of a feminist legal effort to address women's work and gendered work in the global context, it strikes me that these are very much the commitments to which we have come to aspire in much of our contemporary theoretical work. This is a set of problems that would permit us to "walk the talk"—in other words, to put into tangible application these varied, emergent commitments. There is, however, one possible exception.

This program requires us to rethink what we conceive of as a feminist lawyer's role, in ways that are not inconsistent with our theorizing but haven't been as fully fleshed out as the kinds of commitments elaborated above. The lawyer's role in addressing this constellation of problems is not simply about litigating or proposing statutory reforms. It may also be about playing a rhetorical, organizational, or support role in mobilizing a community, about communicating or translating experience from other venues, about deploying critique in institutional settings to stimulate new patterns of thought without knowing precisely where those patterns will lead. We have useful examples of feminist legal scholars who have begun to experiment with performing and advocating this kind of role. Fran Ansley, for example, has written about her role as a participant observer and "rhetorical framer" in labor- and community-based efforts to resist plant closings in Tennessee;³³ she has also described her efforts to produce more concrete understandings of differences between and community among low-wage American and Mexican workers by bringing them together to discuss their work and their circumstances.³⁴ Lucie White has written in her essay *Facing South* about the need for lawyers to stop dispensing traditional stop-gap remedies in their representation of poor communities and instead position themselves as "standing with" those communities, being alert to

33. See Ansley, *supra* note 21.

34. Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America's Eroding Industrial Base*, 81 GEO. L.J. 1757 (1993).

the varied institutional and support roles that it may be useful for them to play, and asking an ongoing series of questions about what is being glimpsed and elided in this effort to share the power to make change with those whom they have traditionally viewed as their constituents.³⁵ A commitment to elaborate and internalize these views of the feminist—or progressive—lawyer's role is the final commitment that feminist legal scholars will need to make before we can productively turn our efforts to this constellation of challenges.

35. White, *supra* note 30. In her vivid, published accounts of her advocacy work, lawyer-activist Julie Su, who has represented migrant women pressed into circumstances ranging from oppressive labor to servitude in the garment industry in Los Angeles, makes the similar point that lawyering on behalf of dispossessed communities can and should involve more sustained and broad-based engagement and collaboration with members of such communities. See Julie Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405, 417 (1998) ("To me, the traditional . . . lawyers, who are not engaged in the workers' lives, cannot represent them in the lawsuit in a way that is true to the workers.").