

## **2 Globalization's challenge to feminist political economy and the law**

A socialist perspective

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This chapter focuses on feminist political economy and the law because of the changes that are occurring in the political and legal regimes that feminists encounter through the process of globalization. New international legal institutions are being constructed that profoundly shift the power structures (and legal institutions) that women have confronted in the twentieth century. This shift in the location of legal power destabilizes the various types of feminist methods that have been constructed over the past century for confronting all aspects of patriarchal economic power: the power of the state, the pervasive and unregulated power of capital, and male privilege. This means that many of the strategies that feminists have used to improve living and working conditions for women no longer have a familiar target. Some targets that were firmly in focus – the state and the corporation – are now more nebulous and increasingly able to sidestep responsibilities and deflect the focus of law (Ciscel and Heath 2001).

Socialist feminism has long been distinguished from liberal feminism for its skepticism about focusing on legal approaches for dealing with social problems and inequality. The typical analysis is to see liberal feminists' demands as reformist, primarily related to gaining equal political and legal rights, while socialist feminists are associated more with analyses and actions based on class distinctions and changing fundamental economic relations.<sup>1</sup> In Canada and other Western industrialized nations the distinction between socialist and liberal feminists has been a real one, with regard to both their political theory and their ultimate objectives, but the notion that socialist feminists are somehow less pragmatic than liberal feminists with regard to issues like the law does not describe the practical political experience.

While the analyses and objectives of socialist and liberal feminisms were markedly different, there were frequent attempts to develop an integrative feminist approach to public policy, specifically with regard to issues of political economy and the law (Matthaei 2001). Feminists in many countries were effective in this and a great deal changed – change that was a direct result of women's activism. Both corporate and state actions have been the target of feminists' attempts to mitigate the effects of state and market forces on women

(Pierson and Cohen 1995). Within the boundaries shaped by the nation-state, feminists have put heavy pressure on states to change their own practices and to design and enforce regulation to restrict the power of corporations.

The main point of this chapter is to argue that the tactics and objectives of feminist action on economic issues need to be reshaped as the nature of the prevailing regulatory regime changes. While the state, corporations and male collective power can be confronted in specific ways under certain relations of ruling, the complexity of changes, such as are occurring through globalization, demands a thorough analysis of the changes in political culture and institutions. Most importantly, it requires a shift in the primary focus on the state and corporations within the state for challenging the conditioning framework under which state actions are undertaken.<sup>2</sup> As international economic law becomes more potent in shaping the parameters for states' actions, more action needs to be developed in relationship to this law and possible alternatives to it.

Discussions of globalization often focus on whether the state is a victim of the international corporate power that is shaping international institutions to support corporate rule, or whether the state has been a willing participant in neo-liberal efforts to reconfigure state power (Weiss 1997; Panitch 1994). The debate is too large to mention all of the variations on these two positions, although this is an important issue because there are variations between states that will affect the strategies of activists within the state (Wood 1999; Hurst and Thompson 1996). In Canada, for example, the federal state has obviously been a prime mover in furthering the codification of international law (by pursuing increasing liberalization in existing international trade agreements and entering into new agreements) to place one ideological perspective in a supreme position to shape the actions of states (McBride 2001; Grinspun and Kreklewich 1994). This has been contested, modified and recontested at the national level, but there is relatively little evidence of success in changing the direction of state actions in the international economic arena (Ayres 1998). That does not mean that collective action dealing with international economic law has been ineffective: certain types of action, such as the concerted effort against the Multilateral Agreement on Investment (MAI), were effective at the international level. However, the action did not force Canada to behave differently; nor has the success of these groups in the international arena changed Canada's subsequent policy. The point is not that the state is an inappropriate target for social action, but that a new and significant arena is opening up and the strategies for dealing with it are embryonic.

The force that is loosely known as "globalization" has put a distinct trajectory to the shape of international economic law. Three separate but related factors influence the construction of a self-regulating market – the major organizing principle of most international economic law.<sup>3</sup> These three forces of globalism are:

- *economic forces*, which are characterized by the dramatic increase both in the mobility of capital and the international organization of production and distribution;
- *political forces*, which are characterized by changes in existing international institutions and the creation of new ones to expand markets and make market-oriented decisions dominant in rules-based systems;
- *cultural forces*, which relate to the hegemony of ideologies that support the spread of self-regulating markets as the primary determinants of social life.

Stressing the three elements of the globalization process is important so that globalism is not construed as an inevitable economic outcome of a stage of capitalism – one that becomes codified by law because it is part of a normal trajectory of international economic forces. Globalization is a result of powerful forces that are intentionally constructing international institutions to pursue specific economic, political and ideological objectives. In this context, international economic law is *not* developing as a codification of existing practices (as one often understands changes in legal regimes); rather, *it is creating economic and political power* through the legal entrenchment of a specific type of economic system that is then accepted as the only legitimate economic organization throughout the world. The shift in power that then occurs is the result of the institutionalization of an ideology in ways that allow no other ideologies or moderating influences to penetrate the international economic legal systems.

This shift in power obviously has different implications for people within different nations. While international law is an extremely powerful force for change in small or weak nations, or in any countries not central to international decision-making, it has less impact on economic, political and cultural institutions in countries that are more closely aligned with the dominant ideology that shapes international law, countries such as the United States. This distinction between the effects of international economic law on the specific circumstances of countries is probably a good basis for understanding the differences in feminist approaches to globalization. Feminists are far from united on the negative effects of globalization, and even when its dangers are recognized there is a wide variety of strategies that seem appropriate to different groups under different circumstances (Benería *et al.* 2000).

Most feminist discourse on globalization does not deal with the legal basis of economic power in the international regime, although when the discourse focuses on this the debate on what type of action is needed is just beginning. But before entering into a discussion of where feminists now stand and what are the most fruitful avenues for action for the future, the limits on dealing with globalization within the confines of national law need to be examined.

### **Feminist political economy and the state**

The globalization process has forced feminists in many countries to focus on the downsizing efforts of governments. In the name of improving the competitive position of national business interests in a globalized economy, many governments around the world are cutting taxes and privatizing state institutions in order to shift resources away from the public sector. As a result, services women struggled to receive are frequently threatened through deliberate decisions by governments – especially through budget initiatives that decrease funding to the public sector and through specific strategies to privatize a wide range of public services (Bashevkin 1998; Crossman and Fudge 2002; Upadhyay 2000).

The focus on state governments' activities as an arena for feminist activism can be effective in countries where governments respond to public pressure through democratic institutions. This activity has appeared even more promising as feminists have drawn attention to the gender implications of a wide range of macro-economic policies that shape government actions on social policy (Bakker 1994, 1996). The recognition that macro-economic policies are not gender neutral but, rather, provide a conditioning framework for state decisions has been an important tool for feminist action. The call for the development of gender-sensitive budget analyses, for example, offers both a strategy for highlighting the negative effects of budget decision-making for women and a rallying point for opposition to neo-liberal government policies (Budlender and Sharp 1998). But there are very serious limits to these types of actions: their success tends to be limited to maneuvering within an accepted framework shaped by overarching neo-liberal designs that are being encrypted through international law. The result is frequently a bizarre demand to show how treating women better will improve economic performance within the neo-liberal regime. This often leads to a lengthy stream of "gender.audits" of government programs that ultimately have little impact on public policy.

In these feminist economic analyses and strategies the focus for action is the nation-state. The underlying premise is that state power is sovereign and, given sophisticated feminist analysis and enough political pressure, might be influenced in a positive way. This is sometimes referred to as a "national-management approach to globalization" (Bergeron 2001: 991). The attempt is to highlight feminist concerns about the effects of globalization and to protect people within the nation from its negative consequences. Feminist activists generally have few illusions about the ease with which change can be brought about and most are highly skeptical about the role of the state as an ally (Cohen 1997). But despite the difficulties of effecting change when neo-liberal forces gain control of governments, there has been at least a domestic arena for discussion, debate and action when the focus is on the nation-state.

Legal approaches to feminist political economy have focused on two main types of actions within the nation, with varying degrees of success: those dealing with legal prohibitions and those dealing with laws that extend social welfare or enabling legislation.

- *Prohibitions*: these actions involve work for legislation that would eliminate economic practices that exclude or harm women. These prohibitions have been an important step towards a social recognition of inequality itself and the harm it does. The most significant of these have been prohibitions against discrimination, particularly those designed to protect women in the workplace, through tax policies and in dealings with financial institutions. Associated with changes in legislation are feminist efforts to eliminate gender bias in all forms of law (Mahoney 1999).
- *Enabling*: these actions involve work for legislation that fosters economic and social programs that enable women and others disadvantaged by a self-regulating market to participate in economic and social life on a more secure basis. Included in this are the whole panoply of publicly provided services, such as public education, healthcare and public infrastructure such as transportation and electricity systems. There have probably been no redistributive devices more significant than public education and healthcare. But also significant were the counter-cyclical programs (like unemployment insurance and social welfare programs) that kept the system, particularly in Western countries, from more disastrous failures during economic crises.

These political projects codifying progressive legal measures were important ideologically: the regulations focusing on prohibiting unfair practices are politically significant in that they imply that self-regulating markets inherently produce inequality. Similarly, the underlying philosophy supporting the co-existence of a substantial public sector within a larger capitalist society implies, either consciously or subconsciously, that the self-regulating market is too brutal to sustain a reasonable society. The counter-cyclical programs implicitly worked and were crucial because the market was prone to failure<sup>4</sup> – or at least it was not self-regulating in a way that was tolerable to human life.

Women and other minorities have had many successes with strategies to enact legal prohibitions and enabling legislation. Usually they were pursued *despite* the overwhelming odds, involving Amazonian efforts that resulted in a great tenacity to bend the system – ultimately in ways that were integral to the very nature of the system itself. However, recognizing the significance of legal gains should be kept in perspective: it is crucial not to exaggerate the extent to which the law has supported women – particularly with regard to economic issues. The capacity of legal discourse to challenge gendered norms and power structures to advance equity is hugely problematic, and any feminist project that focuses on the law (as a solution to a problem) certainly gets its share of criticism from other feminists and other critics on the left (Crossman and Fudge 2002; Backhouse 1999). But it is also important that feminists do not underestimate the important advances women and others have made as a result of concerted political action to control a self-regulating market, or at least reduce the effects of its pure form, within the nation-state.

### **The regime of international political economy**

The state-oriented arena for debate and action is shifting substantially with the growth of international institutions that condition the action of nations. Some of these changes have been the subject of considerable feminist analysis – in particular those associated with structural adjustment policies imposed by the World Bank and the International Monetary Fund (IMF) on less-developed countries (Afshar and Dennis 1992; Elson 1995). Feminists have also focused on international trade agreements and the ways that they can compromise human rights, environmental sustainability and state actions to promote activities other than those provided by market outcomes (Williams 2001; Cohen *et al.* 2002; Hale 1999; Orford 1998).

The particularly disturbing development of the trade agreements is that international trade law, as it is being constructed, is rapidly assuming the role of international government (Clarkson 2002; Schneiderman 2000). The deliberate and conscious attempt to make trade law a world constitution was clearly expressed by the World Trade Organization's (WTO) first director-general, Renato Ruggiero, in a 1995 statement: "We are no longer writing the rules of interaction among separate national economies. We are writing the constitution of a single world economy" (Tabb 2000: 6).

The kinds of accommodations between commercial and social needs that have been painfully worked out over time within nations are being replaced and superseded by international trade agreements whose only purpose is to support the very narrowest of commercial objectives.<sup>5</sup> Governments have had very elaborate roles in capitalist economies, roles that have become increasingly circumscribed with each round of negotiations through institutions that further "liberalize" markets. This does not imply, however, that this circumscribed role for states is in some way in opposition to many individual states' notion of how the world should be shaped. As has been pointed out repeatedly, and as is well recognized by activists who have opposed the extraordinary power of these agreements, many states, other than just the US, have been leading the way in ensuring that they are in place.<sup>6</sup> The problem, then, is not a shaping of state actions by outside forces, but a design of these forces by states so that specific economic and social objectives become much more difficult to negotiate within states themselves. While the extent to which this has actually occurred and how much room the state has to pursue distinct strategies vary considerably with the might and power of individual states, the objective of those involved in furthering an intrusive international regime is clear – they want the state to be less responsive to democratic economic demands from within.

The most intrusive of the new international institutions in shaping the economic structures of nations is the WTO. This organization rules the economic world for one main purpose – to create and expand private markets. In the creation of private markets a specific type of economic system typifies the ideal: this is a system in which state activity does not impinge on the ability of the private sector to undertake all types of economic activity, including that currently in the public sector. While this ideal is far from



existing in reality, the objectives of the WTO are clearly spelled out in its agreements and successive rounds of negotiations are built into the agreements so that this objective can be achieved incrementally<sup>7</sup> (Sinclair 2000; Cohen *et al.* 2002; Shrybman 2001).

Crucial differences exist between the new international legal regimes, like the WTO and the North American Free Trade Agreement (NAFTA) (and their related, quasi-legal bodies the World Bank and the IMF), and those economic legal regimes that operate at the national and sub-national level. These differences relate most fundamentally to the fact that the *international economic regimes established by law have the state as the exclusive subject of law*. This is an important point because the international trading regimes are often characterized as “rules-based” systems, but, unlike national governments, which make rules that everyone must follow, the trade regimes focus exclusively on the ways that governments must behave. It is then up to governments to discipline their subjects to conform to the rules of the international trading regimes.

The WTO is the closest instrument we have to a world constitution. Most nations are in, and those who are not want to get in because exclusion means economic marginalization, if not outright isolation (Hoekman 2002). Because the WTO has one overriding mandate – to create markets – its laws focus on the actions of states that inhibit capital mobility and investor rights (Shrybman 2001). The international economic rules-based system is not intent on regulating the actions of those who trade, but, rather, on regulating governments on both trade and a whole variety of issues involving investment rights. It codifies what actions of states (and sub-national governments) are permissible and in general focuses on removing state power over the market.<sup>8</sup>

The very intention of “liberalization” of markets is to undo the work of millions of women and men within the boundaries of nations whose specific project over centuries has been to get the law to intervene on their behalf to bring about results that were not possible with a self-regulating market.<sup>9</sup> Whatever one thinks about the capacity of law to meet redistributive and equality needs, one thing is absolutely certain: the legal apparatus of globalization and restructuring is a mighty force that has the capacity to make the world, especially the world of women and disadvantaged minorities, even more unequal than it is now, and for many this will mean a more miserable existence. The point to stress is that even if the law does not meet the needs of disadvantaged groups it cannot be ignored. International economic law is shaping up in a peculiar way and is extending its tentacles well beyond economic structures to establish the parameters for political and social organization as well.

### **The feminist debate**

Feminists are far from agreement about the dangers of globalization: some stress the advantages of export-led growth policies on women's employment and see a nexus between equity and growth. These analyses tend to

focus less on the coercive nature of international law itself than on the mitigating measures that need to occur at the national level to protect women and disadvantaged minorities. But among the feminists who are most vocal about the dangers inherent in the legal aspects of the international trade agreements themselves there is considerably less unity on what to do about it.

The most common cry is to say that women want to be consulted and to demand that international institutions like the World Bank, the IMF and the WTO include women in discussions and ensure that women's issues are reflected in policy as it is created. These groups want to "be at the table." Feminist economists who discuss the horrendous problems for women created by WTO policy, for example, call for the integration of a gender perspective into trade policy so that it can be more supportive of gender-sensitive and sustainable human and social development (Williams 2001). Other groups are explicitly "anti." They want no part of any international institutions and would like them to be abandoned. The women's conferences associated with the Asia-Pacific Economic Cooperation (APEC) forums leave no doubt about where specific groups stand and are examples of the many philosophical differences between groups. The group's meeting in Vancouver in 1997 was called the "Second International Women's Conference Against APEC." In contrast, another women's group associated with APEC and funded by the United Nations Development Fund for Women (UNIFEM) is the Women Leader's Network (WLN), which promotes the integration of a gender perspective within APEC (Macdonald 1999). And between these two poles there are a variety of positions that want a transformation of the existing trajectory in international trade perspectives.

The most developed feminist agenda for dealing with the WTO's trade agreements is that of the International Gender and Trade Network (IGTN). IGTN, which was initiated in 1999, is organized into seven regions – Africa, Asia, the Caribbean, Europe, Latin America, North America and the Pacific. Its demands for the WTO's fourth Ministerial Meeting at Doha, Qatar, reflect its recognition of the power of the WTO agenda, particularly in its expanding liberalization initiatives, to compromise food security, national sovereignty and development programs within nations. Three of IGTN's four main demands deal with the removal of whole areas from the rule of the WTO. The areas to be removed are agriculture, intellectual property rights (TRIPS), and trade-related investment measures (TRIMS). Its fourth main demand calls for a renegotiation of the General Agreement on Trade in Services (GATS), mainly so that services in the public sector can remain under state control. But it also calls for the removal within the GATS of the "Movement of Natural Persons," because of the implications of loss of skilled labor from the Global South. This is qualified by saying that removal is necessary "unless more focused attention and corrective mechanisms are defined to protect local labour markets in developing countries" (IGTN 2001: 6).

It is crucial that feminists deal specifically with the existing trade agreements, as IGTN is doing. This requires a tremendous amount of work to



understand the potential of both existing trade agreements and the plethora of new areas being negotiated. The complexity of the agreements makes this a daunting task itself, but one of the successes of the international social movements that are opposed to the trajectory of globalization is the sophistication of the analysis of the trade agreements and the ability to have this information disseminated widely. This is particularly crucial for pressuring governments against support for specific liberalizing initiatives in the successive rounds of negotiations that are occurring at the WTO. However, since the agreements themselves are platforms on which successive structures are erected, undoing what is already there is highly problematic. The inherent penalties on any nation that "opts out" of its previous commitments will prevent any nation from adhering to domestic pressure on these issues, and the specter of a wholesale rewriting of trade law seems a distant and unlikely project.

The biggest danger in working within the structure of the trade agreements is that attempts at redistribution and market control will be pursued in this arena. The most obvious attempt in this direction is to have labor and environmental issues incorporated within the framework of these agreements.<sup>10</sup> It is a dangerous strategy, primarily because it would establish the trade agreements as legitimate governance over areas that in other jurisdictions have rightly been established as separate juridical bodies, with different goals and objectives from the market-creating bodies that deal with issues like trade and investment. The argument here is that separate, distinct international institutions need to be established to regulate capital and effectively to pursue policies of redistribution on an international scale.

### Devil in the details

It is easy to understand why labor and environmental groups in wealthy countries have been attracted to pursuing their issues within the WTO. As the new liberalized regimes make it increasingly easy for large corporations to pursue their objectives of deregulation, the avenues for protection become narrower. The WTO appears to be the most promising forum for imposing discipline on these issues. For those who do not know the specific details of the trade agreements, it would appear logical that any regulation of trade should also regulate trade's influence on labor and the environment. *This would be logical and appropriate if the trade agreements were about trade and if they regulated the actions of corporations.*

But the trade agreements are not about trade as trade is normally understood: they are about guaranteeing the rights of corporations. They are enormously complex documents that do not regulate those engaged in trade (the corporations), but, rather as was noted earlier, the actions of governments that restrict the rights of international capital. As such, they are inherently incapable of regulating the actions of large international corporations. Any discipline of corporations is still left to states, and as states' regulatory power declines (through race-to-the-bottom strategies fostered by global competition or by directives from the WTO), the will or ability to regulate weakens.

So far the main proposals for regulation are aimed at the practices of developing countries. For example, the "core" labor rights proposed by international labor groups for inclusion in the WTO deal with child labor, slave labor, collective bargaining, prohibitions against discrimination, and equal pay (Russell 1998; Swenarchuk 2000). These are not issues that will affect most wealthy countries, since they tend to have at least minimal legislation on all of these issues. But poorer countries are often either too weak or have governments that are too corrupt to enforce these standards on the international corporations operating within their boundaries. Also, with a focus on "core labor rights" the spotlight on abuses will focus on less-developed countries and shift the debate away from the effects of trade agreements and liberalized markets on *lessening* legal protection elsewhere.

Less-developed countries have not been supporters of labor and environmental clauses, and for good reasons. If strong social clauses are included in free trade agreements the effect on poor nations could be devastating. If poorer countries must abide by the employment and environmental standards of wealthy countries and at the same time maintain the same type of capitalist economic system that benefits wealthy, not poor countries, as is mandated by the trade and investment agreements, they will be put in impossible positions. They are essentially barred from pursuing collective-type public policies that might better meet their socio-economic needs. It must be stressed that the inclusion of social, labor, and environmental clauses holds little threat to corporations in wealthy countries. The corporations within their own national boundaries increasingly are escaping control, through the deregulation processes, and the very minimal requirements of the social clauses are easy to meet and pose no threat to business activities within wealthy nations.

Aside from the differential impact these kinds of arrangements would have, setting up trade law as the template for all economic law must be avoided. The main concern is that as piecemeal attempts are made to construct an international regulatory regime through the trade agreements, these agreements will formally be constructed as the constitution for international society. Certainly international capital needs regulation by international institutions, but this has to be developed independently of trade and with international corporations, rather than nations, as the subject for law.

## **Strategy**

The question of whether it is possible to develop a strategy that would change the current trajectory is a serious question because sometimes in the history of the world the changing circumstances of the disadvantaged were so overwhelming and the power they confronted so great that no viable strategy was possible. That is, nothing these people did was going to change the outcome. The most obvious example was the power of Europeans over indigenous people in North America. The annihilation of the culture of these people and the people themselves did not occur because they chose the wrong strategies

– they were brutally overwhelmed by superior political and economic power. In the current rush to “liberalize” markets governments themselves are now aggressively leading the assault on state powers and are excessively unreliable allies in attempts to regulate markets and protect collective interests. As the legal conditioning framework gets established on the international level the disadvantaged are faced with extremely serious problems: who, at the international level, represents women, labor, aboriginal people, racial minorities, and all the disadvantaged? And, equally significantly, how can the interests of civil society be realized in international economic law?

In the face of such serious difficulties, proposals that aim for radical change in the design of international economic law appear utopian and are open to criticism as being exceedingly impractical under the prevailing circumstances. Discussions about the reinvention of globalization to “collectively define viable economic, social and political frameworks that can guarantee gender equality, sustainable livelihoods, and human rights for all” need to occur within the context of what currently exists.<sup>11</sup> There needs to be a common vision of how an integrated global economy could be shaped, and feminists certainly need to be a part of this discussion. But there also needs to be a vision of how to deal with the immediate issue of capital control at the international level. It is crucial that feminists not pursue the path of least resistance, by supporting capital-controlling measures within the trade agreements themselves. This will divide the international feminist networks and have little effect on the enormous power of the international corporations themselves.

The following will deal with only two of the many strategies that need a coherent analysis among feminists. It is important to note, however, that these strategies focus only on international institutions; feminists will obviously need to continue to pursue action at the local and national levels.

### *Economic pluralism*

There is an urgent need to begin what will be a long-term project to counter the very politically successful propaganda of the right with regard to the efficiency of the self-regulating market. This could begin with analyses that show the economic inefficiencies and real human misery which follow from imposing a uniform economic system around the world.

The call would be for an ability to recognize *economic pluralism* in international trade agreements. A tolerance for economic pluralism requires the recognition that different goals, conditions and cultures throughout the world require very different solutions to problems. One system, the Western system based on a US kind of economy and social system, will not serve the needs of all people in all circumstances.

The attempt of international trade agreements to impose uniform economic and social policy worldwide creates impossible positions for people in countries that have vastly different problems and resources, in addition to different values and goals. People in various parts of the world have devised

economic and social systems that are different from the US system because, in part, of the need to accommodate their own conditions, both geographical and cultural, that are extremely different. But countries are being forced to change many of these systems as a result of trade liberalization, and, however difficult it will be for many groups in wealthy countries, the problems arising from conformity are infinitely more serious for poor countries with very different types of social and economic organizations.

In the process of demanding economic uniformity the corporate sector has taken away from less-developed countries innovative ways in which they might be able to find unique solutions to their problems. Poor countries will never be able to escape poverty if they are required to abide by the employment and environmental standards of wealthy countries while at the same time they are required to maintain a competitive, market-based economic system.

The case for economic pluralism would be a natural political position for all feminists, but specifically for socialist feminists. In recent years the political activism of minority and disadvantaged groups has made more visible the different circumstances of groups of people in our society. This has led to the demand for distinct social policy to recognize these different needs. This pluralistic approach to public policy is an important starting point for an analysis that recognizes the need for pluralism in social and economic systems. As a strategy for international feminists, its overarching framework would cross the North-South divide that frequently inhibits a strong feminist voice in international issues.

Any attempt to change the international rules seems an impossible task, particularly because the power of the corporate sector has been so enhanced by the changes in the trading rules so far. However, the very real likelihood of the failure of these policies to meet the needs of most of the people in the world is going to give new approaches a chance to flourish. But, this is obviously a very long-term vision because it is a strategy that is least likely to have the support of the major interests that have developed the world trading system and its laws as they now exist. This does not mean that this is a project that should be abandoned, but, rather, that it should be accompanied by visions of action that are possible under the current regime.

### ***Institutions to control capital***

A stronger regulatory regime to address the threats posed by liberalized financial markets has received attention, particularly in light of the vulnerability of all countries to the contagious effects of financial market failures. Financial deregulation and the consequent hyper-mobility of finance capital create problems that even those normally in favor of deregulated markets realize create a dangerous situation. But the destabilizing effect of deregulation on labor, the environment, and social systems has not yet reached the critical point to trigger serious thinking about international institutions to constrain corporate power.

In designing new international institutions, *the focus for discipline must shift from the nation to the international corporation*. Virtually all of the international regulatory regimes work through the nation-state: they assume that states are responsible for the discipline of corporations. But the very rationale for capital mobility is to take advantage of the economic climate in countries that are either politically corrupt or too weak to protect their people or their environments. International institutions that disciplined corporations, rather than countries, would begin to replicate some of the work of national institutions, work that was effective when nations exerted more power over corporate behavior.

Just as the WTO has been established to work internationally to expand markets, parallel institutions could be established to regulate the corporations engaged in international production. Corporations like Disney in Haiti, Shell in Nigeria and Canadian mining companies in Russia and Spain are not easily disciplined by the countries whose people and environments they exploit. These corporations understand the ways in which their operations outside wealthy Western nations offend, for example, the core labor standards which trade union groups want to see observed internationally. An international body that specifically regulated their behavior – one whose regulations were enforced with the same power that trade legislation is enforced – would obviate the need to rely on nations to control corporations which are often more powerful than the nations themselves.

Related to the institutions to control capital is the need to establish, internationally, redistributive functions now in the purview of the nation-state. As long as enormous disparities exist worldwide, the corporate sector will be able to blackmail nations into submitting to their demands for a “favorable” climate for business. This redistributive function requires the ability for an international governing institution to raise money and to decide where money should go. Financing for global governance now relies primarily on taxing national governments, an approach which is not particularly fruitful for raising substantial amounts of money.

Proposals to shift the burden from nation-states to the corporations that benefit from globalization include a tax on international financial transactions (the Tobin tax) in order both to discourage excessive speculation and to raise money. Another is to charge for the use of common global resources. Economic rents for resource use are common within many countries and this is a principle which could be expanded to deal with global resources which are currently “free.” Other possibilities suggested by the Commission on Global Governance are designed around market instruments for use of the international “commons,” including user fees for ocean, non-coastal fishing; parking fees for geostationary satellites; a surcharge on airline tickets for use of congested flight lanes; a charge on ocean maritime transport to control pollution; and special user fees for activities in Antarctica.<sup>12</sup> These types of activities are taxed within national boundaries and it is reasonable that as the national boundaries are removed, international governance should be financed by the groups that benefit substantially from the globalization process.



## Conclusions

Feminist political economy "has yet to move significantly from a critique to reconstruction."

(Mutari 2001: 396)

While feminist state-focused legal activity is recognizing the need to shift from the local and national to the international, the strategies for dealing with economic issues are exceedingly underdeveloped. The political strategies that we learned when dealing with national or sub-national governments are ineffective when governance is as anonymous and unresponsive as it is at the international level: the construction of an international economic legal regime has the state as its subject, something that in itself discourages participation by minorities or disadvantaged groups.

Feminists have been concerned about the development of international economic law through trade agreements without the development of parallel laws that deal with labor, social, and environmental protections. But because the trade agreements have little control over the activities of international corporations the danger of insisting that the trade agreements deal with these issues is that these agreements can become established as the overarching framework for *all* international legislation, thereby subsuming basic social rights under the market-liberalizing objectives of those agreements. Rather, as international law gets constructed feminists should work for the separation of powers, not the integration of them under the auspices of trade.

This does not mean that feminists can ignore the agreements and work only in other forums, but that the focus for the agreements should be on their details and the ways that they are being constructed. Their details, particularly as they are now being negotiated within the GATS, are extremely important in furthering the deregulation and privatization objectives of many corporate, government and quasi-governmental bodies. These objectives, particularly as they apply to social programs and any other state-centered activities, should be acutely monitored and ultimately opposed because they place at risk all of the programs that feminists and other equality-seeking groups have established within their national and sub-national governments.

## Notes

- 1 It is common for books on feminist theory to structure an analysis on the distinction between different kinds of feminisms to deal specifically with liberal, socialist and radical feminism. See, for example, Bryson, V. (1992) *Feminist Political Theory*, London: Macmillan Press; Eisenstein, E. (1984) *Contemporary Feminist Thought*, London: Unwin; Freeman, J. (1975) *The Politics of Women's Liberation*, New York: Longman; MacKinnon, C. (1989) *Towards a Feminist Theory of the State*, Boston, MA: Harvard University Press; Jagger, A. (1983) *Feminist Politics and Human Nature*, Brighton: Harvester; Spender, D. (1983) *Feminist Theorists*, London: Women's Press; Tong, R. (1989) *Feminist Thought*, London: Unwin Hyman; Vickers, J., P. Rankin and C. Appelle (1993) *Politics as if Women Mattered*, Toronto: University of Toronto Press.



- 2 The argument that the actions of social movements must change with the greater integration of states is most commonly made in connection with the political changes in Europe. See, for example, Marks and McAdam (1999).
- 3 The exception is human rights law, which is a poor cousin to trade law – at least in terms of enforcement at the international level.
- 4 The concept of “market failure” is interesting because of its political associations. For neoclassical economists, it refers to the market’s failure to behave as they have theorized it should.
- 5 The extreme narrowness of these objectives is recognized within the WTO itself (Esty 2002).
- 6 Canada, in particular, has been aggressively pursuing trade liberalization policies both in the Americas and through the WTO (Clarkson 2002).
- 7 Texts of all WTO agreements can be found in World Trade Organization, the Legal Texts; available at <http://www.wto.org/wto/>. Also, see especially World Trade Organization Secretariat (1999) *The GATS: Objectives, Coverage and Disciplines*, Geneva: WTO.
- 8 Of course, this is the ultimate goal and the organization is acutely aware that it is a long way from fully achieving it.
- 9 Even economists who have firmly supported the development of the WTO in the past recognize the limits of neo-liberal principles for the realization of social welfare, economic development and democracy. See, especially, Stiglitz (2002).
- 10 This is the position of the International Confederation of Free Trade Unions (ICFTU) and the Trade Union Advisory Committee (TUAC) of the Organization for Economic Cooperation and Development (OECD).
- 11 The quotation is from the Association for Women’s Rights in Development (AWID) call for papers for its Ninth International Forum on Women’s Rights and Development, “Re-inventing Globalization,” Guadalajara, Mexico, October 2002.
- 12 See *Our Global Neighborhood: The Report of the Commission on Global Governance*, Oxford: Oxford University Press, 1995.

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