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Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of Cooperative Production?

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INTRODUCTION

Professor Sassen argues that we need a new analytics to understand gendering in today's global economy.¹ She maintains this position not because gendering or the valorization and devalorization of different roles associated with gender has not occurred before, but because the process that is underway now--as local economies lurch and grind to mesh with the emerging global economy--is different in both character and magnitude with what has been observed before.² I have no doubt that this is true. However, in my comment for this symposium, I would like to focus first on what is similar between the problems of women in the local or national economy and the global economy. I will do this by analyzing the problems that women face whenever they participate in production in cooperation with men, whether it be in economic or social relationships. I will also briefly discuss the role of law in solving these problems. Finally, once I have established the basic problems of women engaging in production with men, I will examine the new implications or problems that are added to this process by the phenomenon of globalization.

I. THE PROBLEM OF COOPERATIVE PRODUCTION

* Professor of Law and Charles L. Whistler Fellow, Indiana University School of Law, Bloomington. J.D., University of Michigan, 1981; Ph.D. in Economics, University of Michigan, 1984. I would like to thank Professor David Fidler for useful discussions contributing to this Comment and Nicole Daniel for her able research assistance.

1. Saskia Sassen, *Towards a New Analytics to Understand Gendering in Today's Global Economy*, 4 *IND. J. GLOBAL LEGAL STUD.* 7, 9 (1996).

2. *Id.* Professor Sassen argues that the current discussion of globalization in the academic literature is too focused on the "first" labor market of high-paid, high-tech information jobs while ignoring the "second" labor market of low paid supply and manufacturing jobs which accompanies and supports the first labor market. The gendering effect of globalization is to valorize the high paying, high-tech information jobs populated mostly by men over the low paying supply jobs and manufacturing jobs populated mostly by women.

Much of human endeavor can be thought of as a problem of cooperative production.³ People control various resources including land, steel, water, wood, money, strength, skills, and intelligence that can be made more valuable through combination with the resources of others. Not only economic relationships can be thought of in this way. If one takes account of non-pecuniary benefits, one can also think of social relationships, love, and marriage in this way.⁴ Of course, combining efforts and resources with other people is not always simple. Two fundamental problems arise in the coordination of efforts.

The first problem that arises in cooperative production is that the parties have to decide how best to use their combined resources. Garrett Hardin addressed this problem in his classic article, *The Tragedy of the Commons*.⁵ In that article Professor Hardin posited the cooperative production problem of a village with a common pasture and several villagers each of whom own sheep. Hardin argued that, absent some restraint, the villagers would take account of only the personal benefits of grazing additional sheep and not the common costs of depreciation of the meadow. The result would be that the villagers would graze too many sheep and destroy the commons and the value of their joint production.⁶ Although an extreme example, Hardin's parable does demonstrate the importance of maintaining some mechanism for coordinating cooperative production. The law can be used to solve this problem either by enforcing some collective decision on joint production, perhaps by specifying how many sheep each villager can raise, or by specifying individual entitlements and enforcing negotiated solutions between the parties regarding joint production, for example dividing the commons into private tracts of land that individual villagers can use or let out as they see fit.

The second problem that can arise in cooperative production is determining how to divide whatever surplus results from the endeavor. For example, if grazing 100 sheep in Hardin's commons results in 150 sheep next year, who gets to keep the fifty extra sheep? Unlike the previous problem of coordinating joint production to maximize surplus, the problem of dividing the surplus is a zero-sum game in which a benefit to one party necessarily comes

3. EDMUND S. PHELPS, *POLITICAL ECONOMY: AN INTRODUCTORY TEXT* 85-111 (1985).

4. Carol M. Rose, *Women and Property: Gaining and Losing Ground*, 78 VA. L. REV. 421, 431 (1992).

5. See generally Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968) (presenting economic analysis).

6. *Id.* at 1244.

at the expense of another party.⁷ The law can also be used to solve this problem either by enforcing a collective decision on the division of the surplus, or by enforcing private property rights and private agreements concerning the division of any surplus. Even when the latter solution of private property, bargaining, and markets is used to divide the surplus, the law is sometimes employed as a means to rule out some of the harshest possible outcomes of this atomistic process.⁸ For example, the law might prohibit child labor or discrimination on the basis of race or sex.

The economy, whether at a local, national, or global level, can be thought of as a problem of cooperative production. At any of these levels, there are many resources that can be productively employed in joint production to people's benefit: natural resources, capital, and labor. Moreover, since I am discussing the benefits of cooperative enterprise generally, there is no reason why we must limit our consideration to only pecuniary relationships and surplus. As previously mentioned,⁹ people's beneficial social relationships can also be thought of as joint production processes. In short, vast potential surplus exists in the economic and social relationships among people at the local, national, and global levels. As exemplified in Hardin's sheep parable, the problem lies in deciding how best to use these resources, and how best to divide whatever surplus results.

II. THE PROBLEMS OF WOMEN IN THE DIVISION OF THE COOPERATIVE SURPLUS

In general, women have never fared as well as men in the problem of dividing the cooperative surplus from economic or social relationships. In 1980 the United Nations estimated that although women did two-thirds of the world's work, they earned only one-tenth of the world's income and owned only one-hundredth of the world's property.¹⁰ Although the exact proportions of the economic inequity suffered by women varies from country to country, the basic pattern of more work and less remuneration seems stable across the

7. Rose, *supra* note 4, at 428.

8. See Robert Cooter, *The Cost of Coase*, 11 J. LEGAL STUD. 1, 19 (1982).

9. See generally Rose, *supra* note 4 (analyzing the benefits and disadvantages of cooperative property interests).

10. Emily MacFarquhar et al., *The War Against Women*, U.S. NEWS & WORLD REP., Mar. 28, 1994, at 42, 42. See generally Shelly Wright, *Women and the Global Economic Order: A Feminist Perspective*, 10 AM. U. J. INT'L L. & POL'Y 861 (1995) (discussing women's work in the informal or hidden economy that goes unmeasured by conventional economic analysis).

planet.¹¹ Although harder to quantify, it seems fair to assert that women often contribute more to social relationships with men and enjoy less of the surplus from these relationships. Worldwide, women do the majority of work in maintaining the household and rearing children,¹² yet are more likely than men to be caught in a physically abusive or exploitive relationship.¹³ The basic reasons why women fare so poorly in the division of the cooperative surplus with men are that, in all possible means of exchange, women suffer disadvantages due to their physical differences from men as well as cultural and religious beliefs about the appropriate roles of women.

First, there is the possibility of physical coercion in exchange and thus in the division of the cooperative surplus. Although economists commonly assume that exchanges are voluntary and therefore mutually beneficial, this would seem a naive assumption with respect to dealings between some men and women. The relevance of coerced exchanges to the problems of women is evidenced by a partial listing of the topics of concern at the recent International Women's Rights Conference held in Toronto: female infanticide, forced marriage, dowry murder, domestic violence, sexual slavery, and rape.¹⁴ Women are generally at a physical disadvantage in coercive dealings with men. Moreover, cultural norms sometimes sanction violence against women under the rubric of the family order and female obedience.¹⁵

Second, even when women are not physically coerced in their joint production efforts with men, they are often at a disadvantage in bargaining for the surplus from their cooperative endeavors. Women's direct physical ties to their offspring leave them with high needs and low alternatives through much of their adult lives—a very poor bargaining position. Certain cultural norms or practices such as female subservience, the woman as homemaker, and polygamy can further act to undermine women's bargaining power.¹⁶ It is

11. MacFarquhar et al., *supra* note 10, at 44.

12. Wright, *supra* note 10, at 867-68.

13. Rose, *supra* note 4, at 443. See Elizabeth Evatt, *Ours By Right: Women's Rights as Human Rights*, 7 HARV. HUM. RTS. J. 295, 296 (1994) (book review).

14. See generally OURS BY RIGHT: WOMEN'S RIGHTS AS HUMAN RIGHTS (Joanna Derr ed., 1993) (a collection of essays presented at the Toronto conference). For an essay reviewing some of the general themes of the Toronto conference, see generally Evatt, *supra* note 13, at 296. See also *Organization of American States: Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, 33 I.L.M. 1534 (1994); MacFarquhar et al., *supra* note 10, at 45.

15. Evatt, *supra* note 13, at 296-97.

16. *Id.*

difficult to effectively bargain with one's "master" either as an employee or as a wife.

Finally, as Professor Carol Rose has argued, because women are more cooperative than men, or at least perceived to be more cooperative than men, women will generally do worse than men in the division of the benefits of their joint endeavors because men will have a more credible threat to leave the cooperative venture.¹⁷ Women will suffer in bargaining because of their cooperative nature, real or perceived, despite the fact that society as a whole will benefit from the increase in joint productive endeavors women's cooperation makes possible.

Markets may sometimes limit the extent to which women can be exploited in bargaining by providing them with alternatives. If an employer or customer attempts to take advantage of a woman's poor bargaining position in negotiating the terms of an exchange, the woman may take her productive resources elsewhere. However, markets are not perfect and have themselves proven subject to cultural biases and discrimination. Women may suffer lower wages in the labor market because biases against female education and in favor of female child rearing lower women's productivity in the paid labor market,¹⁸ and because cultural roles shunt women into lower paid professions.¹⁹ Moreover, even putting differences in productivity and occupational choice aside, empirical studies demonstrate that women are consistently paid less than men for the same work.²⁰

The law might be used to gain women a greater share of the cooperative surplus from economic and social relationships. It is fundamental to the efficient and equitable undertaking of cooperative production, under either a collective or atomistic system, that all people be secure from violation of their bodily integrity and free from physical coercion in their business and social dealings.²¹ Effective laws protecting women from rape, murder, and physical

17. Rose, *supra* note 4, at 430.

18. ROBERT H. FRANK, *MICROECONOMICS AND BEHAVIOR* 503 (1991).

19. See generally Barbara Bergman, *The Economics of Women's Liberation*, CHALLENGE, May-June 1973, at 12 (arguing that the most important manifestation of employer prejudice is the desire to restrict women to spheres which are viewed as proper for them).

20. Glen G. Cain, *The Economic Analysis of Labor Market Discrimination: A Survey*, in 1 HANDBOOK OF LABOR ECONOMICS 693, 750-51 (Orley C. Ashenfelter & Richard Layard eds., 1986) (surveying a variety of studies to show that women's wages as a percent of men's vary from 40% to 93% even after adjusting for differences in productivity and profession).

21. Richard Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193, 1195-96 (1985).

coercion are a prerequisite to any well-ordered society. In addition, the law could be used to ameliorate or redress some of women's disadvantages in bargaining and the market. For example, laws requiring men to bear (at least) financial responsibility for their offspring would help alleviate the pressure of needs on women in bargaining. Moreover, government programs promoting female education in all fields, combined with guarantees of equal rights for women and prohibitions on sex discrimination would help provide alternatives for women in bargaining and redress market imperfections. Not surprisingly, such government initiatives have been a goal of feminists not only at the local level, but also in national and international arenas.²²

III. THE EFFECT OF GLOBALIZATION ON WOMEN AND THEIR PROBLEMS IN GAINING A SHARE OF THE COOPERATIVE SURPLUS

What are the effects of globalization of the economy on this problem? Will globalization help or hurt women in their efforts to gain a greater share of the cooperative surplus from economic and social relationships? Perhaps not surprisingly for any such phenomenon that is so multi-faceted and pervasive, I believe the effect of globalization on women will be both positive and negative.

On the positive side, globalization of the economy will provide women with more opportunities, limiting the extent to which they can be exploited in bargaining. This is no panacea. As I have previously discussed, markets are also subject to discrimination against women. Indeed, as Professor Sassen's work demonstrates, the pattern of shunting women into low paid positions and occupations that has been historically evident in local and national economies is also evident in the globalized sectors of the economy.²³ The jobs for women in the globalized sector also seem of limited use in terms of providing women with opportunities during their high need child-rearing years since there seems to be a decided preference on the part of employers for young women without children.²⁴ Nevertheless, employers in global export industries decidedly

22. Evatt, *supra* note 13, at 297. See MacFarquhar et al., *supra* note 10, at 44; Aihwa Ong, *Strategic Sisterhood or Sisters in Solidarity?: Questions of Communitarianism and Citizenship in Asia*, 4 *IND. J. GLOBAL LEGAL STUD.* 107 (1996).

23. SASKIA SASSEN, *THE MOBILITY OF LABOR AND CAPITAL* 113-14 (1988); Sassen, *supra* note 1, at 14.

24. SASSEN, *supra* note 23, at 113.

prefer female employees,²⁵ and to the extent that these jobs provide opportunities and skills previously unavailable to women in these industries, they should improve women's bargaining position with respect to their traditional economic and social relationships.

A second aspect of globalization that will have both positive and negative implications for women is the breakdown of local culture and customs. In part this breakdown occurs as a result of local economies' efforts to adapt to and accommodate the global economy, and in part it occurs due to people's exposure to other cultures.²⁶ The export of American television and films has literally provided a world stage for American culture. As previously discussed, some cultural norms such as male-only education, female obedience, and the woman as homemaker undermine women's bargaining power and serve as the basis for discrimination against women. To the extent that globalization lessens these cultural norms it will provide women with greater opportunities and improve women's bargaining position *vis-a-vis* men. However, some cultural norms, for example the extended family, can protect women when they are vulnerable and in their dealings with men. To the extent that globalization breaks down cultural norms that are protective of vulnerable women and meet women's needs, women will of course suffer.

Finally, as Professor Sassen has pointed out, globalization of the economy and the recent move towards privatization have tended to undermine the role of the nation-state in governing the affairs of people.²⁷ Globalized sectors of the economy still need a physical base of operations and local support services, and this foundation provides a modest opportunity for national regulation.²⁸ However, the recent advances in communication and transportation and the hyper-mobility of capital leave some industries just beyond the reach of effective national regulation. If a nation enacts regulation that the officers of a mobile industry do not like, or even if they do like it but it puts them at a competitive disadvantage, the nation stands to lose that industry to another nation without similar regulation. This is not good news for women since, as discussed previously, one role of government in managing the process of

25. *Id.*

26. *Id.* at 97.

27. Sassen, *supra* note 1, at 17; Saskia Sassen, *When the State Encounters a New Space Economy: The Case of Information Industries*, 10 AM. U. J. INT'L L. & POL'Y, 769, 774 (1995). See also Zillah Eisenstein, *Stop Stomping on the Rest of Us: Retrieving Publicness from the Privatization of the Globe*, 4 IND. J. GLOBAL LEGAL STUD. 59 (1996).

28. Saskia Sassen, *supra* note 1, at 14.

cooperative production is to ameliorate the harshest outcomes of the process such as exploitation and discrimination. To the extent that regulations protecting women from exploitation and discrimination place international businesses at a competitive disadvantage, women will no longer be able to seek effective redress through national regulation. Accordingly, enforceable international conventions against exploitation and sex discrimination, like those proposed at the recent U.N. women's conference in Beijing,²⁹ become even more important to the future fortunes of women in the global economy. If the nation-state cannot be counted on to independently perform its role of protecting vulnerable members of its society from exploitation and discrimination, then effective international conventions must be developed to encourage States to perform this role.

CONCLUSION

Whether the process of globalization of the economy will improve or erode the lot of women in economic and social cooperative production is yet to be seen. Globalization may have some beneficial effects for women by providing them with new opportunities and skills that will improve women's productivity and bargaining position relative to men. Globalization may also break down some of the cultural norms that hold women back, although other cultural norms that aid women may also be lost. State initiatives to educate women and prohibit their exploitation and discriminatory exclusion from job opportunities will also be important in redressing women's historic disadvantages in exchanges with men. As globalization of the economy undermines the ability of nation-states to effectively govern international business concerns and undertake such initiatives, effective international conventions to encourage States to undertake such initiatives must be developed. Accordingly, with the globalization of the economy, feminists must seek solutions to women's problems not only on the local and national levels, but on the international level as well.

29. Eisenstein, *supra* note 27, at 92.