

Structural Inequalities in the Global Legal System

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Saskia Sassen, *Globalization and Its Discontents: Essays on the New Mobility of People and Money*. New York: New Press, 1998. Pp. xxxvi + 288 pages. \$25.00 cloth; \$15.95 paper.

Bill Maurer, *Recharting the Caribbean: Land, Law, and Citizenship in the British Virgin Islands*. Ann Arbor: University of Michigan Press, 1997. Pp. xvii + 301 pages. \$44.50.

Anthony Woodiwiss, *Globalisation, Human Rights, and Labour Law in Pacific Asia*. Cambridge: Cambridge University Press, 1998. Pp. xii + 316 pages. \$64.95 cloth; \$24.95 paper.

Outside the Immigration Office

My green card arrived in the post this week, to my intense relief. The six monthly treks from Santa Barbara down to Los Angeles to renew my visa status over the past five years is an experience I am pleased to have behind me. These treks meant having to leave home in the early morning hours in order to reach Los Angeles by 3 a.m., just in time to get into line with hundreds of other “aliens” already camped out on dirty sidewalks outside the Immigration and Naturalization Service (INS) office. They involved witnessing the desperation and fear of mostly non-English-speaking people being herded into order by blustering security guards bellowing too-quickly-spoken orders on megaphones. These trips meant submitting to these guards who non-

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chalantly displayed their gun holsters to bedraggled women, men, children, and grandparents, all anxious to stay warm and find toilet facilities for wailing toddlers. They revealed the incongruities of a pink desert sunrise over corporate skyscrapers and the deep shadows of inner-city degradation and humiliation. And they underscored a kafkaesque world of irrational legal bureaucracy, where briefcase-wielding, cellphone-speaking lawyers apparently hold the key to a stamped passport.

Perhaps most dramatically for me, these trips to Los Angeles emphasized the varieties and forms of legal production; for, around 8 a.m., after the doors of the INS office had already been open for two hours, another world of legal intelligence in the form of corporate lawyers began emerging out of taxis, company cars, and chauffeured limousines. Having grabbed their Styrofoam-packaged coffee and breakfast burritos at the same mobile street stand as myself and my “alien” colleagues, these corporate practitioners then disappeared into marble and glass worlds of computers, digital organizers, support staff, conference calls, financial advice, international arbitration, and stock market figures. What, I wonder, did these corporate lawyers think each morning of the immigrants patiently standing for hours in a line that snaked around the city block? Did they see us, and if so, did they care? More importantly, is it possible to reconcile their world of “law and order” and its management of a global financial economy and transnational market regulation with a very different conception of law and order being claimed at the INS office which seeks to uphold ideals of state borders, geopolitical integrity, and accompanying concepts of citizenship and a nationalist identity? The distance between how global corporate lawyers and INS officials think about law, and its ideological, political, and spatial implications, seems—in this brief snapshot of downtown city living—overwhelmingly enormous.

State Versus Global Law

This essay on global legal processes builds upon a vast literature from scholars of many disciplines who attempt to define, describe, and predict what is meant by “globalization.” Predicated on an increasing movement of people, ideas, capital, and objects within and between places, globalization evokes various forms of change in terms of how we conceptualize space and time. I do not intend to define globalization (see Held et al. 1999; Giddens 1999; Arrighi & Silver 1999; Jameson & Miyoshi 1999; Featherstone et al. 1995; Hannerz 1996; Appadurai 1999). However, I think it is important to realize that, whatever one’s views, globalization involves both the economic robustness of certain state systems and a concurrent decline of others. As argued by Pierre Bourdieu, globalization:

is a myth in the strong sense of the word, a powerful discourse, an *idée force*, an idea which has social force, which obtains belief. . . . It ratifies and glorifies the reign of what are called financial markets, in other words the return of a kind of radical capitalism, with no other law than that of maximum profit, an unfettered capitalism without any disguise, but rationalized, pushed to the limit of its economic efficacy by the introduction of modern forms of domination, such as “business administration,” and techniques of manipulation such as market research and advertising. . . . In short, globalization is not homogenization; on the contrary, it is the extension of the hold of a small number of dominant nations over the whole set of national financial markets. (1998:34–38)

Unlike Bourdieu, whose more complex definition stresses that all nation-states are not equal, most analysts of globalization generally fall into two camps: on one hand are those who write about the endurance of the nation-state despite the speeding up of movement across borders (e.g., Hirst & Thompson 1996; Kahler 1987), on the other are those who write about the decline of the nation-state (e.g., Ohmae 1996). This oppositional rhetoric indicates that globalization analysts either conceive of law primarily as an instrument of the nation-state (the view promulgated by the INS lawyers) or as a tool for shaping new arenas of transnational legal activity that best serve the increasing demands of a global political economy (the position promoted by “global city” lawyers).

In my discussion, I review three books about law and globalization that suggest that these two positions are not as distinct or as divergent as they may appear. Although the state lawyer and the global lawyer and their respective legal arenas, rationales, strategies, and expertise apparently operate through different levels of power and scale and with very different concerns, their viewpoints are not mutually exclusive nor incompatible. It can be argued that the global arena, however defined, is an extraversion of state control and that it in fact intrinsically relies upon the continuing enforcement of law through the nation-state and its international agencies and capabilities (Fitzpatrick, in press: Ch. 6). This is not to say that the nation-state will remain static and unresponsive to economic and political pressures and opportunities lying outside its territorial borders; in fact, it never has. Nor is anyone suggesting that state and global activities necessarily occupy the same geographies of operation, pace of control, or mode and focus of governmentality (Blomley 1994; Darian-Smith 1999). State sovereignty and state law *have* been important in sustaining, servicing, and enforcing global economic operations, and *will remain so* in the foreseeable future. In short, nation-states are crucial in modifying and negotiating the outer limits and substantive content of what some analysts are rather banally calling “global law.” More explicitly, it is the West, most obviously the

United States, that is determining the function and form of this so-called global governance.¹

Grassroots Globalization

In an attempt to move away from the polarized and rather predictable debates about globalization as either an extension of modernity or a new era that is qualitatively different from all that has gone before, I bring to the fore a discussion concerning how law in global contexts may be affecting ordinary people. I take seriously the need to incorporate a grassroots approach into any exploration of relations between global processes and legal attempts to govern and control individuals and communities (Appadurai 2000). A “grassroots” approach means a perspective that takes into account the obviously poor and powerless on the margins of society, be it on the basis of color, gender, ethnicity, or illegality. It also includes the typical working-class person who is not usually considered a “player” on the international scene, and whose capacity to even think about participating in the successes of “triumphant” capitalism is rapidly diminishing.

The everyday person represents a subject position generally ignored by sociolegal theorists; however, this fact should not make this subject any less significant.² A grassroots approach that stresses common people highlights the conceits of legal analysts who look only at privileged domains of legal interaction among lawyers, judges, business people, and entrepreneurs (e.g., Dezalay & Garth 1996; Gessner and Budak 1998; Nelken 1997). A grassroots approach to law and globalization provides a more-productive, focused subject position through which to rethink what we mean by law within and without the nation-state jurisdiction.³ Finally, and this is a crucial point, a grassroots perspective that stresses the involvement of ordinary people in globalizing processes suggests that legal practitioners do not always control legal subjects and, as a consequence, a top-down, causal relationship between law and its implementation should not be pre-

¹ Telling reminders of U.S. power are its 1999 refusal to ratify the Comprehensive Test Ban Treaty and the new International Criminal Court. The United States is currently lashing out at the United Nations for its assumption of being a new centralized global authority. In the words of one analyst, “It’s an old story—the story of a strategically unchallenged dominion, at the apogee of its power and influence, rewriting the global rules for how to manage its empire” (Bennis 1999, p. 2). Senator Jesse Helms, as chairman of the U.S. Foreign Relations Committee, unashamedly and revealingly endorsed this position in his address to the UN Security Council in January 2000: “Many Americans . . . see the UN aspiring to establish itself as the central authority of global laws and global governance. This is an international order that the American people will not countenance” (U.S. Foreign Relations Committee 2000, p. 29).

² Notable exceptions are sociolegal studies such as Coutin 2000; Ewick & Silbey 1998; Greenhouse et al 1994; Darian-Smith & Fitzpatrick 1999.

³ Up to now, in arguments both for and against the enduring significance of the nation-state, the meaning of law is taken as a given and it is only its spheres of centralized legal activity and influence that are brought into question.

sumed. In other words, what happens in the offices of international and state law firms, as well as bureaucratic and regulatory institutions, may have very little to do with the operation of law in the barrio, the schoolyard, the parking lot, the jail, the home-cleaning service, or the local bank. Ordinary people's interaction with and influence upon legal processes indicate that the hegemonic dominance of Anglo-American law may not be as stable or as secure as what we in the West would like to imagine.⁴

Immigrant Workers

The grassroots approach that seems most pertinent to an understanding of relations between law and globalization emphasizes the viewpoint of the immigrant, which raises issues of citizenship, labor conditions, and political and civil human rights. Stressing the perspective of the immigrant is crucial, given that foreign labor and the movement of people is one of the central mechanisms *both* to a global political economy and the durability of state legal systems, institutions, and territorial borders.⁵ So, as *deregulation increases* in nation-states with respect to such things as corporate finance, factory production, minimum wages, health benefits, and taxation—which together provide the new conditions for a successful transnational capitalist enterprise—*regulation also increases* with respect to border controls, citizenship, policing, incarceration, and, in the United States, capital punishment.

Hence, contrary to conventional narratives about law and governance in a global political economy, which tend to overlook this connection, I suggest that these two processes are integrally related. Sociolegal scholarship that focuses only on deregulation within transnational arenas, or regulation within internal arenas, discourages us from conducting research that explores the extent to which these two legal processes drive each other and are mutually reinforcing and significant in blurring the artificiality of local/global divides.

For the non-U.S. citizens lining up outside the Los Angeles INS office, the laws of the United States and California that control their rights to work legally, and the laws of international treaties such as the General Agreement on Tariffs and Trade (GATT) and organizations such as the World Trade Organiza-

⁴ That being said, I am anxious not to evoke a rather romanticized image of resistance and empowerment that seems to plague Western social science scholarship. For instance, on the streets of Seattle during the Nov.–Dec. 1999 WTO Conference, protesters of economic globalization were powerful symbols of resistance, but they are perhaps politically insignificant in terms of attacking strategies of corporate dominance and new centers of control.

⁵ It is well to remember that “the dynamics of immigration control, nationalism and racism are not mere ideological relics of a benighted age but are firmly rooted in the structures of capitalist modernity” (Dale 1999:12).

tion (WTO), which have helped establish the economic conditions that make working in other countries so attractive and necessary, are not clearly distinguishable. In short, from the subject position of immigrant workers, distinctions among state law, federal law, and global law are artificial and nonsensical qualifications.

Sassen's Global Vision

Saskia Sassen's (1998) *Globalization and Its Discontents: Essays on the New Mobility of People and Money* argues strongly against the representation of national and global arenas of law and governance as conceptually discrete and autonomous. Sassen is perhaps best known for her work on "global cities" and emerging new geographies of corporate power that contradictorily work within and against state institutions and state sovereignty (Sassen 1998:xxv & Ch. 8; Sassen 1991; 1994). In *Globalization and Its Discontents*, she builds on these earlier discussions and presents an impressive range of topics and themes, such as feminist movements and non-governmental organizations (NGOs), the growing gap between rich and poor, and, in the final section, electronic space and internet-based capitalism. These are fascinating essays. What ties her analyses of these topics together is Sassen's central concern with the "place" of capital in both its territorialized and deterritorialized configurations, inside and outside major cities. According to Sassen, of direct relevance to understanding law and governance in these new places of power is the relationship between the movement of peoples and transnational capitalism. In this juxtaposition of individuals and capital, ordinary persons and grassroots perspectives are taken seriously and appreciated as significant.

"Immigration," writes Sassen, "is . . . one of the constitutive processes of globalization today, even though not recognized or represented as such in mainstream accounts about the global economy" (1998:xxi). As the state adjusts and adapts to transnational operations and new centralities of authority, its domestic policies on the movement of people are also transformed (Sassen 1998:5). According to Sassen:

I think that there are representations of globality which have not been recognized as such or are contested representations. Such representations include immigration and its associated cultural environments, often subsumed under the notion of ethnicity. What we still narrate in the language of immigration and ethnicity, I would argue, is actually a series of processes having to do with globalization of economic activity, of cultural activity, of identity formation. Too often immigration and ethnicity are constructed as otherness. Understanding them as a set of processes whereby global elements are localized, inter-

national labor markets are constituted, and cultures from all over the world are de- and reterritorialized, puts them right there at the center along with the internationalization of capital as a fundamental aspect of globalization. (Sassen 1998:xxxii)

Sassen's focus on the "border" and the "individual" as two sites of regulatory control highlights the fact that immigration policies in developed countries, although different in their details, are grounded in modernist understandings of sovereignty, constitutionalism, nationalism, and Western superiority. Hence, there is a common presumption that the receiving states are passive and play no role in broader shifts in borders and geopolitical conditions, while the "alien" immigrant intentionally and deliberately desires to enter border zones and reap the advantages of the developed world. This perspective, built on both arrogance and fear, is clearly evident in the European Union (EU), where policies toward breaking down national borders and facilitating the movement of goods, money, and technology are being accompanied by a tightening of immigration and citizenship policies (Sassen 1998:9,14; Darian-Smith 1999).

Jörg Haider and the recent rise of the Austrian Freedom Party is a chilling reminder of reemerging nationalist anxieties and xenophobia. However, the realities of migration, Sassen notes, are very different from what many right-wing political parties suggest in their "floodgate" and "invasion" imagery. Many people do not want to leave their homelands. Levels of permanent immigration are in fact quite small; there is "considerable circulation and return migration, [and] that most migration flows eventually stabilize if not decline" (Sassen 1998:26, n2). In other words, the fears held by some developed nations with respect to mass migration and a possible "takeover" are largely unfounded and misguided. These fears, moreover, prevent many legal analysts from thinking beyond the need to control state border lines as the solution to internal legal, political, and cultural instabilities.⁶

Adding to Sassen's list of reasons why we should reevaluate harsh immigration policies and move away from simply regulating borders and individuals, I want to stress that developed nations historically have benefited economically from the presence of both legal and illegal immigrants through their provisioning

⁶ "The Achilles' heel of U.S. immigration policy has been its insistence on viewing immigration as an autonomous process unrelated to other international processes. It should be clear by now that powerful international forces are at work behind the outflow of emigrants from the developing world and the influx of immigrations into the United States. Yet U.S. officials and the public at large persist in viewing immigration as a problem whose roots lie exclusively in the inadequacy of socioeconomic conditions in the Third World, rather than also being a by-product of U.S. involvement in the global economy. As a result, they fail to recognize that the proposals dominating the debate on immigration policy—sanctions on employers, deportation of illegal immigrants, stepped-up border patrols—are unlikely to stem the flow" (Sassen 1998:49).

of cheap labor as well as expertise.⁷ Here lies the contradiction that Sassen argues underscores discussions about regimes for the circulation of capital, on one hand, and regimes for the circulation of immigrants, on the other. International legal agreements such as the North American Free Trade Agreement (NAFTA) and GATT, and international organizations such as the WTO and the EU, endorse the movement of service workers across borders in the name of economic profitability. This movement, however, represents a temporary labor migration that operates beyond the jurisdiction of nation-states while directly confronting and impinging upon existing state border policy and regulation. "All of these developments have the effect of (1) reducing the autonomy of the state in immigration policy making and (2) multiplying the sectors within the state that are addressing immigration policy and therewith multiplying the room for conflicts within the state" (Sassen 1998:20). Significantly, Sassen argues that this contradiction "cannot be solved through the old rules of the game" (p. 15).

Challenges to the autonomous jurisdiction of nation-states wrought by the movement of people and capital has led to "an unbundling of sovereignty" (see Sassen 1996). And with the transference of elements of authority to supranational, non-governmental, or private institutions, there are emerging "alternative subjects of international law and actors in international relations" (Sassen 1998:92). This discussion of alternative spaces and spheres of authority opens up Sassen's feminist critique of a global economy and state sovereignty in Chapter 5. Here, she emphasizes that the nation-state is not the sole subject and site of legitimization for international law. According to Sassen, a decentralization of state authority is allowing women and other non-state actors to take more active and contributory roles in building new forms of legal control, in turn promoting "the corresponding formation of other sites for normativity beyond that embedded in the nation-state" (p. 94). Writes Sassen, "[T]wo institutional arenas have emerged as new sites for normativity alongside the more traditional normative order represented by the nation-state: the global political economy and the international human rights regime" (p. 95).

⁷ In Chapter 4, "Economic Internationalization: The New Migration in Japan and the United States," Sassen presents a very interesting comparison between Japan and the United States and their respective levels of immigration. Up to the 1980s, Japan had not experienced much movement of people into its country, which helped substantiate and bolster the ideal of a culturally homogeneous national community. Now, with Japan's globalizing economy, its need for low-waged and unskilled labor is intense. Over recent years, this need has resulted in a widespread immigration of both legal and illegal immigrants into Japan and the accompanying need for immigration law and regulation policies.

Utopic Limitations

Later in this essay, I focus upon the two new institutional arenas of normativity that Sassen raises, (1) the global political economy, and (2) the international human rights regime. I do so by turning to two recent books specifically address these arenas from sociolegal perspectives that ground an understanding of law and legal process in the rich social and political fabric of everyday life and ordinary people: Bill Maurer's (1997) *Recharting the Caribbean* and Anthony Woodiwiss's (1998) *Globalisation, Human Rights, and Labour Law in Pacific Asia*.

At this point I want to stress that Sassen has contributed considerably to a deeper understanding of the connections between the movement of capital and the movement of people across state borders. Her feminist critique of international law and her emphasis on the role of ordinary people in global processes will hopefully lead to the future study of exciting alternative legal subjects and legal activities. Nevertheless, she fails to address the extent to which Western legal concepts, categories, and discourse are dominant in a global world. In short, Sassen, like many other analysts of law and globalization, has been swept up in a revitalization of utopic fantasies that include ideas of world governance and the expansion of an international civil society (1998:99; see also Santos 1995; and Darian-Smith 1998).⁸ There is no real questioning of the authority of liberal or "bourgeois" law and its philosophical roots in capitalism, colonialism, nationalism, and racism (see Collier et al. 1995:1). And, as a result, there is a presumption that modern Western law will lead the way to true global democracy, and that postsocialist countries in Eastern Europe, Pacific Asia, and elsewhere will eventually "catch up" with the West (Sachs 1998; see also Ruskola 2000). Important questions—such as Can "civil society" really exist outside a liberal capitalist ideology? Are all women equal and thus equally capable of representing each other? Are sovereignty and democracy universally accepted concepts?—are left unasked and unanswered.

Certainly, Sassen acknowledges the irony that international law, in its old and new configurations, ultimately depends upon nation-states for its sanctioning and enforcement (1998:106, n57; 22). And, in a note, she briefly mentions that the formation of transnational legal regimes is centered in Western economic concepts of contract and property rights (p. xxxv, n7). However, the

⁸ In contrast to this position, Barber notes that "the law has always been the destitute camp follower of the itinerant armies of transnationalism—earlier, the armies of imperialism, communism, international commerce and markets; today, those of telecommunications, ecology, financial and currency markets, and global pop culture. It facilitates rather than constrains the powers it serves. As go the fortunes of nation-states, so go the fortunes of international law. Law does not lead but stumbles behind real power in a manner that belies its claims to transnational regulatory competence" (Barber 1996:225–26, cited in Nader 1999).

full implication of asymmetrical power relations—between North and South, West and East, developed and developing nations—are smoothed over in her enthusiasm to point to new modes of resistance and empowerment among women, minorities, and marginal peoples. Sassen claims that these new forms of resistance decentralize, and by implication delegitimize, conventional, state-based legal systems and legal governance (p. 22). That these new forms of power among people on the periphery may in fact be emerging is not what I am disputing. I am calling into question Sassen's sweeping Eurocentric generalizations about the potential for legal change that assume a rather static and singular understanding of law. Because of these generalizations, I am somewhat unconvinced by the transformative dimensions of her argument, despite its optimism.

New Forms of Legal Imperialism

A stark reminder of the overwhelming hegemonic weight of modern Western law is presented in Bill Maurer's (1997) detailed ethnographic account, *Recharting the Caribbean: Land, Law, and Citizenship in the British Virgin Islands*. In it, Maurer provides a salient response to the first of Sassen's new sites of normativity, the global political economy. Maurer moves away from the more standard explorations of the Caribbean that are based on race, class, and gender. In his ethnographic examination of land, law, and immigration in this former British colony (now dependent territory), he seeks to explore how issues of racial and socioeconomic distinction are refigured within a nationalist discourse. His is a striking account of immigration and the movement of peoples across the Caribbean. In correlation with this geographical fluidity Maurer delineates the congruent need to articulate specific laws that define British Virgin Islanders' citizenship in terms of "insider" or "belonger," and in terms relating to their possession and inheritance of land.

For sociolegal scholars, Maurer's study of law and state-building is a most welcome contribution to the burgeoning literature on contemporary legal interactions in an increasingly globalized world. Importantly, it highlights the significance of detailed ethnographic and field research that picks up the complexities and nuances of transnational legal processes (see also Merry 1992; Coutin 2000; Gupta 1992). Maurer presents a grassroots perspective, incorporating both minorities' and ordinary citizens' legal subjectivity and legal positioning in the activities of state-building. His definitive exploration of the role of law in helping to formulate a contemporary British Virgin Islands (BVI) nationalist identity (which in turn is linked to, but not equivalent to, the independent authority of the BVI state to "write" legislation) considers the complicated and dynamic relations among law, nation-

alism, state, and territory, as well as between individualized and hybridized cultural identities. This is a highly sophisticated analysis that does not take for granted the state as an analytical unit, but rather seeks to show that the state is, by necessity, a site of contested meaning precisely because, through it, different interpretations of cultural congruity—and by implication social and political hierarchy—are officially authorized and substantiated.

Maurer's *Recharting the Caribbean* adds to the literature on creolization, self-determination, and postcolonial appropriations of mainstream rhetoric and strategies of power. The final chapter makes the most significant contribution both to Caribbean Studies and to theories of law and globalization. In it, Maurer contextualizes the complexities of nation-building in the BVI within a wider global political economy. When he connects the British Virgin Islanders' capacity to make their own history through an ability to write their own laws, independent of the British colonizers, Maurer highlights a paradox and, in a sense, a tragedy (see also Maurer 1995). The British Virgin Islanders' adoption of modern Western law as a strategy toward self-government necessarily means a concurrent appropriation of particular Eurocentric constructions of culture, self, and group identity.

Law, as one genre of writing, and one self-consciously keyed to self-regulation and discipline, expresses modern selves within a collectivity. Hence, "the nation's law is one of the key components of a unifying nationalism": it helps us define—and then regulate—our "national" selves. For modern subjects, the "ability to make law is the mark and preserve of independent political society," and, by implication, of the rational, modern individuals making it up. (Maurer 1997:230, citing Fitzpatrick)

The postcolonial dilemma faced by all independence and self-determination movements today is how to obtain international recognition and jurisdictional authority to govern independently without having to fully adopt a modernist paradigm, rationale, and vocabulary. This dilemma is poignantly illustrated by the situation of the British Virgin Islanders. In 1984, the BVI exercised the power to write new laws for the development of offshore financial investments. Through the legislation that allowed the BVI to write its own laws, the BVI punctuated its own capacity to self-govern. At the same time it created a commodity that the state owned and could sell on the international market—the corporate entity (Maurer 1997:249). The ability to write new laws provided the legislative and symbolic framework in which the BVI declared its capacity to manage and participate in a global economy, supposedly on its own terms.

Paradoxically, this legislation also opened up what Maurer calls a new "jurisdictional space." "Caribbean leaders involved in promoting their territories as offshore financial service centers invent and then emphasize unique identities for their jurisdic-

tions, stressing stability, reputation, security and secrecy. They are actively involved in the marketing of their niche for capital” (Maurer 1998:511). The paradox lies in that this new jurisdictional space, even though marketed within the BVI as emblematic of independence and liberation from colonial rule, can in fact only exist on the basis that foreign powers have the capacity to intervene and manage the British Virgin Islanders’ newly created legal commodity.⁹ As Maurer notes, “[T]he first truly self-authored law was the law that created tax haven services in the BVI and subjected the territory to the scrutiny of British and U.S. regulators and vicissitudes of the global finance markets” (1997:227). This in turn opened the door for the BVI Legislative Council’s adoption of the Mutual Legal Assistance Act in 1990 to stem criminal financial activity. The Act, in effect, gave the United States legal authority to monitor the BVI’s offshore financial records.

Recharting the Caribbean presents a powerful instance whereby the new ruling elite of the BVI, in an attempt to carve out a national space and so substantiate a right to represent themselves on the international scene, were forced to adopt Western legal ideologies and legal discourse. The unforeseen tragedy for the BV Islanders is that, by claiming the right to draft their own legislation, they inadvertently opened up their internal authority to the imposition of Anglo-American law. In short, the Islanders were forced to participate and ultimately to submit to the asymmetrical power dynamics underpinning the global political economy.¹⁰ As stated eloquently by Maurer in his concluding comments, “As a site of offshore banking and international finance, as a site newly configured by the law, the BVI is a quintessential example of the new spaces of postmodern capital, spaces whose autonomy and sovereignty are always in question” (1997:256; see

⁹ In a more recent article, Maurer (1998:p. 510) spells out the implications of this overseas intervention more clearly in terms of understanding the “rhetorical constructions of state, sovereignty, market and morality brought into play in writings of offshore finance.” As Maurer argues, “For many, such as leaders in the British Virgin Islands and Cayman Islands, sovereignty, in its liberal sense, which would entail political independence from the United Kingdom, is perceived to have the ability to destroy the financial services business. These jurisdictions’ links to Britain, given local legislative autonomy, are only formalities at this point. However, they are deemed central to the jurisdictions’ ‘reputations’ on the market of international financial services. Furthermore, in a region where ‘free trade’ has meant the decimation of export agriculture, where grants from the Foreign and Commonwealth Office are rarer and smaller because of Britain’s desire to shuck off its remaining colonies, and where tourism can no longer bring in the revenues it once did, marketing a jurisdiction to offshore investors seems a reasonable route to economic health” (1998:511).

¹⁰ This form of submission carries much moral ambiguity, however, given that leaders of the BVI are now often actively engaged in selling BVI citizenship rights to encourage wealthy foreign investors, and at the same time using this form of legal manipulation to exclude BVI-born children of immigrants who are not able to claim full citizenship rights. As Bill Maurer noted, “BVI entrepreneurs are basically pushing the limits of capital mobility and financial integration as far as they can go—more neoliberal than neoliberalism . . . with all kinds of new exclusions” (personal conversation, April 2000).

also Maurer 1998). For me, what Maurer's insightful book highlights is that, despite Sassen's assertions that there are increasingly new global cities, new networks of communication, new subjects of international law, and new critiques of the nation-state, there exists a dominant legal discourse and logic that new players—be they states, NGOs, or individuals—have to adopt and negotiate in order to participate in a global political economy.

Laboring under a Human Rights Regime

Although Maurer offers a daunting message about the hegemonic weight of Western law on the international scene, Anthony Woodiwiss, in his 1998 sociological study of law, *Globalisation, Human Rights, and Labour Law in Pacific Asia*, argues against this view. Woodiwiss tells us that there are spaces and places whereby liberal legal logic and its foundational assumptions can be challenged, modified, reconfigured and, in effect, subverted according to alternative legal ideologies and legal practices operating within and between the West and the Pacific Rim.¹¹

As suggested by its title, *Globalisation, Human Rights, and Labour Law in Pacific Asia* is pertinent to an exploration of Sassen's second institutional arena, the international human rights regime. Here, Sassen claims, new forms of normativity are emerging alongside the more traditional normative order represented by the nation-state (Sassen 1998:95). Along with Sassen, Woodiwiss does not disagree with many commentators who argue that the forces of globalization are to blame for the worldwide deterioration of labor and its conditions. However, what he suggests is that "globalization may also have a positive dimension" because the West is increasingly encountering situations that require developed countries to listen and learn from the rest of the world. The hope is that one day we may see not a "clash of civilizations," but the arrival of a "truly post-colonial world" (Woodiwiss 1998:18).

Woodiwiss's book is a finely tuned, theoretically sophisticated, in-depth historical study that examines the presence (and absence) of an international human rights discourse in Pacific Asia, especially since the end of the cold war. The author is keen to show that, alongside liberalism and socialism, an "ideological/cultural third force" has emerged among many Pacific-Asian countries. This third force is patriarchalism, forms of which endorse and support various new types of economic, social, and cultural rights. In this project, Woodiwiss moves away from the more obvious international debates on human rights in recent years.

¹¹ For a detailed analysis of what constitutes the Pacific Rim, see Woodiwiss 1998:54–58.

These debates posit, on the one hand, claims by Western developed countries that political and civil rights are being abused or ignored in the Pacific Rim; on the other hand, Asian governments argue that “Western governments refuse to recognize even the possibility of the lesser pertinence and indeed lesser value of individual rights in non-individualistic cultures” (Woodiwiss 1998:5). The debate concerning individualism versus patriarchy suffers, says Woodiwiss, in that each response assumes that there are only these two alternatives, and that each is “colored by Orientalist or, in Asia itself, Reverse Orientalist assumptions which lead to the exaggeration or even absolutisation of the differences between East and West” (p. 8).

Drawing on the complex idea of patriarchy as characterized by Max Weber, Woodiwiss notes that today patriarchy signifies a “familialist discourse that, regardless of institutional context, both assumes the naturalness of inequalities in the social relations between people and justifies these by reference to the respect due to a benevolent father or father-figure” (1998:2). Together, these assumptions are called “enforceable benevolence,” and are most obviously manifested in the loyalty and obligation an employee shows an employer.

On the surface, this system of social organization seems laden with inequalities and sexism. Western scholars can so easily criticize it in the context of liberal democracy and the rule of law. Against this standard view, Woodiwiss argues that patriarchy may, in fact, work more effectively in Pacific Asian countries than in a Western system of social/legal relations based on the notion of the autonomous, right-bearing individual. It is important to explore this idea, notes Woodiwiss (1998:8), given a shift in “the planet’s economic and cultural centre of gravity from the North Atlantic to the North Pacific. . . . [I]f we are to understand the fate of the discourse on human rights, let alone contribute a positive outcome, we have to think transnationally and with full cognizance of what is happening in Pacific Asia” (p. 8). Thus the general aims of his book are to encourage analysts and scholars to rethink law and politics in the context of permeable national borders and increasing transnationalism and to explore a “non-Eurocentric basis upon which efforts may be made to enhance respect for human rights in the wider world in addition to Pacific Asia” (p. 9).

In Chapter 1, Woodiwiss discusses his theoretical perspectives on a range of issues, including globalization, governmentality, law and space, and what he calls a “transnational sociality.” He believes analysts need to think about law in the context of increasingly porous national borders and against a backdrop of interrelated and interdependent realms of domestic and international law. This perspective brings into question not only what we mean by “human rights” in a multitude of cultural and political

contexts, but also what we identify as the rule of law itself. Woodiwiss argues that the West assumes the rule of law can only be identified with and through a liberal political philosophy. However, if the rule of law is associated not with the concept of “liberty,” but with substantive legal consistency and a social-structural effect (namely, the “reduction of arbitrariness”), then it is clear that the rule of law must “vary according to the general social-structural background with which it is necessarily imbricated” (Woodiwiss 1998:47).

Woodiwiss discusses a variety of forms of patriarchalism that occur in the Philippines, Malaysia, Hong Kong, and Singapore. His case studies exemplify the historical and cultural contextualization required to understand the concept of patriarchalism. (In Pacific Asia, laws are deeply embedded in indigenous forms of knowledge, social organization, and political realities.)¹² Throughout his analysis of patriarchalism, and in the discussion about Japan in Chapter 2, Woodiwiss emphasizes a number of significant points. There is a need to pay attention to the varieties and nuances of what we in the West generically label “patriarchalism.” We too readily accept and speak about “democracy” and “individualism” as singular concepts of uniform application and meaning. According to Woodiwiss, patriarchalism represents “instances of hybridity” and incorporates Western ideas of nationalism, democracy, modernization, and social democracy. At the same time, we in the West, particularly in Western Europe, mobilize patriarchalist discourse on behalf of labor and human rights (Woodiwiss 1998:16–17). In short, these are not, and never have been, mutually exclusive concepts and perspectives about what constitutes social organization. Each incorporates elements of the other.

The use of the Pacific Asia case studies demonstrates the author’s sociological approach to law. Woodiwiss moves away from analyzing human rights based on an assumption of their universal applicability. He reorients his discussion to explain the extent to which human rights “as discursive entities . . . have the social effects that are hoped for” (Woodiwiss 1998:11). We should not conceive of rights within a humanist, essentialist, and Eurocentric liberal frame as naturally subsisting in each person. Instead, we should consider rights as pluralist bundles of legal relations that consist of “‘liberties’ to perform certain actions; ‘claims’ or expectations *vis-à-vis* specified others; ‘powers’ that allow legal subjects to assume certain specified roles and change certain social relations; and ‘immunities’ against prosecution” (p. 48). Woodiwiss goes beyond the conventional subjects of sociolegal

¹² Woodiwiss’s historical and cultural approach echoes the ethnographic work of Maurer, which I discussed previously, and my desire in this essay to view law and globalization from the perspectives of ordinary people at the grassroots level, trying to survive socially and economically.

analysis, such as actors, trade unions, and legislative instruments, to explore the wider cultural, social, and legal conditions within which these discursive entities subsist.

Woodiwiss's (1998:51) use of case studies demonstrates the extent to which he builds on the work of Saskia Sassen. Woodiwiss's study of human rights in a global context, and labor rights in particular countries and regions, is not so much about the movement of peoples and the presence and challenge of new ethnic groups in developed nations and global cities as it is about the impact of transnational legal ideologies that are emerging in response to the movement of labor and capital. He studies how these transnational legal regimes, in this case the human rights regime, is dealing with new forms of labor relations in the Pacific Rim. He shows that Pacific Rim labor relations are built upon historically grounded and culturally specific social relations that are particular to many Asian countries.

Woodiwiss concludes that the modernist legal ideal of the existence of liberal democracy and individual autonomy is not a precondition for the existence of a government that respects human rights. Western capitalism necessarily embodies social inequalities, and "individuals [are] treated differently depending on how they are positioned within a capital/labor relation" (1998:247); thus, this disassociation between a country's modernist ideals and its conception of human rights should not come as a surprise.

The importance of Woodiwiss's study really strikes home when he points out the tensions that exist within capitalism, which depends upon social inequality in terms of labor, and, incongruously, upon sustaining the belief in individual equality in the form of inalienable human rights.¹³ Woodiwiss thus peels back the mythology of modern Western law (Fitzpatrick 1992). He argues that there is no "natural" correlation between a nation-state's belief in individual equality and an effective human rights regime. In Singapore, for example, new forms of patriarchalism are most fully developed. Yet, this country, of all those studied in the Pacific Rim, is "structurally closest to constituting an alternative human rights regime" (Woodiwiss 1998:Ch. 6, 246).

Woodiwiss clearly supports Sassen's claim that new forms of normativity are emerging in the arena of international human rights that challenge conventional ideals of state sovereignty and centers of state power. In his critique of capitalism and the Western legal ideologies and philosophies that support and sustain it in a global political economy, Woodiwiss goes much further,

¹³ Absolute equality can never exist within a capitalist system; hence the need for producers to constantly seek out a cheap and exploitable labor force, and for Western liberal societies to believe that protection is available to individuals in the form of universal human rights.

however. In a sense, Sassen cannot yet think beyond the foundational liberal concept of individualism and, by implication, the naturalized superiority of the West. According to Woodiwiss:

Because of my conviction that the consistency and therefore also the effectiveness of the law depend upon its articulation with a coherent, and in a Gramscian sense, hegemonic and therefore socially embedded ideological discourse, my point is that any strategy for enhancing respect for human rights in Pacific Asia that depends upon the advocacy of individualism and liberty is unlikely to be successful. . . . Better by far, or so it seems to me, for regional human rights activists and their supporters to go with, rather than against, the regional ethical and social-structural grain and follow up on the anti-authoritarian possibilities opened up by Neo-Confucianism and the more libertarian currents within Buddhism and Islam. What would give content to such a strategy would be the aim of eventually breaking the links between inequality and patriarchalism. Thus, for example, Confucianism's secular humanism and Buddhism's non-essentialist conception of the self both suggest the possibility of a non-metaphysical individualism which could be developed to make virtually all forms of discrimination unacceptable, including sexism. Of course, if such a breakage could be achieved, it would mean the end of patriarchalism by its own hand, so to speak. No culture *must* survive for ever. (1998:262–63)

Woodiwiss presents a provocative and challenging argument that seeks to posit something other than a singular understanding of law and human rights. That being said, whether changing values in Pacific Asia adequately mesh with new forms of capitalism and new forms of patriarchalism remains a central question. An alternative human rights regime, in Singapore or elsewhere, requires at least a semblance of non-discriminatory legal practices to be recognized as such. In my view, the extent to which such a regime actually exists and functions in Pacific Asia requires more substantial evidence than simply a theoretical discussion about shifting abstract values, which Woodiwiss has offered.

Conclusion

Sassen's *Globalization and Its Discontents* is an important set of essays for many reasons, not the least of which is her connecting the internationalization of capital with the movement of people across and within nation-state's borders. As Sassen argues, "Immigration is . . . one of the constitutive processes of globalization today, even though not recognized or represented as such in mainstream accounts about the global economy" (Sassen 1998: xxi). Sassen emphasizes the "presence" of immigrant labor in global cities, and claims that within these new geographies of centralized power, new sites of normativity are emerging that

raise questions about the traditional authority and sovereignty of the nation-state. Significantly, Sassen seeks to break down the local/global divide between internal state policy and external capitalist enterprise. In her view, from the grassroots perspective of many ordinary people, such as the immigrants lining up outside that Los Angeles INS office, the lawyers practicing law related to citizenship, residency, taxation, and incarceration are integrally connected to corporate lawyers overseeing the financing of a global political economy.

However, my point is that Sassen's argument that the global political economy and the international human rights regime are emerging as two new sites for institutional normativity, alongside that of the nation-state, does not adequately engage with the current weight of Western legal hegemony and its impact on ordinary people. As demonstrated by Maurer in *Recharting the Caribbean*, those involved in state-building strategies in the BVI were forced to appropriate and negotiate a dominant Western legalism. Although this adoption of Western legalism certainly helped the Islanders develop an offshore financial industry, and so enter a global political economy, it also reaffirmed the asymmetrical power relations between the developed and developing postcolonial world.

Moreover, in Sassen's hope for an international human rights regime there is little recognition that Western forms of capitalist enterprise, within which new forms of normativity are germinating, are dependent upon a singular understanding of law grounded upon liberal assumptions of individualism, liberty, and equality. This oversight seems to plague law and globalization literature; for, although scholars can appreciate the fragility and hybridity of cultural values, nationalist identities, kinship networks, labor expectations, and political allegiances, when it comes to law—the very meaning of which is embedded in dynamic social structural networks and everyday practices—they seem to have a blind spot in recognizing the fragility and hybridity of legal meaning itself. This is what Woodiwiss in *Globalisation, Human Rights and Labour Law in Pacific Asia* brings home most powerfully—the need to constantly rethink and redefine what we mean by our taken-for-granted Western ideals of “rights,” “individualism,” “equality,” and “democracy” upon which, up to now, an international human rights regime has been based.

Maurer and Woodiwiss seem to present contrary arguments—one narrating a tale of Western legal dominance over a developing postcolonial nation, the other suggesting that international law will, in the near future, have to deal with alternative forms of social relations that may challenge its global authority. Nevertheless, I interpret these two arguments as complementary. Alternative spaces and spheres of power may indeed be emerging, notwithstanding the overwhelming weight of Western legal

norms, which is precisely what Sassen points out. In my opinion, however, she falls short by not fully examining the asymmetrical power relations between regional economies and political philosophies: Mexico City or São Paulo are still not equivalent to Los Angeles or London, despite their new lines of communication and connection. Sassen, it seems, is not yet prepared to embrace what is implicitly suggested by Maurer, and more explicitly by Woodiwiss, that the “magnificent bourgeois promise of universal human rights and the global freedom of movement may yet be rescued, not through the affirmation but the negation of the bourgeois world order itself” (Dale 1999:12).

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