

Transformed Pursuits: The Quest for Equality in Globalized Markets

Kerry Rittich*

INTRODUCTION

Transformative social and political projects must now be pursued in a global field. However local the initiative or particular the concern, activists and reformers now find themselves immersed in debates which extend beyond national borders and facing issues and constraints which were of marginal importance, if not unimaginable, only a short time ago.

The process of global economic integration is a central topic of debate and chief source of anxiety for those in progressive social movements. Hard up against the constraints of the new international economy, old arguments must be revisited, alternative paths charted, and new issues and interests incorporated into the agenda. Settled strategies are called into question; even the goals that seem legitimate or realistic to pursue may be transformed. While the process of globalization presently may seem tilted against progressive politics,¹ some degree of engagement with the market seems unavoidable if such projects are not to be condemned to shrink and fade away altogether.

Activists, scholars, and those engaged in political and social movements everywhere are now struggling to understand the ways in which globalization has changed the terrain of reform and the processes by which reform can be pursued: who rules, and where can political energy and analytic attention most usefully be directed?

While state institutions remain a crucial piece of the puzzle, they can no longer command sole or even primary attention. Porous borders have reduced the efficacy of old state-centered strategies for change. Authority, power, control, and legitimacy appear to be waning in many states; indeed, states themselves are increasingly seeking to carve out favorable places for themselves in the new economic order. Yet while attention is increasingly drawn to the nature and institutions of this new international order, just

* Assistant Professor, Faculty of Law/Women's Studies, University of Toronto.

1. See generally David Kennedy, *Receiving the International*, 1 *CONN. J. INT'L L.* 1 (1994).

where that attention might be focused is anything but clear. Institutions adequate to the new regulatory challenges are often absent altogether or still emerging and weak, outstripped by the pace of transformation and change. How the process of global integration operates, how control over its direction and development might be exerted, and who, if anyone, is "in charge" are questions that elude easy answers.

This debate over regulation and control often masks a more profound problem, which is the fragmentation and lack of consensus, even among those who agree on general goals, concerning desirable strategies for social and political change. The result is a series of normative and institutional dilemmas around issues which are among the most central to people's lives—work, welfare, and consumption not least among them.

The muscular ascendance of capital and the new dominance of relatively unfettered market forces are prime targets of reformist anxiety. Even where financial crises and radical disruptions have been avoided, the new economy appears to be generating vastly uneven results, and winners and losers of a variety of stripes. Despite the promises of growth and welfare gains through trade and integration, the rewards of market activity are increasingly unevenly dispersed.² The result is greater poverty and greater wealth, as well as greater income inequality both within and among states.³

The growing inequality associated with global integration is itself deeply concerning. However, because of the interconnection between access to economic resources and social, political, and cultural advantage, economic inequality threatens the pursuit of many other transformative projects as well. For example, it is likely to have an adverse impact upon attempts to redress racism and gender disparities, overcome the legacy of colonialism and underdevelopment, and respond to the plight of myriad disadvantaged social groups. Indeed, it is unclear how many progressive projects can realistically be expected to thrive in an environment characterized by growing economic inequality.

The current shape of this global transformation is often treated as either an incontrovertible background fact or a development which is inevitable. Yet however tempting it is to attribute poverty or inequality to globalization *per se*, this seems an unsatisfying conclusion. How different forms of disadvantage are produced remains contested and sometimes obscure, as does the connection between the general increase in inequality and changes in the status of particular groups, regions or states.

2. See James Wolfensohn, *Let's Hear Everyone and Get On with Imaginative Solutions*, INT'L HERALD TRIB., Jan. 28, 2000, available in 2000 WL 4119763.

3. See generally UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1999 (1999) [hereinafter HUMAN DEVELOPMENT REPORT 1999]. In entire regions of the world, Sub-Saharan Africa in particular, there has been little or none of the growth and development promised by proponents of markets and trade liberalization, and the per capita income is lower than it was nearly 20 years ago.

There are myriad sources of the current global transformation.⁴ Some, such as technological and informational innovations, seem to resist easy control. However, few developments are simply automatic. It would be a mistake to ignore the active project which is underway to shape and construct the new global economic order. Developing states, in particular those in transition from plan to market economies, have been subject to powerful interventions on the part of international financial institutions as to the shape and nature of their economic policies and institutions.

The transition of the states of Central and Eastern Europe and the former Soviet Union from plan to market economies was a key moment in the elaboration of neoliberal doctrine around "best practice" rules, institutions, and policies in market economies. International financial institutions and economic advisors from major Western states such as the United States played central roles in articulating the path of reform. Because the reform of the state and the restructuring of enterprises were regarded as central to the process of transition, the focus on the appropriate character of the state and the nature of good governance in a globally integrated economy was particularly acute. As a result, the dilemma of transition provides an invaluable window on the particular configuration of institutional roles and responsibilities which organizes neoliberal economic policy. These roles are set out clearly in the World Bank's recommendations to states in transition to market economies.⁵

The following analysis will attempt to illuminate some of the links between particular trajectories of market reform and growing inequality for particular groups within the states.

Part I examines the nature of neoliberal development, in particular the ideas promoted by the World Bank about appropriate state practice and forms of regulation for states in transition to market economies.

Part II examines the distributive effects for women, specifically those with obligations of care to others, of the concerted attempt to induce the states in transition from plan to market economies to follow a particular market-centered path to global economic integration and development and eschew the attractions of regulation and "intervention" by the state. By examining the transformation of reproductive work in the states in transition from plan to market economies, some of the ways in which the market reform process can create disadvantages for particular groups are illuminated.

4. For recent assessments of the phenomenon of globalization, see PAUL HIRST & GRAHAME THOMPSON, *GLOBALIZATION IN QUESTION: THE INTERNATIONAL ECONOMY AND THE POSSIBILITIES OF GOVERNANCE* (1996); *STATES AGAINST MARKETS: THE LIMITS OF GLOBALIZATION* (Robert Boyer & Daniel Drache eds., 1996); PETER GOWAN, *THE GLOBAL GAMBLE: WASHINGTON'S FAUSTIAN BID FOR WORLD DOMINANCE* (1999).

5. See WORLD BANK, *WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET* (1996) [hereinafter *WORLD DEVELOPMENT REPORT 1996*] for a detailed statement of the proposals for the states in transition. See also Kerry Rittich, *Recharacterizing Restructuring Part I* (1998) (unpublished S.J.D. dissertation, Harvard Law School) (on file with the *Harvard Human Rights Journal*).

Part III attempts to draw out some general implications of the investigation undertaken in Part II, suggesting a number of points where neoliberal arguments and reforms might intersect and conflict with equality-driven political projects.

I. EXAMINING MARKET CENTERED DEVELOPMENT

A. *Securing Neoliberal Markets*

A foundational aspect of neoliberal⁶ development policy has been the claim that markets can and should be designed in accordance with one architectural style⁷ and organized around a set of "best practice" rules and institutions which have been derived from model market economies. This claim has dominated economic discourse in recent years and has become intimately associated if not inseparable from current debates about development.

Market-centered economic reform has gained much of its legitimacy and energy through the efforts of international financial institutions. At least since the early 1990s, the issues of proper and improper state action and appropriate or illegitimate policies and forms of regulations in market economies have come to occupy center stage in the development debate. The preoccupation with these issues is exemplified in the World Bank's 1996 and 1997 World Development Reports, *From Plan to Market*⁸ and *The State in a Changing World*.⁹ As these reports reveal, the faltering and demise of the plan system in the former Soviet Union and the states of Central and Eastern Europe is a key piece of evidence in the debate, as it seems to provide a decisive and irrefutable argument in favor of the virtues of the market and the limits and perils of reliance on the state.¹⁰

Out of this narrative on the rationality and functionality of markets has emerged an elaborate set of norms delineating the proper policy goals and necessary regulatory apparatus of market societies in a globally integrated economy. Particular policies and recommendations have been modified or relaxed by the World Bank (the "Bank") over time; additional components have been added. However, notwithstanding the continual reinvention and repackaging, international financial institutions and the broader mainstream development community remain captivated with the project of elaborating a comprehensive, if not authoritative, approach to the question of "develop-

6. Neoliberalism and the "Washington consensus" have become short-hand ways to refer to market-centered development based on a canonical list of policy and regulatory commitments. See, e.g., John Williamson, *What Washington Means by Policy Reform*, in *LATIN AMERICAN ADJUSTMENT: HOW MUCH HAS HAPPENED?* 7, 7-38 (John Williamson ed., 1990).

7. See Dani Rodrik, *Governing the Global Economy: Does One Architectural Style Fit All?* (1999) (unpublished paper prepared for the Brookings Institution Trade Policy Forum Conference on Governing in a Global Economy, Apr. 15-16, 1999) (on file with the *Harvard Human Rights Journal*).

8. WORLD DEVELOPMENT REPORT 1996, *supra* note 5.

9. WORLD BANK, *WORLD DEVELOPMENT REPORT 1997: THE STATE IN A CHANGING WORLD* (1997) [hereinafter *WORLD DEVELOPMENT REPORT 1997*].

10. See *id.* at 23.

ment”¹¹ and are invested in the idea that they can and should build a consensus around “what works.”

The dominant view is that the interests of promoting growth and enhancing efficiency require that the activities of state be cabined and, in many cases, significantly reconfigured, while the market should be structured to facilitate transactions and encourage investment. This is a project that faces in two directions. On the one hand, states must be actively enlisted in the project of implementing market-centered policies and encouraged to adopt efficiency as the measure of good governance. This has been translated into commitments to, among others, deregulated labor markets, open trade and capital accounts and, recently, increased financial regulation. On the other hand, states must be induced to curtail or eliminate activities, for example engaging in industrial policy, which threaten to impede the proper functioning of the global economy and economic growth.

The subsidiary role of the state and the pre-eminence of the market are accompanied by a transformed image of the place and responsibilities of the individual. Welfare and well-being have become in important ways “private” concerns, devolved to the household or individual. In the new economic order, individuals are expected to seek their fortunes and secure their welfare in the market, largely independent of subsidies or support from the state. The state may have a role to play as the provider of safety nets for the least well off. However, extensive redistribution or “intervention” on the part of the state, for example through universal rather than targeted benefits, is regarded as both unwise and illegitimate. Such efforts tend to be inherently unsustainable due to the high level of tax revenues which are required to maintain them and the crushing burdens they place on the productive sector; in any event, the market is sure to strike back at those states who unwisely choose to implement such policies.¹²

The overall objective has been to normalize and legitimize the institutions which will enable the market to function as a zone organized around the pursuit of growth and efficiency. In the view of international financial institutions, the market should be a sphere which, in structural or institutional terms, is free of the play of politics, corruption, “arbitrary” state intervention, and the distortions and inefficiencies introduced to placate special interests.¹³ “Good governance” and the “effectiveness” of the state are attributes that can be measured in large degree by the extent to which these extraneous, dangerous non-market forces are effectively contained and economic activity is thereby fostered.¹⁴

11. For a recent statement of the development enterprise, see James Wolfensohn, *A Proposal for a Comprehensive Development Framework* (visited Jan. 21, 2000) <<http://www.worldbank.org/cdf/cdf-text.htm>>.

12. See WORLD BANK, *WORLD DEVELOPMENT REPORT 1995: WORKERS IN AN INTEGRATING WORLD 5* (1995) [hereinafter *WORLD DEVELOPMENT REPORT 1995*].

13. These preoccupations form a major part of the discussion in *WORLD DEVELOPMENT REPORT 1997*, *supra* note 9.

14. See *id.* See also WORLD BANK, *WORLD DEVELOPMENT REPORT 1994: GOVERNANCE: THE WORLD*

The logic of this path has attained a status approaching the axiomatic within mainstream development discourse. However, as the growing unease and revolt over the expansion of neoliberal policies disclose,¹⁵ questions of market design have become a focal point of opposition. These model rules, institutions, and practices are defended in the name of economic growth and efficiency; nevertheless, it has now become clear that the effects of these institutions extend far beyond the sphere of the market. Whether by design or effect, they intersect with and impinge on a vast range of concerns and aspirations well beyond the narrowly economic. The most basic aims of human rights projects such as equality and dignity can be powerfully affected, either subverted or enhanced, by decisions about market design and economic policy. Indeed, in the current climate, there are reasons to believe that economic reform and restructuring may be among the most important determinants of the fate of such projects.

It is not surprising, then, that aspects of the model market have been challenged by a broad range of social movements, including those of indigenous peoples, feminists, environmentalists, and labor groups. Critiques also have been leveled at the model by states that have succeeded at economic growth via alternative routes,¹⁶ heterodox development economists, and dissenters within the walls of the international financial institutions themselves.¹⁷

So far, however, criticism has largely resulted in reconstruction and renewal of the model;¹⁸ the market-centered thrust of the program has been preserved and most key policy and regulatory proposals have not been displaced or seriously challenged. There are increasing references to the importance of safety nets for the most disadvantaged, equity for women, enhanced attention to local conditions, and a greater emphasis on democratic participation. Often these are intertwined with calls for enhancing the rule of law and protecting human rights. However, despite the forays into more inclusive and locally responsive development, what remains intact at the heart of development policy is the idea of the market as the measure and limit of policy and regulatory initiatives.

Questions of regulation around the emerging global market are certain to remain deeply contested issues for the foreseeable future, in large part be-

BANK'S EXPERIENCE (1994).

15. One example is the defeat of the Multilateral Agreement on Investment, and a dramatic recent incident is the disruption of the opening of the "Millennium round" talks of the World Trade Organization by non-governmental organizations and protesters in Seattle in November 1999.

16. See Robert Wade, *Japan, the World Bank, and the Art of Paradigm Maintenance: The East Asian Miracle in Political Perspective*, 217 NEW LEFT REV. 3 (1996), in response to WORLD BANK, *THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY* (1993).

17. See, e.g., Joseph Stiglitz, *More Instruments and Broader Goals: Moving Toward the Post-Washington Consensus* (visited Feb. 29, 2000) <<http://www.wider.unu.edu/stiglitz.htm>> [hereinafter Stiglitz, *More Instruments*].

18. See Wolfensohn, *supra* note 11.

cause of the high stakes involved for particular groups and states.¹⁹ Opening up the black box of market reform, then, is crucial to understanding the ways in which particular market-centered policies might prove to be predictably, not just contingently, detrimental for certain groups.

It has been central to the persuasive power of the neoliberal paradigm that many of these policies, rules and institutions are described simply as integral to markets or essential to achieving growth in a globally integrated economy. This analysis attempts to consider the effects of such arguments, as well as the implicit assumption that we all share the same basic interest in these policies, rules, and institutions. In particular, it seeks to investigate how a set of assumptions about what good governance requires in a globally integrated economy might foreclose analysis of what specific market-centered rules and policies actually do in particular contexts. This in turn pre-empts a consideration of alternative rules and policies, including some with equally legitimate pedigrees and well-established roots in market-based societies.

There is a second reason for examining such claims. To the extent that they succeed, they appear to divert attention from questions of advantage and disadvantage. When such issues do arise, as when tradeoffs between equity and efficiency are openly acknowledged, the response to these "collateral" effects of reform tends to be minimal, deferred to some always elusive moment in the future, and dependent on myriad contingencies such as adequate state resources and institutional capability. In both cases, the question of the role of legal and institutional reforms in actually generating disadvantage tends to be avoided.

Decisions about market design are not merely or even primarily questions of good governance and the enhancement of efficiency. Market reforms also redistribute resources and power, which means that they are ineluctably connected to contestable decisions about the purposes and ends of social and economic life.

One way to investigate these redistributive effects is to look at the vehicle of market reconstruction: reforms to laws, policies, and legal institutions. In examining how these reforms operate, it becomes apparent how the particular disruptions which have often accompanied economic reform are not simply an inevitable part of development or even (re)constructing markets. Instead, growing insecurity and disadvantage for particular groups are, at least in part, a function of the particular rules and policies which form the current orthodoxy about market reform.

19. This is one of the a central debates in the "Millenium round" of WTO negotiations recently initiated in Seattle. See Joseph Stiglitz, *Addressing Developing Country Priorities and Needs in the Millenium Round*, Address delivered at the Harvard University Center for Business and Government (Nov. 29, 1999) (transcript available at <www.worldbank.org>) [hereinafter Stiglitz, *Addressing Developing Country Priorities*].

B. Legal Regulation and Distribution

The market is not simply a natural entity; rather, as market reformers are keenly aware, the complex markets which comprise the global economy are the product of a dense matrix of legal rights, regulations and institutions. It is not surprising, then, that the Bank places special, indeed, fundamental, importance on securing the rule of law and strengthening legal institutions.

However, it is important to emphasize that market reformers are not only interested in the presence of the rule of law. Instead, they are fundamentally interested in the protection of particular kinds of legal rights, foremost among them property and contract rights.²⁰ In the context of transition, as elsewhere, the protection of property rights in particular is regarded as foundational: property rights spur investment and provide the incentives and rewards necessary to wealth creation.²¹ Promoting wealth creation and investment also requires effective corporate law, bankruptcy protection, credit and securities regulation, and competition.²²

In addition to these "foundational" or basic legal rights, other regulations may also be prescribed, primarily to correct instances of market failure. However, regulations that cannot be demonstrably linked to the enhancement of efficiency tend to fall under suspicion; alternatively, they may be simply omitted from the list of "necessary" laws. Even interventions to correct for market failures are not necessarily justified because of the widespread evidence of "government failure."²³ The basic concern is that all such efforts may interfere with an otherwise efficient allocation of resources and thus may impair the process of economic growth.

"Good" laws are thus envisioned as a mechanism for restraining arbitrary or simply undesirable action on the part of the state, while ill-advised regulations may constitute undesirable "interventions" on the part of the state, part of the very practices that neoliberal reforms seek to curtail. For this reason, protective legislation of various types, however apparently desirable from one standpoint, may be rejected. For example, labor market regulations of various kinds are frequently undesirable in developing markets because they introduce inefficiencies and rigidities into the market for labor.²⁴ Explicit attempts to regulate the market to achieve distributive goals meet with similar disapproval; rather than attempt to redistribute through the market, the proper vehicle is the mechanism of taxation and income transfers.

As the Bank emphasizes, legal rules and regulations are necessary to coordinate exchanges and enable transactions in market economies. However, the image of law and regulation which emerges from mainstream development

20. See WORLD DEVELOPMENT REPORT 1997, *supra* note 9, at 32.

21. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 48-49.

22. See *id.* at 87-97.

23. See *id.* at 111.

24. See WORLD DEVELOPMENT REPORT 1995, *supra* note 12, at 70.

proposals, including those promoted by the Bank in the transition process, is distinctly one-sided. Law is not only the means by which arbitrary state power is curtailed and justice and fairness for individuals ensured.²⁵ The implementation of laws and regulations is also a process of allocating resources and power to particular parties in economic transactions.²⁶ For this reason, distributive issues are inherent in decisions about the regulatory structure of markets. Moreover, as the importance placed on securing the rule of law itself suggests, the state is necessarily implicated in the protection of legal rights; the question then is not whether the state is intervening in the market, but rather when and how, a fact which is obscured by such polarities as "state vs. market" or "intervention vs. non-intervention." Law may be therefore very much "inside" the production of advantage and disadvantage to particular groups. For this reason, decisions about regulating the market are questions which are likely to engender conflict and disagreement rather than automatic assent.

Legal entitlements are created through the assignment or recognition of rights *de novo* or the modification of existing rights; this may occur through regulation, deregulation or re-regulation. In the process, particular forms of power are created or enhanced through the legal sanctions backed by the state. Valuable assets may be created anew; access to resources may be affected. As a result of reforms, the costs of engaging in particular activities may be affected and risks may be re-assigned, as the particular regulatory environment in which transactions and other activities occur determines whether contributions and subsidies will be required from different parties. Thus, the structure of rights and regulations can be crucial to determining if and how much particular costs must be internalized in the course of production, as well as affecting who gains, and how much each party gains, in the process.

Because legal rights are a way of allocating resources, and because they sanction the use of certain kinds of coercion and power over others,²⁷ legal reform projects, especially thoroughgoing efforts to remake the legal and economic order of states such as is occurring in the economies in transition, can be expected to have an effect, sometimes a dramatic effect, on the position of different social groups. Legal rights for some inevitably involve correlative disabilities or obligations for others.²⁸ All of these effects are complicated and often exacerbated by the fact that market reforms will likely if not inevitably generate spinoffs outside the formal economy as well, affect-

25. See, e.g., WORLD DEVELOPMENT REPORT 1996, *supra* note 5.

26. Arguments about the coercive and distributive properties of legal rules have been elaborated at various moments throughout twentieth century American legal thought, beginning with the realists. See WILLIAM W. FISHER III ET AL., AMERICAN LEGAL REALISM (1993); Morris Cohen, *Property as Sovereignty*, 13 CORNELL L.Q. 8 (1927); Robert Hale, *Bargaining, Duress and Economic Liberty*, 43 COLUM. L. REV. 605 (1943).

27. See Hale, *supra* note 26.

28. See W. Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 28 (1913).

ing the position of individuals or groups within the household and the community. By reframing the context in which people operate and the resources and powers that they possess, market reforms thus have the capacity to enhance or mitigate advantage and disadvantage in countless ways.

Direct causal connections between regulatory and policy reforms and advantage and disadvantage can be difficult to establish due to the range of variables which are normally in play. However, by examining efficiency-enhancing rules and policies with a view to ascertaining their (re)distributive properties, some of the links between particular reforms and shifts in risks, rewards, resources, and power to particular actors become discernible. This in turn provides a mechanism for explaining how market reform might alter the position of particular groups and reconfigure market and non-market spaces and activities.

There are further reasons why those interested in equity of various sorts should pay attention to questions of market design. When market regulation is treated as a matter to be dictated by efficiency, concerns about any resulting poverty or inequality are externalized from the debate over markets. There are both risks and inherent misconceptions in imagining the processes of (re)distribution in this manner. First, the distributive effects of the reforms themselves, the benefits which accrue to some and the disadvantages which accrue to others, are likely to be missed, ignored, or simply normalized, therefore escaping critical scrutiny. Second, the remedies to poverty and inequality may also be adversely effected. Distributive outcomes which result from market-based processes tend to be defended in terms of entitlements and rights. Access to remedies by way of "social policy" and income transfers, by contrast, is more precarious; such remedies are more likely to be regarded as either questions of charity or "political" matters, matters which are contingent on other priorities, demands and the level of resources available.

The following analysis attempts to identify how orthodox neoliberal policies and regulatory reforms might work to generate particular forms of disadvantage for at least some classes of women in the context of the shift from plan to market economies. The argument is not that the application of the canonical market-centered reform and restructuring prescriptions will produce identical or even similar results in every context. Rather, it is that market-centered rules and policies are very likely to be an important site of redistribution; tracing their effects is thus crucial to those interested in equality objectives of almost any kind.

Tracing the effects of reforms is also a way of examining how the phenomenon known as "globalization" is constituted and managed through projects of legal and institutional reform. It is evident that international financial institutions such as the Bank are important actors in this process, at least with respect to developing and transitional economies, and that their activities are likely to be a useful site of attention for human rights activists.

Attending to the effects of the institutional and legal projects of these institutions also indicates that the number of reforms relevant to questions of equity might be much broader than initial appearances suggest. As I hope to demonstrate in the following analysis, rules and policies that at first glance seem to be removed if not remote from the concerns of human rights activists can turn out to generate consequences which are sure to be of interest.

II. REDISTRIBUTION THROUGH REFORM

A. Considering the Transition from Plan to Market

Among the central tenets of reform and restructuring in the economies in transition was that states and enterprises needed to limit or eliminate their involvement in “non-productive” activities. In the view of the Bank, both states and enterprises were engaged in a host of functions more properly left to the market. The state was mistakenly and dangerously engaged in providing secure lifetime employment and “cradle to grave” protection to its citizens. This led to massive inefficiencies and disincentives to work while creating expectations about the state which the state was demonstrably unable to fulfill. Enterprises in the plan economy were unwisely providing their workers with a host of benefits and services which had nothing to do with production. These cost the enterprise valuable management time and resources and, in the view of the Bank, were unsustainable under market conditions and, in any event, beyond the proper purview of enterprises.

The basic solution to both problems was the same: workers were now to secure their own welfare by earning income and purchasing goods and services in the market. The market itself would provide the goods and services for which sufficient demand was generated at a price and quality dictated by the market. What was envisioned, then, was a massive re-assignment of tasks and responsibilities to individuals and households, and the replacement of the state and the enterprise by the market as the mechanism for the provision of goods and services.

As the following discussion will indicate, both the design and the result was to redraw the boundary between productive and non-productive tasks and increase the costs borne by individuals or assumed by households.

To understand how this occurs, restructuring needs to be approached as a process which will likely if not inevitably engender a range of strategies and responses outside as well as inside the market. Even small shifts in the policies, laws or organizational structure of the formal economy can necessitate or trigger an incredibly varied, complex and wide-ranging set of responses and adjustments in the informal economy and reproductive sectors.²⁹ The division of labor and the fact that different groups are differently located in

29. For a discussion of the complexities of tracking these effects, see Martha Macdonald, *The Empirical Challenges of Feminist Economics: The Example of Economic Restructuring*, in *OUT OF THE MARGIN: FEMINIST PERSPECTIVES ON ECONOMICS* 175, 175 (Edith Kuiper & Jolande Sap eds., 1995).

the market means that restructuring is very likely to alter the burdens and advantages that various social actors bear.

While the focus of neoliberal reform is on the transformation of the state, the market, and the enterprise, restructuring inevitably transforms the operation and structure of households as well. Notwithstanding the interconstitutive relationship between production and reproduction, and thus the interdependence between the family and the market, actual restructuring proposals proceeded largely without any serious analyses of their expected impact on households or families. Yet to change the structure of laws and entitlements so that enterprises are unlikely to provide certain benefits or services, and at the same time to institute policies expressly discouraging the state from providing those benefits and services, is, in the absence of compensating changes, to assign those costs and responsibilities to the family or the community—and more specifically to women. Because of the profoundly gendered division in both paid and unpaid labor, such decisions are very likely to have an effect on the relative position of men and women. The following analysis will attempt to suggest how this might occur.

B. Constructing Productive and Unproductive Work

The reproductive economy or sphere³⁰ is the term commonly employed to refer to the economic activity which is necessary to the provisioning and support of human life. It typically encompasses such activities as child and elder care, food preparation, volunteer work, and large amounts of education and health care. It includes a broad range of services which are performed rather than purchased, as well as home production which is consumed rather than sold, but which obviates or lessens the need to buy goods or services in the market. By contrast, the “productive” economy refers to all economic activity which takes place within the market.

Two essential features distinguish the reproductive economy, demarcating it from the so-called “productive” economy. The first is the absence of payment: economic activity within it is not the subject of a monetary transaction. Second, because of the way that the observation, classification, and measurement of formal economic activity has evolved, what goes on within the reproductive economy is normally excluded from the “official” economy and the calculation of production, productivity, and national wealth.³¹ Thus, the reproductive economy includes all of the activities which are not directly remunerated but which contribute to the provisioning of human life, which socialize and acculturate people to the performance of particular roles, including those in the “productive” economy, and which constitute, apart from the independent value of such work, an indispensable support and precondition

30. See MARILYN WARING, *IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS* 187–223 (1988).

31. See *id.* See also JULIE NELSON, *FEMINISM, OBJECTIVITY AND ECONOMICS* (1996); ISABELLA BAKER, *THE STRATEGIC SILENCE: GENDER AND ECONOMIC POLICY* (1994); Nilufer Catagay, Diane Elson, & Caren Grown, *Gender, Adjustment and Macroeconomics: Introduction*, 23 *WORLD DEV.* 1827, 1827 (1995).

tion to all market activity. The distinction between the two economies, then, provides a means of conceptualizing one realm of productive activity which, though both integral to other types of production³² as well as an independent source of wealth generation, remains formally invisible in both the accounting of economic activity and discussions of economic policy.

Focusing on the place of unpaid work and the effects of non-market obligations in the context of transition is a useful way to capture the operation of market-centered policies and the disadvantages and dilemmas they characteristically pose for women. Tracing the effects of the proposals, including decisions about whether and how to compensate such work, also provides a window on the larger question at issue, the distributive function of market rules and regulations.

The heart of the neoliberal project is promoting growth as measured through increases in macroeconomic indicators such as the gross domestic product (GDP). However, it has become increasingly clear that any simple equation between economic growth and improvements in human welfare is unsafe. Indeed, it is the frequent disjunction between growth and welfare that gave rise to the development of the alternative "Human Development Index," an indicator which is calculated on the basis of a number of different factors, of which GDP is only one.³³ Assumptions about the growth and the fortunes of particular groups are even more dangerous, as economic growth has proven to be consistent with growing inequality of varying types.

In the wake of efforts by feminist activists and scholars across the globe,³⁴ it has now become more broadly recognized that indicators such as the GDP are inadequate to capture even the scope and degree of economic activity. One of the major defects of these indicators is that they fail to account for the economic value of unpaid work. This is no small exclusion; as the United Nations Development Program reported in its *Human Development Report 1993*, if included, this labor would increase the size of the average economy by about thirty percent.³⁵

It is a stylized fact, characteristic of all societies, that by far the majority of this unpaid work is performed by women. As scholars such as Marilyn Waring have patiently documented,³⁶ the exclusion of unpaid work renders

32. The argument that reproductive labor has economic value has a venerable history in economic thought, beginning at least with the work of Margaret Reid in 1934. For a recent survey of issues around the valuation of unpaid work, see *Symposium*, FEMINIST ECONOMICS, 1996, at 3.

33. The Human Development Index (HDI) is reported each year in the United Nations Development Programme, Human Development Report.

34. See, e.g., WARING, *supra* note 30; Lourdes Beneria, *Conceptualizing the Labour Force: The Underestimation of Women's Economic Activities*, in ON WORK: HISTORICAL, COMPARATIVE AND THEORETICAL APPROACHES 372, 372 (Raymond E. Pahl ed., 1988).

35. See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1993, at 25 (1993). For a general survey on the undervaluation of women's work, paid and unpaid, see UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1995, at 87-89 (1995) [hereinafter HUMAN DEVELOPMENT REPORT 1995]. See also WARING, *supra* note 30.

36. See WARING, *supra* note 30.

much of the work performed by women formally invisible for the purposes of determining growth. The exclusion of unpaid work from the productive economy and the calculation of growth is potentially important to a range of policy decisions. However, the fate of unpaid work is likely to be especially significant in the implementation of market-centered policies. It takes on added significance in this context because in their relentless drive to enhance efficiency, both states and enterprises continually attempt to externalize costs and devolve responsibilities to individuals and households. For a variety of reasons, at least some of this devolution tends to translate into an increase in unpaid work and the elimination of benefits and services that might partly compensate labor otherwise undertaken on an unpaid basis. This generates a series of adverse effects for women which include interference with women's labor market participation. While it might be thought that such a result would be recognized as counterproductive in a market-centered world, the following schematic outline suggests how it is that such strategies seem efficient as long as the connection between unpaid and "productive" work is both ignored or denied and exploited.

First, the fact that unpaid work is excluded from the economic domain means that any increases in the degree of this work are irrelevant to those interested in growth. Second, because these increases in unpaid work are irrelevant, there is no attempt to keep track of the extent of the fluctuations in the amount of unpaid work and their connection to economic reform and restructuring. Third, there is no attempt to determine how increases or decreases in the amount of unpaid work affect the level of activity in the market. Fourth, and most significant in the context of efficiency-driven reforms, the ability to ignore the costs associated with increased unpaid work and the fact that they are not directly visible on the bottom line creates incentives on the part of both firms and governments to externalize them.

Unpaid domestic and other non-market obligations, particularly those involving the care of children, aged parents and other relatives, are frequently an important constraint on women's participation in the labor market and thus a crucial source of women's labor market disadvantage. For this reason, unpaid domestic labor has been characterized as a tax on women's labor market participation.³⁷ To the extent that such labor contributes to economic activity, it can also be described as an uncompensated benefit to other actors in the market. In a market-centered regime, one in which alternative sources of income and services through the state have been diminished if not eliminated entirely, absent independent sources of wealth, participation in wage labor is crucial to welfare if not survival. In such a context, it would be hard to overstate the significance for women of whether obligations of care are compensated in some way, or indeed whether they are accommodated or recognized as relevant to labor market participation at all.

37. See INGRID PALMER, *GENDER AND POPULATION IN THE ADJUSTMENT OF AFRICAN ECONOMICS: PLANNING FOR CHANGE* (1991).

The 1999 *Human Development Report*³⁸ identifies for the first time the effects of globalization on what is referred to as “care work.” It describes these effects in terms of three forces which “squeeze” those who provide care work who are, as they note, overwhelmingly women.³⁹ The first is simply the “time squeeze.” As women are either induced or compelled to enter the labor force, the time available for unpaid household obligations is reduced. Notwithstanding, women generally maintain responsibilities for both paid and unpaid work, producing the phenomenon of the “second shift.”⁴⁰ This phenomenon is a particularly serious problem in Central and Eastern Europe and the CIS, and one which has been aggravated by the transition process.⁴¹ The second is the “resource squeeze.” This refers to the current propensity of governments to make cutbacks in social welfare expenditures; this both creates a greater push for private services and has a negative impact on the quality and availability of care.⁴² The last is the “incentive squeeze.” The relentless focus on profitability provides disincentives to engage in both care work in the market, which is poorly compensated, and unpaid care work. It also penalizes those who specialize in what are termed “altruistic” activities. As the report notes, “both individuals and institutions have been free-riding on caring labor that mainly women provide.”⁴³

Why the position of women might have deteriorated in the context of transition and how it is connected to the fate of care work in the turn to the market is something that can only be appreciated by analyzing the relationship between the productive and the reproductive economies in the plan economies.

C. Organizing Productive and Reproductive Work: The Plan Economies

One of the most distinctive aspects of the organization of production in the plan economies was the integration of production with the provision of a range of social, cultural and economic services. In much of Central and Eastern Europe and the Soviet Union, the state and the enterprise formed part of an interlocking structure for ensuring the material needs of workers and other citizens. Enterprises were the major conduit for the provision of social services and, in addition, carried out many of the redistributive and welfare functions commonly associated with the state in market economies.⁴⁴ Services provided

38. HUMAN DEVELOPMENT REPORT 1999, *supra* note 3, at 79–80.

39. *Id.* at 77.

40. This is a well-documented aspect of women’s lives in both plan and market economies. See, e.g., ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* (1989); Maxine Molyneux, *The “Woman Question” in the Age of Perestroika*, 183 *NEW LEFT REV.* 23, 37 (1990).

41. See HUMAN DEVELOPMENT REPORT 1999, *supra* note 3, at 81.

42. See *id.* at 79.

43. *Id.*

44. See generally JANOS KORNAI, *THE SOCIALIST SYSTEM: THE POLITICAL ECONOMY OF COMMUNISM* (1992); Maxim Boycko & Andrei Schleifer, *Russian Restructuring and Social Benefits*, in *RUSSIAN ECONOMIC REFORM AT RISK* 101, 101–17 (Anders Aslund ed., 1995); Leopold Specht, *The Politics of Property: Soviet Property as a Bundle of Rights*, (1994) (unpublished S.J.D. dissertation, Harvard Law School) (on file with the

included child care, housing, subsidized goods, holidays, health care, and sports and cultural facilities. Enterprises often performed what would typically be local administrative functions as well, maintaining schools and hospitals, and even assuming responsibility for street cleaning and refuse collection.⁴⁵

Unlike in market economies, the fulfillment of reproductive functions ranked along with production targets as important enterprise objectives, as it was important that the system reproduce itself as well. The property of enterprises allocated by the state planning authorities included goods and capital designed for spending on the reproductive needs of labor.⁴⁶ Such assets were allocated to separate social funds and intended to be used for those purposes alone.⁴⁷ For example, the principle of "operative management" which governed the use and disposition of property in the Soviet Union placed limits on the use of property allocated by the state to enterprises. Workers were entitled as a matter of right to access to the social fund, although access might be linked to fulfillment of the productive objectives of the enterprise.⁴⁸

Although this system is commonly characterized as one in which citizens received "free" or "subsidized" goods and services from the state, low- or no-cost provision of goods and services was in fact an integral part of the employment bargain with the state.⁴⁹ Wages in general were very low and employment compensation took the form of a mixture of wages and benefits; as much as half the compensation package came in the form of benefits.⁵⁰ Benefit entitlements as well as the receipt of specific goods were generally conditional upon employment, although because of the nature of the services provided, beneficiaries often extended beyond the workers of a particular enterprise to include those in the community as well.⁵¹

1. The Transformation of Child Care

Among the most significant benefits were child care facilities and various entitlements to family and maternity leave; these were extensive in most if not all of Central and Eastern Europe and the Soviet Union. Such benefits were designed to facilitate women's labor market participation, the legacy of the conscious decision to draw women into the paid labor force to intensify

Harvard Law School Library); GUY STANDING, *RUSSIAN UNEMPLOYMENT AND ENTERPRISE RESTRUCTURING: REVIVING DEAD SOULS* (1996); MARIE LAVIGNE, *THE ECONOMICS OF TRANSITION: FROM SOCIALIST ECONOMY TO MARKET ECONOMY* (2d ed. 1999) (describing and discussing of the characteristic features of social provision and enterprise structure in centralized economies).

45. See Specht, *supra* note 44, at 105.

46. See Specht, *supra* note 44, at 103.

47. See KORNAI, *supra* note 44, at 132.

48. See *id.*; Specht, *supra* note 44, at 103.

49. See INTERNATIONAL MONETARY FUND ET AL., *A STUDY OF THE SOVIET ECONOMY* 2, at 149-50 (1991).

50. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 73.

51. See Specht, *supra* note 44, at 108; Boycko & Schleifer, *supra* note 44, at 110.

industrial production.⁵² They helped to ensure one of the characteristic features of these economies: the high labor force participation of women relative to other industrialized countries.⁵³ However, they were not in any way designed to transform the division of labor in the household. As has been commonly remarked, women retained all of their pre-existing obligations and continued to perform extensive amounts of unpaid work as well.

In the view of the Bank, the involvement of enterprises in providing many of these benefits is problematic on a number of grounds. First, it is a diversion from the "proper" concerns of enterprises in a market economy. Second, it imposes costs that are unsustainable in a competitive environment. Third, it is a serious barrier to the needed restructuring of both enterprises and the labor market because it is a disincentive to labor mobility.⁵⁴ According to the Bank, moving workers from state-owned enterprises to the private sector is crucial to the success of the reform process. However, when workers are dependent on their place of employment for important aspects of their welfare such as housing, they are less likely to change jobs. Thus, "[d]ecoupling delivery of a wide range of services from enterprises—housing and day care are particular problems—will be vital to allow workers to move readily."⁵⁵

One of the planks of the restructuring proposals advanced by the Bank, then, is the elimination of child-care subsidies and the withdrawal of enterprises from the provision of child care services. While there might remain a transitional role for local governments in providing child care in some cases, ultimately what is envisioned is that states, too, will cease to provide such services, at least in the form of universally available benefits, subsidies or services. In the "normal market," services such as child care are something simply to be determined by market demand.

Like other reforms, this proposal is advanced in the name of enhancing efficiency and competitiveness. The elimination of the costs of child care undoubtedly improves the bottom line of enterprises; to the extent that it is excluded from basic social services, it also enhances the fiscal position of the state. However, while no longer visible, either as costs of doing business or as items on the state budget, the costs which are saved there do not simply disappear. Instead, they are merely shifted to households and individuals and, the gender division of labor being otherwise maintained, very likely to women. Consequently, while such moves are efficiency-enhancing from the perspective of those seeking gains in the market, they may only be beneficial to the enterprise involved, not the individual or household that is affected or, depending on the effects which are generated, even the community or the society at large. As discussed below in the context of labor market regulation, the provision of

52. For a discussion of the aims and problems of the attempt to incorporate women into the paid economy in the plan economies, see Molyneux, *supra* note 40.

53. See INTERNATIONAL LABOUR OFFICE, YEARBOOK OF LABOUR STATISTICS (1991).

54. See Boycko & Schleifer, *supra* note 44; MAXIM BOYCKO, ANDREI SCHLEIFER & ROBERT VISHNY, PRIVATIZING RUSSIA (1995).

55. WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 76.

child care facilities through enterprises ensures the cross-subsidization of such services from workers who do not require those services, thus mitigating some of the disadvantages of the gender division in responsibility for care work.

Efficiency arguments thus fail to capture important dimensions of the restructuring exercise. Rather than claims simply about the aggregate economic benefit to be derived from these arrangements, they should be understood as conclusions about how resources and responsibilities should be allocated and income distributed and what activities should be paid for in the context of production. However, all of the arguments about the benefits of these structural reforms are made without any overt recognition of the element of redistribution involved. As a result, there is no attention to the question of compensation, the adequacy of resources or the ability of individuals or households actually to sustain the increased costs and perform the increased labor which will necessarily result.

Failing changes in the division of labor, which are not contemplated in the course of reforms, most of these burdens can be expected to fall on women. The Bank is aware that the result of the loss of child care services has been to increase women's unpaid labor, constrain women's labor market opportunities and limit women's freedom.⁵⁶ Yet these effects do not appear to call the desirability or the legitimacy of the policies into question; how women are supposed to perform in the model market economy under this handicap remains unexplained. Even if some or even all women are able to obtain child care services on the market, why they should be compelled to absorb this cost alone is never addressed.

2. The Elimination of Goods and Subsidies

In addition to divesting enterprises of child care services, the Bank also recommended that subsidies to basic consumer goods be removed and that enterprises cease to compensate their employees in the form of other in-kind benefits and services and replace them with wages alone. This was advocated in an effort to eliminate distortions in consumption decisions and ensure market pricing of goods and services. While less directly disadvantageous to women, this shift also merits attention, as its impact is unlikely to be gender neutral either. Many women, like many men, might well prefer to receive most or all of their compensation in wages, especially if wages rise significantly and are adequate to cover the cost of purchasing goods and services in the market. However, such an outcome is far from inevitable; indeed, because of the wage control policies which were also advocated as part of restructuring, at least in the short to medium term, wages adequate to purchase even basic goods and services are in fact a remote possibility for large segments of the population.

56. *See id.* at 72.

Restructuring plans included deliberate attempts to suppress wage increases during transition.⁵⁷ In order to control the threat of inflation through a wage-price spiral, while states moved to decontrol the prices of many basic goods and services, wage increases remained controlled and the value of the minimum wage, the foundation of the entire wage structure in the public sector in some countries, was suppressed. Not surprisingly, large numbers of people have been unable to purchase even basic goods and services, and the region in general has registered unprecedented declines in welfare.⁵⁸

Benefits and in-kind services lessen the absolute importance of the wage level, because they remove the pressure to secure goods and services on the market. While they may create various efficiency and incentive problems, it is clear that they may also serve to reduce substantive levels of poverty and inequality among workers. Gender inequality, particularly in the form of wage disparities, has proven to be a systemic feature of all economies, whether plan or market,⁵⁹ and women are persistently over-represented within the pool of low wage workers even within particular enterprises. Therefore, the provision of services and benefits may be particularly valuable to women as such provision serves to partly mitigate the effects of the gender gap in wages.

In addition, certain benefits, subsidies, and services may be of greater practical benefit to women, simply because the responsibility for the care of others and securing the basic needs of the household often falls by default to women; this is particularly true where children are involved.⁶⁰ Moreover, there is evidence of gendered differences in consumption, savings, and investment patterns; women everywhere appear to exhibit a significantly higher propensity to invest disposable resources in their children than do men.⁶¹

Where more compensation is provided in the form of benefits and services than wages, there is less room to dispute the allocation of income; indeed, certain items are removed from contention altogether. However, the converse is also true: the removal of services and benefits means that their provision is not ensured. Instead, they must compete for priority with other claims on resources. The outcome will be subject to such factors as the relative bargaining strength and differing priorities of the parties. There is also evidence that the level of control over household decisions is lower when

57. See generally MINIMUM WAGES IN CENTRAL AND EASTERN EUROPE: FROM PROTECTION TO DESTITUTION (Guy Standing & Daniel Vaughan-Whitehead eds., 1995).

58. See, e.g., the discussion of the decline of Russia in UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1996, at 84 (1996).

59. See HUMAN DEVELOPMENT REPORT 1995, *supra* note 35, at 29.

60. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 72.

61. See Catagay et al., *supra* note 31, at 1831; Diane Elson, *From Survival Strategies to Transformation Strategies: Women's Needs and Structural Adjustment*, in UNEQUAL BURDEN: ECONOMIC CRISES, PERSISTENT POVERTY, AND WOMEN'S WORK 42 (Lourdes Beneria & Shelley Feldman eds., 1992). See generally LOURDES BENERIA & MARTHA M. ROLDAN, CROSSROADS OF CLASS AND GENDER: INDUSTRIAL HOMEWORK, SUBCONTRACTING, AND HOUSEHOLD DYNAMICS IN MEXICO CITY (1987).

women are not employed in the labor market and that control varies according to the relative income earning ability of the parties.⁶² If the removal of subsidies and services were accompanied by, or itself produced, disproportionate levels of female unemployment or a widening wage gap (notwithstanding that the total level of resources available to the household might have increased because of rising wages to the employed or better-employed spouse), the potential for disadvantage seems clear. Women might end up with less say over the disposition of resources than men, consequently capturing fewer of the economic gains in the restructured economy.⁶³

3. Maternity and Family Leave: The Move to Deregulated Labor Markets

Yet another restructuring proposal relating to care or reproductive work was the elimination of entitlements to maternity and family leave. For the following reasons, the Bank took the view that the turn to the market requires such entitlements to be reduced if not eliminated entirely. First, such entitlements place an onerous burden on enterprises, especially those attempting to become competitive in global markets. Second, protective or special labor market legislation for women are undesirable, as they tend to function as disincentives to hiring women⁶⁴ and therefore may hinder rather than assist women in the labor market. In the context of transition, extensive maternity and other leave provisions are characterized as "generous" and identified as factors which render women more expensive to employ, thus generating relatively high levels of unemployment among women.⁶⁵

This skepticism regarding maternity and family leave is part of the general commitment to "flexible" rather than "rigid" labor markets. In the view of the Bank,

[a]daptable labor markets are essential if workers are to benefit quickly from economic recovery Increasing labor market flexibility—despite the bad name it has acquired as a euphemism

62. For more discussion on these disparities in the context of developing countries, see Amartya K. Sen, *Gender and Cooperative Conflicts*, in *PERSISTENT INEQUALITIES* 123–49 (Irene Tinker ed., 1990); Bina Agarwal, "Bargaining" and *Gender Relations: Within and Beyond the Household*, *FEMINIST ECONOMICS*, 1997, at 1. However, parallel phenomena have been identified in industrialized market economies as well. See also Gillian K. Hadfield, *Households at Work: Beyond Labor Market Policies to Remedy the Gender Gap*, 82 *GEO. L.J.* 89 (1993); HOCHSCHILD, *supra* note 40.

63. This possibility has already been noted by researchers with respect to the process of transition. See Anastasia Posadskaya, *A Feminist Critique of Policy, Legislation, and Social Consciousness in Post-socialist Russia*, in *WOMEN IN RUSSIA: A NEW ERA IN RUSSIAN FEMINISM* 175 (Anastasia Posadskaya ed., 1994). In Soviet Russia, it appears to have been mainly women who controlled household income and expenditures. Posadskaya suggests that the gender asymmetry has to do with the fact that women also do valuable work outside the home; an increase in male decision-making is to be expected in the case of a reduction in women's outside employment.

64. See WORLD BANK, *TOWARD GENDER EQUALITY: THE ROLE OF PUBLIC POLICY, DEVELOPMENT PRACTICE* 46–50 (1995) [hereinafter *WORLD BANK, TOWARD GENDER EQUALITY*].

65. See generally *id.*

for pushing wages down and workers out—is essential in all regions of the world undergoing major reforms.⁶⁶

In the context of transition, labor market regulations should be designed to encourage positive contributions to growth.⁶⁷ It is a recurring theme in neoliberal policy discussions that, however apparently desirable or beneficial, many labor and employment regulations do more harm than good, even to those they are intended to benefit, because they reduce investment, wages or the number of jobs.⁶⁸ Consequently, it is important to avoid over-regulation.⁶⁹ For example, high payroll contributions on the part of employers are said to hinder employment creation and interfere with the competitiveness of enterprises.⁷⁰ Moreover, labor market policies tend to create favored sectors of employees, resulting in differential benefits for protected groups at the expense of the less well off.⁷¹ For example, unions can have negative effects, even from the standpoint of equity, because they protect minority groups of workers at the expense of the unemployed, those in rural and informal markets, and consumers.⁷² Unions also may be inclined to use their political power to resist structural adjustment efforts,⁷³ which in the Bank's view is merely the exertion of a particular interest at the expense of the general.

Because of the importance placed on the role of the market in determining prices and re-allocating labor, labor market regulations such as job security provisions or minimum wage rates are regarded as particularly problematic for transition economies.⁷⁴ While the weakening of labor regulations will disadvantage workers in general, it is likely to have disproportionately negative effects on women. One reason is that women tend to be over-represented among low wage workers, forming a large part of the class of workers most in need of labor market protections. However, because of the gendered division of unpaid work and non-market obligations, entitlements such as various forms of maternity and family leave are central to the ability of many women to simply engage in and retain paid employment. They are also an important mode of compensating women for part of the time and effort involved in reproductive work, as they compel workers who do not engage in such activities to subsidize those who do. Apart from protecting job security, their main function is to redistribute resources among workers and, depending on how they are structured and how their costs are passed

66. WORLD DEVELOPMENT REPORT 1995, *supra* note 12, at 109–10.

67. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 77.

68. See WORLD DEVELOPMENT REPORT 1995, *supra* note 12, at 70.

69. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 43, 63.

70. See WORLD BANK, POLAND: INCOME SUPPORT AND THE SOCIAL SAFETY NET DURING TRANSITION 60 (1993).

71. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 77; WORLD DEVELOPMENT REPORT 1995, *supra* note 12, at 34–35.

72. See WORLD DEVELOPMENT REPORT 1995, *supra* note 12, at 80–81.

73. See *id.* at 81.

74. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 77.

on, compel contributions from other parties such as corporate shareholders, consumers, and society at large. Like the direct provision of child care services, labor market regulations guaranteeing entitlements to maternity, child, and family-related leave require other workers to cross-subsidize the cost of absences for reproductive activities. If they are eliminated, those who engage in them must shoulder these costs in their entirety.

4. Flexible, Merit-Based Compensation

The transformation of the labor market in the context of transition includes an explicit attempt to introduce greater wage differentials. In the words of the Bank, "Greater disparity of wages, income and wealth is—up to a point—a necessary part of transition, because allowing wages to be determined by the market creates incentives for efficiency that are essential for successful reform. More-efficient workers must be rewarded for their contribution to growth."⁷⁵

This objective, too, is likely to have a gendered outcome. Whatever the effects on productivity, there are structural reasons to believe that men will be the major beneficiaries of flexible, merit-based compensation, receiving the bulk of higher wages, while women will remain clustered at the lower end of the wage scale.

These effects might be explained as follows. The institution of incentive-based compensation serves to better position those with relative freedom from reproductive responsibilities and the consequent extra time and energy to devote to paid work. At the same time, it penalizes those who either choose or must continue to perform such tasks. The rewards offered in the context of employment also create an incentive for individuals to reduce their investment in unpaid labor, if not shed it entirely. As a result, not only is the promotion of merit-based compensation likely to widen the wage gap between men and women, it may also operate to entrench the gendered division of labor with respect to child care.

Because of obligations of care towards children and other dependents, women as a group may fare less well under a system that rewards and encourages labor mobility. The complications of integrating paid employment with reproductive responsibilities means that those with such obligations may find it more difficult or impossible to obtain and work at the most attractive or well-remunerated opportunities. Certain jobs will be effectively foreclosed, causing women to remain in lower-paid employment more often than they would if reproductive obligations were shared equally with others, cross-subsidized by other workers or funded through the state.

Even as the project as a whole is predicated on universal reliance on the market, the gendered division of labor both inside and outside the market suggests that different groups will continue to be positioned in very different ways to take advantage of increased wage and labor market flexibility.

75. *Id.* at 66.

Although increased wage and labor market flexibility are presented as unqualified benefits and an improvement on the status quo in the restructuring agenda, they have obvious distributive consequences and other potentially undesirable effects.⁷⁶

In general, the move to increased flexibility shifts economic risks to workers, compelling them to shoulder more of the costs of restructuring than they otherwise might. In situations of high or increasing unemployment, greater wage competition can provide an opportunity to “sweat” workers by encouraging employers to increase productivity through wage cuts. Apart from the detrimental effects on the status of workers, such strategies can become a substitute for other more pertinent types of restructuring, such as technological innovation, improvements in product quality, or managerial and enterprise governance restructuring.⁷⁷

Greater flexibility, however, has specific, also differentiated effects on particular groups of workers: labor market flexibility appears to mean different things for different groups and in different contexts. Flexibility may be beneficial to elite groups of workers, for example those in high-technology industries, who possess specialized skills and are well-positioned to sell their services in a dynamic market.⁷⁸ However, for many women, labor market flexibility has tended to mean downward pressure on wages, increased job and income insecurity, and degraded working conditions.⁷⁹

5. Public Sector Cuts

Budget reductions and fiscal austerity programs, reductions in the size of the public sector, and the displacement of public by private providers have been stock features of neoliberal reforms everywhere that they have been implemented. They lie at the heart of attempts to enhance the role of the market and demote the state in economic and social life. The social costs that such reforms tend to exact, including disproportionate effects on women, are well documented effects of structural adjustment lending in many states.⁸⁰ Although these features had been identified prior to the transition process, large reductions in the role of the state in the areas of social services formed a central part of the reform trajectory in all of the plan economies.

76. Some of the potential drawbacks are discussed in STANDING, *supra* note 44, at 32–102.

77. Amsden et al. make precisely this point with respect to the defects of neoliberal attempts at enterprise restructuring in the course of the transition. See ALICE H. AMSDEN ET AL., *THE MARKET MEETS ITS MATCH: RESTRUCTURING THE ECONOMIES OF EASTERN EUROPE* (1994).

78. This is the basis of the enthusiasm for the post-Fordist industrial production grounded in flexible specialization. See MICHAEL J. PIORE & CHARLES F. SABEL, *THE SECOND INDUSTRIAL DIVIDE* (1984).

79. See Guy Standing, *Global Feminization Through Flexible Labor*, 17 *WORLD DEV.* 1077 (1989).

80. See GIOVANNI A. CORNIA ET AL., *ADJUSTMENT WITH A HUMAN FACE* (1987); UNITED NATIONS RESEARCH INSTITUTE FOR SOCIAL DEVELOPMENT, *ADJUSTMENT, GLOBALIZATION AND SOCIAL DEVELOPMENT* (1995).

It is now well established that the withdrawal or collapse of services in Central and Eastern Europe and the CIS has resulted in a severe welfare crisis in many parts of the region.⁸¹ In some states, the decline in well-being has reached alarming levels; for example, the change in life expectancy in some countries has been the most rapid and steep ever recorded, a decline of five years over a period of just six years.⁸² Reacting to criticism on this front, the Bank has now moved to recommend the protection of some funds to cover health and primary education expenditures. However, the large scale effects of reforms, reductions in expenditures, and privatization of much of the service delivery, are not easily countered by softening the project at the edges. Here too, the impact is likely to bear more heavily on women, for reasons that became clear following the implementation of the structural adjustment programs.⁸³

Women are disproportionately heavy users of social services such as those promoting health and welfare, a fact which is directly related to their obligations of care to others. Any curbacks, then, will inevitably tend to be felt more intensely by women. Women are also likely to step into the gap created by a shortfall in services, for example, by providing those services for free. Cutbacks thus are likely to increase the amount of unpaid work performed by women. Additionally, women are disproportionately represented among the workforces of those sectors, due to the predominance of women in care work whether it is of the paid or unpaid variety. Finally, women are likely to be harmed by the general attempt to downsize the state, as the state is everywhere a significantly more important employer for women than men, often providing opportunities, benefits, and wages that exceed those available in the private sector.

III. EQUITY AND MARKETS

A. *From Plan to Market: A Progress Narrative?*

In the context of transition, it is not difficult to foresee how some forms of disadvantage for women vis-à-vis men might be either produced or exacerbated in the course of implementing "normal" market practices and institutions. These forms of disadvantage include but are not limited to the following: higher unemployment rates, declining labor force participation, higher rates of informal and subsistence work, lower levels of income, a longer working day, and less leisure time. Many of these effects were in fact documented shortly after the transition process began.⁸⁴ Although there are

81. See UNITED NATIONS CHILDREN'S FUND (UNICEF), CENTRAL AND EASTERN EUROPE IN TRANSITION, REGIONAL MONITORING REPORT NO. 3, POVERTY, CHILDREN AND POLICY: RESPONSES FOR A BRIGHTER FUTURE (1995); UNICEF, MONEE PROJECT, CEE/CIS BALTICS, REGIONAL MONITORING REPORT NO. 5, EDUCATION FOR ALL? (1998).

82. See HUMAN DEVELOPMENT REPORT 1999, *supra* note 3, at 79.

83. See UNITED NATIONS, THE WORLD'S WOMEN: TRENDS AND STATISTICS (1995).

84. See LIBA PAUKERT, ECONOMIC TRANSITION AND WOMEN'S EMPLOYMENT IN FOUR CENTRAL EUROPEAN COUNTRIES, 1989-1994 (1995).

a number of reasons for these phenomena, including outright discrimination against women in the new labor markets,⁸⁵ important causes of the disadvantage can be located in the dismantling of a production structure that served to compensate, at least to some degree,⁸⁶ the costs associated with the performance of reproductive work.

The emergence of these forms of disadvantage for women in the course of transition is visible primarily because of the simple fact of the shift: the transition process illuminates, in quite specific ways and within a fairly short time frame, connections between economic rules, policies, and structures and shifting access to resources and the market. In particular, the transition process highlights how disadvantage can arise because of the manner in which paid and unpaid work and markets for unemployment are organized and intersect: in a context in which non-market obligations and unpaid work are distributed in highly unequal ways, the effective ability to participate and thrive in the market is likely to be similarly unequal.

What is just as significant is that similar if not parallel forms of disadvantage are very likely to be present, if in less visible ways, in other market economies. Moreover, they are likely to become more pronounced as states move toward conformity with neoliberal regulatory and policy ideals. Where strategies and institutions to compensate for the relative burdens of unpaid work are inadequate or absent altogether, costs are imposed on women and benefits accrue to others just as surely as in the context of transition. Some degree of disadvantage in connection with the performance of "reproductive" work, in short, is the norm rather than the exception in most states, whether developing or developed.

It is important to point out that markets do not have to be structured in this way. Part of the solution might involve re-organizing the performance of care work and other unpaid obligations—that is, disrupting the sharply gendered form that it often now takes. Parental as opposed to maternal leave policies, for example, attempt to do just this, if often to limited success.⁸⁷ However, there is no reason that the disadvantage which is attached to the performance of care work is not just as obvious a target for reform. The division of labor has proven to be a persistent,⁸⁸ if variable,⁸⁹ feature of social

85. See WORLD DEVELOPMENT REPORT 1996, *supra* note 5, at 72.

86. In no sense did these strategies mean that anything approaching gender equity had been achieved in these societies. Rather, as numerous commentators have observed, pre-existing expectations that women bear the obligation to perform household labor remained intact and undisturbed as women entered the labor force, leading to the phenomenon of the "double day." See Molyneux, *supra* note 40; BARBARA EINHORN, *CINDERELLA GOES TO MARKET: CITIZENSHIP, GENDER AND WOMEN'S MOVEMENTS IN EAST CENTRAL EUROPE* (1993).

87. Even where such policies are in place, there is evidence that men are reluctant to take advantage of them for fear of being penalized at work and because of ongoing assumptions that caring is the responsibility of women. See, e.g., HUMAN DEVELOPMENT REPORT 1999, *supra* note 3, at 82.

88. See, e.g., Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, in *THE SECOND SIGNS READER: FEMINIST SCHOLARSHIP, 1983–1996*, 27–69 (Ruth-Ellen B. Joeres & Barbara Laslett eds., 1996).

89. It may be the fact of the division of labor, rather than its particular content, which is most

and economic life, often tracking cleavages based on citizenship, ethnicity, race, and nationality. Therefore, it may be just as important to track the flow of benefits and subsidies, both inside and outside the market, and engage in more serious attempts to compensate those who engage in such work.

Reappearing on the agenda here are many of the particular policies, benefits, entitlements, regulations, and even aspects of organizing work life which were targeted for reduction or elimination as part of the restructuring of enterprises and the transition to market economies. Whatever the rationale for their elimination, many are entirely compatible with market economies. Even though they were characteristic of plan or administered economies, they are not uniquely available or suitable to them.⁹⁰ Similar policies, programs, and regulations, running the gamut from extensive job protection and leave entitlements arising from maternity and family obligations to subsidized, universally available child care, can be found in a wide diversity of market economies.⁹¹ Even though they do not fully comport with current neoliberal ideals, they remain integral parts of the structure of many market economies.

There is a range of ways that benefits and services to subsidize or compensate otherwise unpaid work might be ensured. They can be provided directly by the state, whether at the national, regional, state or provincial, or local level, in the form of transfers and programs such as public health care, subsidized child care, and family benefits. While the precise nature and level of benefits and services varies considerably, these remain standard governmental functions in all industrialized market economies. Various forms of public/private partnerships are also feasible.

Contributions from employers and other workers can also be ensured through regulatory efforts. Within this category fall various forms of worker protection laws such as minimum wage and health and safety legislation, as well as mandated employer contributions to pensions and unemployment insurance and pay equity or comparable worth legislation. Depending on how they are structured and interpreted, domestic human rights legislation and anti-discrimination laws might also play a role in redressing the economic disadvantage associated with unpaid work. The likelihood of compensation and subsidy can also be enhanced through the extension of access to collective bargaining, as benefits are often the subject of negotiation in employment contracts.

significant. See Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, in *TOWARD AN ANTHROPOLOGY OF WOMEN* 157, 157-210 (Rayna R. Reiter ed., 1975).

90. See Molyneux, *supra* note 40; EINHORN, *supra* note 86. As these analyses describe, their prevalence in the plan economies was only a contingent feature, driven not only by the pursuit of gender equality but also by the conscious decision to intensify industrial production and the expectation, indeed obligation, that all adults participate in the labor force.

91. For a discussion of different models of welfare under capitalism, see GOSTA ESPING-ANDERSON, *THE THREE WORLDS OF WELFARE CAPITALISM* (1990).

All of these forms of regulation and transfers are common if not widespread features of market economies; in other words, they, too, form part of the "normal" market economy. The fact that benefits and various forms of job security are so often sought by different classes of workers in market economies whenever bargaining power permits suggests that the moves toward idealized neoliberal markets, that is compensation in the form of wages alone rather than wages and benefits and increased labor market flexibility, are of greater benefit to employers than workers.

Moreover, calls to implement many of these very benefits and protections surface routinely as proposals to remedy various forms of gender inequity and labor market disadvantage for women.⁹² As the previous discussion suggested, this is because one of their effects is to require other employees and citizens to subsidize part of the cost of reproductive work. Employer-provided child care, state-subsidized child care, extensive paid maternity leave accompanied by guarantees of job security, and laws ensuring protection against discrimination on the grounds of pregnancy and family status have all been core recommendations for improving the status of women, particularly in industrialized states.⁹³

In the transition to markets, priority has been granted to reducing the involvement of the state in economic life and instituting the institutions and "fundamental" laws which will enable transactions and facilitate growth. However, if labor market regulations of various types and universal benefits and subsidies through the state are not *per se* incompatible with market economies, then what remains of the neoliberal program is simply an argument that a particular type of market should be constructed and particular types of economies and efficiencies should be pursued. The question that emerges is why we should choose to deliberately pursue strategies which tend to produce greater reliance on unpaid work, providing uncompensated benefits to enterprises and some market actors while systematically disadvantaging others.

While the standard answer is that the market, or the emergence of a globally integrated market, compels the path of deregulation and liberalization, this answer obscures the role of neoliberal economists and the international institutions in actively promoting, indeed coercing, developing and transitional states to pursue orthodox neoliberal policies through conditions attached to loans⁹⁴ and the criteria established for institutional membership. It

92. They can be found within the gender research of the Bank itself. See, e.g., WORLD BANK, TOWARD GENDER EQUALITY, *supra* note 64.

93. See United Nations Fourth World Conference on Women, Declaration and Platform for Action, 35 I.L.M. 401, 438–45, 465–71 (1996).

94. Policy-based lending to developing countries by the international financial institutions frequently involves the attachment of "conditionalities" to loan agreements. The Bank and the International Monetary Fund have both been criticized for imposing a standard package of macroeconomic policies in the course of structural adjustment lending and debt relief. These policies have been designed to control the threat of inflation, reduce the size of government and budget and current account deficits, and impose trade liberalization and the deregulation of markets. However, they are also frequently associated with a

also ignores the fact that, beyond such direct forms of control, these institutions are implicated in the response of the market through their role in determining the ideology of sound and unsound economic policies.⁹⁵

The fate of unpaid work and, by extension, the fate of those, largely women, who engage in it places in sharp relief the problem and paradox of pursuing at least one form of equity, gender equity, in the context of neoliberal reforms. It is also a lesson in the distributive properties of neoliberal market regulations and institutions. Whatever the arguments from the standpoint of efficiency and growth about the need for “deregulated” or flexible labor markets, the defects and deficiencies of subsidies, and the dangers of a redistributive state, neoliberal policies are likely to (re)allocate resources in ways that shift the status and opportunities of particular groups. It is clear that the relentless drive towards efficiency is likely to have a deep impact on the relative position of different parties in the market, including the level of income and the degree of leisure that may be enjoyed.

B. (Re)Conceptualizing Work

Tracing the effects of the transition process suggests how the articulation of paid and unpaid work might affect the fortunes of particular groups. However, the transformation of work, including the shift in responsibilities from the enterprise to the individual or family and the elimination of subsidies and compensation for reproductive work, also provides a vantage point from which to reconsider the idea that reproductive work, while “socially” important, can be usefully distinguished from economic or “productive” activities. Instead what becomes apparent is that the activities are deeply interconnected and the boundary between them malleable and contestable. The transition process seems to provide an unusually clear illustration of the proposition that there is no natural, necessary, non-normative or pre-political division between productive and reproductive work. Reproductive work is no less intrinsically productive or economically valuable than other forms of work, nor is it “naturally” uncompensated. Instead, it is the exclusion from the realm of production which places certain tasks in the reproductive sphere. Tasks become “reproductive” because their costs have been externalized and rendered invisible, while other activities are styled “productive” because their costs are visible and internalized.⁹⁶

What follows from the claim that there is no simple or obvious division between productive and reproductive tasks or activities is that it is not at all clear what are costs of “production” or costs of doing business and what are not. Instead, these are not so much “facts” as arguments or decisions as to how production should be organized. These are issues about which we might

contractionary effect on the economy and severe hardship and social costs, particularly among vulnerable sectors of the population. See CORNIA ET AL., *supra* note 80; Stiglitz, *More Instruments*, *supra* note 17.

95. See Rodrik, *supra* note 7, at 13.

96. This argument is explored in depth in Rittich, *supra* note 5.

expect enormous variation over time and place and considerable debate, contest, and ideological investment. The answers we arrive at are likely to both determine and be affected by the relative strength and position of particular groups. They will also be affected by the priority and weight which are given to different values and objectives, that is to say the degree to which various options or institutional arrangements are thought to serve wealth aggregation, equity, efficiency, social projects, cultural visions or any number of other ends.

C. Market Reforms and Equity: Analyzing the Relationship

The previous discussion suggested that it might be important to investigate how neoliberal ideas about the appropriate forms of institutions, policies, rights, and regulations in market societies play a role in determining the boundary between paid and unpaid work, and hence, the position of those who perform activities that fall on the "reproductive" rather than the "productive" side of the divide.

The case of transition illustrated a number of ways in which the discourse of law combined with arguments about necessary rights and regulations in market societies operating within a globally integrated market serve to permit the externalization of particular types of costs and to construct the division between productive and reproductive work. While these ideas about law and regulation will not necessarily serve identical functions or produce the same results in different contexts, some points can be identified which might serve as useful starting points when considering the connections between market reform, legal institutions, and the production or maintenance of disadvantage. The following suggestions describe useful sites of attention.

First, all proposals for legal and institutional reforms should be scrutinized for their distributive effects. Whatever their efficiency-enhancing effects, they may impose hidden costs on certain groups for reasons that are at best contestable. At a minimum, these effects should be brought to the surface and acknowledged so that the question of who should pay for reforms that are advanced as generally useful or necessary can be considered openly.

Second, attention should be given to the priority which is granted to particular rights and regulations. Protections, entitlements, and benefits which are omitted, neglected, or simply delayed may be as important as those that are included and promoted.

Third, the idea of a single or optimal set of market rules and institutions should be resisted. It may be used to discredit regulatory or policy initiatives that are needed to respond to the condition of particular groups. Out-right deviations, new innovations, or simply local alternatives may be discarded without good reason.

Finally, the rhetoric of management and functionality should be met with skepticism when the issue of legal rights and regulation is at stake. While legal rules undoubtedly perform important roles in coordinating and facili-

rating transactions, they are also inseparable from deeper political decisions about the allocation of resources and the general organization of social and economic life.

CONCLUSION

Embedded in the neoliberal conversation around governance, regulation, and best practice is a vision of appropriate roles, responsibilities, and relationships for and among states, markets, and individuals. At its core, market reform revolves around the normalization of a particular division of labor between the state, the market, and households and individuals. Legal and institutional reforms are the mechanism through which these roles and relationships are made, and the discourse of rights and the rule of law the medium in which these boundaries are established and legitimated. For this reason, beyond economics and efficiency, market reform should be understood as a project to normalize a particular set of roles and relationships between individuals, the market, and the state through the mechanisms of legal and institutional reform.

At the same time, no ideals about the individual, the market, and the state themselves provide a direct route to determining the regulatory and institutional structure of market economies. Nor are the particular policies which are promoted as best practice or which form part of the good governance agenda incontestable even within the terms of neoliberal discourse. For example, the commitment to efficiency might indicate policies which are quite different than those currently prescribed. Nor does the picture accurately describe the practices and current state of affairs even in those societies which most closely approximate the neoliberal model or norm.

However, the ideals seem to perform an important function nonetheless: they serve to define the appropriate targets of achievement, and the zone of reasonable, practical, and possible reforms on the one hand and the zone of unreasonable and impractical or simply undesirable results on the other. These ideals may be particularly oppressive and constraining for developing and transitional states. At the present time, the definition of appropriate market policies falls largely to international financial institutions and the large donor nations; developing countries have been conspicuously absent from the development of the architecture of the current economic order.⁹⁷ Yet developing countries are also those states which are most likely to be subject to the power of these institutions and donors.

Once this facet of the market reform project is highlighted, it becomes less surprising that the construction of the global market might conflict with certain transformative, egalitarian social projects. The re-orientation of policy and institutional life toward increasing efficiency and enhancing global competitiveness represents decisions about fundamental and contest-

97. See Stiglitz, Addressing Developing Country Priorities, *supra* note 19.

able political issues, the proper objectives and functions of states, and the structure and organization of economic life. These are decisions that are sure to be central to almost any project of social or political reform. It seems uncontroversial that the organization of markets to make the world safe for investment and capital flows might tend to crowd out other political objectives. Exhortations to embrace efficiency and greater productivity as the metric of good governance can be expected to have similar effects. At a minimum, they seem likely to make competing or countervailing goals more difficult to sustain, if only because the presumption has been decisively shifted in favor of a set of policies which are thought to enhance growth and efficiency.

The claim that a particular regulatory and policy framework is necessary to promote efficiency and growth may also inculcate a culture of tolerance for inequality. This in turn may make it more difficult to advocate for responses to the various forms of disadvantage that the policies themselves help produce. However, tolerance for inequality might also be assisted by the idea that markets should be a "politics free" zone structured primarily if not solely around concerns of efficiency. The argument that neoliberal reforms represent the way to constitute just such a market generates two effects: it masks the quite particular interests that are furthered, and positions those arguing to vary the model as claimants advancing "special" rather than universal goals and interests.

Despite the claims that, through the adoption of particular policies, rules, and institutions, the market is purified and protected from the contamination of that which is political, the resulting market remains structured by political choices and replete with particular values. It is precisely here that neoliberal policies are likely to intersect and perhaps conflict with equality objectives and transformative initiatives of many types.