

LatCrit VII: Coalitional Theory and Praxis: Social Justice Movements and
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Inter/National Migration of Labor: LatCritical Perspectives on Addressing
Issues Arising with the Movement of Workers

***317 AGENCIES OF FILIPINA MIGRANTS IN GLOBALIZED ECONOMIES: TRANSFORMING
INTERNATIONAL HUMAN RIGHTS LEGAL DISCOURSE**

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We are called the living heroes or the new heroes. Yet why are we called 'heroes' when we are slaves in other countries[?] . . . Yes, we earn a little bit more yet the pain of our bodies, minds and most of all feelings are equal to none . . . When can you finally provide us with a peaceful and simple life? [\[FN1\]](#)

We dream of a society where families are not torn apart by the need to survive. We dream of, and will actively work for, a homeland where all can live decently and with dignity. [\[FN2\]](#)

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***318 Introduction**

In his groundbreaking work, "Violence and the Word," Robert Cover introduces to legal discourse the idea that interpretation itself can be a violent act. [\[FN3\]](#) Although he focuses primarily on the violence of judicial interpretation in criminal law, Cover also points to what is lost by persons who have their realities dismissed or legally destroyed in the process of making claims. As he links interpretation and action, Cover addresses

ways that the formation of legal rules and principles participates in the social organization of violence. [\[FN4\]](#)

This Essay will examine the organization and distribution of violence in international human rights law's approach to migration and globalization. I will consider how connections between discursive violence and material and physical violence are manifest in the lives of those who do not fit into the legally proscribed categories constructed by United Nations-based approaches to human rights. The United Nations provides important fora for addressing human rights on an international level. However, the elision of "western" with "universal" in its approach and its failure to confront neo-colonialism and ongoing effects of colonial relations serve to circumscribe the realm of human rights and to limit the usefulness of human rights legal discourse for the lives and needs of disempowered, dispossessed and subordinated people around the globe.

Current contexts of globalization raise significant issues and problems for this human rights regime. Global capitalism and "free trade" require international political and legal systems that enable their flow across national borders. Multinational corporations both challenge States' sovereignty and rely on their maintenance of order. Such corporations are not legally controlled by any one State and yet they rely on an international legal regime that facilitates their transactions. How are human rights to be framed in the complex new order? Postcolonial contexts challenge foundational concepts of what is "human" while structural approaches to rights push for goals defined by that which is enforceable. What does this mean for lives contained by these limits?

The "freeing" of trade and capital to cross national borders has resulted in massive dislocations of persons, creating large numbers of migrants who leave their home countries in search of work. Migration flows are shaped by the creation of employment zones that require large numbers of laborers in production and service sectors. This paper will examine the developing United Nations system's approach to migrants' human rights within the globalized economy. Patterns of migration indicate new massive movements and dislocations that result from globalization while current international legal regimes continue to struggle for the ratification of a Covenant protecting migrants' rights in a framework based on old State-based models of rights. Transnational migrants in globalization thus mark containments of competing economic, political, social, and legal orders.

In contrast to United Nations-based frameworks, voices "from the ground up" articulate different notions of human rights. Rather than looking from a ³¹⁹ structural enforcement approach developed from a western European Enlightenment history of rights that provided "freedom" and dignity in contrast to old orders of authoritarianism, grassroots human rights movements express needs and attempt to counter harms as they are experienced. Grassroots transnational human rights movements show how lives are shaped by multiple systems and structures of power in contexts of globalization. This paper will examine how transnational Filipina human rights organizations express multiple forms of subordination that shape lives of workers who must leave their home countries to work in other nations in order to support their families. While U.N.-based human rights focus on migrants' lack of protection from physical and sexual violence and their vulnerability to discrimination, Filipina organizations point to ongoing effects of colonization that shape the conditions that necessitate migration to other nations for employment. They also surface relationships between subordination at home and abroad, racializations of workers in receiving states and complex economic, political, and "cultural" relations shaped by ongoing effects of colonialism.

Part I of this Essay will look at the relationship between ideology, practice, and discourse in the international human rights regime of the U.N. It will examine connections between

philosophical foundations in western Enlightenment thought and the framing of those particular rights that are to be protected within that system. This Part will conclude with a section focusing on the U.N.'s approach to the human rights of migrants.

Part II will turn to human rights articulations that come from Filipina migrant workers' lives. This Part will focus on conditions of the Philippines in global economic and political contexts and patterns of migration linked to those conditions. I will look at ways that Filipina migrant organizations link migration, militarization and the objectification of women in sex and service industries to neo-colonialist relations in new global economies.

Part III of the Essay will turn to an analysis of competing discourses of human rights. This Part will consider critiques of human rights legal discourse by those who attempt to challenge and change it from within. Other critics consider the ongoing effects of colonialist relations not only in structures and practices but also in the constitution of the Subject at the heart of rights. This Part of the Essay will examine problematics of inclusion and voice in these analyses of human rights.

Finally, using poststructuralist theories of subjectivity and postcolonial theories of agency, Part IV will consider transformations of human rights discourse by agencies in human rights, not as liberal, intentional subjects but rather as those who open up ruptures that interrupt hegemonic regimes of Truth.

***320** I. International Human Rights in a Legal Regime: The United Nations Framework [\[FN5\]](#)

A. Philosophical/Ideological Justifications for International Human Rights

Louis Henkin, a leading international human rights philosopher, provides an entry into understanding the grounding of "human rights" in western Enlightenment thought. Henkin posits contradictory claims that human rights are universal because they are grounded in what human beings are and that they are the product of a certain western politico-philosophical history. In his 1978 work, *The Rights of Man Today*, Henkin tells a standard historical story of liberal rights from U.S., English and French philosophies: these have developed into a system of constitutionalism and positive law that balances individual rights with claims to welfare understood as claims against society. [\[FN6\]](#) However, in later works, [\[FN7\]](#) Henkin writes that the concept of human rights is universal, not tied to a particular history: human rights are individual rights that provide moral claims against society. The individual provides the foundation for systems and institutions that uphold rights through the notions of contract and consent.

In the 1990 *The Age of Rights*, Henkin no longer acknowledges that human rights may not simply come out of universal understandings of what it means to be "human." He writes, "International expressions of rights themselves claim no philosophical foundations, nor do they reflect any clear philosophical assumptions; they articulate no particular moral principles or any single, comprehensive theory of the relation of the individual to society . . ." [\[FN8\]](#) He thus minimizes the importance of the political and ideological contestations that have shaped current understandings as well as institutions, structures and systems of human rights. This framework for human rights is clearly modeled on the western Enlightenment subject and its political project. Henkin elides "universal" with "western," not only in tracing the history of an idea, but also by ignoring the politics of the institutions that support the concept of human rights.

While Henkin is only one philosopher of international human rights, his work illustrates the basic terms of the framework by which the concept is explicated. Others who provide justifications for certain understandings of the idea of "human" rights may disagree

about emphases (for example, in the balance between individuals and groups, liberty and welfare, etc.). [\[FN9\]](#) However, the framework used by *321 Henkin is shared in the discourse that shapes institutions, structures, and systems of international human rights.

B. Discourse Analysis of Human Rights Documents: Framing the Issues

Analyses of United Nations documents show how human rights issues are framed within the international legal regime. These framings link the ideologies of rights with practices that set up certain relationships between individuals, States, and rights. U.N. documents on globalization and migration--a not yet well-developed area of human rights law--show how the U.N. is currently investigating concerns and attempting to analyze new conditions shaped by globalization. How issues are framed, along with the requirements for practice and the ideological framework of rights, set the terms for working toward migrants' rights in ways that do not necessarily match with their lived experiences.

The United Nations' approach to globalization and human rights currently attempts to reconcile goals and standards of international human rights law with those of international trade agreements. The Secretary General's 2000 preliminary report entitled "Globalization and its Impact on the Full Enjoyment of All Human Rights" [\[FN10\]](#) notes common goals between the World Trade Organization and human rights law. An analysis of themes in a report on trade and globalization submitted by Hoe Lim, a report on gender and globalization by Fantu Cheru and the Secretary General's preliminary report on globalization provides insight into the way that the U.N. attempts to reconcile perspectives from international free trade with perspectives that prioritize human rights. While the Secretary General's analysis does not specifically cite to these two particular reports, it clearly attempts to balance the free trade viewpoint with human rights.

In a working paper entitled "Trade and Human Rights: What's at Issue?" [\[FN11\]](#) submitted to the Committee on Economic, Social and Cultural Rights in Spring 2001, Hoe Lim comments on common goals expressed in the United Nations Charter; the Preamble to the Universal Declaration of Human Rights; the CCPR; the International Covenant on Economic, Social, and Cultural Rights (CESCR); and GATT/WTO agreements (especially WTO Articles XX and XXI). Both the human rights documents and international trade agreements seek to establish higher standards of living worldwide. The agreements also seek to increase stability between nations, which Lim suggests "arguably" promotes equity between nations. [\[FN12\]](#) The agreements also promote standards of non-discrimination and economic human rights and coincide with the right to work and the right to favorable living standards.

Yet Lim also notes potential tensions between the trade and human rights agreements. Although the GATT/WTO agreements are concerned with compliance by States, they attempt to balance compulsion with flexibility by focusing on incentives to comply with international agreements in order to foster free trade across national borders. Lim writes that the free trade approach is "neutral"; the agreements do not restrict states from implementing other obligations, including *322 human rights obligations. [\[FN13\]](#) For Lim, human rights embody values that may be in competition with other values. The free trade agreements do not "take sides" between competing values, but instead allow States to make choices in their own domestic political realms. Lim does suggest that economic liberties, freedom of individual choice and the protection of property, each crucial to free trade, are "necessary complement [s]" to human rights freedoms. [\[FN14\]](#) In other words, if human rights are conceived in particular ways, they may go hand-in-hand with free trade.

Importantly, Lim points out that human rights agreements attend to relationships between individuals and States while trade agreements are negotiated contracts between States that set the rules for international trade. [\[FN15\]](#) Lim does not acknowledge that in the international human rights legal regime, States also determine the standards and terms of Covenants (with non-governmental organizations playing a role in the political end of the regime), thus limiting the input that persons (such as laborers) have in the free trade agreements.

Lim clearly imports a law and economics approach into the analysis of international trade and human rights. For Lim, the international economics/legal regime leaves room for, or even coincides with, human rights. However, human rights are not a goal or standard for an economic approach to the organization of international relations. Expanding markets and increasing economic wealth globally will lead to greater well-being in terms of higher standards of living around the world. Yet Lim prioritizes freedom itself in the global marketplace over any particular non-economic outcomes. [\[FN16\]](#) Lim assumes that a non-interventionist model which allows markets to run most freely will lead to greater economic freedom for all. Lim separates politics-- as a form of intervention--from an international legal order that allows the market to run freely. Politics are for domestic issues; States may "intervene" on the domestic level as long as they do not infringe on obligations undertaken by free trade agreements. For Lim, the international level of trade ought to run on free choices for wealth maximization; the role of governments is to step away from economic regulation--just as U.S. domestic law and economics advocates promote a separation of values and politics from economic choice. [\[FN17\]](#)

In contrast, Fantu Cheru's report, entitled "Gender Equality and Globalization: Understanding Complex Dimensions of Opportunity and Challenge," [\[FN18\]](#) raises concerns about growing inequalities under the globalized free trade world order. He criticizes "trickle-down" arguments that claim economic growth on the global level raises the standard of living for all. [\[FN19\]](#) According to Cheru, the economic benefits of free trade have not improved conditions for all. Rather, globalized free trade has raised major problems and difficulties, particularly for women. Cheru points to the following problems under globalization: the feminization of labor activity and the lowering of labor standards; the "informalization" of homework; the intensification of poverty; the rise of migration and trafficking; the rise in transnational crime networks; the growth of nationalistic political violence; and increasing environmental insecurity. [\[FN20\]](#)

***323** Cheru points to the diminution of State power as one reason for human rights problems in certain areas. [\[FN21\]](#) For example, while globalization creates a large degree of homogeneity among cultures and limits State action as national borders become more permeable for capital, nationalist groups reassert their identities into the void. [\[FN22\]](#) This problem is exacerbated by the increasingly free flow of arms across borders. However, Cheru also recognizes that States do exert power through policies and programs they create in the context of globalization. Cheru notes that while globalization has limited the ability of States to control the economic outcomes of global markets, they remain central to economic planning. [\[FN23\]](#) Further, States remain beholden to their human rights obligations as they make policy choices. Cheru argues for increasing democratization as he calls on States to create positive conditions for human rights to thrive. He explicitly criticizes placing human rights on a level secondary to market "needs." [\[FN24\]](#) Instead, Cheru argues that States must prioritize human rights and build policies that enable the fulfillment of those rights. [\[FN25\]](#)

Cheru clearly does not share Lim's presumptions about the outcomes of free trade, namely that globalized free markets will lead to higher standards of living and more freedom for all. Instead, States must continue to play a role by shaping their policies

giving priority to the well-being of humans. Cheru argues against leaving such well-being to the uncontrolled outcome of the free trade system, whose players focus on economic freedom and see regulation as unnecessary and unwelcome intervention into free action.

The documents by Lim and Cheru mirror the "liberal" versus "conservative" split in U.S. law. One side protests against "interference," not just by States but also by international organizations. International trade organizations operate to maintain the freedom of trade, not to shape its outcomes. Economic freedom is promoted as separate from politics or law except to the extent that these protect freedom from intervention. From this perspective, freedom will increase general well-being. On the other hand, those primarily concerned with human rights believe that State and international systems must provide governance over trade in order to adequately manage economic outcomes for the well-being of all persons.

The United Nations attempts to mediate this supposed binary opposition between free trade and rights-based, interventionist perspectives in its approach to globalization. Although the Lim and Cheru documents are reports to the United Nations, not formal positions within it, (and, as mentioned above, the Secretary General's preliminary report on globalization does not specifically rely on either report), the document for the General Assembly clearly attempts to balance these competing perspectives as binary opposites that need to be reconciled.

In "Globalization and its Impact," the Secretary General focuses on the need for more research to assess the impact of globalization on development and on human rights. The report evokes the basic framework set forth in the Universal Declaration of Human Rights: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." [\[FN26\]](#) The report explicitly mentions the two sets of objectives represented by ^{*324} international human rights law and international rules under GATT, the WTO, the International Monetary Fund and the World Bank, stating,

While the norms and standards of international human rights law stress participation, non-discrimination, empowerment and accountability, the global economy stresses economic objectives of free trade, growth, employment and sustainable development. The challenge facing the international community is to ensure that these two sets of objectives can be brought together to meet the commitment to a social and international order conducive to the enjoyment of all human rights. [\[FN27\]](#)

As it turns specifically to the question of human rights, the report focuses on issues of discrimination, particularly against women; the relegation of large numbers of women into low-wage work, especially in the informal sector; the rise of conflict with the provision of "tools" by international arms transfers; the dumping of environmental waste near low-income or minority groups; and the rise of the crime of trafficking in "drugs, diamonds, even human beings." [\[FN28\]](#) The report also notes the impact that the growth of transnational corporations may have on the protection of workers' rights and the continuing problem of poverty. According to the report,

[This] preliminary overview of globalization identifies evidence to suggest that while globalization provides potential for the promotion and protection of human rights through economic growth, increased wealth, greater interconnection between peoples and cultures and new opportunities for development, its benefits are not being enjoyed evenly at the current stage. Indeed, many people are still living in poverty. [\[FN29\]](#)

Still, the report cites World Bank figures that "the number of people living on less than \$1 a day has been relatively stable in the past decade, in spite of an increase in the world's population." [\[FN30\]](#) The report "balances" this statistic with statements that "poverty alleviation is uneven," that certain regions (such as Europe and Central Asia) have seen increases in poverty, and that huge numbers of people have inadequate access to food, water and basic health services. [\[FN31\]](#)

In the end, the report repeats the invocation of the need for a social and international order that can support the realization of human rights as universal, shared values. This can be achieved by "constant monitoring of the social impacts of economic policies, the reduction of negative impacts of international financial turbulence on social and economic development, the strengthening of the capacities of developing countries . . . and the integration of social as well as economic aspects in the design of structural adjustment and reform programs." [\[FN32\]](#)

The report neither confronts basic questions about a presumed "trickle down" of wealth nor addresses any approach to understanding the role of States in ³²⁵ mediating the relationship between the economic and social realms. It also fails to address how "shared values" might resolve the gap between the free trade and human rights approaches. Although the preliminary report is not intended to suggest solutions to the problem of human rights in conditions of globalization, the Secretary General's report does not begin to acknowledge the contradictions between the human rights "values" and late capitalism's turn to globalism because of its need for ever-expanding markets and cheap labor, including pools of un- and under-employed workers that help to keep labor costs low. Although the report attempts to find a balance between global free trade and human rights, that very "balance" presumes the necessity of a global free trade system within which human rights must fit. In other words, that system already places human rights in a secondary position. The free trade system needs as much freedom from intervention as possible. It is limited by what is needed to protect human rights. Human rights are the balance; free trade makes up the basis for the system and the violations that are identified. People are to be protected from human rights violations within the system; victims may attempt to make claims for identifiable harms within that system. This "balance" resembles the U.S.'s legal liberalism in its "balance" of freedom and welfare rights. The ordering of each system relies on liberal presumptions, not simply the priority of individual choice but more significantly the protection of property and the economic realm.

Although human rights violations can be handled under international covenants, they are difficult because of limitations in the recognition of claims within the system. Because existing covenants do not adequately address human rights concerns in the context of globalization, many harms are rendered invisible within the system that attempts to balance free trade and human rights. Particular concerns exist in the realm of economic, social, and cultural rights. These are so-called "second generation" rights because they are already considered to be less enforceable than "first generation" civil and political rights such as the right to non-discrimination. In a legalized international order in which even claims about civil and political rights that focus on protections ("negative" rights) are difficult, claims to more proactive or "positive" rights are even more problematic. While the problem of enforcement is one significant issue, the power to define what human rights are and what claims can be made lies not in those whose lives are most negatively affected by globalization but in a system that attempts to fit those voiceless claimants' harms into the free-trade based system. The limitations on kinds of harms and resulting human rights claims that can be identified as legitimate are even more evident in the examination of the problem of migration in globalization.

C. Human Rights of Migrants in a Globalized Order

Currently the primary concern regarding the human rights of migrants in the U.N. legal regime is their vulnerability as newcomers or outsiders in receiving countries. Migrants are vulnerable to any number of harms, including discrimination in job markets and housing; violence in workplaces, including physical and sexual violence perpetrated against domestic workers; exploitation due to lack of knowledge about their rights; trafficking; and hate crimes. In a pair of working papers, the Working Group of Intergovernmental Experts on the Human Rights of Migrants (under the Economic and Social Council's Commission on Human Rights), headed by Special Rapporteur Jorge Bustamante, focuses on this concept of vulnerability. In its 1998 Report, the Working Group defines vulnerability as "a ^{*326} condition of a lack of empowerment" [\[FN33\]](#) which results from their being ascribed with certain characteristics. [\[FN34\]](#) In a subsequent Report, the Working Group notes that outsider migrants are vulnerable because of scapegoating, slave-like working conditions in low-paying service industries, and their weakness in their ability to organize. [\[FN35\]](#) The Working Group first affirms the ability of sovereign States to make determinations about who crosses their borders and under what conditions they may do so. [\[FN36\]](#) Yet once migrants have entered, States are obligated to observe their human rights. The Working Group urges legislative mechanisms to provide access to all public services that address their vital needs, as well as family reunification, acquisition of nationality, and freedom of association in order to overcome vulnerability. [\[FN37\]](#) In addition, the Working Group seeks punishment for illegal traffickers and those who subject migrants to slave-like conditions at work. [\[FN38\]](#) It also urges more "realistic" assessments of labor market needs in globalization. This last item follows from the Working Group's Report from the previous year that asserted that if the vulnerability of migrants is reduced, the costs of hiring them will rise so that demand for migrant labor will decrease. That Report suggested that such a decrease in demand would discourage migration. [\[FN39\]](#)

While this Working Group identifies important harms suffered by migrants, its identification of human rights issues under conditions of globalization is limited. The Working Group neglects to consider reasons why people are pushed out of their home countries in the first place or how globalization creates conditions that make survival at home difficult or impossible. Even if States improve conditions in receiving countries to reduce migrants' vulnerability to discrimination, violence, and exploitation, thus raising employment costs, if globalized free trade creates unlivable conditions in underdeveloped countries, a lessened demand for migrant labor will not stop people from crossing national borders to search for work.

In addition, the focus on vulnerability centers on "migrant" as a kind of status category for human rights analysis. Rather than addressing conditions that disable people from living well as human beings and focusing on changing those conditions, this human rights model places migrants into a status category with particular identifiable harms. While it is important that those harms be addressed, the treatment of migrants as a status renders invisible the conditions that create their vulnerability in the first place. Dynamics of labeling and stereotyping contribute to migrants' vulnerability, but this approach addresses only the after-effects of the material conditions that create migrants in globalization. Migrants' lives require attention not only to their treatment but also to the existence of an economic system that forces mass movements of people.

This problem is apparent in the Special Rapporteur on the Human Rights of Migrants' first Report to the Commission on Human Rights that focuses on the definition of "migrants" in contemporary contexts. [\[FN40\]](#) Gabriela Rodríguez Pizarro, the Special Rapporteur, notes that current migrants differ from those recognized by international law in the past, who, for the most part, moved largely out of free ^{*327} choice. [\[FN41\]](#) Current migrants also might not fit the established category of "migrant workers" who are already identified in international legal regimes. [\[FN42\]](#) Today's migrants are in some ways similar to asylum-seekers in that they face conditions of forced

displacement. [\[FN43\]](#) Yet these economic migrants are not asylum-seekers; their human rights concerns are not fully addressed by any already-existing category. [\[FN44\]](#)

Noting the similarities between current migrants and refugees, this Report recognizes several reasons for migration, including poverty, civil conflicts, and persecution in home countries. The Report notes a serious gap in human rights jurisprudence in this area: the system of protection for rights of refugees prioritizes violations of civil and political rights over economic, social and cultural rights. [\[FN45\]](#) The anti-discrimination sections of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC) do not deal directly with the rights of migrants who reside outside the border of the countries in which they hold citizenship. [\[FN46\]](#) Since current migration is so often caused by economic factors, the refugee model fails as a means of addressing human rights of migrants. Like the Working Group of Intergovernmental Experts on the Human Rights of Migrants, the Special Rapporteur focuses on discrimination, violence, abuse, trafficking and intolerance. The Report recommends further research, data collection, increased dialogue, monitoring multinational trade agreements, pushing for the ratification of the International Convention of the Rights of All Migrant Workers and Members of Their Families, working with the Commission on Crime Prevention and Criminal Justice, strengthening advisory services and training in international human rights instruments, cooperating to develop better migration policies, and documenting cases of mass migrations caused by discrimination and racial and ethnic conflicts. [\[FN47\]](#) As in the case of the Report of the Working Group of Intergovernmental Experts, this Report does not address the causes of massive migration. This first Report of the Special Rapporteur on the Human Rights of Migrants never uses the term "globalization," nor does it explicitly address how new regimes of international trade shape the economic conditions of migrants. There is no attention to global economic restructuring, the growth of transnational corporations and capitalist free trade structures, or to how these shape conditions that make people leave their home countries. This document focuses mainly on protecting people from individualized harms as migrants rather than the problems of migration that affect possibilities for full human rights.

*328 D. Conclusions

While the United Nations' system of international human rights provides important fora for addressing protections of rights across national borders, the regime is currently shaped by historically and culturally specific presumptions about what is most fundamental about human beings, what ought to be protected in human lives, and how those protections ought to be enforced. These presumptions limit the system's current ability to address and even conceive of the human rights of migrants in globalized economic orders. The next Part of this Essay turns more specifically to conditions that shape the lives of transnational Filipina migrant laborers.

II. Globalization, Labor and Gender: Filipina Migrants in the Global Economy

A. Filipina Migrant Laborers in Globalized Markets

The lives of Filipina migrants illustrate the limitations of the United Nations' current international human rights system for understanding and addressing "rights" that are needed in contexts of globalization. As this section will show, the location of the Philippines in the global economy, its histories of multiple colonizations, and policies formulated by its government all contribute to dehumanizing conditions of migrant Filipinas' lives. A U.N. system of human rights that recognizes only claims of individuals against a State and that seeks only to protect individuals from harms to which migrants are particularly vulnerable reproduces certain relationships between nations, corporate

interests, and "workers" while assuming the legitimacy of certain descriptions of the rights and needs of migrants.

In the mid-1990s, the Philippine government estimated that more than 4% of the nation's population worked as contract workers overseas. [\[FN48\]](#) According to the Philippines' Department of Labor and Employment, in 2000, there were 978,000 registered Overseas Filipino Workers (OFWs). Of these, 527,000 were male and 451,000 were female. [\[FN49\]](#) These numbers do not include unregistered or "illegal" OFWs, who are required to register with the Philippine Overseas Employment Administration (POEA). In 2000, 308,000 of the 451,000 female OFWs were employed as service workers; 283,000 of these were as "Helpers and Related Housekeeping Service Workers." The next largest category of employment for female OFWs was 74,000 "Professional, Technical and Related Workers." [\[FN50\]](#) In the first quarter of 1999, the countries of destination with the largest numbers of OFWs were Saudi Arabia (41,564), Hong Kong (27,154), and Taiwan (17,075). Other nations with large numbers of OFWs were Japan, the United Arab Emirates, Italy, [*329](#) Singapore, Brunei, Kuwait, Oman, Bahrain, Libya, Malaysia, and Qatar. [\[FN51\]](#) Large numbers of female OFWs in Japan and the Middle East are employed in sex and "entertainment" industries. [\[FN52\]](#) Large mail order bride industries in the United States, Germany, Finland, and Norway are sometimes also included in OFW numbers collected by non-governmental organizations. [\[FN53\]](#)

Overseas Filipino Workers send a large amount of money back to the Philippines as remittances. In 1994, \$4.87 billion U.S. was sent back to the Philippines in official remittances. [\[FN54\]](#) Estimates that include non-official remittances range from \$6-10 billion U.S. annually; these remittances provide the largest source of foreign exchange in the country. [\[FN55\]](#)

These large numbers of overseas Filipina/o workers must be placed into the context of global economic restructuring. In *Servants of Globalization: Women, Migration and Domestic Work*, Rhacel Salazar Parreñas cites as reasons for large numbers of migrants not only poor economic conditions and high rates of under- and unemployment in the Philippines but also high demand for low-wage service workers in "developed" nations. [\[FN56\]](#) As a "developing" nation in the globalized economy, the Philippines' export-based national economy includes laborers as exports. [\[FN57\]](#) "Developed" nations with a significant workforce in high-income jobs of finance capitalism require large numbers of low-wage workers to provide a service class. [\[FN58\]](#)

Parreñas notes that relationships between developed and developing nations recall histories of colonial ties. Migrants do not randomly choose nations; historical relations between nations, as well as relative costs of migrating and expected wages in receiving nations shape these choices. [\[FN59\]](#) Global capitalism as a world-system structures unequal relations between nations that seek low-wage workers and those that export them. These relations mirror old colonial relations because of the reproduction and continuation of structural inequalities between "developed" and "underdeveloped" nations: developed nations continue to benefit from resources of underdeveloped nations. Migrating labor from underdeveloped to developed nations [*330](#) is part of the circulation of resources and a global division of labor in the global capitalist order. [\[FN60\]](#)

After its colonization of the Philippines in 1898, the United States employed an educational and political system to train Filipinos to be proper and disciplined subjects. [\[FN61\]](#) As Enrique de la Cruz writes,

If one were to examine the most obvious areas where one might expect to find the remnants of America's empire, the Philippine economy, its political institutions, its

educational system, and its immigrant communities here in the U.S., one finds not just the remnants but the enduring legacies of empire.

. . . [T]he Philippine economy continues to be dominated by American-based multinational corporations. Politically, it was the United States who shaped an emerging Filipino economic upper class . . . into a political oligarchy that has since dominated Philippine politics. [\[FN62\]](#)

The "ceding" of the Philippines by Spain to the U.S.; the U.S.'s so-called Benevolent Assimilation project, its "civilizing mission," and its ongoing hegemonic political and military pressures; the brutal Japanese occupation during World War II; and IMF/World Bank-led policies all shape the relationships between the Philippines and particular nations such as the U.S. and the available channels of migration. [\[FN63\]](#) Filipina migrants travel to places where flows and pathways already exist as well as locations inserted into the network of global labor by new occurrences, as in the case of the Middle Eastern oil boom.

The global division of labor exists in sectors other than service. Factories run by transnational corporations seek low-wage workers not only in developing nations in Asia and Latin America but also developed nations such as the U.S.; low wages in developing nations serve to keep wages low in developed nations. Migrants in both developed and developing nations [\[FN64\]](#) serve as a global low-wage class. Even as certain industries rely on female labor in this low-wage class (as in the maquiladora zone in Mexico), wages are further depressed by the growing informal labor sector in which women do piecework at home.

Saskia Sassen analyzes the gendered nature of this division of labor in the global economy. As men have emigrated to find work, women have developed skills and have themselves become targets of labor recruiters seeking low-wage workers. [\[FN65\]](#) In the maquiladoras, signs on factories often advertise that they specifically seek young women for hire. In the domestic work sector, the growing need for service workers has created a large demand for female workers. Sassen **331* argues that immigrant women provide an important labor supply in this sector because as household labor becomes part of the labor market, it is devalued. Devalued forms of work are feminized as wages are kept low. [\[FN66\]](#) Migrant women fill the need for large numbers of workers in this sector.

Parreñas applies Sassen's notion of the gendered global division of labor to the migration of Filipinas to developed nations by pointing out the international division of reproductive labor. Drawing from Evelyn Nakano Glenn's analysis of the racial division of reproductive labor in the U.S., Parreñas notes that immigrant women slip into the domestic labor roles filled by women of color as white women seek to escape such labor. [\[FN67\]](#) Filipina migration to places like the U.S. and Italy indicate the complex dynamics of gender role negotiations between developed and developing nations in the globalized context. While Parreñas' analysis of the insertion of migrant Filipinas into the "woman of color domestic" role does not account for their high numbers in such work in the Middle East, [\[FN68\]](#) the gendered dimensions of household work still operate there.

B. Filipina Migrant Laborers and the Human Rights Regime

The above section clearly indicates that conditions of Filipina migrants' lives raise more than issues of vulnerability. Certain concerns of Filipina migrants are indeed capturable within existing international human rights discourse; some people work with migrant Filipinas within this framework. For example, Grace Chang points to the mobilization of migrant Filipina workers to expose abuses, fight for the protection of their rights, gain

legal advocacy for claims, lobby for legislative changes, and obtain legal counseling on labor and immigration rights. [FN69] Chang also notes the difficulties in developing strategies to confront more complex issues such as fighting for a ban on recruitment for overseas workers because effectiveness here might force workers into an even more dangerous "illegal" status. [FN70] Other strategies for aiding migrants include working for the ratification of the Convention for the Protection of All Migrant Workers and Members of Their Families, literacy and life skills classes, and other forms of practical support. [FN71]

Dan Gatmaytan, a human rights legal scholar, looks to the Philippine constitution and statutes as well as international agreements for ways of addressing violations of migrant Filipinas' human rights. According to the Philippine Constitution, the state shall "protect working women by providing safe and healthful working conditions, taking into account their maternal functions, and such facilities and opportunities that will enhance their welfare and enable them to realize their full potential in the service of the nation." [FN72] Protections of migrants are included in labor codes and in administrative agencies such as the Philippines Overseas Employment Agency. However, Gatmaytan notes that issues of migrants' *332 vulnerability are not fully addressed because of the lack of enforcement of their rights. [FN73] For example, domestic and international laws, policies, and codes have not solved the problem of violence against Filipina migrant domestic workers. [FN74] Gatmaytan argues that the Philippine government must improve local economies, provide more protection for overseas workers, and create employment opportunities domestically. [FN75] Gatmaytan then acknowledges that these recommendations, while desirable, are insufficient and that Filipina migrants' "degraded status" will only change with the transformation of capitalist structures. [FN76] As an international human rights legal scholar, Gatmaytan is caught between pointing out the deep problems for overseas Filipina workers and attempting to address those concerns within the limiting discourse of human rights legal protections for migrants.

The next section turns to transnational Filipina migrants' organizations' articulations that connect grassroots, everyday experiences to analyses of globalization and multilayered strategies for creating change.

C. Speaking Out of Experience: Transnational Filipina Migrants' Articulations of Their Rights

This section examines the ways in which transnational Filipina organizations connect issues of human rights across legal, political, economic, historical, geographic, and communicative boundaries. Rather than speaking from within any particular regime under which truth claims can be heard, these organizations present voices of migrant Filipinas in a variety of forms. Several non-governmental organizations working with migrants use the World Wide Web as a forum to present issues, provide analyses, and give voice to their members in creative, multilayered, hypertextual formats. Organizations' web pages serve as centers for disseminating information and for organizing members and potential members across national borders. They also provide analyses and perspectives that challenge dominant discourses.

1. Mission for Filipino Migrant Workers (HK) Society

The Mission for Filipino Migrant Workers (HK) Society's Migrants.Net: Online Resources for Migrant Workers [FN77] provides much information and significant analyses about the links between human rights problems created by the Philippine government, the poor economic situation of the nation in the global order, and ongoing effects of

colonialist histories. Its online publication, Migrant's Focus Magazine, provides a history of the Philippine government's role in shaping an economy based on the export of laborers. [\[FN78\]](#) During the 1970s, the Philippine government under Ferdinand Marcos saw the potential for bringing in large amounts of money by sending Filipina/os to the Middle East during the early years of the oil boom when that region needed large numbers of workers. Marcos systematized and institutionalized labor export by creating the Philippine Overseas Employment [*333](#) Agency (POEA), which recruits, registers, and collects the many mandatory fees from overseas workers. Although the Labor Export Program was intended to be a short-term measure to help the Philippines' economy, it has become a firmly entrenched part of the national economy. Indeed, President Corazon Aquino called overseas workers the "new economic heroes" of the nation.

Migrant's Focus Magazine also provides much information about the forced remittance program, the many mandatory fees required of overseas workers, and the lack of funding for services for migrant laborers. As the Magazine points out, the total of overseas remittances is second only to earnings by crude oil trading for the nation. In addition to requiring overseas workers to remit a large proportion of their earnings through formal bank channels, the Overseas Workers Welfare Administration (OWWA) collects numerous mandatory fees from both workers registering to work abroad and those who are already working in other countries. While portions of these fees are ostensibly earmarked for services for the workers themselves, only 11% of the OWWA's budget goes to such services.

Migrants.Net points not only to the government's exploitative behavior, but also to environmental conditions and land-use issues that affect Filipinas/os' survival options. Philippine land is largely exhausted; farmers have either lost their land or become laborers for wealthy landowners who use the land for cash crops. Much land has also been lost to golf courses intended to bring in tourists. Those who formerly lived by farming have been displaced from the land. Migrants.Net links these issues to the government's destruction of minority populations and its counterinsurgency policies that attack those who seek to change the structures of dominance and to reclaim land for farmers. The website also points to the role that foreign superpowers play in "plundering" the economy.

By linking a critique of Philippine government policies to environmental and land-use issues and to issues of foreign dominance as these shape the conditions in which Filipino/a workers must migrate in order to find work, even as it works to serve migrant laborers, Migrants.Net refuses a model of analysis that looks only to vulnerability and the harms of discrimination and individualized experiences of violence.

2. Gabriela

Gabriela is a multi-chapter, transnational Filipina organization. Its websites serve as tools for connecting chapters around the world, provide the organization's analyses of issues, present Gabriela's press releases, and give information about the organization's activities. [\[FN79\]](#) Gabriela seeks to "forge women's unity within and among classes and constituencies to wage a struggle for the liberation of women and the rest of the Filipino people." The organization strives for this liberationist goal by seeking an end to foreign intervention in the Philippines, especially that of the U.S.; pushing for a government that provides support systems for women; supporting the struggle for self-determination of cultural communities; fighting to end militarization; advocating for reform of the legal and judicial systems; pushing for land reform; supporting liberationist education; working for a socio-cultural context that does not demean women; building a self-reliant economy that is geared toward domestic consumption and that supports women's

equality; and forging solidarity *334 with women's groups around the world to fight sexism, imperialism and militarism. [\[FN80\]](#)

Gabriela's website includes creative links that forward these goals and principles. For example, there is an extended series of links about the organization's "Passion Show," which includes images of members modeling clothing as political statements. The Passion Show includes such gear as "[a] wedding gown of rags and chains . . . [to symbolize] the plight of mail-order brides." [\[FN81\]](#) The website links the Passion Show to information about the effects of militarization on women, including the growth of the exploitative sex trade. It also links these pages to statements against the Visiting Forces Agreement which extends U.S. military presence in the nation. Each of these pages is also linked to information about one of Gabriela's main projects, the Purple Rose Campaign, which seeks to inform people and to gather support for women who have been trafficked. The website also includes stories of individual people whose lives have been shaped by these issues. Finally, the website contains links to other organizations that add to their analysis.

For example, Gabriela links to Bayan, the New Patriotic Alliance. Bayan's website lists guiding principles, including statements that: 1) True national sovereignty lies in asserting our nation's independence from imperialist domination . . . , 2) The power of the people rests on building their organized strength, founded on the basic alliance of workers and peasants . . . , 3) A self-reliant and progressive economy rests on ending imperialist exploitation and breaking its feudal land base . . . , 6) The right to self-determination is the core of the indigenous and Moro peoples' struggles . . . , 7) The emancipation of women requires the dismantling of a semi-feudal and semi-colonial system made worse by patriarchy . . . , and 8) The building of a strong anti-imperialist front strengthens solidarity with the oppressed peoples of the world. [\[FN82\]](#)

As in Migrants.Net, Gabriela's website connects complaints about the government to analyses of issues that stem from globalization, militarization, and imperialism. Clearly this organization's transnational, feminist perspective moves beyond an identification of vulnerabilities to being treated "differently" or "unfairly" in a globalized economy. Fulfillment of human rights for such organizations as the Mission for Filipino Migrant Workers (HK) Society, Gabriela and Bayan require attention to complex, multiple dynamics that stem from histories of colonialism rather than to moving individuals into a liberalized system of rights against discrimination.

III. Empire or Imperialism? Overlapping Regimes in Postcolonial Time-Space

As organizations such as the Mission for Filipino Migrant Workers (HK) Society and Gabriela make clear, "human rights" do not reside solely within the international legal framework developed under the United Nations. The idea of human rights is powerful for those attempting to assert claims to change conditions *335 in their lives and to work for justice on a global level. In addition, critical human rights workers are able to use U.N. fora to organize and transform approaches to human rights. Multiple discourses or regimes of human rights co-exist, compete, coincide, and overlap. Acknowledgment of these multiple discourses in contexts of globalization moves from simply adding formerly excluded voices to a more critically transformative approach to severe power differentials in postcolonial, post-liberal contexts.

A. International Human Rights Scholarship: Expanding the Framework

Several international human rights legal scholars are attempting to address limitations in current discourse by pointing to exclusions of particular voices as well as uneven relationships between nations caused by histories of colonization. Scholars such as Berta

Esperanza Hernandez-Truyol, Sharon Elizabeth Rush, Penelope Andrews, and Celina Romany draw from the critique of liberal legalism and its exclusions as they suggest new possibilities for transforming international human rights. These authors' works suggest that an expansion of voices and perspectives in international discourse may open up possibilities for new orders of rights.

By pointing out historical exclusions created by legal frameworks, Hernandez-Truyol, Rush, and Romany insert perspectives shaped by experiences of subordination with hopes of transforming human rights discourse. In "Culture, Nationhood, and the Human Rights Ideal," Hernandez-Truyol and Rush examine critical voices that "deconstruct the legal master narrative." [\[FN83\]](#) They point to specific limitations in international conventions and urge an inclusion of harms based on intersectionalities of race, sex, ethnicity, class, religion, language, and sexuality. [\[FN84\]](#) Similarly, Celina Romany points to the reproduction of liberalism's public/private split in international law's approach to violence against women. [\[FN85\]](#) Women's experiences of violence indicate the existence of forms of power that connect the two realms. Penelope Andrews points to the lack of cultural fit between legal structures and Aboriginal women's needs in Australia as well as difficulties created by formal procedures and evidentiary requirements for making claims. [\[FN86\]](#) For these scholars, bringing forward critical perspectives of persons who have been marginalized provides the opportunity to open up and to change the limitations in human rights law. Hernandez-Truyol and Rush point out that intersectional experiences emphasize the indivisibility and interconnectedness of rights in ways that will lead to more complex treatments of various levels of difference. [\[FN87\]](#)

***336** New international human rights scholarship also points to connections between exclusions in current regimes and multiple histories of colonization. For Hernandez-Truyol and Rush, colonization histories inform the hegemonic western and northern biases in international norms [\[FN88\]](#) as well as differences in which nations are allowed sovereignty. [\[FN89\]](#) Hernandez-Truyol points out that the division between "first-generation" civil and political rights and "second generation" economic, social and cultural rights reflects the priority of historical "bourgeois" European revolutions that conceived of rights as primarily negative protections against state authority. She notes that the normativity of such perspectives on the priority of rights ignores the non-universality of the "white, Anglo, western, European, Judeo-Christian, educated, propertied, heterosexual, able-bodied male" whose life provided the model for these rights. [\[FN90\]](#) Andrews discusses Aboriginal women's subordinated status in the context of multiple struggles for land rights, cultural rights, and rights to self-determination within a group's continued status of dependency. Andrews specifically links violence against Aboriginal women to the ongoing violence of colonization. [\[FN91\]](#)

Each of these new works in international human rights calls for new voices and perspectives that will open up the limits of liberal legalism in international human rights. As Sherene Razack notes, new stories open up truth claims that resist imperial moves. Razack attends to how we tell stories or how we narrativize issues as well as the importance of the interpretive structures through which we hear and understand other perspectives. [\[FN92\]](#) Yet Razack also pushes the critiques of the international human rights legal scholars. Speaking and telling do not themselves change power relations and structures. While crucial, adding formerly excluded perspectives, even ones that challenge the limitations of the foundational notions underlying legal systems of rights, does not guarantee a transformation of relationships of dominance and subordination. Razack notes the difficulties that result when power looks at "others" of its system. Importantly, Razack notes this dynamic even within well-intentioned human rights work. She writes, "[I]n seeing ourselves as good human rights activists engaged in crucial issues of social justice, we can sometimes repeat an imperial civilizing move, and in so doing, fail to see how we oppress others." [\[FN93\]](#) Razack recognizes the power of the

gaze, in which subjects within structures of power determine and define the rights and needs of "others" of that system by perceiving those "others" from within the subject's own lens. While Hernandez-Truyol, Rush, Romany and Andrews most likely would not disagree with Razack on this point, their claims about adding perspectives shaped by intersectionality, multiple forms of subordination, and relationships of colonization do not address the problem of how those voices can transform the subject/other dynamics of power.

*337 B. Human Rights and Postcolonial Theory: Constitutions of Subjects and Their Others

As noted above, [\[FN94\]](#) relations between nations continue to be shaped by histories of colonization. The ongoing effects of colonial relations exist not only in political and economic structures and institutions, but also in constitutions of Subjects and Others. Under colonialism, Subjects who conceived themselves as carrying forth grand projects of law, order and civilization constituted their Others. The colonized were not only constituted as Other through political and economic projects but also through representations of their cultural and religious "difference." As Edward Said points out, representations of the "East" as inherently and essentially different from the "West" served the colonialist project. [\[FN95\]](#) The East, because of its mysterious, exotic, disordered, and pre-civilized ways, was ripe for colonization by the orderly, structured, civilized West. As Leila Ahmed adds, this dynamic is built not only on the regulations of nations but also of gendered relationships in both colonized and colonizing locations. [\[FN96\]](#) Looking at the Other operates not only in binary fashion (colonizer nation/colonized nation; men/women) but in complex interactions of discursive productions within and across political, legal, economic, and cultural forms. Productive power circulates in discourse [\[FN97\]](#) and shapes these interweaving forms beyond the control of rational, planning Subjects; power is at work in the constitution of the Subjects and Others themselves. Individuals in the position of Subject cannot determine or control discourse or the constitution of their own subjectivity, even as they may wish to resist enforced relations. Neither can individuals in the position of Other escape the production of their own subjectivity under conditions of subjugation, even as they also resist enforced relations. [\[FN98\]](#)

The complexity of the relationships of power in the constitution of Subjects and Others points out a problem in attempting to add excluded voices. Colonial histories and the historically constructed Subject/Other relations continue to shape who can "speak" in appropriate languages of power and truth. Others to the Subject must learn to speak the language of the Subject in order to be heard. In the international human rights context, Others to the history that has developed the legal regime insert themselves into a Subject's position by learning to articulate themselves, their needs, and the harms they experience in the language of systems of power. However, when the transnational migrant Filipina Other attempts to insert herself into the position of Subject by claiming rights, her experiences are not translatable within the structures of power of the legal regime. In order for her claims to be heard and addressed, the Other must become what she is not, namely someone whose voice, experience, needs, and claims can be articulated through an established regime of truth and power. Can an Other, constituted as Other by the productive power of discourse, be what has been constituted by the production of her *338 Otherness? As Trinh Minh-ha points out, the binary relationship between Subject and Other does not mark an essential difference between the two. Conceiving of the split as so essential ignores the constructedness of each in relation to the other within particular systems of epistemological power. Those constituted as Other cannot simply bridge the divide by speaking back to those in the position of Subject who see the Other through this constituted relationship. Others are not essentially other but must negotiate the divide of their produced otherness. [\[FN99\]](#)

Historically constituted Others must be inserted into the time-space of the "post" of postcoloniality. [\[FN100\]](#) A global order that understands nations to be "developed" or "developing" is built on the historicization of nations on whose histories concepts of "pre-modern," "modern," and "post-modern" have been built. Although lines between nations that have been colonizers and colonized may be clear, what exists in the "post" of the postcolonial continues to be shaped by the powers of the nations who have been modern and colonialist. [\[FN101\]](#) Even as persons from the formerly colonized (underdeveloped, not yet modern) nations are invited to participate in the global order and to progress in their development, they must attempt to speak as Subjects even though their actual subject positions are incommensurable with that subjecthood.

In a much lauded as well as lambasted article, Gayatri Spivak poses the question, "Can the Subaltern Speak?" [\[FN102\]](#) For Spivak, the subaltern is she who cannot be conceived within any regime of knowledge. She is displaced from all regimes of knowledge by which what is spoken can count as truth. She writes that women in decolonized spaces are gendered subalterns; they are doubly displaced. [\[FN103\]](#) Since gendered subalterns are not simply marginalized or excluded, but also displaced from the position of Subjects of history or knowledge, their speaking cannot simply be included or added to current regimes of truth. Gendered subalterns cannot be conceived within power/knowledge networks that reproduce otherness by expecting sameness in subjects and a "fit" between that subjectivity and truth. [\[FN104\]](#)

In a global capitalist system that requires expendable (potential) laborers for continued growth and functioning, not everyone can be "included." If the international human rights regime works to sustain that order and to subsume and define human rights within that framework, not all voices can be heard--not simply because they are not included but because their claims of truth about the "rights" their lives require are incommensurable with the regime of truth in which they attempt to "speak." If their human rights claims must fit into categories and procedures established to protect systems that contribute to the production of their otherness, women in (not yet) decolonized space cannot make their claims.

***339** As the international human rights regime privileges civil and political rights over economic, social and cultural rights because they are more enforceable, the distance between the articulations of gendered subalterns and claimable human rights becomes clear. Gendered subalterns live in the realm of impossibility created by the regime's connection to global economic structures that foster freedom of capital and then seek to "protect" vulnerable people from discrimination and individualized violences. Lives of gendered subalterns indicate the violence of the context as well as epistemic violences in the underside of structures and ideologies in postcolonial, not-yet-decolonized spaces. Discourses of human rights that lament current impossibilities and exclusions while reproducing the structure of those impossibilities participate in what Spivak calls the "logic of postponement." [\[FN105\]](#) Although calls are made for greater inclusion, the grand narratives of inclusive human rights rely on endless postponement to reconcile the realities of the regime with its purported rightness. This raises additional questions about the relationship between the international human rights system and new forms of colonial relations.

C. Empire or Imperialism?

In their recently published *Empire*, Michael Hardt and Antonio Negri analyze the juridical order of the United Nations as an embodiment of a new form of Empire that is more appropriately understood to be global than international. [\[FN106\]](#) This most recent form of Empire seeks not to rule by overt power but by the integration of the political, cultural, and ontological through the creation of norms and legal structures. [\[FN107\]](#)

Hardt and Negri point to the desire for order as a means to gain peace. The value of peace provides an integrating force that leads to the establishment of a juridical order that has the police power to regulate, control and maintain order. [\[FN108\]](#) Since Empire consolidates these interests across national borders, this power is supra-national; its values are represented as beyond history and space. Empire's order appears to be "permanent, eternal and necessary." [\[FN109\]](#)

According to Hardt and Negri's narration of a global Empire that escapes the control of any particular nation, the desire for peace does not simply rely on consent to coercive power or an expansion of constitutionalism, although Empire encompasses both of these. The newness of the global juridical order lies instead in the global integration of value with structure in ways that escape the order of power of any particular nation or set of competing nations. Empire is not simply an expansion of nation-based imperialism. It rather escapes those origins to create something newly global.

Although global order challenges state sovereignty and national boundaries, it is not clear that it escapes national ties entirely. [\[FN110\]](#) Even as global order challenges nations, its power remains tied to some nations more than others. The historical roots of Empire in Europe and its expansion through the U.S. still have effects in the global order. Although even the U.S. cannot completely control the global order, it **340* is able to exert not just coercive police or military power, but also considerable ideological power in the shaping of norms. [\[FN111\]](#)

In a sense, the current expansion of order on a globalized level marks a period of competition between Empire and imperialism. Certain nations still hold forms of imperial power by which they can exert their will. The U.S. in particular still holds power to shape the juridical order in its actions in the United Nations, in its (threatened) use of military power, and in its exportation of cultural forms across the globe. Yet even the U.S. cannot control the power that extends from its centers. Norms created from U.S. pressures and influences are shifted and turned back on the U.S. itself; its cultural forms are appropriated and re-formed in multiple local contexts. Globalized markets facilitate these shifts in power, order and expression. [\[FN112\]](#)

A significant problem in this competition between Empire and imperialism lies in the position of those who are subject to the reach of power of both yet not integrated into the structures for directing or benefiting from either. Gendered subalterns, transnational migrant Filipina laborers and multiple others lie both within and beyond the reach of Empire and imperialism. They cannot grasp the power of either for intentional use and yet their distance from the centers of each also provide for some possibilities of shifting the terms of power. Productive power requires repressive power because something always escapes both. What possibilities lie in the "something else" that escapes the overarching power of competing regimes of Empire and imperialism?

IV. Conclusion: Resistances of Post-Liberal Subjects and Transformations of the Human Rights Legal Regime

Postcolonial theorists do not simply critique marginalization, othering, logics of postponement and processes that render some "outside" regimes of knowledge, truth and power. They also offer alternative ways to reconceptualize agency in order to resist confinement and appropriation by liberalism in postcolonial contexts. In a globalized world, we must, in Spivak's terms, inhabit inescapable structures of violence and devise strategic negotiations with those structures with persistently critical practice. [\[FN113\]](#) Those who are incommensurable with the logic of regimes of power must figure out how to negotiate the structures, not from equal negotiating positions but in the sense of finding one's way in order to survive. Furthermore, those whose lives are inserted into

social/legal texts but who cannot be **341* the expected subjects indicate ruptures in their legitimizing narratives of the global order. Strategic negotiations with structures of power rupture not only physical violence but also the violence of the word of law with its definitional and constructive powers, as conceptualized by Robert Cover. For example, migrants in a globalized world of capital show not only the global legal order's repressive power but also its productive power--the power to produce a legal order that cannot conceive or address the lives most harmed by the order. When migrants speak back, they do not simply add excluded voices but indicate the escape of that which cannot be captured by the legitimizing narratives of the order.

For Spivak, the multiple layerings of incommensurability of the Other constantly bring each term of order to crisis. [\[FN114\]](#) As lives of migrant Filipina laborers are fit into narratives of "woman," their domestic laboring challenges that story. As their lives are fit into narratives of "labor," their location in gendered coloniality indicate the invisibility of these positions within labor movements. As their lives are fit into narratives of "migrants," as pointed out above, [\[FN115\]](#) their location in informal sectors as gendered workers disrupt old understandings of migrant workers. The distance of the lives of transnational Filipina migrants from each master narrative indicates not only marginality but the possibility of bringing each to crisis [\[FN116\]](#) and "turn[ing] conditions of impossibility into possibility." [\[FN117\]](#) As the migrant laborers organize and develop strategies to negotiate the multiple structures of physical, ideological, legal, and epistemic violences, their lives move from marginality to bringing legitimating narratives to crisis to transforming structures of violence. These transformations do not simply come out of notions of strategy, agency, and actions that derive from liberal forms of subjectivity. The strategic negotiations that deal with multiple erasures, violences, and productive forms of power require something beyond coherent, intentional action based on empiricist understandings of cause and effect. Postcolonial migrant Filipinas thus insert agency that also escapes master narratives of liberal structures. These forms of agency and persistently critical practice need not be understood as alternatives to liberal plans of action based on intentionality, rationality, and the power of the coherent subject. Rather, postcolonial subjectivities stretch and extend notions of acting that can lead to transformation through the negotiations of multiple, complex layerings of power. Multiply positioned subjects are not simply intersectional; intersectionality implies a coherence that the gendered subaltern cannot inhabit. The agency of multiply-positioned subjects under globalization also enriches the interpretation of strategic essentialism: the point is not to rest on an essentialism, even though one must in order to act. [\[FN118\]](#) Instead, the focus turns to the persistently critical practice that does not reverse the coherence of the moment but rather the persistence of the critique.

This concept of the agency of transnational migrant Filipina laborers as disruptive of multiple legitimizing narratives of power can be supplemented by Homi Bhabha's notions of doubling, ambivalence and hybridity. Not quite, not yet de-colonized subjects are inserted into explanatory, discursive, political, and **342* economic narratives yet remain incommensurable to each. Required to be Subjects to be acknowledged, but neither allowed to fully assume that position nor capable of doing so because of the incommensurability of the constitution of the Subject/Other positions, the not quite, not yet de-colonized subject is a double: "neither the One nor the Other but something else besides, in-between." [\[FN119\]](#) This hybrid position caught between the colonial expectation for sameness and its required difference marks the ambivalence of colonial discourse. In decolonizing space, formerly subjected Others assume the mantle of Subject but mark the hybridity between the positions. For Bhabha, hybridity marks alterity - the "something else, besides" that challenges the binary split between colonizer and colonized. New subjects in formerly colonized locations cannot simply take up a pre-colonial, non-colonized subjecthood. Nor can agents of the formerly colonizer nations take on a non-colonizer agency. Rather than locating this dynamic simply on subjects or agents, Bhabha's hybridity indicates movements and transformations from the

"something else." The hybrid double is not all that is transformed by colonization or de-colonization. Rather, any pre-given understandings of "what is" are shifted: how can we conceive of knowledge and truth from the "something else" ? Attention to these dynamics between constitutions of subjects and hybrid agencies denote the power that shapes expected or assumed stabilities. What are hybrid subjects "supposed" to be?

For transnational migrant Filipina laborers, this question of hybrid agency shifts us from this question of what "they must be" and "how they must speak," into an interrogation of the conditions that place them in the position of the hybrid, postcolonial Other. As migrant Filipinas' lives indicate, it is the multiple forms of power that sustain global stability and order in ways that mark their positions as Other to global political, economic, and legal regimes and their possibilities. Recognizing these multiple dynamics of productive power calls for multiple, strategic maneuvers from those "something else, besides" positions. Transnational, coalitional organizations like Gabriela that critique and illuminate multiple sites of power call for expansions of critical strategic practice that negotiate multiple structures of violence across borders, not only as liberal subjects but as agents of something else, besides.

Footnotes:

[FNd1]. J.D. expected, May 2003, University of California, Berkeley, School of Law (Boalt Hall); Ph.D., University of Southern California; B.A., St. Olaf College. I would like to thank Rosie Baldonado and Ken Nakasu Davison for their inspiring work; the editors at Berkeley La Raza Law Journal; Professor Angela Harris and her students in "Wealth and Class Relations" seminar; and Quyen Ta, Jee Park, Daniela Yanai, Kevin Bundy, Serena Lin, Mary Beth Kaufman, Laura Quilter, Hillary Ronen, Yunie Hong, and Catha Worthman for all of their support for this project.

[FN1]. Veronica Plandano, Bayan, Kailan Pa? Tinig Filipino 60 (October 1995), quoted in Rhacel Salazar Parreñas, *Servants of Globalization: Women, Migration and Domestic Work* 57 (2001) [hereinafter *Servants of Globalization*].

[FN2]. Anonymous, quoted by the Mission for Filipino Migrant Workers (HK) Society on Migrants.net at [http:// www.migrants.net/resources/brochure/aboutmfmw.htm](http://www.migrants.net/resources/brochure/aboutmfmw.htm).

[FN3]. Robert J. Cover, [Violence and the Word](#), 95 *Yale L.J.* 1601 (1986).

[FN4]. [Id. at 1628.](#)

[FN5]. This section is not intended to provide a detailed analysis of the United Nations-based system of international human rights. Here I give an overview of some basic issues in the ideological relation between "western" and "universal" conceptions of human rights.

[FN6]. Louis Henkin, *The Rights of Man Today* 1-30 (1978).

[FN7]. See, e.g., Henkin, *The Age of Rights* (1990), and Henkin, *International Human Rights as "Rights,"* in *Human Rights* 257-280 (J. Roland Pennock and John W. Chapman eds., 1981).

[FN8]. *The Age of Rights*, *supra* note 7, at 6.

[FN9]. See, e.g., John Rawls, *A Theory of Justice* (1971); Alan Gewirth, *The Basis and Content of Human Rights*, in *Human Rights* (J. Roland Pennock and John W. Chapman, eds., 1981); Joel Feinberg, *The Nature and Value of Rights*, in *The Journal of Value*

Inquiry 4 (1970); Ronald Dworkin, *Taking Rights Seriously* (1977); Susan Moller Okin, *Liberty and Welfare: Some Issues in Human Rights Theory*, in *Human Rights* (Pennock & Chapman, eds., supra); Joseph Raz, *On the Nature of Rights*, *Mind* 93 (1984).

[\[FN10\]](#). U.N. Doc. A/55/342, 31 August 2000 [hereinafter *Globalization and its Impact*].

[\[FN11\]](#). U.N. Doc. E/C.12/2001/WP.2, 10 April 2001. Lim is an external relations officer of the World Trade Organization. However, the report represents his views only, not that of the WTO.

[\[FN12\]](#). *Id.*

[\[FN13\]](#). *Id.*

[\[FN14\]](#). *Id.*

[\[FN15\]](#). *Id.*

[\[FN16\]](#). See *id.*

[\[FN17\]](#). See *id.*

[\[FN18\]](#). U.N. Doc. E/C.12/2001/4, 9 March 2001.

[\[FN19\]](#). *Id.* at 2.

[\[FN20\]](#). *Id.* at 2-4.

[\[FN21\]](#). *Id.* at 5.

[\[FN22\]](#). *Id.* at 4.

[\[FN23\]](#). *Id.* at 5.

[\[FN24\]](#). *Id.* at 6.

[\[FN25\]](#). *Id.*

[\[FN26\]](#). *Globalization and its Impact*, supra note 10, at 2, citing the Universal Declaration of Human Rights.

[\[FN27\]](#). *Id.* at 3.

[\[FN28\]](#). *Id.* at 8.

[\[FN29\]](#). *Id.* at 9.

[\[FN30\]](#). *Id.*

[\[FN31\]](#). *Id.*

[\[FN32\]](#). *Id.* at 10.

[\[FN33\]](#). U.N. Doc. E/CN.4/AC.46/1998/5, at I(B).

[\[FN34\]](#). *Id.* at I(C).

[FN35]. U.N. Doc. E/CN.4/1999/80, 9 March 1999, at VI.

[FN36]. *Id.* at VII(A).

[FN37]. *Id.* at VII(A-C).

[FN38]. *Id.* at VII(C).

[FN39]. U.N. Doc. E/CN.4/AC.46/1998/5 at I(D).

[FN40]. U.N. Doc. E/CN.4/2000/82, 6 January 2000.

[FN41]. This of course ignores historical examples of economic migrations before "globalization," including much of the migration between the U.S. and Mexico over the past century.

[FN42]. Migrant workers move for specific remunerated activities.

[FN43]. U.N. Doc. E/CN.4/2000/82 at V.

[FN44]. In order to be granted asylum, a person must qualify as a refugee by showing a "well-founded fear of persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. Economic factors are notably missing from this list of qualifications. See "Definition of a Refugee from the Immigration and Nationality Act," Immigration and Naturalization Service, available at <http://www.ins.usdoj.gov/graphics/howdoi/refugee.htm>.

[FN45]. *Id.* at V.

[FN46]. *Id.* at VII.

[FN47]. *Id.* at VIII.

[FN48]. See Grace Chang, *The Global Trade in Filipina Workers*, in *Dragon Ladies: Asian American Feminists Breathe Fire* 132, 135 (Sonia Shah ed., 1997) [hereinafter *The Global Trade*].

[FN49]. "2000 Survey of Overseas Filipino Workers Table," National Statistics Office, Republic of the Philippines, at <http://www.census.gov.ph/data/sectordata/2001/of0003.htm>.

[FN50]. "2000 Survey of Overseas Filipino Workers Table" at <http://www.census.gov.ph/data/sectordata/2001/of0004.htm>.

[FN51]. "Deployed Overseas Filipino Workers (OFWs) by Country of Destination," at <http://www.manila-online.net/bles/empstat/deploy~1.htm>.

[FN52]. *Servants of Globalization*, *supra* note 1, 39 (2001), citing Trinidad Osteria, *Filipino Female Labor Migration to Japan: Economic Causes and Consequences* (1994) and J.N. Sarmiento, *The Asian Experience in International Migration*, 29 *Inter'l Migration Rev.* 195 (1991).

[FN53]. *Servants of Globalization*, *id.*, citing Catholic Institute for International Relations (CIIR), *The Labor Trade: Filipino Migrant Workers Around the Globe* (2nd ed 1987) and Roland Tolentino, *Bodies, Letters, Catalogs: Filipinas in Transnational Space* 48 *Social*

Text 49 (1996). Rosie Baldonado points out how migration in the mail order bride industry contributes to the commodification of Filipinas and extends social scripts of hypersexuality and dehumanization. Transmitting Images: The Exoticization and Commodification of Filipinas (unpublished manuscript, on file with author).

[FN54]. Dan Gatmaytan, [Death and the Maid: Work, Violence and the Filipina in the International Market](#), 20 *Harv. Women's L. J.* 229, 240 (1997).

[FN55]. The Global Trade, *supra* note 48, at 136; Servants of Globalization, *supra* note 1, at 53; Gatmaytan, *supra* note 54; Migrant's Focus Magazine, vol. 2, available at <http://www.migrants.net/resources/magazine/issue2/mainfeature.htm>.

[FN56]. Servants of Globalization, *supra* note 1, at 9.

[FN57]. *Id.* at 11.

[FN58]. See Saskia Sassen, *Globalization and Its Discontents: Essays on the Mobility of People and Money* 90 (1998) [hereinafter *Globalization and Its Discontents*].

[FN59]. Servants of Globalization, *supra* note 1, at 2, 40.

[FN60]. *Id.* at 25.

[FN61]. See Delia Aguilar-San Juan, *The Philippine Centenary: Urgent Feminist Questions*, 24 *Amerasia Journal* 27, 31 (1998).

[FN62]. Enrique de la Cruz, *Introduction: Essays into American Empire in the Philippines: Part I: Legacies, Heroes, and Identity*, 24 *Amerasia Journal* ix, x-xi (1998).

[FN63]. See generally E. San Juan, Jr., *One Hundred Years of Producing and Reproducing the "Filipino,"* 24 *Amerasia Journal* 1 (1998).

[FN64]. People displaced by extremely poor economic conditions migrate to factory zones in developing nations that may be relatively more well-off.

[FN65]. *Globalization and its Discontents*, *supra* note 58, at 112.

[FN66]. *Id.*, at 87, 90, 129.

[FN67]. *Id.*, at 61-62.

[FN68]. Parreñas does not attempt to account for the high numbers of Filipinas in domestic work in all receiving nations. Her work focuses on Filipina migrants to the U.S. and Italy.

[FN69]. The Global Trade, *supra* note 48, at 145.

[FN70]. *Id.* at 148.

[FN71]. Miriam Ching Louie, *Breaking the Cycle: Women Workers Confront Corporate Greed Globally in Dragon Ladies: Asian American Feminists Breathe Fire* 121, 126, 128, 129 (Sonia Shah ed., 1997).

[FN72]. *Death and the Maid*, *supra* note 54, at 249.

[FN73]. *Id.* at 253.

[FN74]. Id.

[FN75]. Id. at 261.

[FN76]. Id.

[FN77]. Migrants.Net can be accessed at <http://www.migrants.net/resources/brochure/aboutmfmw.htm>.

[FN78]. Migrant's Focus, vol. 2.

[FN79]. Gabriela chapter websites can be accessed at http://members.tripod.com/~gabriela_p/ and <http://www.gabnet.org/>.

[FN80]. See Gabriela's Principles, at http://members.tripod.com/~gabriela_p/.

[FN81]. See Fashion Statement: A Philippine Women's Group Sends a Message to the Government, at http://members.tripod.com/~gabriela_p/7-news/000324_aw.html

[FN82]. Bayan, Guiding Principles and Vision, available at <http://www.bayanorg.pilnet.com/Principles.html>.

[FN83]. Berta Esperanza Hernandez-Truyol and Sharon Elizabeth Rush, [Culture, Nationhood, and the Human Rights Ideal](#), 5 *Mich. J. Race & L.* 817, 827 (2000).

[FN84]. [Id. at 833.](#)

[FN85]. Celina Romany, Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law, 6 *Harv. Hum. Rts. J.* 87 (1993). See also Celina Romany, [Black Women and Gender Equality in the New South Africa: Human Rights Law and the Intersection of Race and Gender](#), 21 *Brook. J. Int'l L.* 857 (1996).

[FN86]. Penelope Andrews, [Violence Against Aboriginal Women in Australia: Possibilities for Redress Within the International Human Rights Framework](#), 60 *Alb. L. Rev.* 917, 934-35 (1997).

[FN87]. Culture, Nationhood, and the Human Rights Ideal, supra note 83, at 837. See also Hernandez-Truyol, [International Law, Human Rights, and Latcrit Theory: Civil and Political Rights-An Introduction](#), 28 *U. Miami Inter-Am. L. Rev.* 223 (1996).

[FN88]. Culture, Nationhood, and the Human Rights Ideal, supra note 83, at 827.

[FN89]. See Hernandez-Truyol, [The LatIndia and Mestizajes: Of Cultures, Conquests and LatCritical Feminism](#), 3 *J. Gender Race & Just.* 63, 94 (1999).

[FN90]. International Law, Human Rights, and Latcrit Theory, supra note 87, at 236-37.

[FN91]. Violence Against Aboriginal Women in Australia, supra note 86, at 926.

[FN92]. Sherene Razack, Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms 18 (1998).

[FN93]. Id., at 18.

[FN94]. See supra Part II(A).

[FN95]. See Edward Said, *Orientalism* (1994); *Culture and Imperialism* (1993).

[FN96]. See Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (1992).

[FN97]. See generally, Michel Foucault, *The History of Sexuality*, Vol. III (Robert Hurley trans., 1990); Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writing, 1972-1977* (Colin Gordon ed. & transl., 1980).

[FN98]. See, e.g., Albert Memmi, *The Colonizer and The Colonized* (1967); Frantz Fanon, *Black Skins, White Masks* (1986).

[FN99]. See Trinh T. Minh-ha, *Woman, Native, Other: Writing Postcoloniality and Feminism 90-95* (1989). See also generally, Trinh T. Minh-ha, *When the Moon Waxes Red: Representation, Gender and Cultural Politics* (1991).

[FN100]. See Homi Bhabha, *The Location of Culture* 142 (1994).

[FN101]. Antony Anghie argues that the very concept of state sovereignty that informs modern understandings of the nation continues to be embedded in colonialist projects begun during the nineteenth century. See Antony Anghie, [Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law](#), 40 *Harv. Int'l L.J.* 1 (1999) [hereinafter *Finding the Peripheries*].

[FN102]. Gayatri Chakravorty Spivak, *Can the Subaltern Speak?* in *Colonial Discourse and Postcolonial Theory: A Reader* 66 (Patrick Williams and Laura Chrisman eds., 1994).

[FN103]. Gayatri Spivak, *Who Claims Alterity?* in *Remaking History* 269, 272 (Barbara Kruger and Phil Mariani eds., 1989).

[FN104]. Patricia Williams argues a similar point in her analysis of the silence of Tawana Brawley as a young, Black female in *Mirrors and Windows*, in *The Alchemy of Race and Rights* 166 (1994).

[FN105]. Gayatri Spivak, *The Post-Colonial Critic: Interviews, Strategies, Dialogues* 70 (Sarah Harasym ed., 1990).

[FN106]. Michael Hardt and Antonio Negri, *Empire* 4 (2000).

[FN107]. *Id.* at 9-10.

[FN108]. *Id.* at 15-17.

[FN109]. *Id.* at 11.

[FN110]. See generally, *Finding the Peripheries*, *supra* note 101.

[FN111]. Aiwha Ong offers an interesting point about resistances by Asian nations that challenge both Hardt and Negri's notion of Empire and imperialism tied to "western" nations. Ong argues that Asian nations have incorporated the governmentality of liberalism but not its valorization of individual autonomy. The capitalist economic order of some Asian nations rely on cultural forms of discipline through governmentality rather than the regulation of individuals through a liberal legal regime based on the idea of consent. Ong argues that this has allowed Asian countries, including China, to "say no" to the social/legal regime of the west even while joining in the capitalist global economy.

See Aiwha Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* 185-213 (1999).

[FN112]. See Arif Dirlik, *The Global in the Local*, in *Global/Local: Cultural Production and the Transnational Imaginary* 21 (Rob Wilson and Wimal Dissanayake eds., 1996) and Masao Miyoshi, *A Borderless World? From Colonialism to Transnationalism and the Decline of the Nation-State*, in *Global/Local*.

[FN113]. See *The Post-Colonial Critic*, supra note 105, at 138-151.

[FN114]. Gayatri Spivak, *In Other Worlds: Essays in Cultural Politics* 254 (1988). Lisa Lowe writes of the contradictory positions held by migrant female subjects. See Lisa Lowe, *Work, Immigration, Gender: Asian "American" Women*, in *Immigrant Acts: On Asian American Cultural Politics* 154 (1996).

[FN115]. See supra, Section I(D).

[FN116]. See *Who Claims Alterity?*, supra note 103, at 280.

[FN117]. See *In Other Worlds*, supra note 114, at 201.

[FN118]. See *The Post-Colonial Critic*, supra note 105, at 53.

[FN119]. *The Location of Culture*, supra note 100, at 219.