Losing Control?
Sovereignty in an Age of Globalization

Saskia Sassen

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1. The State and the New Geography of Power

Economic globalization represents a major transformation in the territorial organization of economic activity and politico-economic power. How does it reconfigure the territorial exclusivity of sovereign states, and what does this do to both sovereignty and a system of rule based on sovereign states? Has economic globalization over the last ten or fifteen years contributed to a major institutional discontinuity in the history of the modern state, the modern interstate system, and, particularly, the system of rule?

The term *sovereignty* has a long history, beginning with Aristotle, running through Bodin and Hobbes and the American and French revolutions, and arriving today at yet another major transformation. From being the sovereignty of the ruler, it became the will of the people as contained in the nation-state, that is, popular sovereignty. It was for a long time centered in a concern with internal order, a notion that influenced international law and politics for many centuries. Sovereignty often was "an attribute of a powerful individual whose legitimacy over territory . . . rested on a purportedly direct or delegated divine or historic authority." [1] The international legal system did not necessarily register these changes as they were happening. But by the end of World War II the notion of sovereignty based on the will of the people had become established as one of the conditions of political legitimacy for a government. [2] Article 1 of the un Charter established as one of the purposes of the un the development of friendly relations among states "based on respect for the principles of equal rights and self-determination of peoples"; the Universal Declaration of Human Rights of 1948, Article 21 (3), provided that the will of the people shall be the basis of authority of government . . . through elections. . . ." [3] What is significant here is that this was now expressed in a fundamental international constitutive legal document. "In international law, the sovereign had finally been dethroned." [4]

The sovereignty of the modern state was constituted in mutually exclusive territories and the concentration of sovereignty in nations. There are other systems of rule, particularly those centered in supranational organizations and emergent private transnational legal regimes, and earlier forms of such supranational powers reigned on occasion over single states, as when the League of Nations gave itself the right of intervention for the purpose of protecting minority rights. Systems of rule need not be territorial, as in certain kinds of kinship-based systems; they may not be territorially fixed, as in nomadic societies; or, while territorially fixed, they need not be exclusive. [5] In the main, however, rule in the modern world flows from the absolute sovereignty of the state over its national territory.

Achieving exclusive territoriality was no easy task. It took centuries of struggle, wars, treaties made and treaties broken, to nationalize territories along mutually exclusive lines and secure the distinctive concentration of power and system of rule that is the sovereign state. Multiple systems of rule coexisted during the transition from the medieval system of rule to the modern state: there were centralizing monarchies in Western Europe, city-states in

Italy, and city-leagues in Germany. [6] Even when nation-states with exclusive territoriality and sovereignty were beginning to emerge, other forms might have become effective alternatives--for example, the Italian city-states and the Hanseatic League in northern Europe--and the formation of and claims by central states were widely contested. [7] Even now, there continue to be other forms of concentration of power and other systems of rule, for instance, nonterritorial or nonexclusive systems such as the Catholic Church and the so-called Arab nation.

There have long been problems with the exclusive territoriality of the modern state. Inevitably, one thinks of Garrett Mattingly's account of the right of embassy in medieval Europe. After succeeding brilliantly at creating mutually exclusive territories, states found there was no space left for the protected conduct of diplomacy; indeed, diplomats often felt--and indeed were--threatened, as well as pelted with vegetables. Moreover, for activities not covered by specific immunities, diplomats could be tried in the courts of the host state, just like any other subject. [8] There were various intermediate forms granting specific immunities. For example, the right of embassy could often be granted without reference to a specific sovereign, allowing subject cities to negotiate directly with one another. This form of the right of embassy became increasingly problematic when the right to embassy became a matter of sovereign recognition. As Mattingly notes, having achieved absolute sovereignty, the new states found they could only communicate with each other "by tolerating within themselves little islands of alien sovereignty." [9] The doctrine of extraterritoriality was thus the answer, and its consequences are still evident today, as when a diplomat parks anywhere in the city with impunity, de jure. [10] In the long history of securing and legitimating exclusive territoriality, particularly in this century, a variety of extraterritorial regimes have accumulated. And then there is, of course, Hugo Grotius's doctrine of mare liberum, which remains with us today. [11]

It is not enough simply to posit, as is so often done, that economic globalization has brought with it declining significance for the national state. Today, the major dynamics at work in the global economy carry the capacity to undo the particular form of the intersection of sovereignty and territory embedded in the modern state and the modern state system. But does this mean that sovereignty or territoriality are less important features in the international system?

Addressing these questions requires an examination of the major aspects of economic globalization that contribute to what I think of as a new geography of power. One much-noted fact is that firms can now operate across borders with ease; indeed, for many, this is what globalization is about. But I wish to examine three other components in the new geography of power.

The first of these components concerns the actual territories where much globalization materializes in specific institutions and processes. What kind of territoriality does this represent? The second component concerns the ascendance of a new legal regime for governing cross-border economic transactions, a trend not sufficiently recognized in the social science literature. A rather peculiar passion for legality (and lawyers) drives the globalization of the corporate economy, and there has been a massive amount of legal innovation around the growth of globalization. The third component I wish to address is the growing number of economic activities taking place in electronic space. Electronic space overrides all existing territorial jurisdiction. Further, this growing virtualization of economic activity, particularly in the leading information industries such as finance and specialized corporate services, may be contributing to a crisis in control that transcends the capacities of both the state and the institutional apparatus of the economy. The speed made possible by the new technologies is creating orders of magnitude--in, for instance, the foreign currency markets--that escape the governing capacities of private and government overseers.

Adding these three components of the new geography of power to the global footlooseness of corporate capital reveals aspects of the relation between global economy and national state that the prevalent notion of a global-national duality does not adequately or usefully capture. This duality is conceived as a mutually exclusive set of terrains where the national economy or state loses what the global economy gains. Dualization has fed the proposition that the national state must decline in a globalized economy.

Territoriality in a Global Economy

To elaborate on these three components of the new geography of power, I will begin with the question of the spaces of the global economy. What is the strategic geography of globalization or, more conceptually, the particular form of territoriality that is taking shape in the global economy today?

My starting point is a set of practices and institutions: global financial markets; the ascendance of Anglo-American law firms in international business transactions; the Uruguay Round of the GATT and the formation of the World Trade Organization (WTO); the role of credit-rating agencies and other such delightful entities in international capital markets; the provisions in the GATT and NAFTA for the circulation of service workers as part of the international trade and investment in services; and immigration, particularly the cross-border circulation of low-wage workers. In my earlier research I did not think about these subjects in terms of governance and accountability; here, I seek to understand the spatial configuration and legal/regulatory regimes that specify them.

An aspect of economic globalization that has received the most attention from general and specialized commentators is the geographic dispersal of firms' factories, offices, service outlets, and markets. One of many versions of this is the global assembly line in manufacturing, perhaps most famously dramatized by the infamous case of ibm's personal computer carrying the label Made in the usa when more than 70 percent of its component parts were manufactured overseas, typically in low-wage countries. [12] Yet another version is the export-processing zone--a special tariff and taxation regime that allows firms, mostly from high-wage countries, to export semiprocessed components for further processing in low-wage countries and then to reimport them back to the country of origin without tariffs on the value added through processing. There are now hundreds of such zones; the best-known instance is the Northern Industrialization Program in Mexico, the so-called *maquiladoras*. In Mexico, there are plants from many different countries, including Japanese plants making auto parts and electronic components shipped to Japanese plants in the United States. Another common example is the offshoring of clerical work. So-called clerical factories are growing rapidly in both numbers and types of locations: they can now be found in China even though workers do not necessarily know English. The clerical work that is offshored involves largely routine data entering and is, in many ways, an extension of the common practice in the highly developed countries of locating back offices in suburban areas or shipping clerical work to private households. There are several other variations of this trend toward worldwide geographic dispersal and internationalization. Indeed, national governments have reason to know this well: they are forever struggling to capture the elusive taxes of corporations operating in more than one country.

From the perspective of the national state, specifically the state in highly developed countries, offshoring creates a space economy that goes beyond the regulatory umbrella of the state. And in this regard, the significance of the state is in decline. Here we can point only to the different ways in which globalization brings about this partial denationalizing in developing and highly developed countries. In much of the developing world, it has assumed the form of free trade zones and export manufacturing zones where firms can locate production facilities without being subject to local taxes and various other regulations; such zones exist in many Latin American and Asian countries. In these cases, an actual piece of land becomes denationalized; with financial operations, the process assumes a more institutional and functional meaning.

Conceivably, the geographic dispersal of factories and offices could have gone along with a dispersal in control and profits, a democratizing, if you will, of the corporate structure. Instead, it takes place as part of highly integrated corporate structures with strong tendencies toward concentration in control and profit appropriation. Large corporations log many of these operations as "overseas sales," and it is well known that a very high share, about 40 percent, of international trade actually occurs intrafirm, and, according to some sources, the proportion is even higher than that. [13]

There are two major implications here for the question of territoriality and sovereignty in the context of a global economy. First, when there is geographic dispersal of factories, offices, and service outlets in an integrated corporate system, particularly one with centralized top-level control, there is also a growth in central functions. Put simply, the more globalized firms become, the more their central functions grow: in importance, in complexity, and in number of transactions. [14] The sometimes staggering figures involved in this worldwide dispersal demand extensive coordination and management at parent headquarters. For instance, in the early

1990s U.S. firms had more than 18,000 affiliates overseas; less known is the fact that German firms had even more, 19,000, up from 14,000 in the early 1980s or that well over 50 percent of the workforces of firms such as Ford Motors, gm, ibm, and Exxon are overseas. [15] A lot of this dispersal has been going on for a long time, and it does not proceed under a single organizational form: behind these general figures lie many types of establishments, hierarchies of control, and degrees of autonomy. [16]

The second implication in terms of territoriality and sovereignty in a global economy is that these central functions are disproportionately concentrated in the national territories of the highly developed countries. This means that an interpretation of the impact of globalization as creating a space economy that extends beyond the regulatory capacity of a single state is only half the story. It is important to clarify here that central functions involve not only top-level headquarters but also all the top-level financial, legal, accounting, managerial, executive, and planning functions necessary to run a corporate organization operating in more than one and now often several countries. These central functions partly take place at corporate headquarters, but many have become so specialized and complex that headquarters increasingly buy them from specialized firms rather than producing them in-house. This has led to the creation of what has been called the corporate services complex, that is, the network of financial, legal, accounting, advertising, and other corporate service firms that handle the difficulties of operating in more than one national legal system, national accounting system, advertising culture, etc., and do so under conditions of rapid innovations in all these fields. [17]

As a rule, firms in more routinized lines of activity, with predominantly regional or national markets, appear to be increasingly free to move or install their headquarters outside cities, while those in highly competitive and innovative lines of activity and/or with a strong world market orientation appear to benefit from being located at the heart of major international business centers, no matter how high the costs. Both types of firms need some kind of corporate services complex, and the more specialized complexes are most likely to be in cities rather than, say, suburban office parks. Thus the agglomerations of firms carrying out central functions for the management and coordination of global economic systems are disproportionately concentrated in the highly developed countries, particularly, though not exclusively, in the kinds of cities I call global cities, such as New York, Paris, and Amsterdam. [18]

Another instance today of this negotiation between a transnational process or dynamic and a national territory is that of the global financial markets. The orders of magnitude in these markets have risen sharply, as illustrated by the estimated 75 trillion U.S. dollars in turnover in the global capital market, a major component of the global economy. These transactions are partly dependent on telecommunications systems that make possible the instantaneous transmission of money and information around the globe. Much attention has gone to the new technologies' capacity for instantaneous transmission. But equally important is the extent to which the global financial markets are located in particular cities in the highly developed countries. The degrees of concentration are unexpectedly high. For instance, international bank lending by countries increased from 1.9 trillion dollars in 1980 to 6.2 trillion dollars in 1991; seven countries accounted for 65 percent of this total in both 1980 and 1991. What countries? Yes, the usual suspects: the United States, the U.K., Japan, Switzerland, France, Germany, and Luxembourg. [19]

Stock markets worldwide have become globally integrated. Besides deregulation in the 1980s in all the major European and North American markets, the late 1980s and early 1990s saw the addition of such markets as Buenos Aires, São Paulo, Bangkok, Taipei, etc. The integration of a growing number of stock markets has contributed to raise the capital that can be mobilized through them. Worldwide market value reached 13 trillion dollars in 1995. This globally integrated stock market, which makes possible the circulation of publicly listed shares around the globe in seconds, functions within a grid of very material, physical, strategic places: that is, cities belonging to national territories.

New Legal Regimes

The operation of worldwide networks of factories, offices, and service outlets and the deregulation and global integration of stock markets have involved a variety of major and minor legal innovations. Earlier, I discussed the struggle to nationalize territory and form mutually exclusive sovereign territories, in particular the question

of the right of embassy, which evolved into a form of extraterritoriality through which to resolve the tension between exclusive territoriality and the need for transactions among states. The impact of economic globalization on national territory and state sovereignty could be yet another form of such extraterritoriality, only on a much larger scale. My discussion about territory in the global economy posits that much that we describe as global, including some of the most strategic functions necessary for globalization, is grounded in national territories. Is this a form of extraterritoriality that leaves the sovereignty of the state fundamentally unaltered? Or is it a development of a different sort, one that affects the sovereignty of the state and partially transforms the notions of both territoriality and sovereignty.

To address these questions, it is necessary to examine the particular forms of legal innovation that have been produced and within which much of globalization is encased and further to consider how they interact with the state or, more specifically, with the sovereignty of the state. These legal innovations and changes are often characterized as "deregulation" and taken as somewhat of a given (though not by legal scholars). In much social science, *deregulation* is another name for the declining significance of the state. But, it seems to me, these legal changes contain a more specific process, one that along with the reconfiguration of space may signal a more fundamental transformation in the matter of sovereignty, pointing to new contents and new locations for the particular systemic property that we call sovereignty. As with the discussion of territory in the global economy, my beginning point is a set of practices and minor legal forms, microhistories, that can, however, accumulate into major trends or regimes--and I am afraid are about to do so.

Firms operating transnationally need to ensure the functions traditionally exercised by the state in the national realm of the economy, such as guaranteeing property rights and contracts. [20] Yet insofar as economic globalization extends the economy--but not the sovereignty--of the nation-state beyond its boundaries, this guarantee would appear to be threatened.

In fact, globalization has been accompanied by the creation of new legal regimes and practices and the expansion and renovation of some older forms that bypass national legal systems. Globalization and governmental deregulation have not meant the absence of regulatory regimes and institutions for the governance of international economic relations. Among the most important in the private sector today are international commercial arbitration and the variety of institutions that fulfill the rating and advisory functions that have become essential for the operation of the global economy.

Over the past twenty years, international commercial arbitration has been transformed and institutionalized as the leading contractual method for the resolution of transnational commercial disputes. [21] Again, a few figures tell a quick and dirty story. There has been an enormous growth in arbitration centers. Excluding those concerned with maritime and commodity disputes--an older tradition--there were 120 centers by 1991, with another 7 established by 1993; among the more recent are those of Bahrain, Singapore, Sydney, and Vietnam. There were about a thousand arbitrators by 1990, a number that had doubled by 1992. [22] In a major study on international commercial arbitration, Yves Dezalay and Bryant Garth find that it is a delocalized and decentralized market for the administration of international commercial disputes, connected by more or less powerful institutions and individuals who are both competitive and complementary. [23] It is in this regard a far from unitary system of justice, perhaps organized, as Dezalay and Garth put it, around one great lex mercatoria, which might have been envisioned by some of the pioneering idealists of law. [24]

Another private regulatory system is represented by the debt security or bond-rating agencies that have come to play an increasingly important role in the global economy. Two agencies dominate the market in ratings, with listings of 3 trillion U.S. dollars each: Moody's Investors Service, usually referred to as Moody's, and Standard and Poor's Ratings Group, usually referred to as Standard and Poor. [25] Ten years ago Moody's and Standard and Poor had no analysts outside the United States; by 1993 they each had about a hundred in Europe, Japan, and Australia. In his study of credit-rating processes, Sinclair found that they have leverage because of their distinct gate-keeping functions for investment funds sought by corporations and governments. [26] In this regard they can be seen as a significant force in the operation and expansion of the global economy. [27] And as with business law,

the U.S. agencies have expanded their influence overseas; to some extent, their growing clout can be seen as both a function and a promoter of U.S. financial orthodoxy, particularly its short-term perspective.

Americanization

Transnational institutions and regimes raise questions about the relation between state sovereignty and the governance of global economic processes. International commercial arbitration is basically a private justice system, and credit-rating agencies are private gate-keeping systems. With other institutions, they have emerged as important governance mechanisms whose authority is not centered in the state. The current relocation of authority has transformed the capacities of governments and can be thought of as an instance of Rosenau's "governance without government." [28] This is a subject I will explore in greater detail in the next chapter. It has also spurred the formation of transnational legal regimes, which have penetrated into national fields hitherto closed. [29] In their turn, national legal fields are becoming more internationalized in some of the major developed economies. Some of the old divisions between the national and the global are becoming weaker and, to some extent, have been neutralized. The new transnational regimes could, in principle, have assumed various forms and contents; but, in fact, they are assuming a specific form, one wherein the states of the highly developed countries play a strategic geopolitical role. The hegemony of neoliberal concepts of economic relations, with its strong emphasis on markets, deregulation, and free international trade, influenced policy in the usa and the U.K. in the 1980s and now increasingly does so in continental Europe as well. This has contributed to the formation of transnational legal regimes that are centered in Western economic concepts. [30]

Dezalay and Garth note that the "international" is itself constituted largely from a competition among national approaches. There is no global law. Martin Shapiro, too, notes that there is not much of a regime of international law, either through the establishment of a single global lawgiver and enforcer or through a nation-state consensus. He also posits that if there were, it would be an international rather than a global law; in fact, it is not even certain that the concept of law itself has become universal, that is, that human relations everywhere in the world will be governed by some, though perhaps not the same, law. The globalization of law refers to a very limited, specialized set of legal phenomena, and Shapiro argues that it will almost always refer to North America and Europe and only sometimes to Japan and some other Asian countries. [31]

The international thus emerges as a site for regulatory competition among essentially national approaches, whatever the issue: environmental protection, constitutionalism, human rights. [32] From this perspective "international" or "transnational" has become in the most recent period a form of Americanization, though the process has hardly been smooth. Contestation crops up everywhere, some of it highly visible and formalized, some of it not. In some countries, especially in Europe, there is resistance to what is perceived as the Americanization of the global capital market's standards for the regulation of financial systems and standards for reporting financial information. Sinclair notes that the internationalization of ratings by the two leading U.S. agencies could be seen as another step toward global financial integration or as fulfilling an American agenda. Resentment against U.S. agencies is clearly on the rise in Europe, as became evident when Credit Suisse was downgraded in 1991 and, in early 1992, the Swiss Bank Corporation met the same fate. Conflict is also evident in the difficulty with which foreign agencies gain sec standing as Nationally Recognized Statistical Rating Organizations in the usa. The Financial Times--to mention one example--has reported on private discussions in London, Paris, and Frankfurt concerning the possibility of setting up a Europe-wide agency to compete with the major U.S.-based agencies. [33]

The most widely recognized instance of Americanization is seen, of course, in the profound influence U.S. popular culture exerts on global culture. [34] But, though less widely recognized and more difficult to specify, it has also become very clear in the legal forms ascendant in international business transactions. [35] Through the IMF and the International Bank for Reconstruction and Development (ibrd) as well as the GATT, the U.S. vision has spread to--some would say been imposed on--the developing world. [36]

The competition among national legal systems or approaches is particularly evident in business law, where the Anglo-American model of the business enterprise and competition is beginning to replace the Continental model

of legal artisans and corporatist control over the profession. [37] More generally, U.S. dominance in the global economy over the last few decades has meant that the globalization of law through private corporate lawmaking has assumed the form of the Americanization of commercial law. [38] Certain U.S. legal practices are being diffused throughout the world--for instance, the legal device of franchising. Shapiro notes that this may not stem only from U.S. dominance but also from common law's receptivity to contract and other commercial law innovations. For example, it is widely believed in Europe that EC legal business goes to London because lawyers there are better at legal innovations to facilitate new and evolving transnational business relations. "For whatever reasons, it is now possible to argue that American business law has become a kind of global jus commune incorporated explicitly or implicitly into transnational contracts and beginning to be incorporated into the case law and even the statutes of many other nations." [39]

All the reasons for this Americanization are somewhat interrelated: the rationalization of arbitration know-how, the ascendance of large Anglo-American transnational legal services firms, and the emergence of a new specialty in conflict resolution. [40] The large Anglo-American law firms that dominate the international market of business law include arbitration as one of the array of services they offer. Specialists in conflict are practitioners formed from the two great groups that have dominated legal practice in the United States: corporate lawyers, known for their competence as negotiators in the creation of contracts, and trial lawyers, whose talent lies in jury trials. The growing importance in the 1980s of such transactions as mergers and acquisitions, as well as antitrust and other litigation, contributed to a new specialization: knowing how to combine judicial attacks and behind-the-scenes negotiations to reach the optimum outcome for the client. Dezalay and Garth note that under these conditions judicial recourse becomes a weapon in a struggle that will almost certainly end before trial. Notwithstanding its deep roots in the Continental tradition, especially the French and Swiss traditions, this system of private justice is becoming increasingly Americanized.

The Virtualization of Economic Activity

The third component in the new geography of power is the growing importance of electronic space. There is much to be said on this issue. Here, I can isolate one particular matter: the distinctive challenge that the virtualization of a growing number of economic activities presents not only to the existing state regulatory apparatus but also to private-sector institutions increasingly dependent on the new technologies. Taken to its extreme, this may signal a control crisis in the making, one for which we lack an analytical vocabulary.

The questions of control here have to do not with the extension of the economy beyond the territory of the state but with digitalization--that is, electronic markets--and orders of magnitude such as those that can be achieved in the financial markets, thanks to the transaction speeds made possible by the new technologies. The best example is probably the foreign currency market, which operates largely in electronic space and has achieved volumes--a trillion dollars a day--that leave the central banks incapable of exercising the influence on exchange rates they are expected to wield (though may, in fact, not always have had). The growing virtualization of economic activities raises questions of control that also go beyond the notions of non-state-centered systems of coordination prevalent in the literature on governance.

The State Reconfigured

In many ways, the state is involved in this emerging transnational governance system. But it is a state that has itself undergone transformation and participated in legitimating a new doctrine about its role in the economy. Central to this new doctrine is a growing consensus among states to further the growth and strength of the global economy. This combination of elements is illustrated by some of the aspects of the December 1994 crisis in Mexico.

Mexico's crisis was defined rather generally in international political and business circles, as well as in much of the press, as the result of the global financial markets' loss of confidence in the Mexican economy and the government's leadership of it. The U.S. government defined the crisis as a global economic security issue with direct impact on the U.S. economy and pushed hard to get the U.S. legislature and the governments of other highly developed countries to come to Mexico's aid. It opted for a financial "solution," an aid package that would

allow the Mexican government to pay its obligations to foreign investors and thereby restore foreign (and national) investors' confidence in the Mexican economy. This financial response was but one of several potential choices. For instance, there could conceivably have been an emphasis on promoting manufacturing growth and protecting small businesses and homeowners from the bankruptcies faced by many in Mexico. And the U.S. government could also have exhorted the Mexican government to give up on restoring confidence in the global financial market and focus instead on the production of real value added in the Mexican economy. To complicate matters further, this crisis, which was largely presented as a global economic security issue, was handled not by the secretary of state--as it would have been twenty years ago--but by the secretary of the treasury, Robert Rubin, someone who had been the so-called dean of Wall Street. There are two rather important novel elements here: first, that Treasury should handle this international crisis, and, second, that the secretary of that agency was a former top partner at Goldman, Sachs & Co. on Wall Street, one of the leading global financial firms. My aim here is not to point to even the slightest potential for corruption but rather to raise the question of what is desirable economically, and how we define problems and their best solutions.

The shift in responsibility from the State Department to Treasury signals the extent to which the state itself has been transformed by its participation in the implementation of globalization and by the pressures of globalization. Many governments now see their responsibilities as going beyond traditional foreign policy and extending to world trade, the global environment, and global economic stability. [41] This participation of the state in the international arena is an extremely multifaceted and complex matter, and one in which some states participate much more than others. In some cases, it can be seen as benevolent--for example, in certain matters concerning the global environment--and in others less so--as when the governments of the highly developed countries, particularly the United States, push for worldwide market reform and privatization in developing countries.

I confine the analysis here to the economic arena, where the international role of the state has been read in rather diverse, though not necessarily mutually exclusive, ways. For instance, according to some, much of this new role of states in the global economy is dominated by the furthering of a broad neoliberal conception, to the point where it represents a constitutionalizing of this project. [42] Others emphasize that effective international participation by national governments can contribute to the strengthening of the rule of law at the global level. [43]

Yet others see the participation of the state in international systems as contributing to the loss of sovereignty. One can see this in recent debates over the World Trade Organization, fueled by concerns that it imposes restrictions on the political autonomy of the national state by placing the principle of free trade above all other considerations. For example, some fear that it will be used to enforce the GATT trade regulations to the point of overturning federal, state, and local laws. This is then seen as jeopardizing a nation's right to enact its own consumer, labor, and environmental laws. It is worth noting here that many in the United States who supported the GATT did not like the role of the wto because they did not like the idea of binding the nation to an international dispute-resolution tribunal not fully controlled by the United States.

An important question running through these different interpretations is whether the new transnational regimes and institutions are creating systems that strengthen the claims of certain actors (corporations, the large multinational legal firms) and correspondingly weaken the positions of states and smaller players. John Ruggie has pointed out that "global markets and transnationalized corporate structures . . . are not in the business of replacing states," yet they can have the potential for producing fundamental changes in the system of states. [44]

What matters here is that global capital has made claims on national states, which have responded through the production of new forms of legality. The new geography of global economic processes, the strategic territories for economic globalization, have to be defined in terms of both the practices of corporate actors, including the requisite infrastructure, and the work of the state in producing or legitimating new legal regimes. Views that characterize the national state as simply losing significance fail to capture this very important fact and reduce what is happening to a function of the global-national duality: what one wins, the other loses. By contrast, I view deregulation not simply as a loss of control by the state but as a crucial mechanism for handling the juxtaposition of the interstate consensus to pursue globalization and the fact that national legal systems remain as the major, or crucial, instantiation through which guarantees of contract and property rights are enforced.

There are two distinct issues here. One is the formation of new legal regimes that negotiate between national sovereignty and the transnational practices of corporate economic actors. The second is the particular content of these new regimes, one that strengthens the advantages of certain types of economic actors and weakens those of others. Concerning governance, these two aspects translate into two different agendas. One is centered on the effort to create viable systems of coordination and order among the powerful economic actors now operating globally (to ensure, one could say, that the big boys at the top don't kill each other). International commercial arbitration and credit-rating agencies can be seen as contributing to this type of order. The second is focused less on how to create order at the top than on equity and distributive questions in the context of a globally integrated economic system with immense inequalities in the profit-making capacities of firms and the earnings capacities of households.

This second, equity-oriented agenda is further constrained by some of the order-creating governance issues arising from a global economic system increasingly dominated by finance. For now, I want to raise two larger questions of principle and politics: What actors gain legitimacy to govern the global economy and take over rules and authorities previously controlled by the national state? Do the new systems for governance that are emerging and the confinement of the role of national states in the global economy to promoting deregulation, markets, and privatization indicate a decline of international public law? [45]

I see an important parallel here. Certain components of the state's authority to protect rights are being displaced onto so-called universal human rights codes, a subject I develop in chapter 3. While the national state was and remains in many ways the guarantor of the social, political, and civil rights of a nation's people, from the 1970s on we see a significant transformation in this area. Human rights codes have become a somewhat autonomous source of authority that can delegitimize a state's particular actions if it violates such codes. Thus both the global capital market and human rights codes can extract accountability from the state, but they do so with very different agendas. Both have gained a kind of legitimacy.

It is clear that defining the nation-state and the global economy as mutually exclusive operations is, in my analysis, highly problematic. The strategic spaces where many global processes take place are often national; the mechanisms through which the new legal forms necessary for globalization are implemented are often part of state institutions; the infrastructure that makes possible the hypermobility of financial capital at the global scale is situated in various national territories. The condition of the nation-state, in my view, cannot be reduced to one of declining significance. The shrinking capacity of the state to regulate many of its industries cannot be explained simply by the fact that firms now operate in a global rather than in a national economy. The state itself has been a key agent in the implementation of global processes, and it has emerged quite altered by this participation. The form and content of participation varies between highly developed and developing countries and within each of these groupings.

Sovereignty and territory, then, remain key features of the international system. But they have been reconstituted and partly displaced onto other institutional arenas outside the state and outside the framework of nationalized territory. I argue that sovereignty has been decentered and territory partly denationalized. From a longer historical perspective, this would represent a transformation in the articulation of sovereignty and territory as they have marked the formation of the modern state and interstate system. And it would entail a need to expand the analytic terrain within which the social sciences examine some of these processes, that is to say, the explicit or implicit tendency to use the nation-state as the container of social, political, and economic processes.

The denationalization of territory occurs through both corporate practices and the as yet fragmentary ascendant new legal regime. This process does not unfold within the geographic conception of territory shared by the generals who fought the wars for nationalizing territory in earlier centuries. It is instead a denationalizing of specific institutional arenas. (Manhattan is the equivalent of a free trade zone when it comes to finance, but it is not Manhattan the geographic entity, with all its layers of activity, functions, and regulations that is a free trade zone; it is a highly specialized functional or institutional realm that has become denationalized.)

Sovereignty remains a feature of the system, but it is now located in a multiplicity of institutional arenas: the new emergent transnational private legal regimes, new supranational organizations (such as the wto and the

institutions of the European Union), and the various international human rights codes. All these institutions constrain the autonomy of national states; states operating under the rule of law are caught in a web of obligations they cannot disregard easily (though they clearly can to some extent, as is illustrated by the United States' unpaid duties to the United Nations: if this were a personal credit card debt, you or I would be in jail).

What I see is the beginning of an unbundling of sovereignty as we have known it for many centuries--but not always. Scholars examining changes in mentalities or social epistemologies have remarked that significant, epochal change frequently could not be grasped by contemporaries: the vocabularies, categories, master images available to them were unable to capture fundamental change. Suffering from the same limitations, all we see is the collapse of sovereignty as we know it. But it seems to me that rather than sovereignty eroding as a consequence of globalization and supranational organizations, it is being transformed. There is plenty of it around, but the sites for its concentration have changed over the last two decades--and economic globalization has certainly been a key factor in all this. Over the last ten or fifteen years, that process has reconfigured the intersection of territoriality and sovereignty as it had been constituted over the last century, after struggles lasting many more. This reconfiguration is partial, selective, and above all strategic. Some of its repercussions for distributive justice and equity are profoundly disturbing. And even in the domain of immigration policy, where the state is still considered as absolutely sovereign, the new web of obligations and rights that states need to take into account under the rule of law in the making of policy has caused conditions to change. I discuss these issues in the following chapters.

Notes

Note 1: Reisman 1990, 867. Back.

Note 2: Franck 1992; Jacobson 1996. Back.

Note 3: Reisman 1990; McDougal and Reisman 1981. Back.

Note 4: Reisman 1990, 868. Back.

Note 5: See the classification of different types of relationships between a system of rule and territoriality in Ruggie 1993. Back.

Note 6: See Anderson 1974; Wallerstein 1974; Giddens 1985. Back.

Note 7: See Tilly 1990. On the Italian city-states and the Hanseatic League in northern Europe, see the analysis in Spruyt 1994. Back.

Note 8: See Mattingly's (1988) account of the right of embassy in medieval times as a specific, formal right with only partial immunities. Back.

Note 9: Mattingly 1988, 244. See also Kratochwil 1986. Back.

Note 10: In this case, the site for extraterritoriality is the individual holding diplomatic status. Back.

Note 11: Grotius's doctrine was a response to the Dutch East Indies Company's effort to monopolize access to the oceans; it resolved the vacuum left by the failure of Spain and Portugal to agree on a division of the maritime trade routes. Back.

Note 12: There is a vast literature on this subject. See, e.g., Bonacich et al. 1994; Morales 1994; Ward 1990. Back.

Note 13: See United Nations Centre for Transnational Corporations (UNCTAD) 1993, 1995. The center was an autonomous entity until 1994, when it became part of UNCTAD. Back.

Note 14: I elaborated these issues in Sassen 1991. This process of corporate integration should not be confused with vertical integration as conventionally defined. See also Gereffi and Korzeniewicz 1994 on commodity chains and Porter's (1990) value-added chains, two constructs that also illustrate the difference between corporate integration on a world scale and vertical integration as conventionally defined. Back.

Note 15: More detailed accounts of these figures and sources can be found in Sassen 1994a. Back.

Note 16: See, e.g., Harrison 1994. Back.

Note 17: See Sassen 1991, 1994a; Knox and Taylor 1995; Brotchie et al. 1995; Le Débat, 1994. Back.

Note 18: t is important to unbundle analytically the fact of strategic functions for the global economy or for global operation from the overall corporate economy of a country. Traditional economic complexes have valorization dynamics that tend to be far more articulated with the public economic functions of the state, the quintessential example being Fordist manufacturing. Global markets in finance and advanced services, however, partly operate under a regulatory umbrella that is market centered. This raises questions of control, especially in view of the currently inadequate capacities to govern transactions in electronic space. Global control and command functions are partly handled within national corporate structures but also constitute a distinct corporate subsector, which can be conceived of as part of a network that connects global cities across the globe. In this sense, global cities are different from the old capitals of erstwhile empires, in that they are a function of cross-border networks rather than simply the most powerful city of an empire. There is, in my conceptualization, no such entity as a single global city akin to the single capital of an empire; the category "global city" only makes sense as a component of a global network of strategic sites. See Sassen 1991. For the purposes of certain kinds of inquiry, this distinction may not matter; for the purposes of understanding the global economy, it does. Back.

Note 19: These data come from the Bank for International Settlements, the so-called central bankers' bank. Back.

Note 20: See Mittelman 1996; Panitch 1996; Cox 1987. Back.

Note 21: There are, of course, other mechanisms for resolving business disputes. The larger system includes arbitration controlled by courts, arbitration that is parallel to courts, and various court and out-of-court mechanisms such as mediation. The following description of international commercial arbitration is taken from Dezalay and Garth 1995. For these authors, international commercial arbitration means something different today from what it did twenty years ago. Increasingly formal, it has come to resemble U.S.-style litigation as it has become more successful and institutionalized. Today, international business contracts for the sale of goods, joint ventures, construction projects, distributorships, and the like typically call for arbitration in the event of a dispute arising from the contractual arrangement. The main reason given for this choice is that arbitration allows each party to avoid being forced to submit to the courts of the other. Also important is the secrecy of the process. Such arbitration can be institutional, following the rules of institutions such as the International Chamber of Commerce in Paris, the American Arbitration Association, the London Court of International Commercial Arbitration, or many others, or it can be ad hoc, often following the rules of the un Commission on International Trade Law (uncitral). The arbitrators, usually three private individuals selected by the parties, act as private judges, holding hearings and issuing judgments. There are few grounds for appeal to courts, and the final decision of the arbitrators is more easily enforced among signatory countries than would be a court judgment (under the terms of a widely adopted 1958 New York Convention). Back.

Note 22: Dezalay and Garth 1995; Aksen, 1990. Despite this increase in size, there is a kind of international arbitration community, a club of sorts, with relatively few important institutions and limited numbers of individuals in each country who are the key players both as counsel and arbitrators. But the enormous growth of arbitration over the last decade has led to sharp competition in the business; indeed, it has become big legal business (Salacuse 1991). Dezalay and Garth found that multinational legal firms sharpen the competition further because they have the capacity to forum shop among institutions, sets of rules, laws, and arbitrators. The large English and U.S. law firms have used their power in the international business world to impose their conception of arbitration and more largely of the practice of law. This is well illustrated by the case of France. Although French firms rank among the top providers of information services and industrial engineering services in Europe

and have a strong though not outstanding position in financial and insurance services, they are at an increasing disadvantage in legal and accounting services. French law firms are at a particular disadvantage because of their legal system (the Napoleonic Code): Anglo-American law tends to govern international transactions. Foreign firms with offices in Paris dominate the servicing of the legal needs of firms in France, both French and foreign, that operate internationally (Carrez 1991) (see Le Débat 1994). Back.

Note 23: Summarized in Dezalay and Garth 1995; see also Dezalay 1992. Back.

Note 24: Dezalay and Garth 1995. The so-called lex mercatoria was conceived by many as a return to an international law of business independent of national laws (Carbonneau 1990). Anglo-American practitioners tend not to support this Continental, highly academic notion (see Carbonneau 1990), and insofar as they are "Americanizing" the field, they are moving it farther away from academic law and lex mercatoria. Back.

Note 25: There are several rating agencies in other countries, but they are oriented to the domestic markets. The possibility of a European-based rating agency has been discussed, particularly with the merger of a London-based agency (ibca) with a French one (Euronotation). Back.

Note 26: As the demand for ratings grows, so does the authoritativeness of the notion behind them. Sinclair (1994) considers this to be ill founded given the judgments that are central to it. The processes intrinsic to ratings are tied to certain assumptions, which are in turn tied to dominant interests, notably narrow theories of market efficiency. They aim for undistorted price signals and little if any government intervention. Sinclair notes that transition costs such as unemployment are usually not factored into evaluations and considered to be outweighed by the new environment created (143). Back.

Note 27: Their power has grown in good part because of disintermediation and the globalization of the capital market. Some functions fulfilled by banks (i.e., intermediation) have lost considerable weight in the running of capital markets. Thus, insofar as banks are subject to considerable government regulation and their successors are not, government regulation over the capital markets has declined. Ratings agencies, which are private entities, have taken over some of the functions of banks in organizing information for suppliers and borrowers of capital. An important question is whether the new agencies and the larger complex of entities represented by Wall Street have indeed formed a new intermediary sector (see Thrift 1987). Back.

Note 28: Rosenau and Czempiel 1992. Back.

Note 29: See Trubek et al. 1993. Back.

Note 30: This hegemony has not passed unnoticed and is engendering considerable debate. For instance, a familiar issue that is emerging as significant in view of the spread of Western legal concepts involves a critical examination of the philosophical premises of authorship and property that define the legal arena in the West (e.g., Coombe 1993.). Back.

Note 31: See Shapiro 1993. There have been a few particular common developments and many particular parallel developments in law across the world. Thus, as a concomitant of the globalization of markets and the organization of transnational corporations, there has been a move toward relatively uniform global contract and commercial law. This can be seen as a private lawmaking system wherein two or more parties create a set of rules to govern their future relations. Such a system of private lawmaking can exist transnationally even when there is no transnational court or sovereign to resolve disputes and secure enforcement. The case of international commercial arbitration discussed earlier illustrates this well. See also Shapiro 1979.. Back.

Note 32: Charny 1991; Trachtman 1993. Two other categories that may also partly overlap with internationalization are important to distinguish, at least analytically: multilateralism and what Ruggie (1993) has called multiperspectival institutions. Back.

Note 33: See Sinclair 1994. Back.

Note 34: For a discussion of the concept of cultural globalization, see King 1991 and Robertson 1991, especially Robertson's notion of the world as a single place, what he calls the "global human condition." I would say that globalization is also a process that produces differentiation, but of a character very different from that associated with such differentiating notions as national character, national culture, and national society. For example, the corporate world today has a global geography, but it isn't everywhere in the world: in fact, it has highly defined and structured spaces; it is also increasingly sharply differentiated from noncorporate segments in the economies of the particular locations (such as New York City) or countries where it operates. Back.

Note 35: Shapiro 1993 finds that law and the political structures that produce and sustain it are far more national and far less international than are trade and politics as such (63). He argues that the U.S. domestic legal regime may have to respond to global changes in markets and politics far more often than to global changes in law. For the most part, he claims, national regimes of law and lawyering will remain self-generating, though in response to globally perceived needs. In my reading, it is this last point that may well be emerging as a growing factor in shaping legal form and legal practice. Back.

Note 36: The best-known instance of this is probably the austerity policy imposed on many developing countries. Such policies also point up the participation of states in furthering the goals of globalization, because they have to be run through national governments and reprocessed as national policies. It is clearer here than in other cases that the global is not simply the non-national, that global processes materialize in national territories and institutions. There is a distinction here to be made and to be specified theoretically and empirically between international law (whether public or private), which is always implemented through national governments, and these policies, which are part of the effort to foster globalization. Back.

Note 37: Dezalay 1992. See also Carrez 1991; and Sinclair 1994. Back.

Note 38: Shapiro 1993. Back.

Note 39: Shapiro 1993, 39; Wiegand 1991. Back.

Note 40: Dezalay 1992. Back.

Note 41: Aman 1995, 437. Back.

Note 42: See Panitch 1996; Cox 1987; Mittelman 1996. Back.

Note 43: Aman, 1995; Young 1989; Rosenau 1992. Back.

Note 44: Ruggie 1993, 143. Back.

Note 45: See Kennedy 1988; Negri 1995. Back.