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THE STATE AND GLOBALIZATION: DENATIONALIZED PARTICIPATION†

*Saskia Sassen**

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The effort in this paper is to recover the ways in which the state participates in governing the global economy in a context increasingly dominated by deregulation, privatization, and the growing authority of non-state actors. A key organizing proposition, derived from my previous work on global cities¹ is the embeddedness of much of globalization in national territory, that is to say, in a geographic terrain that has been encased in an elaborate set of national laws and administrative capacities. The embeddedness of the global requires at least a partial lifting of these national encasements and hence signals a necessary participation by the state, even when it concerns the state's own withdrawal from regulating the economy.

One question this raises is whether this participation might entail the formation of a specific type of authority/power for the state in global systems—both for the state as such and/or for the particular state institutions involved. Does the weight of private, often foreign, interests in this specific work of the state become constitutive of that authority and indeed produce a hybrid that is neither fully private nor fully public? My argument is that, indeed, we are seeing the incipient formation of a type of authority and state practice that entail a partial denationalizing of what had been constructed historically as national. This denationalizing consists of several specific processes, including importantly, the re-orienting of national agendas toward global ones, and the circulation of private agendas dressed as public policy. Such a conceptualization introduces a twist in the analysis of private authority because it seeks to

† This chapter is part of the author's larger multi-year research project to be published as *DENATIONALIZATION: TERRITORY, AUTHORITY AND RIGHTS IN A GLOBAL DIGITAL AGE* (Princeton Univ. Press 2005).

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1. SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO*, 3–15 (2001).

detect the presence of private agendas inside the state, rather than the more common focus on the shift of state functions to the private sector, including private forms of authority. It differs from an older scholarly tradition on the captured state which focused on cooptation of states by private actors. In contrast to this older tradition, I emphasize the privatization of norm-making capacities and the enactment of private norms in the public domain.

The purpose here is, then, to understand and specify a particular aspect of globalization and the state which is lost in what are typically rather dualized accounts of this relation; in such accounts, the spheres of influence of respectively the national and the global, and of state and non-state actors, are seen as distinct and mutually exclusive. Even if many components of each of these spheres are separate and mutually exclusive, I argue that this still leaves a specific set of conditions or components that does not fit in this dual structure. Key among these are some components of the work of ministries of finance, central banks, and the increasingly specialized technical regulatory agencies, such as those concerned with finance, telecommunications, and competition policy. In this regard then, my position is not comfortably subsumed under the proposition that nothing has much changed in terms of sovereign state power, nor can it be subsumed under the proposition of the declining significance of the state.

An important methodological assumption here is that focusing on economic globalization can help us disentangle some of these issues precisely because in strengthening the legitimacy of claims by foreign investors and firms it adds to and renders visible the work of accommodating their rights and contracts in what remain basically national economies. However, these dynamics can also be present when privatization and deregulation concern native firms and investors—pace the fact that, in much of the world, privatization and deregulation have been constituted through the entry of foreign investors and firms.

The first half of this paper will introduce a number of conceptual issues about the mix of processes we have come to group under the term globalization. Using a multi-scalar analytics allows us to see that subnational processes and institutions are also critical sites for globalization. Accepting the proposition that the global is multi-scalar leads to its conceptualizing as at least partly consisting of the denationalizing of specific forms of state authority which results from the location of particular components of global processes in national institutional orders. This is the subject of the second half of the paper. Mapping this conceptualization against the mainstream scholarship on the state and globalization, the argument moves on to sketch out the particular substance and conditionality

of what I argue is a new mode of state authority that remains insufficiently recognized and theorized. Though housed or located in national state capacities and institutions, this mode of authority is not national in the way we had come to understand this feature of states over the last century. The empirical focus for much of the examination is confined to states under the so-called rule of law, and especially the United States

I. GLOBALIZATION AND DENATIONALIZATION

What is it we are trying to name with the term globalization? In my reading of the evidence it is actually two distinct sets of dynamics. One of these involves the formation of explicitly global institutions and processes, such as the World Trade Organization, global financial markets, the new cosmopolitanism, the war crimes tribunals. The practices and organizational forms through which these dynamics operate are constitutive of what are typically thought of as global scales.

But there is a second set of processes that does not necessarily scale at the global level as such yet, which I argue, is part of globalization. These processes take place deep inside territories and institutional domains that have largely been constructed in national terms in much, though by no means all, of the world. What makes these processes part of globalization even though localized in national, indeed subnational settings, is that they involve transboundary networks and formations connecting or articulating multiple local or "national" processes and actors. Among these processes I include particular aspects of the work of states, the subject of the second half of this paper. Examples are specific monetary and fiscal policies critical to the constitution of global markets that are hence being implemented in a growing number of countries as these become integrated into global markets. Other instances are cross-border networks of activists engaged in specific localized struggles with an explicit or implicit global agenda, as is the case with many human rights and environmental organizations; particular aspects of the work of states, e.g., certain monetary and fiscal policies critical to the constitution of global markets that are hence being implemented in a growing number of countries; the use of international human rights instruments in *national* courts; non-cosmopolitan forms of global politics and imaginaries that remain deeply attached to or focused on localized issues and struggles yet are part of global lateral networks containing multiple other such localized efforts. A particular challenge in the work of identifying these types of processes and actors as part of globalization is the need to decode at least some of what continues to be experienced and represented as national.

Here I want to focus particularly on these types of practices and dynamics and conceptualize them as constitutive of global scalings we do not usually recognize as such. When the social sciences focus on globalization—still rare enough—it is typically not on these types of practices and dynamics but rather on the self-evidently global scale. And although the social sciences have made important contributions to the study of this self-evident global scale by establishing the fact of multiple globalizations,² only some of which correspond to neoliberal corporate economic globalization, there is much work left. At least some of this work entails distinguishing: a) the various scales that global processes constitute, ranging from supranational and global to subnational;³ and b) the specific contents and institutional locations of this multi-scalar globalization.⁴ It is the latter consideration that concerns me in this paper. Geography more than any other of the social sciences today has contributed to a critical stance toward scale, recognizing the historicity of scales and resisting the reification of the national scale so present in most of social science.

II. THE SUBNATIONAL: A SITE FOR GLOBALIZATION

Studying the global, then, entails not only a focus on that which is explicitly global in scale, but also a focus on locally scaled practices and conditions articulated with global dynamics and a focus on the multiplication of cross-border connections among various localities. Further, it entails recognizing that many of the globally scaled dynamics, such as the global capital market, actually are partly embedded in subnational sites and move between these differently scaled practices and organizational forms. For instance, the global capital market is constituted both through electronic markets with global span, and through locally embedded conditions, i.e., financial centers.

2. See, e.g., ARJUN APPADURAI, *MODERNITY AT LARGE* (1996); Alfred C. Aman, Jr., *The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy*, 31 *VAND. J. TRANSNAT'L L.* 769 (1998); Barry Eichengreen & Albert Fishlow, *Contending with Capital Flows*, in *CAPITAL FLOWS AND FINANCIAL CRISES* 23 (Miles Kahler ed., 1998).

3. See GLOBALIZATION, INSTITUTIONS, AND REGIONAL DEVELOPMENT IN EUROPE (Ash Amin & N.J. Thrift eds., 1994); Erik Swyngedouw, *Neither Global nor Local: "Glocalization" and the Politics of Scale*, in *SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL* 137 (Kevin R. Cox ed., 1997); Peter J. Taylor, *World Cities and Territorial States under Conditions of Contemporary Globalization*, 19 *POL. GEOGRAPHY* 5 (2000).

4. See, e.g., Richard Howitt, "A World in a Grain of Sand": *Towards a Reconceptualization of Geographical Scale*, 24 *AUSTRALIAN GEOGRAPHER* 33–44 (1993); Katherine T. Jones, *Scale as Epistemology*, 17 *POL. GEOGRAPHY* 25 (1998); Doreen Massey, *Politics and Space/Time*, in *PLACE AND THE POLITICS OF IDENTITY* 141 (Michael Keith & Steve Pile eds., 1993).

A focus on such subnationally based processes and dynamics of globalization requires methodologies and theorizations that engage not only global scalings but also subnational scalings *as* components of *global* processes, thereby destabilizing older hierarchies of scale and conceptions of nested scalings. Studying global processes and conditions that get constituted subnationally has some advantages over studies of globally scaled dynamics, but it also poses specific challenges. It does make possible the use of long-standing research techniques, from quantitative to qualitative, in the study of globalization. It also gives us a bridge for using the wealth of national and subnational data sets as well as specialized scholarships such as area studies. Both types of studies, however, need to be situated in conceptual architectures that are not quite those held by the researchers who generated these research techniques and data sets, as their efforts mostly had little to do with globalization.

One central task we face is to decode particular aspects of what is still represented or experienced as “national” which may in fact have shifted away from what had historically been considered or constituted as national. This is in many ways a research and theorization logic that is the same as that developed in the economics of global city studies. But there is a difference; today we have come around to recognize and code a variety of components in global cities as part of the global. What I am trying to focus on here engages a range of conditions and dynamics that are to be distinguished from those global city components in that they are still coded and represented as local and national; further, my concern in this paper is largely the realm of the political rather than economic.

Three types of cases serve to illustrate some of the conceptual, methodological, and empirical issues in this type of study. One of these concerns the role of place in many of the circuits constitutive of economic and political globalization. A focus on places allows us to unbundle globalization in terms of the multiple specialized cross-border circuits on which different types of places are located.⁵ Yet another example is that of global cities as subnational places where multiple global circuits intersect and thereby position these cities on several structured cross-border geographies, each typically with distinct scopes and constituted in terms of distinct practices and actors.⁶ This type of analysis

5. Elsewhere I examine the emergence of forms of globality centered on localized struggles and actors that are part of cross-border networks; this is a form of global politics that runs not through global institutions but through local ones. SASKIA SASSEN, *DENATIONALIZATION: TERRITORY, AUTHORITY AND RIGHTS IN A GLOBAL DIGITAL AGE* Ch. 7 (forthcoming 2005).

6. For instance, at least some of the circuits connecting Sao Paulo to global dynamics are different from those of Frankfurt, Johannesburg, or Bombay. Further, distinct sets of overlapping circuits contribute to the constitution of distinctly structured cross-border geographies: we are, for instance, seeing the intensifying of older hegemonic geographies,

produces a different picture about globalization from one centered on global firms and markets, international trade, or the pertinent supranational institutions. It is not that one type of focus is better than the other, but rather that the latter focus, the most common focus by far, is not enough.

A second type of case, partly involved in that described above, is the role of the new interactive technologies in repositioning the local, thereby inviting us to a critical examination of how we conceptualize the local. Through these new technologies a financial services firm becomes a microenvironment with continuous global span. But so do resource-poor organizations or households: they can also become microenvironments with global span, as might be the case with activist organizations. These microenvironments can be oriented to other such microenvironments located far away, thereby destabilizing both the notion of context which is often imbricated with that of the local and the notion that physical proximity is one of the attributes or markers of the local. A critical reconceptualization of the local along these lines entails an at least partial rejection of the notion that local scales are inevitably part of nested hierarchies of scale running from the local to the regional, the national, the international.

A third type of case concerns a specific set of interactions between global dynamics and particular components of national states. The crucial conditionality here is the partial embeddedness of the global in the national, of which the global city is perhaps emblematic. My main argument here is that insofar as specific structurations of the global inhabit what has historically been constructed and institutionalized as national territory, this engenders a variety of negotiations. One set of outcomes evident today is what I describe as an incipient, highly specialized, and partial denationalization of specific components of national states.

In all three instances the question of scaling takes on very specific contents in that these are practices and dynamics that, I argue, pertain to the constituting of the global yet are taking place at what has been historically constructed as the scale of the national. With few exceptions, most prominent among which is a growing scholarship in geography, the social sciences have not had critical distance, i.e., historicized, the scale of the national. The consequence has been a tendency to take it as a fixed scale,

e.g., the increase in transactions among New York, Miami, Mexico City, and Sao Paulo. *See, e.g.,* Christof Parnreiter, *Mexico: The Making of a Global City*, in *GLOBAL NETWORKS, LINKED CITIES* 145 (Saskia Sassen ed., 2002); Sueli Ramos Schiffer, *São Paulo: Articulating a Cross-Border Region*, in *GLOBAL NETWORKS, supra*, at 209, as well as newly constituted geographies, e.g., the articulation of Shanghai with a rapidly growing number of cross-border circuits, *see* Felicity Rose Gu & Zilai Tang, *Shanghai: Reconnecting to the Global Economy*, in *GLOBAL NETWORKS, supra*, at 273.

reifying it, and, more generally, to neutralize the question of scaling, or at best to reduce scaling to a hierarchy of size. Associated with this tendency is also the often uncritical assumption that these scales are mutually exclusive, most pertinently for my argument here, that the scale of the national is mutually exclusive with that of the global. A qualifying variant which allows for mutual imbrications, though of a very limited sort, can be seen when scaling is conceived of as a nested hierarchy.⁷

Finally, the three cases described above go against those assumptions and propositions that are now often captured through the concept of methodological nationalism. But they do so in a distinct way. Crucial to the critique of methodological nationalism is the need for transnationalism because the nation as container category is inadequate given the proliferation of transboundary dynamics and formation.⁸ What I am focusing on here is a set of reasons other than transnationalism for supporting the critique of methodological nationalism; the fact of multiple and specific structures of the global inside what has historically been constructed as national. Further, I posit that because the national is highly institutionalized and thick, structurations of the global inside the national entail a partial, typically highly specialized and specific denationalization of particular components of the national.⁹

7. In my early research on the global city I began to understand some of these questions of reified scales. Much of the literature on global and world cities has a critical appraisal of questions of scaling, but with important exceptions, see Neil Brenner, *Global Cities, Global States: Global City Formation and State Territorial Restructuring in Contemporary Europe*, 5 REV. INT'L POL. ECON. 1 (1998); Peter J. Taylor, *World Cities and Territorial States: The Rise and Fall of their Mutuality*, in WORLD CITIES IN A WORLD-SYSTEM 48 (Paul L. Knox et al. eds., 1995), this appraisal tends to be in embryo, undertheorized, and not quite explicated. On the other hand, the scholarship on "glocalization" recognizes and theorizes questions of scale but often remains attached to a notion of nested scalings. See, e.g., Swyngedouw, *supra* note 3. I find that among the literatures in geography that come closest in their conceptualization, albeit focused on very different issues, to what I develop in this lecture are those on first-nation peoples' rights claiming. See, e.g., Howitt, *supra* note 4; Claudia Notzke, *A New Perspective in Aboriginal Natural Resource Management: Co-Management*, 26 GEOFORUM 187–209 (1995); Steven E. Silvern, *Scales of Justice: Law, American Indian Treaty Rights and the Political Construction of Scale*, 18 POL. GEOGRAPHY 639–68 (1999). Clearly, there is a particularly illuminating positioning of the issues in this case because from the outset there is: a) the co-existence of two exclusive claims over a single territory; and b) the endogeneity of both types of claims—that of the modern sovereign and that of the indigenous nation. In my case here in this lecture, it is the coexistence of the claim of the historical sovereign and the claim of the global as endogenized in the re-constituted sovereign. For a full development of this somewhat abstract statement, see SASSEN, *supra* note 5, at Chs. 4 and 5.

8. See, e.g., Taylor, *supra* note 3; Ulrich Beck, *Global Democracy: The Higher Politics of the Nation-State*, 5(18) METAPOLÍTICA 66–71 (2001).

9. I have developed this at greater length in Saskia Sassen, *Embedding the Global in the National: Implications for the Role of the State*, in STATES AND SOVEREIGNTY IN THE GLOBAL ECONOMY 158 (David A. Smith et al. eds., 1999), and SASKIA SASSEN, LOSING CONTROL? SOVEREIGNTY IN AN AGE OF GLOBALIZATION (1996). I should clarify that when I first developed the construct "de-nationalization" in the 1995 Memorial Schoff Lectures I intended

III. THE DESTABILIZING OF OLDER HIERARCHIES OF SCALE

Various components of globalization bring with them a destabilizing of older hierarchies of scale—scales and hierarchies constituted through the practices and power projects of past eras, with the national scale eventually emerging as the preeminent one. Most notable today is what is sometimes seen as a return to older imperial spatialities for the economic operations of the most powerful actors: the formation of a global market for capital, a global trade regime, and the internationalization of manufacturing production. It is, of course, not simply a return to older forms: it is crucial to recognize the specificity of today's practices and the capabilities enabling these practices. This specificity partly consists of the fact that today's transboundary spatialities had to be produced in a context where most territory is encased in a thick and highly formalized national framework marked by the exclusive authority of the national state. This is, in my reading, one of the key features of the current phase of globalization, and it entails the necessary participation of national states in the formation of global systems.¹⁰

The global project of powerful firms, the new technical capabilities associated with information and communications technologies, and some components of the work of states have together constituted scales other than the national as strategic today. Most important among these are subnational scales such as the global city, and supranational scales such as global markets. These processes and practices also contained a destabilizing of the scale hierarchies that expressed the power relations and political economy of an earlier period. These were, and to a good extent continue to be, organized in terms of institutional size and territorial scope: from the international, down to the national, the regional, the urban, to the local, with the national functioning as the articulator of this particular configuration. That is to say, the crucial practices and institutional arrangements that constituted the system occurred at the national

it to denote a specific dynamic. I did *not* intend it as some general notion that can be used interchangeably with post-national, global, or other such terms. In this regard see the debate in 7 *IND. J. GLOBAL LEGAL STUD.* 447–601 (2000).

10. SASSEN, *supra* note 9, at 1–58. Diverging somewhat from what has emerged as the main proposition in globalization research—growing interdependence—I argue that the marking condition for globalization is the way in which the national has been constructed over the last century (with different temporal frames in different countries). From here then comes my emphasis on denationalization: the necessity to denationalize specific structurations inside this thickly constructed and highly formalized national context. This type of focus allows us to capture the enormous variability across countries in terms of the incorporation/negotiation/resistance of globalization, since these are partly shaped by the specifics, both *de facto* and *de jure*, of each country; at the same time, it avoids the trap of comparative studies in that it introduces the thesis that the conditionalities of a global system need to be partly met through specific structurations in multiple countries. See SASSEN, *supra* note 5, at Pt. II.

level. Notwithstanding multiple different temporal frames, the history of the modern state can be read as the work of rendering national just about all crucial features of society: authority, identity, territory, security, law, capital accumulation. Earlier periods to that of the ascendance of the national state saw rather different types of scalings, with territories typically subject to multiple systems of rule rather than the exclusive authority of the state.

Today's rescaling dynamics cut across institutional size and across the institutional encasements of territory produced by the formation of national states.¹¹ This does not mean that the old hierarchies disappear, but rather that rescalings emerge alongside the old ones, and that the former can often trump the latter. Older hierarchies of scale constituted as part of the development of the nation-state continue to operate, but they do so in a far less exclusive field than they did in the recent past, even when we factor in the hegemonic power of a few states, which meant and continues to mean that most national states were in practice not sovereign.

Existing theory is not enough to map today's multiplication of practices and actors constitutive of these rescalings. This includes a variety of non-state actors and forms of cross-border cooperation and conflict, such as global business networks, the new cosmopolitanism, NGOs, diasporic networks, and spaces such as global cities and transboundary public spheres. International Relations theory is the field that to date has had the most to say about cross-border relations. But current developments associated with various mixes of globalization and the new information and communications technologies point to the limits of International Relations theory and data. Several critical scholars¹² have shown us how its models and theories remain focused on the logic of relations between states and the scale of the state at a time when we see a proliferation of non-state actors, cross-border processes, and associated changes in the scope, exclusivity, and competence of state authority over its territory. Theoretical developments in other disciplines may prove important; especially relevant is, as I already mentioned above, geography and its contributions to critical analyses of scale, unlike other social

11. Saskia Sassen, *The Locational and Institutional Embeddedness of the Global Economy*, in *TRANSATLANTIC REGULATORY COOPERATION: LEGAL PROBLEMS AND POLITICAL PROSPECTS* 47 (George A. Bermann et al. eds., 2000).

12. See *THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GOVERNANCE* (Rodney Bruce Hall & Thomas J. Biersteker eds., 2002); *POLITICAL SPACE: FRONTIERS OF CHANGE AND GOVERNANCE IN A GLOBALIZING WORLD* 61 (Yale H. Ferguson & R.J. Barry Jones eds., 2002); Phillip G. Cerny, *Structuring the Political Arena: Public Goods, States and Governance in a Globalizing World*, in *GLOBAL POLITICAL ECONOMY: CONTEMPORARY THEORIES* 21 (Ronen Palan ed., 2000).

sciences which tend to take scale as a given and the national scale as a naturalized condition.

A second feature is the multiscale character of various globalization processes that do not fit into older conceptions of hierarchies of scale or conceptions of nested hierarchies. Perhaps most familiar here is, again, the bundle of conditions and dynamics that marks the model of the global city. In its most abstract formulation this is captured in what I see as one of the key organizing hypotheses of the global city model, to wit, that the more globalized and digitized the operations of firms and markets, the more their central management and specialized servicing functions (and the requisite material structures) become strategic and complex, thereby benefiting from agglomeration economies.¹³ To variable extents these agglomeration economies are still delivered through territorial concentrations of multiple resources. This points to multiple scales that cannot be organized as a hierarchy or a nested hierarchy: for example, far-flung networks of affiliates of multinational firms along with the concentration of strategic functions in a single or in a very limited number of locations.¹⁴ This is a multiscale system, operating across scales and not merely scaling upward because of new communication capabilities.¹⁵ Some of these issues assume particular contents and locations when it comes to the political domain. This is the focus of the next section.

IV. THE PARTIAL DENATIONALIZING OF STATE WORK

How does the analytics briefly developed in the first half of this paper map onto the main scholarship on globalization and the state, much of it coming from political science? At what points does this analytics deborder or contest propositions in that scholarship?

The literature on the state and globalization is large and growing. A number of scholars have addressed various dimensions of the particular issue that concerns me here, participation by the state in global processes.

13. For what I define as the organizing hypotheses of the global city model please see the Overview to SASSEN, *supra* note 1. In preparing this new edition I was far more able to formulate these nine hypotheses than I was in writing the first edition, partly thanks to the enormously rich and varied literature produced during the 1990s and the equally rich and varied (though not always as enjoyable) criticisms the first edition provoked.

14. See, e.g., Peter J. Taylor et al., *Firms and their Global Service Networks*, in GLOBAL NETWORKS, LINKED CITIES, *supra* note 6, at 93; Globalization and World Cities Study Group & Network, at <http://www.lboro.ac.uk/gawc/>.

15. Thus I would distinguish this from the case of illegal traffickers of people who have now been able to go global, where before they were regional, because of the infrastructure for communications and money transfers brought about by globalization. For a development of this argument see Sassen, *supra* note 11.

For some, states remain as the key actors and hence not much has changed for states and the interstate system.¹⁶ For others, even if states remain important there are today other key actors, and globalization has changed some important features of states and the interstate system.¹⁷

My particular argument is that we are seeing the incipient formation of a type of authority and state practice that entails a partial denationalizing of what had been constructed historically as national. Even if we accept that the present era is, at a very general level, a continuation of a long history of changes that have not altered the fundamental fact of state primacy, it still leaves us with the need for detailed research about the specificities of the current changes.¹⁸ In this conceptualization I introduce a twist in the various analyses on the broader subject. First, it needs to be distinguished from analyses of private authority because these emphasize the shift out of the public domain and into the private domain.¹⁹ I seek to detect the presence of private agendas and authority

16. See, e.g., CHALLENGE TO THE NATION-STATE (Christian Joppke ed., 1998); Eric Helleiner, *Sovereignty, Territoriality, and the Globalization of Finance, in STATES AND SOVEREIGNTY IN THE GLOBAL ECONOMY* 138 (David A. Smith et al. eds., 1999); PAUL HIRST & GRAHAME THOMPSON, *GLOBALIZATION IN QUESTION: THE INTERNATIONAL ECONOMY AND THE POSSIBILITIES OF GOVERNANCE* (1996); Stephen D. Krasner, *Globalization, Power, and Authority, in THE EVOLUTION OF POLITICAL KNOWLEDGE: DEMOCRACY, AUTONOMY, AND CONFLICT IN COMPARATIVE AND INTERNATIONAL POLITICS* 60 (Edward D. Mansfield & Richard Sisson eds., 2004); Louis W. Pauly, *Global Finance, Political Authority, and the Problem of Legitimation, in EMERGENCE, supra note 12.*

17. See, e.g., PHILLIP G. CERNY, *THE CHANGING ARCHITECTURE OF POLITICS: STRUCTURE, AGENCY, AND THE FUTURE OF THE STATE* (1990); Cerny, *supra* note 12; Ken Dark, *The Informational Reconfiguring of Global Geopolitics, in POLITICAL SPACE, supra note 12, at 61*; Ronen Palan, *Offshore and the Institutional Environment of Globalization, in POLITICAL SPACE, supra note 12, at 211*; PRIVATE AUTHORITY AND INTERNATIONAL AFFAIRS (A. Claire Cutler et al. eds., 1999); SUSAN STRANGE, *THE RETREAT OF THE STATE: THE DIFFUSION OF POWER IN THE WORLD ECONOMY* (Cambridge Stud. in Int'l Relations No. 49, 1996).

For what is probably the most comprehensive mapping of the main strands in the scholarship on globalization and the state, see DAVID HELD ET AL., *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE* (1999), who categorize the two major emerging strands as "hyperglobalists," who posit that national states are becoming weak and are on their way out, and "transformationists," who contend that globalization has brought about significant changes in state authority and the work of states. At a time when we put increasing weight on self-reflexivity, I should perhaps clarify that Held et al. classify me as a transformationist, which is appropriate as far as my work on the state goes, but not quite when I look at structurations of the global that may not run through the state.

18. Along these lines of analysis, I argue that economic globalization is in fact a politico-economic system partly located inside national states, SASSEN, *supra* note 9, at 1–53, thereby having the effect of partly denationalizing specific, often highly specialized components of state work. SASSEN, *supra* note 5, at Ch. 5.

19. A growing literature that often overlaps with particular parts of the above cited strands in the scholarship emphasizes the relocation of national public government functions to private actors both within national and transnational domains. See, e.g., Aman, *supra* note 2; PRIVATE AUTHORITY, *supra* note 17. For a state-of-the-art elaboration of the rise of private authority, see EMERGENCE, *supra* note 12. For the emergence of cross-border governance mechanisms, see POLITICAL SPACE, *supra* note 12.

inside the public domain represented by the state.²⁰ Second, I emphasize the privatization of norm-making capacities which were once in the public domain and today's enactment of these norms in the public domain. This perspective also differs, then, from a literature that emphasizes the decline and obsolescence of the state.²¹ It comes close to the scholarship that emphasizes state transformation²² even though this literature tends to discard the specificity of the current phase of globalization.²³

One of my efforts here is, then, to blur some longstanding dualities in state scholarship, notably, those concerning the distinctive spheres of influence of respectively the national and the global, of state and non-state actors, of the private and the public.²⁴ While it may indeed be the case that mostly the two sides of the duality are separate and mutually exclusive, I argue for the critical importance of recognizing and deciphering conditions or components that do not fit in this dual structure.²⁵ In the case of U.S. law, one domain where this debordering plays out in what I find intriguing ways is the relation between Federalism and several new global regimes.²⁶ An important methodological assumption here

20. A good examination of these issues as they materialize in specific institutional settings can be found in Aman, *supra* note 2. An excellent collection of essays that seeks to capture these types of dynamics can be found in *TRANSNATIONAL LEGAL PROCESSES* (Michael Likosky ed., 2002).

21. Perhaps the best known, though not necessarily the most precise, authors here are KENICHI OHMAE, *THE END OF THE NATION STATE* (1996), and WALTER B. WRISTON, *THE TWILIGHT OF SOVEREIGNTY: HOW THE INFORMATION REVOLUTION IS TRANSFORMING OUR WORLD* (1992); see also Benjamin J. Cohen, *Electronic Money: New Day or False Dawn?*, 8 *REV. INT'L POL. ECON.* 197 (1998); Stephen J. Kobrin, *The MAI and the Clash of Globalizations*, 112 *FOREIGN POL'Y* 97 (1998).

22. There is today a growing literature that interprets deregulation and privatization as the incorporation by the state of its own shrinking role; in its most formalized version this position emphasizes the state's constitutionalizing of its own diminished role. See ROBERT W. COX, *PRODUCTION, POWER AND WORLD ORDER* (1987); JAMES H. MITTELMAN, *THE GLOBALIZATION SYNDROME* (2000); Stephen Gill, *Globalization, Democratization, and the Politics of Indifference*, in *GLOBALIZATION: CRITICAL REFLECTIONS* 205 (James H. Mittelman ed., 1996); Leo Panitch, *Rethinking the Role of the State*, in *GLOBALIZATION, supra*, at 83.

23. Perhaps the best example is Helleiner, *supra* note 16, at 138 (examining the regulatory changes brought on by the emergence of global financial systems and showing how states remain as key actors). See also *supra* note 7.

24. A good source in this regard is *THE EVOLUTION OF POLITICAL KNOWLEDGE, supra* note 16, containing papers by major scholars in international relations addressing key issues about the state and the current features of the interstate system, with responses by critics from other disciplines.

25. See, e.g., *TRANSATLANTIC REGULATORY COOPERATION: LEGAL PROBLEMS AND POLITICAL PROSPECTS* (George A. Bermann et al. eds., 2000); MARK W. ZACHER & BRENT A. SUTTON, *GOVERNING GLOBAL NETWORKS* (1996).

26. For a development of some of these issues, please refer to Saskia Sassen, *Territory and Territoriality in the Global Economy*, 15 *INT'L SOCIOLOGY* 372 (2000). In this context, I find interesting parallels in a specific type of legal scholarship focused on the construction of jurisdictions and the locating of particular issues in jurisdictions that may today be less and less adequate. See, e.g., George A. Bermann, *International Regulatory Cooperation and US*

is that focusing on economic globalization can help us disentangle some of these issues.²⁷

The embeddedness of the global requires at least a partial lifting of these national encasements and hence signals a necessary participation by the state, even when it concerns the state's own withdrawal from regulating the economy. Does the weight of private, often foreign, interests in this specific work of the state become constitutive of a particular form of state authority that does not replace but works alongside older well-established forms of state authority?²⁸ My argument is that the mix of processes we describe as globalization is indeed producing, deep inside the national state, a very partial but significant form of authority, a hybrid that is neither fully private nor fully public, neither fully national nor fully global.²⁹

Federalism, in *TRANSATLANTIC REGULATORY COOPERATION*, *supra* note 25, at 373; *see also* JUDITH RESNIK, *Categorical Federalism: Jurisdiction, Gender, and the Globe*, 111 *YALE L.J.* 619 (2001) (offering an extraordinary analysis).

27. Beyond issues pertaining to the global economy, the question of state participation is also at the heart of a far broader debate about globalization and the state. There is an older scholarship on world-order systems, *see, e.g.*, RICHARD FALK, *EXPLORATIONS AT THE EDGE OF TIME: THE PROSPECTS FOR WORLD ORDER* (1992); Richard Falk, *The Making of Global Citizenship*, in *GLOBAL VISIONS: BEYOND THE NEW WORLD ORDER* (Jeremy Brecher et al. eds., 1993); recently invigorated by debates about cosmopolitanism, *see, e.g.*, DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE* (1995); *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS AND CULTURE* (David Held et al. eds., 1999). It examines and theorizes the possibilities of transcending nationally oriented state authority and instituting world-level institutional orders. This literature often includes partial world-level orders such as the international human rights regime, *see, e.g.*, *GLOBALIZATION AND HUMAN RIGHTS*, (Alison Brysk ed., 2002), or certain features of international environmental treaties, *see, e.g.*, RONNIE D. LIPSCHUTZ & JUDITH MAYER, *GLOBAL CIVIL SOCIETY AND GLOBAL ENVIRONMENTAL GOVERNANCE: THE POLITICS OF NATURE FROM PLACE TO PLANET* (1996), and, quite prominently, discussions about the possibility of a global civil society, *see, e.g.*, *GLOBAL CIVIL SOCIETY 2001* (Helmut Anheier et al. eds., 2001).

28. Several scholars have focused on the nature of this engagement. *See, e.g.*, PAUL N. DOREMUS ET AL., *THE MYTH OF THE GLOBAL CORPORATION* (1998); *GLOBAL CAPITALISM VERSUS DEMOCRACY* (Leo Panitch & Colin Leys eds., 1999); *STRANGE*, *supra* note 17; Cerny, *supra* note 12; Dark, *supra* note 17; Boris Kagarlitsky, *The Challenge for the Left: Reclaiming the State*, in *GLOBAL CAPITALISM*, *supra*; Jan Aart Scholte, *Global Capitalism and the State*, 73 *INT'L AFFAIRS* 427 (1997). One way of organizing the major issues is to ask whether the role of the state is simply one of reducing its authority—*e.g.*, as suggested with terms such as deregulation and privatization, and generally “less government”—or whether it also requires the production of new types of regulations, legislative items, court decisions, in brief, the production of a whole series of new “legalities”. I use this term to distinguish this production from “law” or “jurisprudence.” Sassen, *supra* note 9, at 1–30.

29. Among the issues raised by this type of analysis are the increased autonomy and influence of a whole variety of types of processes and actors, including non-state actors. The literature on non-governmental organizations (NGOs), including transnational ones (TNGOs), and the associated forms of activism, has also generated a series of interesting insights into the changed position of states in a context of multiple globalizations. *See, e.g.*, *CONSTRUCTING WORLD CULTURE: INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS SINCE 1875* (John

As states participate in the implementation of cross-border regimes, whether the global economic system or the international human rights regime, they have undergone at times significant transformations because this accommodation entails a negotiation. In the case of the global economy, this negotiation entails the development inside national states—through legislative acts, court rulings, executive orders, policy—of the mechanisms necessary for the reconstitution of certain components of national capital into “global capital”, and necessary to develop and ensure new types of rights/entitlements for foreign capital³⁰ in what are still national territories in principle under the exclusive authority of their states.³¹

These particular transformations inside the state are partial and incipient but strategic. Such transformations can weaken or alter the organizational architecture for the implementation of international law insofar as the latter depends on the institutional apparatus of national

Boli & George M. Thomas eds., 1999); MARGARET E. KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998); ROBERT O'BRIEN ET AL., *CONTESTING GLOBAL GOVERNANCE: MULTILATERAL ECONOMIC INSTITUTIONS AND GLOBAL SOCIAL MOVEMENTS* (2000). For a critical account that partly rejects the notion that these non-state actors actually represent a politics that undermines existing forms of authority, including that of the state, see André C. Drainville, *Left Internationalism and the Politics of Resistance in the New World Order*, in *A NEW WORLD ORDER?: GLOBAL TRANSFORMATIONS IN THE LATE TWENTIETH CENTURY* (David A. Smith & József Böröcz eds., 1995). I would also include here a variety of emergent global networks that are fighting equally emergent global agents such as trafficking gangs. See, e.g., GILLIAN CALDWELL, *CRIME & SERVITUDE: AN EXPOSÉ OF THE TRAFFIC IN WOMEN FOR PROSTITUTION FROM THE NEWLY INDEPENDENT STATES* (1997). For a general review of these types of organizations, see Saskia Sassen, *The State and Globalization*, in *EMERGENCE*, *supra* note 12, at 91. Along these lines a new set of concrete instances has come about with the September 11, 2001 attack on the World Trade Center, i.e., the use by international organized terrorism of the global financial system and the international immigration regime. For a variety of analyses, see CRAIG CALHOUN ET AL., *UNDERSTANDING SEPTEMBER 11* (2002), and Saskia Sassen, *Governance Hotspots: Challenges We Must Confront in the Post-September 11 World*, in CALHOUN ET AL., *supra*.

30. Seen from the perspective of firms and investors operating transnationally, the objective is to enjoy the protections traditionally exercised by the state in the national realm of the economy for national firms, notably guaranteeing property rights and contracts. How this gets done may involve a range of options. See, e.g., *EMERGENCE*, *supra* note 12; PRIVATE AUTHORITY, *supra* note 17.

31. Two very different bodies of scholarship which develop lines of analysis that can help in capturing some of these conditions are represented by the work of Rousenau, particularly his examination of the domestic “frontier” inside the national state, JAMES N. ROSENAU, *ALONG THE DOMESTIC-FOREIGN FRONTIER: EXPLORING GOVERNANCE IN A TURBULENT WORLD* (Cambridge Stud. in Int'l Relations No. 53, 1997), and by the work of Walker problematizing the distinction inside/outside in international relations theory, R.B.J. WALKER, *INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY* (Cambridge Stud. in Int'l Relations No. 24, 1993). An interesting variant on this subject is INTERVENTION AND TRANSNATIONALISM IN AFRICA: GLOBAL-LOCAL NETWORKS OF POWER (Thomas M. Callaghy et al. eds., 2001), which examines the proliferation of global non-state-centered networks in the case of Africa.

states. Further, they have also created the conditions whereby some parts of national states actually gain relative power as a result of that participation in the development of a global economy. As particular components of national states become the institutional home for the operation of some of the dynamics that are central to globalization, they undergo change that is difficult to register or name. This is one instantiation of what I call a process of incipient de-nationalization.

This partial, often highly specialized or at least particularized, denationalization can also take place in domains other than that of economic globalization, notably the more recent developments in the human rights regime which allow national courts to sue foreign firms and dictators³² or which grant undocumented immigrants certain rights. Denationalization is, thus, multivalent: it endogenizes global agendas of many different types of actors, not only corporate firms and financial markets, but also human rights objectives.

The question for research then becomes: What is actually “national” in some of the institutional components of states linked to the implementation and regulation of economic globalization? The hypothesis here would be that some components of national institutions, even though formally national, are not national in the sense in which we have constructed the meaning of that term over the last hundred years. One of the roles of the state *vis-à-vis* today’s global economy has been to negotiate the intersection of national law and foreign actors—whether firms, markets, or supranational organizations. This raises a question as to whether there are particular conditions that make execution of this role in the current phase distinctive and unlike what it may have been in earlier phases of the world economy.

We need to understand more about the nature of this engagement than is represented by concepts such as deregulation. It is becoming clear that the role of the state in the process of deregulation involves the production of new types of regulations, legislative items, court decisions,³³ in brief, the production of a whole series of new “legalities.”³⁴ It also is evident in

32. See, e.g., BETH STEPHENS & MICHAEL RATNER, *INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS* (1996).

33. See, e.g., Phillip Cerny, *Paradoxes of the Competition State: The Dynamics of Political Globalization*, 32 *GOV'T & OPPOSITION* 251 (1996); Panitch, *supra* note 22; see also SOL PICCIOTTO, *INTERNATIONAL BUSINESS TAXATION: A STUDY IN THE INTERNATIONALIZATION OF BUSINESS REGULATION* (1992); *REGULATING INTERNATIONAL BUSINESS: BEYOND LIBERALIZATION* (Sol Picciotto & Ruth Mayne eds., 1999).

34. For a broad range of views, see, for example, *LEGALIZATION AND WORLD POLITICS* (Judith Goldstein et al. eds., 2001); *GOVERNANCE IN A GLOBALIZING WORLD* (Joseph S. Nye, Jr., & John D. Donahue eds., 2000); for more particular cases of this broader issue, see *REGULATING INTERNATIONAL BUSINESS*, *supra* note 33; ROSENAU, *supra* note 31; Aman, *supra* note 2; Eichenengreen & Fishlow, *supra* note 2; Aihwa Ong, *Strategic Sisterhood or Sisters in Solidarity?*:

the proliferation of specialized, often semi-autonomous regulatory agencies and the specialized cross-border networks they are forming which are taking over functions once enclosed in national legal frameworks.³⁵ The background condition here is that the state remains as the ultimate guarantor of the "rights" of global capital, i.e., the protection of contracts and property rights, and, more generally, a major legitimator of claims.³⁶ It is in this sense that the state can be seen as incorporating the global project of its own shrinking role in regulating economic transactions³⁷ and giving it operational effectiveness and legitimacy.³⁸ The state here can be conceived of as representing a technical administrative capacity which cannot be replicated at this time by any other institutional arrangement; furthermore, this is a capacity backed by military power, albeit not an option in many countries, and with global power in the case of some states. To some extent this work of states is becoming privatized, as is signaled by the growth of international commercial arbitration,³⁹ and by key elements of the new privatized institutional order for governing the global economy.⁴⁰

Legislative items, executive orders, adherence to new technical standards, and so on, will have to be produced through the particular institutional and political structures of each participating state. Even when imposed from the outside, there is specific work that individual states need

Questions of Communitarianism and Citizenship in Asia, 4 IND. J. GLOBAL LEGAL STUD. 107 (1996).

35. We can see this in particular features of a variety of domains: for instance, competition policy, GLOBAL COMPETITION POLICY (Edward M. Graham & J. David Richardson eds., 1997); Brian Portnoy, *Constructing Competition: Antitrust and the Political Foundations of Global Capitalism* (2000) (unpublished Ph.D. dissertation, University of Chicago) (on file with author), specific aspects of international business collaboration, JOHN DUNNING, *ALLIANCE CAPITALISM AND GLOBAL BUSINESS* (1997); in networks among members of the judiciary, Anne-Marie Slaughter, *Agencies on the Loose? Holding Government Networks Accountable*, in *TRANSATLANTIC REGULATORY COOPERATION: LEGAL PROBLEMS AND POLITICAL PROSPECTS* 521 (George A. Bermann et al. eds., 2000), and, in a very different domain, the new opening among the top leadership in a growing number of unions organizing immigrants, LEAH A. HAUS, *UNIONS, IMMIGRATION, AND INTERNATIONALIZATION: NEW CHALLENGES AND CHANGING COALITIONS IN THE UNITED STATES AND FRANCE* (2002).

36. While it is well-known, it is worth remembering that this guarantee of the rights of capital is embedded in a certain type of state, a certain conception of the rights of capital, and a certain type of international legal regime: it is largely embedded in the state of the most developed and most powerful countries in the world, in western notions of contract and property rights, and in new legal regimes aimed at furthering economic globalization, e.g., the push to get countries to support copyright law.

37. See GLOBAL CAPITALISM, *supra* note 28; Gill, *supra* note 22.

38. SASSEN, *supra* note 5.

39. YVES DEZALAY & BRYANT GARTH, *DEALING IN VIRTUE: INTERNATIONAL COMMERCIAL ARBITRATION AND THE CONSTRUCTION OF A TRANSNATIONAL LEGAL ORDER* (1996).

40. See generally PRIVATE AUTHORITY, *supra* note 17.

to do.⁴¹ The emergent, often imposed, consensus in the community of states to further globalization is not merely a political decision; it entails specific types of work by a large number of distinct state institutions in each of these countries. Clearly, the role of the state will vary significantly depending on the power it may have both internally and internationally.⁴² It is in fact some states, particularly the United States and the United Kingdom, which are producing the design for many of these new legalities, i.e., items derived from Anglo-American commercial law and accounting standards, and are hence imposing these on other states given the interdependencies at the heart of the current phase of globalization. This creates and imposes a set of specific constraints on the other participating states.⁴³

There is in this dynamic an interesting dialectic. These types of state participation can contribute to strengthen the forces that can challenge or destabilize what have historically been constructed as state powers.⁴⁴ In my reading this holds both for the United States and for other countries. The U.S. government as the hegemonic power of this period has led/forced other states to adopt these obligations toward global capital and, in so doing, contributes to globalize conditions that reduce particular forms of state authority in more and more countries around the world. One way in which this becomes evident is in the fact that while the state continues to play a crucial, though no longer exclusive, role in the production of legality around new forms of economic activity, at least some of this production of legalities is increasingly feeding the power of new emerging structures, whether global markets for capital, WTO, or the international human rights regime.

Concluding, a crucial part of the argument is, then, the fact of the institutional and locational embeddedness of globalization. Let me specify

41. In terms of research and theorization, one of my concerns, this is a vast uncharted terrain: it would mean examining how that production takes place and gets legitimated in different countries. This signals the possibility of cross-national variations (which then would need to be established, measured, and interpreted).

42. I have developed this at greater length addressing an audience of legal scholars in Sassen, *supra* note 11. See also the development of the argument focusing on private rather than state actors in SASSEN, *supra* note 1.

43. This dominance assumes many forms and does not only affect poorer and weaker countries. France, for instance, ranks among the top providers of information services and industrial engineering services in Europe and has a strong though not outstanding position in financial and insurance services. But it has found itself at an increasing disadvantage in legal and accounting services because Anglo-American law and standards dominate in international transactions. Anglo-American firms with offices in Paris do the servicing of the legal needs of firms, whether French or foreign, operating out of France. See also Sassen, *supra* note 11. Similarly, Anglo-American law is increasingly dominant in international commercial arbitration, an institution grounded in continental traditions of jurisprudence, particularly French and Swiss. DEZALAY & GARTH, *supra* note 39.

44. See in this regard GIOVANNI ARRIGHI, *THE LONG TWENTIETH CENTURY: MONEY, POWER, AND THE ORIGINS OF OUR TIMES* (1994).

why it matters. First, it provides the empirical specification for the proposition that the state is engaged in globalization rather than subjected to it. This in turn feeds the proposition about the denationalizing of particular state functions and capacities arising out of this participation.

Second, it signals that the range of ways in which the state *could* be involved is conceivably far broader than what it is today, largely confined to furthering economic globalization. In principle, state involvement could address a whole series of global issues, including the democratic deficit in the multilateral system governing globalization.⁴⁵ State participation creates an enabling environment not only for global corporate capital but also for those seeking to subject the latter to greater accountability and public scrutiny. But unlike what has happened with global corporate capital, the necessary legal and administrative instruments and regimes have not been developed that would allow citizens to participate in global governance through state institutions. The trade-offs and the resources that can be mobilized are quite different in the case of citizens seeking to globalize their capacities for governing compared to those of global capital seeking to form regimes that enable and protect it.⁴⁶

45. There are several types of analyses that address particular forms of this question. See, for example, GLOBAL TRANSFORMATIONS, *supra* note 27; Aman, *supra* note 2; Alfred C. Aman, Jr., *A Global Perspective on Current Regulatory Reform: Rejection, Relocation, or Reinvention?*, 2 IND. J. GLOBAL LEGAL STUD. 429 (1995), on how states could participate in global governance; POLITICAL SPACE, *supra* note 12; Warren Magnusson, *Politicizing the Global City*, in DEMOCRACY, CITIZENSHIP, AND THE GLOBAL CITY 289 (Engin F. Isin ed., 2000), on how to rethink political space; PEOPLE OUT OF PLACE: GLOBALIZATION, HUMAN RIGHTS, AND THE CITIZENSHIP GAP (Alison Brysk & Gershon Shafir eds., 2004), on the citizenship gap in a global world and what states could do. For a very particular angle on these issues, see CALHOUN ET AL., *supra* note 29, for a variety of authors seeking to understand how the World Trade Center attacks on September 11, 2001 forced a rethinking of how globalization has repositioned the U.S. state in the world and how to respond to the new types of organized international terrorism.

46. Elsewhere, see SASSEN, *supra* note 5, at Ch. 6. I examine some of these issues from the perspective of the institution of citizenship. This produces a domain for global politics that can be distinguished from the notion developed above that state participation in the global economy should function as a bridge for a country's citizens to participate in global governance. However, I see an emergent institutional resonance between the features of the state discussed here and the features of an evolving institution of citizenship.