

## THIS LITTLE COMMIE GOES TO MARKET

ANNALISE ACORN\*

***RECHARACTERIZING RESTRUCTURING: LAW, DISTRIBUTION AND GENDER IN MARKET REFORM*, KERRY RITTICH (THE HAGUE: KLUWER LAW INTERNATIONAL, 2002)**

Kerry Rittich's book *Recharacterizing Restructuring: Law, Distribution and Gender in Market Reform*<sup>1</sup> is a very useful, sophisticated and comprehensive analysis of feminist and post-realist thinking in the context of current debates about internationalization and development theory. Her critical examination of the World Bank's vision of the legitimate role of law and the state in fostering economic growth and efficiency takes the transition of Central and Eastern European countries and the Soviet Union from communism to free market economies as its context. The primary text that Rittich engages with is the World Bank's *World Development Report: From Plan to Market 1996*<sup>2</sup> in which "the World Bank set out its view of the route which the so-called 'transitional' states, those moving from administrative or plan to market allocation of goods and services, must follow in order to successfully transform themselves into market economies, move toward integration into the world economy and achieve economic growth."<sup>3</sup> Rittich seeks to expose the ideological obsessions lurking behind the World Bank's "neoliberal" recipe for economic growth and to reveal the ways in which deeply political and drastically redistributive choices are embedded in the Bank's purportedly politically and distributively neutral prescriptions for fostering efficiency. The first part of Rittich's book examines the Bank's critique of planned economies and situates that critique in relation to the theoretical antecedents of neoliberalism. The second part of the book looks at how neoliberal reforms have drastically different effects on different groups, and in particular, how such reforms disproportionately disadvantage women.

Rittich's focus is on law.<sup>4</sup> She is interested in the "legalization" of reform — that is, the Bank's insistence that successful transition requires the creation of a legal structure that concerns itself primarily, if not exclusively, with the facilitation and enforcement of private arrangements.<sup>5</sup> The Bank deploys concepts such as the rule of law and the primacy of private rights as key forces in the pursuit of efficiency and growth.<sup>6</sup> Here Rittich highlights one of the Bank's pet dichotomies: law vs. regulation. She notes that — as with all the Bank's dualisms — one side is cast as good and the other as bad. Both law and regulation are exercises of state power. Law (good) protects private rights, while regulation (bad) is politically motivated interference with self-interest (good) in the service of special interest

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\* Professor, Faculty of Law, University of Alberta. The author is very much indebted to Trevor Farrow, Jim Marentette and Bob Zuber for helpful comments on earlier drafts of this essay.

<sup>1</sup> (The Hague: Kluwer Law International, 2002).

<sup>2</sup> (New York: Oxford University Press, 1996).

<sup>3</sup> *Supra* note 1 at 1.

<sup>4</sup> *Ibid.* at 3.

<sup>5</sup> *Ibid.* at 65-70.

<sup>6</sup> *Ibid.* at 67.

(bad).<sup>7</sup> Laws create and protect private rights. Regulation interferes with private rights.<sup>8</sup> It confines and constrains the true heroes of efficiency and growth — the entrepreneurs. Laws foster freedom, growth and a bigger pie. Regulation creates unhealthy dependencies, fosters corruption and shrinks or wastes the pie. Thus for the Bank, the division between law and regulation marks the boundary between legitimate and illegitimate state action in a free market economy. Again, legitimacy here is billed as a value that ultimately cashes out in the pure and neutral currency of efficiency.<sup>9</sup>

Yet, as Rittich seeks to reveal, this idea of what is and is not legitimate state action is far more normatively complex than the official story of single-minded concern with efficiency would readily own. Rittich gestures toward at least two of the hidden normative layers lying beneath the Bank's rhetoric about legitimacy of state action. First, there is the idea that as long as the hero wins we are alright.<sup>10</sup> Here — efficient or not — a world in which law gives entrepreneurs more power is simply better, less anxiety provoking and more normal. Second, we find a sort of happy teleology of Americanism. This is the idea that as long as law in developing or transitional countries is pointed in the direction of greater resemblance to that of the United States, we can rest assured that the world is moving in the right direction and is becoming, in some fundamentally comforting sense, more "normal."<sup>11</sup>

In her discussion of gender and transition, Rittich develops much more explicitly a third layer of the buried normative agenda beneath the Bank's official story about the state's legitimate role. This is the idea that — efficient or not — transition rightly entails the adoption of laws that move women out of the paid employment market and into the home to do unpaid "reproductive" work; the adoption of laws that shift resources out of the hands of women and into the hands of men; and that these are shifts toward a better, more normal and more natural state of affairs.<sup>12</sup> In contrast, the high participation of women in the labour force and their relative economic equality with men under planned economies is seen as an artificial distortion caused by the pathologies of communism.<sup>13</sup>

### I. THE PLANNED ECONOMIES, THE BANK'S CRITIQUE AND ITS PRESCRIPTIONS FOR CHANGE

In Chapter 1 of Part I, entitled "Economic Development in the Neoliberal Style: the Case of Transition," Rittich describes some of the key features of the planned economies. She notes that "[o]ne of the most distinctive aspects of the organization of production in the plan economies was the integration of production with the provision of a range of social and economic goals and services."<sup>14</sup>

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<sup>7</sup> *Ibid.* at 7, 70.

<sup>8</sup> *Ibid.* at 71.

<sup>9</sup> *Ibid.* at 53.

<sup>10</sup> *Ibid.* at 33.

<sup>11</sup> See *e.g. ibid.* at 271 for a discussion on the levels of income inequality; see also at 248, where Rittich talks about the Bank's tendency to model its approach to gender equality on policies prevalent in the U.S.

<sup>12</sup> *Ibid.* at 255.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.* at 35.

In planned economies, state-owned enterprises provided employees with all kinds of goods and social services.<sup>15</sup> Rittich notes that state-owned enterprises “performed local administrative functions as well, maintaining schools and hospitals and even engaging in street cleaning and refuse collection.”<sup>16</sup> Compensation for employees would also include subsidized or free “food, housing, vacations, medical, health and childcare,”<sup>17</sup> days off to take care of sick children or relatives, pensions and potentially even things such as “sports and cultural facilities and consumer goods.”<sup>18</sup>

Under the planned system, “benefits provided were those expressly designed to compensate women for reproductive labor.”<sup>19</sup> Market incentives compensating women’s reproductive work facilitated very high participation of women in the paid labour market under planned economies. Rittich stresses, however, that high participation of women in the labour force in Central and Eastern Europe and the Soviet Union was not a necessary incident of communism.<sup>20</sup> This observation sets up a parallel insight, which she makes much of later in the book: that fidelity to the values of the free market does not either logically or practically rule out the creation of market incentives to compensate women’s reproductive labour and facilitate high levels of participation of women in the labour market.

By compensating employees with goods and services in-kind, child and health care, maternity benefits, as well as education, planned economies, at least to some degree, gave women what they wanted and needed — the means to feed, clothe and educate themselves and their children, as well as the means of securing their own independent financial position within the household.<sup>21</sup>

The Bank, however, identified not just state ownership of enterprises, but this entire structure of employee compensation as part and parcel of the evil that needed to be purged before markets could sprout up and flourish.<sup>22</sup> The Bank characterized state provision of maternity benefits, in-kind goods and services, curative health care and the like as overly generous, as well as perniciously redistributive.<sup>23</sup> Employer/state provision of these kinds of goods, services and incentives was seen to be both an inefficient interference in the working of the market and a muddling of the proper division between the public and private spheres. The Bank envisioned a world in which higher wages would provide employees with the resources to purchase the same goods, services and benefits in the market if they *really* wanted them. If a genuine market for such things existed, the invisible hand would provide. In essence, a modern version of Smith was in order.

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<sup>15</sup> *Ibid.* at 35-39.

<sup>16</sup> *Ibid.* at 35-36 [footnote omitted].

<sup>17</sup> *Ibid.* at 37.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.* at 37-38.

<sup>22</sup> *Ibid.* at 39-41.

<sup>23</sup> *Ibid.* at 52-53.

## II. GENDER INJUSTICE, EFFICIENCY AND TRANSITION

The second part of the book is devoted primarily to exposing the Bank's vision as misguided, naïve, counter-productive, probably disingenuous and definitely bad for women. And Rittich makes a compelling case that what is bad for women is bad for development. She argues that the Bank's claim that childcare, maternity benefits, healthcare, education and the like will simply shift into the realm of private markets is empty rhetoric camouflaging what the Bank *really* anticipates. The Bank actually knows that once these benefits drop out of the public sphere, women will simply have to do these things for free in the private sphere. This will mean that women will no longer be able to participate in the labour market at the same levels as they did under the planned economies. Then *even if* household income is increasing as the Bank anticipates, household resources will be shifting out of the hands of women and into the hands of men.<sup>24</sup> And if food, housing, clothing and so forth are also no longer provided in-kind by the employer, the result is a drastic increase in men's power and discretion over the spending of household money.<sup>25</sup> Here we encounter the linchpin of Rittich's argument: if you put money in the hands of women, they spend it on their children; but, if you put it in the hands of men, they spend it on "ponies and drink."<sup>26</sup> Rittich says "[w]omen everywhere appear to exhibit a significantly higher propensity to invest disposable resources in their children than do men; men are much more likely to spend money on alcohol, tobacco and other forms of leisure and socializing."<sup>27</sup> Though Rittich's claim is one about women and men "everywhere," I can't help but wonder whether, in the context of Central and Eastern Europe and the former Soviet Union, Rittich's argument may be made more persuasive by unconscious reliance on the Dostoyevskian stereotype of a vodka-quaffing, volatile and hedonistic Fyodor Karamazov.<sup>28</sup>

## III. THE POST-REALIST AND FEMINIST CRITIQUE OF LIBERALISM

Rittich's theoretical orientation is drawn from critical legal studies or, as she terms it, the post-realist school.<sup>29</sup> The major contribution of her book is to bring the insights of post-realism to bear on the Bank's prescriptions for transition. Post-realist scholars in the 70's and

<sup>24</sup> *Ibid.* at 211-12.

<sup>25</sup> *Ibid.* at 242.

<sup>26</sup> Rittich used the phrase "ponies and drink" in a talk she gave at the University of Alberta, Faculty of Law (Kerry Rittich, "Justice Through Markets: Law and the Socialization of Development" (Address at the University of Alberta, Faculty of Law, 28 February 2004) [unpublished]).

<sup>27</sup> *Supra* note 1 at 211 [footnotes omitted].

<sup>28</sup> In the footnote to this point, Rittich says that

This datum is not advanced to assert either the moral difference or superiority of women; extreme caution should be exercised in the conclusions which are drawn from it. For one, it would be dangerous and subversive of feminist goals to assert the altruism of women, if that altruism in turn were to become the basis for redirecting resources to women. This merely entrenches an instrumental basis for concern over redistribution away from women, encouraging selfless behavior on the part of those who most need to become more selfish, and perhaps limiting transfers to the extent that they can be identified with the wellbeing of others (*ibid.* at 211, n. 84).

Thus she is alive to the risks posed to women by placing too much store in this insight. However, she is not as concerned with the ways in which cultural stereotypes might be operating even more than gender stereotypes in the conclusions that are drawn from this datum. As this point is a very pivotal one to Rittich's analysis, some further discussion of the way that the information can be interpreted and misused might have been helpful.

<sup>29</sup> *Ibid.* at 15.

80's sought to destabilize many of liberalism's core ideas. In particular, post-realism took aim at the liberal reliance on a clear public/private distinction and the liberal idea that the law ought to stay out of the private sphere. Post-realism sought to debunk the liberal myth of the neutral state by revealing the ways in which apparent state forbearance from action was actually significant state assistance to the already powerful.

The contribution of the post-realist critique was to expose the ways in which liberalism failed on its own terms and was itself guilty of all the sins it so decried in others. Post-realism sought to show that liberal legal systems are just as interfering as the most invasive schemes feminists or Marxists might devise. The distinguishing feature of liberalism was not that it constrained state power, but rather that it used state power imperceptibly to further stack the deck in favour of those who were already winning the game. Thus the post-realist critique was essentially an attempt to hoist liberalism on its own petard. Post-realism did not see anything wrong with state interference *per se*, but it attempted to shame the liberal strategy of denouncing state interference while simultaneously and surreptitiously lending all kinds of state assistance to the strong.

Post-realist and feminist critics charged liberalism with doing what it claims to abhor: not really caring about what it pretends to care about, and caring deeply about things it pretends to be unconcerned with. Liberalism, it was alleged, hides its own hypocrisy, camouflages its own power plays and keeps its true political colours well concealed to the benefit of the powerful and the continued detriment of the powerless.

Women, of course, were disproportionately the low status inmates of the private sphere of domesticity. Thus liberalism's *modus operandi* of "staying out" of the private/family realm was seen as lending significant state assistance to men in domestic relations. The link between the feminist and post-realist critiques of liberalism is obvious, and Rittich's analysis draws heavily on the work of both post-realists such as Duncan Kennedy and "fem-crits" such as Frances Olsen.

As Rittich notes, the 1990's saw in neoliberalism the resurrection of many a liberal truism that post-realists and fem-crits thought they had left for dead back in the 80s.<sup>30</sup> The fall of the communist block and the creation of the Bank's agenda for transition breathed new life into a host of liberal and (especially Hayekian) libertarian tenets that, in Rittich's view, had been largely discredited in Anglo-American legal theory.<sup>31</sup> Rittich's objective then is to revisit the post-realist and feminist critique of liberalism today in the context of the Bank's agenda for transition.<sup>32</sup>

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<sup>30</sup> *Ibid.* at 129.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.* at 130.

#### IV. A CONCEPTUAL CATEGORIZATION OF THE STRANDS OF RITTICH'S CRITIQUE

Rittich's book reads like a seamless web of criticisms of the Bank's agenda for reform. Different levels of critique are woven together throughout the text. What I have tried to do in the following section is to create a kind of conceptual categorization of the critical varieties that appear in Rittich's work. In imposing this typology, I may at times give the impression that her tone is more hostile and uncompromising than it actually appears in the book. Indeed, I may be caricaturing her criticisms by categorizing them in the way that I do. I am myself a legal theorist with an interest in development issues, but one who knows relatively little about international lending organizations, loan criteria and their social impacts. So, my assessment of the book may also make it appear more abstract and even ideologically rigid in its approach and conclusions than it actually is. In fact, the book provides many practical examples of the Bank's work and more nuanced case studies than is evident from my analysis here. Nevertheless, I offer the following categorization in the hope that it will be a helpful tool in navigating the sometimes dauntingly complex terrain of Rittich's multiple grounds of attack on the Bank and neoliberalism. Further, I hope that it will provide a framework within which to evaluate the overall cohesiveness of Rittich's assessment of the Bank's role in transitional development.

The first attack we find in Rittich's book is that the Bank and neoliberalism are, well, hypocritical. This allegation of hypocrisy is drawn directly from the post-realist and feminist critiques of liberalism. Rittich's general allegation of hypocrisy can be divided into two subcategories. The first subcategory of hypocrisy I will call "the pot calling the kettle black." The allegation here is that the Bank does all those things it denounces and claims to abhor. The next subcategory of hypocrisy is best described as "disingenuousness." This allegation is that the Bank strikes a phony pose of concern for women and the disadvantaged while acting in a way that demonstrates a lack of any such concern. The second kind of charge Rittich makes against the Bank is conceptually close to the charge of hypocrisy. However it is slightly different. For lack of a better word, I am going to call this one the charge of trickiness. Here Rittich charges that, under the guise of concern to set up proper conditions for the flourishing of markets, the Bank manages to smuggle in many more pro-capital policies than are actually necessary for the creation of a market economy.

The third kind of criticism Rittich levels against the Bank is that its prescriptions are in fact counter-productive to its own stated goals. Here we see that her quarrel with the Bank is not just that it does not fess up to its own redistributive and political choices. She is also concerned that those hidden layers of the Bank's ideology (love of the entrepreneur, comfort around anything that resembles the American way and the belief in the normalcy of women participating in the labour market at lower rates than men) lead the Bank to botch even the pursuit of efficiency and growth. The fourth and final strand of Rittich's argument seek to make the case that efficient or inefficient, covert or candid, the Bank's exercise of power in the developing world is simply unjust. The charge of injustice is one bound up with norms of economic, political and gender equality.

Some elaboration of the particulars of these charges is now necessary in order to determine whether these quite different kinds of critique can effectively work together in Rittich's overall argument.

## A. HYPOCRISY

### 1. THE POT CALLING THE KETTLE BLACK

Much of Rittich's critique can be boiled down to an allegation that the Bank and neoliberalism are guilty of at least two kinds of hypocrisy. First, Rittich charges that neoliberals and the Bank stigmatize certain state actions as sinful, accuse non-liberal states of those sins, promote neoliberalism as the only way to avoid such sinning and simultaneously commit the same sins with a vengeance. Indeed, more than just calling the kettle black, the neoliberal pot first cooks up an argument that there is something deeply wrong with blackness and then claims that it is the only thing in the kitchen that is not black. And black here means redistributive, political, interventionist, pandering to special interest and inefficient.

Rittich offers some very specific instances of this alleged hypocrisy.

#### a. Rent-Seeking

One of the sins invented by neoliberals is rent-seeking. Rittich explains that neoliberals define rent-seeking as "the resource-wasting activities of individuals in seeking transfers of wealth through the aegis of the state."<sup>33</sup> In other words, rent-seeking is the time people waste trying to lobby the government to do something to help them — to transfer rights or resources in their favour. Rittich charges that neoliberals have coined the notion of rent-seeking and stigmatized it as inefficient and wasteful. Then neoliberalism claims to be the only escape from a world riddled with wasteful rent-seeking. It argues that if the state stays out of redistributive functions, and if it does not pander to political and special interests, then there will be no point to rent-seeking. Instead of hanging around the halls of government whining for special treatment, people will get out and produce wealth on their own. So the notion of rent-seeking rests on the neoliberal doctrine about the legitimate role of the state. The further the state wanders into public provisioning and redistribution, the greater will be the incentive for people to expend energy trying to win the state's favour.<sup>34</sup> Neoliberals claim that rent-seekers give up in the face of a minimal state that scorns the business of hand-outs.

Drawing on Warren J. Samuels and Nicholas Mercurio's "A Critique of Rent-Seeking Theory,"<sup>35</sup> Rittich argues that, as all legal rights create entitlements, all profit-making can be seen as rent-seeking. Rittich writes:

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<sup>33</sup> James Buchanan, Robert Tollison & Gordon Tullock, eds., *Toward a Theory of the Rent-Seeking Society* (College Station: Texas A & M University, 1980) at ix, cited in *ibid.* at 117.

<sup>34</sup> *Supra* note 1 at 148.

<sup>35</sup> Warren J. Samuels & Nicholas Mercurio, "A Critique of Rent-Seeking Theory" in David Colander, ed., *Neoclassical Political Economy: The Analysis of Rent-Seeking and DUP Activities* (Cambridge: Ballinger, 1984) 55, cited in *ibid.* at 150.

If rent-seeking is defined as "the resource-wasting activities of individuals in seeking transfers of wealth through the aegis of the state" then it becomes clear that the presence of rents in the market is unavoidable. Legal entitlements are a mode of recognizing, creating, transferring or destroying wealth; all involve the use of the state. All rights then, by the above definition involve rents.... Prices are in part a function of the structure of rights, and all profit-making proceeds in terms of particular regulatory backgrounds, to the result that profit-making is indistinguishable from rent.<sup>36</sup>

The argument is not immediately convincing. While profit-making clearly relies on the aegis of the state, it is not obvious that profit making is a resource-wasting activity. This claim needs more support than I am able to find in Rittich's analysis. However, what Rittich does not claim, and what seems to me to be indisputable, is that promotion of the neoliberal agenda in the context of transition *is* rent-seeking. Lobbying for stronger property rights, lower taxes and fewer protections for workers and the environment is the same kind of activity as lobbying for the opposite kinds of policies. Indeed the Herculean effort that all those neoliberal economists have put into inventing the notion of rent-seeking is rent-seeking *par excellence*. And it is done in the true neoliberal fashion of camouflaging itself as value-neutral and for the benefit of all.

Thus we can see the shape of this count of hypocrisy. The neoliberal rhetorical machine constructs rent-seeking as a deadly sin and claims that only the neoliberal state avoids this vice. Yet the very construction and denunciation of the sin doubles as a commission of the sin itself.

#### b. State Correction of Market Failure

Rittich notes that the World Bank generally deplores state intervention to correct market failure — judging that state failure is just as common as market failure and thus that the cure is worse than the disease.<sup>37</sup> Yet, the Bank favours state intervention to correct market failure in the context of financial institutions.<sup>38</sup> The Bank reasons that such regulation is "essential in order to correct informational asymmetries.... Banks may appear to be healthy, even if they lack the resources to repay loan principals and are only able to keep up interest payments by taking up new loans.... Bank failures tend to be contagious; liquidity may drain out of the system as a whole with severe macroeconomic consequences."<sup>39</sup> Rittich agrees that the case for state regulation here is compelling.<sup>40</sup> She takes issue, however, with the Bank's claim that financial institutions present a unique case. Rittich writes: "The market is rife with examples of informational asymmetries that have potentially serious consequences; the financial sector is not entirely exceptional in this regard."<sup>41</sup> Rittich argues that the case for state intervention could be made just as compellingly and for the same reasons in the context of labour and environmental regulation.<sup>42</sup> Again the Bank casts state intervention to correct

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<sup>36</sup> *Supra* note 1 at 150 [footnotes omitted].

<sup>37</sup> *Ibid.* at 73.

<sup>38</sup> *Ibid.* at 77.

<sup>39</sup> *Ibid.* at 77-78.

<sup>40</sup> *Ibid.* at 78.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.* at 79-85.

market failure as a sin. Yet when it is the entrepreneur who is put at risk by market failure, state intervention suddenly becomes advisable.

c. Altering the Balance of Power Between Workers and Capital

Rittich observes that the Bank looks askance at laws that facilitate the creation of labour unions and allow for collective bargaining.<sup>43</sup> The Bank's stated reason for its disapproval is that such laws "change the balance of power between workers and capital."<sup>44</sup> Yet, as Rittich points out, so many laws the Bank favours — the laws providing for the existence of corporations to take one example — also alter the balance of power between workers and capital.<sup>45</sup> Here again, the Bank commits the sin it both fabricates and denounces. And despite its efforts to appear neutral in these power relations, the Bank is really promoting the entrepreneur.

2. DISINGENUOUSNESS

The second variety of hypocrisy Rittich charges the Bank with is disingenuousness. The allegation here is not so much that the Bank commits the sins it so loudly denounces; but rather, it is that the Bank feigns deep concern over things about which, in truth, it could not give a straw. In particular, the Bank strikes a pious pose of concern for women, while its behaviour shows indifference to the reality of women's lives.

The structure of Rittich's book is perplexing at this point. She begins the second part on gender and restructuring with Chapter 6 entitled "The Gender of Restructuring," in which she describes the negative consequences for women resulting from cuts to family benefits, cross-subsidies, maternity leave, child care, in-kind provisioning and reallocation of household resources to men. Then in Chapter 7, "Gender Equity in the World Bank: The Case of Restructuring," she goes on to explain that the bulk of this information is actually contained in the Bank's own research on gender equality. Rittich writes: "The Bank has endorsed the view that investing in women is good for development, while continuing gender inequality can impair efforts to promote growth."<sup>46</sup> Reports published by the Bank, such as *Advancing Gender Equity: From Concept to Action*<sup>47</sup> and *Toward Gender Equity: The Role of Public Policy*,<sup>48</sup> demonstrate the Bank's awareness that cutting child care, health care, maternity benefits and shifting household resources into the hands of men have serious negative consequences for women.<sup>49</sup>

Rittich argues, however, that the Bank's pose of concern for women is not accompanied by the will to put their understanding into practice.<sup>50</sup> Rittich writes:

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<sup>43</sup> *Ibid.* at 81.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.* at 167.

<sup>46</sup> *Ibid.* at 237 [footnotes omitted].

<sup>47</sup> (Washington, DC: World Bank, 1995).

<sup>48</sup> (Washington, DC: World Bank, 1995).

<sup>49</sup> *Supra* note 1 at 241-45.

<sup>50</sup> *Ibid.* at 247.

The result is, at least on a rhetorical level, increasing acknowledgement of the value of gender equity to economic development. However, the embrace of gender equity within the Bank has been equivocal. Unanimity or agreement about the role and importance of gender equity within the Bank, including the positive links between gender and development, still appears elusive.<sup>51</sup>

## B. TRICKINESS

In addition to the charge of hypocrisy, Rittich makes what can be interpreted as a related but distinct charge of trickiness. The Bank uses its rhetorical skill to camouflage these other deeply political ends and actions. The illusory distinction the Bank insists on between economics and politics is an instance of such trickiness. Likewise, the Bank is tricky in as much as it casts its own policies as the outcomes of neutral exercises in technical expertise rather than political value judgments.<sup>52</sup> The primary upshot of this is that the Bank manages to insist on many more pro-capital, anti-worker, anti-women policies than are actually necessary to implement a free market economy.<sup>53</sup>

The most graphic instance is found in Rittich's discussion of the distinction between productive and reproductive work and the Bank's view that a particular division of labour between the family and the market is entailed by a commitment to free market economies.<sup>54</sup> Drawing on Marilyn Waring's groundbreaking book *If Women Counted: A New Feminist Economics*,<sup>55</sup> Rittich shows that mainstream economics does not count reproductive activities as part of the productive economy.<sup>56</sup> The reproductive sphere

typically encompasses such activities as child and elder care, food preparation, volunteer work, and large amounts of education.... What is distinctive about the reproductive economy, demarcating it from the productive economy, is the absence of payment: economic activity within it is not the subject of a monetary transaction.... Apart from the independent value of such work, it also constitutes an indispensable support and precondition to all market activity.<sup>57</sup>

Reproductive work simply drops out of mainstream calculations of national wealth.<sup>58</sup> Yet Rittich points out that the boundary between the reproductive and productive spheres is fluid and that decisions about what goes in each sphere are political judgments.<sup>59</sup> There is, she argues, no pre-political or natural categorization of activities as either productive or reproductive.<sup>60</sup> While industrialized economies have tended to overload the reproductive sphere, planned economies considered things like child care, elder care, health care and the

<sup>51</sup> *Ibid.* at 237 [footnotes omitted].

<sup>52</sup> *Ibid.* at 89.

<sup>53</sup> *Ibid.* at 16.

<sup>54</sup> On the point of the Bank's packing far more than is necessary into the list of things we need to facilitate a free market economy, see also *ibid.* at 270-79 for Rittich's discussion of the Bank's favouring of minimal welfare benefits targeted at the poorest only.

<sup>55</sup> (San Francisco: Harper and Row, 1988), cited in *ibid.* at 182.

<sup>56</sup> *Supra* note 1 at 182.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.* at 182, citing Waring.

<sup>59</sup> *Ibid.* at 184-89.

<sup>60</sup> *Ibid.* at 184.

like to belong in the productive/public sphere.<sup>61</sup> The Bank seems to have decided that one of the errors of planned economies was to miscategorize these activities in the productive sphere.<sup>62</sup> Thus, for the Bank, the disappearance of enterprise-run child care is an appropriate return to a more natural state in which these activities are performed primarily for free by women in the private family sphere.<sup>63</sup>

Rittich argues that this redrawing of the line between productive and reproductive economies is neither necessary nor intrinsic to the free market economy.<sup>64</sup> Although the Bank employs the language of scarcity claiming that states can no longer “afford” such luxuries, Rittich suggests that the Bank’s real motivation is an ideological commitment to a particular notion of the proper and natural division between public and private, and in effect, man and woman.<sup>65</sup> Indeed Rittich notes that the concept of the family wage, prevalent throughout most of the twentieth century, was itself a means of public compensation of women’s reproductive work.<sup>66</sup> Men earned more because it was assumed that they needed more to support wives and children. The dismantling of the family wage toward the end of the twentieth century was another redrawing of the line between productive and reproductive work. It was a withdrawal of compensation for women’s reproductive work within the family. Yet, no one ever saw the notion of the family wage as posing a threat to the free market.

Thus Rittich argues that there is nothing inherent in the free market economy that dictates a particular division between productive and reproductive work, that the dividing line varies between economies and that the placement of that line is a political act. But the Bank, without evidence to support the proposition, convinces the world that employer provided child care or public health care are inimical to the flourishing of markets and manages to impose a highly contestable vision of what should and should not be placed within the productive economy.<sup>67</sup> Rittich charges that what is really at stake here for the Bank is a particular vision of the natural division between public and private.

There is no reason that the argument could not be made that, just as unemployment insurance is crucial to the efficient redeployment of the labor force, the maintenance of subsidized childcare is crucial to the continued participation of nearly half of the labor force in the emerging markets and the ability of female workers to take advantage of the best opportunities and use the very high levels of training and education which they possess. Indeed, it is such an obvious and readily available argument that its absence indicates the presence of other motives and concerns.<sup>68</sup>

Later Rittich explains: “It is impossible to make sense of the distance between the Bank’s gender analysis and the policies it promotes without considering the Bank’s overall position on the proper division of labor between public and private responsibilities.”<sup>69</sup>

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<sup>61</sup> *Ibid.* at 189.

<sup>62</sup> *Ibid.* at 197.

<sup>63</sup> *Ibid.* at 255.

<sup>64</sup> *Ibid.* at 191.

<sup>65</sup> *Ibid.* at 199; see also 247.

<sup>66</sup> *Ibid.* at 190.

<sup>67</sup> *Ibid.* at 227-28.

<sup>68</sup> *Ibid.* at 231.

<sup>69</sup> *Ibid.* at 247.

### C. COUNTER-PRODUCTIVENESS

The preceding charges, directed primarily at the Bank's lack of candour about its own political values, are not the end of Rittich's attack on the Bank. Rittich also argues that the Bank's political commitments lead it to act in opposition to its own stated mission of fostering efficiency and economic growth. First, Rittich points out that the implementation of the Bank's policies caused a massive decline in the GDP of the transitional countries, and she questions the conventional wisdom that such declines will eventually be recouped.<sup>70</sup> Second, she contends that insofar as the Bank's policies affect a transfer of household resources from women to men, their policies are inefficient because women spend money in ways that are more conducive to economic growth and development than do men.<sup>71</sup>

Third, she argues that the withdrawal of highly skilled women from the labour market as a result of the implementation of the Bank's policies impedes the growth of economies. Fourth, she maintains that, in many cases, employers can be the efficient providers of particular goods and services. She writes: "Although it seems to be assumed in the context of restructuring that this cannot be so, an employer may in fact be the most efficient provider of a particular service. This will be the case, for example, if the cost to an employer of providing a service is less than the cost to the employee of purchasing the service on the market."<sup>72</sup>

Finally, Rittich contends that the Bank's assumption that increased inequality is essential to growth is misguided.<sup>73</sup> Here the Bank holds that growth requires the elimination of universal programs of provisioning and benefits and that growth is best served by providing only minimal welfare to the very most needy.<sup>74</sup> Rittich argues, however, that "high levels of income inequality may also impair growth, for the simple reason that maldistribution of wealth itself makes it difficult to impose the taxes on elites that enable the state to do those things which it must do to encourage growth. The displacement of equality thus may be dysfunctional for the very goals that reformers claim to be seeking, poverty alleviation as well as greater growth."<sup>75</sup>

### D. INJUSTICE

Rittich's final charge against the Bank and neoliberalism is that its policies are simply unjust and that the Bank uses its power to promote the interests of business at the expense of the interests of women and workers. Interestingly, this aspect of Rittich's critique is often only implicit and submerged in the substance of her other arguments. However, Rittich appears to be concerned that — efficient or not — it is simply unjust to restructure economies on the assumption that they will be supported by the domestic work that women will do for free, to deprive women of power over household resources, to take away women's

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<sup>70</sup> *Ibid.* at 9.

<sup>71</sup> *Ibid.* at 202, 211-12.

<sup>72</sup> *Ibid.* at 206.

<sup>73</sup> *Ibid.* at 11-12.

<sup>74</sup> *Ibid.* at 31.

<sup>75</sup> *Ibid.* at 279 [footnote omitted].

power to choose whether to participate in the paid employment market, and to encourage governments to accept significant increases in income inequality.

## V. CONCLUSION

Are Rittich's four kinds of critique harmonious or conflicting? The charges of hypocrisy and trickery are addressed not to the Bank itself, but to those who would be beguiled by the Bank's pose of political neutrality. The aim is simply to expose the deeply political and redistributive aspects of the Bank's agenda. Success of this critique might be seen in a general decline in the world's acceptance of the Bank's claim of political and distributive neutrality and non-interference.

The real potential conflict appears, however, between Rittich's charge that the Bank's policies are inefficient and her charge that they are unjust. Rittich must tell us which aspect of her critique would prevail. Presumably Rittich would not support gender injustice even if it were to be found to be efficient and conducive to economic growth. Yet Rittich presents these two strands of argument as largely mutually compatible. She also foregrounds the charge of inefficiency and leaves the charge of injustice for the most part implicit in her analysis. The charges of counter-productivity and inefficiency are most in need of support by hard evidence. While such evidence may exist, it does not appear to be Rittich's purpose in this book to detail that evidence for the reader. Her key empirical claim — that women spend money in ways that are more conducive to economic growth than do men — is supported by a reference to a United Nations report<sup>76</sup> and an article by Celia Jackson entitled "Rescuing Gender from the Poverty Trap."<sup>77</sup> However, she does not go into the details of the research establishing that claim. Thus we are left in a state of some uncertainty as to which is the dominant element of Rittich's critique — her charge of counter-productivity or her charge of injustice.

Rittich notes that the Bank's view on the potential conflict is clear; that is, it views gender equality as of instrumental value only, and where efficiency and equality conflict, the Bank thinks efficiency should prevail.<sup>78</sup> By implication Rittich appears to take the opposite view — that concerns of gender equality should prevail over concerns of efficiency and growth. However, assuming it is possible for these values to conflict, it would be beneficial to have some more explicit argument from Rittich on why concerns of gender justice ought to trump concerns about economic growth in developing countries.

Rittich's book was published in 2002. In a sense it already seems somewhat out of date, and Rittich's present research demonstrates, in a way that the book does not, a finely tuned understanding of how the Bank's priorities have evolved over time.<sup>79</sup> Current trends suggest that the Bank has been, for some time, slowly beginning to understand the economic benefits of a strong civil society. What would now be interesting is to see more discussion from Rittich on how the Bank differs from the other major Bretton Woods institution, the IMF, in

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<sup>76</sup> United Nations Development Programme, *Human Development Report 1995* (New York: Oxford University Press, 1995), cited in *ibid.* at 211.

<sup>77</sup> 24:3 *World Development* 489 (1996), cited in *ibid.* at 211.

<sup>78</sup> *Supra* note 1 at 244.

<sup>79</sup> *Supra* note 26.

terms of its lending priorities and commitments to good governance; whether the Bank is succeeding in its efforts to become a more dependable multi-lateral partner in important social fields (such as pollution); and whether it is, at least in some cases, forcing governments to make more humane spending priorities than they might otherwise make. We can now await Rittich's assessment of the effectiveness of this new wave of more humane liberal globalization. Most importantly, it will be very interesting to see what Rittich has to say about the efforts the Bank is now making to address gender issues more effectively.

So, Rittich's book leaves us wanting to hear more from her on current developments. It remains, however, an extremely impressive work. She covers tremendous ground and skillfully brings post-realist legal scholarship to bear on the context of transitional development. The book is itself an education on the workings of international financial institutions, globalization, and feminist legal and economic theory. *Recharacterizing Restructuring* should be read by anyone who wants to understand the often controversial role of the World Bank in the economic and political future of the developing world.