

## GENDER ARBITRAGE: LAW, LUXURY AND LABOR

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Only a couple of them have a residence permit. The others are illegal, as was to be expected. It's hard to understand how they can arrive here in Prato [a longtime center for Italian artisan luxury production in Tuscany] without being noticed, and who the traffickers are of these slaves, moved around from shed to shed depending on the market needs. Here their task was to attach the labels with the words 'Made in Italy' on cheap Chinese blouses. Something that is, moreover, against the law. Sabrina Giannini, Italian journalist.<sup>1</sup>

It may happen in some cases, but I've seen it for all other brands, even for those for which I've worked. I saw it for Valentino; I know it happens with products. Michele Norso, CEO & Group Managing Director, Salvatore Ferragamo.<sup>2</sup>

Of the 4,275 textile factories in Prato, 2,500 are owned by Chinese who tend to employ only Chinese workers. And most of Italy's major design houses—including Prada, Versace and Giorgio Armani—rely heavily on Chinese-owned suppliers from Prato.<sup>3</sup>

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1. *Schiavi del Lusso* [*Slaves of Luxury*] (Rai3 television broadcast Dec. 2, 2007), translated in SABRINA GIANNINI, *SLAVES OF LUXURY* 24, available at [http://www.report.rai.it/Contents/files/2007/12/schiavi\\_del\\_lusso.pdf](http://www.report.rai.it/Contents/files/2007/12/schiavi_del_lusso.pdf).

2. *Id.* at 27.

3. See Barbie Nadeau, *Made by Foreign Hands; Rather Than Outsource Production, Many Italian Luxury Brands are Employing Illegal Chinese Immigrants as Their Artisans*, NEWSWEEK, June 23, 2007.

## I. INTRODUCTION

Fashion and gender are mutually-constituting. Femininity and masculinity are sites of consumption and participation. Talk of the production of fashion—the culture industry—typically revolves around stories of designers, fashion shows, and Madison Avenue advertising firms and boutiques. Television shows either take us behind the scenes to the production of marketing, i.e., *America's Next Top Model* and its multinational counterparts, or else to the proliferation of fashion advisors, i.e., *What Not to Wear*.<sup>4</sup> The media has also pressed the case for fashion as subversion from Vivienne Westwood's punk rock looks to Jennie Livingston's documentary, *Paris is Burning*. Up until recently, discussions of the manufacturing of the fashion/gender relationship have been consumed rather than scrutinized. The focus has been on the alchemy of sumptuous materials and artisan sewing in manufacturing luxury.

However, since the 1980s, the luxury market has restructured its manufacturing processes by globalizing. Like sporting goods and automobiles, luxury has outsourced. "Made in Italy" has been outsourced to China. Law has been central to this global restructuring. As shifts in manufacturing, labor, corporate organization, and financing have reoriented the relationship between gender and fashion, bankers and corporate managers have effectuated this shift through transactional law, executive action, legislation, and multilateral agreements.

This article concerns itself with one aspect of this transformation—how this shift in the production of luxury has resulted in the emergence of competing models of gendered labor: century-old European seamstress guilds, on the one hand, and hastily-trained, poorly-paid women from China, the Middle East, and Eastern Europe, on the other. In a world in which sewing skills imbue luxury with quality and justify its expense, as one blue collar worker in a Chinese factory put it: "I teach the girls who come how to glue."<sup>5</sup>

To understand this strategic use of differential gendered labor markets, I introduce the concept: *Gender Arbitrage*. That is, luxury firms treat gendered labor markets similarly to tax jurisdictions. Like international tax planners, luxury attorneys map the various transnational labor jurisdictions. They then make strategic use of these differential gendered regimes. This involves moving production to jurisdictions with low labor cost. It also involves making strategic use contemporaneously of jurisdictions where labor costs are high. For example, within the luxury market, it is important to capitalize not only on low labor costs in China, Romania, and Saudi Arabia, but it is equally important to capitalize on Italian labor jurisdictions simultaneously and in a coordinated fashion in order to maintain the "Made in Italy" label. Globalization produces

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4. NGOs have pressed for celebrities, as chief marketers of fashion, to pay attention to the social and environmental practices of the products that they promote. See, e.g., JEM BENDELL & ANTHONY KLEANTHOUS, *DEEPER LUXURY* (2007), available at <http://www.wwf.org.uk/deeperluxury>.

5. GIANNINI, *supra* note 1, at 11.

differentiation in gendered labor that involves coordination, competition, and erosion.<sup>6</sup>

Governments create, maintain, and undercut these gendered labor markets. Like tax regimes, gendered labor regimes are the product of public law. For this reason, assumptions that gendered labor shifts are produced by corporate strategists overlook the central role played by law in structuring labor markets both in fully-industrialized and developing countries. In Italy, for centuries, women have struggled to shape the public law governing their labor.<sup>7</sup> In the late twentieth century, government officials, allied with executives and bankers, worked with lawyers to restructure public-law-underwritten labor markets. In doing so, certain conceptions of gendered labor have been largely legislated out of existence.

The factories housing luxury laborers sit within enclosed geographically-defined areas which are referred to as “free zones.”<sup>8</sup> Governments legislate these “free zones,” which are strips of land wherein firms set up factories catering to transnational firms.<sup>9</sup> These zones are called “free” by governments to indicate their tax advantages and also the fact that governments do not burden companies with the regulatory strictures existing in the rest of the country.<sup>10</sup> However, the removal of legal constraints involves the passage of a series of proactive laws, such as laws forbidding workers from unionizing.<sup>11</sup> It also involves laws which create an attractive legislative and commercial environment for firms, through such things as infrastructure facilitating laws which create ports, water, sanitation, and power.<sup>12</sup>

These zones are legally hived-off jurisdictions, countries within countries. Free zones are creatures of the state. With the zones, states produce gendered labor; that is, luxury’s global factory system which produces gender arises from public power. Within free zones, a different set of rules apply than those ones that apply in the rest of the country.

Within fully-industrialized countries, these zones are often industrial estates or zones within cities which have a distinct tax, labor, and corporate law regime.<sup>13</sup> In developing countries, free zones are often called export processing zones (EPZs), which are far more ambitious than industrial estates and offer greater state disciplining of laborers.<sup>14</sup> Whereas struggles within European

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6. *But see* LOURDES BENERIA, GENDER, DEVELOPMENT, AND GLOBALIZATION: ECONOMICS AS IF ALL PEOPLE MATTERED 82 (2003) (stressing the need to take care in generalizing the relationship between globalization and gender).

7. *See, e.g.*, THOMAS OKEY, LABOUR LAWS FOR WOMEN IN ITALY 1, 6 (1908), available at <http://pds.lib.harvard.edu/pds/view/2585741?n=3&s=6&imagesize=600&rotation=0>.

8. Michael B. Likosky, *Dual Legal Orders: From Colonialism to High Technology*, 3 GLOBAL JURISTS TOPICS 1, 2 (2003).

9. *Id.* at 21.

10. *Id.* at 18.

11. *Id.* at 29.

12. *Id.* at 17.

13. *Id.* at 16, 18.

14. *Id.* at 17.

industrial zones by seamstresses have resulted in union-like guilds,<sup>15</sup> in the free zones of developing countries, “[t]he ability of female workers to organize and bargain collectively around workplace issues is severely curtailed.”<sup>16</sup>

This article looks at the role of law in constituting gendered luxury labor. It is divided into four parts. First, the article provides an overview of the shift in the manufacturing of luxury which has been driven by globalization. Next, it turns to the role of law in producing this shift through a public law-created world factory system for fashion. In doing so, it underscores how gendered labor markets are constituted by public law, in industrialized and developing countries alike. The article then revisits luxury specifically, looking at how competing models of gendered labor lie at the heart of the shift in the elite fashion market. In doing so, the section looks at not only competition among varying conceptions of gendered labor but also at coordination and transformation. In conclusion, the paper explores how these models of gendered labor relate to shifts in the selling and consumption of gender itself. It does so by scrutinizing connections between shifts in the gendered labor market, on the one hand, and the ascendancy of the designer purse, on the other.

## II. THE GLOBALIZATION OF LUXURY

### A. Shortening Milan’s Fashion Week

Last year, Milan’s winter fashion week was only four days long.<sup>17</sup> The famed editor of *American Vogue*, Anna Wintour, is widely credited with this. In a letter to the major Italian designers, Wintour wrote: “Milan is an important (fashion) centre like Paris and New York.”<sup>18</sup> With a backhanded compliment, she blamed the weak economy for her request to change the duration of fashion week: “. . . [A]nd we Americans come to see as much as possible, but the weak dollar makes our stay very expensive.”<sup>19</sup> One of the main arbiters of world fashion, sitting atop the magazine of record—Conde Nast’s *American Vogue*—Wintour went on: “For that reason, I asked Dolce and Gabbana, Armani, and

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15. CLARE HARU CROWSTON, WOMEN, GENDER AND GUILDS IN EARLY MODERN EUROPE 6 (2006), available at <http://www.iisg.nl/hpw/papers/guilds-crowston.pdf> (“[G]uilds used the social capital derived from their close network to impose controls on training, to regulate the labor market . . . and to set wages”). But see Jean H. Quataert, *The Shaping of Women’s Work in Manufacturing: Guilds, Households, and the State in Central Europe, 1648-1870*, 90 AM. HIST. REV. 1122 (1985) (describing how male-dominated guilds often felt threatened by seamstresses).

16. MARZIA FONTANA ET AL., GLOBAL TRADE EXPANSION AND LIBERALISATION: GENDER ISSUES AND IMPACTS BRIDGE: GENDER AND DEVELOPMENT 38 (1998).

17. GIANNINI, *supra* note 1, at 10.

18. *Milan Fashion Week Organisers Blame Journalists for Delays*, ITALY, Feb. 20, 2008, available at <https://www.italymag.co.uk/italy/lombardy/milan-fashion-week-organisers-blame-journalists-delays>.

19. *Id.*

Versace to help us follow their shows without making us camp out for a week.”<sup>20</sup> She wanted to be free to head off to the Paris shows.

When Anna Wintour flexed her muscles and reduced Milan fashion week, it was more than ego, it was business. Milena Gabanelli, the Italian journalist, explained in a widely watched (within Italy) documentary on Italian fashion and outsourcing:

The Milanese week is one of the most important moments for the fashion industry “made in Italy”, because it is there that the buyers, sellers, and writers are concentrated. A showcase that, it seems, the Americans are trying to grab for themselves. Reducing from 7 days to 4 means cutting back the importance and the related industries. If you have 4 days instead of 7 for buying, you buy less, there is less talk about it, the hotels earn less, and the city goes haywire because in 4 days everyone runs back and forth from a show to a presentation, from one showdown to another. The person who decided all this is the one who controls the image of fashion worldwide, that is, the editor-in-chief of “Vogue America,” to whom our major designers, to avoid displeasing her, said, “Okay.” On the other hand, in Paris they preferred to keep the 7-day week, and they prepared a calendar that keeps everyone there, enabling the minor and beginning designers to be seen, because what counts in fashion is novelty, which should be cultivated and in which a farsighted system of enterprises invests.<sup>21</sup>

Despite the resultant stir and dissent, Wintour thanked the largely compliant Milan designers and, in her thank you letter, indicated her expectation that a new tradition of a shortened Milan fashion week would be inaugurated.<sup>22</sup>

This flexing of power set off a stir in Italy. United States’ influence over fashion, with its focus on advertising over creativity and quality, was decried.<sup>23</sup> Italian designers here fought back conjuring the “Made in Italy” label.<sup>24</sup> It was Italian luxury that was at stake with a shortening of the week. Gabanelli continued:

So, we have seen that during the fashion week, the “made in Italy” industry shows off its product, which is beautiful. What the world envies us [in] is precisely the prestige of our fabrics and the skill of our artisans. If this is not preserved, there is a risk of ruining a unique

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20. *Id.*

21. GIANNINI, *supra* note 1, at 10.

22. *Id.* at 8.

23. *Id.* at 10.

24. *Id.*

heritage. But instead, there are those who prefer investing a great deal in advertising, perhaps overlooking the substance.<sup>25</sup>

*Record* (an Italian *60 Minutes*) aired “Slaves of Luxury,” which took a critical stance on the industry representations of the sanctity and state of “Made in Italy.”<sup>26</sup> Otherwise, however, this defense by Italian designers gained widespread support. In consuming the designers’ storyline, the media itself largely missed a seismic shift in the luxury market. The “Made in Italy” brand had been eroded as much by bankers, governments, executives, and lawyers as it had been by Wintour. Furthermore, Italian luxury enthusiasts might sensibly have looked to the World Trade Organization for blame, with its technocratic Rules of Origin and textile agreements, joining the motley-yet-organized protesters on the streets of Seattle and elsewhere.<sup>27</sup>

### *B. The Outsourcing of Luxury*

Over the last twenty or so years, the manufacturing of luxury has been outsourced. What was once the province of many century-old seamstress guilds with their hard fought union-like rights has become the grind of women in China, Romania,<sup>28</sup> Egypt, and elsewhere.<sup>29</sup> These new workers are at times paid substandard wages with some forced to endure slave labor.<sup>30</sup> The “Made in Italy” label has been largely outsourced from the seamstresses. This outsourcing has been driven by finances, facilitated by law, inconceivable without decades—in fact centuries—of exercises of public power. Here globalization is not privately-driven, instead it is the product of public power. Governments have used law to restructure private gendered labor markets. The next section focuses on these exercises of public power, looking at the legal infrastructure of outsourcing—a network of free zones in both developing and fully-industrialized countries. Here though, we focus on the relation among finance, law, labor restructuring, and gender.

In the 1990s, financial firms and luxury managers began to remake the fashion industry, both production and distribution.<sup>31</sup> Fashion was a booming business before the East Asian currency crisis in the late 1990s. Managers expanded into new markets and niches. The crisis struck, slowing down the market. However, soon after the market recovered, 9/11 happened and drained

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25. *Id.*

26. *Id.*

27. See MICHAEL B. LIKOSKY, *Introduction to TRANSACTIONAL LEGAL PROCESSES: GLOBALISATION AND POWER DISPARITIES* vxiii (Michael Likosky ed., 2002).

28. See GIANNINI, *supra* note 1, at 16.

29. See Alessandra Galloni, Cecelie Rohwedder & Teri Agins, *Foreign Luxuries: Breaking a Taboo, High Fashion Starts Making Goods Overseas; Euro’s Rise, Low-Cost Rivals, Labor Costs Spur Gamble; Not Always “Made in Italy”*; *Egyptians Suit Valentino*, WALL ST. J., Sept. 27, 2005, at A1.

30. See GIANNINI, *supra* note 1, at 16.

31. See generally DANA THOMAS, *DELUXE: HOW LUXURY LOST ITS LUSTER* (2007).

luxury markets in fully-industrialized countries of consumer confidence. Although the global economy recovered with time, as wealth re-concentrated among the elites of fully-industrialized nations, importantly the luxury market gravitated towards new markets, increasingly to China, India, and the Middle East.<sup>32</sup> The recent economic downturn has reinforced this shift. Just like Starbucks, McDonalds, and Warner Brothers, luxury now experiments with how to sell European and American culture to emerging market consumers, while also localizing content. This consumer transformation is also occurring alongside outsourcing. Attempts to segregate production and consumption must be vigilantly maintained by luxury companies, public relations firms, and corporate crisis management divisions within law firms.

To finance this expansion, luxury managers took luxury public. To do so, they engaged the usual cadre of outsourcing professionals—banks, multinational law firms, and accountancies. Companies began to be increasingly publicly-traded rather than privately-held.<sup>33</sup> The decision to go public was tied to a restructuring of the luxury business model itself.<sup>34</sup> This restructuring redefined gendered labor and also, as it is argued in the conclusion of the article, the consumption and participation in gender by “consumers.”

The decision to go public by fashion houses was tied to a shift in the profit cycle expectation. Traditionally, fashion has lived by a long business cycle. Profitability has at times been measured in terms of years, even decades. It is not unusual, for instance, for a designer to have a poorly received collection or series of collections without being dismissed by a fashion house. Success has been measured by a different set of criteria. Such a business model is not unique to fashion; the high technology industry has also bedeviled accountancy firms.

“The market” now demanded a three- to four-month cycle of profitability.<sup>35</sup> In other words, attached to decisions to be a publicly traded company or to be managed by a non-luxury executive was a shift in accountability rules. As in other sectors facing similar restructuring by financial institutions, the aim of investors has been to turn a quick profit from fashion houses.<sup>36</sup>

With the purpose of ensuring this new profitability timeline, financiers made several restructuring demands. For example, luxury firms were required to outsource labor, to engage in gender arbitrage. That is, the undercutting of

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32. *Id.* at 12.

33. *See, e.g.*, Laura Sherman, *When Fashion Goes Public*, FORBES, Nov. 16, 2006, available at <http://www.forbes.com> (search “when fashion goes public”; then follow lead hyperlink) (“In the last two decades, several fashion houses have dipped their toes into the public pool[.]”); Dana Thomas, *When High Fashion Meets Low*, NEWSWEEK, Dec. 20, 2004, at 38 (“Since the late 1980s, however, . . . luxury [has] evolved from privately owned family-run houses to publicly traded global conglomerates . . .”).

34. *See generally* THOMAS, *supra* note 31.

35. *Id.* at 10.

36. *Id.*

the Italian guild seamstress market was a precondition to going public. This “market” demand resulted in a shift of luxury manufacturing away from Italy and towards Eastern Europe, Egypt, and China.<sup>37</sup> The shift towards Eastern Europe had begun a decade earlier, but these processes were accelerated through financial restructuring.<sup>38</sup>

Corporate managers responded to these demands by reinforcing an executive style and agenda that had already begun to pervade certain large luxury firms. Italian seamstresses were dispatched to China to train their replacements in Italian sewing techniques<sup>39</sup>—a strategy familiar to many US union workers in multiple sectors of the economy. This is a micro-implication of the financial shifts—similar to those seen in the 1980s with leverage buyouts which used pension fund money to structurally un-employ workers.

In addition, an Egyptian subcontractor’s technique further demonstrates this executive style. When a potential Egyptian subcontractor sought to convince Valentino to outsource labor away from Italian seamstresses, the Italian luxury company invited a group from the Egyptian firm to the Italian plant.<sup>40</sup> This group was allowed to learn from the Italian seamstresses and recorded extensive videotapes of the manufacturing process.<sup>41</sup> The Egyptian workers then went back to Egypt and modeled their operations on the Italian seamstresses.<sup>42</sup> They so impressed Valentino with their quick-learned know-how that he awarded them a subcontracting agreement.<sup>43</sup> The videos of the Italian seamstresses were then set up throughout the shop floor in Egypt for instructional purposes.<sup>44</sup>

### C. Gender Arbitrage

Along with financial restructuring came the appointment of a new breed of corporate managers. This shift in the management of luxury brands was occurring contemporaneously to the other financial restructurings. Perhaps the most high profile example of this shift in management approaches was the appointment of Bernard Arnault to head up the LVMH Group. LVMH owns over sixty luxury companies in a range of sectors from liquor to fashion to cosmetics to watches and jewelry.<sup>45</sup> It is a vertically integrated company, controlling manufacturing and retail with over two thousand stores.<sup>46</sup> Its clothing designers include Dior, Fendi, Louis Vuitton, Emilio Pucci, Marc

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37. THOMAS, *supra* note 31.

38. *Id.*

39. *Id.* at 202.

40. Galloni et al., *supra* note 29, at 3-4.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. Moët Hennessy & Louis Vuitton, <http://www.lvmh.com> (follow “investor relations” hyperlink) (last visited Nov. 23, 2008).

46. *Id.*

Jacobs, Thomas Pink, Celine, Donna Karan, and Kenzo.<sup>47</sup> Nonetheless, it is emblematic of the shift in management approach within the luxury market; corporate leaders at the helm without prior luxury experience.<sup>48</sup>

In the case of LVMH, Arnault restructured in a two-step process. First, he consolidated operations, vertically integrating them from manufacturing to retail.<sup>49</sup> The creation of a network of boutiques has been pursued in part to bypass department stores and wholesalers. Once production and distribution had been brought together, the second stage was to outsource the production process.<sup>50</sup> Through subcontracting systems, production often moves away from the artisan laborers and towards lightly-trained, poorly-paid women—sometimes women not even paid for their work.

The shifts in the manufacturing process are premised upon *gender arbitrage*. That is, luxury firms and their backers have produced an incentive scheme, encouraging them to shop among different types of gendered labor for specific commercial purposes. The overarching trend is to move away from European guild seamstresses with their organized labor and towards less trained and lower paid laborers from developing countries who also tend to be women, although seemingly overseen by male managers.

At the same time, luxury firms are still experimenting with how much trading away from the seamstress guild market can be carried out without undermining the competitive advantage of firms. For instance, a recurring argument is made that consumers in Asia are unlikely to pay for “Made in China” European luxury goods.<sup>51</sup> Here, production and consumption are all intimately tied, with gender implications. Also, in a segmented, hierarchical luxury market, arguments are also made that the highest end of the market will not tolerate outsourced products.<sup>52</sup> This is the class dimension of the gender/manufacturing/consumption argument. Ralph Toledano, Chief Executive Officer of Chloe, cites to the Father of Advertising—David Ogilvy—who once said: “The consumer’s not a bloody fool; she’s your wife.”<sup>53</sup>

The luxury firms have also adapted to these market-based arguments against outsourcing. Their response has been decidedly legalistic. One response is to move outsourcing off the radar by dictating that subcontractors in China

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47. *Id.* (follow “the group”; then view designers on the dropdown menu).

48. THOMAS, *supra* note 31, at 40.

49. *Id.* at 46.

50. *Id.*

51. See Sophie Hardach, “Made in Asia” Label Helps, Hinders Luxury Goods Makers, REUTERS, June 21, 2008, available at <http://www.reuters.com> (search “made in Asia label”; then follow story’s hyperlink). But *c.f.* Olivia Chung, *China’s Global Luxury Brand Workshop*, ASIA TIMES, Apr. 14, 2007, available at [http://www.atimes.com/atimes/china\\_business/id14cb02.html](http://www.atimes.com/atimes/china_business/id14cb02.html) (discussing how the “negative image” of China-made goods should change, albeit slowly, as quality control efforts improve).

52. THOMAS, *supra* note 31, at 57.

53. *Id.*

sign confidentiality agreements not to disclose their luxury contractors.<sup>54</sup> At times, the complexity of the luxury market itself obscures. Just as with toy outsourcing, with its inputs from Hong Kong, Saudi Arabia, Taiwan, Japan, and Europe,<sup>55</sup> luxury goods are also a multinational product. Dana Thomas explains:

Today, the luxury brand handbag is a study in globalization: hardware, like locks, come from Italy and China (primarily Guangzhou); the zipper comes from Japan; the lining comes from Korea; the embroidery is done in Italy, India, or northern China; the leather is from Korea or Italy; and the bag is assembled partly in China and partly in Italy. The sourcing is sometimes as questionable as the true provenance of the bag: one manufacturer told me that one supplier claims his silk is British when in fact he buys it in China, stores it in the United Kingdom, and then sells it at European prices.<sup>56</sup>

The ability to pursue these outsourcing strategies is dependent upon the massive exercise of public power, pursued in a coordinated manner by governments throughout the world and inter-governmental organizations. Next we turn to the basic public infrastructure of outsourcing, the many-centuries-old free zone system first established by the Romans.

### III. THE TRANSNATIONAL LAW OF LUXURY

With the exception of duty-free airport zones, luxury fashion is sold mainly in commercial districts and shopping malls. However, the manufacturing of luxury generally occurs outside of the customs territory that we typically associate with the nation-state. At the same time, luxury manufacturing occurs within sovereign territory. Fashion is manufactured within a network of free zones. A free zone is a legally hived-off area—fenced in through law—in which a different legal order exists than in the rest of the country. Despite the use of the word “free” to describe a zone, it is not a regulation-free zone. It is simply a territory within the country in which a different set of rules apply than those ones in the rest of the country.<sup>57</sup> Zones exist throughout the world, in fully-industrialized and developing countries. They may be entire islands, cities, neighborhoods, industrial parks, or licensed manufacturing warehouses.

This section briefly traces their history, looking at two forms—the free port and export processing zones. The free zone system is the public law basis

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54. *Id.* at 197.

55. Francis G. Snyder, *Governing Globalisation, in* TRANSNATIONAL LEGAL PROCESSES: GLOBALISATION AND POWER DISPARITIES 65, 72 (Michael Likosky ed., 2002).

56. THOMAS, *supra* note 31, at 202.

57. Likosky, *supra* note 8, at 2-8.

for the restructuring of the luxury industry. Labor within zones is gender segregated, segmented, racialized, and, of course, differentially compensated.

#### A. *The Free Zone*

A free zone, according to its advocates, is a hived-off area within a country which is free from the burdensome government regulations that exist in the rest of the country. It is a zone in which the free market flourishes. Among other things, these zones are creatures of law, often the product of transnational legal processes. Over 120 countries have zone programs.<sup>58</sup> The US has Foreign Trade Zones; even the enterprise zones in urban areas are examples of free zones. Most controversial of these zones is the export processing zone, which refers to a manufacturing-based free zone.<sup>59</sup> Many companies locate parts of their production processes in these zones, most famously clothing and shoe manufacturers.<sup>60</sup> The labor practices of the zones have come under regular scrutiny over a number of decades.<sup>61</sup>

Powerful governments on a bilateral basis and through inter-governmental organizations have systematically promoted free zones, territorially delimited jurisdictions with a regulatory regime distinct from the rest of the country. Among the most well-known of these zones are the Mexican Maquila program<sup>62</sup> and China's Shenzhen Free Trade Zone.<sup>63</sup> The Organization for Economic Cooperation and Development makes the point: "the opportunities offered for foreign enterprises to invest in developing countries are largely dependent on the tariff provisions in force in the investor's country of origin, more specifically when the proposed activity consists of assembly operations with a view to re-export to the country of origin."<sup>64</sup> Zones are the cornerstone of export-led growth which has been lauded as the preferable international model of development by institutions such as the World Bank.<sup>65</sup>

Over the last four centuries, governments have made extensive use of free zones. Free ports, for instance, allowed a ship to stop at several points between origin and destination without paying customs to the local political sovereign.

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58. World Free Zone Convention, <http://www.freezones.org/Default.html> (last visited Sept. 27, 2008).

59. Likosky, *supra* note 8, at 15-23.

60. *Id.* at 19.

61. See, e.g., INT'L LABOUR ORG., U.N. CTR. ON TRANSNAT'L CORP., ECONOMIC AND SOCIAL EFFECTS OF MULTINATIONAL ENTERPRISES IN EXPORT PROCESSING ZONES 58 (1988) [hereinafter INT'L LABOUR ORG]; ASIAN PRODUCTIVITY ORGANIZATION, ECONOMIC AND SOCIAL IMPACTS OF EXPORT PROCESSING ZONES IN ASIA (F.A. Rabbani ed., 1983).

62. See generally Lic. Carlos Angulo Parra, *How to Use Maquiladoras in Mexico Today*, 6 U.S.-MEX. L.J. 111 (1998) (explaining the Maquiladora regime).

63. See The Administration of Shenzhen Free Trade Zones, <http://english.sz.gov.cn/ftz/> (last visited Oct. 26, 2008).

64. ANTOINE BASILE & DIMITRI GERMIDIS, INVESTING IN FREE EXPORT PROCESSING ZONES 18 (1984).

65. See INT'L BANK FOR RECONST. AND DEV., THE WORLD BANK, THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY 14, 22 (1993).

They were used along the ancient trade routes of Tyre and Carthage, throughout the British empire of the eighteenth, nineteenth, and twentieth centuries, within the entire territories of Hong Kong, Singapore, and Penang, the Dutch colonial enterprise, as well as within Europe itself in the cities of Bremen, Copenhagen, Danzig, Hamburg, and Kiel.<sup>66</sup> Carthage controlled over three hundred cities and numerous Mediterranean islands through this device.<sup>67</sup> In relation to Carthage, local communities, at times, sought to limit incursions of foreign powers into their territories by agreeing to this device: “Trade was closely and jealously regulated, the principle measure being that of granting foreign merchants access only to stipulated ports and ruthlessly prohibiting them from all others.”<sup>68</sup> The Romans expanded their empire through free ports in Alexandria and Antioch and also along the “Nile, Red Sea, and Gulf of Oman.”<sup>69</sup> By act of parliament, the British established thirty free ports in the West Indies from 1766 to 1822.<sup>70</sup>

The best known European free port was Genoa,<sup>71</sup> although significant ones existed in Ancona, Civita-Vecchia, Fiume, Marseilles, Messina, Trieste, and Villefranche.<sup>72</sup> Thomas explains how in Genoa:

By an ordinance liberalizing earlier special privileges, a definite free zone—including some port facilities but excluding the residential quarters—was set aside and fenced during the early portion of the seventeenth century. Within the zone were warehouses for storing non-liquidated goods of foreign origin.<sup>73</sup>

In France, the use of free ports came under attack because local communities resented the capitulation to commerce that they represented.<sup>74</sup>

### B. Export Processing Zones

The new generation of free zones, the export processing zone, forms the basis of many global commodity chains. In spite of the use of “free” as a descriptor of these hived-off zones, host governments are in fact devoted to

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66. Likosky, *supra* note 8, at 13. See generally Herbert G. Grubel, *Free Economic Zones: Good or Bad?*, AUSSENWIRTSCHAFT 43, 44 (1984); D.L.U. Jayawardena, *Free Trade Zones*, 17 J. WORLD TRADE L. 427 (1983) (describing “an account...of some of the free trade zones which have been established in developing countries”).

67. Likosky, *supra* note 8, at 14.

68. *Id.*

69. *Id.*

70. *Id.*

71. Xiangming Chen, *The Evolution of Free Economic Zones and the Recent Development of Cross-National Growth Zones*, 19 INT’L J. URBAN & REGIONAL RES. 593, 600 (1995) (“Genoa is generally acknowledged as the world’s first free port . . .”).

72. Likosky, *supra* note 8, at 14.

73. *Id.*

74. *Id.* at 15.

catering to business, collectively creating a “world factory system”<sup>75</sup> for transnational companies. The government does this by building infrastructure, enacting labor legislation and banking laws, granting licenses, and many other law-based means. The zone itself is a transnational legal construct enabled just as much by laws within the US, for instance, as China. US tariff law, securities law reform and also extensive loan and insurance programs have helped create the free zone system.<sup>76</sup> The US government has widely advocated employing these free market stateist technologies through the World Bank,<sup>77</sup> the United Nations Industrial Development Organization, the Organization for Economic Cooperation and Development,<sup>78</sup> and also other institutions. In doing so, they often sold the Irish model, the Shannon Free Trade Zone.<sup>79</sup> The International Labor Organization asserts: “The modern EPZ (export processing zone) should rightly be considered as an Irish invention.”<sup>80</sup> The economy was declining in that region of Ireland, but there was an airport so government set about promoting the zone as an offshore haven for manufacturing companies.<sup>81</sup> Companies could ship in, upgrade, and ship out goods with little hassle. With the airport, distance from a port was not a problem. The United Nations Industrial Development Organization even commissioned Shannon Zone authorities to write a “how-to” book.<sup>82</sup>

One group of zone opponents has highlighted that zones may be surrounded by barbed wire fences likening them to “a new form of foreign settlement adapted to the new...situation.”<sup>83</sup> Regardless of their normative desirability, Jayawardena notes, “[F]or all intents and purposes movement to and from free trade zones and domestic tariff areas (DTAs) constitute movements between two countries”—an area in which zones have an

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75. FOLKER FRÖBEL ET AL., *THE NEW INTERNATIONAL DIVISION OF LABOUR: STRUCTURAL UNEMPLOYMENT IN INDUSTRIALISED COUNTRIES AND INDUSTRIALISATION IN DEVELOPING COUNTRIES* 291 (Pete Burgess trans., Cambridge Univ. Press 1980) (1977). See generally Gary Gereffi, *Capitalism, Development and Global Commodity Chains*, in *CAPITALISM AND DEVELOPMENT* 211, 215 (Leslie Sklair ed., 1994); *COMMODITY CHAINS AND GLOBAL CAPITALISM* (Gary Gereffi & Miguel Korzeniewicz eds., 1994) (discussing global commodity chains in the world economy); Jayawardena, *supra* note 66 (describing the legal issues surrounding free trade zones); MICHAEL B. LIKOSKY, *SILICON EMPIRE: LAW, CULTURE AND COMMERCE* 81-109 (2005); Snyder, *supra* note 55.

76. Likosky, *supra* note 8, at 20.

77. INDUS. DEV. DIVISION, INDUS. & ENERGY DEP'T & TRADE POL'Y DIVISION, *COUNTRY ECON. DEP'T, WORLD BANK, EXPORT PROCESSING ZONES* (1988).

78. BASILE & GERMIDIS, *supra* note 64, at 9-10.

79. Likosky, *supra* note 8, at 18-19.

80. INT'L LABOUR ORG., *supra* note 61, at 1.

81. Likosky, *supra* note 8, at 18.

82. *Id.* at 19.

83. Tsuchiya Takeo, *Introduction* to PACIFIC-ASIA RESOURCES CENTER, *FREE TRADE ZONES & INDUSTRIALIZATION OF ASIA*, SPECIAL ISSUE, AMPO: JAPAN-ASIA Q. REV. 1 (1977) (quoting Yukawa Kohei).

“extraterritorial status, which enables them to enjoy a de facto immunity from domestic civil laws and government controls.”<sup>84</sup>

#### IV. GENDER ARBITRAGE

The manufacturing of luxury occurs within this network of free zones. It happens in both fully industrialized and developing countries. The corporate strategies driving outsourcing would not be possible without the massive displays of public law power that create and maintain the zone system. It is thus public power that underwrites the gendered labor markets that constitute the luxury production process. At the same time, luxury has innovated on the centuries-old free zone system. For example, the usurpation of control over free zones within Italy by Chinese national financiers<sup>85</sup> recreates the zone system and has implications for gendered labor. This section discusses the nexus between luxury, law, and gendered labor. In doing so, it uses the Italian town of Prato as a case study.

In the first section, I introduced the concept of *gender arbitrage* to understand how luxury firms make strategic use of differential gendered labor markets in structuring their transnational manufacturing processes. As discussed in the previous section, free zones are legal environments offering a range of regulatory perks to companies. Zones comprise an array of regulatory orders, from tax to finance to technology-transfer.<sup>86</sup> Gendered labor is another regulatory order. The Italian seamstress guilds have shaped the luxury gendered regulatory order of the zones over centuries. With the transnational restructuring of luxury, firms have made use of gendered regulatory orders within developing countries and fully-industrialized ones. Today, luxury executives participate in *gender arbitrage* whereby they make strategic use of differential gendered orders to advance commercial interests. The zones themselves embody these differential gendered labor orders.

As we shall see in this section, controversies over the maintenance of the “Made in Italy” label are one manifestation of *gender arbitrage*. This section thus looks at three arbitrage scenarios: (1) straightforward gendered labor outsourcing; (2) outsourcing “Made in Italy” maintenance strategies; and (3) the importation of low-waged gender labor conceptions to Italy.

##### A. Straightforward Gendered Labor Outsourcing

Prato, a center of “Made in Italy” luxury,<sup>87</sup> exemplifies the straightforward gendered labor outsourcing scenario. Prato was originally established as a free city in the 13<sup>th</sup> century. In the late twentieth and early twenty-first centuries, luxury manufacturing in Prato occurred within industrial estates, a free zone

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84. Jayawardena, *supra* note 66, at 428.

85. GIANNINI, *supra* note 1, at 17.

86. Likosky, *supra* note 8, at 18.

87. Thomas W. Malone & Robert J. Laubacher, *The Dawn of the E-Lance Economy*, in *CREATING VALUE IN THE NETWORK ECONOMY* 55, 61 (Don Tapscott ed., 1999).

form. Moreover, as luxury firms have outsourced, they have located operations within the overseas free zone network. The network includes zones not only within Italy but also in China, Eastern Europe, and Romania.<sup>88</sup> At the same time, while the Prato zone has traditionally been home to Italian guild seamstresses, luxury has innovated the zone system. As indicated, Chinese nationals have taken control over large parts of Prato. In doing so, they have brought documented and undocumented women laborers from China to work within the Italian zone.<sup>89</sup>

Chinese investment in Tuscany has occurred in part through active promotion by the Italian government.<sup>90</sup> In 2004, the *Invest in Tuscany Network* established an office in Shanghai to encourage Chinese investment in the region.<sup>91</sup> The office highlights the attributes of the region, including various subsidies directed at these overseas investors.<sup>92</sup> It “involves organizing visits and meetings with stakeholders, locating suitable structures and zones, favoring the success of the new installations, offering assistance in procedures and in relations with the institutions and rapidly setting in motion the activities of the region.”<sup>93</sup>

Luxury outsourcing has often followed the traditional outsourcing narrative. It has mainly shifted labor away from Western Europe here and towards China, Eastern Europe, and North Africa.<sup>94</sup> Within this scenario, in doing so, luxury firms have given up the claim to “Made in Italy” status for their products. To counteract the reputation-based damage associated with such a corporate strategy, luxury firms have focused on the role of design creativity and brand, rather than on the artisan quality of the seamstress guilds.<sup>95</sup> For instance, Prada has seriously mooted the possibility of shifting “Made in Italy” to “Made by Prada.” Such a strategy has been pursued by the less-luxury brand Benetton. *Gender arbitrage* lies at the heart of this strategy. Also, while the

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88. GIANNINI, *supra* note 1, at 16.

89. *Id.* at 22-26.

90. Invest in Tuscany, Services for Foreign Investors, <http://www.investintuscany.com/327-services-for-foreign-investors.html> (last visited Oct. 29, 2008).

91. Economic Promotion Agency of Tuscany, Newsletter (Nov-Dec 2004), *available at* [http://www.toscanapro mozione.it/eng/newsletter/newsletter\\_11\\_2004.html](http://www.toscanapro mozione.it/eng/newsletter/newsletter_11_2004.html).

92. *Id.*

93. *Tuscany Has Bought a House in Shanghai: A Meeting Place for the Tuscan and Chinese Productive Worlds*, THE OFFICIAL WEBSITE OF TUSCANY, Sept. 9, 2006, <http://www.intoscana.it/intoscana/home.jsp?language=en> (search “Tuscany has bought”; then follow lead hyperlink).

94. Vanessa Friedman, *A Q&A with Dana Thomas*, FINANCIAL TIMES, Sept. 26, 2007, *available at* <http://www.ft.com/cms/s/0/a1e0d2f2-6b50-11dc-863b-0000779fd2ac.html> (“[H]ow could luxury companies . . . sell billions of dollars worth of goods and still call themselves luxury? . . . [S]hift the focus away from the founder and/or designer and onto the local artisans, whom the tycoons declared were the only ones who possessed the cultural knowledge to produce luxury items properly[.]”).

95. *Id.*

firms had previously infused their product with luxury by the artisans, it is now the designers who do so.

This model has, however, posed problems for luxury firms. First, the luxury firms have traditionally had “Made in Italy” form a central feature of the brand itself. For instance, when Italian firms have faced competition from American designers, they have argued that “Made in Italy” sets the Italian designers apart. It elevates the quality of their product. *A specific conception of gendered labor constitutes the brand itself.* Here, both sumptuous materials and this gendered artisan labor infuses “Made in Italy” with intangible but bankable value. Besides consumers, many French, UK, and US fashion houses have found this argument convincing. They too base manufacturing in places like Prato. This is true for Stella McCartney and Ferragamo.<sup>96</sup>

### *B. Discretionary Power and “Made in Italy”*

Lawyers have solved this problem for luxury houses, outsourcing while still maintaining “Made in Italy” Under this second scenario, the label “Made in Italy” attaches to a product because it meets a legal definition.<sup>97</sup> According to the World Trade Organization (WTO), the nationality of a product, its Rule of Origin, is determined by the place where the product had its last substantial transformation.<sup>98</sup> This term of art depends not only on the WTO definition as elaborated by the organization and international trade lawyers and professors. It also cedes power over its definition to specific countries. So, the Italian government determines, within certain constraints, how it will decide whether a product partially manufactured in China and partly within Italy is “Made in Italy.” This flexibility and national government discretion allow companies to manufacture a product in multiple places while still maintaining the “Made in Italy” label and aura.

Rules of origin are in part what constitutes nationality and, in the area of luxury, the maintenance of gendered labor markets and the gender-content of consumer products. International trade lawyers know a fair amount about how the rules of origin have evolved within the WTO and also about efforts to harmonize national standards. However, little is known about how these rules of origin actually play out in practice at the national and subnational levels. Yet, rules of origin are central to globalization, consumer choice, labor, and representation. For example, under customary commercial practice, one Florence supplier relates, “No, then Dolce & Gabbana do it; for example, if they make it 70% material in China they have to put ‘Made in Italy’, if they do 30% in China, then ‘Made in Italy’; yes, it can be done in Italy. So for example,

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96. Ling Liu, *Ferruccio Ferragamo*, TIME, Nov. 12, 2006, available at <http://www.time.com/time/magazine/article/0,9171,1558284,00.html>.

97. See HIROSHI IMAGAWA ET AL., WTO AGREEMENT ON RULES OF ORIGIN AND PRESENT STATUS OF THE HARMONIZATION WORK: INTENSIVE COURSE ON RULES OF ORIGIN 15-16 (2004), available at <http://www.adb.org/Documents/Events/2004/Intensive-Rules-Origin/ppt-imagawa-1.pdf>.

98. *Id.*

we do the shoulder strap, name tag holder, we do all the lining.”<sup>99</sup> Is this first-hand account of one company’s processes an accurate reflection of general practice, the way in which the rules of origin are given meaning in practice?

### C. The Importation of Gender Labor

Our third scenario by which the restructuring of gendered labor markets has occurred is through an innovation on the free zone system. As explained above, Chinese entrepreneurs have joined Italian firms in Prato. They have taken over factories within this industrial zone, an historic European free city.<sup>100</sup>

Prato, once the center of artisan Italian seamstresses, has had this labor market eroded over the last twenty years.<sup>101</sup> First, jobs were shifted to Eastern Europe and Egypt. Here, as is the case with most outsourcing, Italian seamstresses were paid to undercut their own jobs—dispatched overseas to train women in Italian sewing techniques.<sup>102</sup> This wave of outsourcing began to erode Prato’s artisan labor market. It was made possible in part through Italian corporate law which had created a flexible class of “final firms” which coordinated series of foreign subcontractors while maintaining Prato-based control.<sup>103</sup> The flexibility of Prato’s corporate and financial structure has been equally as renowned as its seamstress guilds.<sup>104</sup>

With the labor market severely undercut and many Italian seamstresses now out of the labor market, a network of entrepreneurs from China purchased vacant local plants.<sup>105</sup> The next step was to move, both legally and illegally, Chinese workers—mainly women—into Prato and put them to work within the plants. The expectations within the plants had changed though. The wages were now generally either below minimum Italian legal standards or else slave labor.<sup>106</sup> When the Chinese entrepreneurs acquired the plants in Prato they did not reemploy the Italian seamstresses. Instead, they hired Chinese immigrants, mainly women and generally with little training.<sup>107</sup> These women were often undocumented.<sup>108</sup> This shift in the labor market solved a problem for Italian

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99. GIANNINI, *supra* note 1, at 32.

100. *See supra* text accompanying notes 90-94.

101. *See* BENNETT HARRISON, *LEAN & MEAN* 95 (1994).

102. *See supra* text accompanying notes 40-44.

103. *See generally* Luciana Lazzeretti et al., *Impannatori and Business Angels: Two Models of Informal Capital Provision*, 28 INT’L J. URB. & REGIONAL RES. 839, 840 (2004) (describing the “co-evolution between *impannatori* [pure entrepreneurs] and subcontractors”); Gabi Dei Ottati, *Economic Changes in the District of Prato in the 1980s: Toward a More Conscious and Organized Industrial District*, 4 EUR. PLAN. STUD. 35 (1996) (detailing the economic history of Prato).

104. PRATO: STORIA DI UNA CITTA [PRATO: STORY OF A CITY] (Elena Fasano Guarini ed., 1986).

105. *See supra* text accompanying notes 90-94.

106. Nadeau, *supra* note 3.

107. *See* GIANNINI, *supra* note 1.

108. *Id.*

firms wanting to lower costs and, at the same time, also to maintain “Made in Italy.”

#### V. TOWARDS A NEW GENDER OF LUXURY

What of the nexus between gendered labor and luxury fashion? First, it is clearly much more difficult to be wealthy. On April 22, 2008, at the Princeton Club in New York, a full day \$1,700 course with one-on-one strategy sessions devotes itself to “Extraordinary Luxury Customer Experiences: Best Practices from the Voice of the High-Net Worth Consumer.”<sup>109</sup>

The restructuring of gendered labor was a package, sold with the so-called democratization of fashion—the ascendancy of the designer purse being a prominent example. As high-net-worth workers search for new ways to ascertain the class of their commodities, Daphne Merkin told us in a *New York Times* piece how “Sometimes a Bag is Not Just a Bag,” arguing that the purse is essential to gender and sex.<sup>110</sup> The knock-off designer bag is itself part of this democratization tied to outsourcing<sup>111</sup>—and despite the refrain from fashion magazines and intellectual property lawyers, it is encouraged actively by the fashion houses. It is a corporate strategy.

What do we do with all of this then? At the first day of Wisconsin Journal of Law, Gender & Society symposium: Working from the World Up, Beth Mertz was asked to draw large-scale prescriptions from her research findings. Beth cautioned against the hubris that can be attached from drawing widely applicable conclusions from limited data sets.<sup>112</sup> International Trade Law often elides unknown facts and exaggerates the universality of World Trade Organization rules. Nonetheless, as Victoria Nourse argued at the symposium, legal theory is an important instrument for guiding inquiry when faced by a reality of partial knowledge and political exigencies.<sup>113</sup>

The architects of the transnational commercial order present the attendant legal edifice as a product of private law. This article sought to highlight that this edifice is in fact a creature of public law. Moreover, critics of the transnational commercial order have often predicated their legal strategies on a presumed private law nature of the transnational commercial order. As a result, the architects have been able to absorb attacks, strategically outflanking carefully mounted strategies.

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109. Extraordinary Luxury Customer Experiences: Best Practices from the Voice of the High Net-Worth Consumer, <http://www.luxuryinstitute.com/exp08agenda.html> (last visited Oct. 30, 2008).

110. Daphne Merkin, *Sometimes a Bag is Not Just a Bag*, N.Y. TIMES, Feb. 26, 2006.

111. Thomas, *supra* note 31, at ch. 6 (discussing designer bags and outsourcing).

112. Elizabeth Mertz, Remarks at the University of Wisconsin Journal of Law, Gender and Society Symposium: Working from the World Up: Equality’s Future (Mar. 14-15, 2008).

113. Victoria Nourse, Remarks at the University of Wisconsin Journal of Law, Gender and Society Symposium: Working from the World Up: Equality’s Future (Mar. 14-15, 2008).

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A central lesson of Feminist Legal Theory has been that we must critically consume the division between public and private law. A legal theory of luxury outsourcing must be premised upon the assumption that private law is a product of public power. This means problematizing the use of private law strategies to fight public power.