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BRINGING IT HOME: BUILDING INTERNATIONAL HUMAN RIGHTS LAW, ADVOCACY AND CULTURE, A CONFERENCE TO MARK THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

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THREE QUESTIONS

David Kennedy†

I will begin by raising three questions or issues for conversation that strike me when I speak with younger people that I am working with who are interested in going into the human rights domain, or are interested in working in the public interest internationally, about what their strategies might be.

The first question is: Is the model of human rights protection that we look back on in the United Nations structure building standards, building bureaucracies, or litigating to enforce compliance? Is that really the right model for thinking about extending the legal protection and legal contribution to issues of economic and social justice? I am not speaking only of the United States, but of abroad as well. It has kind of a *recherché* feeling, and the question is whether what is going on in other areas of international law, particularly international economic law in the domain of GATT¹ and the WTO,² or in the domain of international private law, might provide some different models. When people talk about intellectual property protection or the protection of property rights, or worry about the free mobility of capital across boundaries and the mechanisms that are put in place, the legal strategies that are developed have much less legalistic standards. Bureaucracies and litigation structure are much more negotiation and ADR, much more acknowledgedly political. So the first question is, in thinking of questions surrounding social and economic justice, can we learn something as strategists from the bureaucratic and legal models on display in international economic law? We only need to think about the very difficult debate over extending international labor standards to realize that there is more going on here than the need to codify, in a traditional human rights way, economic and social rights, or a minimum wage, and then implement it through a bureaucratic structure of litigation. Whether one does it through the

† Professor of Law, Harvard University. These remarks were made at *Bringing It Home: Building International Human Rights Law, Advocacy and Culture, A Conference to Mark the 50th Anniversary of the Universal Declaration of Human Rights*, held at the City University of New York School of Law, 1 May-3 May 1998.

¹ General Agreement on Tariffs and Trade, 55 U.N.T.S. 187 (1947).

² World Trade Organization, 3.3 I.L.M. 1140 (1994) [hereinafter WTO]. The agreement establishing the WTO is the Marrakesh Agreement Establishing the World Trade Organization, contained in the agreements concluded at the end of the 1994 Uruguay Round.

ILO,³ or through the WTO,⁴ addressing questions of labor justice internationally as well as at home is going to take the next few years. In my view, it won't be a human rights model, but some other model that we are interested in, that addresses these issues.

The second question relates to the problem of this very troubling word "culture." Here, the question is: Is there a way in which our community, as human rights activists and progressive internationalists, gets very hung up in some areas on the word "culture" and the issues of culture? I have a doctoral student who is working on the history of the phrase "cultural relativism" in international law. One of the things that she found out in a six-month literature search is that there really are not any cultural relativists. There are thousands and thousands of articles denouncing cultural relativism. It does not take Freud to wonder why we are doing that. What does it say about our community that we spend so much time having anxiety about this problem of culture? Can we in some way draw a map, geographically and substantively, about what triggers that anxiety? Why is it that issues relating to women seem to be particularly freighted with anxiety about cultural influence? If we talk about extending democracy or extending markets, we might easily understand that there might be political choices involved in the model that will be implemented in the structure, such as which kind of market one might have, whether there will be resistance, and whether there will be groups on the ground in various places that will struggle back and forth, just as they struggle back in forth in this country over the definition of the market. But when it comes to issues relating to anything called "culture," we all get the heebie-jeebies. I guess the question here is whether our phobia in thinking about the enforcement of human rights in the American context is in some way the flip side of our anxiety about cultural issues abroad. We need to think of this not as a problem we encounter in doing the work, but as a problem we encounter in ourselves.

The third question is: What is the relationship between a particular strand of international human rights work within the large variety of things that occur in society? There is a particular strand very closely associated with neo-liberal economic expansion. So there is a way in which the human rights community, all of us really, have benefited in a kind of free ride on the post-Cold War expansion of neo-liberal markets abroad. The whole injection of

³ International Labor Organization 15 U.N.T.S. 35 (1946).

⁴ See WTO, *supra* note 2.

rule of law, building good governance abroad, and the emerging right of democratic self governance—all of that has breathed new life into the human rights community. But this has occurred in a puzzling partnership with the expansion of a particular model of markets; the particular model of markets that would not be something that any of us advocating international human rights would be very comfortable with at home. There is a silver lining in the free riding, which may just be that the strategic alliance internationally between the human rights community and the neo-liberal market expansion types may be responsible for the pressure on the United States to comply with human rights norms. Several of the previous speakers have spoken of this immense pressure. Maybe that is a kind of an extra freebie. It is precisely because the establishment in a variety of places sees a link between the expansion of a particular model of markets and a particular set of ideas about democracy, that the level playing field makes arguments very telling about things like the recent, tragic Paraguayan case. That is a silver lining, but it is also a dark side. The dark side is as we come to expand our vigilance about international human rights in the United States, are we in some way contributing to an alliance abroad that might have economic consequences we might find quite dubious? These are my three questions. I look forward to a very exciting couple of days.