PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY

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William S. Hein & Co., Inc.
Buffalo, New York
2007
There may be no better place to begin highlighting the human rights implications of globalization and market ideology than within the legal academy itself. My essay begins, therefore, by touching on a few of the many promising projects to which lawyers, legal academics, and law students are contributing. I begin by featuring the work of those within my own particularly engaged community at Northeastern as an illustration of the parallel projects of other progressives around the country.

I mean this to be both a “progressive narrative,” describing a series of efforts to use law in the cause of social justice, and a “progress” narrative on how far human rights strategies have come in attempting to meet the challenges of globalization. Nevertheless, I will also leave you with a few recent “headlines” that illustrate unresolved challenges facing international human rights law and those lawyers who hope to use human rights lawyering strategies.

Human Rights: A Social Justice Mission?
(A Progress Narrative)

Members of Northeastern’s legal community—faculty, students and alumni—have used explicitly human-rights-based approaches as part of the community’s public service and social justice mission for years.¹

¹ © Hope Lewis; 2007. All rights reserved. Used by permission. Professor of Law and co-founder of the Program on Human Rights and the Global Economy at Northeastern University School of Law. She appreciates the helpful comments of Professors Ibrahim Gassama and James Hackney and the research assistance of Ellen B. Sullivan and Constance Utada. This essay is based on a talk delivered on November 7, 2003, for the opening plenary at the Northeastern University School of Law Conference, “Rethinking Ideology and Strategy: Progressive Lawyering, Globalization, and Markets,” Boston, MA, November 6–8, 2003.
They lobbied for the rights of women at the World Conference in Beijing² and at negotiations on the UN Anti-Trafficking Protocol³ in New York. They demanded racial justice at the World Conference Against Racism in South Africa.⁴ They drafted language on the rights of persons with disabilities for the UN,⁵ provided legal representation for the poor in India and Pakistan, and won important precedents on the rights of asylum seekers at the Inter-American Commission on Human Rights.⁶

They have participated in South Africa’s post-apartheid transition, explored the pros and cons of micro-enterprise for poor women, and submitted statements to UN investigators exposing human rights violations in the aftermath of Katrina.⁷ They helped draft the gender-asylum guidelines adopted for U.S. immigration officers,⁸ and

faculty work with other social justice activists who hope to make the world a more humane and compassionate place. Graduates of Northeastern generally enter public interest careers at a rate that is five times the national average. See <http://www.slaw.neu.edu/coop/default.htm>.

⁶ See, e.g., In Re R-A-, 22 I. & N. Dec 906 (2001) (Attorney General Reno, vacating Board of Immigration Appeals holding that Guatemalan women who have been involved intimately with Guatemalan male companions who believe that women are to live under male domination do not constitute a persecuted group within the meaning of the statute).
HOPE LEWIS 47

documented the aftermath of ethnic cleansing in Bosnia.9 They consult in international fora on the status of workers and the poor and on international public health initiatives.10 They advocate for more urgent attention to a global AIDS crisis that has now killed more than 18 million in Africa alone.11 In doing this work at home and abroad, they are demonstrating the broad-based and important impact human rights lawyering and activism can have in changing the lives of real people for the better.

This human-rights-based work, therefore, is not new. What is new is the influence of human rights thinking in arenas that have been traditionally understood as “domestic.” In tandem with the explicitly human-rights-based work of their colleagues, members of Northeastern’s legal community, along with so many other progressive lawyers and activists around the country, are leaders in the use of traditional domestic strategies to protect the constitutional civil rights and civil liberties of people of color; poor and working-class people; women; gay, lesbian, bisexual and transgendered people, and people with disabilities.12 Many such legal advocates are now rethinking domestic strategies and reaching out to an international human rights framework to energize or transform domestic litigation, legislative agendas, or administrative policy.

What has become clear is that globalization, privatization, market-based approaches to problem solving, and other neo-liberal strategies are affecting the nature and scope of social justice work at home and abroad in important and unpredictable ways, demanding and eliciting innovative

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responses from engaged progressives. Members of our community have responded to this challenge in myriad ways. They contribute to scholarship on self-determination and an entire range of civil, political, economic, social and cultural rights.\textsuperscript{13} They work internationally with legal services, clinics, peoples' tribunals and Truth Commissions; monitor elections; advise on the drafting of NGO reports, new constitutions and international conventions, and file briefs in U.S. courts on behalf of torture victims, workers abused by multinational corporations and prisoners sentenced to death.\textsuperscript{14} They explore the domestic human rights implications of international trade policies\textsuperscript{15} and they ask whether international human rights strategies can be "imported" back into the U.S. context.\textsuperscript{16}

Most recently, Northeastern launched a Program on Human Rights & the Global Economy that will strengthen legal education, scholarship, and advocacy on human rights and globalization. The program has organized a symposium on the 50\textsuperscript{th} anniversary of the South African Freedom Charter, sponsored an electronic working papers journal on *Human Rights & the Global Economy*, and published the proceedings of an expert consultation on the realization of economic, social and cultural rights as well as a report on "Civil Gideon" rights.\textsuperscript{17}

This progress and progressive narrative illustrates a movement among legal advocates around the country toward more broad-based and inclusive social-justice ideologies and strategies. By reaching toward these international, universal and fundamental standards and mechanisms we hope to reinvigorate old social justice agendas—we want to "inter-


nationalize our problems,” to paraphrase Malcolm X. At the same time, we want to meet new challenges posed by global legal problems.

Three Cautionary Tales

Having duly celebrated these developments, I want now to share three cautionary tales taken from media reports. Each tale, I believe, offers lessons for progressives working in this new environment. As we move forward to “globalize” our social justice mission, what are the pitfalls we must seek to avoid? Where may our ideologies lead us astray? What are the potential limits of the strategies we so enthusiastically deploy?

**Muslim Nigerian Woman Sentenced to Death by Stoning**

This first tale illustrates the globalization of cultural, religious and gender norms and raises questions about progressive cross-cultural human-rights strategies.

In 2002, Amina Lawal, a Muslim woman from a village in Katsina State in Northern Nigeria, who was unmarried and poor, was sentenced to death by stoning for adultery by a Shari’a court under that court’s interpretation of Islamic law. Stories about the sentencing, accompanied by photographs of Lawal and her new baby, received widespread media attention and were the focus of international letter writing campaigns by international feminist and human rights NGOs. Nonetheless, President Olesegun Obasanjo refused to invoke international human

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The introduction of Shari’a criminal law in several northern Nigerian states was said by its supporters to be motivated by a desire to return to tradition and the rule of law in response to rampant crime and corruption under the military regimes that preceded the ascendance of President Obasanjo. Nonetheless, more critical observers have noted that the most severe restrictions and punishments seem to be reserved for the poor, and that narrow interpretations of Shari’a law that created or reinforced gender hierarchies were imposed rather than those interpretations more consistent with universal human rights norms. They argue that culture and religion is being used to perpetuate economic and gender inequities.

20 Although its Amina Lawal campaign is over, Amnesty International continued to campaign on behalf of others sentenced to death by stoning. See Nigeria: Amina Lawal is free—at last! AMNESTY INTERNATIONAL at <http://web.amnesty.org/wire/November2003/Nigeria>.
rights norms or federal constitutional protections to challenge the sentence, preferring instead to allow Lawal to exhaust local appeals.

In this atmosphere, Lawal’s lawyer, Hauwa Ibrahim, and other local advisers chose to pursue her case through the Islamic appeals courts, arguing that Islamic law had been misconstrued rather than rejecting its legitimacy entirely or seeking a presidential pardon immediately. Lawal’s sentence was successfully overturned by an Islamic regional appeals court in late September of 2003 on the basis that her procedural rights under Islamic law had not been properly protected at the trial level. News reports indicated that Lawal expressed relief, but also that she maintained a strong adherence to her religious beliefs throughout the appeals process.

In the weeks prior to the appeals court ruling, BAOBAB for Women’s Human Rights, a local but internationally recognized NGO, called for a moratorium on the international letter writing campaigns. The organization expressed the concern that some campaigns had spread sensationalist rumors and inaccurate information about the case or had engaged in racist or anti-Islamic stereotyping. BAOBAB also expressed the fear that vigilantes and conservative religious leaders would distort all efforts to save Lawal as Western cultural imperialism—thus sparking more violence.

BAOBAB’s open letter to the international feminist and human rights community urged a more sophisticated approach to transnational solidarity:

We are asking for international solidarity strategies that respect the analyses and agency of those activists most closely involved and in touch with the issues on the ground and the wishes of the men and women directly suffering human rights violations. ... There is an unbecoming arrogance in assuming that international human rights organizations or others always know better than those directly involved, and therefore can take actions that fly in the face of their express wishes. Of course, there is always the possibility that those directly involved are wrong, but surely the course of action is to persuade them of the correctness of one’s analysis and strategies, rather than ignore their wishes. ... Please do liaise with those whose rights have been violated and/or local groups directly involved to discuss strategies of solidarity and support before launching campaigns.

BAOBAB recommended a variety of international interventions that could support local efforts. Those suggestions included providing financial support to those affected by violations and to reputable local

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See BAOBAB for Women’s Rights, at <http://www.baobabwomen.org/contact.html>.

Id.
groups; providing legal and religious interpretive advice; working to support and promote recognition and respect for human rights on the local and national levels; supporting and promoting offers of asylum, and other efforts to exchange information and discuss strategies.  

In my view, the execution of women (or men) by stoning is an international human rights problem, and when the victims are women it is one that should be of grave concern to the international feminist human rights movement as a manifestation of gender violence. And indeed, Hauwa Ibrahim, among other local actors, asked that an international spotlight be kept on the issue. Nevertheless, the story is a cautionary tale in that, even in instances of clear violations of human rights, we westerners may not always be able to come up with the “correct” strategies or to foresee the potential consequences of our actions without working in dialogue and partnership with local actors.

Hundreds of Nigerian Women Take Over Chevron Oil Terminal

In a less “exotic” example from Nigeria, hundreds of women occupied the Escravos Chevron oil terminal (Escravos means “slaves” in Portuguese) in July of 2002 to protest the lack of jobs and other services in the surrounding impoverished communities. In the words of one news reporter, African countries with substantial oil reserves have become the “new best friends” of the United States as it searches for alternatives to unstable Middle Eastern oil supplies. The Niger Delta is already the fifth largest source of oil for the United States.

The women planned the takeover carefully, sought the approval of local traditional religious leaders, and effectively brought oil production at the terminal to a halt. They were unarmed, but used the cultural threat of disrobing publicly, a sign of ultimate disrespect, to intimidate the company’s management and security officers. Within 10 days, a deal was reached in which the company promised to provide more jobs for local people, link surrounding villages to sources of clean water and electricity, and build schools and other community resources.

The women also could have made use of regional or international human rights mechanisms to pursue their cause. The African Com-

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24 Id.
25 See Ibrahim, supra n. 21.
26 See Michael Peel, Women’s sit-in disrupts Nigerian oil depot, LONDON TIMES, July 11, 2002, at 12.
mission on Human and Peoples' Rights, for example, has issued a groundbreaking opinion interpreting environmental, economic and social rights in Nigeria. Instead, these women targeted the most direct source of their oppression, the multinational corporation itself, and did not stop to address thorny legal questions about the responsibility of non-state actors for violations of international human rights law. They appealed to traditional cultural and religious norms in support of their quite postmodern action. They may have relied on some aspects of "rights-talk," but their strategy also avoided the overly formal and often inaccessible traditional human rights mechanisms.

Similarly, when indigenous groups and other Bolivians went into the streets to resist water privatization or the Chilean gas pipeline, ultimately resulting in the resignation of the president, was that part of a "human rights" movement, or something else? These stories raise the question whether or to what extent progressive human rights lawyering strategies are in fact relevant to grassroots resistance to globalization and the negative consequences of "free" markets. Are more creative strategies available, and more likely to emerge, at the local level? Does channeling thinking about resistance into traditional "human rights" conduits do more to constrain than to expand possibilities for activism? Or will new forms of populist activism instead be seen as the basis of a more legitimate, reconceived human rights movement?

African Migrants Found Dead off Coast of Italy and Spain

Newspapers periodically report that the bodies of African boat people are found, often along with dehydrated and starving survivors, in drifting, rickety boats off the coast of Italy and the Spanish Canary Islands. Survivors report that other bodies of men, women, and children are thrown overboard in the days after water and food run out. These people are just the latest in what a friend calls a "silent, deadly, migration" of thousands across the deserts of North Africa in the hope of reaching


Europe and finding economic security for themselves and their families. Media reports estimate that 6,000 people died in this way in 2006 alone. These tragic incidents, of course, mirror the deadly desert treks of Mexicans across the U.S. border and the flow of Haitian and Cuban refugees in boats attempting the dangerous crossing to South Florida

Neither the promises of globalization nor the promises of human rights have been fulfilled for such migrants. Globalization and "free trade" ideology promised them jobs at living wages, fair trade for their agricultural and manufactured goods, the sharing of technological and medical advances, and even democratic governance and peace. Instead, many are left facing the cost of privatized water and other services, lack of access to health care and drug treatments, barriers to the importation of their agricultural goods to European and American markets, the proliferation of the illegal drug trade and the violence that accompanies it, and violent ethnic conflicts that are exacerbated by competition over limited resources. It has become a cliché to note that globalization promises the free movement of capital and investment without similarly free movement for people—people whose movement is therefore forced underground, and who are therefore subject to exploitation or oppression by traffickers, by transnationals like Wal-mart, or by governments.

33 According to the U.S. Coast Guard, in fiscal year 2004 it interdicted 3,229 Haitians and 1,225 Cubans attempting to reach the U.S. by sea, often in rickety, self-made boats. U.S. Coast Guard Office of Law Enforcement, U.S. Coast Guard Migrants Interdictions, available at: <http://www.uscg.mil/hq/g-o/g-opl/AMIO/FlowStats/currentstats.html>. In fiscal year 2005 the Coast Guard interdicted 1,850 Haitians and 2,712 Cubans at sea. Id.
35 The U.S. Department of State estimates that 600,000 to 800,000 men, women, and children are trafficked across international borders each year. Most recently, the data was disaggregated by age and gender, reflecting that 80 percent of those trafficked are women and girls and approximately 50 percent are minors.
Harsh treatment is not, of course, reserved for immigrants, refugees, and asylum-seekers. A new class of what immigration lawyer John Wilshire-Carrera has called the “American disappeared” was created post-9/11—the Arab-American, South Asian American men and American men of other ethnicities who were detained in U.S. prisons or subjected to “extraordinary rendition” to an unknown fate. The legal wrangling over the status of Guantanamo Bay detainees, although engendering an historic Supreme Court decision in *Hamdan v. Rumsfeld*, also saw the legislative abridgement of the right to *habeas corpus*.

Many of us now work on elevating economic, social, and cultural rights from their second-class status, and believe them to be as fundamental as civil and political rights. But progressive lawyers must also backtrack to address the wholesale attacks on basic civil rights and civil liberties in the name of national security in the United States and elsewhere. At a time when even the traditional constitutional civil and political protections of U.S. citizens are being threatened, how can progressive lawyers respond, and how can that response include within its scope concern for those peoples migrating across borders in response to hardship or violence at home?

**Conclusion: What Next for Progressive Human Rights Lawyering?**

These three cautionary tales illustrate the complex, multidimensional nature of the human rights problems facing us under globalization and the increasing influence of neo-liberal market forces. They involve economic, political, and cultural dimensions that may not be solvable by human rights law alone. They remind us not to wield human rights as a blunt instrument in contexts in which that instrument may destroy more than it protects. They remind us to remain humble about the potential reach and application of human rights strategies, and never to see them as more than one among several catalysts for social and political change. They remind us not to impose Western solutions on problems that we may see as global in scope, but always manifest locally and require sensitivity to context. And they remind us to guard our flank: not to

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See U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT (2005) available at [http://www.state.gov/g/tip/rls/tiprpt/2005/46903.htm](http://www.state.gov/g/tip/rls/tiprpt/2005/46903.htm). Wal-Mart Stores reached a settlement for $11 million with the U.S. Justice Department following the arrest of 350 illegal immigrants from 21 states who worked in its stores as janitors. Steven Greenhouse, AMONG JANITORS, LABOR VIOLATIONS GO WITH THE JOB, N.Y. TIMES, July 13, 2005, at A1. Wal-Mart is not alone; a number of U.S.-based companies have been accused of similar immigration-related labor violations.

abandon our attention to civil and political rights as we move forward to confront the challenge of promoting social and economic rights. Despite all the reasons for caution, it is too early in the day for progressive lawyers to give up on human rights. Rather, we must embrace the increasing complexity of human rights problems and adopt all the creative, flexible strategies that can be gleaned from the fields of law, economics, and politics. The ongoing work represented by the contributions to this volume gives us some reason for optimism.