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## Equality, Social and Economic Justice, and Challenges for Public Interest Lawyering

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## EQUALITY, SOCIAL AND ECONOMIC JUSTICE, AND CHALLENGES FOR PUBLIC INTEREST LAWYERING\*

*Sharon K. Hom\*\**

Thank you so much. I'm honored to be part of this symposium. At the risk of sounding somewhat incoherent, because Shannon Mintner, Kendall Thomas, and Jenny Rivera<sup>1</sup> said such provocative things, I'd like to pick up on some of that and interweave it with my remarks this morning. It might sound like there are multiple voices going on because I am engaging with these other voices.

When I came into the building this morning I forgot—I don't know how and am ashamed to admit it—but I forgot how deeply I love this community. This is one of the few law schools, perhaps the only one in the country, where you can walk in and have people like Mr. Katz on the security desk, Margie at the Childcare Center's breakfast table, and colleagues and students and staff expressing such joy in welcoming someone back because it really is a community. I was very blessed to be part of it for eighteen years. I had fabulous students who taught me a great deal. I had fabulous colleagues who pushed me—didn't push me out, but pushed me to grow. It was just so wonderful, as Penny Andrews<sup>2</sup> said, to be with so many people you respect and admire as teachers, scholars, activists, lawyers, and as friends. I'm supposedly now "retired," but am really back in the trenches, so thank you for including me in today's program.

I didn't want Kendall Thomas to feel bad being up there at that "other" law school, Columbia, while we were all saying how fabulous we were. Columbia is okay, and it's because they have wonderful people like Kendall on the faculty. CUNY was always tied to a much broader social justice, progressive community and

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\* This is an edited expanded version of remarks delivered at the Symposium to Honor the Work of Professor Ruthann Robson on November 6, 2004.

\*\* Sharon K. Hom is the Executive Director of Human Rights in China and Professor of Law Emerita at CUNY School of Law. These remarks are personal views and are not intended to represent any organizational views or positions.

<sup>1</sup> Shannon Mintner is a Senior Staff Attorney at the National Center for Lesbian Rights; Kendall Thomas is Professor of Law at Columbia University Law School; and Jenny Rivera is Professor of Law at CUNY School of Law.

<sup>2</sup> Penny Andrews is Professor of Law at CUNY School of Law.

many of our friends are also here today and it's just so wonderful that we have come together to honor a very special member of this community.

#### HONORING RUTHANN

Ruthann. People have already said this a lot. I just want to say it because it's true for me intellectually, personally, and professionally, what an incredibly gifted colleague you are and what a generous mentor. There are people who are brilliant and gifted, but who are just showing off. Okay, Ruthann does *that* sometimes, but not a lot. Then there are people who are gifted and take their gifts and use them in ways to empower *other* people. I've seen that and you can see it in this room. You can hear it from the students who have spoken. It is an empowering gift and a model of how one should use his or her gifts. I used to joke when I was here that when I grow up I want to be Ruthann. I guess at fifty-three I am unfortunately "grown-up" or supposed to be, yet I think that what I have become is what Ruthann really would have wanted. I am becoming who I was meant to be and am doing the work I was meant to do and doing it in the best way that I can. So Ruthann, thank you again.

There is one thing that people have not said about Ruthann that I would like to add before I do what I was supposed to, which is to open up the aperture and talk from an international perspective. Ruthann would say things sometimes that would provoke people, and not nicely either, and that is really important. There is positive provocation, like all of you provoking me this morning. Then there is provocation, which provokes a "*what did she say?*" reaction. I think it's very important not to be afraid to say what needs to be said and to say it in the ways that only you can say it. Ruthann often said it, even when she knew there would not be a good response, and she said it in powerful, cogent, and clear ways. That is something really important to honor in her and in each of us in our capacity to do that.

#### DOING SOCIAL JUSTICE IN CHALLENGING TIMES

On a daily basis, my staff at Human Rights in China (HRIC)<sup>3</sup> and I address the complex challenges of the human rights abuses

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<sup>3</sup> Formed in March of 1989 by Chinese students and scientists to support the democratic movement in China, the mission of HRIC is to promote universally recognized human rights and advance the institutional protection of these rights in China. With offices in New York and Hong Kong, HRIC carries out its strategic mission by linking

of one the most authoritarian governments in the world. Because of the result of the recent presidential election, I suspect this week has been profoundly depressing and difficult for many of us.<sup>4</sup> As a Hong Kong-born Chinese, I actually considered moving back to Hong Kong rather than staying in the United States. Then I came to my senses. We have to do the work we need to do wherever we are. Penny is right: we are now in multiple places at one time.

While [during the 2004 presidential election] we were looking at Ohio and closer to home, the whole world was looking at us, and I must say they were looking with great fear, incomprehension, and anger. It's hard to imagine the anger that is now directed at us by the rest of the world. The cover page of the *Guardian* newspaper—some of you may have seen it—is a solid black and reads in little white characters “Oh my God.”<sup>5</sup> Actually, God had nothing to do with it and neither did Ohio. We need to be working now to ensure that this does not happen again. Thatcher and her policies had seventeen years in which to destroy an important trade union movement through violent use of police state power. There is a lesson: we cannot wait seventeen years to fully appreciate what is happening because we can't afford it and the world can't afford it.

I do not have time to fully describe the work that we do at Human Rights in China, but it includes domestic and international advocacy on behalf of political prisoners and other human rights defenders. Our thematic research is led by our Hong Kong office, which fuels HRIC's overall advocacy and strategic linking of technology, human rights, trade, and corporate social accountability issues. We have two issues of our quarterly English-language journal *China Rights Forum*<sup>6</sup> out front and I hope you take them. It will introduce you to our office and research work. I also invite you to go to our web site, and for those of you who are Chinese speaking, please also visit our Chinese website, which I should note is undergoing a radical redesign and will be re-launched in spring 2005.<sup>7</sup>

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individual advocacy with systemic and policy interventions, and is active in multilateral and bilateral processes. *See generally* <http://www.hrichina.org>.

<sup>4</sup> *See, e.g.*, Alexandra Abboud, *Bush Wins 2004 U.S. Presidential Election: Incumbent Carries Electoral College, Majority of Population Vote*, USINFO, Nov. 3, 2004, <http://usinfo.state.gov/dhr/Archive/2004/Nov/03-311949.html>.

<sup>5</sup> *The Guardian*, G-2 Supplement Frontpage, Nov. 4, 2004.

<sup>6</sup> *See* HUMAN RIGHTS IN CHINA, CHINA RIGHTS FORUM, <http://www.hrichina.org/public/contents/category?cid=1043> (last visited Mar. 3, 2005).

<sup>7</sup> *See* CHINA RIGHTS FORUM WEBPAGE, <http://gb.hrichina.org/gate/gb/big5.hrichina.org/big5/> (simplified Chinese) (last visited Mar. 3, 2005) or <http://big5.hrichina.org/big5/> (traditional Chinese) (last visited Mar. 3, 2005).

## OPENING THE APERTURE TO INTERNATIONAL PERSPECTIVES

Let me offer two quick points from an international perspective: First, to fight inequality, we need to be wary of, and transcend, equality discourse trapped within a U.S.-centric framework. This means to not ignore race, sex, class, and sexuality as culturally located or the importance of discursive struggles. I think each of the speakers have underscored attention to the importance of discursive debates and (mis)uses of rhetoric. The notion of justice as blind informs a conservative invocation of sex-blind, race-blind, and class-blind, though class tends to just be erased or marginalized. But for justice to be possible, it needs to *not* be blind. Justice as a normative vision, as a process, needs to see clearly. It has to see what is central: the pervasive realities of suffering and inequalities and the structural pre-conditions that are necessary for peace, without which there can be no justice. These structural conditions implicate economic, social, and cultural rights.

The U.S. is sadly still out of step with the rest of the world. With its enormous military power, it can and is doing incredible damage. Recently, I was speaking on international human rights at the New York University 50th Anniversary of the Root-Tilden Program. My talk referenced the right to a living wage, to clean water, to an education, a right to health care, to culture, and to your own language. One objection raised quite strongly by a Root-Tilden alum from the 1950s was “*but are those really human rights?*” He went on to argue that these are not rights at all. Actually, this view coincides with the view of the current U.S. administration, as well as the administrations of the U.S. government in the 1970s, particularly the State Department.<sup>8</sup> This view claims that “real adults” take care of themselves, house themselves, and so on. I found out later that my interlocutor was actually in the State Department in the 1970s. However, the rest of the international community has normatively signed onto, though abysmally implemented these rights, a vision of human rights as interrelated, indivisible.

The danger of this kind of hostility to structural rights—discursively, rhetorically, politically, economically—is not just rhetorical. Abu Ghraib,<sup>9</sup> Guantanamo Bay,<sup>10</sup> the eleven states that have

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<sup>8</sup> See Elizabeth M. Schneider, *Transnational Law as a Domestic Resource: Thoughts on the Case of Women's Rights*, 38 NEW ENG. L. REV. 689, 706 (2004) (discussing the historical resistance the United States has adopted to international human rights standards and scrutiny and the bifurcated role of civil and human rights in the United States).

<sup>9</sup> Amnesty International, *USA: Pattern of Brutality and Cruelty - War Crimes at Abu Ghraib*, May 7, 2004, <http://news.amnesty.org/index/ENGAMR510772004>.

<sup>10</sup> Stephen R. Shapiro, *The Role of the Courts in the War Against Terrorism: A Prelimi-*

just passed initiatives on family and marriage,<sup>11</sup> and the ongoing death penalty debates are domestic human rights challenges that implicate international human rights law and debates. Moving beyond a U.S.-centric framework to include the international perspective will both make the challenges more complex and, at the same time, provide resources for the development of more effective arguments and strategies.<sup>12</sup> Moving beyond a domestic framework also underscores the tragic situation in the U.S. today. The world is citing the U.S. as the new lowest common denominator so when HRIC tries to report on torture in China for example, think Guantanamo Bay. Whatever issue you are working on, once you leave the border, you will be hit in the face with the fact that this country has lost its moral legitimacy in the world.

Second: We need to integrate human rights work more effectively across multilateral processes and institutions that impact social economic justice. This means that, in addition to UN bodies and processes, we need to understand and develop critical and strategic approaches to the WTO, the Global Compact, multilateral financial institutions, such as the World Bank, regional banks, and bilateral government processes. Part of the cross-sector and cutting edge work we are developing at HRIC is attempting to explore these approaches on advocacy, norm-setting, and lobbying levels, and it is not easy in the face of the dominant narrative circulating about China. That is, China is growing at breathtaking, double-digit rates, and the focus is on China's people as 1.3 billion potential consumers. So there is this rush to China of transnationals, of foreign investment.

#### TRAINING PUBLIC INTEREST LAWYERS

I am out of time, so let me end with three quick points about training public interest lawyers that flow from what I have been saying. Effective public interest lawyers for the 21st century, especially those committed to social change work, must be grounded in multidisciplinary approaches, possess an international understanding of the issues, and be able to use and develop new policy tools.

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*nary Assessment*, 29 FLETCHER F. WORLD AFF. 103 (2005) (evaluating landmark decisions in the emerging human rights jurisprudence surrounding the indefinite detention of "enemy combatants" in Guantanamo Bay).

<sup>11</sup> Charisse Jones, *Issues: Eleven States Nix Gay Marriage; Calif. OKs Stem Cell Work*, USA TODAY, Nov. 11, 2004, at 18A.

<sup>12</sup> For a discussion of the interaction between international and domestic discourses and practices, see Sharon K. Hom and Eric Yamamoto, *Collective Memory, History, and Social Justice*, 47 UCLA L. REV. 1747 (2000).

Of course much of legal education curriculum today is already multidisciplinary (e.g. legal history, law and literature, law and economics, law and sociology, anthropology, linguistics, and so on). These multidisciplinary interventions are important as resources for developing powerful, discursive analyses and tools. Kendall Thomas has also suggested that we have a new unilateral order. I want to suggest that this unilateralism may not be so new. The racism and arrogance reflected in recent U.S. military actions is exactly what allowed the U.S. to justify taking over the Philippines in the 19th century. The U.S. sought to seize the rich resources of the Philippines, and needed to eliminate its inhabitants as an obstacle.<sup>13</sup> This 19th century naked imperialism might sound shocking, except that it is true. So we *need* a critical multi-disciplinarity, which is necessary to avoid a kind of ahistoricity about past wars of aggression and imperialism.

There also needs to be attention to training in international public and private law areas, no matter what area of practice one intends to work in. This is related to the reality of the global dimensions of many public interest areas, immigration and asylum, environment, civil rights, labor rights and organizing, and the broad range of economic justice work, including the building of sustainable and equitable communities. Many law schools now have multidisciplinary and international law programs that include inviting foreign scholars and visiting professors. But CUNY already *has* a diverse and international student body and faculty. How can these different perspectives and experiences be drawn upon in the classrooms? I know these were certainly valuable for the clinic work with our diverse clients.

Finally, future public interest lawyers need training in rigorous policy analysis and how to develop new advocacy and policy tools to make effective social justice interventions. In addition to the multidisciplinary approach I mentioned earlier, I want to suggest how important it is to be trained in critical economics. I know that this is anathema to CUNY students and may be resisted as law and economics. But we cannot cede the field of empirical arguments to the conservative law and economics that dominates today. I'm struggling now because the work that I am doing out there requires precisely this kind of economic sophistication. I often have to address very different and sometimes hostile corporate audi-

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<sup>13</sup> See, e.g., Nicole Colson, *War Crimes of the U.S. Empire*, SOCIALIST WORKER ONLINE, May 14, 2004, at 6, [http://www.socialistworker.org/2004-1/499/499\\_06\\_WarCrimes.shtml](http://www.socialistworker.org/2004-1/499/499_06_WarCrimes.shtml).

ences, which bring home to me how important it is to learn to be multi-vocal, and speak with different disciplinary inflections. If we only speak in the language of our shared communities of struggle, then we may limit ourselves to speaking to ourselves. When I speak to corporate CEOs, simply invoking the language of justice is often not very effective. I've had to listen and learn different vocabularies of power and to make different kinds of arguments.

Economics is a really powerful discipline. One quick example: We are working on an ambitious human rights bench-marking project at HRIC, and have completed a preliminary survey of existing benchmarks and substantive indicators that we believe are relevant to measuring human rights progress. You can see an example of an application of this effort on-line.<sup>14</sup> We were also fortunate to have a smart creative graduate student in development economics interning at HRIC who helped us understand some of these economic arguments, modeling, statistics, and the great house of cards economic arguments can be. We have these really funny discussions in the office where he says things that no one understands and my eyes cross—regressions, probabilities, and so on. But I simply say, “*Just tell me, does this support our argument? Does it support what we want it to, both descriptively or normatively?*” He often answers, “*Well it does and it doesn't.*” Then I ask for charts, correspondences (forget about causality), and numbers. This is actually all mutable and arguable. We do not have to accept as empirically true the kinds of thinking that passes as science or economics out there. That is what I am suggesting—that we need to go back to tying powerful and critical empirics into legal training. We need to develop these new advocacy tools, and I think that the best way to honor special colleagues and special members of the community and each other, is to get on with it.

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<sup>14</sup> See, e.g., Human Rights in China (HRIC) & Fédération Internationale des Ligues des Droits de l'Homme (FIDH), *Preliminary Assessment of the EU-China Human Rights Dialogue* (2004), available at [http://hrichina.org/fs/downloadables/pdf/downloadable-resources/EUChinaWeb.pdf?revision\\_id=10337](http://hrichina.org/fs/downloadables/pdf/downloadable-resources/EUChinaWeb.pdf?revision_id=10337). In their preliminary assessment of the human rights dialogue between the EU and China, HRIC and FIDH announced eight benchmarks for the dialogue, with specific human rights obligations and indicators such as human development, poverty, corruption, and press freedom, developed by UNDP, World Bank, and various NGOs.

