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978-0-521-71624-6 - Civilising Globalisation: Human Rights and the Global Economy

David Kinley

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Human rights and the global economy

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For
Finn, Jacques and Louis,
whose civilisation we await.

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PREFACE

A plethora of influences, inspirations, experiences and encounters prompted me to write this book. But if I was to nominate the seminal moment in its evolution, then it would have to be one morning in the middle of September 2003, when I met with a senior economist in his office at the World Bank on H Street in Washington DC to talk about the place of human rights within the work of the Bank. I was doing some preliminary research for a Senior Fulbright Scholarship project that I was to take up in 2004 on that same subject. My host was and is a highly respected economist and strategic thinker both inside and outside the Bank. He was most hospitable, not least for honouring the meeting in the first place given the deluge of work that was pouring into his in-tray following the collapse of the Cancún ministerial trade talks barely twenty-four hours earlier. I enjoyed the encounter and I learnt a lot. During the meeting he said one thing in particular that struck me then and stayed with me thereafter. We were discussing the nature of human rights, and from that building a picture of what impact Bank operations had on them, and they on the Bank. We agreed that the Bank's impact on matters of people's economic and social welfare was profound, as indeed one would expect given the Bank's goals to alleviate poverty and bolster standards of living. However, its impact on people's and governments' civil and political circumstances was, at least in terms of direct action, much less significant (though not immaterial). My host believed that only the latter category of issues constituted the proper concern of human rights, and the former did not. Desirable though the advancement of people's economic and social circumstances clearly may be, these were policy goals, in his view, not enforceable obligations. As such, the answer to the question of the Bank's impact on human rights was that it was minimal, and did not and should not therefore bear significantly on the strategic thinking and operations of the Bank.

This is not an uncommon line of argument in debates over the ontology of human rights more generally. However, within the context of its

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delivery, it crystallised for me the idea that there are today two major, and often competing, globalising forces that strut the global stage. These are the universalisation of human rights on the one hand, and economic globalisation on the other. While it may be said that they occupy the same global space, they often appear to conduct their affairs separately, and when they do intersect it is more usually in collision rather than collusion. This is an impression that has been reiterated for me over the years in dealings with those from both sides of the debate, be they corporations, human rights activists, governments, academics, students, or officials from international organisations. In fact, an early working title for this book was 'Two Globalisations'. But as my research and thinking developed, I understood that it was in fact too simple a representation of the whole scene. Certainly, it is an important point to make in order to appreciate the history and sentiments of the two fields that persist even today, but as a depiction of the totality of interrelations between the global economy and human rights the title was incomplete. Across the board, the intersections are numerous, subtle and inexorable, and as such I plumped for 'Civilising Globalisation' for the book's title, with its connotations of globalisation being both a civilising force and a force that must be civilised. This *double entendre* constitutes the book's abiding theme. It also reflects the positioning of the book within the broader imperative of needing to curb capitalism's excesses, so graphically illustrated by the monumental interventions being made by governments in the global capital markets at the time I write these words in late 2008, and the mounting calls for the tightening of the regulatory frameworks within which financial institutions operate.

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This book has been rolling around in my head for nearly ten years. Emanations of its thesis have made appearances in other books, articles, reports, talks, conference papers and seven years of university courses and workshops in Australia, the United States, Europe and South East Asia. The research upon which it is based has been enabled by two grants from the Australian Research Council (one covering corporations and human rights, and the other covering trade and human rights) and one from the US Fulbright Commission (for work on the human rights dimensions of World Bank and IMF operations). My coalface experiences of human rights and the global economy in action have mainly come through work undertaken with AusAID, the United Nation's Office of the High Commissioner for Human Rights, the World Bank, and a number of transnational corporations and law firms, as well as state and non-state agencies in and from developing countries, including China, Indonesia, Iraq, Laos, Myanmar, Nepal, South Africa and Vietnam.

I have benefited enormously from many discussions with numerous officials, from national governments, international organisations (such as those institutions mentioned above, as well as the Asian Development Bank, the European Commission, the UN Development Fund, the UN Children's Fund (UNICEF), the UN Conference on Trade and Development, and various UN human rights treaty bodies, special rapporteurs and special representatives), international non-governmental organisations (especially Amnesty International, Human Rights Watch, Oxfam, World Vision, Human Rights First, the International Commission of Jurists and the Human Rights Council of Australia), and transnational corporations, in both the northern and southern hemispheres. Scores of colleagues, students, friends, family and foes have commented on, criticised or concurred with my ideas, logic and delivery, and to them I owe a debt of which they are as unaware as it is great.

Of particular note are those kind and thoughtful souls who undertook not only to read various drafts, but also to allow me to profit from

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their many and various comments – namely, Philip Alston, Chris Avery, Lorand Bartels, Ross Buckley, Karin Buhmann, Tom Campbell, Mac Darrow, Tom Davis, Brice Dickson, David Feldman, Conor Gearty, Catherine Giraud-Kinley, Andrew Lang, Verity Lomax, Siobhan McInerney-Lankford, Sabine Michalowski, Gig Moon, Justine Nolan, John Pace, Annika Rosenblatt, John Ruggie, Hélène Ruiz Fabri, Jeffrey Sachs, Ben Saul, Andrea Shemberg, Chris Sidoti and Sune Thorsen. Though, privately, each of them knows how much I appreciate their contributions, let me here register the fact publicly.

I am also very grateful to the staff at Cambridge University Press for their efforts in bringing the book into existence, and especially Frances Brown, Daniel Dunlavey and Richard Woodham for their careful editorial ministrations, and Finola O’Sullivan for her support of the idea of the book from the outset.

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The writing of the book was almost wholly undertaken between January and September 2008, with emendations and updates made in the five months thereafter. It was a peripatetic affair, starting and ending in Sydney, with significant encampments in between, in England (Cambridge and London), France (Estensan and Paris) and Northern Ireland (Belfast and Island Magee), roughly in that order. The space and opportunity to commit thoughts and deeds to paper was made possible by the Sydney University Law School, which freed me from the delights of teaching and the scourge of administration for the first half of 2008, and by the Law Faculty at Cambridge University, which generously bestowed on me a Herbert Smith Visiting Fellowship, and provided me, through the Lauterpacht Centre for International Law, with a most convivial and intellectually stimulating base during my stay in Cambridge.