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Universal Mother: Transnational Migration and the Human Rights of Black Women in the Americas

Hope Lewis*

You don’t have to be teacher and nurse to be important.¹

Women migrants often embody—literally—the absence, the breakdown, or the inequities of the international legal regime. War, global economic restructuring, human rights abuses, the persistence of gender oppression all over the world each play a role—alone, in combination, or alongside other factors—in propelling many women to depart their countries of nationality and seek new lives. . . .²

While immigrant women’s labor is desired, their reproduction—whether biological or social—is not.³

Are the experiences of Black women as migrant workers⁴ in the

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4. I use the term “migrant worker” in a broad sense, rather than distinguishing between those who migrate for short periods as seasonal workers and those who migrate with the intention of establishing long-term or permanent residence in a host country. As used in this essay, “migrant
Americas appropriate subjects of international human rights focus? Unfortunately, the answers to that question sometimes depend on the nature of the acts we recognize as human rights violations. Often, the primary focus of international tribunals and non-governmental organizations is only on the violation of “first generation” rights through direct state-sponsored physical violence. The relative invisibility of Black women in the Americas on the mainstream human rights agenda is at least partially due to the prioritization of civil and political rights and to the marginalization of economic, social, and cultural rights. Black women do, of course, experience traditional violations of civil and political rights—they are arbitrarily detained.


6. Related solidarity rights, such as the right to development, are also marginalized. Intellectuals from the Third World have argued that the right to development should be prioritized as the key human right. See, e.g., Mohammed Bedjaoui, The Right to Development, in STEINER & ALSTON, supra note 5, at 1321 (characterizing the right to development as “the core right from which all other rights stem”).

7. Black women in the Americas are no less subject to violations of their civil and political rights than are other women and men. I suggest, however, that the particularities of the violations they experience in the sphere of economic, social, and cultural life are rarely discussed as violations of international human rights. For exceptions, see generally Mallika Dutt, With Liberty and Justice For All: Women’s Human Rights in the United States (1994) (discussing violations of the human rights of both women of color and white women in the United States); Lisa A. Croom, Families, Fatherlessness and Women’s Human Rights: An Analysis of the Clinton Administration’s Public Housing Policy as a Violation of the Convention on the Elimination of All Forms of Discrimination Against Women, 36 Brandeis Fam. L.J. 1 (1997-98) [hereinafter Croom, Families, Fatherlessness] (discussing U.S. government policies on public housing as a violation of poor women’s rights); Lisa A. Croom, Indivisible Rights and Intersectional Identities or, “What Do Women’s Human Rights Have to Do with the Race Convention?”, 40 How. L.J. 619 (1997) (analyzing the intersection of racial and gender discrimination under human rights law); Hope Lewis, Lionheart Gals Facing the Dragon: The Human Rights of Inter/national Black Women in the
sexually assaulted, or otherwise tortured for their political opinions or for those of their partners. Feminist human rights scholars assert, however, that the traditional focus on political violence has failed to take full account of violence against women of color and white women, even in the "public" sphere. The failure to prioritize social welfare and cultural rights also undermines the interests of women to the extent that their experiences are socially constructed in the realm of the "private" sphere of home, family, and the (non-political) community.

The answers to the question I have posed also depend on the lenses of identity through which Black women see themselves and through which those who make, interpret, and enforce the law see them. Even if we attempt to restrict our focus to gender, it soon becomes evident that gender itself is richly complicated and textured by other aspects of identity. As


8. See, e.g., In re D-V-, 1993 BIA LEXIS 15 (Board of Immigration Appeals May 25, 1993) (granting asylum in the United States to a Haitian woman who had been gang-raped by members of a paramilitary group in retaliation for her political activism).

9. See, e.g., Hilary Charlesworth et al., Feminist Approaches to International Law, 85 AM. J. INT'L L. 613 (1991) (discussing ways in which traditional approaches to international law fail to appropriately address the needs of women); Celina Romany, Women as "Aliens": A Feminist Critique of the Public/Private Distinction in International Human Rights Law, 6 HARV. HUM. RTS. J. 87 (1993) (discussing the implications for women of the public/private distinction in international human rights law). Efforts by women's non-governmental organizations (NGOs), individual lawyers, judges, and other domestic and international officials, journalists, academics, and women who have experienced violations have led to increased recognition of such experiences as human rights violations. For example, a recent decision of the International War Crimes Tribunal for the Former Yugoslavia, based in the Hague, convicted three Bosnian Serb military commanders of crimes against humanity for rape and sexual enslavement of women. See, e.g., Barbara Crossette, Crimes Against Humanity: A New Legal Weapon to Deter Rape, N.Y. TIMES, Mar. 4, 2001, at 5 (noting that “for the first time, a war crime tribunal ruled that rape was a crime against humanity, and did not have to be ordered from above to rise to that highest level of atrocity”); Marlise Simons, 3 Serbs Convicted in Wartime Rapes, N.Y. TIMES, Feb. 23, 2001, at A1 (noting that the decision was the first international trial “dealing exclusively with sexual violence”).


11. The United Nations Committee on the Elimination of All Forms of Racial Discrimination recognizes that racism may include discrimination on the basis of intersections of race with other forms of identity such as gender and class. Committee on the Elimination of Racial Discrimination, General Recommendation XXV, at 3, U.N. Doc. A/55/18 (2000).
Sherene Razack has cautioned, “[W]e cannot begin to evaluate how laws work for women or don’t work, without understanding that gender comes into existence through race, class, sexuality, and physical or mental capacity.” 12 Increasingly, contemporary forms of globalization mean that gender is further informed and complicated by the transnational identities of the women, men, and children who cross national borders in search of work.

Similarly, racial and ethnic identities are complicated by gender and by the flow of human beings within and across borders. The migration of groups racially, ethnically, culturally, or linguistically identified as “other” has led to the resurgence of racial violence in sites as culturally and geographically diverse as Western Europe, Eastern Europe, Central Africa, Southern Africa, and North America.13 In recognition of these trends, the United Nations (“U.N.”) World Conference Against Racism addressed, among other things, the implications of the intersection of racism and sexism with migration status.14

As part of a larger project on Black transnational migration, I have explored the implications of human rights discourse for one group of Black women in the Americas—Afro-Caribbean women who migrate to North America. 15 Some of those migrant women take jobs as household workers


15. Some Afro-Caribbean women migrate to former colonial powers in Europe as well. See, e.g., MIGRANT WOMEN’S HUMAN RIGHTS IN G-7 COUNTRIES: ORGANIZING STRATEGIES (Mallika Dutt ed., 1997) [hereinafter MIGRANT WOMEN’S] (discussing organizing strategies among African, Caribbean, and Asian migrant women’s groups in the North); Nancy Foner, Sex Roles and
and other caregivers ("domestics," home health aides, and nannies).16

Excavations of their experiences can contribute to the larger feminist and Critical Race Feminist project of reconceptualizing the norms of human rights theory and practice. Such a reconceptualization is part of the continuing challenge of making human rights law a useful, transformative tool in resisting subordination.17 This brief essay reflects on the human rights implications of the use, and misuse, of identity stories about the experiences of Black women migrants.

Individuals and groups construct identities both to resist and to enhance globalization. In order to resist the strong influence of global markets and cultural pressures,18 communities recreate, or create, racial, cultural,

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17. The scholarship on feminist reconceptualizations of international law has, happily, become too large to list here in its entirety. See, e.g., HUMAN RIGHTS OF WOMEN (Rebecca Cook ed., 1994); GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien Katherine Wing ed., 2000); Charlesworth et al., supra note 9; Berta Esperanza Hernandez-Truyol, Sex, Culture, and Rights: A Re-conceptualization of Violence for the Twenty-First Century, 60 ALB. L. REV. 607 (1997); Celina Romany, supra note 9; Barbara Stark, Women and Globalization: The Failure and Postmodern Possibilities of International Law, 33 VAND. J. TRANSNAT'L. L. 503 (2000).

18. Barbara Stark notes that, under contemporary forms of cultural globalization, “no walls
religious, and national ties. Individual members of such groups may see themselves as agents of such communitarian aspirations, seeking cultural or racial bonds as a bulwark against the crushing intrusions of globalization.

On the other hand, they might also encounter and resist powerful elites who seek to use the authority of culture to crush non-conformity.

In addition to such community-based or personal forms of identity, I argue here that some externally imposed gender, race, and cultural stereotypes operate simultaneously to serve the free-market agendas of global capital. These stereotypical roles are forms of "identity" that mediate whether, and how, individuals and groups who occupy certain class positions will gain access to legal structures. For example, gender, race, and ethnic stereotypes associated with "illegal alien" status assist in regulating the flow of low-wage migrant labor. Further, gendered and racialized images help to maintain many people of color in the United States in a precarious "foreigner" status, regardless of their documentation or residency status.

In host countries, this manipulation of identity categories may take the form of discriminatory status and preference categories under immigration and asylum laws. Native-born and immigrant identity-based groups are structured and re-structured to occupy different spaces in racialized labor
and social hierarchies. At different historical moments, various ethnic, racial, or gender groups are encouraged to enter or discouraged from entering host countries. The resulting conflicts and tensions can be further manipulated to undermine political organizing and solidarity among these groups.

Sending countries may be economically or politically dependent on the commodification of identity as well. Remittances from migrant workers are likely to be one of the most important sources of private transfers to the national economy. Gender stereotyping may figure into the perceived value of the potential migrant on the international market as in the trafficking of women for sex work and household work. Sending countries also may see migration as a means of reducing domestic unemployment or political unrest. The resulting formal and informal arrangements between host

24. See, e.g., Hernandez-Truyol, supra note 17, at 732.

25. For example, commentators have discussed the tensions among native-born African-Americans and immigrants from the Afro-Caribbean or from the African continent. See KASINITZ, supra note 16, at 49-54 (discussing race, class, and historical contexts of ethnic tensions between Caribbean migrants to the United States and native-born African-Americans and critiquing work of Thomas Sowell in this regard); Butcher, supra note 16, at 266 (challenging Sowell’s attribution of actual or perceived differences in economic status to “cultural” differences). Similarly, commentators have examined tensions between working-class native-born Blacks and Whites and immigrant groups from Asia and Latin America. See, e.g., Thomas Muller, Nativism in the Mid-1990s, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 107 (Juan F. Perea ed., 1997) (discussing perceived competition for low-wage jobs among native-born Blacks and immigrants).

There have been efforts to cross the divides among immigrant and non-immigrant groups by forming political coalitions; such groups can better resist common oppression. See, e.g., Ibrahim Gassama, Transnational Critical Race Scholarship: Transcending Ethnic and National Chauvinism in the Era of Globalization, 5 MICH. J. RACE & L. 133 (1999) (discussing the need for Critical Race scholarship to engage racial and economic issues internationally); Francisco Valdes, Under Construction: LatCrit Consciousness, Community and Theory, 85 CAL. L. REV. 1, 1104 (1997) (“LatCrit critiques of the Black/White paradigm must at once denounce its truncation of race relations discourse and avert the possibility that our critiques might undermine experiences and claims unique to African Americans, or, for that matter, other outsider groups.”). Despite the actual or imagined divergences among immigrant and native-born communities of color, there are many areas of convergence and spaces for political solidarity. For example, several recent articles discuss the experiences of immigrants, and people of color perceived to be immigrants, in the context of racial profiling in the United States. See, e.g., Neil Gotanda, Racialization of Asian Americans and African Americans: Racial Profiling and the Wen Ho Lee Case, 47 UCLA L. REV. 1689 (2000); Kevin R. Johnson, The Case Against Race Profiling in Immigration Enforcement, 28 WASH. U.Q. 675 (2000).

26. Sending countries and host countries may enter into formal bilateral or multilateral agreements that effectively or explicitly target a specific identity group (such as male agricultural workers from Mexico or the Caribbean, or Filipina household workers). See, e.g., Gilbert Paul Carrasco, Latinos in the United States, in IMMIGRANTS OUT!, supra note 25, at 194-97 (discussing the Mexican Labor Program (generally known as the Bracero Program)—a labor migration agreement established during World War II and aimed at attracting Mexican workers to the United States); Joan Fitzpatrick & Katrina R. Kelly, Gendered Aspects of Migration: Law and the Female Migrant, 22 HASTINGS INT’L & COMP. L. REV. 47, 69-92 (1998) (discussing national, bilateral, and international legal regulation of the trade in domestic workers); Dan Gatmajtan, Death and the Maid: Work, Violence, and the Filipina in the International Labor Market, 20 HARV. WOMEN’S L.J. 229 (1997) (discussing international legal arrangements regulating the migration of Filipina
countries and sending countries have enormous human rights implications for the migrant workers involved and the communities they enter and leave behind.27

In this essay, I explore the human rights implications of the stories surrounding one female migrant household worker. I explore the public narratives about her because they seem to epitomize how perceptions about identity can shape legal responses and how legal frameworks can shape our perceptions of identity. The identities associated with the migrant household worker described below seemed, at first, to constitute a uniquely complex illustration of the intersection of race, gender, ethnicity, class, immigration status, nationality, and disability. Yet, one lesson to be drawn from these stories is that all of our identities can be equally complex.

I. WHAT IS A "HUMAN RIGHTS STORY"?

The economic, social, and cultural violence and atrocities experienced by many people from the “Third World”28 have largely been rendered

workers); Audrey Macklin, Foreign Domestic Worker: “Surrogate Housewife" or Mail Order Servant?, 37 McGill L.J. 681, 684-85, 757-60 (1992) (discussing the Live-In Caregiver Program, which regulated the migration of women from the Caribbean, Asia, and Africa who migrated to work as household workers in Canada); WILKINSON, supra note 16 (discussing “guest worker” programs encouraging the migration of male Caribbean agricultural workers to the United States). Lawyers for Mexicans who had worked in the United States under the Bracero program have recently instituted a class-action suit on their behalf for the restitution of unpaid back wages. Pam Belluck, Mexican Laborers During War Sue for Back Pay, N.Y. TIMES, Apr. 29, 2001, at A1 (discussing the suit and the history of the Bracero program).

Fitzpatrick and Kelly argue that “legal regulation of female-specific migration streams tends to be perverse, frequently increasing risks to participants’ physical integrity and economic welfare.” Fitzpatrick & Kelly, supra note 26, at 17. The regulation of migrant workers also can be informal, through administrative or legal practices that effectively define particular identity-based groups as more, or less, suited for labor migration as labor needs change in the host countries. Hernandez-Truyol, supra note 17, at 733-35 (discussing the social construction of immigrant groups as middle-tier buffers between elites and an entrenched underclass).

27 See generally THE TRADE IN DOMESTIC WORKERS: CAUSES, MECHANISMS, AND CONSEQUENCES OF INTERNATIONAL MIGRATION (Noeeleen Heyzer et al. eds., 1994) (collected papers from conference in Colombo, Sri Lanka in 1992 on global trade in household workers); Fitzpatrick & Kelly, supra note 26, at 48, 56 (discussing the gendered impact of the legal regulation of migration); Shirley Hune, Migrant Women in the Context of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, XXV INT’L MIGRATION REV. 800 (discussing the value of female migration to both host and sending countries and the human rights implications).

28 I use the terms “North” or “First World” primarily in reference to countries with highly developed economies such as the United States, Canada, the United Kingdom, France, Germany, Japan, and Russia. When I refer to the “South” or the “Third World,” I generally mean less industrialized countries or countries with relatively small economies that are concentrated primarily in the southern hemisphere. In this essay, I use these problematic terms in part out of convenience, but I share the discomfort expressed by Vasuki Nesiah at the essentialism inherent in the terms and the historically negative connotations associated with some references to “Third World countries.” However, I, too, recognize the oppositional and deliberate political potential of the terms, and I hope to excavate ways in which the terms were used in post-colonial attempts at liberation. See Vasuki Nesiah, Towards A Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship, 16
Nesiah notes the following:

I am uncomfortable with the use of terms such as “Third World,” “First World,” “underdeveloped” and “developed.” Historically, the term “Third World” has often been used within paradigms that invoke orientalist conceptualizations of the countries or regions to which they refer. They have negative essentialist connotations that imply a bipolar, adversely hierarchical relationship between the “developed First World” and the “underdeveloped Third World.” They group together a number of counties as if they were homogeneous with no regard to their diversity and complexity. The terms “North” and “South,” although not as hierarchical, are equally homogenizing. Moreover, even a work that speaks critically of “Third World” resistance runs the risk of implying untenable links between identification as a “Third Worlder” and political commitment to anti-imperialist struggles. Nevertheless, I use this terminology because I want to address certain commonalities that arise from the impact of colonial and post-colonial domination without negating the historical specificity that conditions the experience of each country and each community in the “Third World.” In addition, some writers have suggested that the term “Third World” could be recaptured in oppositional political interventions akin to the appropriation of terms such as “Black” and “queer.”

Id. at 189 (citing Chandra T. Mohanty et al., Preface, in CHANDRA T. MOHANTY ET AL., THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM ix, x (1991); see also Celestine Nyamu, How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?, 41 HARV. INT'L L.J. 381 (2000) (expressing discomfort with the use of “Third World,” but using the term “to refer collectively to countries that are usually targeted by development policies of multilateral and bilateral development agencies”).

The discourse surrounding “Third World” status has a complex history. For example, leaders of the post-colonial Non-Aligned Movement have used it to express both the negative conditions experienced by post-colonial countries and to express hoped-for, but rarely attained, progress toward more equitable social and economic arrangements than those that had characterized the “First” or “Second” worlds. For a brief history of the Non-Aligned Movement, see The Non-Aligned Movement: Description and History, at http://www.nam.gov.za/background/history.htm (last visited Jan. 15, 2001) (noting the movement’s founding at a conference in Bandung, Indonesia in 1955 and noting that the current membership includes 115 states).

The late Michael Manley, a former prime minister of Jamaica and a leader of the Non-Aligned Movement, provided one definition of “Third World” in a book focusing on Jamaica as a case study:

Jamaica is a part of the Third World. By the Third World one means that entire range of countries, mainly tropical, that were the scene of the great colonial explosion which reached its crescendo in the latter part of the nineteenth and the first part of the twentieth centuries. All of these territories stretching as they do through the Caribbean, Africa, India and the Near and Far East were used as sources of raw materials and primary agricultural products destined for the great manufacturing centers which were mainly concentrated in Europe. After the Second World War a reverse political process commenced led by India and quickly to be followed in the Caribbean, Africa and the rest of the colonial world. In short order all the former colonies had attained political independence. However, without exception, these territories entered upon political independence suffering from enormous economic disabilities.

invisible or irrelevant to mainstream human rights analysis. This failure to address economic, social, and cultural rights and the right to development has the effect of undermining the accountability of the North for violations of human rights. As noted by the U.N. High Commissioner for Human Rights, "The shocking reality is... that States and the international community as a whole continue to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerned calls for immediate remedial action." As a result, the economic, social, and cultural roles in which many Black women migrants are typecast leave many aspects of their experiences beyond traditional human rights focus.

One wonders, for example, whether most North American readers of the following summary of a pending Supreme Court case in a legal weekly would have analyzed it as a human rights story:


30. The categories of "North" and "South" and of "Third World" and "First World" are not necessarily geographically fixed and clear in their application. For example, I have argued elsewhere that the experiences of certain groups in the South may be more consistent with those usually associated with the North (e.g., urban elites in underdeveloped countries) and that some groups in the North experience conditions that are similar to those in the South (e.g., working-class people and people of color in the United States). See Lewis, Women (Under)Development, supra note 7, at 282.

31. I do not suggest that governments in the South do not bear responsibility for violations of human rights in their own countries. Rather, I argue that traditional human rights discourse focuses on those governments without similar analysis of the culpability of governments in the North that directly and indirectly create conditions that encourage human rights violations.


Mavis Baker came to [this country]... as a visitor from Jamaica in August 1981. She found work... as a live-in domestic and never returned. In December 1992, she was ordered deported.

Before Baker came to [this country]... she had four children born in Jamaica. By the time she was ordered deported, she had given birth to four children in [this country]....


According to that application, she would not take her children back to Jamaica with her if removed, because she could not support them there.

Two of the children... were in the custody of their father. The other two were in her custody. She had no one with whom to leave [them]....

A psychologist determined that the children's best interests were served by their remaining in [this country]... and that the removal of the mother would cause trauma, harm and hardship to the children.

Since February 1992 and at the time of her application, Baker was on welfare. She had been diagnosed as a paranoid schizophrenic, and had spent about one year in a hospital. At the time of her application, she was an outpatient at the Queen Street Mental Hospital....

When I heard about this case on a recent visit to Toronto, it struck me that a similar story might just as easily have appeared in a newspaper in New York or Miami. Draconian immigration laws in the U.S. and Canada...
Some immigrants who had been in the country for many years were summarily deported. For discussions of the rise in deportations related to criminal convictions, see, e.g., Daniel Kanstroom, Deportation, Social Control, and Punishment: Some Thoughts about Why Hard Laws Make Bad Cases, 113 HARV. L. REV. 1890 (2000); Barry Newman, Slender Mercies: For Criminal Aliens, The Deportation Boot is Very Swift Kick, WALL ST. J., July 9, 1999, at A1. According to Immigration & Naturalization Service statistics on criminal "expedited removals" (actions that had previously been referred to under U.S. law as "deportations and exclusions"), 1,844 Jamaicans had been removed, as compared with a total of 1,928 nationals of all of the countries of the European region. IMMIGRATION & NATURALIZATION SERVICE, M-367 1998 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE: JUSTICE, IMMIGRATION, AND NATURALIZATION, Table 66 (1998); Aliens Removed By Criminal Status and Region and Selected Country of Origin, Fiscal Years, 1993-98, at http://www.ins.gov/graphics/aboutus/statistics/1998yb.pdf (last visited June 29, 2001). By far the largest number of criminal removal proceedings are targeted at Mexican nationals, with 139,135 subject to criminal removal in 1998. IMMIGRATION & NATURALIZATION SERVICE, supra, at tbl. 66. The figure for the entire Caribbean region in 1998 was 5,441. Id. Some immigrant groups suggest that immigrants of color had been targeted for more intensive enforcement of the deportation laws. See, e.g., Merle English, The New New Yorkers: Deportations Spark An Outcry: Caribbean Immigrants Say New Law Targets Them for Removal, NEWSDAY, July 1, 1998, at A33. English noted that

from fiscal 1993 to fiscal 1997, more than 14,000 people from the Caribbean—most of them men—were returned to their countries as criminal deportees, according to INS records. Of that number, 6,582 were from the Dominican Republic, 4,836 from Jamaica, and 1,036 from Haiti, the Caribbean countries with the highest numbers of deportees. In addition to convicted aliens and undocumented immigrants, permanent residents who committed what the INS calls 'crimes of moral turpitude,' even decades before the passage of the 1996 law are finding themselves deportable with little or no recourse under the laws.

Id. There were widespread protests against immigration reform and the policies led to unforeseen negative economic and political implications in regions where immigrants were concentrated. Further, a booming economy and labor shortages in the late 1990s contributed to some changes in policy. See Michael D. Goldhaber, Immigration Reform is a Hot Issue, NAT'L L.J., Sept. 18, 2000, at A1 (discussing horror stories of arbitrary deportations and pressures on U.S. officials to reform punitive immigration laws). In addition, the media and human rights groups began to expose the treatment in detention of political refugees. See, e.g., Chris Hedges, Suit Details the Beatings of Detainees in Louisiana, N.Y. TIMES, Jan. 2, 2001, at A12. Because of these pressures, some of the more draconian measures began to be reduced in severity or eliminated. See, e.g., Joel Brinkley, New Protection for Refugees From Right-Wing Oppression, N.Y. TIMES, May 21, 1999, at A14; Jane Gross, Change Stirs Hope for Legal Status Among Immigrants, N.Y. TIMES, Feb. 20, 2001, at A1; Chris Hedges, Policy to Protect Jailed Immigrants is Addressed, N.Y. TIMES, Jan. 2, 2001, at A1; Susan Sachs, Pressed by Backlog, U.S. Rethinks Citizenship Test, N.Y. TIMES, July 5, 1999, at A1; Eric Schmitt, G.O.P. Fight with Clinton on Immigrants Splits Party, N.Y. TIMES, Oct. 22, 2000, at 16. The most recent Bush administration is studying the possibility of "regularizing" the status of undocumented workers from Mexico who are currently in the United States. Eric Schmitt, Bush Panel Backs Legalizing Status of Some Migrants, N.Y. TIMES, July 24, 2001, at A1. It is unclear if such "regularization" would be in the form of new "guest worker" programs. Id. Some speculate that the administration's motives were to gain political support among Latina/o voters. Id. Immigrant groups from other countries are advocating for the extension of any such "regularization" program to
make stories of long separations of female migrant household workers from their foreign-born children commonplace. Only rarely does the media or the general public discuss such stories in international human rights terms.


Finally, recent decisions by the U.S. Supreme Court have modified some of the more draconian interpretations of U.S. immigration law. Linda Greenhouse, Justices Permit Immigrants to Challenge Deportation, N.Y. TIMES, June 26, 2001, at A1 (describing the decision in Immigration and Naturalization Service v. St. Cyr, No. 00-767 2001, in which the U.S. Supreme Court ruled, in a 5-4 decision "that immigrants who pleaded guilty to crimes in the years before stringent new provisions of federal immigration law took effect in 1996 do not face automatic deportation" and preserving the right to judicial review); Linda Greenhouse, Supreme Court Limits Detention in Cases of Deportable Immigrants, N.Y. TIMES, June 29, 2001, at A1 (describing the U.S. Supreme Court 5-4 decision in Zadvydas v. Davis, No. 99-779, in which the Court ruled "that the government may not detain deportable aliens indefinitely simply for lack of a country willing to take them"); Linda Greenhouse, In Year of Florida Vote, Supreme Court also Did Much Other Work, N.Y. TIMES, July 2, 2001, at A12 (describing recent U.S. Supreme Court decisions, including those regarding immigration law). By contrast, the Court also rejected, in a 5-4 decision, a constitutional challenge "to an immigration law provision that makes it easier for a child born to unwed parents overseas to be deemed an American citizen if the mother rather than the father is an American." Id. Despite recent changes, U.S. immigration law remains a significant barrier to the human rights of migrant workers. LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, FOLLOW-UP TO THE PRE-DURBAN STRATEGY MEETING FOR U.S. NGOS ATTENDING THE U.N. WORLD CONFERENCE AGAINST RACISM 8-9 (Aug. 2001) (on file with author) (NGO report urging the U.S. government to "ratify, implement, and adhere to human rights documents that protect the rights of immigrants and their families").


38. By the time of the Canadian Supreme Court decision, Ms. Baker's Jamaican-born children were young adults. Valerie Lawton, Jamaican Woman's Deportation Halted, TORONTO STAR, July 10, 1999. Women like Ms. Baker are often forced to choose between being near their children or providing for their economic needs by migrating. See, e.g., Fitzpatrick & Kelly, supra note 26, at 68-69 (discussing separation of female migrant workers from their own children); Researcher Reveals Plight of Domestic Workers: Interviews Uncover Concerns, Labor Conditions of Immigrant Women, AScribe NEWSWIRE, Apr. 9, 2001 (noting that forty percent of household workers surveyed who are mothers report that at least one of their children lives in their countries of origin). Authorities accused one such Afro-Caribbean woman in New York of having paid smugglers to bring her child from Jamaica to the U.S. after a long separation due to the restrictions of U.S. immigration laws. Deborah Songt, Separated From Children, Immigrants Grow Desperate, N.Y. TIMES, June 2, 1994, at B1.


the court took the view that Canada’s ratification of the Convention on the Rights of the Child was non-self-executing, it held that Canadian law and administrative practice should be interpreted in a manner consistent with the Convention. The Canadian court’s significant attention to the obligations of international human rights standards succeeded in making one part of Ms. Baker’s story—the separation of mothers from children through draconian deportation laws—a “human rights” story.

II. WHOSE STORY IS IT?

The Supreme Court decision also concluded that the case notes of the immigration officer who initially recommended the denial of Ms. Baker’s application evidenced “a significant apprehension of bias.” The immigration officer’s notes summarizing Ms. Baker’s application were reproduced in the decision as follows:

The [applicant] . . . is a paranoid schizophrenic and on welfare. She has no qualifications other than as a domestic. She has FOUR CHILDREN IN JAMAICA AND ANOTHER FOUR BORN HERE. She will, of course, be a tremendous strain on our social welfare systems for (probably) the rest of her life. There are no . . . [humanitarian and compassionate] factors other than her FOUR CANADIAN-BORN CHILDREN. Do we let her stay because of that? I am of the opinion that Canada can no longer afford this kind

certain basic civil, political, economic, social, and cultural rights of children, including protections against the separation of children from their families. Id. (Article 9, states that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child . . . “). In Baker, the application of international human rights law to Canadian immigration proceedings was an important aspect of the case. Baker, [1999] 2 S.C.R. at 836, 837. While the Canadian Supreme Court took the view that the Convention is non-self-executing, it also held that Canadian domestic law should be interpreted in light of the goals and objectives of the Convention. Id. at 230-31.


42. For discussion and criticism of the non-self-executing status of international human rights conventions in the United States, see, e.g., STEINER & ALSTON, supra note 5, at 1025-26, 1043-47 (discussing U.S. reservations, understandings, and declarations with respect to international human rights treaties, including their “non-self-executing” status under U.S. law and the comments of the U.N. Human Rights Committee criticizing the U.S. interpretation).

43. Baker, [1999] 2 S.C.R. at 836, 837 (holding that a duty of procedural fairness applies when immigration officials deal with requests for exemptions on humanitarian and compassionate grounds).


of generosity.46

To the Canadian Supreme Court's credit, Ms. Baker's deportation was stayed, at least temporarily, and her application was sent back for re-hearing by another immigration officer.47 Human rights activists applauded the decision. It makes an additional legal strategy available for, and gives hope to, hundreds of undocumented immigrant women with Canadian-born children who face deportation.48

It is not my intention to analyze in this brief essay the specific implications of the Baker decision for Canadian humanitarian or immigration law. Rather, I briefly explore the images and stories of identity that are embedded in the immigration officer's description of Ms. Baker's case. I argue that these stories consign Ms. Baker (and the now grown children she had in Jamaica) to a space beyond the scrutiny of the traditional human rights paradigm. The immigration officer's narrative attempts to render women like Ms. Baker to a "sub-human" status not worthy of fundamental human rights, much less "humanitarian and compassionate" consideration.

Ms. Baker's gender, race, class, disability, and migratory identities were all operative in her status. Critical Race theory has persuasively suggested that the encounter of individuals and groups with law and legal structures is shaped by the intersection of their many identities.49 Critical Race Theorists have critiqued legal structures that fail to recognize, and give voice to, these complex identities.50 They have also critiqued the role of law in assigning

46. Id. at 827, 828.
47. Id. at 863, 865.
48. Nahlah Ayed, Hundreds of Mothers Fear Deportation, CANADIAN PRESS NEWSWIRE, Apr. 28, 1999; Lawton, supra note 38; Best Interests of Children Must Be Considered in Deportation Appeal, Supreme Court Determines, COMMUNITY ACTION, Aug. 16, 1999, at 3.

Not all observers were happy with the decision. See Kevin Steel, A Rising Human Tide: International Treaties and the Welfare State Set the Stage for a Flood of Illegal Migrants, BRIT. COLUM. REP., Aug. 30, 1999, at 24 (expressing the fear that the Baker decision erodes Canadian national sovereignty). One critic of the decision argues that the "rights of the child treaty mandates that children have a right to First World welfare state entitlements, among them healthcare and public education. The children are also given the right not to be separated from their parents. This treaty significantly pushes the definition of 'refugee' into the economic sphere." Id.; see also Bert Raphael, Suggests Court Ought to Have Condemned Baker's Illegal Activities, LAW. WKLY. (Canada), Oct. 8, 1999 (letter to the editor arguing that "illegal immigrants like Ms. Baker cannot with immunity abuse Canada's welfare, health, and educational services"). Such views, of course, are reinforced by popular stereotypes of migrant workers and their families as parasites of Northern largesse and obscure the dependency of the North on the human and other economic resources of the South.

50. See Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, in
groups or individuals to narrowly constructed and inferior social roles. “Identity” can refer to a set of complex and continually evolving social, intellectual, and physical influences that make us who we are as individuals or group members. It can also involve complex processes of construction by legal, economic, social, and political systems that place human beings into categories suitable for specific agendas.

The most important stories about Ms. Baker, therefore, can only be told through her own recounting of her life in Canada and Jamaica, and her hopes, dreams, disappointments, and expectations for herself and for those she loves. Legal academics, lawyers, human rights activists, immigration officials, journalists, and judges cannot tell her stories for her. However, what outside observers can do is deconstruct and re-examine the public narratives about women like Ms. Baker. These narratives reveal how the identities of Black women migrants can be structured to fall outside human rights analysis.

III. UNIVERSAL MOTHER STORIES

Ms. Baker’s status as the mother of eight children was obviously central to the media attention surrounding the case, the immigration officer’s rejection of her application, and the legal strategies used to prevent her deportation. Her motherhood worked both for and against her. It was considered an additional reason to deport her, and yet, it was her

Crenshaw, supra note 44, at 63, 67.

51. For a discussion of the anti-essentialist project of Critical Race scholarship, see, e.g., Razack, supra note 12, at 157-209.

52. Id. Razack argues that one can understand the “limitations of an essentialist understanding of women’s experience by focusing on how a woman’s race, class, sexuality, and physical or mental condition combine in historically specific ways to produce her and the responses to her in classrooms and courtrooms.” Id. at 157.

53. The stories of migrant household workers are increasingly appearing in printed form. See, e.g., Chang, supra note 3 (interweaving the stories of individual household workers with analysis of their economic, legal and cultural status in the U.S.); Migrant Women’s, supra note 15 (compiling migrant women’s organizing strategies); Honor Ford-Smith et al., Lionheart Gal: Life Stories of Jamaican Women (1986) (collecting narratives of household workers and other women in Jamaica); Mary Romero, Maid in the U.S.A. 71 (1992) (analyzing history of household work in the U.S.); Evelyn Nakano Glenn, From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor, 18 Signs 1, 2-3 (Autumn 1992) (discussing status of household workers in the U.S.); Audrey Macklin, Foreign Domestic Worker: Surrogate Housewife or Mail Order Servant?, 37 McGill L.J. 681 (1992) (discussing status of household workers in Canada).

54. For examples of the use of narrative in Critical Race theory, see, e.g., Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism (1992); Derrick Bell, And We Are Not Saved: The Elusive Quest for Racial Justice (1987); Lewis, Lionheart Gals, supra note 7; Margaret E. Montoya, Un/masking the Self While Un/braiding Latina Stories, in The Cutting Edge, supra note 49, at 529; Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 14 Women’s RTS. L. Rep. 297 (1992).
motherhood that saved Ms. Baker from deportation. She literally is a transnational mother because she has children in both Canada and Jamaica. Her status as figurative universal mother in the domestic and international division of labor is equally important.

IV. A “WELFARE QUEEN” STORY

For the immigration officer, Ms. Baker’s status as a Black single mother, in combination with her reliance on public services, reasserts the well-known stereotype of the “Welfare Queen.” In that story, such women are lazy members of the “undeserving poor,” who have too many children and who are merely a drain on the social welfare system. Ms. Baker’s work for more than ten years in Canada, prior to seeking public assistance, was discounted, as was the value of her unpaid labor in caring for her own Canadian children. The possibility that Ms. Baker’s mental illness might have left her unable to work, or that she might have been discriminated against in finding work did not seem to enter the story. Further, we do not know whether Ms. Baker initially avoided seeking medical care because of the fear of being deported—a fear common to many undocumented

55. As in the United States, the legal strategy of last resort for an undocumented migrant mother might be to seek a stay of deportation on the basis of the impact on her native-born children. See, e.g., Jeannette Money, Human Rights Norms and Immigration Control, 3 UCLA J. INT’L L. & FOR. AFF. 497 (1998-1999) (discussing a Ninth Circuit Court of Appeals decision in which the court “ruled that INS should take into account ‘the hardship that will result from family separation.’” The case involved an undocumented 33-year-old woman, resident in the United States for fifteen years, married to a legal resident alien, and mother of two U.S.-born children”). Money notes that “states balance their interest in expelling undocumented (or legal residents) aliens with the hardship imposed on the individual.” Id. at 518.


57. See, e.g., JOEL HANDLER, THE POVERTY OF WELFARE REFORM 44-45 (1995) (“The popular stereotype or myth in debates over welfare in the U.S. is that welfare is composed primarily of young black women who have lots of children, are long-term dependent and pass on this dependency from generation to generation.”).

58. Roberts, supra note 56, at 875 (discussing “workfare” and other policies in the United States designed to force women on welfare to enter, or return to, the paid labor force). She notes that images of Black women contribute to the undervaluing of the unpaid work they do in the home, including the mothering of children. Id.

59. The LAWYER’S WEEKLY article notes that Ms. Baker had been receiving outpatient care for her illness. Matas, supra note 34; see also Lawton, supra note 38 (quoting Ms. Baker’s lawyer, who stated that “Miss Baker would like to work and go to school here”).
immigrants in North America.60

In contrast to the stereotype, many female migrants who engage in low-wage domestic work do not have effective access to certain legal protections, to private employee benefits, and to some forms of public assistance upon their retirement, disability, illness, or maternity.61 Like native-born women and children who rely on public assistance to meet some of their most fundamental needs, we should see Ms. Baker's story in the context of human rights.62

As deployed in North America, the “Welfare Queen” story takes on economic, gender, racial, and cultural significance. Women of color, as reproducers of children, are also seen as reproducers of labor supplies and of desirable or undesirable gender, race, and cultural identities. Powerful groups in the host country sometimes see such reproduction as valuable.63 At other times they see it as carrying a threat of racial, cultural, or political influence that might overwhelm the groups currently in power. In discussing the application of the “Welfare Queen” stereotype to immigrant women in the United States, Grace Chang makes the following observation:

Women migrants pose a distinct set of challenges to lawmakers and “reformers.” The current American obsession with alleged “welfare abuse” by immigrant women and their supposed hyperfertility are actually age-old “social problems.” This rediscovery of women of color and immigrant women as laborers, potential consumers, and reproducers only revisits dilemmas that have historically concerned the state and “reformers.” While

60. Some undocumented migrant workers do not apply for the social services for which they are eligible because they fear revealing their immigration status. Johnson, Public Benefits, supra note 36, at 1528-29 (“Serious disincentives exist for undocumented persons to apply for and receive the few public benefits and social services for which they are eligible. They may fear that seeking benefits will increase the risk of deportation.”); see also Molly Selner, Post-Welfare Reform Benefits for Elderly Immigrants, N.Y. L.J., Aug. 25, 2000, at 1 (describing the benefits available to elderly immigrants and fears among undocumented immigrants about accessing those benefits).

61. See Peggy R. Smith, Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform, 48 Am. U.L. Rev. 851, 890-900 (1999) (noting that the devaluation of paid housework included the exclusion of household employees from many labor reforms).


63. DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 27-31 (1997) [hereinafter ROBERTS, KILLING] (discussing slave-breeding practices in the U.S.); Pamela D. Bridgewater, Reproductive Freedom in Civil Freedom: The Thirteenth Amendment’s Role in the Struggle for Reproductive Rights, 3 J. Gender Race & Just. 401 (2000) (discussing history of slave-breeding in the United States and the applicability of U.S. Thirteenth Amendment jurisprudence to modern efforts to control the reproductive rights of women of color); see generally, ROBERTS, KILLING, supra (discussing historical and modern efforts to control the reproduction of women of color in the United States); Dorothy E. Roberts, Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy, 104 Harv. L. Rev. 1419 (1991) (discussing legal efforts within the United States to imprison, or otherwise punish, pregnant women of color who are addicted to illegal drugs). Such efforts disproportionately target women of color. Id.
immigrant women's labor is desired, their reproduction—whether biological or social—is not. Biological reproduction is deemed undesirable because it entails the United States having to provide basic needs for raising and training the children of immigrants .... Immigrants' social reproduction is perhaps even more threatening, since it implies a transformation of "American" culture, departing from dominant white European culture and the dominance of Western civilization ....64

It is likely impossible to use the labor of "surrogate housewives"65 and "surrogate mothers" from the Third World to care for the children and the elderly of the North without also experiencing the social reproduction of the Third World in the North. This would be the case even if the state attempts to restrict the biological reproduction of female migrant workers.

V. A "PARANOID SCHIZOPHRENIC" STORY

The immigration officer casts Ms. Baker, as a Black woman diagnosed with mental illness, in the story of the potentially permanent drain on the Canadian social welfare system. The officer's story reflects commonly held discriminatory stereotypes of persons with mental illness. Persons with mental illnesses or disabilities are essentialized as permanently unable to work, as drains on the non-disabled community, or as unable to make any important decisions in their own lives or the lives of their loved ones. The officer's story masks the violations of the right to self-determination, health care, work, family life, and housing that many people with mental illnesses or disabilities experience. Racism, sexism, and class discrimination further compound the discrimination experienced by Black women who have a mental or physical disability. The immigration officer's story omitted the fact that Ms. Baker was being treated for her illness and her desire to return to work would likely be limited by disability discrimination.66 There have

64. Chang, supra note 3, at 10.
66. Unemployment rates among persons with disabilities have been estimated to reach as high as seventy percent in the United States. See, e.g., Melton & Garrison, Fear, Prejudice, and Neglect: Discrimination Against Mentally Disabled Persons, 42 AM. PSYCHOLOGIST 1007, 1015 (1987); Abby Ellin, Seeking Laws for Disabilities of the Attitude, N.Y. TIMES, July 26, 2000, at I. Persons with disabilities are often treated as the objects of pity rather than as individuals worthy of human dignity and as active agents who can identify their own needs and goals. For discussions of the intersection of gender, ethnicity, and disability discrimination in the law, see, e.g., RAZACK, supra note 12, at 130-56 (arguing that some non-disabled feminists fail to respond to the needs of all women, disabled and non-disabled); ROBERTS, KILLING, supra note 63, at 89-90 (describing sterilization abuse of African-Americans with mental disabilities under the auspices of the eugenics movement); Nasa Begum, Snow White, in WHAT HAPPENED TO YOU?: WRITINGS BY DISABLED WOMEN 46 (Lois Keith ed., 1996) (describing childhood encounters with race, gender, and disability discrimination by a woman of color). The U.N. General Assembly has recognized the human rights of persons with disabilities. Declaration on the Human Rights of Disabled Persons, G. A. Res. 3447 (XXX), U.N. GAOR 30th Sess., Supp. No. 34, at 88, U.N. Doc. A/10034 (1975) (recognizing the
been many legal and social challenges to, and restrictions on, the ability of women with mental or physical disabilities to raise their own children.\textsuperscript{67} Often, women with mental disabilities receive little information about reproductive health care and are subjected to arbitrary decisions about their reproductive futures. Discrimination based on the intersection of mental illness, gender, immigration status, and race remains an under-examined issue in the traditional human rights framework.

VI. A “DOMESTIC” STORY

According to immigration lawyer David Matas,\textsuperscript{68} Ms. Baker worked as a “domestic” for more than ten years in Canada. The gendered division of labor in both South and North has meant that women, as literal or figurative “mothers,” remain primarily responsible for household work. That work involves grocery shopping, food preparation, cleaning, laundry, and caring for other family members.\textsuperscript{69} The strong tendency to place the bulk of this

\textsuperscript{67} See, e.g., \textit{Boston Women's Health Book Collective, The New Our Bodies, Ourselves} 301-02 (1992) (discussing history of sterilization abuse, including efforts to sterilize poor women, women with mental or physical disabilities, women of color, and immigrant women). Women with physical disabilities are stereotyped as asexual, while women with mental disabilities are stereotyped as hypersexual. \textit{Id.} at 223-25, 231-33 (discussing sex and physical disability and noting the irony that “with most physical disabilities, we are considered asexual, yet if we have a condition that makes us appear unintelligent—mental retardation, emotional or speech disability—we are often thought of as overly sexual. For instance, one argument against sex education for mentally retarded or deaf people has been that others didn’t want to encourage their ‘natural promiscuity.’ This reveals an odd warp in our society’s assumptions about sexuality”); ROBERTS, \textit{Killing}, \textit{ supra} note 63, at 89-98 (describing history of legally-sanctioned sterilization abuse of African-American and other women of color and contemporary abusive practices by the medical profession).

\textsuperscript{68} Matas, \textit{ supra} note 34.

responsibility on women remains largely unchanged even where women enter the paid labor force. Many women, in both North and South, do “double duty” by working at a full-time waged job and then taking care of household duties in the evenings and weekends. Families that can afford to do so hire other women and girls to take care of some household work on a paid basis. These workers tend to occupy the lowest rungs of the pay scale. In the countries of the South, many household workers are women or girls from poor rural areas who have migrated to urban centers. In North America, household workers tend to be native-born or immigrant women of color (sometimes drawn from middle-class as well as working class groups in the home country). International labor activists, women’s groups, and anti-racism organizations are beginning to focus on the exploitation associated with the migration of household workers within and across borders as a form of trafficking in persons.

The immigration officer’s comments describing Ms. Baker as having

70. See generally Joan Williams, Gender Wars: Selfless Women and the Republic of Choice, 66 N.Y.U. L. REV. 1559 (1991) (discussing the continuing responsibility of women for work in the home as well as work outside the home, and the devaluation of women’s work in the home).

71. FORD-SMITH ET AL., supra note 53, at 6-7. In discussing the history of internal migration in Jamaica, Ford-Smith notes that “women tended to migrate internally to the city to find work. They came ... often to work as domestic servants in the hope that living in the city would increase their independence from family restrictions and material well-being. Migration then was a hoped for savior who turned traitor. Female workers in the city earned starvation wages if they earned any at all.” Id. at 6; see also Patricia Mohammed, Domestic Workers in the Caribbean, in WOMEN IN THE REBEL TRADITION: THE ENGLISH-SPEAKING CARIBBEAN 12, 13 (Women’s Int’l Resource Exchange ed., 1987).

72. Gatanmaytan, supra note 26, at 247; Lewis, Lionheart Gals, supra note 7, at 591; see also ROMERO, supra note 53, at 71. Romero notes,

[In South Carolina, employers typically expect to hire African American women as domestic: in New York, employers may expect their domestics to be Caribbean immigrants; however, in Los Angeles and Chicago they can expect to hire undocumented Latin American immigrants. Racial, class, and gender stratification so typifies domestic service that social expectations may relegate all lower-class women of color to the status of domestic.

73. Some women pay exorbitant fees to traffickers in exchange for transportation to the host country, for documents, or for placement with an employer. Fitzpatrick & Kelly, supra note 26, at 63-73 (discussing the economic exploitation of migrant household workers by “maid brokers”). Debates over the individual agency or coercive exploitation of poor women for sex work or prostitution parallel the conflict over the treatment of migrant household workers in international legal contexts. I am indebted to Carmelyn Malalis, a student in my seminar on Gender, Race, and International Human Rights, for helpful discussions on this issue. As is the case among prostitutes and sex workers, the material and social conditions of female household workers range from slavery-like conditions enforced by physical violence, to subtler forms of economic coercion enforced by the economic needs of the individual and her community. Of course, women also migrate and work as household workers for reasons that we tend to associate with individual agency (economic opportunity, social mobility, skill, enjoyment of one’s job, etc.). Cf. Dorothy E. Roberts, Spiritual and Menial Housework, 9 YALE J.L. & FEMINISM 51 (1997) (discussing agency of household workers and resistance to oppression). Fitzpatrick & Kelly note that some countries have adopted paternalistic legislation or policies that restrict the movement of women as a means of responding to the abuses of trafficking. Fitzpatrick & Kelly, supra note 26, at 70-74.
"no qualifications other than as a domestic" indicate the low value in which he holds household work. Despite the tremendous need for, difficulty of, and importance of, the work women do in the home, domestic workers remain officially and socially classified as "unskilled." The low status, and correspondingly low wages, assigned to domestic work, is intimately linked to the discriminatory assignment of identity roles. In the United States, for example, unpaid female family members, African-American women who were enslaved, and later, immigrant women, and non-immigrant women of color, did most domestic work. Advocates for household workers describe the risks many modern household workers face: low or unpaid wages; long hours; poor or dangerous working conditions; physical and sexual abuse; lack of benefits; long and forced separations from children, partners, and extended family; exposure to harmful chemicals or other dangerous conditions in the home; social isolation; arbitrary arrest, detention, and deportation.

75. Smith, supra note 61, at 880; Glenn, supra note 53, at 1, 15.
76. See, e.g., Williams, supra note 70, at 1605 (citing RUTH SIDEL, ON HER OWN 174, 209 (1990) (discussing the devaluation of professional women child caregivers and their consignment to low-wage and high-stress jobs)).
77. Roberts, supra note 56, at 871.
79. See HUMAN RIGHTS WATCH, UNFAIR ADVANTAGE, supra note 78.
80. See Joan Fitzpatrick, The Gender Dimensions of U.S. Immigration Policy, 9 YALE J. L. & FEMINISM 23, 32-33, 37-43 (1997). Host country immigration laws make it extremely difficult for female migrants to obtain visas to work legally in the North. Id. at 34-35. In the United States, applications for permanent residency must generally be made from the sending country and require a long (sometimes up to ten year) waiting period. See Melanie Ryan, Swept Under the Carpet: Lack of Legal Protections for Household Workers—A Call for Justice, 20 WOMEN'S RTS. L. REP. 159, 170 (1999). Household workers are generally classified by the U.S. Department of Labor as "unskilled" workers; unskilled immigrants are classified in the lowest preference category and the number of employment-based visas available to them is severely restricted. See NATIONAL IMMIGRATION FORUM, IMMIGRATION POLICY HANDBOOK 2000, 8 (2000) (summarizing U.S. immigration provisions on employment-based immigration); Ryan, supra, at 170. The National Immigration Forum notes that "skilled workers must be capable of performing skilled labor requiring at least two years training or experience." Id. Potential employers can attempt to have a migrant household worker classified as a "skilled" immigrant by showing that the job requires at least two years of experience. However, the process is complicated and requires extensive documentation to support the classification. Melvin R. Solomon, Between A Rock and A Hard Place: An Explanation of Immigration, 167 MAR N.J. Law. 40, 42 (1995). Some migrant household workers enter the U.S. under special visas to work for non-immigrants residing in the U.S., such as officials of foreign
Ms. Baker’s identity as a figurative mother also may have been significant in “pulling” her to Canada from Jamaica. Many Afro-Caribbean female migrants form part of a “nanny chain”, migrating to care for the homes, parents, and children of middle-class families in North America or Europe, while leaving their own children and parents in the care of relatives or lower-paid women or girls from rural areas in the Caribbean. Women migrants may be the sole economic support of their children back home, but they may not see their children for years at a time, resulting in tremendous strains on emotional ties.82

We know from news reports of Ms. Baker’s case, and from the Supreme Court decision, that a psychologist had determined “that the removal of the mother would cause trauma, harm, and hardship to the [Canadian-born] children.”83 Because of the requirements and priorities of the domestic and international legal frameworks involved, Ms. Baker’s lawyers had to focus on the hardship and trauma of her Canadian-born minor children. The past or current trauma experienced by her Jamaican-born adult children, and by Ms. Baker herself, largely remains hidden.

Many Afro-Caribbean migrant women send cash remittances, as well as food, clothing, and other household goods in shipping barrels back to the governments. Laurie Grossman & David Grunblatt, The Nonimmigrant Admission of Attendants, Domestics, and Personal Servants, 1 AILA Handbook (2000).

In Canada, immigration laws specifically encouraged the migration of women from developing countries to work as household workers and nannies, but restricted their ability to change employers or engage in other forms of work without risking deportation. Macklin, supra note 26, at 26-29 (1999). Once female migrant workers are admitted to host countries, their ability to change employers, or to seek different forms of employment, may be restricted by law or circumstance. Fitzpatrick, supra note 23, at 25-26, 31-36. As a result, many female migrant household workers remain undocumented, risking arrest and deportation. See Macklin, supra note 26, at 26-29. On the legal issues facing migrant women workers, see, generally, Fitzpatrick & Kelly, supra note 26 (analyzing ways in which the legal regulation of migration exacerbates the cultural and social inequities that subordinate migrant women); Ryan, supra (challenging women employers to support household workers in their struggle for equality and in their efforts to bridge the gap between white women and women of color and between poor women and wealthy women); Suzanne Goldberg, In Pursuit of Workplace Rights: Household Workers and a Conflict of Laws, 3 YALE J.L. & FEMINISM 63 (1996) (examining the denial of employment rights to household workers and how this contributes to their economic and physical exploitation by private employers); Hune, supra note 27 (analyzing the application of International Convention on the Protection of the Rights of All Migrant Workers and Their Families to female migrants).

81. See, e.g., Arlie Russell Hochschild, The Nanny Chain, 11 AM. PROSPECT 32 (2000) (reviewing RHACEL PARRENAS, SERVANTS OF GLOBALIZATION (2000)). Parrenas describes the nanny chain as involving “the globalization of mothering.” Id. The racial stereotyping associated with this phenomenon is not limited to migrant women of color. See ROMERO, supra note 36, at 72. Romero recounts the late Audre Lorde’s experience in a New York supermarket: “I wheel my two-year old daughter in a shopping cart through a supermarket in Eastchester in 1967, and a little white girl riding past in her mother’s cart calls out excitedly, ‘Oh look, Mommy, a baby maid.’” Lorde was a well-known poet, essayist, and academic.

82. PAULA AYMER, UPROOTED WOMEN: MIGRANT DOMESTICS IN THE CARIBBEAN (1997).

home country. The children of these migrant women are sometimes referred to as “barrel children.” This informal economic support is not insignificant; the amount sent back is estimated to be more than $500 million per year to Jamaica alone. Migrant women, are, therefore, major pillars of support for Caribbean economies. Many are self-conscious and assertive about the importance of their roles as economic providers, creating complex labor scouting networks within and outside the Caribbean. They send home money to build houses, to educate their children, and to care for their elderly parents. They also create important survival networks within Northern communities.

Race, gender, and ethnicity play vital roles in regulating the supply of these “surrogate mothers” to the North. While sociologists have examined the significance of the nanny chain phenomenon, it is rarely seen through the

84. See, e.g., Lewis, Lionheart Gals, supra note 7, at 569; Brook Larmer, The Barrel Children, NEWSWEEK, Feb. 19, 1996, at 45; Barrels of Hope for Jamaicans, CHI. TRIB., May 24, 1992, at 7B (discussing the common practice among Jamaican migrants of sending shipping barrels from the U.S. and Canada to relatives in Jamaica); Abigail Beshkin, Making It Work: Immigrants Build A Bridge of Barrels, N.Y. TIMES, Oct. 10, 1999, at 3 (describing the use of shipping barrels by immigrants in Crown Heights, Brooklyn, to send remittances to the Caribbean and noting that one Brooklyn shipping company sent 13,000 barrels annually to Jamaica alone).

85. See, e.g., Don Bohning, Better Days for Jamaica, DALLAS MORNING NEWS, Feb. 26, 1995, at 26A (estimating that remittances from abroad accounted for more than $500 million in foreign exchange); Gatmaytan, supra note 26, at 229 (stating that in the Philippines, an important source of female labor migration for the countries of the North and the Middle East, estimates of remittances from migrant labor run to more than $700 million annually). On the importance of remittances from migrant workers to Latin America, see generally, Deborah Waller Meyers, Migrant Remittances to Latin America: Reviewing the Literature (May 1998), at http://www.ialdia.org/meyers.html (paper discussing remittances and providing bibliography on remittances to Latin America); Stephen Fidler, Middle East, Latin America and Caribbean: New Migrants Spur Growth in Remittances, FIN. TIMES, May 17, 2001 (noting that “the level of remittances exceeds aid flows to the region (Latin America) and is equal to almost a third of the region’s foreign direct investment”), available at http://globalarchive.ft.com/globalarchive/articles.html.

Facilitating the transfer of remittances has become a thriving business for some companies. See, e.g., Abigail Beshkin, Making It Work: Immigrants Build A Bridge of Barrels, N.Y. TIMES, Oct. 10, 1999, at 3 (use of shipping companies by immigrants); Wendy Lin, The Money Tie That Binds; Workers Wire Millions Back to Families, NEWSDAY, Oct. 18, 1991, at 28 (discussing remittances sent by immigrants in New York and the high rates charged by some of the wire services involved).

86. See, e.g., AYMER, supra note 82.

87. See Fitzpatrick & Kelly, supra note 26, at 70 (discussing the importance of remittances from female migrant workers); Joan French, Hitting Where It Hurts Most: Jamaican Women’s Livelihoods in Crisis, in MORTGAGING WOMEN’S LIVES: FEMINIST CRITIQUES OF STRUCTURAL ADJUSTMENT 165 (Pamela Sparr ed., 1994) (discussing the important economic role that women play in the Jamaican economy and discussing the survival strategies many of them adopt, including migration); Lewis, Lionheart Gals, supra note 7; Free Trader: The Gentle Art of Higgling, THE ECONOMIST (U.K.), Nov. 30, 1991, at 44 (discussing growing importance of traders in the informal sector, sometimes referred to as “higglers,” in the Jamaican economy).

lens of human rights. What does the nanny chain mean for the migrant woman’s right to family and community life? Is the sending state’s pursuit of economic or social policies that enhance migratory pressures a violation of human rights? Does the host country have an obligation to provide for family reunification?

VIII. AN “ILLEGAL ALIEN” STORY

Of course, Ms. Baker was in danger of deportation because of her status as an undocumented worker or “illegal alien.” This story places Ms. Baker in the precarious position of being a part of a group from which sovereign states seek the protection of international and domestic law, but who receive little effective human rights protection themselves. The ability to regulate

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89. See, e.g., Universal Declaration, supra note 5, at Art. 16, sec. 3 (according special protection to the family); id. at Art. 25, sec. 2 (providing special protections for motherhood and childhood); id. at Art. 27 (extending a right to participate in the cultural life of a community); International Covenant on Economic, Social and Cultural Rights, supra note 5, at Art. 10 (recognizing the special status of family life).

90. See, e.g., Universal Declaration, supra note 5, at Art. 28 (according a right to “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”). One response to reports of labor and other abuses against female migrant workers has been for the sending state to place restrictions on the migration of women. Fitzpatrick & Kelly, supra note 26, at 70-74. This approach can itself violate the human rights of women. Universal Declaration, supra note 5, at Art. 13 (providing a right to leave and return to one’s country).

91. See Cholewinski, supra note 4, at 171-73 (discussing the right of family reunification under the International Convention on the Rights of All Migrant Workers and Their Families). Article 44 provides, “States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state, shall take measures to ensure the protection of the unity of the family of migrant workers.” Id. at 172 (quoting text of the convention). Article 44 of the Migrant Workers Convention applies only to “regular migrants” as defined in the convention. Id.

92. Baker, [1999] 2 S.C.R. at 827 (noting that Ms. Baker “was ordered deported in December 1992, after it was determined that she had worked illegally in Canada and had overstayed her visitor’s visa”). She applied for a stay of deportation in 1993.

93. The right to regulate state borders is considered a fundamental attribute of state sovereignty. Cholewinski, supra note 4, at 172. Even fundamental human rights instruments limit certain rights protections to citizenship or legal immigrant status. See, e.g., International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2160(xx) (1995). The Convention states that its provisions “shall not apply to distinctions, exclusions, restrictions, or preferences made by a State Party to this Convention between citizens and non-citizens.” Id. at Art. 1, sec. 2. The Convention goes on to provide, however, that “[n]othing in this Convention may be interpreted as affecting in any way the legal provision of States Parties concerning nationality, citizenship, or naturalization, provided that such provisions do not discriminate against any particular nationality.” Id. at Art. 1, sec. 3.

Money notes that “States, via the principle of national sovereignty, have the acknowledged right to determine who enters their borders” and that they “define, through their immigration control policies, the number of individuals they will permit to enter, the characteristics of those individuals, and the conditions associated with their entry.” She also notes, however, that “the right is not absolute.” Money, supra note 55.

An exception may arise in cases where an undocumented alien gives birth to a child
human traffic across borders is considered a basic attribute of state sovereignty.\textsuperscript{94} Despite increasing pressures to remove trade, investment, and other economic barriers to the global movement of capital, the movement of human beings across borders remains highly regulated, especially in the North.\textsuperscript{95} Therefore, "illegal" or undocumented status makes Ms. Baker, and people like her, more vulnerable to the deprivation of human rights protections. The role of migrant workers as "citizens" who contribute over the course of years or decades to the economic, social, and political needs of the host country remains unrecognized.\textsuperscript{96}

The broader categories of "illegal alien" or "migrant worker" often themselves hide the specific stories of women migrant workers. International human rights organizations have only recently begun to recognize the implications of the global trade in working women. Some abuses experienced by women migrant workers are inconsistent with the requirements of various International Labour Organization ("I.L.O.") conventions\textsuperscript{97} and of the U.N. Convention on the Protection of the Rights of who becomes a citizen through the principles of \textit{jus soli}, the granting of citizenship based on birth in the host country. That infant citizen may then ultimately bring in nuclear family members under whatever provisions are established for uniting a citizen with his or her alien family. However, among AMECs [Advanced Market Economy Countries], unconditional \textit{jus soli} is the exception rather than the rule. Most AMECs practice \textit{jus sanguinis} that denies citizenship to children of aliens. Both Britain and Australia, once countries of unconditional \textit{jus soli}, have adopted provisions that grant citizenship to children born on their territory to alien parents only when the parents are legally resident, permanently established aliens. France grants citizenship to children of alien parents born on French soil only after substantial periods of residence. The United States, with unconditional \textit{jus soli}, is an exception to the more general rule.

\textit{Id.} at 506, n.14.

\textsuperscript{94} See THE \textsc{MOVEMENT OF PERSONS}, supra note 4.

\textsuperscript{95} Fitzpatrick & Kelly, \textit{supra} note 26, at 79-80.


For general discussions of the rights of migrants under international human rights standards, see CHOLEWINSKI, \textit{supra} note 4; THE \textsc{MOVEMENT OF PERSONS}, \textit{supra} note 4; Money, \textit{supra} note 55; Connie de la Vega, \textit{Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment}, 21 HUM. RTS. Q. 229 (1999) (reviewing Cholewinski's book and
All Migrant Workers and Members of Their Families. However, the specific implications of gender and race for female migrant workers are generally hidden in these instruments. In order to bring visibility to their specific experiences, female migrant workers have testified before non-governmental tribunals organized at World Conferences in Vienna, Beijing, and Copenhagen. They have noted that the international human rights discourse assumes that migrant workers are male heads of households who will send remittances home to their wives and children. Increasingly, it is women who migrate to support themselves and their families and who face gender-specific violations of their human rights.

Some progress has been made. The U.N. Secretary-General, the Commission on Human Rights, and the Special Rapporteur on Violence Against Women have recognized the existence and prevalence of gender-specific abuses. They have adopted resolutions against trafficking in women and on violence against female migrants. Human rights NGOs also have documented some of the most severe labor and physical abuses of female

describing efforts by U.N. bodies and human rights NGOs to strengthen international recognition of the human rights of migrants).


101. Id.

102. See, e.g., Escaler, supra note 98.
migrant workers in human rights reports.103

At this early stage in the recognition of the human rights implications of female migration, the attention of most mainstream human rights organizations remains fixed primarily on the physical and sexual abuses associated with slavery and trafficking. They document conditions involving literal enslavement or indentured servitude, such as the horrific cases reported in the United States involving foreign diplomats as employers.104 Are the stories of economic, social, and cultural violations that many other female migrant workers experience too “ordinary” for us to see them as a matter of human rights urgency?

IX. HUMAN RIGHTS AND TRANSNATIONAL IDENTITY: A GLOBALIZATION STORY

The media, the court, and the immigration agency could have told Ms. Baker’s story as a story about the impact of globalization on human rights, but did not. Ms. Baker is, in some sense, a “transnational” or “inter/national”105 woman from a country where a history of trade inequity, foreign debt, and structural adjustment devastated the economy.106 The

103. See, e.g., HUMAN RIGHTS WATCH, GLOBAL REPORT, supra note 78, at 273-81 (discussing human rights abuses against women workers); HUMAN RIGHTS WATCH, UNFAIR ADVANTAGE, supra note 78.


105. I use this term to describe the status of migrant women who negotiate life between two (or more) national identities. Lewis, Lionheart Gals, supra note 7, at 567; Lewis, Global Intersections, supra note 16, at 311.

106. For overviews of the political economy of Jamaica from post-colonial socialist perspectives, see MANLEY, supra note 28; GEORGE BECKFORD & MICHAEL WITTER, SMALL GARDEN, BITTER WEED: STRUGGLE AND CHANGE IN JAMAICA (2d ed. 1982). For an interesting history of the popular culture and traditions of Jamaica by a leading Caribbean historian and sociologist, see OLIVE SENIOR, A-Z OF JAMAICAN HERITAGE (1983). The country was originally settled by Arawak and other indigenous peoples who were largely decimated by the effects of European colonization (Spanish and British). Id. at 7-9. The island then became a central part of the trans-Atlantic trade in enslaved human beings from Africa, sugar, bananas, coffee, and other commodities. Id. at 2-3. The island’s complex history also included the importation of indentured servants from Europe and Asia and small colonies of merchants, plantation owners, and plantation managers from Europe and the Middle East. Id. The island has a rich history of labor struggle and resistance to global domination, culminating in the country’s independence from Britain in 1962. MANLEY, supra note 28, at 21-22, 172-78 (describing and criticizing the Jamaican trade union movement).

Despite the many resources and positive aspects of the country, beginning in the 1970s, a variety of factors including the internal political violence, the adoption of International Monetary Fund-imposed structural adjustment policies, Cold War-linked political destabilization efforts, a decline in commodity prices for important export items like sugar, and bauxite, and a large public
conditions in Jamaica likely had a strong influence on her decision to migrate to Canada and to remain separate from her first four children.

Why not return to the tourist paradise of Jamaica to visit her Jamaican-born children and to raise her Canadian-born children? A temporary visit might have been out of the question for fear of losing her job or of having her undocumented status discovered. The most significant issue, however, likely was the social and economic conditions in Jamaica. Activists and scholars must begin to place those conditions in the foreground of human rights analysis. In Ms. Baker’s application for the stay of deportation, the immigration officer noted that Ms. Baker claimed that there was “nothing for her” in Jamaica.107 For many middle-class observers like myself, Jamaica is a beautiful, sun-filled, friendly place, with natural resources and a rich cultural and intellectual history.108 Tourist board advertisements once

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108. I was born in the United States and made frequent visits to the island when I was growing up. Most members of my immediate family are Afro-Jamaican immigrants to the United States. I identify as Black, African-American, and Afro-Jamaican, among other things and in various contexts. Such specific identifications can be seen as divisive, but need not be if used in the context of political or cultural solidarity. See Lewis, Global Intersections, supra note 16, at 312-13; Dorothy E. Roberts, BlackCrit Theory and the Problem of Essentialism, 53 U. MIAMI L. REV. 855 (1999) (discussing critical, anti-essentialist analysis of Black identity in the context of LatCrit theory); see also Elisabeth Iglesias, Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community, 53 UNIV. MIAI. REV. 575, 622-29 (analyzing Roberts’s article and the implications of the diversity of Black and Latina/o identities for LatCrit theory). Roberts discusses the political flexibility of identity, including her identity as “the daughter of a Jamaican immigrant” in a discussion of U.S. immigration policy. Id. at 628. By contrast, Roberts identified as “African American rather than West-Indian” in other contexts. Id. Iglesias notes that “The West–Indian identity has often been embraced by Caribbean Blacks as a mark of distinction that separates them from and seeks to raise them above the subordinated status of Black Americans in the United States.” Id. I argue elsewhere that mutual stereotypes about Caribbean Blacks, Blacks from the African continent, and Blacks from the United States are often the result of attempts to divide and manipulate these groups and to limit the possibility of political coalition. Lewis, Global Intersections, supra note 16, at 321-22, 325-26 (critiquing these stereotypes and calling for solidarity on issues of common concern). Nevertheless, there is also a long history of solidarity across class and cultural borders among Black activists and intellectuals from different geographic or cultural regions. TRANSAFRICA FORUM, A RETROSPECTIVE: BLACKS IN U.S. FOREIGN POLICY (Hope Lewis ed., 1987); Hope Lewis, Reflections on BlackCrit Theory: Human Rights, 45 VILL. L. REV. 1075 (2000) (reflecting on human rights scholarship that focuses on the human rights of Black peoples).
emphasized that “we’re not just a beach; we’re a country.” Indeed, many poor people in Jamaica experience the richness of the island in similar ways. However, for these same people, some of whom refer to themselves as “the sufferers,” Jamaica can also be a dangerous and difficult place.

Human rights discourse about Jamaica focuses primarily on civil and political violations such as police brutality, arbitrary arrest and detention, intolerable prison conditions, and abuses associated with the death penalty. Each of those violations, however, is inextricably linked to failures of the right to development and of socio-economic rights in the region. The unemployment rate among adult women in Jamaica has reached sixty-five percent, forcing some poor women into the tourist sex trade. The minimum wage is thirty dollars (U.S.) per week and the annual per capita income is $2,400 (U.S.). Nearly twenty-five per cent of the population lives below the international poverty line of one dollar (U.S.) per day. The high cost of basic goods and services led to three days of civil disturbances over a gasoline price increases in 1999.

109. The Jamaica Tourist Board used this advertising campaign in the late 1970s and early 1980s. See Maggie Lewis, Lively, Hilarious Jamaica, Where Even the Bamboo Moves to a Reggae Beat, CHRISTIAN SCIENCE MONITOR, Oct. 14, 1983, at B6 (referring to the ad); Jamaica Targets Areas With Tourism Potential, TOUR & TRAVEL NEWS, Oct. 15, 1990, at 34 (discussing new advertising campaign in the 1990s and noting that in 1989 “Jamaica received about 1.1 million visitors and $593 million, making tourism the number-one earner of foreign exchange”).

110. The economic and social dislocation caused by the effects of colonialism, neo-colonialism, and inter-group conflict has led to a rise in violence on the island, particularly, in non-tourist areas within Kingston, the capital city. For an overview of the human rights situation in Jamaica, see U.S. DEP’T OF STATE, 2000 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, JAMAICA (2001).


112. French, supra note 87, at 174 (discussing increase in prostitution of women following structural adjustment policies on the island).

113. U.S. Dep’t of State, 1999 Report, supra note 111.


115. U.S. Dep’t of State, 1999 Report, supra note 111.

116. In July of 2001, twenty-one civilians were killed in a shoot-out between police and residents of Tivoli Gardens, a West Kingston neighborhood. David Gonzalez, Violence Subsidizes in
especially in the poorer parts of Kingston. Furthermore, "few resources exist to assist the poor and disabled. Poor Jamaicans have limited access to health care and medication, and the disabled are also subject to widespread discrimination." 118

Because of the single-state focus of the traditional human rights framework, if we identify these issues as human rights problems at all, we tend to see them in isolation from the transnational context in which they occur. Migrant workers from countries like Jamaica are, at best, seen as victims of abuses by "alien" governments or cultural norms located in the Third World. This view of human rights violations makes it more acceptable for the countries of the North to allow periodic flows of migrants or refugees from the South, seemingly as a matter of largesse. The "enlightened" North can thus conveniently import migrant workers from the South when necessary. However, because such limited admissions are seemingly based on humanitarian considerations, Northern governments can also more easily exclude these workers when its "generosity" runs out.119 Northern economies can only "take care of" so many "victims" of the political, social, and economic conditions of the South for so long. Global migration stories should also be about the transnational human rights impact of international policies and arrangements over which the North has significant control and responsibility. Assigning the sole responsibility for human rights violations to the governments of the Third World masks the responsibilities of the North with regard to the human rights of migrants. Structural adjustment policies, Third World debt, and inequitable terms of trade, for example, have a great deal to do with human rights conditions in the South. We must use the lens of human rights to examine more fully the factors that contribute to the need to migrate. With such an approach, one can re-examine stories that explain the migration of women solely as a movement from "backward" oppressive cultures to the "enlightened" human rights cultures of the North.

X. CONCLUSIONS: TOWARD A STORY OF HUMAN RIGHTS INTERSECTIONS

Intersectionality theory tells us that Ms. Baker may have experienced all of the human rights violations associated with her various identities...
simultaneously, with one, or a combination, taking on more importance in specific contexts. Traditional human rights discourse focuses on those who experience human rights violations as objects who represent an essentialized “human rights victim.” We ask those victims to conform to certain gendered, racialized categories in order to be worthy of our concern. But the framework must be flexible enough to address the multiplicity of forms in which identity-based violations can occur. Human rights activists and scholars also must continue to question the reasons that underlie not only the failure to focus on violations of economic, social, and cultural rights, but also the desire to create and reify essentialist categories of human rights victims.

Further, Ms. Baker, and some women like her, might not have been able to take advantage of recent feminist efforts to expand the acceptability of political asylum categories in Canada and the United States. Ms. Baker did not claim to be the victim of political detention or torture in Jamaica. She did not argue that her cultural identity might subject her to violations of bodily integrity, or domestic violence from which the state would not protect her. She therefore did not appear to fit any of the recognized categories for which Northern governments grant political asylum, including the more recently acknowledged sub-category of gender asylum. She is a refugee from “economic violence,” not from “political violence.”

If the stories of many Black female migrant workers are to become human rights stories, they must be intersectional stories and they must recognize the interdependence and indivisibility of human rights. Human rights stories must include the right to food, as well as the right to political


121. Following extensive advocacy by refugee and asylum lawyers and other activists, both Canadian and U.S. immigration authorities have recognized the legitimacy of political asylum claims based on gender-related persecution. Both governments have developed guidelines for the assessment of such claims. See Deborah E. Anker, Women Refugees: Forgotten No Longer?, 32 SAN DIEGO L. REV. 771 (1995) (discussing the invisibility of gender-based persecution in U.S. asylum cases and the eventual adoption of non-binding guidelines on gender considerations for U.S. asylum officers in considering gender-related claims).


123. On the relevance of race in the differential treatment under U.S. immigration and asylum law of migrants from Africa, Latin America, the Caribbean, and Asia, see Johnson, Race Matters, supra note 22, at 532-533. See also RICHMOND, supra note 13, at 214 (noting the “double standard” applied by the Bush, Sr., and Clinton administrations to the treatment of Haitian and Cuban refugees).
participation; they must include the right to development as well as the right not to be raped or tortured because of one’s political beliefs. They must include the right to family and the enjoyment of culture, as well as the right to a fair hearing under the law; they must include the rights of parents and the rights of their children, regardless of where they were born.

Those who hold these rights, like Ms. Baker, must be able to hold the governments of which they are citizens accountable for their complicity in violations of those rights. But a post-Seattle world should now recognize that powerful states are complicit in human rights violations through bilateral immigration policies and through their domination of international financial institutions and trade agreements. Northern governments also must be held accountable for addressing the conditions that allow economic and social human rights violations to flourish in both developed and developing countries.

Finally, when we hire migrant workers in our homes to care for our children, our elderly, and ourselves we must see human rights both as a “personal” and “political” issue. The media attention on women (rarely men) who are nominated to public office and who have employed undocumented workers create sensational “nanny-gate” media scandals. Beyond the usual guilty wringing of hands, there is little sustained discussion about the “unskilled labor” cushion on which Northern economies rest. A response to the issues affecting migrant women requires domestic and international legal, political, and social responses that extend beyond the responsibilities of any single employer.

The nanny chain is stronger than ever and is still growing. Corporations

124. Seattle, Washington, was the site in December 1999 of a large, highly-publicized protest against top-down globalization. The protests resulted in the failure of a meeting of the World Trade Organization. Balakrishnan Rajagopal, From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions, 41 HARV. INT’L. L.J. 529, 569 (2000) (noting the Seattle protests). Subsequent protests have taken place in cities around the world, usually in conjunction with meetings of international financial organizations or of business and political leaders from the North. On the history of grassroots movements in the Third World in opposition to policies of international financial institutions, see id.

125. See STEINER & ALSTON, supra note 5, at 238.

126. Banks, supra note 69, at 2-3 (discussing Zoe Baird, the first woman nominated as Attorney General of the United States, who withdrew from consideration for the post following the disclosure that she and her husband had failed to pay social security taxes for an undocumented immigrant nanny).

127. A variety of possible explanations may underlie the hesitance of many female employers of household workers to engage in activism on the issues. Taunya Banks notes that a majority of women who hired household workers did not pay social security or other taxes required by law, even though they believed that Baird acted inappropriately. Banks, supra note 69, at 23 (citing Pierrette Hondagneu-Sotelo, Affluent Players in the Informal Economy: Employers and Paid Domestic Workers, 17 INT’L J. SOC. & SOC. POL’Y 130 (1997)). Joan Williams has identified the conundrum facing many middle-class women who fear spending too little time with children (like a “workaholic father”) but who also fear failing to perform as an “ideal worker” in the paid workplace. Id. at 22 (citing Joan Williams, Sameness Feminism and the Work/Family Conflict, 35 N.Y.L. SCH. L. REV. 347, 352-53 (1990).
draw “skilled” labor into the workforce (including women) while paying little attention to the needs of families for the care of children, elderly, or themselves.\textsuperscript{128} Those working-class and middle-class families struggle to locate affordable and reliable care for children and elderly parents while they participate in the paid workforce. Women in the North, who often maintain responsibility for this work, are forced to choose between “success” at work and guilt about what may be going on at home or to work a double-shift of full-time paid labor and full-time unpaid labor at night.\textsuperscript{129}

And what about the silence surrounding those women imported to take on this work, often at low wages, for long hours, under difficult conditions, and without benefits upon illness or retirement?\textsuperscript{130} Anyone who has cared for children, the sick, or the elderly know that the work is not glamorous, and that it requires patience, stamina, and knowledge if it is to be done safely and efficiently.\textsuperscript{131} Where are their children and parents? Many migrant women are caregivers for their own children and relatives, but for them the caregiving role is largely that of “economic providers.” Emotional and social ties are left to letters and long-distance calls. The fact that the “nanny-chain” seems to flow in only one direction—from South to North—should give us pause.

A reconceptualized approach to human rights would also examine the complex roles of “culture” in the context of the global migration process. The movement of “Third World” women from South to North is often characterized as a liberating journey from backward patriarchal cultures to enlightenment and freedom. Women migrants do seek to take advantage of real or perceived flexibility in economic and social opportunities in the North. The nature and definition of “culture,” however, must also be re-examined. As Leti Volpp has pointed out, we tend to attribute “cultural” reasons to decision-makers in the North only when discussing immigrant or

\begin{footnotes}
\item[128] Increasingly, new social movements, human rights NGOs, and litigators are seeking to hold transnational economic institutions and “private” actors, such as transnational corporations, accountable for human rights violations. See generally Frances Lee Ansley, \textit{Rethinking Law in Globalizing Labor Markets}, I U. PA. J. LAB. & EMP. L. 369 (1998); Rajagopal, \textit{supra} note 124.

\item[129] Fitzpatrick & Kelly, \textit{supra} note 26, at 64-67 (outlining the factors that “pull” female migrant labor into host countries).

\item[130] CHANG, \textit{supra} note 3, at 78-79 (calling for policies that would address the needs of working-class women of color and white women who perform low-wage household work).

\item[131] Caregiving for the elderly, for example, involves grocery shopping, cooking, feeding, bathing, toileting, preparation of medication, and housecleaning. See \textit{ALWAYS ON CALL: WHEN ILLNESS TURNS FAMILIES INTO CAREGIVERS} (Carol Levine ed., 2000) (examining experiences of family members who are caregivers and professional caregivers); John Langone, \textit{On Health: When Friends and Family Fill Most of a Patient’s Medical Needs}, N.Y. TIMES, Oct. 24, 2000, at F8 (noting that “about 25 million Americans provide essential care to seriously ill or disabled family members”). Similarly, childcare requires feeding, bathing, changing, and dressing the child, transporting the child to doctor’s appointments, play dates, and school, housecleaning, and other tasks that can require attention at any time of the day or night.
\end{footnotes}
other "Exotic Other" communities. Do we accept unchallenged the definitions of "culture" provided by those who wish to keep a patriarchal structure in place? Most importantly, do we interrogate our own cultural norms in the reification of gender, racial, and ethnic roles in our own societies? Are we open to the possibility that Afro-Caribbean women, instead of rejecting their culture, might rather be extending it? Could their migration therefore be seen as the pursuit of resources that had been inequitably transferred from South to North?

The stories of individual women reflect different answers, but for a reconceptualized approach to human rights it is important to ask the questions. The breakdowns associated with military and other forms of physical violence in the South are still the primary focus of traditional human rights discourse. For many female migrant household workers, however, the violence of transnational economic inequities and the related destabilization of home, community, culture, and socio-economic opportunity must also gain the increased focus of human rights discourse and activism. To be legitimate, the human rights framework must be a useful tool for those Black women whose rights are violated in, and by, the North, as well as in, and by, the South.


133. See, e.g., Nyamu, supra note 28.