Global intersections: critical race feminist human rights and inter/national black women

Hope Lewis

Follow this and additional works at: http://lsr.nellco.org/nusl_faculty

Recommended Citation
Lewis, Hope, "Global intersections: critical race feminist human rights and inter/national black women" (1998). School of Law Faculty Publications. 73.
http://lsr.nellco.org/nusl_faculty/73

This Article is brought to you for free and open access by the Northeastern University School of Law at NELLCO Legal Scholarship Repository. It has been accepted for inclusion in School of Law Faculty Publications by an authorized administrator of NELLCO Legal Scholarship Repository. For more information, please contact tracy.thompson@nellco.org.
"My life stories influence my perspective, a perspective unable to
function within a single paradigm because I am too many things at
one time."

Taunya Lovell Banks

"Say, I remember, when we used to sit in a government yard in
Brooklyn..."

The 'Fugees'

I. INTRODUCTION

As an African American feminist law professor who is visually
impaired and the daughter of immigrants, I am often torn as to which
social justice organizing conference to attend first on any given day. 

---

1. Taunya Lovell Banks, Two Life Stories: Reflections of One Black Woman Law
Professor, in CRITICAL RACE FEMINISM: A READER 96, 99 (Adrien Katherine Wing ed., 1997)
[hereinafter CRITICAL RACE FEMINISM].
2. 'Fugees, No WOMAN, No CRY (Sony Music Entertainment, Inc. 1996) (the original be,
from a Bob Marley and the Wailers song, reads: "...in a government yard in Trenchtown..."
). The 'Fugees (short for "refugees") are a soul and rap band comprised of Blacks from Haiti, Jamaica,
and the United States.
3. My status as an American law professor allows me many privileges not available to most
women of color who have disabilities. Discrimination against people with disabilities, and how this
form of discrimination intersects with other forms of discrimination, remains largely unexplored in
critical legal scholarship. Cf Laurie S. Wiseberg, Disabled Faced Additional Obstacles in Beijing,
HUMAN RIGHTS INTERNET, Oct.-Nov. 1995, at 8 (describing difficulties faced by women with
disabilities who attended the World Conference on Women in China). Critical Race Feminists have
examined, however, how racism, sexism, and other prejudices often undermine our privileged status
as law professors who are also women of color. See, e.g., Banks, supra note 1, at 98-99 (describing
an incident in which the presence of five Black female law professors in an elevator presented a
frightening prospect for two white residents of a luxury apartment building); Isabelle R. Gunning,
Arrogant Perception, World-Travelling and Multicultural Feminism: The Case of Female Genital
Surgeries, 23 COLUM. HUM. RTS. L. REV. 189, 203-04 (1991-1992) (noting that, as a Black woman,
the author could not expect to be treated with the respect normally accorded to law professors when
she walks into a library or classroom).
Many characteristics at the core of my identity are under attack in the United States and globally, and may continue to be in the twenty-first century. I learn more each day about survival in the intersection of racism, sexism, able-ism, and nativism. Perhaps that is the basis for my attraction to the international human rights movement. Despite its limitations, that movement is at its best when it undermines the isolation that oppressed peoples and individuals can experience. Human rights can serve as a basis of coalition across geographic, political, gender, race, and physical boundaries. Since the focus of the symposium is "feminism," I note that, in recent decades, millions of women have looked to feminist human rights strategies as tools of first, and last, resort. As they engage in those strategies, many of those women understand the indivisibility of the struggle against sexism from struggles against racism, class-ism, and able-ism.

Those of us who work in the transnational feminist human rights movement in this post-Beijing, globalized world are facing a moment of great challenge and opportunity. Feminist human rights theorists and activists have laid to rest the notion that human rights violations occur only in public, political contexts. They have focused on the right to food and the right to be safe from abusive partners as well as on the right not to be arbitrarily detained or tortured by state officials. The world attention and activist energy surrounding the Beijing World Conference on Women has created a unique opportunity to build feminist human rights consciousness domestically and internationally. We could all look forward to supporting such a "globalization from below.

Nevertheless, the feminist human rights movement is simultaneously facing great challenges. Although we have made important strides at local, national, and international levels in creating strategies to prevent domestic violence and other forms of "private" violence against women, we still have far to go. For example, we have only just begun to recognize how the juggernaut of top-down globalization also perpetrates physical, social, and economic violence against women.


5. The concept of "globalization from below" arose out of grassroots efforts to defend against the harmful effects of top-down globalization by organizing cross-culturally. On the concept of "looking to the bottom" in critical race scholarship, see generally Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 63 (Kimberle Crenshaw et al. eds., 1995) [hereinafter CRITICAL RACE THEORY].

particularly poor women of color, are being crushed beneath the wheels of multinational corporations, regional and multilateral trade agreements, and structural adjustment policies. Our responses to such economic violence, therefore, must also be transnational in order to target the shifting geopolitical spaces in which these violations of women's rights occur.

Critical Race Feminism, a set of approaches to legal scholarship that has its roots in feminist and anti-racist critical traditions, is beginning to struggle with some of these questions. In this brief essay, I illustrate how Critical Race Feminist analysis could reconceptualize the human rights problems facing "inter/national Black women"—in this case, Black women who migrate between the United States and Jamaica.

This focus on Jamaican American migrants is very personal as well as political; I was raised by Jamaican American women. However, I have begun to focus on such women in my research not only in a search for "home" but also because there are important lessons to be learned from those who are the least visible in the legal literature.

I draw the framework for a Critical Race Feminist human rights analysis from a number of sources: Third World and global feminism; critical race theory; and human rights activism and theory. Such a

(discussing the need to reimagine violations of the economic rights of poor Latinas, for example, as violence against women). The socioeconomic status of women is receiving increasing attention in the human rights arena. See, e.g., Clair Apodaca, Measuring Women's Economic and Social Rights Achievement, 20 Hum. RTS. Q. 139 (1998) (providing empirical analysis of data on social welfare of women from a human rights perspective).

7. See generally MORTGAGING WOMEN'S LIVES: FEMINIST CRITIQUES OF STRUCTURAL ADJUSTMENT (Pamela J. Sparr ed., 1994) (hereinafter MORTGAGING WOMEN'S LIVES) (collection of essays examining the impact of structural adjustment policies on the status of women); see also Joan French, Hitting Where It Hurts Most: Jamaican Women's Livelihoods in Crisis, in MORTGAGING WOMEN'S LIVES, supra, at 165.


10. I grew up in East Flatbush, an enclave of Caribbean American immigrants in Brooklyn, New York. My grandmother migrated to the United States in the late 1940s and worked as a domestic and nurses' aide; my mother arrived in the 1950s and has been a registered nurse since the early 1960s.

11. For more on global feminism, see, for example, THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM (Chandra Talpade Mohanty et al. eds.; 1991); CYNTHIA ENLOE, BANANAS, BEACHES, AND BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS (1989); SISTERHOOD IS GLOBAL (Robin Morgan ed., 1984). For examples of Critical Race Feminist scholarship, see, CRITICAL RACE FEMINISM, supra note 1; Regina Austin, Sapphire Bound?, in CRITICAL RACE
framework places the specific needs and objectives of women of color at the center, rather than at the margins, of the analysis. It seeks to normalize the concerns and needs of women of color as being of key significance, rather than as exceptional.\textsuperscript{12} The approach extends the insights of feminist legal analysis. It acknowledges the transparency of divides between public and private spheres and between political and socioeconomic rights.\textsuperscript{13}

Further, the framework is transnational in perspective because the concerns of women of color increasingly are cross-border concerns. Women of color struggle to survive within their own rural villages, urban centers, and nation-states, but their hard-won participation at these levels can be undermined by the global fluidity of capital and culture.

Finally, a Critical Race Feminist human rights analysis is rooted firmly in the idea of solidarity with other anti-racist, anti-sexist, and anti-classist struggles for social justice and human dignity.\textsuperscript{14} This lofty commitment also requires prospective strategies to be pragmatic, as well as theoretical, and multi-level; as well as targeted at single centers of oppression. It requires a difficult process of building coalitions among women and men who sometimes resist seeing their common interests.

II. WHO ARE JAMAICAN-AMERICAN WOMEN?

Like many children of Jamaican and other Caribbean immigrants, I spent my childhood moving back and forth between the "home" country capital of Kingston, Jamaica, and the post-colonial metropole of New

\textsuperscript{12} There are over 31 million women of color in the United States alone. See \textsc{Wilhelmina A. Leigh}, \textsc{Women's Research and Education Institute, The Health Status of Women of Color} 3 (1994).

\textsuperscript{13} For feminist critiques of the public/private distinction, see, for example, Celina Romany, \textit{Women as Aliens: A Feminist Critique of the Public/Private Distinction in International Human Rights Law}, 6 \textsc{Harv. Hum. Rts. J.} 87 (1993); Elizabeth M. Schneider, \textit{The Violence of Privacy}, 23 \textsc{Conn. L. Rev.} 973 (1992). For a critique of divisions between civil and political rights and economic, social, and cultural rights, see \textsc{Wright, supra note 11, at 861}.

\textsuperscript{14} See, e.g., \textit{Introduction to Critical Race Theory}, \textsc{supra note 5}, at xiii.
York. In recognition of my dual status, my mother often referred to me as her “Jamerican” child. The Jamaican American women I discuss in this essay are intimately familiar with the implications of such multiple identities. Jamaican American women constitute one of the largest groups of Black immigrants to the United States. They follow a long tradition of migrancy among peoples from the Caribbean, where migrancy rates can reach sixty percent or higher. The political, economic, and cultural dislocations underlying that tradition of migrancy are both internal and external to the region. European colonial powers viewed the Caribbean islands as reserves for predictable supplies of labor and raw commodities (sugar, spices, bananas, oil, and bauxite). In that sense, the peoples of the Caribbean have been subject to the vagaries of globalization—the globalization of European imperialism—for hundreds of years. While the ties to European post-colonial powers remain strong, the influence of the United States is increasingly important for Caribbean islands in the post-independence era. United States tourism, television, and radio have exposed Jamaicans to the bounties of the American consumer economy and make the United States an attractive migratory destination.

Depending on the labor needs of host countries, Caribbean countries may find themselves alternately losing large numbers of working-age men or women. The consequent dislocations in economic and social arrangements in the sending country are rarely considered in the host

15. While London is technically the relevant post-colonial metropole for migrants from the English-speaking Caribbean, I intentionally treat the United States as a former, and current, “colonizer” of Jamaica and other islands in the Caribbean. The dominance of U.S. popular culture, as well as U.S. economic and political influence, effectively makes it so. Of course, the role of the United States as colonizer has been more explicit with respect to the American military presence in Haiti, the Dominican Republic, Cuba, and Puerto Rico.


17. See Elsa M. Chaney, The Context of Caribbean Migration, in Caribbean Life in New York City: Sociocultural Dimensions 8-9 (Constance R. Sutton & Elsa M. Chaney eds., 1992) (discussing emigration rates from selected Caribbean countries); see also Philip Kasinitz, Caribbean New York: Black Immigrants and the Politics of Race 19 (1992) (explaining that “subject to the chronic over-population, scarce resources, seclusion, and limited opportunities of small island nations, West Indians have utilized migration as a survival strategy whenever they were free to do so”); Peggy Antrobus, Women in the Caribbean: The Quadruple Burden of Gender, Race, Class and Imperialism, in Connecting Across Cultures and Continents: Black Women Speak Out on Identity, Race and Development 53, 57 (Achola O. Pala ed., 1995) (noting that “migration to other countries in search of work is . . . a common survival strategy for Caribbean women”).

countries. In recent decades, the majority of "new" immigrants to the United States have been female.

The vast majority of the Jamaican women who migrate to the United States come to the East Coast (New York, Connecticut, and Florida) to seek work in the service economies of major urban centers. Many work in private homes as domestics, childcare workers, and home health aides. Those who had access to college-level education are heavily concentrated in registered nursing at urban hospitals and nursing homes. Many of the working-class Jamaican American women who take jobs in private homes are "visa overstays" who remain in the United States after their tourist visas have expired. Because there are well-established Caribbean immigrant enclaves in the urban centers of the eastern seaboard, informal job-location networks develop through which women "send for" other female relatives once they find their own jobs.

Like most migrants from the Caribbean, working-class Jamaican American women migrate in an attempt to escape the poverty and economic pressures they face at home. Jamaica's economy is overly dependent on agriculture for export and on the income from tourism. For most Jamaicans, the country's dependence on fluctuations in international commodities pricing and tourist flows means a life sentence of poverty. The annual per capita income is less than $2200 (U.S.), and the unemployment rate is 16%. The jobless rate rises to 35% for women. Instead of providing social services, 52% of the annual Jamaican budget is devoted to servicing the $3.6 billion foreign debt.

19. On male Caribbean labor migration to the United States, see, for example, ALEC WILKINSON, BIG SUGAR: SEASONS IN THE CANE FIELDS OF FLORIDA 39-48 (1989) (describing the conditions under which Jamaican canecutters work as temporary labor migrants to the United States under the H-2 program). Feminist social scientists have begun to examine the gendered consequences of these migratory flows within and outside the Caribbean. See AYMER, supra note 18, at 8.


22. Paula Aymer has identified this "labor scouting" phenomenon among female migrant domestic workers in the Eastern Caribbean as well. See AYMER, supra note 18, at 71-72.


25. Among women 16 to 30 years of age, the unemployment rate is 65%. See id.

In the 1980s, many women found garment-assembly work in the Export Processing Zones (EPZs) of Kingston. Under EPZ arrangements, foreign-owned garment manufacturers were allowed to set up export assembly plants in Jamaica. The enterprises are given tax incentives, easy access to land and cheap labor, and are held to less restrictive labor standards than elsewhere on the island.27 Low-wage factory work provided jobs for many poor women in Jamaican urban centers until the North American Free Trade Agreement (NAFTA) shifted the competitive balance for garment assembly to Mexico.28


28. The effects of NAFTA decimated the garment-assembly industry in Jamaica. Many of the workers in such plants are low-wage women. See id. at 371. Manufacturing concerns around the world increasingly target female workers. Klak observes that “[y]oung women are said to be more docile, dexterous, less organized [with respect to labor organizing], cheaper, and more willing to tolerate monotonous and repetitive work.” Id. “In Jamaican EPZs, women fill 95 percent of the jobs, significantly more than in any Asian country or Mexico.” Id. Klak goes on to suggest that labor unions on the island, which are male-dominated, were willing to allow the government to make employer concessions on wages and working conditions because the EPZs would primarily employ women. See id.

The competitive impact on Caribbean economies of NAFTA has prompted many Caribbean governments to call for “NAFTA-parity”—trade arrangements between the Caribbean and the United States that are comparable to those among the United States, Mexico, and Canada. The call for NAFTA parity has been controversial in both progressive and conservative political circles. Caribbean politicians urged the adoption of NAFTA parity legislation during a highly publicized trip to the Caribbean by President Clinton in 1997. Despite Clinton’s efforts, “fast-track” authority for parity legislation was defeated in Congress. United States labor and human rights groups had opposed such legislation, arguing that NAFTA’s labor and human rights side agreements were insufficiently protective of the rights of workers. Caribbean and Caribbean American politicians bitterly protested the failure of NAFTA parity efforts. Many Caribbean and Latin American governments are therefore seeking to strengthen regional arrangements within Latin America or to establish stronger trade ties with the European Community. See, e.g., Jim Lobe, Fast-Track Fades Amid Hints at Cuba Moves, INTER PRESS SERVICE, Feb. 10, 1998, available in 1998 WL 598576; Larry Rother, Caribbean Nations, Ignoring U.S., Warm to Cuba, N.Y. TIMES, Dec. 21, 1997, at 8.

The U.S. was also instrumental in influencing a World Trade Organization decision with respect to trade in bananas between Europe and the Eastern Caribbean. Caribbean farmers, who owned small banana plantations, were in competition with bananas grown in the large, Latin-American plantations controlled by the multinational Chiquita Banana company. Carl Lindner, the head of Chiquita Banana, and a large contributor to both Democratic and Republican 1996 presidential campaigns, was alleged to have influenced the U.S. position on the W.T.O. controversy. See John Maggs, Bananas Split U.S., Europe in WTO Spat, J. COM., Mar. 18, 1997, at A1; Niccolo Sarno, Development: WTO Rules Banana Regime Unfair, INTER PRESS SERVICE, Sept. 10, 1997, available in 1997 WL 13256502. See generally Rodrigo Bustamante, The Need for a GATT Doctrine of Locus Standi: Why the United States Cannot Stand the European Community’s Banana Import Regime, 6 MINN. J. GLOBAL TRADE 533 (1997). Latin American and Caribbean governments continue to pursue the Holy Grail of hemisphere-wide free trade, however. See, e.g., Kevin G. Hall, Hemispheric Trade Talks Jumbled; Defeat of Fast Track May Lead to Reduced US Role, J. COM., Dec. 8, 1997, at 1C (describing plans for the Summit of the Americas talks in April 1998 and continued discussions about the feasibility of a “Free Trade Area of the Americas” despite the defeat of U.S. fast-track legislation).
Tourist commercials aside, Jamaica is a dangerous place for working-class Black women. Both street violence and domestic violence remain a frightening reality for many Jamaican women, particularly those who live in the urban slums of Kingston. In 1997, more than 1000 people were murdered on the island.29 This street violence itself has complex roots in the forces of globalization. Economic desperation forces some poor Jamaicans into the transnational drug trade. Some form “posses” that are loosely affiliated with political parties; these gangs then do battle over disputed territory. The influx of guns with which to conduct this low-level civil war began to enter the island during the 1970s when the street violence was more explicitly political.30 The desire of government officials under both conservative and progressive Jamaican governments to protect the tourist industry—one of the largest sources of foreign exchange31—has resulted in recurrent police brutality and arbitrary detention. Working-class Jamaican women are either caught in the cross-fire themselves or suffer as the mothers, sisters, and daughters of the men who are gunned down in the streets.32

Sistren,33 a local grassroots women’s collective, reports that domestic violence remains a prevalent problem, and accounts for many of the murders—allowing officials to de-emphasize crimes that might scare off tourists. While domestic violence occurs throughout the world among people of all socioeconomic classes, the problem is exacerbated in Jamaica by the widespread availability of guns, economic privation, and overt or tacit state policies that allow discrimination against women to continue.

Many Jamaican women are heads of households; birth rates among unmarried women are high.34 In order to survive, many working-class
women sell small imported goods as “higgler” on the beaches or at the roadside. However, the tourist industry on the island is highly protected and structured to benefit the owners of large, all-inclusive resorts. The access of women in the informal sector to tourist dollars, therefore, is limited by periodic police interventions. Media reports also indicate that some young girls have turned to prostitution in tourist areas to support themselves and their families.

Although literacy rates in Jamaica are relatively high, and the equal access of girls to basic education is assured under formal laws, the small size of the economy provides few work opportunities for the people the country educates. The islands, therefore, become net exporters of people whose education might have prepared them to contribute to the island’s social and economic development as indigenous teachers, physicians, or labor organizers. Instead, their economic circumstances force them to migrate. Some lucky few find work in the United States in the professions for which they were trained. Others take any job they can find on the bottom rungs of the U.S. service economy. The remittances these workers send home in U.S. dollars and shipping barrels full of food and clothing have become an essential support for the Jamaican economy.

The children, spouses, parents, and friends of Jamaican-American women are housed, fed, and clothed by the money and materials they send home.

Poverty, unemployment, and violence in Jamaica are among the factors “pushing” working-class Jamaican women to migrate, but U.S. legal and socioeconomic forces present significant “pull” factors as well. The economic desperation of these women makes them a ready source of the low-wage labor that supports our economy. The low-wage immigrant women pulled in to meet the household needs of Americans have become the private solution to the public problem of fundamental race, class, and gender inequities in our own country. Political and economic changes that allowed some middle-class and poor women to enter the American paid labor force were made at the cost of creating.


35. See, e.g., French, in MORTGAGING WOMEN’S LIVES, supra note 7, at 174-75 (discussing “higglering,” or women’s work in the informal market economy in Jamaica).

36. See Johnson, supra note 24.


new hierarchies that left poor immigrant and native-born women of color at the bottom.39

Immigration law and policy legitimizes or delegitimizes the importation (and deportation) of these indoor migrant workers just as it does the movements of migrant farm workers from Mexico and sweatshop workers from Thailand and China. Depending on the political atmosphere in the United States, Jamaican American transmigrant workers, by turns, are recruited as reliable, low-wage supports for the dual-income family, lauded as "model minorities" by conservatives hoping to deny the reality of American racism and to undermine affirmative action policies, or castigated as "free-loaders" who steal jobs or become a drain on public services. Instead of being subject to policies born in the media hype of the moment, the needs of transmigrant women must be treated as matters of right. Their social and economic stability should not depend on the largesse of economically overdeveloped host countries. Such largesse can be too easily withdrawn when an American administration believes it to be politically expedient:

III. JAMAICAN-AMERICAN WOMEN AS SUBJECTS OF A CRITICAL RACE FEMINIST HUMAN RIGHTS FOCUS

The physical and economic jeopardy in which many Jamaican American transmigrant women find themselves is a telling example of the global intersections of racism, nativism, sexism, and economic exploitation. A Critical Race Feminist human rights framework that is relevant to these Black women must therefore be equally transnational, textured, and adaptive to change.

Jamaican-American women, so far, have fallen through the cracks of both Critical Race Theory and feminist international human rights theory. Critical Race Feminists have begun to identify and analyze the roles of race, gender, class, and other identities in the experiences of Black women in the United States.40 Similarly, Latina/Latino and Asian American feminist scholars have explored the impact of resurgent nativism on Latina and Asian American female immigrants.41

39. Native-born women of color work as low-wage laborers in private homes and sweatshops throughout the United States as well. Their "Third World" status is often chillingly demonstrated by the conditions under which they work in manufacturing and processing plants in the United States. Cf. Three Company Officials Indicted in Fatal Fire at Chicken Plant, St. Louis Post-Dispatch, Mar. 11, 1992, at 12A, available in LEXIS, BUSFIN Library, SLPD File (discussing fatal fire at the Imperial Foods Products, Inc. chicken processing plant where 25 workers were killed because company officials had locked fire exits).

40. See, e.g., Austin, supra note 11, at 426.

41. See, e.g., Hernandez-Truyol, supra note 6, at 625-27 (discussing human rights violations against Latinas in the United States); Leti Volpp, Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism, 96 COLUM. L. REV. 1573 (1996) (discussing the use and misuse of the "cultural defense" in criminal trials involving Asian-Americans).
However, the legal literature largely overlooks the roles that race, ethnicity, class, and gender play in the experiences of Black female immigrants. This failure to surface their specific experiences allows the continued manipulation of their images in the service of political or economic expediencies. They are invisible in discussions about conflicts between “Blacks” and “immigrants,” or they are treated as “others” when they are considered a threat to native-born Blacks in U.S. racial politics. Critical Race Feminism cannot afford to ignore the role that these women play in the complex mix of law and politics in the United States.

Jamaican-American women are similarly ignored in the context of international human rights. Their invisibility on the human rights map stems more from the deficiencies of the traditional framework than from any immunity from human rights violations. Western governments and western human rights non-governmental organizations (NGOs) prioritize the existence of formal civil and political rights as the primary indicators of human rights compliance. The short-sightedness of this approach is especially apparent in Jamaica. Jamaican women have the right to vote and the right to run for political office, and have legal protections against discrimination in employment and education. Yet, the pretty formalities of civil and political rights serve mainly to hide the violent reality of the economic, social, and cultural violations that most working-class Jamaican women experience. Many are jobless or underemployed. Many suffer from anemia, high blood pressure, or diabetes. Maternal and infant mortality rates are high. Despite new anti-domestic violence legislation, most poor Jamaican women do not have access to effective protections against violence in the home.

To the extent that international human rights organizations focus at all on Jamaica, they do so by denouncing those violations that predomi-
nantly target men: the reimposition of the death penalty, overcrowded prison conditions, and rampant police brutality. Further, the NGOs fail to fully explore the direct connection between threats to civil and political rights protections in Jamaica and the fact that the island remains hostage to transnational economic trends. In a move shocking to most observers in the human rights community, Jamaica recently withdrew from the First Optional Protocol to the International Covenant on Civil and Political Rights. That Protocol allows for individual complaints to be submitted to the Human Rights Committee of the United Nations once domestic remedies have been exhausted. The withdrawal is the Jamaican government's response to calls for shorter death penalty appeals. The government hopes to return to execution as a means to deter street violence, quell political unrest, and thereby protect tourism and foreign investment. Of course, this unprecedented withdrawal from a major human rights treaty not only affects those who would have used the Optional Protocol to avoid the death penalty, but it also makes other civil and political human rights protections less available to women in Jamaica.


49. See Virginia Hardy, Jamaica Government Going the Wrong Way, Say Critics, INTER PRESS SERVICE, Feb. 11, 1998, available in 1998 WL 5985794 (discussing negative reactions to the Jamaican government's withdrawal from the First Optional Protocol); see also Jamaica, LATIN AM. REGIONAL REPS.: CARIBBEAN & CENT. AM. REP., Feb. 24, 1998, available in LEXIS, NEWS Library, LAN File (noting that Jamaica was the first country to withdraw from the Optional Protocol). The government hoped to begin execution by hanging of the more than 600 prisoners on death row in response to public outcry over the 1038 murders in Jamaica in 1997. See id. The U.K. Privy Council, the tribunal of final recourse under the Commonwealth system, had determined that prisoners who are held under penalty of death for more than five years without the sentence being carried out would have their sentences commuted to life in prison. The Council took the view that years of uncertainty would constitute cruel treatment. See Larry Rohter, Death-Row Rule Sours Caribbean on Britain, N.Y. TIMES, July 7, 1997, at A1. Caribbean governments, under increasing pressure to respond to crime in order to protect the tourist and export-processing industries, advocated for withdrawal from the Commonwealth, or looked for other ways of reducing the length of death penalty appeals. Removing the option of an appeal to the Human Rights Committee appears to be one way of doing so.

50. See Hardy, supra note 49 (reporting on Jamaica's withdrawal from the Optional Protocol and discussing the adverse impact on women's rights); see also International Covenant on Civil and Political Rights, supra note 48. The non-discrimination provisions of the Civil and Political Covenant provide important protections for the human rights of women. Article 2 of the Covenant requires states parties to "undertake[] to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Id. at 173. Article 26 extends the principle of non-discrimination to require equal treatment under the laws of states parties:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any
Female migrants from Jamaica are marginalized again as subjects of human rights focus when they enter the United States. Despite the increasing predominance of female immigrants to the United States, the implementation of gender-conscious analyses of U.S. immigration and asylum law and policy is still rare.\(^{51}\) In both the popular imagination and legal scholarship, the “immigrant” is most likely to be a man.\(^{52}\)

A Critical Race Feminist analysis could explore how race and gender stereotyping contributes to an atmosphere in which the rights of Jamaican American female migrant workers can be more easily violated. We have yet to fully explore, for example, the gender and race-specific connections between the imposition of welfare reform in tandem with immigration reform in this country. Welfare reform now requires poor women with children to work outside the home without access to affordable childcare, adequate healthcare, a living wage, and appropriate labor protections.\(^{53}\) Popular images of women who need welfare buttress these abuses by picturing them as lazy baby factories who should bootstrap themselves out of poverty. Very few reformers recognized the fact that raising children is, indeed, very difficult, unpaid work, or questioned how poor women could obtain access to reproductive health care, childcare facilities, educational resources, or even new jobs after having had their welfare benefits dropped.\(^{54}\)

Simultaneously, Caribbean Americans, who previously had been stereotyped as “model minorities” who do not need public benefits, suddenly found themselves in the throes of nativist backlash. Those who did rely on public assistance because of age or disability found their food stamps, social security income, and other supports threatened. Some long-term U.S. residents with records of minor criminal violations found themselves deported to Jamaica. When they were not being subjected to deportation proceedings, low-wage immigrant women were portrayed as a hardworking counterpoint to the image of the lazy, native-born “Welfare Queen.” A Critical Race Feminist analysis could expose the cynical ways in which the desperate attempts of migrant women to obtain subsistence for themselves and their families in the sending

---


\(^{52}\) For an intersectional analysis of migrants who are women of color, see, for example, Kevin R. Johnson, Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class, 42 UCLA L. REV. 1509 (1995).


country are used against native-born Black women who work hard to maintain themselves and their children in hostile urban centers.

A Critical Race Feminist human rights analysis that is transnational in scope could alert us to the fact that, as Third World women, Jamaican American women are also subject to negative stereotypes. In a global context, Third World women are the “Welfare Queens” of international aid, trade, and population policies. Their home countries are so indebted to U.S. and European interests that most of the fruits of their Gross National Product are earmarked to service that debt. The reduction or removal of public services on which poor women and their families rely is a hallmark of international structural adjustment policies as well as of U.S. domestic welfare reform. Experimental drugs, used in related attempts to control the reproductive lives of women of color born in the United States, are often experienced first in the bodies of women in the Third World.

A Critical Race Feminist human rights analysis also challenges the false dichotomy between public and private spaces as sources of human rights violations. Recent events, such as that involving the detention and mistreatment of asylum-seeker Fauziya Kassindja and the alleged police beating of Haitian immigrant Abner Louima, illustrate that Black immigrants are not necessarily safe from state-sponsored, public violence when they seek out the United States as a safe haven. But inquiry should be made as well into how Black immigrants encounter “private” violence.

Human Rights Watch and other non-governmental organizations have begun to examine the prevalence of violence and sexual abuse of Filipina women who work as domestics in the Middle East. A Critical Race Feminist human rights analysis could enter the privacy of the U.S. home to expose the exploitative and abusive conditions under which

55. See USAID FY 1998: JAMAICA; supra note 26 (noting that more than half of Jamaica’s annual budget is used for external debt repayment).
58. Abner Louima, a Haitian-American who lives in Brooklyn, New York, was severely beaten and assaulted sexually, allegedly by police officers.
many working-class Jamaican American immigrants work. The nature of domestic work—inside private homes, away from view—itself creates opportunities for abuse. Because household workers are often dependent on the families for whom they work with respect to their immigration status, they can be subjected to wage-related abuses, poor working conditions, and sexual and other forms of violence. Efforts to organize among such workers are often frustrated by their isolation and the vulnerability inherent in their immigration status.\textsuperscript{60} They are often afraid to access those U.S. labor and civil rights laws that cover them because they fear deportation.

A Critical Race Feminist human rights analysis could shed additional light on the violations of economic, social, and cultural rights that Jamaican-American migrant women experience. For example, additional work needs to be done from a critical legal perspective on the human rights of so-called "economic refugees"—women who are not fleeing political persecution, but whose lives are equally in jeopardy due to economic privation.

Finally, Critical Race Feminism must explore ways to make international human rights work for these women in grassroots, pragmatic ways.\textsuperscript{61} Traditional approaches to human rights law present Jamaican-American women with a number of barriers. The United States has signed, but not ratified, the International Covenant on Economic, Social, and Cultural Rights\textsuperscript{62} and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).\textsuperscript{63} While the
implementation and enforcement mechanisms of the Covenant and CEDAW are even weaker than those available under other international human rights treaties, both instruments set forth essential standards for the rights of women. These instruments recognize the responsibility of the state to take steps to ensure the right of women to adequate food, shelter, protection from violence, equal access to education, credit, and work for a decent wage. Such social welfare rights, as well as civil and political rights, must be implemented if women of color are to be true participants in the right to development within the borders of the overdeveloped United States. Feminist human rights lawyers must be among those who advocate for the formal ratification of such human rights instruments and to work on ways to use domestic legal systems to implement them in the face of a human rights-hostile Congress and Supreme Court.

But United States ratification of human rights treaties is not the only barrier facing Jamaican-American women. Feminist human rights lawyers must keep the pressure on U.S. NGOs to monitor and report on abuses against domestic workers. While there are a number of grassroots groups that focus on the rights of female domestic workers, their work tends to be marginalized by the mainstream human rights movement. Even those few U.S.-based human rights NGOs that take account of the status of domestic workers still view the violations largely as problems of the exotic others in the Philippines and the Middle East, rather than North American, Caribbean, and European problems.

Mainstream NGOs must find ways to appropriately use their resources and access to popular media to assist grassroots organizing

---

64. The International Covenant on Economic, Social, and Cultural Rights requires that States Parties recognize, and undertake to ensure, the following rights: the right to work (Art. 6); the right to just and favorable conditions of work (Art. 7); the right to organize (Art. 8); the right to social security (Art. 9); the right to an adequate standard of living (including food, clothing, and shelter) (Art. 11); and the right to health (Art. 12). See International Covenant on Economic, Social, and Cultural Rights, supra note 62. CEDAW requires States Parties to take appropriate measures to modify social practices that are based on stereotypical roles for men and women (Art. 5); to suppress trafficking in women and the exploitation of prostitution (Art. 6); to eliminate discrimination in education (Art. 10); to eliminate discrimination in employment (Art. 11); to eliminate discrimination in health care (Art. 12); and to take into account the special needs of rural women (Art. 14). See CEDAW, supra note 63.


66. See, e.g., Anaga Dalal, Cleaning Up Exploitation, MS. MAO., Mar./Apr. 1998, at 12 (discussing Workers' Awaaz, or Workers' Voice, an advocacy organization for South Asian women immigrants who are household workers in the United States).
efforts among poor women of color. Building a global feminist human rights movement involves a complex network of relationships, requiring both the resources and technical assistance of well-funded western NGOs and the creative, pragmatic, and transformative work of grassroots, indigenous women's organizations. A Critical Race Feminist analysis could be helpful in sorting through the thicket of potential conflicts raised by differences in class, race, and nation.

Finally, the situation of Jamaican American inter/national women must be examined in transnational perspective. These examinations must take account of the external and internal nature of state sources of violations. It must reveal state complicity in the exploitation of low-wage women workers at home or as migrants, in Export Processing Zones, and in private homes. But it must also take account of the fact that the dependence of sending countries, like Jamaica, on economic and political ties with receiving countries, like the United States, also contributes to violations.

Human rights systems too often fail to hold accountable the transnational, non-state actors and arrangements that lead to the violations of women's human rights. Critical Race Feminist legal scholars could make use, for example, of the growing body of sociological data by Third World feminists about the oppressive impact of high foreign debt and structural adjustment policies on women. Such an analysis could critique trade and investment agreements that result in violations of the human rights of women of color.

IV. CONCLUSION: IMAGINING THE POSSIBILITIES

I have focused here on Jamaican American women. But the specifics of women's experiences are full of such rich possibilities for feminist law and policy. Meeting the need for this targeted work will help build longer-lasting, richly-textured, feminist coalitions in the cause of social justice.

In the twenty-first century, we can begin to imagine U.S. feminists organizing around the abuse of women and men in U.S. prisons and detention centers as loudly as we organize against the eradication of

67. Grassroots organizations like the Sistren collective, which organizes poor Jamaican women through the use of creative forms such as theater, dance, poetry, and storytelling, need the economic and political support of international feminist human rights organizations (but not their political strings). Even the Jamaica Council on Human Rights, a local NGO that monitors violations of civil and political rights in Jamaica, has constantly been in danger of closing due to lack of resources. See JAMAICA COUNTRY REPORT, supra note 23; see also Shanthi Dairiam, Barriers to Funding for Women's Legal Rights: Some Critical Issues for Consideration by the North, in OURS BY RIGHT, supra note 63, at 92 (discussing the obstacles for women’s rights organizations in obtaining adequate funding).
female genital surgeries (female genital mutilation).68 We can begin to imagine migrant domestic workers in the Middle East and the United States organizing together to bring their experience of the exploitative aspects of globalization to the top of the international human rights agenda. We can begin to imagine a human rights culture that makes discourse and activism around human rights issues as much a priority for native-born and immigrant women in the U.S. as it is for Third World women.69 We can imagine a world in which native-born Black women and immigrant Black women can share economic and other survival strategies born out of their hard experiences at home and abroad.70 Such coalitions are a necessity, now and in the twenty-first century.

68. See, e.g., WOMEN'S RIGHTS PROJECT, HUMAN RIGHTS WATCH, ALL TOO FAMILIAR: SEXUAL ABUSE OF WOMEN PRISONERS IN U.S. STATE PRISONS (1996); Lewis & Gunning, supra note 57.

69. For explorations of the need for human rights culture in the United States, see generally Stark, supra note 67, at 185 (calling for the application of concepts of international economic and social rights to urban centers in the United States); see also Lewis, Women (Under) Development, supra note 11, at 281 (calling for the implementation of a right to alternative development among poor women of color in the United States).

70. See Lewis, Women (Under) Development, supra note 11, at 293-96 (discussing the work of Cooperative Economics for Women, a grassroots women's organization in Boston, Massachusetts).