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# Globalization, Human Rights and Critical Race Feminism: Voices from the Margins

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# Globalization, Human Rights and Critical Race Feminism: Voices from the Margins

*Penelope E. Andrews\**

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IN AUSTRALIA
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Two vignettes:

South Africa:

When you leave your child alone in the home she is not safe. And in the street, she is not safe. And in the school she is not safe. There is nowhere that she can walk and be safe. Girls are afraid somebody in a car will stop them and say "get in." When they walk in the street they are raped by men with guns. Sexual abuse happens so much that some students stop going to school.<sup>1</sup>

Australia:

Evidence was presented to the Inquiry which indicated that Aboriginal and Islander women and girls have been sexually threatened and

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1. HUMAN RIGHTS WATCH/AFRICA & HUMAN RIGHTS WATCH WOMEN'S RIGHTS PROJECT, VIOLENCE AGAINST WOMEN IN SOUTH AFRICA: THE STATE RESPONSE TO DOMESTIC VIOLENCE AND RAPE 55 (1995) (quoting Diane Russell, Rape and Child Sexual Abuse in Soweto: An Interview with Community Leader Mary Mabaso, CAPE TOWN: CENTRE FOR AFRICAN STUDIES, Mar. 26, 1991, at 7).

abused by police officers. In Mossman (northern Qld) an Aboriginal woman alleged that she had been raped by a police officer whilst in custody. There were also complaints from Alice Springs that Aboriginal teenage girls had been assaulted and raped by police officers and other white males. Evidence was received from a non-Aboriginal person who had witnessed a police officer detain and line-up young Aboriginal women outside the Burketown (Qld) hotel on Friday nights during early 1988. The officer then offered the young women to white male patrons in the bar for sex.<sup>2</sup>

## I. INTRODUCTION

I have recalled elsewhere the details of violence against women in South Africa<sup>3</sup> and Australia.<sup>4</sup> Both of these countries, although markedly different in their demographics, politics, and history, share a colonial past where race was the fault line throughout.<sup>5</sup> Although there were marked differences in the colonial structure and various policies of the colonial administrators, both societies shared certain patriarchal attitudes that cemented during the colonial period and left a particular legacy of violence against black women. In both, the incidence of violence against women was so systemic and so ubiquitous that it has been described as a continuing violation of their human rights.<sup>6</sup> The

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2. HUMAN RIGHTS & EQUAL OPPORTUNITY COMM'N, RACIST VIOLENCE: REPORT OF NATIONAL INQUIRY INTO RACIST VIOLENCE IN AUSTRALIA 88 (1991).

3. See Penelope E. Andrews, *Violence Against Women in South Africa: The Role of Culture and the Limitations of the Law*, 8 TEMP. POL. & CIV. RTS. L. REV. 425 (1999) (describing the "role of culture in perpetuating violence against women").

4. See Penelope E. Andrews, *Violence Against Aboriginal Women in Australia: Possibilities for Redress Within the International Human Rights Framework*, 60 ALB. L. REV. 917 (1997) (addressing the "issue of violence against Aboriginal women").

5. The patterns of colonialism in the two societies differed, for example, with respect to land and labor. In South Africa, the dispossession of Africans of their land was motivated by conflicting needs for cheap black labor and a desire to maintain "political security" in "white" areas. See Geoff Budlender, *Incorporation and Exclusion: Recent Developments in Labor and Influx Control*, 1 S. AFR. J. ON HUM. RTS. 3, 3 (1985). In Australia, Aboriginal labor was not required since this was provided by convicts in the newly established British convict colony. See generally Sidney L. Haring, *The Killing Time: A History of Aboriginal Resistance in Colonial Australia*, 26 OTTAWA L. REV. 385 (1994) (analyzing the nineteenth century conflict between Aboriginal tribes and colonists and attempts to frame the conflict within the common law tradition). Aboriginal dispossession of land merely satisfied the settlers' need for more land. *Id.* Aboriginal resistance led to their near annihilation. *Id.*

6. See Suzanne Daley, *Young, Vulnerable and Violated in the New South Africa*, N.Y. TIMES, July 12, 1998, § 6 (Magazine), at 30 (describing the high incidence of rape of South African children); see also generally AUDREY BOLGER, *ABORIGINAL WOMEN AND VIOLENCE* (1991) (describing the facts, figures and causes of violence against women in Australia); Diane Bell, *Representing Aboriginal Women: Who Speaks for Whom?*, in THE RIGHTS OF SUBORDINATED PEOPLES 221, 238-46 (Oliver Mendelsohn & Upendra Baxi eds., 1994) (describing an anthropological representation of Aboriginal women and how that relates to violence against those women).

intersection of colonialism, patriarchy and violence and its consequences for black women informs the main thesis of this paper, namely, critical race feminism and its particular perspective on the issue of violence against women. In other words, this paper addresses the following question: How can critical race feminism contribute to the continuing feminist project of unmasking structures, legal and otherwise, that generate, tolerate and acquiesce in violence against women?

Colonialism's rampant racism, patriarchy, and cultures of masculinity left women in a particularly vulnerable position. In excavating the many causes of violence, my paper references not just the colonial experience, but the remnants and effects of both colonial and indigenous culture. In both South Africa and Australia, however, it was the ordinary processes of law and legalism which kept the colonial structures in place and which continue to raise questions about the role of law today. In my paper, the theme, violence against women, will combine the focus of these two societies.

At the outset, I need to commence with an explanation about the assumptions inherent in the title, namely critical race feminism. I owe Paulette Caldwell and Taunya Lovell Banks a particular note of thanks for enlightening me on the origins of critical race theory, subsequent developments and contemporary debates. I am uncomfortable at the labeling because it suggests a certain uniformity and consensus about critical theory that does not reflect the rich body of work now incorporated under the rubric "critical race theory."<sup>7</sup> What combines these writings is a concern with the persistence of racism in the United States and the interplay of race and the law. As Jerome Culp has elucidated:

Critical race theory is not uni-perspectival; there is no single consensus of a characterization of the theory. Certainly the name "critical race theory" suggests some connection to critical legal theory, yet its name derives more directly from the name "critical theory" by which some refer to the tenets of the Frankfurt School of Philosophy of Habermas and Marcuse. The contributors to critical race theory have resisted defining themselves.<sup>8</sup>

Some writers, labeled as critical race theorists, utilize a non-traditional methodology, namely story-telling, to highlight and to humanize personal

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7. See, e.g., *CRITICAL RACE FEMINISM: A READER* (Adrien Katherine Wing ed., 1997) (a collection of critical race feminism articles); *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado ed., 1995) (a collection of critical race articles).

8. Jerome McCristal Culp, Jr., *Posner on Duncan Kennedy and Racial Difference: White Authority in the Legal Academy*, 41 *DUKE L.J.* 1095, 1096 n.5 (1992).

experiences of racial subordination.<sup>9</sup> Patricia J. Williams' narratives provide a particularly eloquent example.<sup>10</sup> Others have insisted that the law incorporates the intersectionality of gender, race, ethnicity and socio-economic status to fully account for and attempt to overcome the contemporary burden of disadvantages under which a disproportionate number of African-American women labor.<sup>11</sup> Others have suggested a more expansive interrogation of racial reparations,<sup>12</sup> whilst some have assessed ways of racial coalition building.<sup>13</sup> Increasingly scholars of color have contributed to the dynamic body of critical theory, incorporating the perspectives of Asians and Latinos.<sup>14</sup> This cryptic listing of scholars does not even begin to do justice to the prolific body of work gathered under the rubric of critical race theory/feminism.<sup>15</sup>

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9. See, e.g., PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991) [hereinafter WILLIAMS, *THE ALCHEMY OF RACE*] (using narrative that Williams describes as a "diary of a law professor"); PATRICIA J. WILLIAMS, *THE ROOSTER'S EGG* (1995) [hereinafter WILLIAMS, *THE ROOSTER'S EGG*] (using narrative to discuss race and racial history); Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (using narrative to describe being a black woman); Judy Scales-Trent, *Commonalities: On Being Black and White, Different and the Same*, 2 YALE J.L. & FEMINISM 290 (1990) (using narrative to describe being black and looking white).

10. See generally WILLIAMS, *THE ALCHEMY OF RACE*, *supra* note 9; WILLIAMS, *THE ROOSTER'S EGG*, *supra* note 9.

11. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (arguing that the combination of race and sex produces a different experience for African-American women); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1991) (arguing that black women are often ignored in feminist and legal theory, and that feminist legal theory should challenge the law's tendency to privilege the abstract and unitary voice).

12. See, e.g., Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) (arguing that adopting the perspective of those who have experienced discrimination can greatly assist critical scholars).

13. See, e.g., Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 ASIAN L.J. 7 (1998) (calling for the engagement of coalition building among minority groups). For a thoughtful analysis of Derrick Bell's scholarship (widely regarded as a "founder" of the critical race theory movement), see Leroy D. Clarke, *A Critique of Professor Derrick A. Bell's Thesis on the Permanence of Racism and His Strategy of Confrontation*, 73 DENV. U. L. REV. 23, 45 (1995) (calling for a broad-based, non-racial, cooperative coalition of individuals committed to advancing civil rights).

14. See, e.g., Sharon K. Hom, *Commentary: Re-Positioning Human Rights on "Asian" Perspectives*, 3 BUFF. HUM. RTS. L. REV. 251 (1997) (analyzing human rights law from an Asian perspective); Berta Esperanza Hernández-Truyol, *Indivisible Identities: Culture Clashes, Confused Constructs and Reality Checks*, 2 HARV. LATINO L. REV. 199 (1997) (articulating a LatCrit theory); Tanya Kateri Hernandez, *"Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. 97 (1998) (questioning the assumptions that underlie the meanings of "multi-racial discourse").

15. Regina Austin's scholarship is particularly provocative. See, e.g., Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539 (decrying the dearth of writings on the legal problems of minority women); see also Monica J. Evans, *Stealing Away: Black Women, Outlaw Culture and the Rhetoric of Rights*, 28 HARV. C.R.-C.L. L. REV. 263 (1993) (examining black women as shapers and transmitters

The attempts by critical race theorists to excavate the intersectionality and multiplicity of perspectives and incorporate them in legal theory have subjected them to critiques by liberal and conservative scholars.<sup>16</sup> Despite these critiques, critical race theorists continue the imperatives of vigilance towards the persistence of structures of racial subjugation and oppression which appear to be inviolate and to certain racial attitudes which remain intractable and misguided.<sup>17</sup>

My contribution to these issues emanates from a combination of the various schools of thought which have influenced my perspectives. My attitudes are deeply steeped in the liberal non-racial tradition espoused by the Reverend Martin Luther King, Jr. and by President Nelson Mandela.<sup>18</sup> In addition, I have been schooled and persuaded by the imperatives of the many feminisms,<sup>19</sup> been skeptical of postmodern claims<sup>20</sup> and engaged by critical race theory.<sup>21</sup>

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of a positive, outlaw culture). Adrien Wing has done a sterling job of gathering together the work of critical race feminists. See CRITICAL RACE FEMINISM: A READER, *supra* note 7. For a comprehensive volume of critical race scholarship, see CRITICAL RACE THEORY: THE CUTTING EDGE, *supra* note 7.

16. See RICHARD A. POSNER, OVERCOMING LAW 368-84 (1995) (criticizing, among other things, the claim that critical race theory uses narration); see also Randall Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1749 (1989) (arguing that critical race scholars “fail to support persuasively their claims of racial exclusion or that claims that legal academic scholars of color produce a racially distinctive brand of valuable scholarship”). The author also takes issue with critical race argumentation policies and “narrative premises.” *Id.*; see also Daniel Subotnik, *What’s Wrong with Critical Race Theory?: Reopening the Case for Middle Class Values*, 7 CORNELL J.L. & PUB. POL’Y 681, 682 (1998) (offering a “broad-based evaluation of CRT . . . from outside the movement”). The author purports to be “unwedded to both traditional and Postmodernist legal scholarship.” *Id.*; see also Lloyd Cohen, *A Different Black Voice in Legal Scholarship*, 37 N.Y.L. SCH. L. REV. 301 (1992) (analyzing the dispute presented by Randall Kennedy’s article, *supra*, and the subsequent responses by critical race scholars).

17. It is virtually a truism that racial discrimination and racism persist in the United States despite a comprehensive civil rights legal framework and jurisprudence. See, e.g., SHELBY STEELE, THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACE IN AMERICA (1990) (attempting to search out the human universals that explain racial specifics); DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987) (analyzing racism and the legal barriers to racial justice). Law reviews and other scholarly journals reflect a rich debate on racial issues, and some of this is reflected in the popular media, although not always productively or constructively. See Margaret M. Russell, *Race and the Dominant Gaze: Narratives of Law and Inequality in Popular Film*, 15 LEGAL STUD. F. 243 (1991) (analyzing the racial content of various films).

18. See NELSON MANDELA, THE STRUGGLE IS MY LIFE (1978) (describing the philosophy of Nelson Mandela); TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS 1954-63 (1988) (describing the philosophy of Martin Luther King, Jr.).

19. See, e.g., FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katharine T. Bartlett & Rosanne Kennedy eds., 1991) (a collection of feminist legal scholarship); HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES (Rebecca J. Cook ed., 1994) (a collection of articles on the human rights of women).

20. See Maria Nzomo, *Women and Democratization Struggles in Africa*, in FEMINISM/ POSTMODERNISM/DEVELOPMENT 131 (Marianne H. Marchard & Jane L. Parpart eds., 1995) (questioning the utility of postmodernism for the feminist movement in Kenya); see also Celina Romany, *Ain’t I a Feminist*, 4 YALE J.L. & FEMINISM 23 (1991) (questioning postmodernism’s potential

The reader may have some curiosity as to how an analysis of Aboriginal women comports with one of black South African women. In other words, how did I come to focus on these two communities? There are two broad reasons for doing so. The first is a practical or experiential one. Even though I am South African by birth, I have lived and taught law in Australia for several years and in the process became an Australian citizen. On many occasions while living in Australia, I traveled to Aboriginal communities where I attended meetings and conducted some research. I also taught courses on Australia's laws and policies with respect to indigenous peoples and Australia's equal opportunity laws and policies.<sup>22</sup> The second reason is a theoretical one, which raises issues and links the colonial experience in both societies to the legacy of violence with respect to women. In both societies, the legacy of racism, dispossession and alienation has ensured that black women are trapped in a spiral of poverty and violence. In a previous paper I had explained, using anthropological and other research, the multiple causes of violence with respect to the Australian Aboriginal experience.<sup>23</sup> The causes are many, but as in the situation in South Africa, a combination of colonial attitudes and patriarchal practices within Aboriginal communities account for much of the violence.<sup>24</sup> Although there were similarities in colonial attitudes towards issues like miscegenation, land tenure and freedom of movement, there were significant differences in the colonial experiences of black South Africans and Aboriginal Australians. For example, the process of dispossession of Aboriginal land and annihilation of the Aboriginal population was particularly brutal. Aboriginal labor was never needed in Australia, so destroying whole communities and confiscating their land was accepted practice (if not always official policy).<sup>25</sup>

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for fundamental social change).

21. See generally *supra* note 15.

22. My own experience growing up in South Africa often resonated with what I witnessed. I grew up classified as a "coloured" (mixed race) South African, a racial identity often typified by contradiction and confusion. For an interesting discussion of the formation and perpetuation of a "coloured" identity, see BREYTEN BREYTENBACH, *DOG HEART: A MEMOIR* 9 (1999) (discussing the twilight political world of South Africa's mixed-race population).

23. See Andrews, *supra* note 4, at 925-29.

24. See Andrews, *supra* note 3, at 437.

25. See CHRIS CUNNEEN & TERRY LIBESMAN, *INDIGENOUS PEOPLE AND THE LAW IN AUSTRALIA* 11, 13 (1995); see also AUNTY IRIS LOVETT-GARDINER, *LADY OF THE LAKE: AUNTY IRIS'S STORY* 17 (1997). There is some controversy in the literature about the extent of official authorization (as opposed to condemnation or ignorance) of displacement of Aboriginal communities and/or massacres. For example, some evidence suggests that the first occupiers carried strict instructions from the British Crown about their first contact with the local people:

You are likewise to observe the genius, temper, disposition and number of the natives, if there be any, and endeavour by all proper means to cultivate a friendship and alliance with them . . . [S]h[ow]ing them every kind of civility and regard . . . You are also with the consent of the natives to take possession of convenient situations in the country in the name



My final explanation relates to the question of gender equality and global approaches. In order to analyze the existence and causes of inequality, local conditions need to be scrutinized. The peculiarities of each country, premised on its history, geography, culture and economic status, demand that the local inquiry is the preeminent one. In other words, both the investigation of gender equality and an appropriate response requires that we focus on local conditions. However, engagement with the global, and particularly international human rights law, necessarily entails sweeping with a general brush. The widespread coincidence of the experiences of women, whether through violence or other forms of gender oppression, necessarily makes that general brush appropriate, certainly as a theoretical matter.<sup>26</sup>

The purpose of this article is to ascertain how the local can engage with the global, and vice-versa, not just as a rhetorical device, but as a shared venture to stem violence against women.<sup>27</sup> The situation and experience of black women in South Africa and Aboriginal women in Australia are utilized because they illustrate the intersectionality of race, gender, culture and poverty with violence. They also highlight law's epistemological limitations in stemming violence against women.

This paper is divided into three sections. Section one analyzes the incidence of violence against women in South Africa and Australia. The analysis includes a focus on legal strategies aimed at stemming such violence and their possibilities for doing so. Section two highlights issues with respect to globalization and particularly the impact of the contemporary global economic configuration on women. This section also describes some successes, at the formal level, of feminist interventions with respect to violence against women. The purpose of this section is to connect violence against women, and the ability to stem such violence, to unequal access to resources both at the local and at the global level. Section three analyzes the specific contribution that a critical race feminist perspective might bring to this ongoing debate and the policy and practical implications of such contribution.

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of the King of Great Britain . . . .

J.M. BENNET & ALEX C. CASTLES, *A SOURCEBOOK OF AUSTRALIAN LEGAL HISTORY* 253-54 (1979). However, there is every indication that no consent was either sought or obtained from the Aborigines before their land was seized. *Id.* at 177.

26. For a thoughtful discussion on the implications of global feminist initiatives for local organization, see L. Amede Obiora, *Feminism, Globalization, and Culture: After Beijing*, 4 *IND. J. GLOBAL LEGAL STUD.* 355 (1997).

27. In this regard, it may be appropriate to invoke Richard Falk's view of globalization and human rights, namely, "globalization-from-below," which locates political participation at the local level as the key factor in building and "strengthening over time . . . global civil society." Richard Falk, *The Making of Global Citizenship*, in *GLOBAL VISIONS: BEYOND THE NEW WORLD ORDER* 39, 39 (Jeremy Brecher et al. eds., 1993).

## II. VIOLENCE AGAINST WOMEN IN SOUTH AFRICA AND ABORIGINAL WOMEN IN AUSTRALIA

### A. South Africa

In South Africa violence against women generally defies racial, class and geographical boundaries. However, even a cursory examination of the alarming statistics reveals that it is poor, largely black women, who bear the brunt of these consequences.<sup>28</sup> In a country where race and class continue to coincide, harsh socio-economic realities bear heavily on black women.<sup>29</sup> They have to depend on public transport and its attendant unsafe conditions; they have to walk miles to and from train and bus stops increasing the likelihood of attacks; they have to sleep on sidewalks or at railway stations rendering them even more vulnerable to assaults.<sup>30</sup>

In the domestic sphere as well, violence against women remains at alarming levels.<sup>31</sup> The situation is so severe that a large number of women have come to view violence as "normal and inevitable."<sup>32</sup> The situation has been exacerbated by the fact that for so long domestic violence was largely hidden because abused women did not seek help from the authorities, but rather from close family and friends.<sup>33</sup> In 1998, the South African government responded to artful lobbying by women activists and passed the Domestic Violence Act.<sup>34</sup> This act is a comprehensive blueprint for eradicating domestic violence. Its far-reaching definitions extend beyond the traditional heterosexual live-in relationship to include homosexual and other intimate relationships.<sup>35</sup> Its elastic

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28. The number of rapes in South Africa between 1983 and 1994 have more than doubled, from 15,342, to 32,107. HUMAN RIGHTS WATCH/AFRICA & HUMAN RIGHTS WATCH WOMEN'S RIGHTS PROJECT, *supra* note 1, at 50 (citing SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, RACE RELATIONS SURVEY 1993/94, at 299 (1994)).

29. *See id.* at 53.

30. *Id.*

31. *See id.* at 45.

32. *Id.* at 47.

33. *Id.*

34. Domestic Violence Bill, 1998, Bill 116 (GG).

35. *Id.* § 1(vii):

"[D]omestic relationship" means a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other, including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;

definition of victim stretches to include family members other than spouses.<sup>36</sup> Its extensive definition of domestic violence recognizes the plethora of abuses to which batterers subject their victims.<sup>37</sup> Most significantly, the Act imposes on police officers, peace officers, court officers and the other actors in the legal system the duty to engage in a series of activities to protect the complainant.

These include the duty to inform a complainant of her rights under the statute<sup>38</sup> and the duty of a peace officer to arrest an abuser without a warrant “at the scene of an incident of domestic violence” upon reasonable suspicion that the abuser has committed an act of domestic violence against the complainant.<sup>39</sup> The Act also obligates the abuser to provide for rent or mortgage payments or other emergency monetary relief.<sup>40</sup> The Act makes provision for the protection of the complainant’s privacy by restrictions at hearings, as well as restrictions on the publication of certain information connected therewith.<sup>41</sup>

These few examples from the Act represent symbolically and substantively the determination of the South African government to eradicate domestic violence. There have been other official responses as well. A particularly significant one has been the judiciary’s decisive intervention to deal with the alarming statistics of rape of women and girls. In 1998 the highest court in South Africa discarded the cautionary rule in rape cases, an evidentiary

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- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
  - (d) they are family members related by consanguinity, affinity or adoption;
  - (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
  - (f) they share or recently shared the same residence

36. *Id.* § 1(vii)(c)-(d).

37. *Id.* § 1(viii). The Act provides a comprehensive definition of domestic violence, which includes physical abuse, stalking, and damage to property. *Id.* § 1(viii)(a), (g), (h). The definition also includes economic abuse, as well as emotional, verbal and psychological abuse, and harassment. *Id.* § 1(viii)(c), (d), (f).

38. Domestic Violence Bill, 1998, Bill 116 (GG), § 1(vii).

39. *Id.* § 3. If the abused spouse is unable to apply for a protection order, the Act makes a provision for a counselor, social worker, teacher or other individual to make the application on her behalf. *Id.* § 4(3). The Act provides for the issuance of an interim protection order where the court is satisfied that there is evidence that an act of domestic violence has occurred, or that “undue hardship” would result if a protection order is not issued immediately. *Id.* § 5(2)(a)-(b). Such an interim order will be rendered permanent if the abuser does not respond with the time period prescribed by the Act, or if after a hearing attended by the abuser, the court is satisfied that “on a balance of probabilities, that the respondent has committed or is committing an act of domestic violence.” *Id.* § 6(4). The Act provides for sweeping measures in the protection order to curb the incidence of domestic violence, including a prohibition on the abuser from entering the victim’s residence or place of employment. *Id.* § 7(1)(a)-(h).

40. Domestic Violence Bill, 1998, Bill 116 (GG), § 7(3)-(4).

41. *Id.* § 11(1)(a).

impediment which made rape convictions very difficult to obtain.<sup>42</sup> However, it is trite that legal enforcement does not always follow legislative or judicial pronouncements, and women activists will have to be consistently vigilant to ensure that the provisions in statutes are enforced. But this comprehensive legal response to violence is implicated in the larger question about the law's epistemological boundaries in the face of deeply entrenched patriarchal and sexist attitudes.<sup>43</sup>

### *B. Australia*

Violence against Aboriginal women in Australia has reached such startling proportions that it constitutes a violation of their human rights.<sup>44</sup> The particular forms of violence that Aboriginal women experience come from both public and private actors. A 1991 Report on Racist Violence in Australia revealed evidence of widespread sexual abuse of Aboriginal women at the hands of police officers.<sup>45</sup> The evidence included the rape of very young girls at police stations, who were too traumatized or too fearful to lodge complaints.<sup>46</sup> The abuse, however, was not confined to women in custody. Some testified of a police practice in one town of detaining Aboriginal women patrons at a bar and then offering them to white male patrons for sex.<sup>47</sup>

By far the most devastating violence against Aboriginal women emanates from "private violence," shown by the homicide, rape and assault statistics. The fact that these statistics have only recently begun to receive attention is equally disturbing.<sup>48</sup> These sources indicate that Aboriginal women are at far greater risk of being the victims of homicide, rape and other assaults than non-Aboriginal women.<sup>49</sup>

The causes of violence against Aboriginal women are complex, and the research suggests a combination of factors. The first factor is the system of

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42. "This rule has its origins in a cultural prejudice that women habitually lie about rape, and that to protect the due process rights of the accused, the state requires evidence to corroborate the rape victim's testimony." Andrews, *supra* note 3, at 454.

43. *See id.* at 456; *see generally* CATHERINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) (analyzing the significance of gender inequality in knowledge and politics).

44. *See* Andrews, *supra* note 4, at 917; *see also* Bell, *supra* note 6, at 221.

45. HUMAN RIGHTS & EQUAL OPPORTUNITY COMM'N, *supra* note 2, at 79-114.

46. *Id.* at 89.

47. *Id.* at 88.

48. *See* Bell, *supra* note 6, at 238; AUSTRALIAN LAW REFORM COMM'N, *EQUALITY BEFORE THE LAW* 91-93, 138-41 (1993) (discussing statistics on the nature and the extent of violence in domestic relationships and proposals to combat such violence).

49. *See* BOLGER, *supra* note 6, at 35.

sexual subordination which exists in traditional Aboriginal society and which is buttressed in the wider Australian society.<sup>50</sup> The second factor is the breakdown of traditional social control due to the imposition of foreign influences and societal structures.<sup>51</sup> A third factor is the appalling socio-economic conditions in which many Aborigines find themselves.<sup>52</sup> Another devastating factor is the abuse of alcohol in many communities.<sup>53</sup>

“The problem of violence against Aboriginal women therefore incorporates an array of factors: race, gender, the after effects of colonialism, the minority status of Aboriginal people and the unequal access to societal resources.”<sup>54</sup> All of these factors intersect to render Aboriginal women particularly vulnerable to violence. These policies and consequences, integral to the colonial administration of indigenous peoples, have wreaked havoc on individual Aboriginal lives and have destroyed whole communities. However, Aboriginal communities and their supporters have subsequently embarked on concerted campaigns for redress, compensation and an official apology.<sup>55</sup> None of these have yet been forthcoming.

In both South Africa and Australia, the incidence of violence is connected to the socio-economic realities that impact the lives of some black women. Moreover, the ability of the law to temper or even eradicate violence is compromised continuously by the contradictions between law’s epistemological boundaries and cultural attitudes buffeted by social and economic arrangements.<sup>56</sup> Official steps to eradicate violence therefore need to engage with mechanisms other than law to confront such reality. In short, the law’s epistemological paradigms have to incorporate the economic powerlessness which generate the violence.

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50. See Bell, *supra* note 6, at 226.

51. See DIANE BELL & PAMELA DITTON, LAW: THE OLD AND THE NEW: ABORIGINAL WOMEN IN CENTRAL AUSTRALIA SPEAK OUT 7 (1980).

52. See PHYLLIS DAYLIGHT & MARY JOHNSTONE, WOMEN’S BUSINESS: REPORT OF THE ABORIGINAL WOMEN’S TASK FORCE 22 (1986) (quoting Editorial, AGE, Sept. 3, 1985). The 1988-1989 Annual Report of the Department of Aboriginal Affairs places the number of Aborigines and Torres Strait Islanders at 227,638 or 1.46% of the total Australian population. See H. MCRAE ET AL., ABORIGINAL LEGAL ISSUES: COMMENTARY AND MATERIALS 33 (1991). “The life expectancy of Aborigines is approximately 20 years less than that for all Australians.” *Id.* at 34. The imprisonment rate of Aborigines is estimated to be 16 to 20 times than that for the non-Aboriginal population. See *id.* at 35.

53. See BOLGER, *supra* note 6, at 45.

54. Andrews, *supra* note 4, at 918.

55. See, e.g., Ron Merkel, A Paper on Legal Options for Aborigines “Taken” from Their Families and Their People 7-8 (Oct. 1994) (unpublished manuscript, on file with author).

56. For a comprehensive and controversial discussion of these issues, see MACKINNON, *supra* note 43.

## III. GLOBALIZATION AND FEMINIST INTERVENTION

In light of these comments, and building on the theme of colonialism and its legacy with respect to black women, in the following section I would like to consider the relevant developments in globalization. Specifically, I will address the engagement of women with globalization and vice versa.

*A. Our Global Neighborhood?: The Phenomenon of Globalization*<sup>57</sup>

Some scholars have raised the question whether globalization is a new phenomenon, or whether it is just imperialism or modernization with a new label.<sup>58</sup> It is beyond the scope of this paper to explore these fascinating questions; they continue to be debated by scholars across many disciplines.<sup>59</sup> For our purposes, the significance of the phenomenon of globalization rests in its relationship to international human rights law, and more specifically, what such relationship signals for women.

Today the language of universal human rights is accepted, if not always in substance, at least as symbolic of global cooperation and consensus.<sup>60</sup> The proliferation of United Nations treaties, conventions and declarations reflect

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57. "Globalization" can be described as "the process through which forces and actors that transcend national boundaries shape life and law within nations." See Susan H. Williams, *Globalization, Privatization and a Feminist Public*, 4 *IND. J. LEGAL STUD.* 97, 97 (1996) (footnote omitted); see also Robert McCorquodale with Richard Fairbrother, *Globalization and Human Rights*, 21 *HUMAN RTS. Q.* 735, 736 (1999) (considering contemporary globalization in its most general sense as a form of institutionalization of the two-fold process involving the universalization of particularism and the particularization of universalism).

58. See Boaventura de Sousa Santos, *Toward a Multicultural Conception of Human Rights*, 1 *ZEITSCHRIFT FÜR RECHTSZOLOGIE* 1, 1 (1997).

59. A small sample of this debate includes: BENJAMIN R. BARBER, *JIHAD VS. MCWORLD* (1995); THE NEW GLOBALISM AND DEVELOPING COUNTRIES (John H. Dunning & Khilil A. Hamdini eds., 1997).

60. This is a rather generalized point because the global human rights endeavor is fraught with conflict and contradiction. Some of these debates, though important, have become standard fare for human rights scholars and advocates, such as the debate surrounding universalism and cultural relativism. See Jack Donnelly, *Cultural Relativism and Universal Human Rights*, 6 *HUMAN RTS. Q.* 400 (1984) (arguing that there should be a fundamental universality of basic human rights, tempered by a recognition of the possible need for limited cultural variations); see also Dianne Otto, *Rethinking the "Universality" of Human Rights Law*, 29 *COL. HUM. RTS. L. REV.* 1 (1997) (examining the universality of human rights law); Karen Engle, *Female Subjects of Public International Law: Human Rights and the Exotic Other Female*, 26 *NEW ENG. L. REV.* 1509 (1992) (discussing the practice and culture of clitoridectomy in human rights law); Maxwell O. Chibundu, *Making Customary International Law Through Municipal Adjudication: A Structural Enquiry*, 39 *VA. J. INT'L L.* 1069 (1999) (discussing the enforcement of human rights law globally).

this new world order of rights.<sup>61</sup> The celebration of fifty years of “global governance” in 1995 and the much heralded report on global governance reflect an optimistic and confident global arrangement and the supposed global arrangement of shared values.<sup>62</sup>

In fact, Boaventura de Sousa Santos has commented on the primacy of human rights as “the language of progressive politics,” confidently providing an “emancipatory script” for those seeking redress from unjust and abusive regimes.<sup>63</sup> Upendra Baxi refers to the discourse of human rights seeking to “supplant all other ethical languages.”<sup>64</sup> Of course this optimistic edifice masks a more sinister period in world history, one typified not by international strife, but by intra-national conflicts which have devastated millions of lives in the last few decades.<sup>65</sup> In these conflicts, whole communities fare dismally, but women and children continue to be the most vulnerable and have experienced particular injury based on their gender.<sup>66</sup> For them, the international human rights framework exists as a distant, arcane construct.

The Report of the Commission on Global Governance enunciates “people’s right to security.”<sup>67</sup> The Report highlights the disturbing fact that the “Third World continues to be the primary purchaser of arms.”<sup>68</sup> An anomaly exists in simultaneously “spending for war” and “spending for peace.”<sup>69</sup> For example, the Democratic Republic of Congo spends \$9.70 per head on defense, while

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61. See, e.g., G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) [hereinafter CEDAW] (entered into force September 3, 1981); International Convention on the Elimination of All Forms of Racial Discrimination, U.N. GAOR, 33d Sess., Supp. No. 18, at 108, U.N. Doc. A/33/18 (1978) (entered into force on January 4, 1969).

62. See OUR GLOBAL NEIGHBORHOOD, REPORT ON THE COMMISSION ON GLOBAL GOVERNANCE (1995).

63. de Sousa Santos, *supra* note 58, at 1.

64. Upendra Baxi, *Voices of Suffering, Fragmented Universality and the Future of Human Rights I* (1999) (unpublished manuscript, on file with author.)

65. See CLIVE PONTING, *PROGRESS AND BARBARISM: THE WORLD IN THE TWENTIETH CENTURY* (1998) (discussing the evolution of the world during the twentieth century); see also J. Oloka-Onyango, *The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of Refugee and Internally Displaced Women in Africa*, 24 *DENV. J. INT’L L. & POL’Y* 349 (1996) (arguing that international law is oblivious to the overall situation of women).

66. See generally Dianne Otto, *Whose Security? Re-Imagining Post-Cold War Peacekeeping from a Feminist Perspective*, in *SECURITY IN A POST-COLD WAR WORLD* 65 (Robert G. Patman ed., 1999) (discussing the position of women in the post-Cold War world).

67. OUR GLOBAL NEIGHBORHOOD, *supra* note 62, at 71.

68. *Id.* at 127.

69. Upendra Baxi, “*Global Neighborhood*” and the “*Universal Otherhood*”: *Notes on the Report of the Commission on Global Governance*, 21 *ALTERNATIVES* 525, 526 (1996).

spending a mere \$.40 per head per year on health care.<sup>70</sup> The situation in Tanzania is only slightly better. There the government spends \$4.00 per head on defense, while spending \$.70 per head on health care.<sup>71</sup>

Global governance and its attendant exhortation of certain values, though laudable, is elusive for several reasons. One significant reason is that global governance is premised on the myth of the sovereign equality of states.<sup>72</sup> In other words, the formal structure of international law and governance embraces the notion that sovereign states are politically equal. It has been eloquently argued that this formal edifice essentially masks not just the de facto economic inequality of states, but obscures the fact that many states have bartered their "political" sovereignty to secure certain economic benefits.<sup>73</sup> This was the reality during the Cold War era when the existence of the two powerful ideological blocks effectively corroded any semblance of political autonomy on the part of developing countries. These countries, all in the Third World, were conscripted into one or the other ideological camp with economic and other benefits as incentives for loyalty.<sup>74</sup>

Although the economic status quo contradicts any notion of the sovereign equality of states, the operation of the United Nations Security Council exemplifies this contradiction. Five countries essentially have a veto on decisions made by the General Assembly consisting of 150 plus member states!<sup>75</sup> And therein lies the rub; the United Nations, with its elaborate bureaucracy and its voluminous collection of declarations and resolutions of equality, masks the inherent disparity between the powerful West and the rest of the world.<sup>76</sup> International human rights law essentially exists at the margins of governance. This is not to deny the importance of the role of the United Nations or its herculean efforts at redressing injustices however and wherever they may surface. The point is not to undermine the importance, both symbolically and substantively, of the range of human rights instruments which

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70. See Kari Nielsen, *Is Global Justice Impossible?*, 4 RES PUBLICA 131, 138 (1998).

71. *Id.*

72. See Maxwell Chibundu, *Affirmative Action and International Law*, in GLOBAL ISSUES IN COMPENSATORY JUSTICE 11, 11 (Penelope E. Andrews ed., 1999).

73. *Id.*; see also generally R.H. JACKSON, QUASI-STATES: SOVEREIGNTY, INTERNATIONAL RELATIONS AND THE THIRD WORLD (1991) (questioning state sovereignty in the Third World).

74. Chibundu, *supra* note 72, at 13.

75. See U.N. CHARTER art. 2; see also Diane Otto, *Challenging the "New World Order": International Law, Global Democracy and the Possibilities for Women*, 3 TRANSNAT'L. & CONTEMP. PROBS. 371, 376 (1993).

76. See Kenneth Anderson, *Secular Eschatologies and Class Interests*, in RELIGION AND HUMAN RIGHTS: COMPETING CLAIMS 107, 115 (Carrie Gustafson & Peter Juviler eds., 1999) (arguing that the rhetoric of human rights obscures the domination of the global elite, who use the language of rights to justify their domination).



exhort national leaders to appropriate practices (if not higher ideals) and which provide great sustenance symbolically and materially for local and global activists. My rather simplistic observation is that given the disparity in economic resources globally, the notion of equality of states distorts the global economic and political reality.<sup>77</sup>

The specter of globalization has spawned three issues which bear directly on women's human rights. The first issue is the issue of sovereignty, and more specifically, the regulatory capacities of the nation state.<sup>78</sup> The second issue is the globalization of law or what has been termed the "judicialization of politics."<sup>79</sup> The third issue is the hegemony of human rights as the language of struggle.<sup>80</sup>

### *B. Hierarchies of Human Rights*

In many ways the divide between civil and political rights on the one hand, and economic, social and cultural rights on the other, is an artifact of the Cold War era.<sup>81</sup> The consequences of this divide, not just in ideological terms, but material ones, are now well known. But despite the demise of the Cold War era, this primacy of individual rights is reflected in not just the contemporary global economic arrangements, but in the dominant discourse and structures of politics and law.

Contemporary political discourse reflects the hegemony of liberal democracy as the dominant political paradigm.<sup>82</sup> This paradigm is imbued with its own version of legal formalism, one predicated on constitutionalism and the rule of law. Boaventura de Sousa Santos has referred to the "judicialization of politics," the idea that legal institutions and processes of conflict resolution, or ordering of societal relationships, are now hegemonic.<sup>83</sup> Its most profound

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77. This simple point is significant because of its bearing on human rights and practice: the body of human rights law, however detailed and substantial, cannot be effective in the face of massive inequalities which circumscribe choices for people. See generally Russell Lawrence Barsh, *A Special Session of the UN General Assembly Rethinks the Economic Rights and Duties of States*, 85 AM. J. INT'L L. 192 (1991) (discussing the 18th special assembly of the U.N. General Assembly).

78. See SASKIA SASSEN, *LOSING CONTROL?: SOVEREIGNTY IN AN AGE OF GLOBALIZATION* xii-xiv (1996).

79. Boaventura de Sousa Santos, *The Gatt of Law and Democracy: (Mis)Trusting the Global Reform of Courts*, in *GLOBALIZATION AND LEGAL CULTURES* 49, 52 (J. Feest ed., 1999).

80. See *supra* note 60.

81. See John P. Pace, *The Development of Human Rights Law in the United Nations, Its Control and Monitoring Machinery*, 50 INT'L SOC. SCI. J. 499, 500 (1998).

82. See Sharon K. Hom, *International Law Moves in a Cross-Discipline Register*, 92 AM. SOC'Y INT'L L. PROC. 99, 100 (1998).

83. de Sousa Santos, *supra* note 79, at 52.

manifestation is the primacy of constitutions or the idea of constitutional governance.<sup>84</sup>

South Africa exhibits the most recent reflection of this tendency; arguably the revolution there was largely a legal one.<sup>85</sup> The most influential processes prior to the elections there in 1994 were the constitutional negotiations.<sup>86</sup> It was the pens of lawyers that gave the nation its new legal and political order, albeit at the behest of politicians who brokered the substance of the final documents.<sup>87</sup> The proliferation of quasi-legal and legal regulatory agencies and human rights bodies, specifically to administer and enforce the new dispensation of human rights, reflects the bureaucratization of human rights enforcement and its legalistic culture.<sup>88</sup>

This strategic maneuver to channel political aspirations and conflict resolution through the prism of the law is overall laudatory. But what this legal edifice obscures are underlying economic and social inequalities which fall outside the confines of legal solutions.<sup>89</sup> They need to be addressed through the processes of political and economic enfranchisement leading to those extra legal processes which empower people, not just every four years at the ballot box, but every day in the ordinary encounters of their lives.<sup>90</sup>

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84. See generally DANIEL J. ELAZAR, *CONSTITUTIONALIZING GLOBALIZATION* (1998) (discussing the role of constitutions in the process of globalization).

85. See generally SIRI GLOPPEN, *SOUTH AFRICA: THE BATTLE OVER THE CONSTITUTION* (1997) (discussing the connection between the revolution and the constitution).

86. *Id.* at 199-276.

87. See Doreen Atkinson, *Brokering a Miracle?: The Multiparty Negotiating Forum*, in *THE SMALL MIRACLE: SOUTH AFRICA'S NEGOTIATED SETTLEMENT* 12 (Steven Friedman ed., 1994) (discussing the drafting of South Africa's Constitution).

88. I am not suggesting that this is overall not a good thing. South Africans recognized at the outset that the excesses of apartheid masquerading under the guise of parliamentary supremacy, as well as the rampant lawlessness typified by the security police during the 1980s, needed to be unequivocally reversed. See JOHN DUGARD, *HUMAN RIGHTS AND THE SOUTH AFRICAN LEGAL ORDER* 14-36 (1978); see also *THE TRUTH AND RECONCILIATION COMM'N OF SOUTH AFRICA, THE FINAL REPORT* (1998) (reporting the Commission's findings on apartheid). In addition, the incorporation of rights in the Constitutions (both the interim and final ones) required effective enforcement mechanisms.

89. See Benjamin R. Barber, *Global Democracy or Global Law: Which Comes First*, 1 *GLOBAL LEGAL STUD. J.* 119, 121 (1993).

90. In fact, it has been argued that the hegemony of neoliberalism, with its trappings of the liberal state, has deleterious consequences for social and economic rights.

[T]he new globalizing ideology of neoliberalism and the dismantling of social guarantees afforded by the welfare state, on behalf of economic efficiency, have set the tone for an over-evaluation of the individualistic homo-economicus, with the correlate phenomena of exclusion and social dislocation.

J. A. Lindgren Alves, *Commemorative Essay: On the 50th Anniversary of the Universal Declaration of Human Rights, the United Nations, Pastmodernity, and Human Rights*, 32 *U.S.F. L. REV.* 479, 486 (1998).

Not to be cavalier about the significance of the codification of rights,<sup>91</sup> but the formal edifice often obscures the underlying structural dimensions which law cannot cure. For example, in the United States, where civil and political rights enjoy constitutional primacy, the right to vote remains hollow. A huge proportion of the population, disproportionately people of color, have effectively disregarded the formal electoral process, which is seen as having no validity to their lives.<sup>92</sup>

For critical race feminists, the challenge is marrying substance and symbolism and refusing to reinforce a lopsided view of rights which sacrifices socio-economic rights to the primacy of political and civil rights.<sup>93</sup> Traditional gendered analysis often failed to see the epistemological and experiential connections with other subordinated groups, for example, the poor or racial minorities.<sup>94</sup> Moreover, even though within those groups women largely fare worst, this is not always so. For example, in certain societies generational benefits accrue and women are sometimes implicated in gender oppression.<sup>95</sup> In short, the quest for women's rights often involves a fraught negotiation between class and culture and how each implicates men and women as perpetrators of human rights violations.<sup>96</sup> This focus appreciates the condition

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91. See WILLIAMS, *THE ALCHEMY OF RACE*, *supra* note 9, at 164. As Williams notes so elegantly: "'Rights' feel new in the mouths of most black [and other oppressed] people. It is still deliciously empowering . . . . The concept of rights, both positive and negative, is the marker of citizenship, our relation to others." *Id.*

92. See Richard L. Ergstrom, *Minority Electoral Opportunities and Alternative Election Systems in the United States*, in *VOTING RIGHTS AND REDISTRICTING IN THE UNITED STATES* 227, 227-43 (Mark E. Rush ed., 1998) (discussing a cumulative voting system that would better represent a minority vote).

93. I am not for a moment suggesting here that feminists and other critical scholars have not addressed this issue comprehensively. See generally Kathleen Mahoney, *Theoretical Perspectives on Women's Human Rights and Strategies for Their Implementation*, 21 *BROOK. J. INT'L L.* 799 (1996) (discussing theories of feminism and their practical application in international law). But the contemporary configuration of global politics and economics demands vigilance by women activists to address economic disadvantages which continues to contribute to women's subordination.

94. See ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 114-15 (1988).

95. An example is the issue of sati (women flinging themselves on their husband's funeral pyre). See Radhika Coomaraswamy, *To Bellow Like a Cow: Women, Ethnicity, and the Discourse of Rights*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, *supra* note 19, at 39, 48-50. Coomaraswamy's analysis incorporates the culpability of both men and women in reinforcing cultural and familial imperatives for a practice that literally kills women. *Id.* at 48-54.

96. It is not sufficient to reference only false consciousness as the culprit; these attitudes and practices are steeped in any society's history and concomitant sense of shared values. See Jill Krause, *Gender Inequalities and Feminist Politics in a Global Perspective*, in *GLOBALIZATION: THEORY AND PRACTICE* 224, 232, 234 (Eleonore Kofman & Gillian Youngs eds., 1996); Valentine V. Moghadam, *Introduction: Women and Identity Politics in Theoretical and Comparative Perspective*, in *IDENTITY POLITICS AND WOMEN: CULTURAL REASSERTIONS AND FEMINISMS IN INTERNATIONAL PERSPECTIVE* 3, 7 (1994).

of powerlessness of whole communities, including men, in the continuing economic disenfranchisement of the developing world, albeit with the concurrence and acquiescence of local elites.<sup>97</sup> Specifically, a traditional rights-based approach situates the state as the major provider of those rights, the conduit through which claims are made. But the limitations posed by the demands of the International Monetary Fund and the World Bank on these countries to restructure their economies severely constrain the ability of states to do much, with deleterious consequences for economically marginalized groups, particularly women.<sup>98</sup>

### *C. Women and Globalization*

What does the contemporary era of globalization mean for women? In other words, what does “globalization look like when viewed through the ‘lens’ of gender.”<sup>99</sup> All the evidence suggests that globalization has merely cemented women’s unequal economic status.<sup>100</sup> A perusal of the economic arena suggests that most women in the developing world experience globalization through the “structural adjustment” imperatives imposed by the financial regulatory agents of globalization, the World Bank and the International Monetary Fund.<sup>101</sup> For women, the processes of structural adjustment merely reinforce their subordinate status within the national labor force and other economic indicators.<sup>102</sup>

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97. See, e.g., J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT’L L.J. 1 (1995) (analyzing economic and social human rights in specific relation to the African continent); Susan Demske, *Trade Liberalization: De Facto Neocolonialism in East Africa*, 86 GEO. L.J. 155 (1997) (arguing that equalizing trade barriers indiscriminately has the effect of discriminating against those countries that do not begin on the same playing field).

98. See Mahoney, *supra* note 93, at 852-53 (stating that “[s]tructural adjustment programs imposed by the International Monetary Fund and the World Bank have caused disproportionate disadvantage to women because their theories, strategies, and solutions for development, growth and underdevelopment tend to ignore women and the role they fulfill in their societies”).

99. See Krause, *supra* note 96, at 225.

100. See *id.*; see also Lucy B. Bednarek, *The Gender Wage Gap: Searching for Equality in Global Economy*, 6 IND. J. GLOBAL LEGAL STUD. 213 (1998) (discussing the wage gap between men and women).

101. See Akua Kuenyehia, *The Impact of Structural Adjustment Programs on Women’s International Human Rights: The Example of Ghana*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 19, at 422, 423-26; Gracia Clark, *Implications of Global Polarization for Feminist Work*, 4 IND. J. GLOBAL LEGAL STUD. 43, 47 (1996).

102. See generally Bharati Sadasivam, *The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda*, 19 HUM. RTS. Q. 630 (1997) (discussing the effects of globalization on women).

We have witnessed the now complete movement offshore of manufacturing and other industries to cheap labor in marginal countries like Taiwan, Malaysia and Guatemala. This movement is accompanied by a “race” to the bottom in the developing world, for example, the least protective labor laws, and the lowest wages.<sup>103</sup> A country’s most favorable investment status, namely, its allure to foreign investments, depends on the least protective labor standards, lowest wages, most docile labor force and the least regulation.<sup>104</sup> The twin processes of privatization and restructuring results in government privatization of essential services, as well as of its regulatory and administrative functions.<sup>105</sup> The *raison d’être* for structural adjustment and its offspring, privatization, is to allow for the free flow of capital and to make recipient countries more attractive to investors. In short, the cumulative consequences for workers and economically marginalized groups is quite deleterious. For women this is particularly so.<sup>106</sup> In 1989, the Report of a Commonwealth Expert Group of Women observed as follows:

Women are at the epicentre of the crisis and bear the brunt of the adjustment efforts: it is women who have been most severely affected by the deteriorating balance between income and prices, and who have desperately sought means for their families to survive. It is women who have had to find extra work to supplement family income; it is women who have rearranged family budgets . . . and it is women who have been most immediately affected by cuts in health and educational facilities, and by the rising morbidity and deaths among their children. Women are at the frontline of the crisis in the developing world—and it is they who have been most severely affected and have had the greatest responsibility for adjusting their lives to ensure survival.<sup>107</sup>

Structural Adjustment Programs therefore disproportionately impact women, leaving them as a group particularly vulnerable.

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103. See Williams, *supra* note 57, at 98.

104. See Susan George, *The Debt Boomerang, in 50 YEARS IS ENOUGH: THE CASE AGAINST THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* 29, 30-31 (Kevin Danaher ed., 1994).

105. Not all commentators see the phenomenon of globalization and its attendant market liberalization as necessarily a negative thing. See, e.g., Pierre Sauve, *Open Markets Matter, WORLD COMPETITION*, June 1998, at 57, 57-72 (arguing the benefits of an open market).

106. See Sadasivam, *supra* note 102, at 632.

107. *ENGENDERING ADJUSTMENT FOR THE 1990S: REPORT OF A COMMONWEALTH EXPERT GROUP ON WOMEN AND STRUCTURAL ADJUSTMENT* 31-32 (1989), *quoted in* Sadasivam, *supra* note 102, at 633.

*D. Feminist Interventions in International Human Rights Discourse*

Different critical theorists have tried to make sense of this “new” arrangement.<sup>108</sup> Some scholars have argued that this so-called new world order is not really new, that it merely represents a postmodern package buttressed by highly sophisticated information technology.<sup>109</sup> Whatever perspective on the debate we adhere to, it is arguable that this phase in human history differs from earlier periods of colonialism and imperialism. Much of the difference can be attributed to the new communication and information technology, and the “end” of some of the familiar technology.<sup>110</sup> Other scholars have tried to show how this new economic arrangement has led to greater global economic inequality.<sup>111</sup> Feminist scholars have been particularly insightful at showing how global economic forces institutionalize the subjugation of women through, for example, labor practices, reduction of state welfare services and growth in the sex trade.<sup>112</sup>

Feminist legal scholars have been adept at pointing out how the regulatory field, international law and particularly the major regulatory body, the United Nations, has failed women by consistently ignoring their needs through its enforcement documents, procedures, enforcement mechanisms, administration—in short the legal ideology of international law and the United Nations and its umbrella organizations.<sup>113</sup> These critical scholars continue to expose international law’s patriarchal edifice.<sup>114</sup> They have barely penetrated this vast edifice, but the urgency of gender equality has been given the formal

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108. See Jost Delbruck, *Globalization of Law, Politics and Markets—Implications for Domestic Law—A European Perspective*, 1 *IND. J. GLOBAL LEGAL STUD.* 9, 9 (1993).

109. See generally ROBERT SCHAFFER, *UNDERSTANDING GLOBALIZATION: THE SOCIAL CONSEQUENCES OF POLITICAL, ECONOMIC AND ENVIRONMENTAL CHANGE* (1997) (examining political, economic, and environmental changes throughout the world during the 1970s, 1980s, and 1990s with a historical perspective).

110. Upendra Baxi, an Indian scholar, has rather amusingly referred to the fact that the prefix post is essential in the discourse of the *cognoscenti*: post-modern, post-colonial, post-feminist. As we approach the millennium, there are bold assertions of the end of much that has comforted us: the end of history, the end of religion, the end of race. Upendra Baxi, *The Unreason of Globalization and the Reason of Human Rights* 3 (1998) (unpublished manuscript, on file with author).

111. See generally Arthur MacEwan, *Globalization and Stagnation*, 23 *SOC. JUST.* 49 (1996) (arguing that globalization has resulted in stagnation for some).

112. See Williams, *supra* note 57, at 98.

113. See, e.g., Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 *AM. J. INT’L L.* 613 (1991) (questioning the immunity of international law to feminist analysis). For a helpful bibliography on feminist readings of international law, see Rebecca J. Cook, *Women’s International Human Rights: A Bibliography*, 24 *N.Y.U. J. INT’L L. & POL.* 857 (1992).

114. See, e.g., *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* (Adrien Katherine Wing ed., forthcoming 2000); *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, *supra* note 19.

nod in previously recalcitrant quarters; witness, for example, the Beijing Conference and the Platform for Action,<sup>115</sup> the Vienna Conference<sup>116</sup> that preceded it, and the Population and Development Conference in Cairo.<sup>117</sup> One can therefore argue the international law landscape for feminist activists appears more amenable to change for women.<sup>118</sup>

Of course feminist debates have not occurred without conflict or controversy. Western liberal assumptions implicit in much of feminist writing, and its essentialist paradigm have been subjected to widespread analysis.<sup>119</sup> Women of color in the developed world and women in the developing world have challenged these assumptions, and this process of debate and resultant practice continues. However, despite these controversies, women activists globally have energized the plethora of non-governmental organizations (NGOs) which continue to proliferate.<sup>120</sup> The individual and combined efforts and lobbying of these NGOs have forced governments to consider gender

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115. *Report of the Fourth World Conference on Women: The Beijing Declaration and the Platform for Action*, U.N. Doc. A/CONF. 171/20 (1995). The document bolsters CEDAW, by providing a program of action for governments to address women's rights. See Margaret Plattner, *The Status of Women Under International Human Rights Law and the 1995 UN World Conference on Women, Beijing, China*, 84 KY. L.J. 1249, 1254-60, 1263-73 (1996) (discussing both CEDAW and the Beijing Conference); Elizabeth L. Larson, Comment, *United Nations Fourth World Conference on Women: Action for Equality, Development, and Peace (Beijing, China: September 1995)*, 10 EMORY INT'L L. REV. 695 (1996) (discussing the Beijing Conference).

116. At this conference, feminists lobbied extensively in favor of the recognition that violence against women is a violation of human rights. The conference culminated in the *Declaration on the Elimination of Violence Against Women*, G.A. Res. 104, U.N. GAOR, 48th Sess., Agenda Item 111, U.N. Doc. A/RES/48/104 (1993). See Donna J. Sullivan, Note, *Women's Human Rights and the 1993 World Conference on Human Rights*, 88 AM. J. INT'L L. 152, 152 (1994) (stating that "[t]he conference crystallized a political consensus that various forms of violence against women should be examined within the context of human rights standards and in conjunction with gender discrimination").

117. The 1994 International Conference on Population and Development in Cairo addressed, among other topics, women's reproductive health issues. Feminists lobbied extensively to ensure that the debate included women's perspectives, although individual women's perspectives differed in relation to questions of birth control and particularly abortion. Rhonda Copelon, *Sexual and Reproductive Rights*, in *THE CONSTITUTION OF SOUTH AFRICA FROM A GENDER PERSPECTIVE* 190, 198-201 (Sandra Liebenberg ed., 1995).

118. The many collections in the past decade exploring these issues bear testimony to this burgeoning acceptance of women's rights as human rights. See, e.g., *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, *supra* note 19; *OURS BY RIGHT: WOMEN'S RIGHTS AS HUMAN RIGHTS* (Joanne Kerr ed., 1993).

119. See, e.g., *CRITICAL RACE FEMINISM: A READER*, *supra* note 7; *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER*, *supra* note 114.

120. See, e.g., Afra Afsharipour, Note, *Empowering Ourselves: The Role of Women NGO's in the Enforcement of the Women's Convention*, 99 COLUM. L. REV. 129 (1999) (arguing that NGOs can fill the enforcement gap).

issues, and they have “engendered” organs of civil society.<sup>121</sup> Examples of such activism abound.<sup>122</sup>

Many of the goals demanded by women on the global level remain aspirational. However, the script for women’s emancipation and equality, no longer written only by Western feminists peddling a brand of essentialist politics, is now multi-authored.<sup>123</sup> In short, the trenchant claims of universalism continue to be challenged and modified to accommodate competing visions of human rights interpretation and enforcement.<sup>124</sup>

### *E. Violence Against Women: Global Strategies*

The universal need to eradicate violence against women is recognized not just as a rhetorical tool, but it is also incorporated in the United Nations Declaration. The most detailed document detailing rights to which women are entitled is the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).<sup>125</sup> CEDAW provides a comprehensive legal framework designed to ensure equality for women.<sup>126</sup> It outlines the major legal and social structures that impede women’s rights and opportunities. It also specifies measures that state parties who ratify CEDAW must take to eliminate such discriminatory structures.<sup>127</sup>

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121. See Dorothy Q. Thomas, *Holding Governments Accountable by Public Pressure*, in OURS BY RIGHT: WOMEN’S RIGHTS AS HUMAN RIGHTS, *supra* note 118, at 82, 82-88 (discussing the creation of the Women’s Rights Project at Human Rights Watch); see also Govind Kelkar, *Stopping the Violence Against Women: Fifty Years of Activism in India*, in FREEDOM FROM VIOLENCE: WOMEN’S STRATEGIES FROM AROUND THE WORLD 75 (Margaret Schuler ed., 1992) (discussing violence against women in India).

122. Note for example how women activists lobbied the major political parties during South Africa’s constitutional negotiations to ensure that the new constitution incorporate rights of gender equality. See Penelope E. Andrews, *Striking the Rock: Confronting Gender Equality in South Africa*, 3 MICH. J. RACE & L. 307, 327-34 (1998); see also Coomaraswamy, *supra* note 95, at 39 (discussing litigation brought by women in South East Asia to stem violence).

123. See Isabelle Gunning, *Arrogant Perception, World Travelling and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189-248 (1992); see also Amede Obiora, *supra* note 26, at 355 (questioning the interface of feminism and globalization with particular reference to the implications for culture).

124. See Rosi Braidotti, *The Exile, the Nomad, and the Migrant: Reflections on International Feminism*, 15 WOMEN’S STUD. INT’L F. 1, 7-10 (1992).

125. G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979).

126. *Id.*

127. *Id.* at arts. 2-10.



But it is the Vienna Declaration<sup>128</sup> which pushed the issue of violence against women to the forefront of the struggle for women's human rights. In 1993, the United Nations at its World Conference on Human Rights in Vienna recognized the specificity of women's rights as part of the international human rights agenda.<sup>129</sup> The Vienna Declaration specifically identifies the "human rights of women" as "an inalienable, integral and indivisible part of universal human rights."<sup>130</sup> The Declaration goes on to state that "the full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community."<sup>131</sup> The Declaration also condemns "[g]ender-based violence and all forms of sexual harassment and exploitation,"<sup>132</sup> and calls upon the General Assembly to "adopt a draft declaration on violence against women."<sup>133</sup>

#### IV. VOICES FROM THE MARGINS<sup>134</sup>: THE CONTRIBUTION OF A CRITICAL RACE FEMINIST PERSPECTIVE

The issues bearing on the human rights of women have shifted slowly from the margins to a more accessible place in human rights discourse.<sup>135</sup> This shift, at least in terms of the parameters of human rights discourse, has emanated

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128. *World Conference on Human Rights, The Vienna Declaration and Programme of Action*, A/CONF. 157/24 (1993).

129. *Id.*

130. *Id.* at art. I (18).

131. *Id.*

132. *Id.*

133. *Id.* at art. II (38). This section also calls upon states to combat violence against women in accordance with the United Nations' provisions and declares that "[v]iolations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law." *World Conference on Human Rights, The Vienna Declaration and Programme of Action*, *supra* note 128.

134. The term is used here to refer to economic and cultural margins, those locations not at the center of economic activity; or those communities culturally marginalized and relegated to other locations. See Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, FEMINIST REV., Autumn 1988, at 61, 61-65 (highlighting the experiences of women from the "Third World" to counter western feminist notions of a monolithic "Third World Woman").

135. Women still remain the most disadvantaged globally, but there is at least a growing lobby of women activists and scholars loudly pursuing women's rights. See *supra* text accompanying notes 120-22.

from thoughtful, analytical interventions by feminist legal scholars.<sup>136</sup> Their most enduring insights have been attempts to excavate the absent voices of women, either as part of the formal structures of the United Nations' system, or in the context of international human rights law.<sup>137</sup> They have also challenged the so-called neutrality and objectivity of international law and have demonstrated how the public/private dichotomy in international law serves to reinforce formal structures that subjugate women.<sup>138</sup> Feminist scholars have also recognized the multiplicity and intersectionality of factors like race and ethnicity that impede women's rights.<sup>139</sup> All these perspectives have surely enriched the analytical landscape for the human rights of women.

In light of these creative feminist analyses, what perspectives might a critical race feminist approach bring to bear on the discourse of human rights and especially the elimination of violence against women globally? Further, what effective strategies could such an approach identify to combat such violence? To put the question differently, what is the transformative potential of critical race feminism?<sup>140</sup>

At its most basic level, critical race feminism needs to locate the origins of violence against women beyond the individual pathologies reflected in intimate domestic violence, rape, sexual harassment or other forms of sexual violence, by locating such manifestations in the larger power imbalance between the genders which perpetuate male hegemony.<sup>141</sup> This inquiry requires excavating the causes of violence and situating them within the larger socio-political and economic context. Critical race feminists should examine physical violence in

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136. See Rebecca Cook, *Women's International Human Rights Law: The Way Forward*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 19, at 3, 3-36.

137. See Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 MICH. J. INT'L L. 517, 518-21 (1992).

138. See Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 19, at 85, 85.

139. Harris, *supra* note 11, at 585 (criticizing mainstream feminism for failing to take into account the experiences of black women).

140. I refer to transformative feminism, one that addresses women's subordinated status by referencing not just the actual experience of violence that women are subjected to, but one that interrogates the causes and the consequences of violence, not just for the women involved, but the society at large. See Hope Lewis, *Lionheart Gals Facing the Dragon: The Human Rights of Inter/National Black Women in the United States*, 76 OR. L. REV. 567, 625-26 (1997) (discussing some of the challenges critical race feminism must confront).

141. Catherine MacKinnon has persuasively articulated the locus of violence against women by referencing patriarchy which is predicated in violence. See CATHERINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 158 (1979). Rhonda Copelon has called for a more expansive definition of violence against women as torture. See Rhonda Copelon, *Intimate Terror: Understanding Domestic Violence as Torture*, in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, *supra* note 19, at 116, 116-52.

all its gross and vapid manifestations, but in the process it has to unbundle the violence of poverty. Feminists have made impressive strides in forcing the international community to recognize violence as a human rights issue.<sup>142</sup> What needs to occur is an interlinking of violence and economic opportunity or status. In other words, critical race feminism can bring to the table an agenda that locates violence within the wider structures of economic subordination and oppression, both locally and globally.<sup>143</sup> A fellow traveler of critical race feminism, Berta Hernández-Truyol, has demonstrated the “inter-connectedness of civil and political rights with social and economic rights.”<sup>144</sup> This connection needs to be articulated at the local level, as well as on the global scale, where impoverishment and disempowerment plague large communities.<sup>145</sup>

Building on the body of feminist theory analyzing the universe of international human rights law and its deficiencies with respect to women’s rights, critical race feminists could unmask the veneer of equality of states which underpin international legal discourse. In this endeavor they will not be alone; female scholars from the developing nations have articulated a vision of human rights that recognizes the economic imperatives which skew political options.<sup>146</sup> In other words, the formal ideology of international law—the sovereign equality of states—is meaningless in the contemporary global economic configuration.<sup>147</sup>

Unbundling this de facto inequality is significant if one of the root causes of violence, poverty, is to be attacked.<sup>148</sup> The reality of poverty implicates women’s rights and women’s choices in several ways. One way is the ability

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142. For a discussion of the Vienna Declaration, see *supra* text accompanying notes 128-33.

143. See, e.g., Lisa C. Ikemoto, *Furthering the Inquiry: Race, Class, and Culture in the Forced Medical Treatment of Pregnant Women*, 59 TENN. L. REV. 487 (1992) (rejecting the subordinating restrictions on reproductive choice).

144. Berta Esperanza Hernández-Truyol, *Sex, Culture and Rights: A Re/Conceptualization of Violence for the Twenty-First Century*, 60 ALB. L. REV. 607, 619 (1997).

145. These are not academic questions. Despite the “victory” of women’s rights activists in Vienna, see discussion of the Vienna Declaration, *supra* text accompanying notes 128-33, the issue of violence is not regarded as *the* most important issue facing women, particularly in the poorer countries of the globe. For many women in these societies, basic sustenance for them and their families is the most they can hope for. The conditions of gross poverty distort their most basic choices and access to health, reproduction, education, and other economic benefits. For an interesting discussion of the tensions at the Vienna Conference about this conflict, see Julie Mertus & Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: The Inside/Outside Construct*, 26 N.Y.U. J. INT’L L. & POL. 201 (1994).

146. See Cheryl Johnson-Odim, *Common Themes, Different Contexts: Third World Women and Feminism*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 314, 320 (Chandra Talpade Mohanty et al. eds., 1991).

147. See Chibundu, *supra* note 72, at 11 (analyzing the term “equity” as it relates to affirmative action and international law).

148. See Andrews, *supra* note 3, at 457.

of states to provide the kinds of resources required to stem violence against women.<sup>149</sup> Another way may be in the choices available to women in situations of widespread illiteracy, a by-product of poverty.<sup>150</sup> In these situations, even when the state has intervened to stem violence against them, for example, women can only avail themselves of these benefits if they are empowered to pursue them.<sup>151</sup>

Critical race feminism also needs to locate the question of culture, not as an abstract anthropological phenomenon, but as the vehicle through which political and economic transformation is negotiated and to which women's rights often become hostage.<sup>152</sup> Local economic conditions and the symbols and substance of culture are implicated in, and affected by, global economic arrangements.<sup>153</sup> So, for example, in societies where migrant labor, particularly for women, becomes the norm for certain groups of people, their cultural arrangements accommodate the mobility (and exploitation) of women.<sup>154</sup>

Critical race feminism, with its focus on particularity and intersectionality, provides the space for an articulation of rights and remedies which takes local

149. My point here is not to excuse states who are unsympathetic or indifferent to the plight of women. Rather, this point is premised on the assumption that even where governments are willing to effect some change, the resources they have at their disposal may be limited in light of competing resource demands.

150. This is a rather basic point and also a hackneyed one. It is now recognized that all the lofty announcements of governments, through legislation or policy pronouncements, are of no consequence if women are not aware of them, or feel powerless (for example, through lack of resources or education) to enforce them. See Abdullalhi Ahmed An-Naim, *State Responsibility Under International Human Rights Law to Change Religious and Customary Laws*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES*, *supra* note 19, at 167, 167-88 (outlining the impediments facing national governments in embracing human rights).

151. See ROXANNA CARRILLO, *BATTERED DREAMS: VIOLENCE AGAINST WOMEN AS AN OBSTACLE TO DEVELOPMENT* (1992) (linking gender-based violence to development).

152. I have argued this point in the South African context, where during the constitutional negotiations, women activists who pushed for universal application of the equality principle were pitted against "traditionalists" who wanted to exempt traditional practices and institutions from the principle. See Andrews, *supra* note 122, at 323. When one deconstructs the conflict, the economic issues surface. Economic resources were controlled by men. Women were not allowed to become chiefs, a role not merely symbolic, but one which allowed the chief to allocate resources and generally spread largesse. See Yvonne Mokgoro, *Traditional Authority and Democracy in the Interim South African Constitution*, 3 *REV. CONST. STUD.* 60, 66 (1996).

153. It has been argued that any analysis of globalization has to incorporate the issue of culture. Tracey Skelton, *Globalization, Culture and Land: The Case of the Caribbean*, in *GLOBALIZATION: THEORY AND PRACTICE*, *supra* note 96, at 318, 320.

I believe that is directly necessary to adopt a cultural focus to what is often called world politics. . . . We have come increasingly to recognize that while economic matters are of tremendous importance in relations between societies and in various forms of transnational relations these matters are . . . subject to cultural contingencies and cultural coding.

*Id.* (citing ROLAND ROBERTSON, *GLOBALIZATION, SOCIAL THEORY AND GLOBAL CULTURE* 4 (1992)).

154. *Id.* at 324.

conditions as the starting point and then engages the universal.<sup>155</sup> It is not fettered by universalist, essentialist notions which start with the universal woman and then extrapolates local conditions. It insists that the voices from the margins have a central place in the discourse of international human rights. It is not just a rhetorical tool; such a perspective includes one of the underdeveloped world, in other words, those of poor, marginal people.

The implications of an analysis that attempts to fill theoretical gaps and centralize the perspectives of marginalized groups have some implications for international human rights practice. This is no small consideration since arguably human rights law is a question of political will or possibility.<sup>156</sup>

## V. CONCLUSION

I have attempted to demonstrate in my remarks that critical race feminism, although entirely of American vintage, may provide the theoretical potential for an analysis of marginalized groups in the global human rights framework. In this endeavor, and utilizing the lens of violence, I have attempted to incorporate the experiences of Aboriginal women in Australia and black South African women. Although Australia shares all the traits of a first world country, this is not the case for Aboriginal peoples. Aboriginal peoples represent the Third World in Australia by all indicators.<sup>157</sup> Similarly, black South African women remain the most disadvantaged within that society.<sup>158</sup>

By examining the conditions of Aboriginal women and black women in South Africa, it is reasonable to conclude that the intersectionality of violence, race and poverty create the conditions for violence which constitute a continuous violation of human rights. The purpose of this experiential focus is not to suggest that the conditions of these two groups of women, or indeed all women in economically marginalized communities, are interchangeable. Rather the idea is to highlight certain conditions, such as poverty and violence, which may coincide across borders and cultures and utilize the possibilities of a critical race feminism approach.

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155. One of critical race theory's most significant contributions has been the suggestion that attempts to redress injustice and transform the lives of oppressed groups requires an approach which "looks to the bottom." See generally Matsuda, *supra* note 12 (arguing that adopting the perspective of those who have experienced discrimination can greatly assist critical scholars).

156. See generally Chibundu, *supra* note 60, at 1069 (exploring the implications of using one domestic court to enforce international human rights).

157. See Andrews, *supra* note 4, at 918 (stating that Aborigines are the most disadvantaged Australians and that within Aboriginal communities, women fare the worst).

158. See Andrews, *supra* note 3, at 430.

