Transnational Dimensions of Racial Identity: Reflecting on Race, the Global Economy, and the Human Rights Movement at 60

Hope Lewis

Transnational Dimensions of Racial Identity: Reflecting on Race, the Global Economy, and the Human Rights Movement at 60

HOPE LEWIS[*]

Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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.[1]

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.[2]

HUMAN RIGHTS AND THE GLOBAL ECONOMY: THE CONTINUING SIGNIFICANCE OF RACIAL IDENTITY

Are race and racism to be considered matters of priority, or even relevant, at a time of global economic (and other) challenges for the

1. Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 25, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

2. *Id.* art. 28.

human rights movement? Should they be deemphasized in light of the rapid movement of people across geographic and cultural borders? Is there anything to say about the human rights implications of race, identity, and culture when it all seems to be "about the economy, stupid"?

This brief reflection assumes the continuing significance of race, ethnicity, and culture for a human rights approach to the global economy. Underlying this assumption is a broad and complex definition of "race" that includes the multiple dimensions of ethnicity, culture, gender, class, and other identity categories as partially expressed through race. In my view, the failure to see the complex nature of racial identity lies at the source of many debates about the meaning of racial "authenticity" as well as the tendency to miss the relevance of race entirely.

Sixty years after the Universal Declaration of Human Rights (UDHR) established a vision for equality and non-discrimination in the enjoyment of human rights, race and racism do continue to be important aspects of the international human rights agenda. However, in practice, the significance of the global economic dimensions of race and ethnicity tends to be less well mainstreamed into the analysis of human rights.

Over the last six decades human rights advocates have witnessed the end of formal colonialism, the adoption of the Race Convention,[3] the rise of domestic civil rights movements and the partial implementation of affirmative action measures in North America and Europe, the end of formal apartheid in South Africa,[4] a World Conference Against Racism and Xenophobia,[5] and the election of the first African-American president of the United States of America.[6] These

---

3. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195.

4. S. Afr. Const. 1996.

5. *See* World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, Aug. 31–Sept. 8, 2001, *Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, U.N. Doc. A/CONF.189/12 (Jan. 25, 2002). *See also* Durban Review Conference, Apr. 20–24, 2009 (report forthcoming), *available at* http://www.un.org/durbanreview2009/background.shtml.

6. *See generally* Financial Times, US Presidential Election – Global Reaction, http://www.ft.com/indepth/us-elections/global-reactions (describing the global reaction to the election of Barack Obama) (last visited Mar. 11, 2009); Henry Louis Gates, Jr., *In Our Lifetime: From Toiling as White House Slaves to President-elect Barack Obama, We Have Crossed the Ultimate Color Line*, The Root, Nov. 4, 2008, http://www.theroot.com/views/

positive developments seem to signal the potential for a new, non-racist, global perspective.   "Another World is Possible,"[7] as the saying goes.

Nevertheless, and during the same period, mass killings, genocide, and ethnic cleansing in Cambodia, Rwanda,[8] Darfur, and Eastern Europe;[9] the rise of anti-Semitic and white supremacist movements and violence in Europe;[10] violent post-election conflicts in Kenya;[11] ethnically motivated profiling, arbitrary detention, and even torture by the U.S.;[12] and hate crimes against people of color and immigrants in both Global North and Global South provide clear evidence that racism remains inextricably linked to other causes of widespread violations of civil and political human rights. But race and racism are also linked to the dimensions of economic, social, and cultural rights, and the right to sustainable human development.

We in the human rights movement tend to put explicit questions of race in the context of the global economy on the back burner. In the absence of state-sponsored or organized private racial violence, we treat race (and, indeed, some other non-class forms of identity) as irrelevant, or at least less relevant, than economic class alone. I take the brief opportunity presented by this symposium panel to call for

---

our-lifetime.

7. "If another world is possible, another US is necessary…" was the title of the 2007 United States Social Forum, held June 27–July 1, 2007 in Atlanta, Ga. 2007 United States Social Forum Homepage, http://www.ussf2007.org (last visited Mar. 17, 2009).

8. *See generally* PHILIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES: STORIES FROM RWANDA (1998); SAMANTHA POWER, A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE (2002).

9. *See generally* POWER, *supra* note 8.

10. *See, e.g.*, *Morning Edition: Race and Politics in Europe Today Series* (NPR radio broadcast Jan. 12–14, 2009) (reporting on minorities and racism in Europe), *available at* http://www.npr.org (search for "99268596"; then follow "Race And Politics In Europe Today" hyperlink).

11. *See, e.g.*, Adam Mynott, *Inter-ethnic Scores Settled in Nakuru*, BBC NEWS, Jan. 26, 2008, http://news.bbc.co.uk/2/hi/africa/7210310.stm (describing violence in Kenya in the wake of disputed presidential election results).

12. *See* US Human Rights Network, ICERD Shadow Report 2008 Homepage, http://www.ushrnetwork.org/cerd_shadow_2008 (last visited Mar. 19, 2009) (discussing official U.S. racial, ethnic, and religious profiling, arbitrary detention, and other abuses against immigrants, non-citizens, or those perceived to be "foreign"); U.N. Comm. on the Elimination of Racial Discrimination, Feb. 18–Mar. 7, 2008, *Concluding Observations Submitted by States Parties Under Article 9 of the Convention*, *available at* http://www2.ohchr.org/english/bodies/cerd/cerds72.htm; *see also* posting of Hope Lewis to IntLawGrrls, http://intlawgrrls.blogspot.com/2008/03/concluding-observations-just-beginning.html (Mar. 10, 2008, 9:19 EDT).

deeper analysis of the more subtle aspects of race and racism for human rights law and politics in today's global economy.

As I noted above, "race" is shorthand for a complex, multi-dimensional set of social and cultural constructs that includes such layers as ethnicity, national origin, class, gender, and religious identity. By choosing to focus on race, I do not intend to imply that other forms of social, cultural, political, or economic identity are irrelevant or do not share parallel or intersecting patterns in human rights analysis. On the contrary, I believe that other identity and social factors influence how we should construct and talk about race and racism. At the same time, I also remain convinced that race itself carries a special primacy even in our multicultural and seemingly diverse global economy.

GET BACK TO WHERE YOU ONCE BELONGED: THE ORIGINAL VISION OR A NEW PARADIGM?

In theory, the original human rights framework illustrated by the UDHR contemplated an integrated, multidimensional, and contextual approach to human rights, including the prohibition of racial discrimination.[13]

The political compromises that led to the bifurcation of what would have been a unified Human Rights Covenant into separate treaties on economic, social, and cultural rights, and on civil and political rights are known for their negative impact on the ideal of indivisibility in human rights. In practice, they resulted in inappropriate and politicized prioritization between the two categories of rights.[14]

---

13. Core human rights instruments prohibit discrimination on the basis of specified identity categories, such as race and sex. *See* UDHR, *supra* note 1, arts. 2, 7. The two remaining instruments that comprise the International Bill of Rights contain similar provisions imposing obligations on states to prohibit discrimination on the basis of a range of identity categories. *See* International Covenant on Civil and Political Rights art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights art. 2(2), Dec. 16, 1966, 993 U.N.T.S. 3.

14. See, for example, HUMAN RIGHTS AND THE GLOBAL MARKETPLACE: ECONOMIC, SOCIAL, AND CULTURAL DIMENSIONS 75–77, 85–89 (Jeanne M. Woods & Hope Lewis eds., 2005) [hereinafter Woods & Lewis], which excerpts statements on international human rights by U.S. President Franklin D. Roosevelt (viewing fundamental human rights as indivisible), and by U.N. Commission on Human Rights Chair Eleanor Roosevelt (arguing that economic and social rights are as important as civil and political rights, but that they were of a different character that required weaker implementation mechanisms).

Identity-based approaches to human rights seemed to present a different set of motivations. The adoption of human rights conventions based on single-identity categories such as race, sex, childhood, and disability seemed to stem from a desire to highlight and address special violations that affect specific groups and individuals. But, the single-axis character of some human rights instruments carries dangers as well as targeted opportunities. In practice, human rights advocates sometimes essentialize identity categories rather than using holistic or multidimensional approaches.

Of course, a focus on specifically marginalized aspects of identity that affect fundamental human rights is pragmatically necessary. We want the broad principles enshrined in the UDHR to have concrete content when it comes to recommendations on preventing genocide, prohibitions on racial segregation and apartheid, the rights of women, prohibitions on torture, and prohibitions on trafficking in children. Such an all-encompassing project does, therefore, require some attention to norm-creation and implementation mechanisms that use a single lens such as, for example, race, sex, childhood status, or disability. Still, each of these working categories must take into account intersections and potential marginalizations within the category as well. From a structural perspective, it requires official and non-governmental actors to talk across single-axis divides. Anti-poverty and development agencies must engage with civil rights groups; health rights advocates must talk with local women's rights NGOs.

People of color and women with disabilities might face forms of discrimination that are different from white men with disabilities or children with disabilities. Eastern European or South Asian women might experience human trafficking in forms that differ from that experienced by Dominican women or Mexican men. Human rights treaties and mechanisms that focus on a single problem are best and most effectively implemented when they are interpreted to take such multiple layers into account. Too often, the single-axis tendency of which I am most critical tends to essentialize the people it otherwise intends to protect.

MULTIDIMENSIONAL APPROACHES

My current project, begun some years ago and to which I recently returned after an exploration of economic, social, and cultural rights,[15] is to explore fundamental gaps in the promotion and protection of international human rights for selected African Diaspora groups in the United States. It is my thesis that Black transnational migrants,[16] for example, experience a complex array of human rights abuses that require equally textured responses on the level of international law.

Although fundamental human rights against racial, sexual, national origin, and class discrimination are formally recognized in the UDHR and subsequent instruments, the promise of "human rights for all" remains unfulfilled for many in the African Diaspora (as it does for millions outside it). Certainly, the UDHR and the human rights movement it generated have not yet achieved their goals. Nonetheless, the UDHR is a useful starting point. It envisioned a set of rights applicable to all, "without distinction" as to their life circumstances, but it can also be read to recognize those rights violations that occur *because of* those circumstances. The core international human rights treaties reflected a continued commitment to this perspective by the inclusion of enumerated non-discrimination provisions in each instrument. However, such layered approaches to non-discrimination are sometimes ignored in the analysis or implementation of specific rights—including rights against racial discrimination or the rights of migrant workers in the global economy.

A BLACK TRANSNATIONAL ILLUSTRATION

The stories of Black transnational migrants serve as telling illustrations of the multidimensional nature of race-related human rights violations. Despite the potential significance of their experiences, however, immigrants to the U.S. from the Caribbean basin and the African continent remain largely invisible as subjects of international human rights legal analysis. This situation has only

---

15. *See id.*

16*. 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 (1997) [hereinafter Lewis, *Lionheart Gals*]; Hope Lewis, *Universal Mother: Transnational Migration and the Human Rights of Black Women in the Americas*, 5 J. GENDER RACE & JUST. 197 (2001).

been exacerbated by the anti-immigrant backlash in the U.S. and Europe that followed the events of September 11, 2001. The significance and specifics of Black migrations were marginalized even during the high-profile U.S. pro-immigration reform organizing efforts and protests in 2006, and in the debates that accompanied the subsequent failure of that comprehensive immigration reform.[17]

Americans tended to view and talk about racial discrimination as solely involving human rights abuses against an essentialized group consisting only of native-born African Americans. Similarly, human rights concerns about the treatment of immigrants or non-citizens in the U.S. primarily addressed the needs of Mexican or other Latino immigrants.

Further, the specifics of Black migration often are either subsumed as part of a broader essentialized and undifferentiated Black racial identity, or else placed in opposition to "authentic" Blackness (often characterized as linked to native-born status). The definitions and implications of "Black" or "African-American" identity are complicated and subject to debate, as illustrated by early controversies over the identity status of prominent political figures such as President Barack Obama and former Secretary of State Colin Powell. Some even asked whether Obama and Powell, as first-generation descendants of Kenyan and Jamaican immigrants respectively, could represent African-American interests.[18]

In a context in which many among native-born Black communities in the U.S. are themselves alienated from the economic, social, and cultural benefits of "American-ness," how should the interventions of foreign-born Blacks be perceived? Is there a basis for solidarity, or a cause for further distrust and division among those groups?[19] Most important for this inquiry, how can a race-conscious international human rights framework take account of differences in ethnicity or

---

17. *See, e.g.*, Ines Ferre et al., *Thousands March for Immigrant Rights*, CNN.COM, May 1, 2006, http://www.cnn.com/2006/US/05/01/immigrant.day/index.html; AILA InfoNet, Proposed Legislation, http://www.aila.org/content/default.aspx?docid=11536 (last visited Mar. 19, 2009) (providing links to legislative proposals on immigration reform).

18. *See, e.g.*, Hope Lewis, Editorial, *AS YOU WERE SAYING . . . Focus Not on the Skin-deep*, BOSTON HERALD, Feb. 17, 2007, at 16 (discussing critiques of racial "authenticity").

19. *See, e.g.*, Sara Rimer & Karen W. Arenson, *Top Colleges Take More Blacks, but Which Ones?*, N.Y. TIMES, June 24, 2004, at A1 (discussing a controversial study reporting that a high percentage of Blacks admitted to "elite" colleges were immigrants or from immigrant families, thereby placing them in competition for the limited number of places available to Black students under affirmative action policies).

migration status without deepening political and cultural divisions?

The contrast between native-born and immigrant status is not the only relevant intersection, however. It is clear to sociologists, anthropologists, and political scientists that economic and cultural class plays an important role in the navigation of intra-racial relations among native-born and foreign-born Blacks. But the complications of class differences among Blacks also tend to be ignored in human rights legal analysis.

Although I refer here to situations involving Blacks in the United States, the significance extends beyond these particular social and cultural contexts. Insights from Critical Race Feminism[20] and Third World Approaches to International Law[21] movements can identify weaknesses in the traditional human rights framework. Such weaknesses help explain why Blacks who cross geographic or political borders tend to fall through the cracks of human rights analysis.

WHY TRADITIONAL HUMAN RIGHTS STRATEGIES HAVE FAILED BLACK MIGRANTS

I identify here four primary critiques of traditional approaches to human rights: (1) the failure to address the intersection of identity (race, gender, culture, class, migration status, religion, sexual orientation, and disability) in the promotion, and protection, of human rights standards; (2) the failure to link socio-economic rights and civil and political rights as interdependent and indivisible in practice; (3) an overemphasis on the public sphere to the exclusion of human rights violations that occur in "private"; and (4) the limits of state-centered approaches to rights under contemporary globalization.

Multidimensional Identities

The complex, multidimensional identities of Black transnational migrants are an important example of the first challenge for the human rights framework. A female, transnational migrant worker from Haiti or Jamaica may experience the combined effects of

---

20. *See, e.g.*, GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER (Adrien Katherine Wing ed., 2000).

21. *See*, *e.g.*, Makau Mutua, *What Is TWAIL?*, 94 AM. SOC'Y INT'L L. PROC. 31 (2000); Antony Anghie, *What is TWAIL: Comment*, 94 AM. SOC'Y INT'L L. PROC. 39 (2000). Also, see the selected bibliography in Woods & Lewis, *supra* note 14, at 108.

racism, sexism, nativism, and economic exploitation simultaneously. Yet violations of her rights are usually analyzed without taking into account the multiple dimensions of the violations she encounters. She may be marked as "illegal" or experience gender violence or be excluded from adequate housing, education, or health care opportunities because she is Black.

Similarly, by examining the human rights implications of "race" too narrowly, we may miss the complexities associated with racialized migration status. Throughout its history, the U.S., for example, used immigration law and policy to structure the ebb and flow of popular racial, religious, ethnic, and sexual attitudes about immigrants—Asians, Europeans from Southern or Eastern Europe, Latin Americans, Haitians, and Africans.[22] Racial prejudice against Black immigrants is thus complicated by the periodic manipulation of actual or perceived differences in social or class status between specific cohorts of Black immigrants, other immigrant groups, and native-born Blacks. Since the early 20th century, for example, Black immigrants from the English-speaking Caribbean have been labeled variously as "radicals," "assimilationists," "model minorities," "separatists," "exotic," members of "drug posses," and now, "potential terrorists."

Black male encounters with violence and abuse attributed to the state raise similar issues. Those cases that initially involve only race and gender targeting may also raise international issues when immigrants are involved. Racial profiling of "Black men" may include profiling of ethnicity and migration status as well. High-profile cases of police brutality against Black immigrants, racial profiling of Black transnational migrants as drug traffickers or terrorists, and abuses against detainees from Haiti[23] and the African continent are examples of this mix. They demonstrate the need to come to terms with the multiple dimensions of Black migration status if international human rights are to be fully realized in the United States.[24]

---

22. *See* Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. ILL. L. REV. 525 (discussing the racial significance of U.S. immigration laws).

23. *See, e.g.*, EDWIDGE DANTICAT, BROTHER, I'M DYING (2007) (providing a personal account of abuses against Haitian asylum-seekers and immigrants).

24. Hope Lewis, *Reflections on "BlackCrit Theory": Human Rights*, 45 VILL. L. REV. 1075 (2000) (discussing implications of race, ethnicity, and national origin profiling).

*The Interdependence of Civil, Political, Economic, Social, and
    Cultural Human Rights*

Black transnational and internal migrations also challenge the political–economic distinction in asylum status and in the protection of human rights. Many Black transnational migrants are attempting to escape extreme economic privation rather than explicit political persecution, or they seek to escape a combination of the two. Yet the prioritization of civil and political violations over violations of economic and social rights marginalizes Black migrants, or excludes them entirely, from important protections. The failure to recognize the interdependence of these rights in U.S. foreign policy also contributes to the violent abuses of human rights that cause many Black migrants to flee their home countries.

These lessons apply within national boundaries as well. The revelations (to some) of widespread poverty and failures in educational, housing, and health care access that accompanied Hurricane Katrina also make clear the importance of an interdependent approach to rights.[25] Although the more familiar, constitutionally-guaranteed civil and political rights still seem ineffectual for many African-Americans, ending analysis at the formal recognition of such rights can mask other fundamental inequities. Katrina and its aftermath illustrate the inevitability of recognizing affirmative rights to housing, food, education, and health care, in addition to rights against discrimination, if our society is to make substantial progress toward social justice and equitable human development. The international human rights movement has begun to push the boundaries in this regard, and the struggles of Black internally-displaced persons can inform, and be informed by, such efforts.

The Public–Private Distinction

Third, analyzing the human rights of Black immigrants challenges the public–private distinction in human rights law. Feminist scholarship has taken a leading critical role in this regard. For example,

---

25. *See* Press Release, Miloon Kothari, Special Rapporteur on Adequate Housing and the Right to Non-discrimination, & Gay McDougall, Independent Expert on minority issues, United Nations, UN Experts Call on U.S. Government to Halt Ongoing Evictions and to take Immediate Steps to Protect the Human Rights of African-Americans Affected by Hurricane Katrina and the Demolition of Public Housing in New Orleans, Louisiana (Feb. 28, 2008) (recognizing the intersection between housing rights and non-discrimination rights).

many female transnational domestic workers and care workers experience labor violations and gender-based violence within the "privacy" of home and family. Because they occur "at home," they receive less attention than, say, abuses in large sweatshop operations. Recent efforts to transcend the potential isolation of household domestic or care work through union or other efforts to organize such workers are promising. Again, however, the specific dimensions of race, culture, and national origin will be relevant in addition to gender and class.

Although the UDHR recognizes the importance of human rights such as family, parenthood, culture, and community, such rights are still often marginalized in practice. They are less important, it seems, than direct civil and political abuses against Black migrant female workers.   Nevertheless, many such women navigate a global economy in which family and community life is overly confined by their racial, ethnic, and migration status. Black women from the Caribbean who work as caregivers, for example, often find themselves "mothering" their own minor children from afar through remittances and letters.[26] They have gone after the economic and social benefits associated with migration, but at the personal and community costs of family and cultural alienation. Such costs can and should be analyzed and addressed through a human rights lens.

Globalization and the Black Migrant

The status of Black transnational migrants under globalization is another important challenge for the promotion and protection of their human rights. Some violations against Black migrants are trans-national in scope, involving the practices of more than one govern-ment as well as non-state actors such as businesses or financial institutions.   Because the international human rights framework focuses on the state as both the primary protector and the primary violator of human rights, insufficient attention is paid to more complex relationships.

Governments in both host and sending countries may commit violations against transnational migrants, or allow them to occur with impunity.   For the host country, the low-wage, racialized, and

---

26. The children they leave in the home country are sometimes referred to as "barrel children." The reference is to the shipping barrels filled goods that their mothers send home for their care. *See* Lewis, *Lionheart Gals*, *supra* note 16, at 569–70.

gendered work obtained from working migrants enhances the productivity of other socio-economic sectors. For the sending country, remittances from migrants (often amounting to hundreds of millions of dollars in foreign exchange)[27] may be a tempting incentive to resist changing the status quo.

Human rights advocates must explore whether or not the United States and the governments of sending countries are meeting their obligations with regard to the treatment of Blacks as migrant workers, but we must also explore the roles and responsibilities of non-state actors such as business enterprises, human traffickers, and international financial institutions.

LOOKING BACK AT THE UDHR AND POINTING THE WAY FORWARD?

The original vision reflected in the UDHR may be more than merely a historical relic; it may still point the way forward. The UDHR takes a clear stance against discrimination and for equality in the realization of all fundamental human rights. It represents an integrated approach to the recognition of civil, political, economic, social, and cultural rights. It represents a multidimensional approach, including in its scope the range of identity status markers of most concern to the drafters at the time (including race, sex, class, and national origin); but, the drafters also had the vision to understand that such a list could never be comprehensive in light of the emerging norms and changing priorities of human behavior. It therefore attempted to be inclusive through use of the catch-all phrase "any other status." It represents a collective as well as an individual approach with regard to the international economic and social context necessary for individual rights to be enjoyed. In this respect, it anticipates the rise of global economic and social interconnectedness. And finally, it crosses the public–private divide in revealing that other individuals (including members of one's own community or family) and entities (such as corporations and insurgent groups) can, and do, violate human rights and also must play a role in protecting them.

The human rights framework, even as originally envisioned under the UDHR, has its limitations and can be manipulated in ways that do

---

27. *See* INT'L ORG. FOR MIGRATION, IOM ON REMITTANCES: DEFINITION, SCALE AND IMPORTANCE OF REMITTANCES (2006), http://www.iom.int/jahia/Jahia/cache/bypass/pid/674?entryId=5884.

not comport with social justice. Certainly, the global economic instrumentalist aspects of human rights promotion and protection are embodied in both the preamble to the U.N. Charter and the UDHR. A more peaceful, less restive population is, after all, "good for business" in the most pragmatic sense of the word. Human rights is the "opiate of the people" perhaps?

At the same time, I am much more comfortable with the notion that, when fundamental human rights are respected, protected, and fulfilled, everyone is better off—not just business leaders or government elites. It is this notion that is the genius and the central challenge of the UDHR as a document of interdependence, indivisibility, and interconnectedness. Although much has occurred in these sixty years, some key elements remain relevant. As we move ahead, it may well be worth our while to look back at an old document with fresh eyes.