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REFLECTIONS ON "BLACKCRIT THEORY": HUMAN RIGHTS*

HOPE LEWIS**

"The Colorline Belts the World."¹

—W.E.B. Du Bois

"[T]he left-liberal approach to globalization has yet to generate an adequate account of the connections between racial power and political economy in the New World Order."²

—Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas

I. INTRODUCTION: WHAT IS "BLACKCRIT THEORY: HUMAN RIGHTS"?

As the United Nations World Conference Against Racism approaches, Du Bois' observation on the global nature of racism still rings true. Nevertheless, those of us who seek to apply the insights of Critical Race scholarship to international law and politics continue to struggle with significant contradictions. On the one hand, a dominant view in the traditional popular and scholarly discourse is that contemporary racism against Blacks is geographically concentrated in the Global North, with the looming exception of southern Africa before the end of legalized apartheid. By contrast, the international human rights focus on Blacks has been primarily centered on the peoples of sub-Saharan Africa.

The implications of these prevailing assumptions are that Critical Race Theory should confine itself to the analysis of race relations in the Global North—particularly the United States—and that international human rights law should separately engage "exotic others" on their home

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2. CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED THE MOVEMENT at xxx (Kimberlé Crenshaw et al. eds., 1995).

(1075)
ground in Africa. Therefore, one could well ask—"Is Critical Race Theory irrelevant to international human rights law?" “Will attempts to engage international human rights law become part of an imperialist global project?” My tentative response to both questions is “no,” but only if Critical Race human rights scholars continue to recognize the necessity of a complex dialogue with peoples of color around the globe. We must expand our ability to understand the ways in which people experience racism and other human rights violations outside this country, and we must also remain willing to turn the lens of international human rights scrutiny back on ourselves.

Critical Race Theory must engage international law and politics because racism itself is international and domestic, global and local. The failure of Critical Race Theory to address either context will lead to the continued marginalization and subordination of peoples of color, whatever their geographical or cultural ties. At the same time, Critical Race Theory must adopt a dynamic understanding of racism in its particular cultural and historical contexts.

The strand of Critical Race scholarship that I am labeling “BlackCrit” addresses the significance of racial attitudes toward Africans and peoples of African descent in the structure and operation of the international human rights system. In using this umbrella term, I am not suggesting that scholars who engage in this work have adopted a single, comprehensive lens through which to analyze the issues or that this is a separate, splinter group from other Critical Race movements. Instead, my purpose is to use this shorthand term to call attention to the fact that convergence between Critical Race Theory and international human rights focus on Blacks was present at the modern foundations of both movements, and to suggest the need for the continued development of this inter/national engagement. Further, my discussion here of literature on peoples of Africa and the African Diaspora is not an attempt to argue that the concerns

3. The questions posed to the symposium panel in which I participated were: “How does Critical Race Theory understand International Law?” and “How does International Law understand Critical Race Theory?” My responses are from the perspective of one strand of Critical Race Theory, which Anthony Paul Farley has dubbed “BlackCrit Theory.” As defined here, BlackCrit Theory focuses, from critical perspectives, on the law and politics relevant to racism against Blacks.


For an overview of the status of Afro-Latino/a communities in Central and South America, see generally Communities of African Ancestry in Costa Rica, Honduras, Nicaragua, Argentina, Colombia, Ecuador, Peru, Uruguay (Inter-American Development Bank 1996) [Background Paper].
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raised by these scholars are irrelevant to non-African peoples. Rather, attention to "BlackCrit Theory" highlights and resists the continued marginalization of Blacks in international human rights law and politics. That marginalization is in no small part attributable to racism within powerful states and institutions, which then results in the failure to address, or the enhancement of, human rights violations in communities of color. Just as violence and economic abuses in domestic communities of color have been normalized as "background noise" on the evening news, violence and economic abuses in Africa, the Caribbean and elsewhere in the Third World similarly have been made palatable.

The title of this talk, "BlackCrit Theory: Human Rights," re-asserts the existence of historical critiques and raises new possibilities in the exploration of international approaches to the human rights of Black peoples in their different geographies. As such, BlackCrit theory on human rights converges and diverges with various scholarly movements that have examined international human rights law from a critical perspective, including Critical Legal Theory, Critical Race Theory, LatCrit Theory, FemCrit Theory, Critical Race Feminism, Third World Approaches to International Law and New Approaches to International Law. Rather than a balkanization of critical scholarship, the diversity of these movements reflects the complex texture of the issues.

This brief Essay begins by describing a few of the historical links between intellectuals and activists concerned with the impact of racism within the United States and internationally. It then outlines three identifiable themes in contemporary BlackCrit scholarship on international human rights. Finally, it uses hypothetical encounters of Black migrants (and other travelers) with state (and non-state) power to illustrate the global context in which racial discrimination occurs.

II. THE HISTORICAL TIES

In his essay in tribute to the late Professor Goler Teal Butcher, Henry Richardson III reminds us that race-conscious approaches to the human rights of Black peoples are not new. A long activist and scholarly tradi-

tion predates the founding of the nation. Some of those activists and intellectuals tried to build pan-Africanist ties, having despaired over being fully included in the American democratic enterprise. Others saw themselves as rightful participants in, and contributors to, the development of U.S. foreign policy toward Africa and the Caribbean.

Despite their substantial differences in approach, African-American human rights activists such as W.E.B. Du Bois, Paul Robeson, Martin Luther King, Jr., Randall Robinson, Goler Butcher, Gay McDougall, Haywood Burns and many others have contributed to our understanding of the nexus between race and international human rights. The voices of the Black inter/national have contributed to this analysis as well, whether through Black immigrants to the United States and their descendants (such as Marcus Garvey, Amy Jacques-Garvey, C.L.R. James, Malcolm X, and Stokey Carmichael (Kwame Toure)), or through Third World voices influential among Blacks in the United States (such as Toussaint L'Ouverture, Kwame Nkrumah, Julius Nyerere, Michael Manley and Walter Rodney). Even the student participants in the founding of the Critical Race Theory movement at Harvard Law School in the mid-1980s styled themselves as the “Third World Coalition” and included Native-American, African-American, African, Asian-American, Latino/a and Afro-Caribbean members. These intellectuals and activists recognized, or attempted to establish, ties between people of color in the Third World and those in the Diaspora. The attempts at solidarity were based on real (and sometimes

ed., 1968), which discusses Marcus Garvey’s philosophy of pan-Africanism and the history of the Universal Negro Improvement Association; and MALCOLM X, BY ANY MEANS NECESSARY: SPEECHES, INTERVIEWS AND A LETTER BY MALCOLM X 38, 57, 86-87 (George Breitman ed., 1970), which discusses the founding of the Organization of African-American Unity and Malcolm X’s call for African-Americans to appeal to international human rights fora. On the links between civil rights activism in the United States and international law and politics, see, for example, Derrick A. Bell, Jr., BROWN v. BOARD OF EDUCATION AND THE INTEREST CONVERGENCE DILEMMA, IN CRITICAL RACE THEORY: KEY WRITINGS THAT FORMED THE MOVEMENT, supra note 2, at 22-23, examining the impact international implications of Brown v. Board of Education; Mary L. Dudziak, DESSEGREGATION AS A COLD WAR IMPERATIVE, 41 STAN. L. Rev. 61, 64 (1988), which studies desegregation cases in the context of U.S. foreign policy; Bert B. Lockwood, Jr., THE UNITED NATIONS CHARTER AND UNITED STATES CIVIL RIGHTS LITIGATION: 1946-1955, 69 IOWA L. Rev. 901, 903-12 (1984), examining the impact of the United Nations Charter on U.S. domestic litigation; and Dorothy Q. Thomas, ADVANCING RIGHTS PROTECTION IN THE UNITED STATES: AN INTERNATIONALIZED ADVOCACY STRATEGY, 9 HARV. HUM. RTS. J. 15, 21-22 (1996), which examines whether the implementation of the International Covenant on Civil and Political Rights would assist U.S. affirmative action efforts. Finally, for an appeal to Critical Race theorists to internationalize their focus, see Ibrahim J. Gassama, TRANSCONTINENTAL CRITICAL RACE SCHOLARSHIP: TRANSCENDING ETHNIC AND NATIONAL CHAUVINISM IN THE ERA OF GLOBALIZATION, 5 MICH. J. RACE & L. 133, 142 (1999), which suggests that absence of transnational perspective in domestic struggles for justice is inappropriate.

romanticized) cultural connections, as well as common experiences of racial and economic oppression.

III. BLACKCRIT HUMAN RIGHTS CRITIQUES

Contemporary BlackCrit human rights scholarship builds on this tradition of exchange and linkage on the question of race in the inter/national setting. It has explored the roles of race in international human rights law from many different perspectives, but brevity requires that I paint only a very incomplete, preliminary picture.

BlackCrit human rights theorists have developed, or have drawn from, at least three important critiques of international human rights law. First, some BlackCrit theorists have called for a deepened understanding of the role of race in the structure and norms of international human rights law, while others have critiqued beliefs about the race-neutral nature of international human rights law. Among other things, these critical analyses have involved a re-examination of the purported origins of the international human rights movement, the racial and economic hierarchies in that movement, and the meaning of those hierarchies for non-Western peoples. They have added a race-conscious dimension to the understanding of international human rights law and policy. Work examining the impact on human rights of apartheid in South Africa has been particularly important in this regard, and often recognizes the links between U.S. civil rights and nationalist movements and South African anti-

apartheid movements. Further, BlackCrit scholarship has struggled with the implications of colonialism and the post-colonial condition for group identity and their effect on racial/ethnic politics. In the latter group are BlackCrit scholars who form part of a fledgling movement on "Third World Approaches to International Law." They have highlighted the role of global racism, as well as neo-liberalism, in the international community's failure to implement rights to self-determination, economic and social welfare, and development in Africa, Asia, Latin America and the Caribbean. In doing so, these scholars have redirected our understanding of racism as a process that occurs only among groups that interact within the borders of a single country. They examine how racism shapes


10. For an example of "Third World Approaches to International Law," see generally Antony Anghie, Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, 40 HARV. INT'L L.J. 1 (1999), discussing the impact of the colonial encounter in shaping international law.

the policies of powerful governments in the North, international financial institutions and transnational corporations.¹²

Second, BlackCrit scholars have examined the need to address the ways in which race and gender, among other categories, intersect in the context of human rights. Some have addressed the racialized and gendered construction of “culture” in the longstanding debates over universalist or cultural-relativist approaches to human rights.¹³ In this regard, the work of Critical Race Feminists has been particularly influential. Feminist analyses of the struggle between North and South have been enriched by the analysis of Black and non-Black feminists from Africa, Latin America, North America and Europe, who have critiqued the domination of international feminism by voices from the North. They have argued that we can neither understand nor prevent human rights violations without understanding the intersections among racial, cultural, gender and economic discrimination.¹⁴

¹². In describing one of several themes in anti-colonial legal scholarship, James Thuo Gathii notes the following:
The first set of themes relates to the revision of international law by decolonized countries with the aim of ending colonialism, the arms race, discrimination on the basis of race, intervention from powerful countries, as well as arguing for a restructuring of the unequal economic relations between developed and developing countries through efforts such as the New International Economic Order.


Third, BlackCrit scholars have highlighted the role of the United States as a key actor with regard to human rights violations in Africa and the Caribbean as well as within its own borders. They have drawn parallels between the racist treatment of Blacks in the Global South and the racist treatment of African-Americans in the United States. They have criticized the racial underpinnings of United States foreign policy toward Africa, the Caribbean, and other regions.15 Significantly, they have also turned the spotlight of human rights analysis on domestic law and politics.16 These scholars have examined whether and how international human rights law is applicable in analyzing the roots of race-based insurrections in urban centers,17 police brutality, and racial stereotyping of immigrants18 and


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those needing public assistance.\textsuperscript{19} Some have renewed calls for economic reparations for slavery and its legacy.\textsuperscript{20} A few of us are beginning to address in legal scholarship the convergences and divergences of race-conscious analysis and human rights law that can be found in the experiences of Black migrants to the United States. In this regard, BlackCrit human rights scholarship has intersected with RaceCrit, LatCrit and Asian-Crit

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\textsuperscript{20} \textit{See generally RANDALL ROBINSON, THE DEBT: WHAT AMERICA OWES TO BLACKS} (2000) (examining human rights violations committed by United States in institution of slavery and arguing for reparations therefor); Robert Westley, \textit{Many Billions Gone: Is it Time to Reconsider the Case for Black Reparations?}, 19 B.C. Third World L.J. 429, 433 (1998) (arguing that reparations are due to compensate for years of harm from racial stereotyping and have been used to redress other human rights violations).
movements as they address the domestic law and politics of "other-ness" on U.S. soil.21

IV. BLACK CRIT THEORY AND BLACK MIGRATION22

My own recent work calls for Critical Race Theory to analyze the human rights implications of Black migrations between the Global North and Global South. I have argued that the experiences of Black migrants to the United States provide a telling illustration of the dynamic nature of racism under contemporary globalization. Certainly, Black immigrants often find themselves literally in the sights of the forms of racial violence that are traditional in the United States. The police shooting of Guinean


For a recent article arguing that both native-born and foreign-born Blacks are "foreign" in the United States, see Lolita K. Buckner Inniss, Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness, 49 DEPaul L. REV. 85, 85-86 (1999). In previous work, I have argued that racial discrimination is significant to the experience of Black immigrants even before they enter the United States. See Lewis, Lionheart Gals, supra note 18, at 582-83 (describing lack of opportunity for Africans in Jamaica as impetus for migration); Lewis, Global Intersections, supra note 18, at 313-14 (discussing basis for "tradition of migration" from Jamaica).
immigrant Amadou Diallo and the torture of Haitian immigrant Abner Louima in New York caused outrage around the world. The history of police brutality and arbitrary execution of Black men was nothing new in the United States, but the realization that Black immigrants are subject to the same forms of racial violence seemed to take the media, and some in both native-born and immigrant Black communities, by surprise. The Black migratory experience also demonstrates the need for BlackCrit Theory to examine how the traditional divides in international human rights law (between state and non-state actors, between political and economic violations, and between race and gender) help to perpetuate racial subordination.

To illustrate, I will close with two hypothetical examples of how the global nature of racism can be experienced even within the borders of the United States and how traditional international human rights approaches fail to fully address that global racism.

A. Hypo I: Crossing the Border While Black

Imagine a Black woman, arriving in New York from the Caribbean. She encounters a customs or immigration agent at the airport. What is her “race” status and her “human rights” status?

If she is traveling alone, if her hair is dreadlocked or she wears a hat, if she speaks Patois or has a Caribbean accent, she may be placed in the racially-profiled category of “drug courier” or “illegal labor migrant.”


24. See Kathryn Flewellen, Whose America Is This?, ESSENCE, Feb. 1996, at 154 (recounting Flewellen’s harassment by airport officials who assumed that she was non-citizen because she was Black and wore dreadlocked hairstyle). Flewellen is a native-born African-American human rights activist. On the racial profiling issue of “flying while Black,” see generally U.S. Customs Service Responds to Allegations of Racial Profiling by Issuing New Guidelines, (NPR broadcast, Nov. 20, 1999), which discusses the claim filed by an African-American advertising executive against the U.S. Customs Service. The claim charged that, upon her return from vacation in Jamaica, the advertising executive had been singled out for an invasive body search by officials because she was a Black woman. See id. The broadcast also included a discussion of a class-action suit filed in 1998 on behalf of 83 Black women who had been strip-searched at Chicago’s O’Hare International Airport. See id.

One “profile” of a suspected drug courier used by airport officials was that of a woman, traveling alone, from the Caribbean. The profiling of women is based on
She might then be strip-searched, held in a detention facility or immediately deported.

She might have been trying to escape violence and poverty in her home island. She may or may not be aware of how ingrained attitudes about the inferiority and expendability of Black peoples at the highest levels of the U.S. government and international financial institutions might have contributed to that violence and underdevelopment. But the complicity of the U.S. government in her suffering would be irrelevant. As far as the customs or immigration agent is concerned, she would be an “economic migrant” and effectively disappear from the human rights map.

What if our hypothetical Black woman claims to be a “political refugee,” fleeing threats of murder or rape by military or paramilitary groups as a result of her political activism? She might still meet with skepticism and abuse, or be returned into the hands of her torturers, because of her two assumptions: 1) that a woman traveling alone is the girlfriend of a male drug dealer who “mules” on his behalf by carrying his drugs through customs; or 2) that a woman tourist traveling alone has knowingly, or unwittingly, been made to “mule” for a male drug dealer with whom she became friendly while on vacation. This gender profile has also been applied to women suspected of carrying terrorist bombs.

Dreadlocked hair is considered an attribute of Rastafarianism, a Jamaica-based religion that draws on African and Judeo-Christian themes. The consumption of marijuana is an aspect of religious ritual for some. For a discussion of Rastafarianism, see generally Joseph Owens, Dread: The Rastafarians of Jamaica (1976) and Leonard E. Barrett, The Rastafarians: The Dreadlocks of Jamaica (1977). Some Rastafarians cover their hair with large knit hats or scarves under which the airport officials believe drugs can be hidden. The dreadlocked hairstyle associated with Rastafarianism (and some traditional African ethnic groups) has become popular among many non-Rastafarian people in the United States, the Caribbean, Europe, Africa and Asia.

Some women from the Afro-Caribbean have migrated to the United States in search of work as “domestics” or childcare workers. The continuing need for such workers in the homes of the United States, in combination with the poverty and underdevelopment that makes it necessary for many women to leave the Caribbean, have caused many to migrate to the United States, Canada, or England. Some travel to those countries on tourist visas and “overstay” them after finding employment. See Lewis, Lionheart Gals, supra note 18, at 591-92 (noting that some Jamaican migrant women overstay visa in order to work as household workers in U.S.); Lewis, Global Intersections, supra note 18, at 314 (same).

25. For discussions of the impact of international economic policies on Black women from the Caribbean, see generally Peggy Antrobus, Women in the Caribbean: The Quadruple Burden of Gender, Race, Class, and Imperialism, in CONNECTING ACROSS CULTURES AND CONTINENTS: BLACK WOMEN SPEAK OUT ON IDENTITY, RACE AND DEVELOPMENT (Achola O. Pala ed., 1995), which explores the global exploitation of Caribbean women of color in labor and wealth distribution contexts; and Joan French, Hitting Where it Hurts Most: Jamaican Women’s Livelihoods in Crisis, in MORTGAGING WOMEN'S LIVES 165 (Pamela Sparr ed., 1994), which discusses the impact of structural adjustment programs on Jamaican women and the society as a whole.
status as "Black refugee." Such racial distinctions seem to lie behind the U.S. government's failure to comply with international human rights norms on the treatment of asylum-seekers whenever the specter of a refugee flow from Africa or the Caribbean is threatened.

Our traveler still might not be protected even if she has a valid U.S. passport and speaks with a New York accent. The agent might place her in the second-class citizen status of "Black woman" because of her skin color and gender. She might be subject to the same strip-search or arbitrary detention as her non-citizen alter ego. She may believe this to be a violation of her human rights, but because she is a U.S. citizen and because the encounter occurs in the United States, her situation would only rarely be seen in that light by lawyers or international human rights activists. The United States has been notoriously resistant to the internal application of international human rights laws. The possibility that people of color within the United States might make effective use of international instruments to protect their rights seems too much for some to bear.

B. Hypo II: Driving While Black

A young Black man drives down the New Jersey Turnpike. His encounter with New Jersey state troopers might take several forms. Many of us know the stories or have experienced the consequences of "driving while Black," but the young Black male stereotype can take on an inter/nationalized form as well. If that Black driver has a Jamaican flag decal on his bumper, has reggae music playing on his car radio, or wears his hair in dreadlocks, these additional attributes all are considered legitimate reasons to disregard his rights. He falls into the category of "Jamaican drug posse member"—a stereotyped group said to be one target of the infamous racial-profiling efforts of some New Jersey State Troopers.

If the driver happens to be a native-born African-American who has simply adopted the cultural styles of Africa and the Caribbean, his "American-ness" does not protect him. As a Black man in the hands of the police, he may be beaten, unjustly arrested, or worse.

26. See, e.g., Lewis & Gunning, supra note 13, at 129-31 (discussing mistreatment of Fauziya Kassindja, a refugee from Togo who claimed asylum in United States).

27. See, e.g., Thomas, supra note 5, at 18-20 (discussing history of U.S. resistance to creation of binding human rights obligations under international law). This official resistance has been undermined by growing efforts among grassroots and mainstream non-governmental organizations ("NGOs") to hold the United States accountable for its actions. For a discussion of several NGO reports on violations involving the treatment of refugees and prisoners in the United States, the use of the death penalty and police brutality, see, for example, AMNESTY INTERNATIONAL USA, UNITED STATES OF AMERICA: RIGHTS FOR ALL (1998).

28. This hypo is not so hypothetical. As I was preparing for this talk, I received a call from a relative in Brooklyn. A young Afro-Caribbean man she knew had been stopped by the police as he was driving home from church. The police searched him and then jailed him even though they found no drugs or weapons in his possession.
V. Conclusion

Of course, racism is not the only explanation for the violence, misery and underdevelopment in which much of Africa, the Caribbean, Latin America and many Black communities in North America and Europe find themselves. Economic exploitation by elites, neo-liberalism, competition over resources, sexist hierarchies, cross-cultural tensions, imperialism, militarism, and nationalism all continue to play their important roles. Nevertheless, racism intensifies the exposure of Blacks and other people of color to other sources of human rights violations.

Racism, in the form of benign neglect, helps to explain the fact that the rivers of Rwanda were red with the blood of more than half a million people while the world largely remained silent;29 it lurks behind the ability to ignore the murder and mutilation of civilians in Sierra Leone;30 it affects the infant and maternal mortality rate in Baltimore31 and Port-au-Prince;32 it is interwoven with the death from AIDS of eleven million Afri-
cans; it lies behind the incarceration rate of Black men in the United States and South Africa; and it simmers beneath the murders of hundreds on the streets of Kingston and Washington, D.C.

In his book analyzing race and racism in Britain, *There Ain't No Black in the Union Jack*, Paul Gilroy, a cultural studies scholar, notes that "[r]acism does not... move tidily and unchanged through time and history. It assumes new forms and articulates new antagonisms in different

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Rebound, Again at Risk, CHRISTIAN SCI. MONITOR, Apr. 22, 1997, at 19, which notes an infant mortality rate of 8.4% as an indicator of Haitian poverty.

33. The World Health Organization describes the growing AIDS crisis in Africa as follows:

Africa, the global epicentre, continues to dwarf the rest of the world on the AIDS balance sheet. Since the start of the epidemic, 83% of all AIDS deaths so far have been in the region. Among children under 15, Africa's share of new 1998 infections was 9 out of 10. At least 95% of all AIDS orphans have been African... The sheer number of Africans affected by the epidemic is overwhelming. Since HIV began spreading, an estimated 34 million people living in sub-Saharan Africa have been infected with the virus. Some 11.5 million of those people have already died, a quarter of them children. In the course of 1998, AIDS will have been responsible for an estimated 2 million African deaths—5500 funerals a day. And despite the scale of death, today there are more Africans living with HIV than ever before, 21.5 million adults and a further 1 million children.


34. Paul Butler's eloquent appeal to imagination and reality sets the context well:

Imagine a country in which more than half of the young male citizens are under the supervision of the criminal justice system, either awaiting trial, in prison, or on probation or parole. Imagine a country in which two-thirds of the men can anticipate being arrested before they reach age thirty. Imagine a country in which there are more young men in prison than in college.


situations." Therefore, it is imperative that Critical Race human rights scholars from all points of the globe continue to engage the shape-shifting nature of racism on the international plane.