

“*INTHUTHUKO* MEANS THAT WE ARE GOING FORWARD”: HEARING THE VOICES OF DOMESTIC WORKERS IN SOUTH AFRICA

*Melissa Cole**

INTRODUCTION

Just as law itself, in trying to speak for all persons, ends up silencing those without power, feminist legal theory is in danger of silencing those who have traditionally been kept from speaking, or who have been ignored when they spoke¹

In May of 1991, I was caught up in the last-minute preparations for spending my summer in South Africa on a human rights internship.² While much of the preparation involved the details of a visa and plane tickets, the most important part revolved around planning for the work I would do there and deciding just what I wanted to take out of it. I had chosen to work with the Black Sash Legal Advice Office in Johannesburg³ because I knew it would provide me the opportunity to speak directly with African⁴ women, to find out what they faced, how they felt, what they hoped to change in their lives, and how they hoped to effect that change. This information, I decided, would form the basis for an article on the conditions of African women in South Africa.

* Melissa Cole received her A.B. in American Civilization from Brown University in 1988 and expects to receive her J.D. from Columbia University School of Law in 1993. She hopes to continue to work with international human rights and especially with women's rights.

¹ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581, 585 (1990).

² I am indebted to Sheena Duncan for setting up the internship for me and for welcoming me to South Africa, as well as to the Columbia Human Rights Internship Program for funding my work.

³ Black Sash is an anti-apartheid group founded by white women which is heavily involved in political protest. The group currently operates a number of Legal Advice Offices, where a staff of varied ethnic backgrounds provides free services and referrals to anyone wishing assistance.

⁴ I choose the designation "African," as opposed to "Black," because it emphasizes that Africans are people of Africa and best encompasses the cultural experiences of the women. The designation is also separate from the South African "apartheid" classifications based purely on skin color.

However, when I told people about my plans I found the same questions being thrown at me again and again. "How can you expect to know them after just ten weeks?" "How can you purport to speak for women whose backgrounds and experiences are so different from your own?"

These questions made me stop and think hard about my proposal. As a white, middle-class woman, I felt in some ways barred from meaningful contribution to the discussions of race and class occupying much current writing in feminist jurisprudence. At the same time, I realized that, despite my best intentions for contributing to change, it would be insensitive of me to charge ahead without acknowledging the limits of my perspective.⁵

Finally, I boarded the plane for Johannesburg with a more open mind and a desire to speak to as many women there as possible in order to hear firsthand what their lives were like. At the Advice Office, I counseled domestic workers only, because the great majority of the women who come to the offices,⁶ as well as the largest number of urban African working women in South Africa, are employed in domestic work.⁷ My paper therefore focuses on their experiences as especially illustrative of the various limitations and frustrations of life for African women in South Africa.

In addition to my work as a counselor at the office, I spent a great deal of time in South Africa researching the conditions under which the women live. This research provides both a context for their stories and an illustration of the "difference" that separates us. However, such secondary

⁵ In the writing and editing of this piece I discovered the additional limitations of language, which is subject not only to the author's intentions, over which I had control, but also to the reader's inferences, which my editors tried to help me address. The very question of whether I could in theory write a paper about African women was mirrored in the question of whether I was able to choose the appropriate words to do so.

⁶ Domestic workers accounted for 13% of all cases seen in the Johannesburg office in 1990, a total of 666 cases, or 2 to 3 each day. Johannesburg Advice Office Report 2 (1990). Of the 345 small claims court cases brought with the help of Black Sash's Johannesburg office between January 1 and August 8, 1991, 294, about 85.2%, were on behalf of domestic workers wrongfully dismissed. Black Sash Small Claims Court Files (1991) (on file with Black Sash).

⁷ In 1982, 50% of African women in South Africa were employed in services, including domestic service. In contrast, 11% were employed in the professional sector, mainly nursing and teaching; 3% in clerical jobs; 5% in sales; 17% in agricultural production; 13% in manufacturing. Jacklyn Cock, *Maids and Madams: Domestic Workers Under Apartheid* 7 (1989).

statistics about domestic workers' lives also tend to present them as a monolithic group and, in the process, to dehumanize them. Ironically, the actual conditions imposed upon domestic workers by their white employers and a white minority government seem directed at doing just that. My presentation of secondary information serves to illustrate how these conditions may be seen as an attempt to dehumanize domestic workers.

Upon returning to the United States, I took a closer look at the debate within American and Canadian feminist jurisprudence between an essentialism that assumes a common "woman's experience" and the growing call for recognizing differences among women and putting an end to the middle-class, white appropriation of the feminist movement. I found that the need for a middle ground was clear and agreed upon, but the means of achieving it seemed murky.

It occurred to me, as I investigated this debate, that the common experiences of womanhood, while not an entirely unifying force, do establish connections between people of different backgrounds. I realized that I, a white, middle-class, American woman, may have been through some single event, at a level beyond race, class, and any other perspective, that prompted the same human emotions that an African, working-class, South African woman may also have felt through her experiences. Thinking back on our conversations, I saw that the experiences shared at this level made communication between us possible. The events that prompt these shared emotions I refer to as "common experiences" or "connections."

This paper therefore presents the thoughts and goals of domestic workers in their own voices. In consciously trying to avoid the replacement of their voices with my own paraphrasing and analysis, I hope to provide the reader with the means of establishing a connection on a basic, emotional level and thus to discover a common experience with the women speaking. In this way, I mean to illustrate how the debate within American and Canadian feminist jurisprudence, with its advocates of global feminism,⁸ may avoid the pitfalls of both essentialism and difference and move toward communication, understanding, and solidarity.

I begin this paper, then, with a presentation of the debate between essentialism and difference within American and Canadian feminist jurisprudence. I then present domestic workers' stories about their circumstances, supplementing their narratives in deliberately separate sections with contextual information on the living and working conditions of domestic workers as a group. Finally, I examine their agendas for change, accompanied by a note on other African women's agendas as a

⁸ For aspects of global feminism, see generally *Sisterhood Is Global: The International Women's Movement Anthology* (Robin Morgan ed., 1984).

reminder that women as a group are mobilizing. Although initially hesitant about mixing the voices and the secondary facts, I found that their juxtaposition highlights the overriding theme of this article—that while the secondary information points out our differences, the human voices may accent our connections.

THE ESSENTIAL WOMAN FRAGMENTED BY DIFFERENCE

The Conflict

In seeking a voice within legal theory and an articulation of those concerns ignored by the dominant legal discourse, American and Canadian feminist jurisprudence scholars find themselves at the proverbial crossroads. On the one side they may settle into the “welcoming” arms of essentialism and find themselves accepted simply by virtue of their womanhood. Turning the other way, they delve into the multiple facets of their own individual experiences not only as women, but as women of color, lesbians, working-class women, physically challenged women—and an endless variety of other self-classifications.⁹ While many women yearn for some middle road, few practical suggestions exist for building one. Scholars tend to choose one path or the other, though they may also choose to stay close to the side of one road in an attempt to venture closer to the other.¹⁰

The scholar who chooses the path of essentialism joins the pioneers of feminist jurisprudence in recognizing difference primarily along gender lines. Focusing on women’s difference from men, she assumes a shared connection with all women. She enters the world of Catharine MacKinnon,

⁹ I by no means intend this list to be all-inclusive, nor do I believe that I could create an all-inclusive list. Instead, I refer to “self-classifications” because this term embraces the two most important characteristics of identities such as Black, lesbian, physically challenged, etc., that is, that groups are identified along such lines and that women who speak from the points of view of membership in such groups are aligned with the groups’ identities. While they may not initially choose to include themselves in the group, but find themselves classified by society or the actions of others, their choice to speak from a particular perspective indicates a conscious decision to define their experience as that of a member of the group. That decision becomes a self-definition.

¹⁰ While the picture of these two roads may suggest that feminist jurisprudence scholars deliberately choose one path to the exclusion of the other, such is not the case. Indeed, many women now write of the need to establish a middle ground that avoids movement only in one direction or the other. See *infra* notes 22–37 and accompanying text. However, the middle road has not yet been adequately constructed, and I therefore present a picture of the two distinct avenues.

who, in her concentration on laws governing rape, pornography, and sexual harassment,¹¹ defines "equality" as being the same as men, "difference" as the lack of correspondence with male standards, and "gender neutrality" as just such a male standard.¹² MacKinnon's view that laws on sexual discrimination affect women's "chance at productive lives of reasonable physical security, self-expression, individuation, minimal respect, and human dignity" "across class lines"¹³ recognizes that women belong to different economic classes but contends that class differences may be subsumed in discrimination against women as a whole.¹⁴

Wandering further down the essentialism path, the scholar encounters Robin West's "connection theory" and discovers that her womanhood means she is "actually or potentially materially connected to other human life . . . [in a way that men] aren't."¹⁵ She further discovers that some branches of feminism are unified in "the discovery, or rediscovery, of the importance of women's fundamental material difference from men."¹⁶

However, the woman who heads in a different direction finds herself acknowledging the existence of issues that differentiate individuals within their own gender, issues such as race, class, culture, sexual preference, physical challenge, religion, nationality, and so forth. She joins in the "critique of blindness to difference within difference"¹⁷ and finds herself in the company of bell hooks, "calling attention to interlocking systems of

¹¹ See Catharine A. MacKinnon, *Sexual Harassment of Working Women* (1979); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 Signs 515 (1982); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 Signs 635 (1983). See generally Fred Strebeigh, *Defining Law on the Feminist Frontier*, N.Y. Times, Oct. 6, 1991, § 6 (Magazine), at 28 (discussing MacKinnon's work and areas of impact).

¹² Catharine A. MacKinnon, *Legal Perspectives on Sexual Difference*, in *Theoretical Perspectives on Sexual Difference* 213, 214-18 (Deborah L. Rhode ed., 1990).

¹³ *Id.* at 215.

¹⁴ For criticism of MacKinnon's approach as essentialist, see Harris, *supra* note 1, at 591 ("As a political matter . . . , MacKinnon is quick to insist that there is only one 'true,' 'unmodified' feminism: that which analyzes women *as women*, not as subsets of some other group."); Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 Harv. Women's L.J. 115, 134-44 (1989).

¹⁵ Robin West, *Jurisprudence and Gender*, 55 U. Chi. L. Rev. 1, 14 (1988).

¹⁶ *Id.* at 14. For a criticism of West's essentialist approach, see Harris, *supra* note 1, at 603. Harris calls "West's claims . . . clearly questionable on their face insofar as the experience of women—'mothers'—is asserted to stand for the experience of all women." *Id.*

¹⁷ Brenda Cossman, *A Matter of Difference: Domestic Contracts and Gender Equality*, 28 Osgoode Hall L.J. 303, 350 (1990).

domination—sex, race, and class—[so that] Black women and many other groups of women acknowledge the diversity and complexity of female experience, of our relationship to power and domination."¹⁸ She recognizes that "racism and class elitism among women have frequently led to the suppression and distortion of [the shared ideological foundation between patriarchy and other forms of oppression] so that it is now necessary for feminist thinkers to critique and revise much feminist theory and the direction of the feminist movement."¹⁹

The difference scholar joins John Dupré in acknowledging that "there can be no consistent stopping place for feminist politics short of comprehensive and systematic resistance to all . . . forms of oppression."²⁰ Finally, she arrives at the problem presented by Tamsin Lorraine, that "[d]espite the obvious advantages of a unified perspective for collective political action, the differences among women disallow such a perspective."²¹

Thus, for the woman wishing to move in both directions—a basic connection with all women coupled with a recognition of the differences between them—a dilemma arises. While women must work collectively to achieve change both in social conditions and in legal assumptions, they are each bound by their own individual experience and therefore find themselves unable to speak for others without the risk of distorting feminist concerns. As Marlee Kline points out, "[o]verlooking racial identity . . . has the effect of appropriating the pain of specific groups by attributing the particular experiences of women of color to all women"²² However, once women recognize their inability to speak for others they find the collective fragmented and communication increasingly difficult.

¹⁸ bell hooks, *Feminism: A Transformational Politic*, in *Theoretical Perspectives on Sexual Difference*, supra note 12, at 187. hooks adds that "[t]he intent is not to dissuade people of color from becoming engaged in the feminist movement." *Id.*

¹⁹ *Id.* at 188.

²⁰ John Dupré, *Global Versus Local Perspectives on Sexual Difference*, in *Theoretical Perspectives on Sexual Difference*, supra note 12, at 61.

²¹ Tamsin E. Lorraine, *Gender, Identity, and the Production of Meaning* 20 (1990).

²² Kline, supra note 14, at 124. Harris warns against the flip side of appropriation, a type of tokenism she terms "nuance theory":

[B]y being sensitive to the notion that different women have different experiences, generalizations can be offered about "all women" while qualifying statements, often in footnotes, supplement[] the general account with the subtle nuances of experience that "different" women add to the mix. Nuance theory thus assumes the commonality of all women—differences are a matter of "context" or "magnitude"; that is, nuance.

Harris, supra note 1, at 595.

Harris very aptly illustrates this potential fragmentation in her presentation of a scene in which women of different colors meet to determine a feminist agenda and their differences cause a breakdown in communication:

White women stress women's commonality, which enables them to control the group's agenda; black women make reference to 200 years of slavery and argue that their needs should come first. Eventually, as the group seems ready to splinter into mutually suspicious and self-righteous factions, someone reminds the group that after all, women are women and we are all oppressed by men, and solidarity reappears through the threat of a common enemy.²³

In Harris' scenario, women ultimately return to an essentialist approach, with its attendant problems of rendering invisible nonwhite, nonprivileged women while appropriating their voices.²⁴

This conflict within feminist jurisprudence goes beyond a theoretical debate, for, as Martha Fineman points out, "[f]eminists must overcome these differences [between women] in both practice and theory because the existence of these differences is misused to divide women."²⁵ She explains that "[t]he task of feminist theory in this regard is to encourage women to work together, across differences, so that the similar, shared gendered aspects of our lives do not continue to be invisible and unspoken in law."²⁶ The challenge, then, is to find a place where essentialism and difference can meet, where individuals can maintain a connection while preserving the integrity of their own experiences and the experiences of others.

The Conflict Manifests Itself

To those people trained in European-based legal theories and molded in traditional classrooms, the debate between essentialism and difference seems insurmountable.²⁷ In a world of absolutes and of a language where

²³ Harris, *supra* note 1, at 606.

²⁴ *Id.* at 607.

²⁵ Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 Fla. L. Rev. 25, 26-27 (1990).

²⁶ *Id.* at 27.

²⁷ By "European-based legal theories" and "traditional classrooms" I mean the modes of law and legal training employed by most practitioners and most professors at most law schools in the United States, at least including Columbia University, which I attend. For constructive views on changing American legal education, see Patricia A. Cain, *Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections*, 38 J. Legal Educ. 165 (1988); Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 Harv. Women's L.J. 1 (1988).

"objectivity" is nebulously defined and fervently believed, the debate cannot move in a constructive direction, for the language of traditional law speaks only in the generalities of the "reasonable person"²⁸ and prizes its exclusion of adjectives such as "Black"²⁹ or "lesbian" except in specialized fact situations.

The exclusion of considerations of difference purports to operate to the benefit of "others," for "[t]he requirement of fair judging is to treat individuals without regard to status, race, gender, or class."³⁰ However, while the judging purports to be fair, the outcomes are often discriminatory.³¹ Furthermore, Mari Matsuda points out that

[w]hen outsiders' perspectives are ignored in legal scholarship, not only do we lose important ideas and insights, but we also fail in our most traditional role as educators. We fail to prepare future practitioners for effective advocacy and policy formation in a world populated by women and men of differing points of view.³²

In striving to create general legal guidelines meant to apply regardless of a person's individual position, the legal system limits its own ability to address valid differences in the way individuals perceive and are affected by society.³³ By refusing to recognize an injured plaintiff as working-class and a defendant as a multimillion dollar corporation, a judge subscribes to the myth that the \$100,000 award means as much to the corporation as it does to the unemployed worker and suggests that the worker will be made whole by the award and the company will avoid further

²⁸ The designation of a reasonable "person" is deemed by some a great triumph for feminism, for it supplanted the traditional "man" standard. However, the change in labeling did little to change the concept underlying the original phrase. A great deal of scholarship has been devoted to the "reasonable person"—"reasonable woman" debate. See Lucinda Finley, in "Feminist Jurisprudence"—The 1990 Myra Bradwell Day Panel, 1 *Colum. J. Gender & L.* 17, 19–21 (1991).

²⁹ I have chosen to capitalize "Black," in contrast with "white," in recognition of the fact that, at least in an American context, "Black" denotes a heritage and identity more unified than the whiteness of various other Euroethnic groups' skin.

³⁰ Judith Resnick, *On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges*, 61 *S. Cal. L. Rev.* 1877, 1903 (1988).

³¹ *Id.*

³² Matsuda, *supra* note 27, at 4.

³³ These guidelines are inherently biased toward the white, middle-class male perspective that shaped them. See Resnick, *supra* note 30, at 1906 ("[W]hat has been assumed (by some) as a universal viewpoint is, in fact, a viewpoint of some men, who have articulated a vision of reality and claimed it to be true for us all.").

wrongdoing.³⁴ In ignoring a criminal defendant's disadvantaged upbringing, the jury merely condemns her to a term of imprisonment without addressing the true societal problems that first prompted her to commit the crime.

So, too, in encouraging feminist jurisprudence to establish one general set of juridical guidelines written in the language and form of existing legal concepts, traditional jurisprudence limits our ability to speak effectively both as a collective and as the distinctive individuals therein. Only by opening up the law to recognition of personal characteristics³⁵ that allow the establishment of true connections between individuals instead of the assumption of shared situations and perceptions can feminist jurisprudence move forward and effect change.

To bridge differences, some feminist theorists advocate the creation of a "relational self," which "contains the idea that we are situated in relation to others, and that our relationships with others are partially constitutive of who we are."³⁶ Harris, too, recommends that "feminist theorizing about 'women' must similarly be strategic and contingent, focusing on relationships, not essences."³⁷ These relationships can best be established by bringing people's voices into the law, where their experiences can be heard and where others can listen to what they are saying.

The Conflict Re-Examined

Establishing connections clearly depends upon opening up the law to the experiences of individuals, for, as Marilyn Frye asserts:

It is an unforgettable, irreversible, and definitive fact of feminist experience that respect for women's experience/voice/perception/knowledge, our own and others', is the ground and foundation of our emancipation—of both the necessity and the possibility of rewriting, recreating, the world. Thus it is only by a violent

³⁴ See, e.g., *Boomer v. Atlantic Cement Co.*, 257 N.E.2d 870 (N.Y. 1970), in which the court effectively allowed the defendant corporation to continue polluting a residential neighborhood upon the payment of a monetary "permanent damage" award. The court proceeded as if the money were a significant burden for the cement company or could compensate for the plaintiffs' polluted air.

³⁵ Harris suggests that such characteristics should be broken down into facets rather than broad generalities to avoid some of the problems already inherent in "objective" standards. Harris, *supra* note 1, at 586. "My suggestion is . . . that we make our categories explicitly tentative, relational, and unstable, and that to do so is all the more important in a discipline like law, where abstraction and 'frozen' categories are the norm." *Id.*

³⁶ Cossman, *supra* note 17, at 357.

³⁷ Harris, *supra* note 1, at 612.

dishonesty that we could, or can, fail to give credence to women's voices—even when they differ wildly and conflict.³⁸

Yet, as legal scholarship currently and traditionally stands, no mechanism exists for giving voice to differing experiences.³⁹ Without such a mechanism, feminist scholars may strive to paint true pictures of people's needs, but they necessarily filter the experiences of those for whom they speak through their own perspectives and thus distort the voices of others.

In order to effectively incorporate multiple experiences that allow women to establish useful connections amongst themselves, the presentation of these experiences must be firsthand. Therefore, feminist scholars cannot speak for other people. However, they may provide a forum in which other people may speak for themselves. Opening up the law to the voices and personal stories of individuals and cultivating the skill of listening allow for the true experiences of people to emerge.

Telling the Story with Our Own Voices

I have ploughed, and planted, and gathered into barns and no man could head me! And ain't I a woman? I could work as much and eat as much as a man—when I could get it—and bear the lash as well! And ain't I a woman? I have borne thirteen children and seen them most all sold off to slavery, and when I cried out with my mother's grief, none but Jesus heard me! And ain't I a woman?⁴⁰

³⁸ Marilyn Frye, *The Possibility of Feminist Theory*, in *Theoretical Perspectives on Sexual Difference*, *supra* note 12, at 177.

³⁹ Judith Resnick describes the lack of such a mechanism and recounts using nontraditional reasoning to support her criticism of Judge Robert Bork for his absence of humanity when she took part in the hearings on his nomination to the Supreme Court in 1986:

I was struck by how infrequently his commentary and opinions discussed the facts of the cases, the people, the lives and the pain of the litigants. My distress at the modes of analysis led me to criticize the nominee on several grounds, including the failure to speak with requisite particularity and compassion. In my written statement, I provided no citation for that request, for I had no learned legal opinion upon which to rely.

Resnick, *supra* note 30, at 1922. Judge Bork ultimately failed to receive congressional approval, for reasons other than his failure to "speak with requisite particularity and compassion."

⁴⁰ Sojourner Truth, *Address at Women's Convention in Akron, Ohio* (1851), reprinted in Angela Y. Davis, *Women, Race & Class* 61 (1981).

When Sojourner Truth, the only Black woman at a convention on women's rights,⁴¹ spoke she shared the pain peculiar to her life, as well as to the lives of other slaves. While she could not have appeared more different from the white, middle-class women watching, so removed from her life experiences, Truth's passionate recant of her "mother's grief" created a connection between herself and her audience.⁴² Her speech is recounted so often because her words express, more precisely than could any person outside her experience, the pain she felt as a female slave, while at the same time her voice connects with the parallel pains of other women's experiences.

Just as Truth asserted a Black woman's experience many years ago, Regina Austin insists that current feminist jurisprudence scholars of color should bring their own personal stories into their work. "[T]he experiential is not to be abandoned by the minority female legal scholar," she warns. "She must be guided by her life, instincts, sensibility, and politics. The voice and vision reflected in her work should contain something of the essence of the culture that she has lived and learned"⁴³

Patricia Cain hopes to bring personal stories into the law school classroom, where they can have the greatest effect in training future scholars and lawyers to be sensitive to others' stories and open about their own.

My major pedagogical goal in this part of the course [where they told stories about their own experiences] was to encourage the telling of personal stories about what it meant to be female or male; what it meant to be black, brown, or white; what it meant to be living in a heterosexist society. The aim was to emphasize that a person's point of view is naturally determined by that person's life experiences. I felt that if we failed to articulate the things that contributed to our point of view, we would all stay in our separate little circles. . . . If we talked and listened, we might begin to stretch ourselves along the scale. And if we were to continue to talk and listen upon becoming lawyers, we might help to stretch others.⁴⁴

Similarly, outside the classroom, Martha Minow calls for "consciousness raising," or the "personal reporting of experience in communal settings to

⁴¹ *Id.*

⁴² Furthermore, "[i]n repeating her question 'Ain't I a woman?' no less than four times, she exposed the class-bias and racism of the new women's movement. . . . Sojourner Truth herself was Black—she was an ex-slave—but she was no less a woman than any of her white sisters at the convention." *Id.* at 63–64.

⁴³ Regina Austin, *Sapphire Bound!*, 1989 *Wis. L. Rev.* 539, 542–43.

⁴⁴ Cain, *supra* note 27, at 175.

explore what has not been said."⁴⁵ By bringing together small groups of women to share their experiences, she hopes to raise the voices of those women previously silenced.

The Importance of Listening

Naturally, all the personal expression in the world fails to bring the stories of individuals into law and legal scholarship if no one listens. Cain captures this danger in her "theory about listening, really listening. . . . Often when we listen to others, we pick out the bits of their stories that are like our stories and discard the rest. That is, we embrace the familiar, the part that is easily recognized."⁴⁶ If we hear only that to which we are used to listening, the rest, the unfamiliar, the silenced voices of the true speakers, is ignored.

The cultivation of listening skills therefore becomes as crucial to the establishment of connections as the incorporation into the law of people's voices, for

it is not enough that a plurality of women's voices is heard in law. It is also important that our diverse voices be understood to affect one another, to intersect and interact. We must seek to understand this interaction, to modify our past work in light of this knowledge, and to apply it to the analyses of women's oppression we attempt in the future.⁴⁷

In calling for "affirmative action in legal scholarship," the presentation of new and different perspectives, Matsuda points out the requirement of "new skills of listening."⁴⁸ "The voices bringing new knowledge are sometimes faint and self-effacing, other times brash and discordant. To the extent that our past complicity in academic segregation has contributed to these different tones, we should strive to understand their origin and listen carefully for the truth they may hide."⁴⁹

On Bringing Women's Voices into the Law

Through the various shared experiences of women, told in their own voices and heard by other women, relational connections are established and the solidarity crucial to successful feminist change becomes possible. As hooks advises, "[w]orking collectively to confront difference, to expand our awareness of sex, race, and class as interlocking systems of domination,

⁴⁵ Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 J. Legal Educ. 47, 51 (1988).

⁴⁶ Cain, *supra* note 27, at 171.

⁴⁷ Kline, *supra* note 14, at 149.

⁴⁸ Matsuda, *supra* note 27, at 7.

⁴⁹ *Id.*

of the ways we reinforce and perpetuate these structures, is the context in which we learn the true meaning of solidarity."⁵⁰

THE LIVES OF DOMESTIC WORKERS

My Interaction with Domestic Workers

This dilemma of the shortcomings of essentialism and the fragmentation of difference became acutely clear to me when I first arrived at the Black Sash Legal Advice Office in Johannesburg. Upon my entrance, I was greeted by a roomful of people waiting to be seen. Many of them held referral slips from previous visits. Some women nursed babies; other clients sat patiently, their only diversion the activity of the office. The crowded room was filled with faces framed by bright woolen caps and surrounded by a mix of uniforms, western clothes, and colorful African wraps.

Walking past these people, I was acutely aware of how easily I could be identified as a staff member. Not only did my skin color set me apart, but my American clothing suggested I was different even from white South Africans. I felt so separate from them that I began to feel nervous about being able to find a connection between us.

But speaking with my clients quickly lightened such fears. Listening to them tell the stories that follow, I began to understand the unbearable treatment they endured because jobs are scarce, as well as the feeling of holding one's pride together inside because no other choice exists. And I remembered events in my own life that prompted feelings related to what the women expressed. I urge the reader, in hearing the voices that follow, to unearth her own shared connections.

A Note on Methodology

Discovering firsthand accounts of how domestic workers view the social, cultural, and legal conditions that surround them is a difficult task, for most of the available information presents analysis only. Their position in South African society contributes to the difficulty—the possibility of collective action fragmented by solitary working situations, and political agitation nearly impossible in the face of long working hours. In addition to a certain shyness I observed when interviewing the women as part of my Advice Office work, many of them spoke through African interpreters,⁵¹ and their accounts were noticeably streamlined when they were repeated to me. Similarly, accounts from other sources are also limited by their researchers'

⁵⁰ hooks, *supra* note 18, at 190–91.

⁵¹ I owe great thanks to the interpreters of the Johannesburg Black Sash Office for all their help: Mabel Makgosethe, Mittah Maphike, Bridget Phakathi, and Adelina Pholosi.

methodologies. Finally, my choice of which stories to present and how to present them necessarily impacts on their presentation.

My research in this area, then, focuses primarily on three studies which include many first-person accounts: Jacklyn Cock's *Maids and Madams: Domestic Workers Under Apartheid*,⁵² Suzanne Gordon's *A Talent for Tomorrow: Life Stories of South African Servants*,⁵³ and Jane Barrett et al.'s *Vukani Makhosikazi: South African Women Speak*.⁵⁴ I supplement these sources with my own interviews and papers written by African women. I have tried, wherever possible, to present direct quotations from the women with whom I spoke. However, because many stories were translated to me and because I had no tape recording equipment, I at times present events and conversations without using my clients' actual words.

Working Hours

The Stories

"⁵⁵I work very hard. I must start work at seven o'clock in the morning and I only finish at 8.30pm after they have finished eating supper and I have washed up the dishes. Every Friday I have to work until 10.00pm because my madam had people for supper. On Saturday nights I have to come in and look after the children because the madam and master go out. I don't get paid any extra money for doing it."⁵⁶

—Eldah Mthuludi

⁵² Cock, *supra* note 7. Cock's study of domestic workers in the Eastern Cape is somewhat limiting, since most of the comments she receives from domestic workers are in response to specific questions and therefore may not accurately reflect the primary concerns of the domestic workers themselves. The stories presented in her study are told by anonymous speakers.

⁵³ Suzanne Gordon, *A Talent for Tomorrow: Life Stories of South African Servants* (1985). Gordon's book, in contrast to Cock's, is based on more free-flowing interviews, rather than conforming to a research agenda. It therefore provides a more accurate means of gauging the issues that are of foremost concern to domestic workers. For this reason, I rely more heavily upon Gordon's interviews than Cock's.

⁵⁴ Jane Barrett et al., *Vukani Makhosikazi: South African Women Speak* (1985). Their book uses women's voices as a supplement to secondary information.

⁵⁵ I have placed the voices in quotation marks to emphasize the fact that these words are women speaking, not just blocks of text. Quotation marks also differentiate between actual voices and my recounts, which are set off by dashes. My purpose in presenting both direct quotes and my own accounts in blocks is to visually distinguish them from the secondary materials.

⁵⁶ Eldah Mthuludi, quoted in Barrett et al., *supra* note 54, at 29.

"So much work! Start six in the morning. Breakfasts for everybody, eggs, coffee, toast. I couldn't take time off in the day. Knock off half past seven at night."⁵⁷

—Paulina Masebeso Mokoena

"They went out at half past seven, but I had to be there at six, you see. They going to tell me what to do and all things like that. About getting home at night, Mrs[.] Philpson didn't think about that. I didn't go until I had to finish *everything* she wanted me to do on that day. That means even sometimes I left there at five o'clock. So I get back to Soweto at half past seven. Get home late. Go early in the morning. That was very, very hard.

She didn't think about the time you had to go home—she only thought about the time you had to come to work. She thought about the work she wants me to do and didn't think about what pay she's going to give me. She never thought about when it was late at night—she didn't mind if I got out of their house five or six o'clock and then I got home after eight. My husband said I'll get killed because that time it's dark and there's nobody."⁵⁸

—Elizabeth Nomvula Tshayinca

"You can never get away. You can never have a bit of time for yourself. I can be eating my lunch and my madam will decide she wants something from the shops or a cup of tea. I must jump up and go then—I can't even finish eating. If she calls and I'm doing something I must still go. I can be cooking or ironing and the child will cry—and she'll shout 'Flora, Cindy's crying.' She's just lying on her bed or talking on the phone or her friends are visiting. I'm working and she's doing nothing but I must always be there."⁵⁹

—Flora Manyono

"There's the baking and they're entertaining a lot, sometimes three or four times a week, even on Sundays. When you're in you knock off about half past ten, quarter to eleven on Sundays. During the week, even if they haven't got visitors, it's half past nine. I start at

⁵⁷ Paulina Masebeso Mokoena, quoted in Gordon, *supra* note 53, at 108.

⁵⁸ Elizabeth Nomvula Tshayinca, quoted in *id.* at 74.

⁵⁹ Flora Manyono, quoted in Barrett et al., *supra* note 54, at 30.

a quarter past six in the morning. Yesterday I only got about fifteen minutes in the afternoon to rest. If I say anything to Mrs[.] Goldman she tells me, 'You must never answer me back because I'm the owner of the house. You must just keep quiet.'"⁶⁰

—Christine Mashadi Kgapola

"They take me to the sea and when we get back they say did you have a good holiday. But it's no holiday for me."⁶¹

—⁶² Bokhana Elizabeth L. came to the Black Sash Legal Advice Office and told me of accompanying her employers to Namibia on their vacation to clean house for their son there. She was stabbed by a man on the street while working for them. After several weeks of recovery, she was dismissed for refusing to move heavy furniture because she was still too weak.⁶³ Her employer called the trip to Namibia "a vacation" for her employee, adding that "she didn't pay a cent."—⁶⁴

The Statistics

The domestic workers I saw started work as early as 6:30 a.m. and finished as late as 8:30 p.m. (both of these extremes were the same worker). Michael Whisson and William Weil found that a domestic worker may be "on duty for anything up to 80 hours per week and [sleep] in her employer's kitchen or servant's quarters."⁶⁵ Cock discovered that the working hours of the women she questioned ranged from forty to eighty-five hours per week with 77.7% working *more* than a forty-eight-hour week. Nearly one-third of the total sample work a seven-day week.⁶⁶ In her study, "[t]he worst case started work at 6 a.m. and went off around 9 p.m. six nights a week."⁶⁷ In contrast, "[m]ost [nondomestic] workers in South Africa work between forty and forty-five hours a week and expect at least two weeks paid holiday annually."⁶⁸

⁶⁰ Christine Mashadi Kgapola, quoted in Gordon, *supra* note 53, at 217–28.

⁶¹ Anonymous speaker, quoted in Cock, *supra* note 7, at 34.

⁶² See *supra* note 55.

⁶³ Interview with Bokhana Elizabeth L. in Johannesburg (June 25, 1991).

⁶⁴ Telephone Interview with employer of Bokhana Elizabeth L. (June 26, 1991).

⁶⁵ Michael G. Whisson & William Weil, *Domestic Servants: A Microcosm of "The Race Problem"* 39 (1971).

⁶⁶ Cock, *supra* note 7, at 150.

⁶⁷ *Id.* at 127.

⁶⁸ *Id.* at 31.

When one takes into account the hours live-out domestic workers spend traveling to and from work and the hours during which live-in workers are unofficially "on-call," their time spent working increases greatly and their opportunity for social and home lives becomes almost nonexistent. As Cock points out, "[a] living-in domestic worker in the Eastern Cape is frequently considered generally available in the evenings to cook, wash up, babysit, serve snacks when her employers return from an evening out or, as in one case, serve coffee at 11 p.m. to their bridge guests."⁶⁹ She hypothesizes that for those who live out, "it is possible that domestic workers, because of the distance between black and white residential areas, have to spend longer [commuting than other workers]."⁷⁰

Few workers receive annual leave or public holidays, and for many a "holiday" means accompanying their employers on their vacation to provide domestic services. In Cock's study, eighty-three percent of the workers had to work on public holidays, and twenty-three percent received no annual holiday. Of the women who did receive annual holidays, only forty percent received pay during that time.⁷¹

These conditions are all perfectly legal because domestic workers are specifically excluded from the Basic Conditions of Employment Act⁷²—which regulates maximum hours, meal intervals, annual leave, sick leave, and contract provisions—as well as the Labour Relations Act,⁷³ which creates a Manpower Commission, industrial courts, and an industrial council to settle labor disputes and violations, and which provides inspectors to ensure that proper working conditions as specified are being met.⁷⁴ Domestic workers' only means of shortening their hours are to refuse to take jobs with such demands and thus to risk no employment at all.

In light of the extremely long hours women spend working, it seems all the more tragic that "[o]n the whole, the more hours that one works for an employer, the lower the rate of remuneration."⁷⁵

⁶⁹ Id. at 32.

⁷⁰ Id. at 33.

⁷¹ Id. at 150.

⁷² Act No. 3, § 1(2)(c) (1983), as amended by Act No. 27 of 1984.

⁷³ Act No. 28, § 2(2) (1956), as substituted by Act No. 83 of 1988.

⁷⁴ Despite the recognized need for protective legislation, some people feel that incorporation into the Acts would deprive domestic workers of some advantages, such as one month's notice pay upon immediate dismissal, which they currently receive under common law. Some people recommend special legislation for domestic workers. See Domestic Worker Submissions to the Centre for Applied Legal Studies (CALS) (advocating for inclusion in several acts as well as other legal reforms); Memorandum from CALS to Minister of Manpower Utilisation (recommending a Domestic Servants Act and inclusion in other acts) (both on file with CALS, Johannesburg).

⁷⁵ Whisson & Weil, *supra* note 65, at 14.

The Wages Received

The Stories

"They've got money, they're millionaires, but they don't want to pay I know the Robertsons are exploiting me because they're underpaying me. I get R150 [about \$55.50] a month and R30 [about \$11] for food. Granny eats chops and steak and vegetables, but I go to Woolworths and buy bones and bring them home for my meals."⁷⁶

—Muriel Margaret Stella Mlebuka

"There was so much to do with it. A little must go to my mother, a little must pay for my clothing and a little must pay for my two sisters' education. Really, it's unbelievable! . . . One month I would buy something for one sister, the following for the other sister and the next month for my mother, whatever was needed. The other month I would get myself something to wear. A pair of shoes would cost about twelve bob, a good pair, you know. But that one pound ten shillings was too little. I don't know how the whites really *felt* when they gave a worker that money."⁷⁷

—Thokozile Virginia Mngoma

"I'm getting tired to work for this little bit of money for eleven years."⁷⁸

—Abie Begwapi Socatsha

"[If I ask for a raise] [t]he madam will say, 'Nanny, you know the boss is sick and has to go and lie in hospital and have this operation and pay all this money.' She will say this to me. I know they got lots of money, but they got no money for *me*."⁷⁹

—Rachel Lydia Ndabezitha

"When I say to the madam, can't you give me more money, the madam says she is suffering because her children are still at school.

⁷⁶ Muriel Margaret Stella Mlebuka, quoted in Gordon, *supra* note 53, at 146.

⁷⁷ Thokozile Virginia Mngoma, quoted in *id.* at 97.

⁷⁸ Abie Begwapi Socatsha, quoted in *id.* at 139.

⁷⁹ Rachel Lydia Ndabezitha, quoted in *id.* at 122.

She hasn't got more money to give me. It is not enough because all things are dear. It is not enough."⁸⁰

—Miriam Sindiwe Ngulube

"I always wait until she gives me an increase. Once when I tried to ask for an increase she told me in a low voice that I must never ask for an increase. I must just wait, because her husband never asked for an increase when he was employed by other people."⁸¹

"I was told I must never ask for an increase because her husband does not ask for an increase at Fort England."⁸²

The Statistics

Domestic workers are among the lowest paid workers in South Africa, and many are paid below the rate given to people qualifying for state pensions.⁸³ The women with whom I worked reported a range of monthly salaries from R50 [about \$18.50] to R400 [about \$145], and an average salary of R232 [about \$86] per month. Few are given or ask for wage increases, and if they do ask, they are often denied or simply dismissed.

Again, they have no legal recourse for these conditions. Just as they are excluded from the Basic Conditions of Employment Act and the Labour Relations Act, domestic workers are similarly excluded from the Wage Act,⁸⁴ which establishes a wage board to determine minimum wages in covered job categories.

The Wages Not Received

The Stories

"Today when I want to get my wages, she say I get my wages in my fucking ass."⁸⁵

—Siebongile Pauline N.

⁸⁰ Miriam Sindiwe Ngulube, quoted in *id.* at 168.

⁸¹ Anonymous speaker, quoted in Cock, *supra* note 7, at 22.

⁸² *Id.*

⁸³ Marj Brown, *Conditions of Domestic Workers* 3 (July 1990) (unpublished report, on file with Black Sash).

⁸⁴ Act No. 5, § 2(2) (1957), as amended by Act No. 58 of 1981 and Act No. 26 of 1984.

⁸⁵ Interview with Siebongile Pauline N. in Johannesburg (Aug. 6, 1991).

—After working for two months with a promised wage of R190 [about \$70], Triphina S. came to me because she had received no wages at all. Unfortunately, she did not know her employer's name or correct address and was afraid to return there, so she was without recourse.—⁸⁶

—Bolayi Maggy M. and Rosemary L. both told me that when they asked for their wages, their employers told them that they had no money to pay them.—⁸⁷

—Mmetja Violet L. came to the Black Sash Legal Advice Office because she had been dismissed for asking for her wages on time,⁸⁸ while Senani Roselyn A. had been dismissed for asking for her wages at all.—⁸⁹

"What is bad about domestic work is that when you stop working, everything has *stopped*. You've got no pension money, you've got no money for insurance or anything of that sort. Once you've stopped, everything is stopped. That's why most of the people work until they get very old. Even if they tell you to come to get your pension from the government that you get every second month, it's the very little—you can't pop out with that little bit of money, especially me now, my rent."⁹⁰

—Elizabeth Nomvula Tshayinca

"After working for her for nineteen years. Promised me a will. The last of my will was R100 [about \$37] from her sister. That's all."⁹¹

—Bertha Malebone Mabena

The Statistics

Domestic workers' only recourse for the withholding of their wages is in small claims court. They may learn of this option through the South

⁸⁶ Interview with Triphina S. in Johannesburg (June 2, 1991).

⁸⁷ Interviews with Bolayi Maggy M. and Rosemary L. in Johannesburg (June 20, 1991 and Aug. 6, 1991).

⁸⁸ Interview with Mmetja Violet L. in Johannesburg (July 1, 1991).

⁸⁹ Interview with Senani Roselyn A. in Johannesburg (July 16, 1991).

⁹⁰ Elizabeth Nomvula Tshayinca, quoted in Gordon, *supra* note 53, at 76.

⁹¹ Bertha Malebone Mabena, quoted in *id.* at 152.

African Domestic Workers Union (SADWU)⁹² or Black Sash, which relies on common law rules governing oral contracts to demand notice pay.⁹³ Many magistrates of the small claims court are sympathetic, and the rate of recovery, though not recorded, seems to be high.⁹⁴ However, the actual damages are very low because they are based on low wages. Furthermore, not only is filing a claim a lengthy process, but even if a domestic worker does receive judgment, she may still face yet another lengthy wait to recover against her former employer.

Few domestic workers have any type of pension to provide for their old age beyond the meager state pensions given to women once they reach the age of sixty.⁹⁵ Nor do they have any provisions for disability, or for their families, in the event of their own deaths. According to The Domestic Pension Fund, fewer than one in one hundred domestic workers have any of the benefits normally given to industrial and commercial workers.⁹⁶

Happily, an occasional kind employer will provide retirement benefits herself. Mamotse Evelyn T. came to me to see whether she had received everything from her employer to which she was entitled. Her former employer had agreed to pay her R150 [about \$55.50] each month after she had to retire due to illness. "We didn't fight. We are friends," Mrs. T. said of her employer.⁹⁷

Food and Accommodation of the Live-In Worker

The Stories

"Making pudding for them is the worst. I have to just lick the dish and that's the end."⁹⁸

⁹² See discussion on SADWU, *infra* text accompanying notes 241–55.

⁹³ For wrongfully dismissed workers, Black Sash demands payment through the end of the month, one month's notice pay, payment in kind for food and accommodation, and pro rata leave pay.

For a discussion of the use of oral contracts in domestic employment, see the influential article by Paul Benjamin, *The Contract of Employment and Domestic Workers*, 1 *Indus. L.J.* 187 (1980) (S. Afr.).

⁹⁴ Interview with Phillipa Kruger, University of Witwatersrand Law Clinic, in Johannesburg (July 19, 1991).

⁹⁵ For a discussion of the inadequacy of government pensions for Africans, see generally Black Sash National Advice Office, "This Money Will Be Used to Bury Me . . .": The Current State of Black Pensions in South Africa (Feb. 1990).

⁹⁶ Fedlife, *Security in Old Age: The Domestic Pension Fund* (brochure, on file with author). This private plan requires a minimum monthly contribution of R15 [about \$5.50] and pays benefits upon retirement between ages 55 and 70, disablement, or death. *Id.*

⁹⁷ Interview with Mamotse Evelyn T. in Johannesburg (July 25, 1991).

⁹⁸ Anonymous speaker, quoted in Cock, *supra* note 7, at 27.

"The smell of their food makes me hungry."⁹⁹

"I only get samp [to eat], but I cook everything and am not allowed to eat it. Everybody would like a piece of meat, specially if you have to cook it. The smell is enough."¹⁰⁰

"The only meat I get is what I steal from the pot while the stew is cooking."¹⁰¹

". . . to live on the smell of meat."¹⁰²

– Bokhana Elizabeth L. told me of the need to spend time with relatives instead of living in while she was recovering from her knife wounds because her room at her employer's house was unheated. – ¹⁰³

The Statistics

Included in many employers' calculations of wages are "payments in kind," such as food and accommodation supplied to live-in workers.¹⁰⁴ However, such food often consists only of "mealie meal," a type of cornmeal that is made into porridge or "pap," a starchy, filling, bread-like food, and tea and sugar. In Cock's survey, breakfasts were usually mealie-meal porridge or bread and jam with tea. Lunch was often mealie meal or samp, beans and other vegetables, and, "in a small proportion of cases, meat."¹⁰⁵ Indeed, "[a]lmost half" of the women in Cock's survey "received no meat at all."¹⁰⁶ Few of my clients received better food.

Likewise, accommodations are "frequently squalid, or bare and cramped, especially in comparison with the standard of furnishings in the employers' living quarters."¹⁰⁷ As the stories indicate, the rooms are often unheated and without electricity, and access to running water may be

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id. at 16.

¹⁰³ Interview with Bokhana Elizabeth L. in Johannesburg (June 25, 1991).

¹⁰⁴ Black Sash employs a policy of demanding an additional R150 (about \$55.50) per month for food and an equal amount for accommodation as part of the monthly wages. I found that this practice benefited dismissed workers in enabling them to demand greater damages.

¹⁰⁵ Cock, *supra* note 7, at 129.

¹⁰⁶ Id. at 26.

¹⁰⁷ Id. at 35.

limited. Furthermore, these rooms are frequently subject to inspection by employers.¹⁰⁸ Of course, the rest of the house is reserved for the use of the employer's family.

On Enduring the Separation from Their Families

The Stories

"You know, before, people didn't mind if you had a baby—say about six to nine months, you went to work with the baby on your back. They didn't mind those days, but now some of them don't want that at all, you see. It's very, *very* hard. . . . Some didn't even want you to pick up the baby, they want you to leave the baby outside in the yard."¹⁰⁹

—Elizabeth Nomvula Tshayinca

"Now my madam said I can't bring that child here on her property. She said, why did [your daughter] get that baby? She is naughty. Now she can't keep that child here on her property because she was naughty to get the baby. I don't know what I'm going to do."¹¹⁰

—Miriam Sindiwe Ngulube

– Alina Faladi S. came to the Advice Office after her employer dismissed her because she protested that her one-month-old baby was too young to be left at home.—¹¹¹

– Lungile Mantomsi M. told me that her employer refused to allow her time off to visit her son in the hospital. As she related the story to me, she began to cry in fear that her son had already died.—¹¹²

¹⁰⁸ Mmatshilo Kedijang, *The Best Kept Secret: Domestic Workers as Victims of Violence 9* (1990) (unpublished project for the Study of Violence Seminar, Univ. Wis., on file with author). Kedijang posits that such searches contribute to the depersonalization of domestic workers. *Id.*

¹⁰⁹ Elizabeth Nomvula Tshayinca, quoted in Gordon, *supra* note 53, at 72.

¹¹⁰ Miriam Sindiwe Ngulube, quoted in *id.* at 169.

¹¹¹ Interview with Alina Faladi S. in Johannesburg (July 1, 1991).

¹¹² Interview with Lungile Mantomsi M. in Johannesburg (July 2, 1991).

– Esther M. came to me because she was dismissed for failing to wash the dishes quickly enough. Her son, who had lived with her at her employer's house, had elected to stay there with them. – ¹¹³

"Seeing a child once a month, it's not enough. It's sad to be separated from your children while they are still young."¹¹⁴

—Caroline Ramokone Sotloe

"[After coming to visit my daughter in Germiston and finding that she had been baptized and given a new name without my knowledge] I cry then and said, why didn't you ask me that you taking my baby to baptize her in the Church? Why didn't you baptize the baby with *my* name? You mean to say that you taking that baby? That I give you the baby for a present? And then she tell everybody in Germiston that she's got a baby from a rubbish girl. She didn't know where to put the baby and she gave the baby to me for a present. I cry. I go back to work. She wouldn't give it to me. We'll make the baby to pieces if I take the baby."¹¹⁵

—Epsie Mtomkulu Zondo

The Statistics

Of the twenty-four women whom I asked, twenty-one told me of children living with other family members, some a significant distance from Johannesburg. Of these women, two clients said their children cared for themselves, one left her children with a stranger who watched them for pay, and the rest left their children with husbands, parents, or another family member. Whisson and Weil found that children often are cared for by their older siblings, "keeping 12 and 13-year-old daughters out of school in order to run the home, thus perpetuating the cycle of poverty, inadequate child care and incomplete education."¹¹⁶ Cock found that forty percent of working African mothers left their children in the care of adult relatives,¹¹⁷ often in rural areas, which may be distant from their places of employment. In only half of the cases in Cock's study did the children stay with their

¹¹³ Interview with Esther M. in Johannesburg (June 19, 1991).

¹¹⁴ Caroline Ramokone Sotloe, quoted in Gordon, *supra* note 53, at 197.

¹¹⁵ Epsie Mtomkulu Zondo, quoted in *id.* at 24.

¹¹⁶ Whisson & Weil, *supra* note 65, at 30.

¹¹⁷ Cock, *supra* note 7, at 10.

fathers.¹¹⁸ Many employers in Cock's study allowed children to visit, but she does not report any who allowed the children to live in their houses.¹¹⁹

Those women who do keep their children with them in the townships are "unable to provide adequate daytime care, [and] the effect of maternal deprivation for an entire generation of mainly black youth . . . has become a gigantic national problem."¹²⁰ The statistics on child care are daunting. As of 1986, there were over four million preschool aged African children in South Africa, but only 0.37% of them were cared for in creches (day nurseries).¹²¹

Nor is maternity leave a protected right in South Africa.¹²² Twenty percent of the mothers interviewed in a national survey returned to work when their children were less than two months old, fifty-two percent when their children were six months old or younger, and sixty-two percent when their children were one year old or younger.¹²³ Because domestic workers are not covered by unemployment insurance,¹²⁴ many of them, desperately in need of work, try to hide their pregnancies. Inevitably, of course, the truth appears and they are dismissed, such as the woman whose employer angrily told me that her employee had deceived her by lying about her pregnancy when she was hired. She was subsequently dismissed.

However, the economic realities of supporting a family prevent domestic workers from leaving those jobs which keep them away from their children. "All [the women in Cock's study] hate to leave their children alone during the day or in the care of others, but they are forced to do so either because they have no other source of income, or because their husbands do not earn enough to maintain their families."¹²⁵ Furthermore,

¹¹⁸ Id. at 43.

¹¹⁹ Id. at 45.

¹²⁰ Doris Ravenhill, *Women and Work in South Africa*, Speech at the International Federation of University Women Study and Programme 5 (1986) (transcript on file with author).

¹²¹ Barrett et al., *supra* note 54, at 146.

¹²² Id. at 141. The Wiehahn Commission, sponsored by the government to report on labor relations, concluded in 1979 that a guaranteed right to return to work after childbirth "would result in serious complications for employers, especially for the small employer who has to employ substitute labour when an employee takes maternity leave and who cannot afford to increase his labour complement by re-instating the employee concerned." Id. The Commission did, however, recommend that employers "give cases of this nature their utmost sympathetic consideration and where possible . . . act in the spirit of the recommendation." Id.

¹²³ Id. at 9-10.

¹²⁴ Id. at 143.

¹²⁵ Cock, *supra* note 7, at 44.

once she has a family, a domestic worker loses much of her job mobility, being "less willing to gamble with her work, preferring a regular job to the possibility of a week or two without employment between jobs, in the hope of getting a better wage."¹²⁶ Ironically, domestic workers are "driven into domestic employment in order to support their dependents, and then have to neglect their own families in the process."¹²⁷

In addition to separation from their children, domestic workers must endure separation from their husbands and other family members.¹²⁸ Of the live-in workers I queried, seven out of eleven were allowed to have their husbands or boyfriends live with them. However, Cock found that sixty-four percent of the employers she surveyed did not permit members of the domestic workers' families to visit them at work.¹²⁹ One employer commented to me that Bokhana Elizabeth L., the woman working for her, had been "using her room as a hotel for eight years; she's had all her relatives in."¹³⁰ What her employer failed to mention was where else Mrs. L. could visit with her family.

Despite this isolation, when Cock asked the employers in her study if they thought the workers might be lonely, "all the employers said 'No.'"¹³¹

Domestic Workers' Relationships with Their Employers

The Stories

"The madams are very tough on us. I don't know why because we're both women"¹³²

—Elizabeth Nomkhitha Siphika

"She does not see me as a woman. She looks down on me."¹³³

¹²⁶ Whisson & Weil, *supra* note 65, at 28.

¹²⁷ Cock, *supra* note 7, at 20.

¹²⁸ Detention, the practice by which the South African police arrested and held people without charge, created an additional set of issues for many domestic workers. For further insight into the impact of detention on the wives of detainees, see Sue Middleton et al., *The Hidden Burden: The Impact of Detention on the Women Left Behind* (unpublished manuscript presented at Black Sash Conference, Cape Town, on file with author).

¹²⁹ Cock, *supra* note 7, at 132.

¹³⁰ Telephone Interview with employer of Bokhana Elizabeth L. (June 26, 1991).

¹³¹ Cock, *supra* note 7, at 132.

¹³² Elizabeth Nomkhitha Siphika, quoted in Gordon, *supra* note 53, at 251.

¹³³ Anonymous speaker, quoted in Cock, *supra* note 7, at 70.

"[T]hey were all right, didn't shout at me or anything, but treated me like something . . . something not human, you know."¹³⁴

—Thokozile Virginia Mngoma

"Once you are employed by them you tend to be a machine that can be switched on and off which is very wrong: you are still a human being, you still have feelings of your own."¹³⁵

—Margaret Nomgcibelo Nhlapo

"Once you are sick, you are no good for them, they want another new one. It's just like when something in the kitchen doesn't work, you just throw it away and you buy a new one. And we are human beings, just like them. We feel the same. If they are sick, we look after them. Why can't they look after us?"¹³⁶

—Catherine Kebuile Kelokilwe

"The cheeky people, when they want you to do something they never ask you nicely, politely. Say, will you please do this? And can this be done? Or can you please, today, when you get a chance, to wash the fridge? They don't say that. All they say is, you must wash the fridge, or, you must wash the stove and you must clean the house."¹³⁷

—Violet Gatote Motlhasedi

"I'm sorry. No matter how you can be, people treat you like *dirt*. I didn't know. Had I known, I would have done something for myself. I did everything for *them*. I'm sorry, I'm sorry. I never cry, but somehow, talking about it . . . "¹³⁸

—Muriel Margaret Stella Mlebuka

– Tambisa Hazel N. told me the humiliating story of returning to her room one day to find her employer's dogs had defecated in it.

¹³⁴ Thokozile Virginia Mngoma, quoted in Gordon, *supra* note 53, at 97.

¹³⁵ Margaret Nomgcibelo Nhlapo, quoted in *id.* at 226.

¹³⁶ Catherine Kebuile Kelokilwe, quoted in *id.* at 175.

¹³⁷ Violet Gatote Motlhasedi, quoted in *id.* at 256.

¹³⁸ Muriel Margaret Stella Mlebuka, quoted in *id.* at 144.

"It's enough I share the bathroom with the dogs. But not my room." She refused to clean it up herself and was therefore called a "kaffir" [the equivalent of "nigger"] and her wages were docked. – ¹³⁹

"I hate being called 'the girl.' I am 48 years old now and I'm still a girl." ¹⁴⁰

—Agnes Ceba

"I take this house as my home, but madam show me that this is not my home." ¹⁴¹

—Rachel Lydia Ndabezitha

– Mamelato Elisa T. told me she was dismissed because her employer believed she had stolen a bottle of wine and filled it with tea. – ¹⁴²

– Though Gladness L. denied drinking the bottle of whiskey for which her employer fired her, ¹⁴³ her employer proclaimed to me that, "I marked the bottle." – ¹⁴⁴

"My brother in Springs, he phone me on Saturday and she pick up the phone and the call was for me and she was very cross for me. She tell me that *her phone is not a public phone*." ¹⁴⁵

—Abie Begwapi Socatsha

– Maria Khuri M. was dismissed when her employer accused her of trying on a dress. However, Mrs. M. told me that the dress was kept in a locked closet for which she had no key. – ¹⁴⁶

¹³⁹ Interview with Tambisa Hazel N. in Johannesburg (July 17, 1991).

¹⁴⁰ Agnes Ceba, quoted in Barrett et al., *supra* note 54, at 34.

¹⁴¹ Rachel Lydia Ndabezitha, quoted in Gordon, *supra* note 53, at 125.

¹⁴² Interview with Mamelato Elisa T. in Johannesburg (Aug. 1, 1991).

¹⁴³ Interview with Gladness L. in Johannesburg (June 25, 1991).

¹⁴⁴ Letter from employer of Gladness L. to author 1 (June 27, 1991) (on file with author).

¹⁴⁵ Abie Begwapi Socatsha, quoted in Gordon, *supra* note 53, at 136–37.

¹⁴⁶ Interview with Maria Khuri M. in Johannesburg (July 4, 1991).

"[My employer is] like a cat. You know, you can play nicely with a cat, then it scratches you. She does this to make me think I'm not good. I must be down. She likes me to be down, then I must know that I'm not so good, nobody would take me" ¹⁴⁷

—Rachel Lydia Ndabezitha

"Let's say this cushion is lying like this. She'll come and say, 'Why did you make this lie like this?' And then you start to say, 'I never done that!' and then she starts to say, 'No, it's only a joke.' And that pricks you. Everything that is wrong in the house, it's you. They think the black people are the stupid ones. A mistake is a mistake. They think because you're a black woman, you're always wrong. Everything that is mixed up, it's you." ¹⁴⁸

—Eunice Tholakele Dhladhla

"I have no feelings for [my employer] because she has none for me." ¹⁴⁹

"I feel pity for her" ¹⁵⁰

"Shame, I'm sorry for my madam. I don't want to leave my madam because if I leave her she will do this to the other fools like me, but the other fools will walk away." ¹⁵¹

—Rachel Lydia Ndabezitha

The Statistics

Many white employers treat their employees as children or possessions. They openly distrust the workers, and yet perceive the relationship as being mutually satisfying. The effects of this "working" relationship are far-reaching, as Whisson and Weil explain:

[T]he servant is invariably placed in a position inferior to that of her employer. Her lower status is not confined to the work situation,

¹⁴⁷ Rachel Lydia Ndabezitha, quoted in Gordon, *supra* note 53, at 126.

¹⁴⁸ Eunice Tholakele Dhladhla, quoted in *id.* at 242.

¹⁴⁹ Anonymous speaker, quoted in Cock, *supra* note 7, at 69.

¹⁵⁰ *Id.*

¹⁵¹ Rachel Lydia Ndabezitha, quoted in Gordon, *supra* note 53, at 120.

but pervades her total identity. She does not feel inferior simply because she is not white, she feels inferior in almost every aspect of her being. In short, she feels herself to be and is treated by society as an inferior person.¹⁵²

Viewing domestic workers as incompetent children in need of protection seems to serve as a justification to white employers for placing themselves in a position of superiority to their employees.¹⁵³

Invariably, workers either are called "girl" or addressed by a first name, usually an English one assigned because the women's African names are deemed too difficult to pronounce or to remember.¹⁵⁴ "The ordinary 'girl' grows up to be a lady, [but] the servant remains a 'girl' for ever."¹⁵⁵ Few of the employers with whom I spoke used their employees' African names or surnames. Cock, too, found that "only 10 per cent of the employers in [her] depth sample knew their domestic workers' full names."¹⁵⁶ In my own experience, whenever I spoke to employers and used a domestic worker's full African name, I usually encountered initial confusion, followed by something along the lines of "Oh, you mean Annie."

Similarly, many of the women with whom I worked did not know their employers' names, for they were to be referred to only as "Madam." Whisson and Weil explain:

The[se] forms of address commonly used in the employment situation underline and express the distinction in status. Without conscious humour, employers will refer to themselves as "Madams" and will expect their employees to use the respectful term when speaking of "My madam." The reciprocal term implies a child-like status—"maid," "girl" or the use of the first name of the employee, rather than the surname and title, i.e., "Annie" rather than "Mrs. Jones."¹⁵⁷

Although employers may not realize that by withholding their names they gain the advantage of limiting their employees' recourse to small claims court, I frequently encountered that problem.

¹⁵² Whisson & Weil, *supra* note 65, at 38.

¹⁵³ "Few employers can escape entirely from the moral problems of living in a society which is based on a premise of inequality, where discrimination on the grounds of colour pervades every aspect of life, inconveniencing the whites in dozens of ways and insulting the non-whites in hundreds of ways." *Id.* at 40.

¹⁵⁴ Kedijang, *supra* note 108, at 9.

¹⁵⁵ Whisson & Weil, *supra* note 65, at 39.

¹⁵⁶ Cock, *supra* note 7, at 74.

¹⁵⁷ Whisson & Weil, *supra* note 65, at 36.

Not knowing even an employee's name may also signal a lack of knowledge about her in general. In Cock's study, "[o]verall, employers [did] not know as much about their servants as their length of employment might warrant. . . . Only 40 per cent knew what level of schooling their servant had and 44 per cent did not know whether or not she had children attending school" ¹⁵⁸

Relations between white employers and their African employees also display the strong distrust white women feel for their domestic workers. In many cases, employers proclaim their belief that their employees are thieves. "If anything goes missing in the house, the maid is often blamed and wages illegally docked for the missing or broken item."¹⁵⁹ One employer told me that, "I've come to the conclusion you musn't be good to them."¹⁶⁰ Another told me that, "You can not speak to Augstina; she's one of the most unsatisfactory workers I've ever had; I gave her the job because I felt sorry for her; times are hard. She's so stupid you can't talk to her."¹⁶¹ Employers ridicule workers, joke about mistakes, and use derogatory labels such as "kaffir."¹⁶² Such treatment is "common in domestic service"¹⁶³ and pervasive.

Yet for all this mistreatment, a strong belief seems to exist among white employers that their employees feel as if they are a part of the family, usually in a manner in keeping with the childlike status assigned to them. Cock explains:

Many employers [in her study] described their servant as one of the family. This implies that she is seen in a role-specific dimension, that her life is viewed as totally enmeshed with that of her employers. Yet not one of the domestic workers in the sample saw herself as one of the family and some voiced cynicism about their employers' use of this phrase. In no case was there the sharing of power and resources that authentic family membership might be thought to involve.¹⁶⁴

Several employers with whom I spoke defended themselves by claiming that they treated their employees as "one of the family."

¹⁵⁸ Cock, *supra* note 7, at 118. "Overall, only two employers of those who knew their servants had school-going children knew the cost involved." *Id.*

¹⁵⁹ Brown, *supra* note 83, at 2.

¹⁶⁰ Telephone Interview with employer (June 25, 1991).

¹⁶¹ Telephone Interview with employer of Makresmise Augstina B. (Aug. 1, 1991).

¹⁶² Kedijang, *supra* note 108, at 18.

¹⁶³ *Id.*

¹⁶⁴ Cock, *supra* note 7, at 112.

The Threat of Violence

The Stories

– Although I heard many stories of slapping and hitting, the most horrifying was that of Ida S., who came to us after her release from two weeks of hospitalization, necessitated by a beating with an iron pipe by her employer's husband and father. She had stitches over both eyes, under her left eye, and inside her mouth, and was missing several teeth. – ¹⁶⁵

– [A] live-in domestic was employed by a male in Bellevue. Some time in 1989, her employer arrived at his house and found her in the kitchen. He touched the domestic worker in the region of her private parts saying that her "thing" is big. The worker then took exception to this act, got angry and walked out of the kitchen. When the employer noticed that she was cross, he chased her out of his premises with a firearm. He locked the domestic worker's room and the gates.– ¹⁶⁶

The Statistics

Domestic workers suffer particular forms of violence and harassment in a society where Africans are already subjected to often unfathomable brutality.¹⁶⁷ Kedijang points out the special vulnerability of African domestic workers:

For South Africa, violence against domestic workers is, at least in part, rooted in social inequalities of power and rights between individuals of different races, sexes and classes. By virtue of being black and female, with no legal protection and no political rights, domestic workers tend to become immediate targets of aggression in the white household.¹⁶⁸

Figures on physical violence against domestic workers are difficult to obtain for the same reasons that obtaining information about any domestic

¹⁶⁵ Interview with Ida S. in Johannesburg (July 24, 1991).

¹⁶⁶ Kedijang, *supra* note 108, at 16.

¹⁶⁷ For an example of violence against African farmworkers, see Lauren Segal, *A Brutal Harvest: The Roots and Legitimation of Violence on Farms in South Africa* (undated). Segal's point that farm violence is "well hidden from public scrutiny," draws a parallel to the hidden violence against domestic workers. *Id.* at 4.

¹⁶⁸ Kedijang, *supra* note 108, at 24.

violence is problematic. "Apart from being a sensitive and personal area to explore, many of the offenders do not admit to committing acts of violence. Similarly, victims and onlookers such as neighbours and relatives are reluctant to talk about their respective experiences or observations."¹⁶⁹ Therefore, women hesitate to report violence, as the lack of first person stories suggests, making "[it] difficult to make generalisations about physical cruelty to domestic servants."¹⁷⁰ None of my clients gave me such a reason for their dismissal.

However, Kedijang does assert that "[p]hysical violence against domestic workers is presently reported to be on the increase."¹⁷¹ She sees "[t]he increasing incidence of the white 'baas' [boss] coming home to beat up a domestic worker . . . not only [as] a barometer of fear, but [also as] an indication of the frustration generated by a feeling of loss of control in the political and socio-economic environment."¹⁷²

Sexual harassment is another form of violence against domestic workers that is extremely difficult to locate or prevent. Kedijang finds the reasons for underreporting this type of violence to be "numerous; the society regards sexual harassment as a 'joke' and a victim who complains or institutes action against the employer may be regarded with suspicion and distaste."¹⁷³ She believes that domestic workers are especially at risk because

[i]n the case of domestic service, sexual harassment is characterized by an unwelcome imposition of sexual requirements in the context of extreme inequality of power in the master-servant relationship, combined with a desperation to keep the job on the part of the worker. Domestic workers may be seen as people whom their employers can use for anything and everything. The worker faces a dilemma in that if she accepts the advances, she may suffer humiliation and an impairment of her dignity. On the other hand, if she refuses the advances of her employer . . . she may be dismissed.¹⁷⁴

¹⁶⁹ Id. at 2 (footnote omitted).

¹⁷⁰ Cock, *supra* note 7, at 78. "The main source of difficulty is the hidden, or masked, nature of domestic crime generally." Id.

¹⁷¹ Kedijang, *supra* note 108, at 12. "Union officials express great concern at the growing incidence of cases, especially of physical assaults, flooding their offices. They identify the country's current uneasy political atmosphere as one of the reasons for this increase." Id.

¹⁷² Id. at 3.

¹⁷³ Id. at 15.

¹⁷⁴ Id.

African Women's Cultural and Social Status*The Stories*

"African laws, you must ask the husband everything. . . . Everything you must ask the man and if he say no, it's no. It's African law."¹⁷⁵

—Epsie Mtomkulu Zondo

"If it's Zulu custom they say a woman is a dog. Because I am a dog, if he wants to marry another woman, he can marry another woman. We can be five if it's Zulu custom."¹⁷⁶

—Rachel Lydia Ndabezitha

"When you get married, your parents tell you if you find those people eating snakes, you must eat them. So that you go there knowing that whatever hardship you find there, you've got to obey them. . . . That's very difficult. But you adjust yourself. You cope. You've got to cope. It's a terrible thing with us, marriage. You are like a bought somebody, you've got to obey the orders. . . . But today it's different; they don't do these things today."¹⁷⁷

—Margaret Mongcibelo Nhlapo

"You see, our fathers weren't as these parents today. They had to choose everything for you. If they say, 'We want you to get married to so and so,' you didn't have to argue. Otherwise, if you argue, they tell you, 'Get out of the house!'"¹⁷⁸

—Elizabeth Nomvula Tshayinca

¹⁷⁵ Epsie Mtomkulu Zondo, quoted in Gordon, *supra* note 53, at 26.

¹⁷⁶ Rachel Lydia Ndabezitha, quoted in *id.* at 120.

¹⁷⁷ Margaret Mongcibelo Nhlapo, quoted in *id.* at 222–23.

¹⁷⁸ Elizabeth Nomvula Tshayinca, quoted in *id.* at 71.

The Statistics

African women's oppression in South Africa arises from a combination of white and African societal attitudes. Frene Ginwala explains that African women "have to acknowledge that oppression of women in South Africa is not only a consequence of conquest and white domination, and make a commitment to abolish *all* vestiges of patriarchy in our institutions and practices, not just those that followed conquest."¹⁷⁹

In the South African tribal traditions "[a] woman's role is explicitly defined in terms of looking after her husband, his family and her children. The home is her place, though even within this, her husband is in control. Men are assumed to be the thinkers, the decision makers in all spheres of the society."¹⁸⁰ This power distribution between men and women is reinforced through cultural attitudes toward women as daughters, wives, and mothers. Thandabanto Nhlapo calls for an end to "romanticising custom to the extent of closing our eyes to some of the horrific consequences of a family law that does not recognise the equal humanity of women."¹⁸¹

In the eyes of customary tribal values, women are perpetual children¹⁸² who remain in the care of their fathers until marriage, when they become the property of their husbands.¹⁸³ This view of women as property is reflected in the custom of "lobolo," in which the husband pays money to his new wife's family in exchange for marriage. Thus, "[t]he marriage contract functions as a system of exchange in which women and goods

¹⁷⁹ Frene Ginwala, *Formulating National Policy Regarding the Emancipation of Women and the Promotion of Women's Development in Our Country* 3 (1989) (unpublished manuscript, on file with CALS).

¹⁸⁰ Transvaal Rural Action Committee, *Demanding a Place Under the Kgotla Tree: Rural Women's Access to Land and Power* 7 (Jan. 1991) (unpublished manuscript, on file with the Transvaal Rural Action Committee, Johannesburg) [hereinafter TRAC].

¹⁸¹ Thandabanto Nhlapo, *The Family in a Traditional and Customary Law Context* 5 (unpublished paper, on file with CALS).

¹⁸² See also discussion of employers' treatment of domestic workers as children or property, *supra* text accompanying notes 132-64.

¹⁸³ See TRAC, *supra* note 180, at 5-6. Nhlapo equates this "perpetual minority" with a "lack of legal personality," which she believes may have "a direct bearing on violence." Nhlapo, *supra* note 181, at 6. This minority status is codified in the Black Administration Act No. 38, § 11 3(b) (1927) ("1927 Act"). Legal Resources Centre, *Handbook for Public Interest Lawyers* 183 (1991) [hereinafter LRC]. A woman's majority at marriage or at age 21 is recognized only by § 14 of the Natal Code of Zulu Law (Natal Code) and the KwaZulu Act on the Code of Zulu Law (KwaZulu Code). *Id.*

transfer ownership. An ethos of the women as the men's property prevails."¹⁸⁴

Other customs perpetuate the idea of women as property. "Sororate" requires the younger sister of a woman unable to produce children to become her surrogate, and "levirate" transfers the widow of a childless man to a relative to continue the lineage.¹⁸⁵ Furthermore, a man may divorce his wife for adultery but she may not do the same, presumably because a man having extramarital affairs is looking for another wife.¹⁸⁶

Laws created by whites (civil laws) further affect the status of African women. Marriage laws severely disadvantage those African women married either by custom or civilly before 1988 when an amendment¹⁸⁷ to the Matrimonial Property Act of 1984 was enacted.¹⁸⁸ The 1988 Amendment made African marriages performed under civil law after 1988¹⁸⁹ functionally the same as the marriages of all other couples, but specifically excluded those marriages of individuals living in the self-governed territories and "independent" homelands.¹⁹⁰

However, civil African marriages entered into before the 1988 Amendment and not changed by notarial contract¹⁹¹ are automatically out of the community of property,¹⁹² so that all accumulated assets of the

¹⁸⁴ Tracy Segel & Dana Labe, *Family Violence: Wife Abuse*, in *People and Violence in South Africa* 251, 256 (Brian McKendrick & Wilma Hoffman eds., 1990). Nhlapo also presents the view of wives and children as economic assets. Nhlapo, *supra* note 181, at 5.

¹⁸⁵ See Nhlapo, *supra* note 181, at 6.

¹⁸⁶ *Id.* at 4. See *infra* note 196 for codification of polygamy.

¹⁸⁷ Marriage and Matrimonial Property Law Amendment Act No. 3 (1988) ("1988 Amendment").

¹⁸⁸ Act No. 88 (1984) ("1984 Act"). The 1984 Act lifted restrictions on non-African women's legal power within post-1984 marriages. See June Sinclair, *An Introduction to the Matrimonial Property Act of 1984*, at 14-55 (1984). African marriages are generally exempted from the 1984 Act. See *id.* at 62-68.

¹⁸⁹ The 1988 Amendment allowed a two-year grace period during which African couples married before 1988 could change their marital status by notarial contract (see *infra* note 191), with the consent of both spouses. LRC, *supra* note 183, at 187-88.

¹⁹⁰ *Id.* at 186. The excluded marriages are still governed by § 22 of the 1927 Act. *Id.*

¹⁹¹ A notarial or antenuptial contract is an agreement that may change the legal status of a marriage, and therefore, change the automatic distribution of property upon divorce.

¹⁹² Under community of property, all assets of both spouses are pooled. However, either spouse may enter into a transaction controlling the joint estate without the consent of the other. LRC, *supra* note 183, at 190. Because of the dangers of this system, many couples contract for an accrual system, which keeps their assets separate until divorce when the assets accrued after marriage are divided equally. *Id.* at 191.

spouses remain separate.¹⁹³ This situation creates a distinct disadvantage to many women who, as minors, were unlikely to own property upon entering the marriage. Upon a divorce, because the property of the parties is never pooled, they would receive only those assets, if any, that they accumulated independently. Furthermore, such marriages designate to the husband the "marital power," which gives him complete control over all property owned by *either* spouse.¹⁹⁴ Of course, putting together the notarial contract necessary to abolish the marital power and give the woman rights in the accumulated assets of the marriage requires the funds and connections to hire a lawyer, both of which are difficult tasks for most Africans in South Africa.

In addition to marrying under civil law, Africans may marry under customary law.¹⁹⁵ While customary unions appear to differ little from civil marriages entered into before the 1988 Amendment, significant differences exist in legal recognition of any union not officially registered. A man may take as many wives as he wishes under unregistered customary unions.¹⁹⁶ Furthermore, because an unregistered customary union is not recognized by law, any children born to such a marriage are deemed illegitimate.¹⁹⁷ Nor may a widow of an unregistered union claim benefits upon the death of her husband unless she claims as a dependent, not a spouse.¹⁹⁸ Women married under unregistered customary law (as opposed to civil law) do not inherit land upon their husbands' death.¹⁹⁹

Courts have become more liberal in their interpretation of "certification" of customary marriages in cases involving the insurance claims of widows of customary unions. The court's negative determination in 1983 in *Dlikilili v. Federated Insurance*²⁰⁰ that "[the certification requirements] become[] impracticable if any sort of certificate will do,"²⁰¹

¹⁹³ See Dolly Mokgatle, *The Black Marriages Bill*, 1 Afr. L. Rev. 1 (Jan. 1987).

¹⁹⁴ LRC, *supra* note 183, at 187. Even with the abolition of the marital power, the husband remains "head" of the family. He controls all decisions relating to domicile of the family and parental power over the person and property of the couple's minor children. *Id.* at 189-90.

¹⁹⁵ See generally *id.* at 182-86. Customary unions are governed by § 22 of the 1927 Act. *Id.* at 182.

¹⁹⁶ *Id.* at 182. This custom is codified in § 36(2) of the KwaZulu and Natal Codes. *Id.*

¹⁹⁷ *Id.* at 185.

¹⁹⁸ *Id.*

¹⁹⁹ See TRAC, *supra* note 180, at 5. Instead, the land is transferred to the man's family, and his widow may remain only at their discretion. If she remarries, she is expected to leave. *Id.* at 6.

²⁰⁰ *Dlikilili v. Federated Ins.*, 1983 (2) S.A. 275.

²⁰¹ *Id.* at 283.

and that "there would be little incentive to couples married decades ago to register their union now, unless and until they are made aware of the possible consequences of non-registration,"²⁰² was overturned the following year in *Monamodi v. Sentraoer Co-Operative Ltd.*²⁰³

While efforts are being made to make African women aware of the benefits of marrying civilly or registering customary unions,²⁰⁴ many African men resist such contracts.²⁰⁵ Hence, unless an African woman can convince her husband to register their customary marriage or, for couples married prior to 1988, create a notarial contract, she functionally remains a dependent of her husband.

Legislation in the areas of contraception and abortion similarly disadvantages all women, and African women to a greater extent. While contraception and sterilization are often encouraged for African women,²⁰⁶ both are dangerous and often given without consent.²⁰⁷ "Contraceptives given out by the Department of Health are often powerful and potentially dangerous. . . . State clinics usually will not give out diaphragms. The Department of Health seems to feel that women are too stupid to take control of contraception themselves."²⁰⁸ Ruth Mompati asserts that "[s]o blatant is the exploitation of women, that even women's fertility has been racially categorised and subjected to state priorities: white women are exhorted to fulfil their national duty and have 'babies for the republic,' black women are warned that too many children means poverty."²⁰⁹ Furthermore, for many women "[t]he real barrier is men. Women want to take control of their fertility, to plan their lives according to their needs. This threatens

²⁰² Id. at 282.

²⁰³ *Monamodi v. Sentraoer Coop. Ltd.*, 1984 (4) S.A. 845. See also *Mgoqi v. Protea Assurance Co. Ltd.*, 1985 (4) S.A. 159, finding that "[t]he Legislature is presumed to have known that outside [a] few areas . . . , no register of customary unions existed, which meant that the widow's right to sue was rendered nugatory if the certificate was required to reflect an entry in a register of customary unions." Id. at 162.

²⁰⁴ See, e.g., Motgatle, *supra* note 193. Black Sash and other human rights groups are contributing to these efforts.

²⁰⁵ While "women clearly favoured a marital contract that gave them dual power within the relationship," TRAC, *supra* note 180, at 11, "[m]any men resist acquiring a marriage certificate because they feel it reduces their marital powers." Id. at 5.

²⁰⁶ See Barrett et al., *supra* note 54, at 169.

²⁰⁷ Dot Cleminshaw, *Women's Right to Informed Choice on Gender Issues 5* (1991) (paper presented at Black Sash National Conference 1991, on file with Black Sash).

²⁰⁸ Barrett et al., *supra* note 54, at 173.

²⁰⁹ Ruth Mompati, *Putting Women on the Agenda*, Speech at Lawyers for Human Rights Conference 4 (1990) (transcript on file with CALS).

men, for whom children are often symbols of their maleness and virility."²¹⁰

Despite exhortations to African women not to have children, abortion is a crime in South Africa unless pregnancy endangers the physical or mental health of the mother;²¹¹ presents a serious risk of irreparable and serious handicap to the child;²¹² results from "unlawful carnal intercourse";²¹³ or where the mother is mentally unable to comprehend the implications of pregnancy.²¹⁴ In all cases, the opinion of the administering doctor must be supplemented by written certifications of two additional medical practitioners.²¹⁵ This proposition is an expensive one, with a particular impact on African women, who have the least money and access to contraceptives of all South African women.

Not surprisingly, abortions are "rarely sought through legal means. The result is that numerous women suffer permanent injury or death due to back street and home abortion techniques."²¹⁶ Approximately 300,000 women in South Africa have illegal abortions each year.²¹⁷ In the first six months of 1989, 35,038 legal operations were performed to complete illegal abortions done elsewhere.²¹⁸ Overall, about ten percent of illegal abortions result in death, and many more in sterility.²¹⁹

²¹⁰ Barrett et al., *supra* note 54, at 171.

²¹¹ Abortion and Sterilization Act No. 2, § 3(1)(a)-(b) (1975), as amended by Act No. 48 of 1982.

²¹² *Id.* § 3(1)(c).

²¹³ *Id.* § 3(1)(d).

²¹⁴ *Id.* § 3(1)(e).

²¹⁵ *Id.* § 3(1)(a)-(e). Not surprisingly, the Act was created by an all-male committee with a strong influence of religious fundamentalism. Cleminshaw, *supra* note 207, at 7. The Civil Rights League's submission to the Director-General of National Health recommends allowing a woman to make an informed and counseled decision to abort within the first 12 weeks of her pregnancy. *Id.* at 9. But see *S v. Collop*, 1981 (1) S.A. 150, finding:

Parliament would, I apprehend, be surprised to learn that, in its wisdom, it had placed on the statute book a law which made legal an abortion procured by any unqualified person or quack carrying on business in a back-street provided only that the operation was performed on the patient before the end of the second month of pregnancy.

Id. at 163.

²¹⁶ LRC, *supra* note 183, at 194.

²¹⁷ *Id.* at 194 n.76.

²¹⁸ Cleminshaw, *supra* note 207, at 7.

²¹⁹ Barrett et al., *supra* note 54, at 174.

DOMESTIC WORKERS' AGENDAS FOR CHANGE

Remembering to Listen

Understanding the lives domestic workers live is only one step in bringing their voices into legal discourse. Feeling some of the common pains that arise from being a woman, being a Black woman, or being a working-class woman may tempt a reader to express her indignation immediately. Her own struggle for power and voice may seem to her to justify using any megaphones possible for expressing how these women live and how change can occur.

But in such a scenario the crucial second step remains untaken. It is not enough to hear these women talk of their circumstances. To end their stories here would still lead to the appropriation of their pain by other women with stronger political voices. To avoid this phenomenon, feminists must listen further as domestic workers relate their own agendas for change.

Why Not Just Demand It

The Opinions

"If you complain, you can lose your job. She'll tell you about all the other people who come to the door looking for work."²²⁰

—Eldah Mthuludi

"You can't complain or you might lose your job. If you complain your employer tells you about all the girls coming to the door looking for work."²²¹

"I am afraid she will sack me if I speak again."²²²

The Options

Demanding better conditions is difficult because of high unemployment,²²³ leading many women to take jobs despite unacceptable conditions.

²²⁰ Eldah Mthuludi, quoted in *id.* at 32.

²²¹ Anonymous speaker, quoted in Cock, *supra* note 7, at 19.

²²² *Id.* at 22.

²²³ Some South African economists "estimate that there are about three million blacks without work—20 to 25 percent of the workforce of the whole of South Africa." Ravenhill, *supra* note 120, at 5.

Black Sash attempts change through employer education,²²⁴ but ultimately can only refer clients to SADWU and rely on small claims courts to provide redress for wrongful dismissals.

Constantly aware of their tenuous job status, domestic workers must seek other means of bettering their circumstances and the circumstances of women in the future.

Education

The Opinions

"[My employer] does not care. She does not like our children to go to school because she says they end up nowhere."²²⁵

"They say it's useless to educate a daughter. She going to be married and she won't work anything for you, won't bring any money."²²⁶

—Miriam Ngulube

"My feeling when I think my child mustn't go to school! I was getting mad! All my daughters, they from high school. Four of them! Ooh, I was fighting for my daughters! Ja, I used to have a petticoat you see, a mealie-meal bag. Ja! And even for my pantie. I cut that mealie-meal bag and make a pantie. Push my four daughters to school. . . . I don't want them to suffer."²²⁷

—Epsie Mtomkulu Zondo

The Options

With the demise of apartheid laws, inferior education remains the most obvious way in which the government continues to perpetuate

²²⁴ See Penelope Geerds, *Masisebenzisane: Let Us Work Together* (1991), which is published and distributed by Black Sash, and lists suggested wages, hours, overtime, vacation, accommodations, meals, transportation, clothing, and use of facilities. The booklet also recommends drawing up a written agreement upon hiring and sets out the terms of dismissal. *Id.*

²²⁵ Anonymous speaker, quoted in Cock, *supra* note 7, at 29.

²²⁶ Miriam Ngulube, quoted in Gordon, *supra* note 53, at 162.

²²⁷ Epsie Mtomkulu Zondo, quoted in *id.* at 32.

racially motivated class distinctions. Much of domestic workers' limited job mobility stems from their lack of training for other, higher-paying jobs.²²⁸ In Cock's study, "[t]he great majority of domestic workers . . . had only a minimum amount of formal education. [Sixty-three] per cent had been to school but the vast majority, three-quarters, had not progressed beyond Standard V [fifth grade]. No one in the sample had progressed higher than Standard VIII [eighth grade]."²²⁹

Despite domestic workers' great hopes for better educational opportunities for their children,²³⁰ schools in South Africa remain segregated, with no anti-discrimination laws in place to repair the effects of apartheid. The African schools suffer from overcrowding, insufficient resources, and difficult physical learning environments. "In some township schools, there are 100 pupils to every teacher"²³¹ and "[g]ross overcrowding" was "highlighted" during a National Education Co-ordinating Committee tour in July, 1991.²³² Some African schools have no money to provide even textbooks—the teachers must "beg . . . or borrow" them.²³³ "Broken window panes, missing doors, no toilets or water" are a "common feature" of African schools.²³⁴ For example, the school established by residents at Weiler's Farm, a shack settlement, is a "cardboard and zinc structure supported by wooden pillars. Inside, the older children . . . work diligently on donated stationery at rapidly disintegrating desks. At least 50 younger charges carry their chairs outside and then shiver under the early morning winter sky, waiting for their lesson to begin."²³⁵

²²⁸ Cock points to lack of educational opportunities as one of the factors which "trap" domestic workers. Cock, *supra* note 7, at 4.

²²⁹ *Id.* at 17.

²³⁰ "Their hopes for the future focused on their children, and education was seen as the means whereby their children could escape to a better life." *Id.* at 18.

²³¹ Portia Maurice, *Go Back to School*, Piet Clase, *Weekly Mail*, June 14–20, 1991, at 1.

²³² Phil Molefe, *Squalor, Overcrowding at Black Schools a Shock for Diplomats*, *Johannesburg Star* ("J'burg Star"), June 18, 1991, at 3. [hereinafter Molefe, *Squalor*].

²³³ Portia Maurice, *The Kids Who Learn in Cardboard Classrooms*, *Weekly Mail*, June 14–20, 1991, at 11. [hereinafter Maurice, *The Kids*].

²³⁴ Molefe, *Squalor*, *supra* note 232, at 3.

²³⁵ Maurice, *The Kids*, *supra* note 233, at 3. "[T]aking the increasing cost of education into account, the real increase [in the education budget] was only 6 percent [from 1987 to 1990]. Against that the increased enrol[l]ment of pupils requires a 14 percent annual increase in the education budget merely to keep pace." Patrick Laurence, *A Boat with Too Many Holes*, *J'burg Star*, June 15, 1991, at 15. In light of inadequate government policies, some African groups have begun a campaign to take over white schools closed for lack of enrollment. The government has responded by forcing them out and often selling the schools to private

Despite the picture presented by such overcrowding, the dropout rate is extremely high. It has been reported that of every one hundred African pupils who enroll in first grade, only sixteen make it to tenth grade.²³⁶ For example, currently, only nine thousand out of seventy thousand children of school-going age in Alexandria, an African township near Johannesburg, attend school.²³⁷

Without decent education, African women remain confined to unskilled manual work, and domestic work provides the most accessible market. They therefore hope to provide their children with a better education than their own, and many save money for the best schools possible. The belief, "This is the last generation of domestic workers," is voiced often and proudly.

Creating Change for Themselves

The History

"We were not afraid [during the pass law protest march on the Union Buildings in Pretoria], I don't know why we weren't. People die sometimes that way you know, not caring whether they die or not. . . . [W]e came home singing *Nkosi Sikelela* and *Morena Buluke* and standing for a few minutes in silence. It felt great, really!"²³⁸

—Thokozile Virginia Mngoma

"[The 1958 Alexandria protest had been scheduled to start at eight o'clock.] [A]t about half past eight the women didn't come, they simply poured in from all corners of the square. They were running, pulling their jerseys behind them, many carrying babies. . . . You know, I've never seen such a thing! Within a few minutes the whole square was full!"²³⁹

—Thokozile Virginia Mngoma

educators rather than turning them over to the African students. See, e.g., Phil Molefe, *FW Told to Act on Black Schools Now*, *J'burg Star*, June 21, 1991, at 6; Phil Molefe, *Govt Threat over Plan to Occupy School*, *J'burg Star*, June 26, 1991, at 9; Phil Molefe, *Lots of Space but Blacks Turned Away*, *J'burg Star*, June 3, 1991, at 2; Phil Molefe, *Occupation of School Stopped*, *J'burg Star*, June 26, 1991, at 1.

²³⁶ Laurence, *supra* note 235, at 15.

²³⁷ Molefe, *Squalor*, *supra* note 232, at 3.

²³⁸ Thokozile Virginia Mngoma, quoted in Gordon, *supra* note 53, at 100.

²³⁹ *Id.* at 101. In the end, the organizers of the Alexandria protests decided to carry the passes that restricted their movement outside of their designated "homelands." *Id.* at 103. Ms. Mngoma recounts: "I was strongly against it. It made me

"I didn't realise it at first, it was only afterwards, as I grew up, that I realised that kitchen work was no good for a person like myself. I could see the political implications. I already knew that we were being exploited by the whites in the kitchens. When I thought of the work I did, and getting *nothing* for it, it broke my heart. It really made me angry."²⁴⁰

—Thokozile Virginia Mngoma

"[The South African Domestic Workers Association (SADWA), which later became SADWU, broke from the Domestic Workers Education Project (DWEPE) and other training groups run by white women because, the white women] were trying to protect those ladies there. Maybe those ladies don't want to be protected. They don't ask the ladies, 'Do you want to be protected?' Martha Fordyce told me, 'You know, Margaret, we've got to protect them from politics.' She didn't ask those people if they wanted to be protected. I mean, you've got to let go sometimes. They don't want to let go. So it's a one-sided thing and I *hate* it. I'd rather starve than have somebody telling me what to do with my life. Some of these white women don't like SADWA because that is the thing that will bring light to black women's eyes."²⁴¹

—Margaret Nombgcibelo Nhlapo

"When I was given this telephone [at the newly independent SADWA office] I was so thrilled. This, to me, was a step ahead. I started communicating with the other SADWA members and SADWA in Durban and Cape Town. After a month Norah Kau came and joined me. We bought that small table. We started addressing envelopes, arranging a meeting."²⁴²

—Margaret Nombgcibelo Nhlapo

feel sick, really it was very bad, but I simply had to. It's a pity. We should start all over again. We could do it again." *Id.*

For a history of African women's resistance to carrying passes, see Cheryl L. Poinsette, *Black Women Under Apartheid: An Introduction*, 8 *Harv. Women's L.J.* 93, 111-14 (1985).

²⁴⁰ Thokozile Virginia Mngoma, quoted in Gordon, *supra* note 53, at 98.

²⁴¹ Margaret Nombgcibelo Nhlapo, quoted in *id.* at 228.

²⁴² *Id.* at 229.

"I just see SADWA's future being work and work for domestics and all the domestic workers joining SADWA and we all working together."²⁴³

—Margaret Nombgcibelo Nhlapo

"Why do you want to build SADWA if it is not yourselves? Because me, being Caroline, I'm not SADWA. SADWA should mean *all* domestics working together to change their lives."²⁴⁴

—Caroline Ramokone Sotloe

"SADWA must have its own office, run by domestic workers. If we have someone who never been domestic workers before, it's those who's going to give us headaches."²⁴⁵

—Violet Gatote Motlhasedi

"We must teach the people how strong you can be when you are a domestic worker. Not to let the employers just push you."²⁴⁶

—Violet Gatote Motlhasedi

"I'll be sad to leave domestic work because of SADWA. I can really die about SADWA."²⁴⁷

—Elizabeth Nomkhitha Siphika

A Union of Domestic Workers

"You have strength. You can clean and cook. She [your employer] can't."²⁴⁸

—Eunice Tholakele Dhladhla

²⁴³ Id. at 230.

²⁴⁴ Caroline Ramokone Sotloe, quoted in id. at 203.

²⁴⁵ Violet Gatote Motlhasedi, quoted in id. at 262.

²⁴⁶ Id.

²⁴⁷ Elizabeth Nomkhitha Siphika, quoted in id. at 252.

²⁴⁸ Eunice Tholakele Dhladhla, Address at SADWU training session in Johannesburg (July 18, 1991).

"No one must call you a girl. You're not a girl anymore. Comrades, let's fight for that."²⁴⁹

—Eunice Tholakele Dhladhla

"If she says, 'Eunice,' say, 'Yes, Irene.' If she says, 'Mrs. Dhladhla,' say, 'Yes, Mrs. Smith.'"²⁵⁰

—Eunice Tholakele Dhladhla

SADWU Demands

SKILLED FULL TIME WORKER

R450.00 [about \$167] per month for an 8 hour day for 5 days per week, plus full meals and protective clothing to be provided.

. . . .

MATERNITY LEAVE

Maternity benefits should be given to all domestic workers 8 weeks prior to giving birth and 6 weeks after giving birth. Days off to attend anti-Natal Clinics, wages not to be deducted.

ANNUAL LEAVE

The worker shall be entitled to 21 working days paid leave after completing 12 months of service. . . . Leave pay shall be paid before the worker goes on leave. Workers are entitled to all Public Holidays.

WE DEMAND A LEGISLATION THAT COVERS:

1. WAGE DETERMINATION ACT
2. WORKMANS COMPENSATION ACT
3. U.I.F. [unemployment insurance] ACT

MEDICAL AID

Sick leave[:] The worker shall be entitled to 14 days of paid sick leave in any year

²⁴⁹ Id.

²⁵⁰ Id.

BENEFITS

The employer shall provide the following[:]

Accommodation

Meals

Transport allowance (bus or trainfares)

Pension

Medical Aid

Annual bonus—one month

Assistance with housing education

....

PENSION

Pension to be provided for the worker by the employer.

CONTRACT

It is very important to have a written and signed agreement of employment after negotiations

THE RIGHTS OF THE WORKER

ALL WORKERS SHOULD BE PROTECTED BY THE LABOUR RELATIONS ACT. IT IS NOT A PRIVILEGE BUT A RIGHT.²⁵¹

"We'd like to see domestic workers recognized by the Manpower [Commission] and we'd like to see domestic workers earn the living wage"²⁵²

—Eunice Tholakele Dhladhla

The Options

Unionizing is difficult for domestic workers because of the number of employers and the low ratio of employees to employers. Furthermore, so

²⁵¹ SADWU, Demands for Legislation 1–2 (1989). See also Resolutions Adopted at the General Conference (Nov. 1986), reprinted in Cock, *supra* note 7, at 177–80. The Resolutions include demands on working conditions, discrimination, living conditions, and education, as well as affiliation with the Congress of South African Trade Unions and a role in anti-apartheid activity. *Id.*

²⁵² Interview with Eunice Tholakele Dhladhla, SADWU, in Johannesburg (June 24, 1991).

many women are looking for domestic work that most are afraid to demand higher wages and better working conditions for fear that it will cost them their jobs. Eunice Dhladhla of SADWU explained to me, "Domestic workers don't want to join unions because they are afraid once employers find out they are a member they will be dismissed."²⁵³ Moreover, "Because members work in isolation and there are few available venues for meetings, it is difficult for them to organize. . . . [E]ven in the unlikely event of domestic workers gaining legislative recognition and protection, the nature of their employment would make monitoring by a union extremely difficult."²⁵⁴

Despite these concerns, membership in SADWU is growing. Although the 14,963 members of the Johannesburg branch account for only about one quarter of the domestic workers in the area,²⁵⁵ their membership continues to rise. The meeting I attended, which included one woman's story of her successful demand for significantly higher wages, filled the room with hope. SADWU is run by domestic workers, and within its walls they can raise their voices and be heard. In the very assertion and reassurance of such power, they are improving their conditions.

A Note on Other Voices

Of course, not only domestic workers are coming together to change their conditions. To avoid presenting such an unbalanced picture, this section presents a brief overview of the louder voices African women are gaining in the changing political front. The major women's organization in South Africa is the African National Congress Women's League (ANCWL).²⁵⁶ "The League now bears the hopes of women who have struggled for many years, in the face of enormous state repression and at the cost of managing the triple shift—family, work and political activity—to organise women against patriarchy and apartheid."²⁵⁷ The ANCWL's agenda, which focuses on increasing political representation for women²⁵⁸

²⁵³ Id.

²⁵⁴ Gordon, *supra* note 53, at xxvi.

²⁵⁵ Interview with Eunice Tholakele Dhladhla, SADWU, in Johannesburg (June 24, 1991).

²⁵⁶ Shireen Hassim, *From Handmaiden to Comrade: The ANCWL and the Question of Political Power 1* (1990) (unpublished manuscript, on file with CALS).

²⁵⁷ Id.

²⁵⁸ See, e.g., the ANCWL's demand that there be a 30% quota of women on the ANC's National Executive Committee and the eventual compromise. Mark Gevisser & Phillip Van Niekirk, *Compromise over Quota of Women*, *Weekly Mail*, July 12–18, 1991, at 1; Mark Gevisser, *The ANC and the Mediocracy*, *Weekly Mail*, July 12–18, 1991, at 14.

and on constitutional guarantees of equal rights for women,²⁵⁹ is very different from that expressed by domestic workers in these studies or the women with whom I have talked. Most domestic workers would find it difficult to make time for the ANCWL meetings or to pay dues.

Yet despite their differing agendas, these women may benefit from each other, especially if communication between them is improved. Shireen Hassim asserts that:

[t]here is . . . a two-fold task which confronts us. The first task is how to ensure greater representation of women on decision-making bodies in the crucial short-term, when many policies and legislation are being formulated. The second task relates to the longer-term: how to create a base from which women can ensure that their demands are met by the state²⁶⁰

This reminds one that the legal constraints on domestic workers' marital power and reproductive freedom, which they cannot change themselves until they achieve greater political power, are not being ignored.

The solidarity among domestic workers coupled with cooperation with those women who share common circumstances illustrates a hopeful possibility for working together as women without allowing individual experiences to be appropriated by a vocal majority. While the circumstances of women other than domestic workers are as different as their voices, they do share with domestic workers some common experiences across which connections may be forged so that domestic workers may retain control over their own agenda but will not remain fragmented from the other African women of their country.

CONCLUSION

Only when we confront the realities of sex, race, and class, the ways they divide us, make us different, stand us in opposition—and work to reconcile and resolve these issues—will we be able to participate in the making of feminist revolution, in the transformation of the world.²⁶¹

²⁵⁹ See, e.g., Brigitte Mabandla, *Protecting Women's Rights and Promoting Gender Equality in a Democratic Non-Racial, Non-Sexist South Africa* (1990) (paper presented at Lawyers for Human Rights International Conference, on file with author).

²⁶⁰ Hassim, *supra* note 256, at 2.

²⁶¹ hooks, *supra* note 18, at 191.

Admittedly, the methodology of this paper is at times awkward, the academic debate on feminist theory bumping up against the straightforward voices of domestic workers. Furthermore, while the written debate is rich and full of sources, first-person stories are more difficult to come by, and in their very scarcity one fears that they are no more representative of the lived experiences of a group of women than are the intellectual arguments among academics.

If nothing else, the difficulties in my research reveal the obvious truth that legal research is not geared toward this kind of analysis. With little focus on, indeed, an aversion to, examining life experiences and allowing people to speak for themselves, legal methodology has yielded too few documented oral histories and too limited means of obtaining the stories. The chasm between the academicians and the domestic workers themselves seems to me to indicate just how little input the domestic workers have had into the debates, research, and analysis about themselves. The scarce resources available validate this suspicion.

The sources, however, do help to provide the necessary initial step toward communication. Anyone who has been the subject of open and unwarranted hatred and distrust can begin to understand the daily hurt of a domestic worker. The reader who has tried to decide whether to report a case of sexual harassment feels the fear and humiliation of such a position. Any parent who has had to endure a separation from a child, any lover who has been forced to live apart from a loved one, experiences again through the women's voices a measure of the anguish of their solitary lives. I encourage the reader to return again to the voices presented, as I remember the voices and faces of the clients who came to see me, and to try to forge connections, to challenge her belief that she understands what they are saying, and to move toward a greater understanding. Even after the process of researching and writing this piece, I find that each time I return to the stories I am brought yet closer to the women who tell them.

Through such an establishment of communication across differences between women, the solidarity crucial to successful feminist change becomes possible. In the very articulation, confrontation, and celebration of difference, a bond is established. And in the sharing of similar experiences among different women, a web of relationship is woven which allows women to speak to each other and to society with a multiplicity of voices sharing a common understanding.