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Dancehalls, Masquerades, Body Protest and the Law: The Female Body as a Redemptive Tool Against Trinidad and Tobago's Gender-Biased Laws¹

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Abstract

The female body has long been the subject of awe, shame and controversy. 'Sexual profiling' in all cultures, cast assumptions about women who use their bodies to express themselves. Social stereotypes regarding 'morality' are generally used to evaluate women's behaviours and justify sexual profiling. An analysis of the effects of sexual profiling on female bodily expression reveals that laws and social constructs conspire to restrict women's autonomy and freedom of expression, and has even impacted on feminist jurisprudence's view of female bodily expression. This impact is evidenced by the fact that, thus far, feminist jurisprudence has neglected to embrace the female body as a tool for redemption and liberation. Such an omission, however, has not derailed female bodily expression. In all cultures, there are women who use their bodies to fight patriarchy and resist gender-biased laws and assumptions. Comparing and contrasting U.S. based concerns with those of Trinidad and Tobago, this article argues that feminist jurisprudence must identify women's bodies as tools for redemption against sexual profiling, sexism and patriarchy.

Introduction

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Male domination of the female body is the basic material reality of women's lives; and all struggle for dignity and self-determination is rooted in the struggle for actual control of one's own body ...² (Dworkin, 1979)

The very word *erotic* comes from the Greek word *eros*, the personification of love in all its aspects — born of Chaos, and personifying creative power and harmony. When I speak of the erotic, then, I speak of it as an assertion of the life force of women; of that creativity energy empowered, the knowledge and use of which we are now reclaiming in our language, our history, our dancing, our loving, our work, our lives.³ (Lorde, 1984)

Aristophanes' play, *Lysistrata*, tells of a group of women who withhold sex from their husbands until the men make peace with the Spartans.⁴ This simple story creates a powerful image of these women's awareness of their bodies' inherent power. This awareness, arguably, pushes them to present the body as a tool capable of triggering change. While this may, at first glance, seem a story of manipulation, it is actually a celebration of the power and redemptive qualities of women's bodies.

Examples of Trinidadian women's use of their bodies to fight patriarchy are referred to in this article as 'body protest'. The term is used here to describe women's use of the female body as a mode of expression and as a tool for liberation and transformation. If we 'read' these women's bodies, we witness an 'organic feminism' that should allow us to recognize internalized sexism and limitations in arguing for women's liberation.

This article attempts to further the feminist discourse by demonstrating how embracing the female body as a redemptive tool can lead to a more liberated, inclusive and effective feminist movement. This article consists of six parts. The first part explores the concept of body protest. The second part provides a history of the traditional stereotypes attached to women's bodies and discusses the effects of body politics on women. The third part consists of an assessment of feminist theory's treatment of the female body. The fourth part deals with Trinidadian women's use of their bodies to reverse gender constructs and explores how body politics in Trinidad and Tobago might inform potential legal reforms. Finally, the fifth and sixth parts discuss the lack of protection provided by Trinidad and Tobago's jurisprudence to women and incorporate a proposal for women-centric legal reforms in Trinidadian law.

Body protest defined

Body protest consists of women's use of their bodies to challenge gender restrictions and to activate women-centric legal reforms.⁵ It also encompasses the therapeutic goals of

² Andrea Dworkin, *Pornography: Men Possessing Women* (Boston: E. P. Dutton 1979, 1989), 203.

³ Audre Lorde, "Uses of the Erotic" *Sister Outsider: Essays and Speeches* (Berkeley: Crossing Press, 1984), 53, 55.

⁴ Aristophanes, *Lysistrata*. Douglass Parker trans., (New York: Signet Classic, 1970) centres on a group of women in Athens led by Lysistrata who, outraged at having lost their sons to war, agree to deny their husbands sexual intercourse until they make peace with the Spartans.

⁵ Body protest might also fall under critical legal studies' notion of flipping or "[a]ppropriating the central

asserting dominance over one's body and of facilitating one's expression of womanhood in revolt against a patriarchal society. Instances of body protest include, but are not limited to, women's use of their bodies through dance, dressing and the performance arts. For example, certain women choose to dance suggestively, dress contrary to societal standards of propriety, perform sexually explicit artistic roles, bring attention to specific body parts, and adopt sexually explicit personae in order to highlight the societal restraints imposed on them.

The non-legitimization of body protest by feminist jurisprudence is directly related to stereotypes associated with the employ of the female body. These stereotypes hinder potentially beneficial uses of the female body by designating many of its liberating functions as immoral. The societal attitudes engendered by these stereotypes also explain the legal system's reluctance to protect body protests. This lack of protection, consequently, leaves women who choose this valuable form of resistance both unprotected and vulnerable. An exploration of body protest reveals the existing diversity inherent in women's experiences and struggles. This diversity benefits rather than harms feminist jurisprudence. Including these organic feminists' remedies will result in a more inclusive feminist jurisprudence and thus a stronger task force against patriarchy.

Recognizing body protest as a feminist endeavour is not without its challenges. It requires accepting the possibility that women's experiences and struggles do not always fit into already established feminist categories. Still, analyzing the reasons that motivate body protest will also provide feminist jurisprudence with a clearer understanding of the tacit ways in which law oppresses women. Body protest is organic feminists' response to the widespread sexual profiling that they encounter daily in the social, political and familial spheres of their lives. Feminists must realize the entrenchment of sexual profiling in these spheres in order to effectively combat patriarchy. As suggested by Moira Gatens:

[F]eminists have offered little by way of a coherent theory of the body. In particular, there has been little critical work done on the *conceptual* dimension of the relations between women's bodies and the state: between the body of woman and the body politic. In the absence of such theory, it is culturally dominant conceptions of the body that, unconsciously, many feminists work with.⁶

It is time for feminist jurisprudence to understand how dominant conceptions continue to repress women both socially and politically, so it can combat gender-biased rules more effectively.

A history of the traditional classifications of the female body

idea of your opponent's argument-bite and claiming that it leads to just the opposite result from the one she proposes." Duncan Kennedy, *A Semiotics of Legal Argument*, 42 *Syracuse L. Rev.* 75, 87. 1991. This article, however, argues that organic feminists, as exemplified by certain Trinidadian women, go beyond flipping the patriarchal structure by actively questioning and combating it through the deliberate use of their bodies.

⁶ See Rose Weitz, "A History of Women's Bodies" in *The Politics of Women's Bodies*, Rose Weitz (ed.) 2d ed., (New York: Oxford University Press, 2003), for similar argument.

Sexual profiling is rooted in the gender stereotypes historically associated with women's bodies. The belief in the inferiority of women's bodies dates as far back as biblical writings.⁷ An analysis of Aristotle's writings,⁸ for example, reveals an interpretation of woman as a "misbegotten man" who, because of lack of heat, did not become fully human.⁹ Beliefs regarding women's physical and genetic inferiority were extrapolated to include their psychological and mental abilities. Biblical stories portrayed them as weak-willed sirens susceptible to sexual temptations. For example, according to Rose Weitz, Eve is blamed in *Genesis* for the fall of humankind in the eyes of the Creator and for the attachment of original sin to the human race.¹⁰ Women's lower standing in society was thus justified by their presumed lack of intelligence and ability to reason. While women generally had little legal protection, enslaved African women were even more vulnerable. They were considered property and therefore not treated as persons by the judiciary. Viewed as animals, these women were the physical and sexual subjects of their owners. Raping them was justified by labels such as "animalistic ally hypersexual" and thus "responsible for their own rapes".¹¹

Vestiges of these repressive views of women's bodies still remain not only in men's and women's psyches but also in societal norms and in legal concepts. For example, the United States, which purports to have achieved the greatest strides in the struggle for women's rights, still grapples with the idea of an autonomous female body. Debates over women's rights to abortions, as well as documented interference with black women's reproductive and parental rights, speak volumes about the attempts to subjugate the female body.¹² In her denouncement of governmental restrictions on black women's reproductive rights, Dorothy Roberts analyzes the roots of stereotypes associated with black female bodies, finding that many of them originate in slavery. According to Roberts, "the licentious Jezebel; the careless, incompetent mother; the domineering matriarch; and the lazy welfare mother [are images that] have reinforced and legitimated [black mothers'] devaluation."¹³ During slavery, black women were the victims of the most self-annihilating contradiction; the slave owners capitalized on black women's reproductive abilities while constantly defaming their bodies. That contradiction is poignantly exemplified by the method used to punish pregnant slaves. It was the custom for:

Slave owners [to] force women to lie face down in a depression in the ground while they were whipped, thus allowing the [slave owner] to protect the fetus while abusing the

⁷ Ibid.

⁸ Aristotle, *The Generation of Animals* 716A4-9. A. L. Peck ed. & trans., (Cambridge: Harvard University Press rev. ed. 1953), available at <http://duke.usask.ca/~niallm/233/Aristotl.htm> ("As we said one can easily identify the causes of birth as the male and the female, the male as the cause of change and development, the female as the supplier of the material.")

⁹ Weitz, *supra* note 6, at 3.

¹⁰ Ibid. at 4.

¹¹ Ibid. at 4-5.

¹² See generally, e.g., Dorothy Roberts, *Killing the Black Body: Race, Reproduction and the Meaning of Liberty* (New York: Random Publishing Group, 1997); Dorothy Roberts, *Shattered Bonds: The Color of Child Welfare* (London: Perseus Books Group, 2003).

¹³ Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies*, 104 Harv. L. Rev. 1419, 143. 1991.

mother. It serves as a powerful metaphor for the evils of a fetal protection policy that denies the humanity of the mother... It is also a forceful symbol of the convergent oppressions inflicted on slave women: they were subjugated at once both as blacks and as females.¹⁴

In view of these negative classifications, it is not surprising that black women progressively migrated toward the opposite view, which presented them as more virtuous, chaste and genteel and did not leave them susceptible to physical and spiritual denigration. Although reactionary, this adoption of a more Victorian and European idea of virtue, at the very least, put the rest of the world on notice that such stereotypes of black women would not be tolerated. “Judged by the evolving nineteenth-century ideology of femininity, which emphasized women’s roles as nurturing mothers and gentle companions and housekeepers for their husbands, [b]lack women were practically anomalies.”¹⁵ Yet, today black women continue to be viewed as promiscuous beasts of burden, while contending with modern stereotypes derived from other legacies of slavery.

TV programmes such as *The Jerry Springer Show* and *The Maury Povich Show* capitalize on some black women’s economic despair and social challenges by depicting them as morally loose and unfit parents.¹⁶ At no time do these shows ever analyze the socio-economic elements affecting these women’s lives. Instead, they are caricatured and presented as objects for the public’s moral judgment. Regina Austin captures some of the pejorative characterizations of black women in *Sapphire Bound!*, where she states: “I grew up thinking that *Sapphire* was merely a character on *Amos ‘n’ Andy*,¹⁷ a figment of a white man’s racist, comic imagination. Little did I know that *Sapphire* was a more

¹⁴ *Ibid.* at 1438.

¹⁵ Angela Y. Davis, *Women, Race & Class* (New York: Vintage Books, 1981); Paula Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (New York: Harper Collins, 1984), reviewing the negative stereotypes held in relation to black women and the intersection of race and class in black women’s status in America; see also A. Leon Higginbotham, Jr., *In the Matter of Color* (New York: Oxford University Press, 1978), discussing society’s historical negative perception of black women.

¹⁶ These shows focus frequently on black women who don’t know the paternity of their children. Paternity tests are conducted on two, three or four contenders associated with each woman. While both shows periodically conduct paternity tests, *The Maury Povich Show* seems to conduct them more frequently. The audience waits anxiously to find out whether these allegedly promiscuous women will be able to determine the identity of their children’s fathers. The ultimate shame comes when, after the tests, none of the male contenders turns out to be the father. These narratives and other variations of them similarly questioning black women’s morals are repeated endlessly throughout the year, and these shows are not the only ones to denigrate black women. They only exemplify a common pattern in daytime television.

¹⁷ See *New Dictionary of American Slang*, Robert L. Chapman ed., (New York: Harper Row, 1986), defining “sapphire” both as an unattractive black woman and the name of a character on *Amos n’ Andy*, a radio comedy about two black men. *Bart Andrews & Ahrgus Julliard, Holy Mackerel! The Amos and Andy Story* (1986). It was first broadcast in 1951, with a cast of carefully chosen black actors. See *ibid.* at 45-49, 60-61. Various black civil rights organizations condemned the television version as “fostering racial stereotypes.” David Schutz, *The Original Amos ‘n’ Andy* Webpage: History, <http://www.geocities.com/Hollywood/2587> (last visited Jan. 11, 2006). As the fight against racial discrimination heated up, sponsors became increasingly wary of associating their products with black entertainers—this fear of association in conjunction with criticism of the show’s depiction of black Americans led the network to drop the show in 1953. Pam Deane, *The Museum of Broadcast Comm’ns, Amos ‘n’ Andy Show*, <http://www.museum.tv/archives/etv/A/htmlA/amosnandy/amosnandy.htm> (last visited Jan. 11, 2006).

generally employed appellation for the stereotypical black bitch — tough, domineering, emasculating, strident and shrill.”¹⁸ For black women, liberation from the weight of these negative characterizations is sometimes challenging. Some end up internalizing the stereotypes. Consequently, the use of the body as a liberating force and as a way to assert rights generally receives mixed reception from feminist scholars as well as grassroots organizers.

Critique of feminist theory’s treatment of the female body

Feminist theorists have explored the social construction of women’s bodies extensively.¹⁹ More particularly, feminist discourses on the body have denounced patriarchal oppression and invasion of women’s bodies and the perpetuation of the superior/inferior dichotomy.²⁰ However, there are conflicting views about the idea of the body as a tool for renegotiating gender roles. While most feminists would acknowledge the traditional use of sex to oppress and dominate women,²¹ very few give real credence to female bodily expression as a successful and useful conduit for negotiating gender classifications. For example, over the past decades, some feminists have questioned their traditional analysis of heterosexuality, prostitution²² and pornography by suggesting the possibility of agency in certain circumstances. These feminists argue that it is possible for women to voluntarily choose to participate in heterosexuality and pornography without being the victim of false consciousness and patriarchy. Critics of anti-prostitution movements have also stated that laws designed to eradicate prostitution are inadequately enforced and perpetuate the oppression of female sex workers. As a result, the legal rules enacted to protect these women have made them even more vulnerable to harassment by pimps, customers and police alike. Priscilla Alexander finds that the failure of the anti-prostitution movement stems from its conviction that it is illegitimate. She argues that:

¹⁸ Regina Austin, *Sapphire Bound!* (1989) Wis. L. Rev. 539, 540 (1989); see also bell hooks, *Ain’t I A Woman* (Boston: South End Press, 1981); see also Patricia Bell Scott, “Debunking Sapphire: Toward A Non-Racist and Non-Sexist Social Science” in *All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave*. Gloria T. Hull, Patricia Bell Scott & Barbara Smith (eds.) (New York, The Feminist Press, 1982).

¹⁹ See Weitz, supra note 6, at 9.

²⁰ Ibid. (discussing the social construction of the female body and promotion of women as inferior to men).

²¹ Catharine A. MacKinnon. *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) and *Feminism Unmodified* (Cambridge: Harvard University Press, 1987).

²² See generally Priscilla Alexander, “Prostitution: A Difficult Issue for Feminists” in *Sex Work*. Frederique Delacoste and Priscilla Alexander (eds.) (San Francisco: Cleis Press, 1987), reprinted in *Women and the Law* (Judith G. Greenberg, Dorothy E. Roberts & Martha L. Minow eds., 2d ed. (New York: Foundation Press, 1998), [hereinafter *Women and the Law*] discussing traditional feminists’ perceptions of sex workers as tools and prostitution as illegitimate; see also Priscilla Alexander, “Making a Living: Women Who Go Out” in *Women’s Experience With HIV/AIDS* (Lynell D. Long & E. Maxine Ankrah eds., 1996) discussing numerous aspects of prostitutes’ lives and issues in a global report that includes information about working conditions and health; Priscilla Alexander, *Prostitution Around the World* (Greenwood: Greenwood Press, 1993) unpublished database, on file with the San Francisco Public Library including information about laws, enforcement practices and issues regarding mandatory testing for a wide range of countries around the globe, survey forms and related materials; Priscilla Alexander, “Sex Workers Fight Against AIDS: An International Perspective” in *Women Resisting AIDS: Feminist Strategies of Empowerment*. Beth E. Schneider & Nancy E. Stroller eds. (Feminist Studies, 1995) discussing how AIDS discourse is changing as a result of the active involvement in the struggle to prevent infection.

If law enforcement is designed to reduce the amount of prostitution, it has failed miserably... Forced prostitution cannot be addressed until voluntary prostitution is legitimate. Feminists' attempts to simply stop it, and to 'rescue' the women who have been so badly abused, are doomed to fail until the laws that punish prostitutes are abolished and businesses that employ them are regulated...²³

Priscilla Alexander's statement illustrates the tension among feminists regarding prostitution and pornography. Disagreements with anti-prostitution and anti-pornography movements generally address the inadequacy of the laws regulating the industries rather than advocating the redemptive potential of body use by women.²⁴ Gail Pheterson exposes the underlying reason for this when describing the interactions and non-interactions between feminists and sex workers:²⁵ "Sex workers were rarely visible at feminists meetings. Given the dominance of abolitionist feminism during the late 1970s and early 80s, those feminists with either histories or present jobs in prostitution were careful to conceal their 'politically incorrect' occupation."²⁶ Fear of judgment from fellow feminists caused these past or present sex workers to hide their occupation and to work separately. Anti-prostitution activists' failure to address the complex nature of prostitution and to centre the debate on the protected nature of prostitutes' use of their bodies created a schism in the feminist movement, and excluded potential sympathizers, thereby weakening the fight for women's rights.²⁷

Pheterson describes a number of conflicts, such as Kathleen Barry's refusal to participate in a televised roundtable on sexual slavery with a prostitute or ex-prostitute.²⁸ However, the fact that some feminists and sex workers have finally teamed up to demand human rights protection for prostitutes and have even published a statement on the issue²⁹ offers hope that there can and will be future alliances among women of varied social, economic, educational and philosophical backgrounds. The inclusion of personal and authentic narratives from specific women should humanize the continuing struggle for equality.

²³ Alexander, *Prostitution: A Difficult Issue for Feminists* (San Francisco: Cleis Press, 1987) *supra* note 22, at 968.

²⁴ See Patricia Hill Collins, *Black Feminist Thought*. (New York, Allen & Unwin, 1991), *reprinted in Women and the Law, supra* note 22, at 1025, 1025-36; Andrea Dworkin, *Against the Male Flood: Censorship, Pornography and Equality*, (Harv. Women's L.J. 1, 1-29, 1985); Carlin Myer, *Sex, Sin, and Women's Liberation: Against Porn-Suppression* (Tex.L.Rev. 1097, 1097-1201, 1994); Mariana Valverde, *Sex, Power and Pleasure* 121, 121-45 (1987), *reprinted in Women and the Law, supra* note 22, at 1059, 1059-65.

²⁵ The term refers to people who offer sexual services.

²⁶ Gail Pheterson. "Not Repeating History" in *A Vindication of the Rights of Whores* (Seattle: Seal Press, 1989).

²⁷ See *ibid.*. "[C]oncurrent and separate from feminist debates on prostitution and pornography was a growing movement of political prostitutes, especially in North America and Western Europe... as naïve or self-righteous agents of control and condemnation. Prostitutes were viewed by the same feminists as either victims of abuse or collaborators with male domination."

²⁸ *Ibid.* at 99, reporting that Barry justified her refusal with the claim that the "conference was feminist and did not support the institution of prostitution."

²⁹ International Committee for Prostitute's Rights, *Statement on Prostitution and Human Rights* (1986), *reprinted in Women and the Law, supra* note 22, at 998.

Feminist legal theory should focus not only on women's suffering and pain but also on their stories of resistance and triumph. The deliberate inclusion of narratives of resistance through the use of their bodies (as is often illustrated by body protest) in feminist legal theory will require suspension of moral judgement, restraint from quick accusations of "false consciousness" and an understanding of the diversity of women's cultures and realities. Robin West explains false consciousness:

As feminists know all too well, it is not just the legal culture which trivializes women's suffering, women do so also... an injury uniquely sustained by a disempowered group will lack a name, a history and in general a linguistic reality. Consequently, the victim as well as the perpetrator will transform the pain into something else, such as, for example, punishment, or flattery or transcendence, or unconscious pleasure. A victim's response to an injury which is perceived by the victim as deservedly punitive, consensual, natural, subconsciously desired, legally inevitable, or trivial will be different from a response to an injury which is perceived as simply *painful*.³⁰

Labelling female bodily expression as a product of false consciousness confuses the real issues and attempts to make women's actions fit into neatly established feminist categories. A re-evaluation of these categories does not, in any way, negate the existence of oppressive structures for women, nor does it dilute the argument that legal and mainstream structures continue to create systems that subjugate women and their bodies. Reassessing feminists' treatment of the female body will challenge the traditional analysis and categorization of women as passive victims. This portrayal already permeates feminist jurisprudence. For example, West states that, "[a]lmost all women, including those who have never experienced unwanted sex or battery, have experienced the fear of rape... One way that (some) women respond to the pervasive, silent, unspoken, invisible fear of rape in their lives is by giving their sexual selves to a consensual, protective and monogamous relationship."³¹ On the other hand, some women conquer their fears by making affirmative uses of their bodies in protest against societal restrictions. However, the lack of legal protection afforded such women renders these kinds of protests very risky.

False consciousness has been used to describe women who practise body protest in revolt against traditional gender classifications. These women are usually portrayed as superficial or 'floozy'. From American pop culture icons like Lil' Kim³² and Madonna³³ to everyday mothers and sisters, these women might be dismissed as representing the antithesis of feminism. Across cultures, a woman's worthiness and social acceptance is usually closely related to the way she chooses to express herself physically, for example, the way she dresses and her bodily expressions. Similar to racial profiling, judging a woman based on her clothes and bodily expressions, i.e. sexual profiling, marginalizes

³⁰ Robin West, "The Difference in Women's Hedonic Lives", *Wis. Women's L.J.* (1987), available at <http://www.heinonline.org/HOL/Page?handle=hein.journals/wiswo3&size=4&rot=0&collection=journals&id=87>.

³¹ *Ibid.* at 103-04.

³² Kimberley Jones is a rapper who became known in the mid-1990s for her provocative lyrics and sexually suggestive clothing. At the 1999 MTV Music Awards, she appeared in a lavender suit with one bare breast covered only by a matching pasty.

³³ Pop culture icon who is known for her controversial lyrics, provocative costumes and daring behavior.

the profiled woman. , sexual profiling and its consequences in all spheres of life, including the enactment of laws, continue to be less contested than racial profiling. Denouncing the negative stereotypes³⁴ associated with women who choose to wear suggestive clothing is just as crucial as denouncing those associated with teenagers wearing baggy clothes. In both instances, harassment of the two groups is condoned because of the judgment associated with their clothing or physical appearance. There is a sense that certain women and urban black men, by virtue of their clothes and physical expressions, should be treated with suspicion. They deserve to be harassed³⁵ and, therefore, are less worthy of legal protection. This rationale is demonstrated *ad nauseum* in rape³⁶ and sexual harassment cases³⁷ where the clothing of the victim is often an issue. The logic seems to be that certain types of self-expressions, for example, sexual self-expression, are completely forbidden to women and if a woman chooses to disobey the norms, she cannot prevent access to her own body by anyone. As stated by Susan Estrich, rape trials often adjudicate “the appropriateness of the woman’s behaviour according to male standards of appropriate female behaviour”³⁸ rather than according to the actual issues presented at trial.

Mike Tyson and Kobe Bryant are two such cases. In *Mike Tyson v. Indiana*, the court focused considerably on the victim’s style of dress.³⁹ In Bryant’s case, the alleged victim’s sexual history played a prominent role in the court documents’ description of the facts and in media coverage.⁴⁰ In a third case, *Commonwealth v. Killen*, the Pennsylvania Supreme Court ruled that statements by the complainant that could be interpreted as sexually provocative “were not subject to the Rape Shield Law and were admissible in order to assist the jury in assessing the complainant’s credibility...”⁴¹ This narrow interpretation of the Rape Shield Law begs the following question: What factors should be used to determine the relevance of an alleged victim’s sexual conduct during and after the alleged incident? One commentator has said that in *Killen* “evidence existed tending to prove that the complainant was the aggressor and that following the alleged attack, she

³⁴ See generally bell hooks. *Yearning: Race, Gender and Cultural Politics*. (Boston: South End Press, 1990).

³⁵ See, e.g., Elvira R. Arriola, “What’s the Big Deal?” *Women in the New York Construction Industry and Sexual Harassment Law, 1970-1985*, 22, *Collum. Hum. Rts. L.Rev.* (1990): 21, 22-57.

³⁶ See, e.g., Sakthi Murphy, Comment, *Rejecting Unreasonable Sexual Expectations: Limits on Using a Rape Victim’s Sexual History to Show the Defendant’s Mistaken Belief in Consent*, 79 *Cal. L.Rev.* (1991): 541, 545 stating that rape, historically, has been treated differently from other crimes); see also Susan Estrich, *Rape*, Yale L.J. (1986) 1087 stating that sexism is inherently present and ingrained in Rape Law.

³⁷ See generally Berta Esperanza Hernández-Truyol, *Sex, Culture and Rights: A Re-Conceptualization of Violence for the Twenty-First Century*, 60 *Alb. L. Rev.* (1997): 607; see also Jenny Rivera, *Domestic Violence Against Latinas by Latino Males: An Analysis of Race, National Origin and Gender Differentials*, 14 *B.C. Third World L.J.* (1994): 231

³⁸ Estrich, *supra* note 36, at 1094.

³⁹ *Tyson v. Indiana*, 619 N.E.2d 276, 282, 286 (Ind. Ct. App. 1993) “Woman who exited from the backseat of the limousine was approximately 5’6” to 5’7” in height and was wearing a black mini skirt and a top which had a collar . . . [she was] an African-American woman with shoulder-length curly hair. . . [or] with tinted hair”).

⁴⁰ See Blaine Harden, “Bryant Case is Called a Set-Back,” *Washington Post*, Sept. 3, 2004, at A08; see also *Re Probable Cause Determination, Bryant v. Colorado*, 03 CR 204 (Eagle County Ct. 2003), available at <http://news.findlaw.com/hdocs/docs/bryant/cobryant102003ord.pdf>.

⁴¹ *Commonwealth v. Killen*, 680 A.2d 851, 854 (Pa. 1996).

acted unlike an individual who had been raped.”⁴² What exactly is appropriate behaviour for a rape victim? If she becomes numb and does not fight off her aggressor, is she less worthy of protection? What if she initiates sex in the beginning and subsequently changes her mind: is she then prevented from saying no?⁴³ On the other hand, if she engages in sexual contact after the alleged rape, does her rape claim become less valid? If the purpose of the Rape Shield Law is “to prevent a rape case from turning into an attack of the victim’s sexual conduct and reputation”, how can that goal be accomplished when courts are now willing to admit what the law was designed to exclude?

The *Killen* ruling ratifies the perception that a woman who chooses to have sex with more than one man would not have refused to have sex on the alleged occasion. While *Killen* certainly does not state that evidence of prior or subsequent sexual conduct can be introduced if it has no probative value,⁴⁴ it does open the door to manipulation of evidence disguised under the rubric of relevancy. In other words, it opens the door to sexual profiling: using evidence of sexual behaviour unrelated to a specifically alleged crime to serve as a proxy for determining an alleged victim’s credibility (and in essence her moral character). It is as if a woman’s unrelated sexual decisions are interpreted as giving a *carte blanche* to men, i.e. a free pass to her body. This is a continuation of the mainstream view that the law should only protect women who follow the model of chastity dictated by society.

The discourse of the victim’s prior sexual experiences in the Bryant case resulted in the dismantling of her character and a complete negation of her honesty.⁴⁵ Elizabeth Iglesias confirms that “feminists have long recognized that the dominant images of women represent us as mother, virgin, or whore. Indeed, many feminists have linked violence against women to the ways in which these images circulate in cultural narratives and the psychic structures of individual men and women.”⁴⁶ Less attention has been paid to women’s symbolic expressions of resistance and liberation through their bodies which are generally unpopular, and run the risk of being seen as perpetuations of patriarchy. They can, however, be used as tools to combat sexism and the disenfranchisement of women. Welcoming these modes of resistance as legitimate feminist weapons will fortify

⁴² Brian J. Golias, Note, *Evidence – the Pennsylvania Rape Shield Law – Admissibility of Evidence Concerning Sexual Conduct Offered for Purposes of Impeachment*, (Duq. L. Rev. 1997): 953, 971.

⁴³ See Murphy, *supra* note 36, at 548. “According to the traditional analysis, whether ‘no’ means ‘no’ depends on what kind of woman the victim is. A woman’s sexual lifestyle has always been one of the prime criteria for deciding whether her ‘no’ indeed means ‘yes’. Thus, a ‘no’ from a ‘good girl’ might be respected, while a ‘no’ from a ‘bad girl’ might not. The dichotomy captures both the idea that sexually experienced women do not tell the truth and the idea that a woman who consents to sex once has a propensity to consent again and again.”

⁴⁴ See Golias, *supra* note 42, at 971. “One should not interpret *Killen* to mean that evidence of an alleged rape victim’s sexual conduct occurring during or after the alleged rape is admissible at trial even if such evidence has no probative value.”

⁴⁵ Elizabeth M. Iglesias, *Rape, Race and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 Vand. L. Rev. (1996):868, 886, 902 discussing how the language around rape and implications behind the terms used have strategic implications and social meaning.

⁴⁶ *Ibid.* at 902.

the feminist movement and help overcome the misgivings and stereotypes that women themselves often carry about “proper uses” of the female body.

Body protest is similar to the “outlaw culture” enunciated by Monica J. Evans in her analysis of the systematic way in which black women have used their positions at the margins to subvert discriminatory and oppressive norms.⁴⁷ Evans describes outlaw culture as “the process by which African-Americans shift within and away from identities in response to mainstream legal systems and dominant culture” and “through which black women, develop and formalize strategies for coping with the terrifying exclusion of blacks from the protection of mainstream law.”⁴⁸ Evans focuses on the way black women have traditionally defied mainstream culture and created their own cultures, outside of the purview of the law, in order to obtain reprieve and remedies that the law could not provide for them. Evans describes such ‘outlaw women’ as Harriet Tubman and Rosa Parks.⁴⁹ Tubman was an outlaw woman because she dared to “disrupt the existing legal norms of property” and to “explode the boundaries of a destructive culture.”⁵⁰ Similarly, Parks, and Claudette Colvin before her,⁵¹ became outlaw women when they refused to obey Jim Crow laws. These women used a reversal tactic that oppressed groups have often used throughout the world. They converted a behaviour regarded as illegal and subversive into an instrument of power, hence, eventually reversing the legal definition traditionally associated with their actions. Consequently, Tubman, who formerly would have been described as a contrabandist, and Parks, who would have been viewed as a troublemaker, became two of the most celebrated women in American history. It is of great importance that some women who stood outside of the law were able to trigger legal change and reform. Using non-legal methods they brought people and behaviours traditionally located at the margins of the law within its purview, thereby making them legal. This methodology is still used by women today in their struggle for empowerment.

The mainstream and feminist theorists alike often misinterpret this struggle. bell hooks’ criticism of feminist activists who denigrate women’s choice of heterosexuality⁵² can be applied to some feminists’ blanket prejudice against the use of the body to negotiate rights. hooks purports that “feminist activists must take care that our legitimate critiques of heterosexism are not attacks on heterosexual *practice*. As feminists, we must confront those women who do in fact believe that women with heterosexual preferences are either

⁴⁷ Monica J. Evans, “*Stealing Away*”: *Black Women, Outlaw Culture and the Rhetoric of Rights*,” in *Critical Race Theory: The Cutting Edge* (2000):500, 501-13. Richard Delgado & Jean Stefancic eds., 2d ed.

⁴⁸ *Ibid.* at 501.

⁴⁹ *ibid.*; see also Stephanie L. Phillips, *Claiming Our Foremothers: The Legend of Sally Hemmings and the Tasks of Black Feminist Theory*, 8 *Hastings Women’s L.J.* (1997) 401, 407-15 discussing historical black female figures that have defied mainstream definition of who they should be.

⁵⁰ Evans, *supra* note 47, at 502.

⁵¹ Claudette Colvin is reported as the first African-American woman to defy Jim Crow and refuse to give up her seat on a public bus. As a result of her refusal, the fifteen-year-old was handcuffed and jailed. Colvin subsequently became part of Rosa Parks’ youth group. Parks then became the leading figure in the organized bus boycotts during the civil rights movement. E.g., Amanda Dawkins, *Unsung Bus Boycott Hero Cite 50 Years Later*, *The Decatur Daily News*, Feb. 6, 2005, <http://www.decaturdaily.com/decaturdaily/news/050206/bus.shtml>.

⁵² bell hooks, “Feminist Theory: From Margin to Center” reprinted in *Women and the Law* (1984): 148-58, *supra* note 22, at 929, 932..

traitors or likely to be anti-lesbian.”⁵³ A similar admonishment should be issued regarding feminists’ view of female bodily expression. Underlying desires to appear proper and be accepted by the general mainstream have led some feminist activists to “de-gender”⁵⁴ the female body and to perpetuate stereotypes regarding female bodily expressions. Such a characterization is dangerous, not only because it continues a tradition of denigrating the female body but also because it creates a schism between feminist scholars and the women existing and fighting at the margins of the law. How can feminist theory truly address the inequalities suffered by women if feminists are disconnected from the realities faced by certain groups of women?

Women’s struggle for control and domination of their bodies permeates all aspects of their lives. It is a constant struggle to force the world to respect and accept their own definitions of themselves, their bodies and their beings. This battle has not been given appropriate attention or recognition because of feminist theory’s over-emphasis on ‘sameness/difference’ theories. While such theories illustrate the existing conflicts between the sexes, they do not, however, fully explore the complexities of various and endless struggles carried on by women at different levels of our social echelons. In contrast, Regina Austin’s work examines body resistance by black women.⁵⁵ In order to resist societal classifications of adequate femininity and heterosexual norms of attractiveness, certain groups of black women have deliberately adopted non-conformist garments and physical behaviour. Austin states that:

The impact of the attack on the femininity and sexuality of low-status black female workers is quite broad... black women of any class who choose to look and act like they survive without a man, experience a reproach that is not unrelated to the negative assessment of the beauty and sexuality of black women of low economic status. Racist heterosexism and fear of black lesbianism, within and without the black community, denigrate the sexuality and sensuality of black females who eschew the primping of the pampered and privileged and/or thrive as sexual beings within the orbit of a social order controlled by women. All of these modes of vilification seek to control more than black women’s sexual expression; in addressing how and for whose benefit we ought to work, they affect exploitation of our labour force.⁵⁶

The extent to which feminist theory has co-opted mainstream definitions of femininity and female expression is hard to determine. Still, the influence of the dominant discourse concerning adequate forms of femininity is widely reflected in feminist jurisprudence’s treatment of prostitution and pornography.⁵⁷ While arguments targeting the arbitrary

⁵³ Ibid. at 932.

⁵⁴ De-gendering here refers to the process of rendering the female body less female and controversial (both in actual practice and in rhetoric) in order to achieve more social gains.

⁵⁵ Regina Austin, “Black Women, Sisterhood and the Difference/Deviance Divide”, 26 *New Eng. L. Rev.* 877 (1992), reprinted in *Women and the Law*, *supra* note 22, at 973.

⁵⁶ Ibid. at 977.

⁵⁷ It should be noted that a few feminists have acknowledged the issue of agency in women’s use of their bodies in the context of pornography and prostitution. In addition, recently, two feminist authors presented an argument for prostitution as legitimate labour by the women who practise it. See Bertha Hernández-Truyol & Jane Lawson, “Prostitution, Work, and Human Rights”, address at the Thomas Jefferson School of Law Fifth Annual Women and the Law Conference (Feb. 18, 2005), available at <http://www.tjssl.edu/downloads/Her.pdf>. However, there is still a general lack of recognition by feminist

appropriation, domination and subjugation of the female body are necessary, there is little room in these analyses for the acceptance of women's choices, in addition to a reluctance to recognize a plurality of experiences. Feminists' constant representation of the female prostitute as a misguided woman, or as a victim, negates the possibility that a 'prostitute' or 'pornographer' could be a valuable contributor to the women's rights struggle. Rather, these women are portrayed as unwitting beings that better-knowing and more knowledgeable protectors, i.e., non-prostitute feminists, have to protect. This characterization creates a schism among women that prevents a consideration of their diverse needs. Focussing on the debate in the U.S., the arguments in this paper do not reflect the very progressive debates in Europe, particularly in the Netherlands, which have confronted the issues of female autonomy and the body since the 1980s. As stated by Shannon Bell:

Prostitutes' collective public demand for the legal right to be recognized as citizens just like all others is not a demand for equality in spite of difference but a demand for equality based on the distinct difference of being a prostitute. What lies just beneath the surface of the demand [is]... an affirmation of a 'negative' identity and a revaluation of values through the recognition of commercial sex as being just as valid and worthy as non-commercial sex.⁵⁸

It would be counterproductive to continue to impose preconceived notions of proper feminist conduct or to assume that certain modes of expression through the female body are inherently tainted and invalid. If the female body is dismissed as a non-legitimate tool in fighting patriarchy, is feminist theory then saying that the female body's only purpose is to perpetuate patriarchy?⁵⁹

Examples of women's liberative uses of their bodies in Trinidad and Tobago and the challenges they face

Women in Trinidad and Tobago have a long history of both overt and covert resistance.⁶⁰ The two-island republic, which is located off the northeastern coast of Venezuela, was under English colonization until the 1960s. Intermittent occupation by the Spanish, French, and Portuguese, as well as the British, influenced the language and customs of the people. Further influences of cultural formations come from the aboriginal Amerindians as well as the Chinese and Lebanese populations. Africans were brought to the islands as slaves; today, their descendants make up over a third of the population. Another forty percent consists of Indians who migrated to the island as indentured

jurisprudence of the body as an effective tool against patriarchy. Fewer feminists have advocated the use of the body as a type of symbolic speech that should be protected by legal systems, including certain instances of prostitution that involve women's agency and are not controlled by men or the police.

⁵⁸ Shannon Bell, *Reading, Writing and Rewriting the Prostitute Body* (Bloomington: Indiana University Press, 1994).

⁵⁹ Pheterson, *supra* note 26, at 17. "Women's liberation movements throughout the world have not been immune to social, legal and ideological distortions of the lives of prostitutes... most contemporary feminists are isolated from women in the sex industry. A common misconception among feminists is the belief that women are protected by efforts to abolish prostitution..."

⁶⁰ See generally Patricia Mohammed, *Gender Negotiations Among Indians in Trinidad from 1917-1947* (Basingstoke: ISS and Palgrave Press, 2002).

servants in the second part of the 19th century after the abolition of slavery in Trinidad.⁶¹ The balance comprises a growing proportion of a “mixed” group. This cultural diversity is instrumental when analyzing the ways in which Trinidadian women negotiate gender.

While the feminist movement in Trinidad and Tobago has made tremendous gains since the 1940s, these have been limited by the faulty implementation of laws geared towards the protection of women.⁶² These faulty implementations are not accidental but rather the result of mainstream resistance to the idea of governmental regulations in favour of women. Where dominant groups are forced to accede to the demands of subjugated entities, it is common for these groups to create a legal system where deficient rules masquerade as legal rules that promote the formal equality of those who are subjugated.⁶³ Paulette Pierce describes this subterfuge as a common response “by hegemonic classes to demands from marginalized groups, for greater inclusion in modern systems of control and resource distribution.”⁶⁴ Pierce labels this substitution as a “structural deflection” and “an adroit substitution of a formal equality for a true equality that would require fundamentally changing the way things are done, changing the goals of the organization, or both.”⁶⁵

The enactment of Trinidad’s Domestic Violence Act and its subsequent faulty application in the court system is a perfect example of Pierce’s aforementioned adroit substitution of formal equality for true equality. Despite mainstream objections that the act was an attempt to criminalize “husband and wife business”, it was passed.⁶⁶ Its enactment was hailed throughout the Caribbean as a symbol of women’s gains over Trinidad’s entrenched patriarchal system. It is reported that “thousands of women from all over the

⁶¹ The Government of Trinidad & Tobago Government Online – General Information, <http://www.visittrinidad.com/General/about/general.html> (last visited Feb. 26, 2006).

⁶² Rhoda Reddock reports that women’s organizations in Trinidad and Tobago flourished during the 1940s and 1950s due to better opportunities for women, as a result of the war and the establishment of universal suffrage in Trinidad in 1946. Education soon became the means for entrance into formerly exclusively male social arenas. As women gained more access to education, many organizations sprang up, such as the Housewives’ Association of Trinidad and Tobago, the National Commission on the Skills of Women, Trinidad’s Women for Progress, and the Centre for Gender and Development Studies at the University of West Indies in Trinidad and Jamaica. See also Patricia Mohammed, “Reflections on the Women’s Movement in Trinidad: Calypsos, Changes and Sexual Violence” in *Feminist Rev.* (1991); Selwyn Ryan, “Social Stratification in Trinidad and Tobago: Lloyd Braithwaite Revisited” in *Social and Occupational Stratification in Contemporary Trinidad and Tobago* (St. Augustine, Trinidad: Institute of Social and Economic Research, 1991).

⁶³ Formal equality here refers to the legal laws that purport to confer the same status on women as men, but do not necessarily provide them with substantive equality.

⁶⁴ Mindie Lazarus-Black, *The (Heterosexual) Regendering of a Modern State: Criminalizing and Implementing Domestic Violence Law in Trinidad* 28 *Law & Soc. Inquiry* (2003) 979, 985 available at <http://www.journals.uchicago.edu/LSI/journal/issues/v28n4/284001/284001.web.pdf> (quoting Paulette Pierce, “Boudoir Politics and the Birthing of a Nation: Sex, Marriage, and Structural Deflection in the National Black Independent Party” in *Women Out of Place: The Gender Agency and The Race of Nationality*. Brackette F. Williams ed., (New York: Routledge, 1996).

⁶⁵ *Ibid.*

⁶⁶ *Ibid.* at 994 (quoting *Trinidad Guardian*, Mar. 10, 1991).

country filed applications for protection as soon as the act became law”.⁶⁷ Unfortunately, passing the law did not take into consideration the cultural forms of domination present everywhere in Trinidad, including the courtrooms and the clerk offices. As a result, “the vast majority of applications for protection orders do not result in restraining orders”.⁶⁸ In addition, as stated by Mindie Lazarus-Black, “when lawmakers and activists passed the Domestic Violence Act, they imagined a regendered state attuned to the problem of violence against women. As many anthropologists and linguists have shown, however, implementing rights and protections requires attention to everyday ideologies and practices of the culture at the courthouse.”⁶⁹ Such is the task faced by a number of states enacting formal rules similar to Trinidad’s Domestic Violence Act. To achieve true equality, it is necessary for states to pay attention to the way in which formal equality masquerades as true equality, and also examine closely the ways in which women undertake feminist activism through everyday tasks and actions. Only by referring to specific women’s struggles and by understanding the forms they take and the issues they raise, can there be true equality for women.

Poor Trinidadian women illustrate the power of an organic feminism in the way they choose to display their bodies. Both Afro- and Indo-Trinidadian women, especially those belonging to the lower social echelon, have consistently resisted society’s gender classifications and patriarchal oppression. From slavery to modern times, these women have been able to manoeuvre around societal constraints, create their own sub-reality, and sub-culture as a coping mechanism and a way of asserting their independence and identity. Historically, they have used their bodies as liberating forces and as a means of obtaining political, societal and sexual power. They are from different cultural legacies but they come together in these settings and join each other in liberating expressions.

Afro-Caribbean women initially used masquerading, or ‘dressing up’, at Carnival to invent new social structures and/or reverse already existing ones.⁷⁰ As Pamela R. Franco pointed out, dressing up is a “non-confrontational style that allows women to be visible, not as objects, but as agents and producers of meaning in their performances”.⁷¹ Afro-Caribbean women who participated in early European-based celebrations were concerned with self-representation and symbolic repositioning because they were unable to perform the masquerades of their homelands, which were representations of ancestors, guides and teachers in initiation ceremonies. For example, historians describe costumes, such as the French-Creole Martiniquan dress, with “elaborate underskirt... turban, foulard, and a profusion of jewellery” as a dress of “‘high affect’ juxtaposing highly contrasting colors and designs.”⁷² While these elaborate costumes resembled variations of the existing European style of dress, they were, in fact, used by Afro-Caribbean women “as public

⁶⁷ Ibid. at 985 (quoting Merri Creque, “The Shelter for Battered Women and Coalition against Domestic Violence: A Study of the Incidence of Domestic Violence in Trinidad and Tobago from 1991 to 1993” (1995)).

⁶⁸ Ibid. at 985.

⁶⁹ Ibid. at 986.

⁷⁰ See Pamela R. Franco, “Dressing Up and Looking Good: Afro-Creole Maskers in Trinidad Carnival” in *African Arts*, Spring 1998, at 62, 62-96.

⁷¹ Ibid. at 63.

⁷² Ibid. at 64.

displays of rank and authority⁷³ rather than simple imitations of European women. Costumes were used by Afro-Caribbean women as encoded signs and masks that helped recreate a social order in which they, an oppressed group, occupied positions of power.

Indo-Trinidadian women had their own way of resisting dominance and traditional patriarchal norms. Those who came to the island as indentured servants had the unique opportunity to depart from the established gender roles perpetuated in their homelands. While gender inequity in wages and treatment certainly existed among indentured Indians, researchers suggest that at least “the system of indentureship did offer conditions under which [women] could earn an independent wage. The 1847 Immigration Ordinance granted... \$2.40 to male Indians, \$1.45 to female Indians...”⁷⁴ The capacity of women “to commodify their labour power in Trinidad...despite the lower value attached to their labour, must have provided a material base from which they could achieve a degree of economic independence.”⁷⁵ While the immigrants and the regulators strove to maintain traditional family life, housing conditions created a close proximity that facilitated gender interactions and negotiations, especially for single men and women.⁷⁶ Thus, “[a]way from the watchful eyes of parents and kin, women and men had the option of choosing from several willing partners. This was a fundamental break with the patriarchal tradition, where marriages were arranged by parents, and families kept intact by a host of kin relationships and duties.”⁷⁷

To say that indentured women were given the chance to create new opportunities and break way from some of the patriarchal restraints does not negate the fact that these women were also physically vulnerable to rapes and other crimes and the incidence of rape and violence against them during their indentureship was high. Nonetheless, they were able to negotiate some advantages that rendered life on the island preferable to a return to India. This is supported by the fact that a much higher percentage of men than women returned to India.⁷⁸

This phenomenon seems to be in great part due to the fact that, while Indian men found it quite easy to resume their roles in society on their return to India, women were considered to have lost their caste or status and found it hard to readjust to life on their return to the subcontinent.⁷⁹ By leaving India, these women had already transgressed traditional female conduct and the new habits they adopted in the colony were

⁷³ Ibid.

⁷⁴ Mohammed, *supra* note 60, at 43; *see also* Bridget Brereton, “General Problems and Issues in Studying the History of Women” in *Gender in Caribbean Development*. Patricia Mohammed and Catherine Shepherd eds. (Jamaica, Trinidad, Barbados: University of the West Indies Press, 1988). Brereton notes that many Indian women who came were single, and that such circumstances allowed them to escape rigid classifications by earning and keeping their own wages.

⁷⁵ Mohammed, *supra* note 60, at 43. *See also* Kapil Kumar, “Rural Women in Oudh 1917-1947: Baba Ramchandra and the Women’s Question” in *Recasting Women: Essays in Colonial History* (Kumkum Sangari & Sudesh Vaid eds. (New Brunswick, NJ: Rutgers University Press, 1989).

⁷⁶ Mohammed, *supra* note 60, at 44. “All Immigration Ordinances deemed it illegal to separate husbands and wives and children under the age of 15.”

⁷⁷ Ibid.

⁷⁸ Ibid. at 50.

⁷⁹ Ibid..

unacceptable in the old setting.⁸⁰ For example, in 1893, “females who upon their arrival [to Trinidad] would veil their faces with their ornie at the approach of a man... [would] after some years’ residence in the colony, merely touch the ornie with the hand, and in many cases neglect to do so altogether.”⁸¹ Furthermore, many of the single Indian women who migrated to Trinidad did so in order to escape some form of societal constraint or difficulty in their lives and found in the island more freedom than in India.

When settled in Trinidad, it is reported that the immigrant women found many ways to carve out new identities and challenge the patriarchal structure. These attempts at independence, however, often triggered violent responses from the male population.⁸² They sometimes defied the established norms by changing sexual partners at will and by taking paramours of different races. These actions alarmed both the Christian missionaries and Indo-Caribbean men. When Sarah Morton, a missionary, narrated her conversation with Indo-Caribbean women on the issue of sexuality, she recorded her dismay:

The loose actions and prevailing practices in respect of marriage here are quite shocking to the newcomer. I said to an East Indian woman whom I knew to be the widow of a Brahmin, ‘You have no relations in Trinidad, I believe?’ ‘No Madame,’ she replied, ‘only myself and two children; when the last immigrant ship came, I took a ‘papa.’ I will keep him as long as he treats me well. If he does not treat me well, I shall send him off at once; that’s the right way, is it not?’⁸³

Some Indo-Caribbean women renegotiated their standing in relation to their male counterparts through the politics of the body. Setting the standards for appropriate treatment in male-female relationships, they defied the norms of patriarchy and Christianity by even indulging in polyandrous practices and interracial intercourse. Risking violence against them by their male counterparts,⁸⁴ the women “continued to challenge normative expectations of Indian female sexuality and simultaneously

⁸⁰ Ibid.

⁸¹ Ibid. at 50, quoting Dennis Wood Deane Comins, a note on emigration from India to Trinidad 38 (1893).

⁸² There were a great number of recorded of murders and “chopping” of women by men who became jealous either because a woman lover replaced them with another man or because he suspected her of romantic involvement another man. Mohammed, *supra* note 60, at 188-90.

⁸³ Ibid. at 183, quoting John Morton of Trinidad 343 (Sarah Morton ed., 1916).

⁸⁴ Ibid. at 188. “Even when the indentureship system ended . . . ‘crimes of passion’ persisted with some regularity . . . In Chaguanas, an inquest was held into the death of Antee, an Indian woman, killed on the Montrose Estate on February 28, 1918. The verdict delivered by Mr. R.M. Van Buren, Senior Magistrate, was that the ‘woman came to her death by the severing of the spinal cord as a result of wounds inflicted by Lutchmarsingh who has since hanged himself’ In April 1919, Narinesingh, a middle-aged Indian man, was indicted for wounding one Jusoral on Thursday, October 27th at the San Pedro estate. The case for the Crown was that Narinesingh and Jusoral had been living together for a considerable period of time. She left him about four months before, having ‘transferred her affections’ to another Indian male. ‘On the day in question, the accused went to the house of his rival, called the woman out and inflicted a severe cut on her forehead. The cut went through a considerable portion of the bone and the brain matter was almost exposed’. . . . Men were sometimes also the victims of jealousy-motivated violence: “Jealous at the idea that his sweetheart had transferred her affections to another labourer on the Caroni estate, by the name of Stephen Rogers [most likely a non-Indian man], Dookie, one morning in July last, inflicted two severe wounds on Rogers with a brushing cutlass. Dookie giving evidence said ‘Rogers took away my wife’”).

redefine[d] femininity in the Trinidad-Indian context.”⁸⁵ These indentured women shook the fabric of patriarchy in such a way that in 1916, a year before the end of indentureship, a group of indentured labourers filed a formal complaint against Indian women.⁸⁶ The complaint specifically deplored the freedom the women were able to exercise in their choice of sexual partners and the inability of their husbands, brothers and fathers to prevent their behaviour. It stated in part:

Is it plausible that those females desire to live as paramours with males of a different race to hers. Fathers nor husbands, nor brothers, who are their lawful protectors have power over them and are not in the least heard when such matters are brought before the authorities.⁸⁷

With the greater reconstitution of an Indian community in ensuing decades, the number of Indian women on the island increased and patriarchal structures re-established a stronghold over their lives on the island. Still, through body protest, both Indo- and Afro-Caribbean women continued to challenge normative concepts of sexuality and women’s roles in various arenas.

Body protest and resistance as expressed in modern-day settings in Trinidad and Tobago

It is not only during Carnival that Trinidadian women appropriate and invert the dominant culture’s norms. Faced with the constraints of a male-dominated culture, Trinidadian women challenge social norms at dance clubs and in neighbourhood streets. Such metamorphoses are so convincing that it becomes difficult to determine where the performances end and reality begins. Women are also subject to great dangers because they are often viewed as loose and easy prey. While literally masquerading by wearing costumes, women also figuratively do so by adopting personae that normally would not be deemed acceptable by Trinidad and Tobago’s patriarchal society.

Masquerading in non-carnival settings takes various forms: from women dressing the part of the courtesan of old, to the sultry, sexually experienced, aggressive woman who defies society, to the woman who is completely in control of her own body and expresses it to music. We see her in the club, ‘wining’ suggestively to calypso or reggae,⁸⁸ overpowering her male partner with the thrust of her hips, becoming the pursuer. In sharp contrast to her domestic or professional identity, she takes on the role of the sexual aggressor, through explicit sexual acts with and without a partner. She uses the movements of her body to exert control over her male partner.⁸⁹ For example, she might use fast, strong and

⁸⁵ Ibid. at 188.

⁸⁶ Ibid. at 190.

⁸⁷ Ibid, quoting *Petition of Indentured Labourers in Trinidad, 1916*. 913, *Duke J Gender Law and Policy*, 177.

⁸⁸ To wine is a term used in the English-speaking Caribbean which refers to dance movements involving the lower part of the body. Wining is usually associated with soca and dancehall music.

⁸⁹ Trinidadian women’s attempt to control their bodies and resist patriarchy is also present in soca songs by female artists such as “I’m Going to Kill You with My Wine Tonight” and “Carnival Is a Time for Freedom” by Denise Belfon (stage name Saucy Wow), and “Bonnie and Clyde” by Destra. The songs clearly show these women’s intention of resisting patriarchal structures and defeating restrictions imposed

provocative hip movement to throw her male partner off-balance. The man becomes the hunted, the woman the hunter. The male partner in the above scenario is overwhelmed by this form of expression and not truly understanding the source of it, may categorize it as odd, licentious and problematic, even while fully participating in it. The adoption of traditionally masculine roles in chance settings begs the question of whether this behaviour ultimately benefits women or whether it simply duplicates the patriarchal system. While it is certain that some women definitely emulate a pattern of behaviour expected by patriarchy, others have attempted to carve out an identity that is contradictory to that delineated by the Caribbean patriarchy.

Regardless of the actual cause of the behaviour and of whether the masquerader is, in fact, the puppet of an omnipresent puppeteer, I contend that the masquerades that play out in our sub-cultural settings should inform a more women-centric reform of Trinidad and Tobago's jurisprudence. This reform is necessary and urgently needed because the aforementioned efforts at sexual liberation make those women who are sexually liberated easy targets of sexual predators and sexists. Women's attempts to forge a more complex identity seem to have gone unnoticed by Trinidad and Tobago's jurisprudence. An exploration of criminal, family and succession laws reveal that not only are women's complexities not addressed in Trinidad and Tobago's jurisprudence, but also that some of their basic needs for legal protection are ignored.

The need for women-centric reforms in Trinidadian and Tobagonian jurisprudence

Trinidad and Tobago's jurisprudence is young and pregnant with possibilities for reform. The need for indigenous reforms and a move away from the neutral language of English jurisprudence is evidenced by the fact that the legal statutes do not address specific problems experienced by the women of Trinidad and Tobago. To appreciate this need, let us first look at aspects of Trinidad and Tobago's law that are discriminatory towards women; and second, analyse aspects of Trinidad and Tobago's law that are neutral, but discriminatory in their application.

A wide variety of laws in Trinidad are discriminatory; most importantly, those dealing with rape, as there has been a rise in the number of reported cases in Trinidad. Women who are raped or violated have very little recourse to justice. Marital rape was only recently outlawed in the country.⁹⁰ This fact reveals the lack of protection once afforded to married women and clearly shows disregard for a woman's right to consent to sex and to control her body after marriage. The rationale underlying this statute was flawed and its reasoning tacitly condoned other acts of physical violence against women. This

on their bodies. In "Bonnie and Clyde", for example, Destra specifically creates an ode to her rag as her sole reliable companion and rejects the presence of any male companion in a desire to remain autonomous. Similarly, when performing, Denise Belfon usually invites a man on the stage and unfailingly overpowers him physically, thus publicly shaming any attempt he makes at controlling her body.

⁹⁰ Press release, Committee on the Elimination of Discrimination Against Women, Committee on the Elimination of Discrimination Against Women Concludes Consideration of Trinidad and Tobago Report, U.N. Doc. WOM/1316 (Jan. 29, 2002).

rationale also ratified the domestic abuser's feeling of entitlement to commit acts of violence against women.⁹¹

A case that is the seminal precedent for determining consent in rape case states that:

Rape is not a word in the use of which lawyers have a monopoly and the question to be answered in this case, as I see it, is whether according to the ordinary use of the English language a man can be said to have committed rape if he believed that the woman was consenting to the intercourse and would not have attempted to have it but for his belief, whatever his grounds for so believing. I do not think that he can.⁹²

The problem with consent being established subjectively is that it mutes the women's voice and negates the possibility that she might have withdrawn her consent.

Another example of gender bias in the actual drafting of law is seen in Trinidad's statutory rape laws. Strict liability is applied to statutory rape crimes committed against girls aged 13 and younger, but not to statutory rape crimes committed against girls between 14 and 18.⁹³ The law thereby treats young women as sexual actors and sees them as active contributors to their fate, no matter how immature they may be. The law may be so written in part because sexual involvement with girls as young as 12 is so high in the Caribbean that legislators are perhaps reluctant to change the status quo. Sexual offences such as abductions of unmarried girls under 14, as well as "attempting to procure any girl...not being a common prostitute, or of known immoral character, to have unlawful carnal connection" are only punishable by two years in prison.⁹⁴ The age of consent for a female minor's ability to contract marriage can be as low as 12 years old.⁹⁵ This rule might speak specifically to the diverse racial make-up of Trinidad's population, which is 39.6% African descent and 40.3% East Indian descent, with the rest being of mixed, European and Asian descent.⁹⁶ Traditionally, arranged marriages among Indians were contracted at a young age explains the Trinidad and Tobago legislature's to set the

⁹¹ See Leela Ramdeen, "Eliminating Violence Against Women" in *Trinidad Guardian* (online edition), Nov. 22, 2004, available at <http://www.guardian.co.tt/archives/2004-11-22/LeelaRamdeen.html>

⁹² *Director of Public Prosecutions v. Morgan*, [1976] A.C. 182 (H.L.), available at http://www.nuigalway.ie/law/Common%20Files/larry_donnelly/nameMorgan_and_rape_rtf (emphasis added) (discussing the mens rea of rape and the effect of mistake on this mens rea requirement under the common law. This is the leading House of Lords decision on this issue. Mr. Morgan brought three men from a pub to his home and requested that they have intercourse with his wife. Mr. Morgan told the men to ignore his wife's protests or resistance, saying his wife was "kinky". The men forcibly overcame the wife's resistance and each penetrated her without her consent. The three men were charged with rape. Though charged with aiding and abetting the men, the husband was not charged with rape because the marital immunity was thought to apply. The trial judge directed the jury that the defendants would not be guilty of rape if they honestly believed that the woman was consenting and the belief in consent was reasonably held).

⁹³ Offences Against the Person Act, 1990, c. 11:08 § 32 Trinidad & Tobago.

⁹⁴ Offences Against the Person Act, 1990, c. 11:08 §§ 37, 48 Trinidad & Tobago.

⁹⁵ U.N. Comm. on the Rights of a Child, *State Party Report – Trinidad and Tobago*, U.N. Doc. CRC/C/11/Add.10 (Feb. 16, 1996) stating that under the Muslim Marriage and Divorce Act, c. 45:02, a girl may marry at 12 and a boy at 16, and that under the common law, the ages are 12 for a girl and 14 for a boy.

⁹⁶ The Government of Trinidad & Tobago Government Online – General Information, available at <http://www.visittrinidad.com/General/about/general.html> (last visited Feb. 26, 2006).

minimum age of consent for females at 12 years old for Muslims and 14 years for Hindus. The law, nonetheless, requires the consent of the parent or guardian to solemnize the marriage.

Abortions are illegal in Trinidad and Tobago, except to protect the life or health of the mother; those who are found guilty of procuring an abortion can be imprisoned for up to four years.⁹⁷ Despite being illegal, the abortion rate in Trinidad and Tobago is thought to be higher than in the United States, and abortion has turned into a lucrative business for those willing to perform them.⁹⁸ The issue of whether women should have access to legal abortions is a delicate subject in a deeply religious country. However, granting the right to legal abortions would raise the standard for legal protections granted to Caribbean women, because it would recognize the sovereignty of their bodies.

There is also a need for a revision of laws affecting common-law marriages in Trinidad and Tobago. While great strides have been made in giving Caribbean women in common-law unions maintenance or inheritance rights, this legislation is not reflected in the day-to-day realities many face. In Trinidad and Tobago, the law recognizes common-law unions as valid, and the women are entitled to both maintenance and inheritance rights if they can prove cohabitation for an extended period of time.⁹⁹ The legislature, however, has failed to address the existing problem of men having more than one common-law union, in addition to being legally married. Even though the law recognizes common-law marriage, it seems that the multiple common-law wives of a decedent are still faced with having to compete for the label of sole wife at the death of their husband.

Trinidad and Tobago's jurisprudence, thus far, has been blind to the *de facto* polygamy that exists in the Caribbean and, consequently, has been unable to hold men accountable within this structure.

In addition to clearly discriminatory laws, Trinidad and Tobago has many others that are gender-neutral, but are applied in a discriminatory way by the courts. The country's constitution supports the equality of all citizens under the law and the legislature has in many ways attempted to pass laws that would ensure equality between the sexes. Why, then, are the women of Trinidad and Tobago still subordinated and subjected to unequal treatment in certain aspects of the law?

One of the reasons lies in the current inefficiency of the legal machinery in Trinidad. Mindie Lazarus-Black asserts that the failure of the domestic violence law in Caribbean countries to provide meaningful protection to its victims is due to four factors: (1) the sheer number of protection applicants (2) that few applications result in extended protections (3) that the majority of applications are withdrawn or dismissed, and (4) the considerable time that these cases take to be resolved.¹⁰⁰ Another challenge to obtaining

⁹⁷ Offences Against the Person Act, 1990, c. 11:08 §§ 56-57 Trinidad & Tobago.

⁹⁸ Paul Nowak, "Planned Parenthood Targets Trinidad and Tobago to Legalize Abortion" on ttgapapers.com, Aug. 10, 2004, <http://www.ttgapapers.com/Article801.html>.

⁹⁹ Suzanne Shephard, "How TT's Laws Cover Common-Law Unions" in *Newsday*, Jan. 22, 2006, http://www.newsday.co.tt/stories.php?article_id=32708.

¹⁰⁰ Mindie Lazarus-Black, "The Rites of Domination: Tales From the Domestic Violence Court" The Centre for Gender and Development Studies, Working Paper No. 7, 2002.

adequate legal protection for women lies in a lack of organization and a proper means of tracking cases in the court system.¹⁰¹ In this context, it is very easy for women to get discouraged and eventually decide not to pursue a case. The fact that the system is so disorganized speaks volumes about how little importance members of the legal system accord domestic violence cases. In addition to their inefficiency, women seeking remedies from the courts have to deal with intimidation, the humiliation factor of having their personal lives on trial, the effects of judicial discretion (which is often formed by the decision-maker's own bias and socialization), and the numerous second chances given by courts to their abuser, even when they have already violated court mandates.¹⁰²

Inherent flaws in the proper application of the law reveal a need for gender reform in attitudes as well. Gender sensitivity workshops might serve to counter the long-term effects of the inherent sexism in Trinidad and Tobago's culture. While gender law and relations are far from perfect in the United States, such workshops in offices have helped acclimatize Americans to the idea of women in power and have forced individuals to be more careful about the use of gender-biased language. For these workshops to be successful, however, they must be implemented in conjunction with a movement to amend laws that protect women more adequately. In addition, organizations, individuals and officials implementing gender-sensitivity workshops must especially target primary and secondary school students since they will set the tone for Trinidad and Tobago's gender relations in the future.

Reform proposal

To reform the traditional English law-based Caribbean system, a new generation of Trinidadian women must lobby lawmakers to make greater use of indigenous concepts of identity and of gender equality. In order to accomplish this, both men and women will have to be educated about how law is both made and applied,¹⁰³ so they can organize grassroots reformation movements to promote change. While women's rights movements have had successes, feminist activism in Trinidad and Tobago should not be limited to an educated class of women 'helping' the less privileged. Combined efforts to recognize the potential contributions of women from all social spheres will not only create a healthy, egalitarian feminist movement in Trinidad and Tobago, but will also put more pressure on the male-dominated legislature to represent women's interests.¹⁰⁴

¹⁰¹ The author personally witnessed the difficulties presented by the courts' case indexing system when she went to the courthouse and was not able to find a case after nearly an hour, despite the presence of numerous clerks. This inefficiency might also point to the problems created by the digital divide that exists between the Caribbean and more technologically advanced nations like the United States.

¹⁰² Lazarus-Black, *supra* note 105, at 14-16.

¹⁰³ See generally Stephen Heath, "Male Feminism" in Men in *Feminism* Alice Jardine and Paul Smith eds., (New York: Methuen Ltd, 1987) and *Engendering Men: The Question of Male Feminist Criticism* (Joseph A. Boone & Michael Cadden eds., (New York: Methuen Ltd, 1990).

¹⁰⁴ While this comment refers specifically to women in Trinidad, the abolition of the divide between social spheres among women as well as the sameness/deviant divide enunciated by Regina Austin would benefit feminist movements worldwide and maximize our efforts.

Furthermore, there is an urgent need to infiltrate the political system in Trinidad and implement ways of holding the legislators accountable for their indifference towards women's concerns. Lobbying and forceful protests against politicians' decisions might force them to enact useful, women-centric laws in a quicker fashion. Such lobbying led to the passing of the Domestic Violence Act in Trinidad and Tobago. It is important to show lawmakers that the majority of women are unhappy with the laws.

Both male and female attorneys should advance women-centric, equitable arguments in court documents without fear that the judges will not take them seriously or that they will be labelled as being too sensitive. A new generation of female attorneys can be instrumental in advocating for change inside and outside of the courtrooms. Many professional women in Trinidad readily admit the oppression that they experience from the 'good ole boy' network in the legal profession. Breaking the vicious cycle of that network will require a constant denunciation of its existence and its nefarious effects.

Conclusion

Body protest is not particular to a country or region. Sexism and patriarchy are inherent problems in all societies, as are legal systems' inability to protect women who contest the status quo. Throughout the world, sectors of women use body-inspired tools to renegotiate society's restrictive and oppressive gender definitions. Exploring such uses, however, demands that we eradicate preconceived notions and learn to appreciate the potential utilitarian and redemptive functions of body politics. Body protest demonstrates that the female body is a symbol loaded with meaning and that its use can constitute protected speech. Body protest is evoked in the context of Trinidad and Tobago's traditional custom of masquerading because the terms 'body protest' and 'masquerade' both refer to the presentation of physical elements which mask underlying messages and social commentaries.

The purpose of discussing Trinidadian and Tobagonian's women's body protest is not to say their gender issues are unique, but to demonstrate how women's symbolic conduct constitutes feminist activism. Trinidad and Tobago is but one example where this type of struggle takes place daily. The goal is for all those who are committed to 'global feminism' to find ways to exert pressure on local governments to obtain more legal protection for these protests. This article recognizes that while countries are currently in various stages of the struggle for women's rights, all legal systems need to accept women's use of bodies for resistance and redemptive functions.

Female bodily expression has generally been associated with eroticism, which is a concept that is "often... misnamed by men and used against women."¹⁰⁵ Eradication of these biases will remove a monumental obstacle to trans-cultural, trans-economic coalition-building among women. Acknowledging the impact of sexual profiling on all members of society is the first step in accepting one's own internalized sexism. The changes proposed will not take place overnight and will necessitate cross-cultural and

¹⁰⁵ Lorde, *supra* note 2, at 54 (stating that these stereotypes have led us to "turn[] away from the . . . erotic as a source of power and information...")

cross-generational coalition-building. A study of law-making in American jurisprudence shows that legal changes occur over long periods because of social, political and international pressure.¹⁰⁶ This recipe may also be successful in pushing for change in Trinidad and Tobago. This does not mean that American standards and views should be forced on other countries, but that women activists from around the world should team up to accelerate reforms that would increase women's rights. The success of these coalitions will depend on feminist theorists' ability to accept and understand non-traditional forms of resistance to patriarchy. Understanding non-traditional tools of resistance, like the female body, will not only facilitate a greater discourse among women internationally but also reinvigorate the domestic feminist movement.

¹⁰⁶See Mary L. Dudziak, *Desegregation as a Cold War Imperative*, in *Critical Race Theory: The Cutting Edge* (Philadelphia: Temple University Press, 2000) 106, 106-08 (Richard Delgado & Jean Stefancic eds., 2d ed