

**CENTERING FAMILY VIOLENCE IN FAMILY LAW AS RACIAL
JUSTICE**

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INTRODUCTION

The call to place family violence at the center of family law presents the opportunity to reconceptualize family law doctrine, systems, practices, scholarship, and teaching. As we explore what family law would look like if we were to center the reality of family violence, we must define what family violence means and examine who experiences family violence. That work will lead us to another consideration that remains in the shadows of family law: race. For too long, family law has treated race as an afterthought, and, in some instances, has not considered race at all.¹ We have a chance to do better.

Centering family violence in family law has the potential to advance racial justice.² To properly account for the impact of race on experiences with family violence, we must broaden our conception of family violence. We can expand our lens by implementing two guiding principles: (1) focus on structure; and (2) center difference rather than sameness.

¹ See generally Shani M. King, *The Family Law Canon in A (Post?) Racial Era*, 72 OHIO ST. L.J. 575, 575 (2011) (arguing that “the family law canon does not scrutinize race-based disparities in laws, procedures, and outcomes”); Robin A. Lenhardt, *The Color of Kinship*, 102 IOWA L. REV. 2071 (2017) (examining how family law scholarship and advocacy have “largely ignored race, focusing instead on matters such as gender or class”); Andrea L. Dennis, *Criminal Law As Family Law*, 33 GA. ST. U.L. REV. 285, 290 (2017) (arguing that “legal scholars mostly have neglected to explore the intersection of criminal law, family law, and racial justice”); Jessica Dixon Weaver, *Racial Myopia in [Family] Law*, 132 YALE L. J. FORUM 1086, 1094 (2023) (contending that “[a] wholesale realignment of family law requires that the blinders that have previously hampered scholars, practitioners, and judges from analyzing race within the canon and practice of law be removed”). See also Twila L. Perry, *Family Law, Feminist Legal Theory, and the Problem of Racial Hierarchy*, TRANSCENDING THE BOUNDARIES OF LAW: GENERATIONS OF FEMINISM AND LEGAL THEORY 243, 252 (Martha Albertson Fineman ed., 2011) (discussing the failure to address race in feminist family law scholarship).

² An in-depth examination of the meaning of racial justice is beyond the scope of this Article. Activists and scholars have defined racial justice in many ways. At its core, racial justice involves Black, Latin, Asian, Indigenous, and other people of color leading efforts to undo harm against them, eliminate racial hierarchies, “create deliberate systems and supports to achieve and sustain racial equity,” and advance their liberation and human flourishing. *Racial Justice in Education: Key Terms and Definitions*, NATIONAL EDUCATION ASSOCIATION (Jan, 2021), <https://www.nea.org/professional-excellence/student-engagement/tools-tips/racial-justice-education-key-terms-and>; *What is Racial Equity?*, RACE FORWARD, <https://www.raceforward.org/about/what-is-racial-equity-key-concepts> (last visited Mar. 15, 2023).

The traditional definition of “family violence” is myopic. For racial and ethnic minorities, family violence is more wide-ranging than violence *within* families — intimate partner violence, domestic violence, and child abuse.³ To fully recognize the experiences of Black and Brown families with violence, our conception of family violence must include violence by the state and other institutions *against* families that perpetuates marginalization. To advance racial justice, we must use an antiracist conception of family violence that includes both interpersonal and structural violence.⁴

³ JOSHUA M. PRICE, STRUCTURAL VIOLENCE: HIDDEN BRUTALITY IN THE LIVES OF WOMEN 2 (2012) (“Women at the margins experience violence generated by structures, institutions, and histories, which make their experiences irreducible to the commonsense notion that violence against women is basically a question of ‘domestic violence.’”).

⁴ Peace researcher Johan Galtung introduced the term “structural violence.” Brian Kritz, *Direct and Structural Violence Against Transgender Populations: A Comparative Legal Study*, 31 FLA. J. INT’L L. 211, 218 (2019). Galtung identified three different, yet interrelated types of violence: direct, cultural, and structural. *Id.* Direct violence, which overlaps with what this Article calls “interpersonal violence,” is physically perceived violence, such as an assault or verbal attack. William Hathaway, *Varieties of Violence: Structural, Cultural, and Direct*, TRANSCEND MEDIA SERV. (Oct. 21, 2013), <https://www.Transcend.org/tms/2013/10/varieties-of-violence-structural-cultural-and-direct/>. Structural violence “refers to social systems embedded with injustice and exploitation.” Kritz, *supra* note 4, at 218. Under Galtung’s typology, examples of structural violence include laws, policies, and practices that exacerbate marginalization. *Id.* Cultural violence “is the prevailing attitudes and beliefs that justify and legitimize the structural violence, making it seem natural.” Hathaway, *supra* note 4. White supremacy is an example of cultural violence. *Id.* Galtung’s model maps the interrelatedness of the forms of violence: “structural violence often causes direct violence, which in turn is justified and normalized by cultural violence.” Kritz, *supra* note 4, at 218.

According to feminist scholar Lubna Nazir Chaudhry, structural violence is:

[Un]equal life chances, usually caused by great inequality, injustice, discrimination, and exclusion, needlessly limiting people’s physical, social and psychological well-being. These inequalities are the result of the exercise of power and coercion of dominant groups at the local, state, and global levels, and manifest themselves through economic, legal and administrative systems, legitimized through a superstructure produced by ideology, history, mythology, philosophy and religion. Structural violence is, then, rendered invisible, as it is perceived as the status quo, but it is experienced as injustice and brutality at particular intersections of race, ethnicity, class, nationality, gender, and age.

PRICE, *supra* note 3, at 6 (quoting Lubna Nazir Chaudhry, *Reconstituting Selves in the Karachi Conflict: Mohajir Women Survivors and Structural Violence*, 16 CULTURAL DYNAMIC 259 (2004)).

Structural violence is a reality for people other than racial and ethnic minorities, including women and people living in poverty. Structural violence that

Broadening our conception of family violence has the potential to ensure that efforts to center family violence in family law do not amplify the role of systems and institutions that perpetuate family violence, particularly against families of color, such as the carceral and family regulation systems.

Rather than primarily focusing on sameness in experiences with family violence, we must center difference.⁵ When we examine a phenomenon with family violence, we must ask what is different about this phenomenon across race and ethnicity. If we do not know the answer, we should seek to find out, primarily by hearing directly from impacted families. We cannot work to develop and advance solutions if we do not understand the complexities and fullness of the problem. While amplifying difference has been used as a tool of oppression, we can use this analytical framework to pursue liberation.

This Article proceeds in three parts. The first section presents a definition of family violence that includes structural violence and centers difference. The second section examines the consequences of ignoring structural violence and primarily focusing on sameness. The third section explores how centering family violence (rightly defined) in family law advances racial justice.

This Article builds on the work of family law scholars — many of them Black women — who have advocated for removing race from the shadows of family law doctrine and scholarship for decades.⁶ Rather than

disproportionately impacts people of color is the focus of this Article because it concerns racial justice.

⁵ See Beth E. Richie, *A Black Feminist Reflection on the Antiviolence Movement*, 25 SIGNS 1133,1135 (2000) (“[T]he assumed race and class neutrality of gender violence led to the erasure of low-income women and women of color from the dominant view. I contend that this erasure, in turn, seriously compromised the transgressive and transformative potential of the antiviolence movement’s potentially radical critique of various forms of social domination. It divorced racism from sexism, for example, and invited a discourse regarding gender violence without attention to the class dimensions of patriarchy and white domination in this country. Put another way, when the national dialogue on violence against women became legitimized and institutionalized, the notion that ‘It could happen to anyone’ meant that ‘It could happen to those in power.’”).

⁶ See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (examining how intersectionality results in qualitatively different experiences of domestic violence, rape, and remedial reform for women of color); Perry, *supra* note 1; Weaver, *supra* note 1; Lenhardt, *supra* note 1, at 2076-77 (arguing that “[t]he sidelining of race has consequences for the ability of family law scholars to effectively analyze and interpret family law decision making by judges, legislators, policymakers, and other actors[,] . . . track how race informs family formation and meaning for families of color, [and] . . . advance an account of family law systems and structures that prove useful or influential in reform efforts.”).

present wholly novel arguments, the Article is a reminder that it is imperative to consider race when determining whether and how to center family violence in family law. To do otherwise perpetuates racial subordination and white supremacy. Rather than providing definitive answers about how to advance racial justice by centering family violence in family law, this Article surfaces important questions that we should answer using a racial justice lens, including:

- (1) What is family?
- (2) What is violence?
- (3) What is family violence?
- (4) What is family law?
- (5) What does it mean to center family violence in family law?
- (6) How can centering family violence in family law promote racial justice?

I. DEFINING FAMILY VIOLENCE TO ADVANCE RACIAL JUSTICE

Family law scholars and activists often use the term “family violence” without defining it. The exclusion of race from family law doctrine and scholarship has resulted in viewing family life, including family violence, through a white normative lens.⁷ This section uses a racial justice framework to explore the meaning of “family violence” by deconstructing the term into its component parts: What is family? What is violence?

A. The Meaning of “Family”

Traditionally, the special designation of “family” has been reserved for individuals related by blood, adoption, or marriage. This construction of family centers white normativity. Defining “family” through a racial justice lens requires expanding the concept beyond white norms. Historically and today, racial and ethnic minorities are more likely to experience close interpersonal relationships with and affective ties to individuals to whom they have no biological or formal legal connection like marriage or adoption.⁸ To advance racial justice, our definition of “family” must include and center the lived experiences of families of color.

⁷ See Weaver, *supra* note 1, at 1115 (arguing that family law “research and scholarship are often conducted using whiteness as the default standard”); Tonya L. Brito et al., “*I Do for My Kids*”: Negotiating Race and Racial Inequality in Family Court, 83 *FORDHAM L. REV.* 3027, 3043 (2015) (detailing how judges use a “normative White standard” in child support proceedings).

⁸ See Sacha M. Coupet, “*Ain’t I A Parent?*”: The Exclusion of Kinship Caregivers from the Debate over Expansions of Parenthood, 34 *N.Y.U. REV. L. & SOC. CHANGE* 595, 612–13 (2010) (“Very few assessments of black families actively defend their often nontraditional forms as on a par with the nuclear family ideal. To the contrary, the kinship family has historically been viewed as a pathological form of social organization. Multigenerational female-headed households, highly flexible and adaptive familial roles, strong familial cohesion, and shared caregiving—the very traits that have helped black families to survive substantial hardship—

Existing family law doctrine provides exemplars of broadly defining “family.” Parentage doctrine is one example. Due to the work of family law scholars and advocates, in many states, the creation of a parent-child relationship extends beyond biology, marriage, and adoption. Parentage can be established by conduct such as cohabitation and holding oneself out as the child’s parent. The Uniform Parentage Act (UPA) includes provisions that recognize and establish parental status for intended parents of a child conceived by assisted reproduction technology and for functional parents.⁹ The District of Columbia’s civil protection order statute provides another example of broadly defining “family.” The statute allows a “family member” to petition the court for protection against a criminal offense.¹⁰ The definition of “family member” includes “a person . . . [w]ho is the child of an intimate partner.”¹¹ These broad definitions of family rightly depart from conceptions of family that are “deeply rooted in this Nation’s history and tradition”¹² and include the lived experiences of many Black and Brown families.

-have been framed, from a[n] Anglo-American majority perspective, as a ‘failure of values and morality’ at best, and a hopeless ‘tangle of pathology’ at worst.”)

⁹ See generally Courtney Joslin, *Nurturing Parenthood Through the UPA* (2017), 127 YALE L.J. FORUM 589 (2018) (detailing the current UPA’s incorporation of intentional and functional parents); Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185 (2015) (detailing the UPA’s history of including intentional and functional parents). See also Douglas NeJaime, *The Constitution of Parenthood*, 72 STAN. L. REV. 261, 262, 319-343 (2020) (mapping “family law’s functional turn”).

¹⁰ D.C. Code § 16-1003(a) (provides that a person may petition the specialized domestic violence court for a civil protection order against another person “who has allegedly committed or threatened to commit . . . an intrafamily offense, where the petitioner is the victim”); *id.* § 16-1001 (defines “intrafamily offense” as “an offense punishable as a criminal offense against . . . a family member”).

¹¹ *Id.* § 16-1001(5A). The other relationships defined as “family member” track the traditional notion: “related by blood, adoption, legal custody, marriage, or domestic partnership.” The definition of “family member” is distinct from “intimate partner.” The statute defines “intimate partner” as “a person . . . to whom the offender is or was married; . . . with whom the offender is or was in a domestic partnership; . . . with whom the offender has a child in common; or . . . with whom the offender is, was, or is seeking to be in a romantic, dating, or sexual relationship.” *Id.* § 16-1001(6A).

¹² Compare *Moore v. City of East Cleveland*, 431 U.S. 494, 503-4 (1977) (U.S. Supreme Court struck down a local zoning ordinance that prohibited a grandchild from living with his grandmother as an unconstitutional violation of 14th Amendment substantive due process rights) with *Michael H. v. Gerald D.*, 419 U.S. 110, 124 (1989) (U.S. Supreme Court held that a child’s biological father did not have a substantive due process right to parental recognition and custody because the child was born during the mother’s marriage to another man who was deemed the child’s legal father pursuant to state statute).

B. The Meaning of “Violence”

To align with efforts to advance racial justice, we must also broadly construe the definition of “violence” when considering the meaning of “family violence.” Racial and ethnic minorities experience two types of family violence: interpersonal and structural. Interpersonal violence occurs *within* families. Structural violence is perpetrated by state and institutional actors *against* families.

Interpersonal violence includes intimate partner violence, domestic violence, and child abuse. In some contexts, the definition of interpersonal violence has been expanded beyond physical abuse to include sexual, emotional, psychological, verbal, and economic abuse.¹³ However, for intimate partner and domestic violence, the primacy of physical abuse remains.¹⁴ Racial and ethnic minorities experience interpersonal family violence at alarmingly high rates. More than four in ten Black women experience physical violence and about fifty-four percent experience psychological aggression perpetrated by an intimate partner during their lifetime, compared to thirty-one percent and forty-seven percent, respectively, for non-Hispanic white women.¹⁵

In the United States, structural violence against families of color dates back to colonization, slavery, and Jim Crow, and continues today through systems that separate and debilitate families, including the criminal, immigration, social welfare, and child abuse and neglect systems.¹⁶ Structural violence happens when an Indigenous woman is incarcerated for killing her abusive spouse,¹⁷ a Black child is removed from their mother’s

¹³ For example, the United States Department of Justice Office on Violence Against Women defines “domestic violence” as “physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship.” *Domestic Violence*, DEP’T OF JUST., <https://www.justice.gov/ovw/domestic-violence> (last visited Apr. 11, 2023).

¹⁴ See Margaret E. Johnson, *Redefining Harm, Reimagining Remedies and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107 (2009).

¹⁵ *The Status of Black Women in the United States*, INST. FOR WOMEN’S POL’Y RSCH., at 120, <https://iwpr.org/wp-content/uploads/2020/08/The-Status-of-Black-Women-6.26.17.pdf> (last visited Mar. 15, 2023).

¹⁶ See King, *supra* note 1, at 592 (“The law’s disproportionate intrusion into African-American family life began with the slave codes and continues today through the application of traditional family law rules, such as the best interest standard, and through other systems—such as the social welfare and child welfare systems—that are not traditionally included in the family law canon, but nonetheless should be, as they affect family autonomy and structure.”); JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS 555-59 (LexisNexis, 3d ed. 2007) (describing the state’s efforts to regulate and prohibit Black family formation during slavery and post-Reconstruction).

¹⁷ See generally LEIGH GOODMARK, IMPERFECT VICTIMS: CRIMINALIZED SURVIVORS AND THE PROMISE OF ABOLITION FEMINISM (University of California Press, 1st ed. 2023).

care and placed in foster care because a curling iron accidentally burns their leg,¹⁸ or a Latin woman without legal status calls the police on her abusive, undocumented boyfriend, resulting in immigration officials detaining one or both of them.¹⁹ Structural violence happens when a child support judge holds a jobless Black man in contempt for failing to pay without recognizing the role of race-based employment discrimination,²⁰ a pregnant Asian woman must answer questions about her previous romantic relationships and the earning capacity of her child's father to obtain state-funded prenatal care,²¹ or a Latin man spends twenty years in prison for a first-time, non-violent drug offense, separated from his children, intimate partner, parents, siblings, and other family.²² Structural racism is at the root of structural violence against families of color. Many of the state's policies and practices violently devalue the lives of Black, Indigenous, Latin, Asian and other people of color and dehumanize them, while perpetuating white supremacy.

Social movements that fight for racial justice define violence as both interpersonal and structural. As part of its Vision for Black Lives, the Movement for Black Lives focuses on eliminating all forms of gender-based violence, including "state, community, interpersonal, economic, and reproductive racial gender-based violence."²³ In addition to focusing on domestic violence against Black women, the gender-based violence policy platform includes state violence such as "physical, sexual, and fatal violence by law enforcement agents, criminalization, and incarceration."²⁴

¹⁸ Larissa MacFarquhar, *When Should a Child Be Taken from His Parents?*, THE NEW YORKER (July 31, 2017), <https://www.newyorker.com/magazine/2017/07/31/when-should-a-child-be-taken-from-his-parents>.

¹⁹ A national survey found that immigrant survivors of domestic violence were afraid to call the police for help due to fear of deportation. *Immigrant Survivors Fear Reporting Violence*, TAHIRIH JUST. CTR. (May 2019), <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>.

²⁰ See Brito et al., *supra* note 7, at 3030 (examining how the failure to consider race and racial inequality in the child support enforcement process harms members of racially subordinated groups, particularly Black fathers).

²¹ See KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS 2-4, 11, 32 (2019) (arguing that the state has dispossessed poor mothers, who are disproportionately people of color, of privacy rights).

²² Cf. Alexis Karteron, *Family Separation Conditions*, 122 COLUM. L. REV. 649 (2022) (examining family separation for people on parole, probation, and supervised release).

²³ *Vision for Black Lives: End the War on Women*, MOVEMENT FOR BLACK LIVES <https://m4bl.org/policy-platforms/end-the-war-black-women/> ("The war on Black women, girls, trans, intersex, and gender nonconforming people takes many forms, including state, community, interpersonal, economic, and reproductive racial gender-based violence. Each fuels, facilitates, and reinforces the others.").

²⁴ *Id.* at 9.

In 2001, INCITE! Women of Color Against Violence²⁵ and Critical Resistance²⁶ issued a statement “call[ing] on social justice movements to develop strategies and analysis that address both state and interpersonal violence.”²⁷ In the statement, the activists point out that women of color “suffer disproportionately from both state and interpersonal violence.”²⁸ They argue that the silo between activism against state violence and activism against domestic and sexual violence has marginalized women of color in both movements.²⁹ The statement acknowledges the tension between the movements’ goals and the need to align their missions:

It is critical for us to develop responses to gender violence that do not depend on a sexist, racist, classist, and homophobic criminal justice system. It is also important that we develop strategies that challenge the criminal justice system, while providing safety for survivors of sexual and domestic violence. To live violence-free lives, we must develop holistic strategies.³⁰

The statement marks the coming together of activists against interpersonal violence and structural violence to eradicate both forms of family violence.

Interpersonal and structural family violence are distinct yet related. Structural violence creates disparities in the incidence of interpersonal violence, which is “a function of poverty, inequality, and the quotidian experiences and conditions wrought by systemic degradation.”³¹ Structural racism creates the conditions for violence within families of color. Furthermore, although the state and other institutions are perpetrators of structural violence, it is interpersonal in nature because it is meted out

²⁵ Later, INCITE! became Women, Gender Non-Conforming, and Trans People of Color Against Violence.

²⁶ At the time, Critical Resistance was a “recently coalesced” organization that advocated for the abolition of policing and prisons. ANGELA Y. DAVIS ET AL., *Preface* to ABOLITION. FEMINISM. NOW., at ix (2022). The organization continues this work today and “seeks to build an international movement to end the prison industrial complex.” *Mission and Vision Statement*, CRITICAL RESISTANCE, <https://criticalresistance.org/mission-vision/> (last visited Mar. 15, 2023).

²⁷ Critical Resistance & Incite!, *Critical Resistance-Incite! Statement on Gender Violence and the Prison-Industrial Complex*, 30 SOC. JUST. 141 (2003).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 141. The statement also “highlighted the role that the antiviolence movement played in increasing the reach of the criminal legal system into the lives of survivors, documented the failures of the criminal legal system in addressing violence, and acknowledged the failure of the anti[-]prison movement to attend to the needs of survivors of violence, both interpersonal and state.” GOODMARK, *supra* note 17, at 18-19.

³¹ Deborah M. Weissman, *Gender Violence, the Carceral State, and the Politics of Solidarity*, 55 U.C. DAVIS L. REV. 801, 844 (2021).

person to person. Individual acts by state and institutional agents coalesce into structural violence.

Structural violence against families of color persists because it easily can be rendered invisible. One way to do so is to center sameness rather than difference.

[The] popular and institutionalized assumption of sameness masks [family] violence that does not conform to the imagined norm; the assumption overlooks or suppresses public, institutional, and structural collusion with [family] violence. It hides the heterogeneity of [families'] situations as they face violence. Rather than broaden understanding, the assumption limits the view of violence. It renders violence against the most socially marginal invisible or distorted.³²

The exclusion of structure and difference from family violence has devastated families of color.

II. CONSEQUENCES OF EXCLUDING STRUCTURE AND DIFFERENCE

The tragic harms of interpersonal and structural violence for families of color have been minimized, rationalized, and ignored. In many respects, family law doctrine, policy, and norms have rendered these experiences invisible.

One stark example of exclusion of the structural dimension of family violence is the disappearance of a tool designed to surface institutional and cultural supports for intimate partner violence. The iconic Power and Control Wheel,³³ which depicts the tactics of interpersonal violence, was once accompanied by the Institutional and Cultural Supports for Battering Chart, which “focused on structures outside the relationship that increase one partner’s capacity to abuse the other.”³⁴ The decoupling of the Wheel from the Chart amplifies “individual, private violence”³⁵ and “masks structural violence.”³⁶ Regrettably, the focus on individuals rather than structures resulted in the anti-domestic violence movement turning to the

³² PRICE, *supra* note 3, at 2-3 (the original text says “women” where “family” appears here).

³³ Domestic Abuse Intervention Programs, *Understanding the Power and Control Wheel*, <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/>.

³⁴ Tamara L. Kuennen, *Uncharted Violence: Reclaiming Structural Causes in the Power and Control Wheel*, 5 ARIZ. ST. L. REV. (2023) (forthcoming) (manuscript on file with the author). See also PRICE, *supra* note 3, at 21-44.

³⁵ Kuennen, *supra* note 34.

³⁶ *Id.*

carceral system to remedy interpersonal abuse, causing devastating harms to families of color.³⁷

Another example of the consequences of excluding structural violence is the persistent harms of the family regulation system. For decades, we have known that the state systems that purportedly address child abuse and neglect disproportionately impact Black children and parents³⁸ and “weaponize[] fear to control marginalized families.”³⁹ Year after year, scholars, practitioners, activists, and impacted families sound the alarm to remind us that “[t]oo often, [the family regulation system] increases mothers’ isolation and powerlessness, treats fathers as threats, exacerbates the material deprivation of families, severs children’s most important relationships, weakens communities, and reinforces historical trauma and inequity.”⁴⁰ Yet the devastation persists.⁴¹

The exclusion of structural violence from the definition of family violence ignores many of the experiences of Black and Brown families with violence. When we focus on sameness rather than difference, we miss the reality that the systems that are intended to protect survivors of interpersonal violence actually harm them, particularly survivors of color. For example, when Black and Brown survivors of intimate partner violence

³⁷ *Id.* (examining how activists of color cautioned the mainstream anti-gender violence movement about the dangers of reliance on the criminal system); LEIGH GOODMARK, *DECRIMINALIZING DOMESTIC VIOLENCE* 12 (2018) (arguing that “marginalized people are most harmed by . . . overreliance on the criminal system”); LEIGH GOODMARK, *A TROUBLED MARRIAGE* 9-28 (2012) (detailing the development of the criminal legal response to domestic violence).

³⁸ *See generally* DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002); DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES* (2022) (detailing racial disparities in the child welfare system).

³⁹ S. Lisa Washington, *Weaponizing Fear*, 132 *YALE L.J. FORUM* 163, 166 (2022).

⁴⁰ *What We Do*, RISE, <https://www.risemagazine.org/what-we-do/> (last visited Mar. 15, 2023) (organization founded in 2005 and led by parents impacted by the family regulation system).

⁴¹ *See generally* ROBERTS, *TORN APART*, *supra* note 38.

attempt to access the court system for help, they often are disbelieved,⁴² retraumatized,⁴³ and shamed.⁴⁴

We can no longer ignore racist policies and racist ideas that perpetuate family violence.⁴⁵ One such racist idea is that people of color, particularly Black people, inherently are more violent than white people. This racist idea results in judges treating interpersonal violence as common and mutual for Black families in intimate partner cases. In family regulation cases, the assumption is that the system intervened because a child had been harmed rather than because the family is Black, most likely poor, and certainly over-surveilled. Instead of psychological denial,⁴⁶ interpersonal violence is an expected part of the Black experience in the United States. These racist ideas, which are the foundation of racist policies, devalue and dehumanize Black life.

The exclusion of structural violence from the definition of family violence masks the causes of racial and ethnic disparities in the incidence of interpersonal violence. Hesitation to discuss the disparities stem from concerns about promoting a racist idea and essentializing people of color as more violent than white people. However, when the focus shifts from individuals to structure, this hesitation is unfounded. Structural racism and structural violence produce the disparities, not the inherent propensity for violence of any individual or people group. Rather than hesitate, we must unveil the structures, amplify differences, and rectify harms.

⁴² Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors' Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 436 (2019) (“American courts have a long history of discrediting African American witnesses on the basis of their blackness. Such discrediting can occur based on stereotypes that African Americans are less intelligent than are whites, or that they are untrustworthy and dishonest. Based on [the evidence that demonstrates discounting of women’s credibility because they are women], it stands to reason that black women risk being doubly disbelieved.”).

⁴³ Negar Katirai, *Retraumatized in Court*, 62 ARIZ. L. REV. 81, 85 (2020) (“Given the broader inequalities faced by women in poverty and women of color, the chilling effect of retraumatization can have a particularly harmful effect to already disadvantaged, vulnerable, or marginalized populations.”).

⁴⁴ A. Rachel Camp, *From Experiencing Abuse to Seeking Protection: Examining the Shame of Intimate Partner Violence*, 13 U.C. IRVINE L. REV. 103, 123 (2022) (“Black people, in particular, must contend with the shame of stigmatizing narratives that perpetuate racial inferiority.”).

⁴⁵ See IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 21, 25 (2019) (defining “racist idea” as “any notion that suggests one racial group is inferior or superior to another racial group in any way” and “racist policy” as “any measure that produces and sustains racial inequity between racial groups”).

⁴⁶ See Joan S. Meier, *Denial of Family Violence in Court: An Empirical Analysis and Path Forward for Family Law*, 110 GEO. L.J. 835, 838 (2022) (arguing that family court judges disregard family violence due to psychological denial).

III. CENTERING FAMILY VIOLENCE IN FAMILY LAW TO ADVANCE RACIAL JUSTICE

We are left with important questions: What does it mean to center family violence in family law? How can centering family violence in family law promote racial justice?

Centering family violence — both structural and interpersonal — in family law involves expecting it, recognizing it, considering it, remedying it, and preventing it. However, we must be careful that centering family violence does not amplify the role of systems and institutions that perpetuate family violence, such as the carceral and family regulation systems. Instead, we must deconstruct these systems and institutions and reimagine and create new mechanisms for addressing family violence without delay.

Centering structural and interpersonal family violence in family law, done properly, has the potential to advance racial justice in two primary ways. The first is restoring dignity to families of color. Calling out the horrific traumas and atrocities that families of color experience due to interpersonal and structural violence recognizes their humanity and acknowledges that they have been wronged and deserve repair. The second is prompting repair. We must create mechanisms to address family violence outside the carceral and family regulation systems. We already have sound proposals for how to do this work.⁴⁷ The time to implement them is now.

CONCLUSION

This Article is an exhortation to align efforts to center family violence in family law with the work of advancing racial justice. It is time once and for all to remove race from the shadows of family doctrine and scholarship. Race matters. Structure matters. Difference matters. The lives of families of color matter. If these are our beliefs and values, we must critically examine and transform family law advocacy, scholarship, doctrine, systems, practices, and teaching to reflect that.

⁴⁷ See, e.g., ROBERTS, *TORN APART*, *supra* note 38, at 277-303; GOODMARK, *IMPERFECT VICTIMS*, *supra* note 17, at 186-195.