

*The State as Batterer: Learning from Family Law and Women's Progress
to Address America's Family-Like Racial Dysfunction*

by

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Introduction

The women's movement for equality bootstrapped to the movement for equality for African Americans.² Now the reverse can happen. This paper uses family law, and the plight of some women who are battered,³ as a lens to address the conflicts in the broader American family.

Several years ago, I had the television on while I was doing a little housework. On television was one of the court divorce shows⁴ and the separated wife was ambivalent

¹ Professor of Law, Mississippi College School of Law. I dedicate this paper to all of those who, though battered, rise up, at some point, and reach for their own power and control over their own precious selves. I especially dedicate this paper to the spirits and memories of my dearly departed: mother who peacefully passed away just months ago, Minnie Lee Perkins Dorsey Moore; brother, Rev. Quincy C. Moore, II; grandmother, Alma Perkins Dorsey; and great aunt, Theresa Perkins Foster.

This paper was presented as a work in progress in several settings, which I greatly appreciate. I want to thank the University of Florida, Levin College of Law, and especially their Center on Children and Families and their Center for the Study of Race and Race Relations, for sponsoring my lecture and visit there in February 2008. The feedback of the distinguished faculty, staff, and student body was priceless.

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Of course, I greatly appreciate the encouragement of my home institution and its generous support of faculty scholarship, including nontraditional and, perhaps, provocative scholarship, such as this essay.

² See, e.g., Katharine T. Bartlett and Deborah L. Rhode, *Gender and the Law: Theory, Doctrine, Commentary* 13-14 (4th Ed. 2006 Aspen) (discussing how feminists have used the conditions and struggles of blacks in their own favor); Carole Pateman, *The Sexual Contract* 116-29 (Stanford Univ. Press 1988) (comparing inequities suffered by some white wives to former conditions of slaves).

³ Admittedly, men are also sometimes battered in domestic relationships. Women, however, are more frequently and historically the victim, and thus will be the lens for this article. See Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence against Women Survey*, reprinted in Nancy K.D. Lemon, *Domestic Violence Law* 92-95 (2d edition Thomson/West 2005). Unmarried women, and not just wives, also suffer domestic abuse. Also, same-sex battering is also reported. See, e.g., Michelle Aulivola, *Outing Domestic Violence: Affording Appropriate Protections to Gay and Lesbian Victims*, 42 *Fam. Ct. Rev.* 162 (2004). Although I will use male/female relationships, with a wife as the one battered as my point of reference, this article is meant to be inclusive in principle and to include all such relationships with such imbalances of power.

⁴ I don't remember which television "actor/judge" show I was watching.

about leaving her abusive husband for good.⁵ I overheard the judge in the action saying that she did not understand why anyone would want to remain in a marriage with physical, emotional, verbal and financial abuse. As I thought over her remarks, I sighed in agreement and continued with my housework. Then suddenly the force of the judge's words struck me and I had to sit down and think. After giving her words much thought, it occurred to me that her words applied not just to women battered by men, but also to those battered in other ways.

I thought more about the state of African Americans in the family called America. I concluded that in many ways, the condition of African Americans in America is analogous to the condition of a battered wife in an abusive relationship. And, an abused wife has four choices: to leave and to change; to leave and not change; to stay and not change; and to stay and change.⁶ Most African Americans are not in a position, nor desire, to leave America permanently,⁷ which eliminates two of the options. Moreover, if African Americans are going to stay, they need to change the race-dysfunctional dynamics of their family like relationship with America or they will continue to be the battered spouse of America.

In this paper, I will use domestic violence and battered women literature and theories to evaluate whether some of the precepts for abused partners in the traditional family context can be transformed to precepts to help African Americans change their relationship with America and address the family-like race dysfunction. My essay, therefore, will focus on two very important topics: disempowered, battered women and family law and disempowered, battered blacks in the United States and race and the law. I will comingle issues related to the plight faced by battered women on the one hand, and that faced by blacks battered by America on the other hand. I hope that by time you read my conclusion, you will see that the two "hands" are connected to the same body, to the same batterer. That batterer is the state.

This essay will be divided into four parts. First, I will explain my interest in these areas and in making this analogy. Second, I will propose my thesis that black and white America is a family, a dysfunctional family. And, black America is the battered spouse in this family relationship with America. Third, I will examine whether battered, abused women, and battered blacks in their family relationship with America, are in fact, not victims of other humans, but battered as a result of or by the state and its systemic oppression. And, fourth, I want you to join me in questioning whether there are any benefits, and harms, in approaching America's race problem in this way.⁸

⁵ Sometimes battered women who leave their husbands go right back. This can be very frustrating for those who try to help them. See Wesley R. Monfalcone, *Coping with Abuse in the Family* 98 (Westminster Press 1980).

⁶ Monfalcone, *supra* note ____, at 92-93.

⁷ Such attempts in the past to escape were not very successful. See Nell Irvin Painter, *Creating Black Americans: African American History and Its Meanings 1619 to the Present* 95 (Oxford 2006) (discussing blacks' unsuccessful attempts to destroy slavery).

⁸ As I said in an earlier article, we need innovative, different approaches to resolving America's centuries' long race problem. See Angela Mae Kupenda, *Negotiating a Metaphorical Contract between Blacker and Whiter America*, 37 U. of Memphis L. Rev. 707 (2007) (analyzing racial solutions by proposing a metaphorical contract between blacker and whiter America).