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The State as Batterer: Learning from Family Law to Address American's Family-Like Racial Dysfunction

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THE STATE AS BATTERER: LEARNING FROM FAMILY LAW TO ADDRESS AMERICA’S FAMILY-LIKE RACIAL DYSFUNCTION

Angela Mae Kupenda*

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* Professor of Law, Mississippi College School of Law. I dedicate this Article 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 Article to the sweet spirits and memories of my dearly departed: mother, Minnie Lee Perkins Dorsey Moore, who peaceably passed away at home surrounded by her family just months ago; older brother, the Rev. Quincy C. Moore, II; grandmother, Alma Perkins Dorsey; and great aunt, Theresa Perkins Foster.

This Article was presented as a work-in-progress in several settings, which I greatly appreciated. I want to thank the University of Florida Levin College of Law, and especially its Center on Children and Families and its Center for the Study of Race and Race Relations, for sponsoring my lecture and visit there in February 2008. I am forever grateful to Professor Shani King, who heard me present an earlier draft of this work in Vancouver, for his insightful comments and kind collegiality and for facilitating my visit to the University of Florida. The feedback of the distinguished administration, faculty, staff, and student body was priceless.

I also appreciate the wonderful feedback from: Professor Doris “Wendy” Greene (Cumberland School of Law) and others at the Northeastern People of Color Conference, hosted by Boston University Law School in September 2008; Professor Margaret Barry (Columbus School of Law); Executive Director Hazel Weiser (Society of American Law Teachers); Professor Nancy Dowd (University of Florida); participants at the Law and Society Association, Montreal, in May 2008; participants at the International Society of Family Law, North American Regional Conference, Vancouver, in June 2007; and Ke Yuan (Mississippi College School of Law graduate 2008) who reviewed an earlier draft of this Article with the diligence and dedication one would show to his mother.

Additionally, I am grateful too for the wonderful sisterly motivation and encouragement of Mississippi College School of Law Acquisitions Librarian Tiffany Paige. As a law professor, I enjoy watching my excellent students, like Tiffany grow, graduate, pass the bar, and become respected colleagues and trusted friends. Of course, I greatly appreciate my home institution and its support of faculty scholarship, including nontraditional and provocative scholarship, such as, perhaps, this Article.
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I. INTRODUCTION

The women's movement for equality bootstrapped to the movement for equality for Blacks. Now the reverse can happen. This Article uses family law and the plight of some battered women, as a lens to address analogous racial conflicts in the broader American family.

Several years ago, I was casually listening to the television while doing a little housework. On television was one of the court divorce shows, and the separated wife was ambivalent about leaving her abusive husband permanently. I overheard the judge saying that she did not understand why anyone would want to remain in a marriage with physical, emotional, verbal, and financial abuse. I immediately sighed in knowing agreement and continued with my housework. Then, suddenly, a fuller force of the judge's words struck me. After much consideration, it occurred to me that her words applied not only to women battered by men, but also to those battered in other ways.

I thought more about the state of Blacks in the family called “America.” I concluded that, in many ways, the condition of Blacks in America is analogous to the condition of a battered wife in an abusive relationship. Because battering usually does not end miraculously, an abused wife has four choices: to leave and to change; to leave and not change; to stay and not change; or to stay and change. Most Blacks are


2. Admittedly, sometimes men also are battered in domestic relationships. Women, however, are more frequently and historically the victim, and thus will be the focus of this Article. See Patricia Tjaden & 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 (Thomson/West 2d Ed. 2005). Unmarried women, not just wives, also suffer domestic abuse. Furthermore, same-sex battering is 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 the husband and wife relationship, with the battered wife as my point of reference, I intend this Article to include all relationships with such imbalances of power.

3. I do not remember what television “actor/judge” show I was watching.

4. 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 (1980).

5. Id. at 92-93.
not in a position, nor do they desire, to leave America permanently.\(^6\)

Moreover, if Blacks are going to stay, then they need to change the race-
dysfunctional dynamics of their family-like relationship with America, or
they will continue to be the battered spouse. Battering does not seem to
simply end without any deliberate work to change.\(^7\)

In this Article, 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 used as precepts to help
Blacks change their relationship with the state of America and to address
family-like race dysfunction. My Article, 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 commingle issues related to the plight faced by women battered by
their husbands on the one hand, and those faced by Blacks battered by
America on the other. I hope the reader will see that the two “hands” are
connected to the same body, to the same batterer. That batterer is the state
of America.

This Article 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 America is a family—a dysfunctional family—in which
Blacks are the battered spouses. Third, I want the reader to join me in
questioning the consequences of approaching America’s race problem in
this manner.\(^8\) In conclusion, I will propose starting points for Blacks to
end their battering.

II. MY INTEREST IN THESE AREAS AND IN MAKING THIS ANALOGY

Eighteen years ago, I fled an abusive marriage with nothing but my
purse and the clothes on my back. I hid my eyeglasses in my bra,\(^9\) because

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6. During slavery, efforts by Blacks to escape their social class were fraught with difficulty. See, e.g., NELL IRVIN PAINTER, CREATING BLACK AMERICANS: BLACK HISTORY AND ITS MEANINGS 1619 TO THE PRESENT 95 (Oxford 2006).

7. MONFALCONE, supra note 4, at 19 (illustrating with a chart how unaddressed abuse risks creating more maximum consequences for the battered and the batterer).

8. As I said in an earlier article, we need innovative, different approaches to resolve America’s centuries-old race problem. See generally Angela Mae Kupenda, Negotiating a Metaphorical Contract between Blacker and Whiter America, 37 U. MEM. L. REV. 707 (2007) [hereinafter Kupenda, Negotiating] (analyzing racial solutions by proposing a metaphorical contract between blacker and whiter America).

once when I tried to leave my battering spouse, he pushed me so hard that my eyeglasses flew off my face. He kicked them somewhere out of my view, smiling in amusement as I groped around the floor trying to find them. This time, though, I was prepared for my eventual departure. I even remembered to leave some of my important papers in the law firm where I was working as a summer law clerk.

I had been married for over thirteen years when I ran from the house. I walked all the way to work, cutting through yards, the backs of buildings, and a college campus in case my husband was following me. I was afraid to get on the city bus, because he had threatened to stop the bus and cause a scene to get us both arrested. It took me more than an hour to walk to work in the Mississippi summer heat. Once there, I embarrassingly notified the law clerk administrator, the security officers in the building, and a few attorney mentors of my situation. Then I called my mother to finally admit to her that I was a battered wife and announce that I had left my husband for good. My mother, happily but with much concern, replied that this was an answer to her prayers. She feared something was wrong in my marriage, but she did not know what to say or to do, as she was afraid he would isolate me further if she intervened in our relationship.

Prior to being married, I had grown up in a home where I helplessly witnessed my father batter my mother. My father regularly abused my siblings and me too — verbally, emotionally, and, occasionally and increasingly, physically. In 1970, after living with my father for seventeen years, my pregnant mother finally fled with her four children in tow. At least three reasons persuaded her to leave her idyllic, suburban, three-bedroom, two-bath house with a fenced-in backyard.

First, my mother saw the effect the abuse was having on her children and feared the permanent impact it would have on our lives. Domestic abuse does not just injure the primary target of the abuse; it also causes injury to those who witness the abuse. As my siblings and I got older, we

\textit{Women, Based on Alice Walker's Book}, The Third Life of Grange Copeland, 42 How. L.J. 1, 6-7 (1998) (telling part of the story).

10. I worked hard to help fully pay for our three-bedroom house. We were mortgage free and had other assets. Nevertheless, I gave it all up, and accepted responsibility for payment of all marital debts to obtain my freedom from marital abuse. A very strict divorce law, which made it quite difficult to be divorced in Mississippi unless both spouses agreed, caused me to make this overly generous offer so that the chancellor could see how desperately I needed to be free.


12. See, \textit{e.g.}, Evelyn C. White, \textit{Chain, Chain, Change: For Black Women Dealing with Physical and Emotional Abuse} 33-35 (1985) (discussing the effects of domestic violence on children); Walker, \textit{supra} note 11, at 145-64 (analyzing and documenting effect on entire
had a hard time deciding whether to try to help our mother during the abuse and risk our own injuries, or to disconnect mentally. In later discussions with my siblings, I learned that several of us were individually plotting what we could do to make our father stop the abuse. Fortunately, my mother left him before any of us could carry out our plans.

Second, my mother's mother, who lived a distance from us, had died in her sixties after a difficult marriage that she never ended up leaving. It was no coincidence that, within three years of my grandmother's death, my mother got a job outside the home as a cook in a restaurant, and began to fiercely fight back when my father became violent, ripping his white t-shirt from his body (he yelled that she must be crazy for acting like that, although he had torn her clothes many times). She then separated families). After I grew up, married, and then left my abusive husband many years later, I attended a Catholic Charities support group for battered women and received counseling from an insightful and kind counselor. At first, my mother, sharing the skeptical view of many Blacks toward counseling, was troubled that I thought I needed counseling. See generally WHITE, supra, at 54-63 (addressing counseling, domestic violence, and the Black community). Eventually, she understood how I wanted to own my part in remaining in the abuse. See generally MONFALCONE, supra note 4, at 95 (discussing benefits of counseling for women who have left abusive relationships). After my weekly support group meetings and one-on-one counseling sessions, my mother always would ask me to get off the bus near her apartment so we could visit. We had many long talks about our lives, power, control, race, gender, and abuse. She, too, wanted to learn from my sessions. These discussions led to our developing an even closer relationship. When my mother passed away this summer, I could say, without a doubt, that she was my best friend and wise mentor, in addition to being my loving and devoted mother.

Since my mother had no car, my grandmother's house seemed so far away, even though she lived only about seventy miles away from us. When we visited her, we often rode in the back of the Continental Trailways or Greyhound bus, because Blacks were required to sit in the back. My grandmother lived in the town of Port Gibson, Mississippi, which Union soldiers called "the city too beautiful to burn" because of the antebellum houses that lined the town's main highway. During the sixties, Blacks and Black-sympathizers were embroiled in a grassroots civil rights battle with the White supremacist power structure and community. See generally EMILYE CROSBY, A LITTLE TASTE OF FREEDOM: THE BLACK FREEDOM STRUGGLE IN CLAIBORNE COUNTY, MISSISSIPPI (2005); NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1992) (ruling against White merchants' claims to recover from the NAACP the revenues that the white merchants lost during the economic boycotts of Blacks seeking more equality). My mother's oldest brother, the Rev. James Dorsey, was a leader in the NAACP and is still the pastor of a large Black church in Port Gibson that was often a meeting place for the NAACP boycott planning meetings. CROSBY, supra, at 94, 102, 104-05.

Although my father ridiculed my mother for not having an outside job, he eventually refused to drive her to work. One day, he put her out of the car many miles from her job. So, with the help of her boss, she bought a used station wagon on credit (although she did not have a driver's license) and learned to drive good enough.

I remember the night my mother defended herself in this way. As a girl peeping from my darkened doorway at my mother's show of defensive and offensive force in the hallway, I was amazed, wondering where she found such physical strength. Many years later, my mother explained
from my father, moving all of us into a little one bedroom, shotgun house in the inner city, far from our large, new house in the suburbs.

My mother’s third reason for leaving my father came after she realized how difficult it was to reason and reconcile with him. After a long, six-year separation and many attempts at reconciliation, she finally divorced my father after having one more child with him and considering returning countless times because of the financial hardships she endured raising six children as a single Black woman in the Deep South.16

Just like my mother, I experienced pivotal points that made me try to leave my abusive spouse.17 My own turning point, which helped me to garner the strength and resources to flee my abusive marriage, came when I was a first-year law student18 in my mid thirties. I was in torts class, and we were discussing assault and battery. I remember reading a court’s

to me that ripping my father’s shirt from his body taught her that she was strong and could defend herself. It also taught her that she did not want to live the remainder of her life physically fighting with her spouse, as some couples do. That was when she intensified her ongoing efforts in planning for a different life for herself and her children.

16. Ultimately, my mother did succeed in securing educations for all of her children. Of the six, all received college degrees, several are ministers, several are teachers, and one has a Ph.D., one an M.D., and I have a J.D. These were the first doctorate degrees in the family. During her life, my mother was a friend and mentor to her children and anyone else trying to succeed against the odds. She often counseled others who were experiencing relationship difficulties or educational challenges. My mother did all of this with only a high school degree.

17. I contemplated leaving several times, but I had great difficulty in doing so for many reasons. Once before law school, when I was teaching at the University of Mississippi, Oxford, I left my home in Jackson, stayed in a cheap hotel, and then arranged my transportation back to Oxford. When he followed me to Oxford, I tried to reason with him that we should separate. I offered for him to stay at the house in Jackson, and I would remain in the faculty apartment in Oxford. He refused that arrangement, threatening to make a huge scene on the campus to get us both evicted and to hurt my reputation at my job. At that time, I was the only Black American faculty member at the Ole Miss School of Business. I believed my spouse would do what he said he would, so I quietly intensified my studying to take the Law School Admission Test. To his dismay, I scored very high and received unsolicited offers from many law schools. My spouse refused to “agree” to my going to law school unless I attended a religious law school, where I could attend Bible study and learn proper wifely and Christian behavior. I accepted the scholarship offer of Mississippi College School of Law, in Jackson, where my family lived. I knew that my departure from the marriage was approaching.

18. I did well in law school, graduating first in my class. I ranked first in grade point average from the end of my first semester until graduation. People often ask me how I did so well, given the abuse I suffered and the racial problems I encountered. I tell them that I did well partly because I was fighting for my life. I somehow knew that finishing law school would help me to empower myself and change my life for the better. Therefore, I studied hard because of the abuse, not in spite of it. Analogous to the moment when my mother fought back against her batterer by ripping his t-shirt, getting into law school and studying hard was my way of fighting back against marital and racial battering.
opinion and thinking that if the law protects people from stranger abuse, then I should be able to assert those same rights against intimate abuse.

Almost two years later, I fled. The final blow that sent me running from the house was not an acute battering incident. Rather, it came when I realized the effect the abuse was having on my spiritual and moral self. I had been an ethical, and at times too strictly religious, girl. Therefore, when I started reacting to the abuse in ways I thought immoral, I realized that I had to flee. On the morning that my spouse threatened me and tried to prevent me from going to work again, I knew I was becoming someone that I did not like, and I fled.

As I beat him to the door and jerked it open, he asked whether I really thought that I was the only person he could control. For a split second, as I stared at the person who was now a stranger to me, I pondered the full meaning of his words. He did not say, “Baby, I love you,” or “Sweetie, I’m so sorry, I need you.” Rather, he admitted that it all had been about control.

Once I became physically free from my batterer, I learned that the “law” might not find me worthy of legal or financial protection. The state might have viewed me as a hardened or tough woman who could take more abuse and, therefore, I would be unable to prove grounds for a state-sanctioned divorce. Ultimately, however, I was able to obtain a divorce in a contested, open hearing.

My second frame of reference for this Article comes from my life as a Black woman in America. I was born in Mississippi in 1956. I rode in the back of buses and attended separate and unequal schools. I did not attend my first integrated class until 1970, even though Brown v. Board of

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19. My mother explained to me many years later why she raised my older brother and me in a stricter, more religious way than she did the younger children. She needed her older children to behave well, so that my father would not subject us to harsh punishment and whippings. She also needed to maintain relative calm in the house when my father was behaving unpredictably. Other Black parents were strict as well, which helped equip their children to survive in trying racial times in the South, so that Whites would not subject them to harsh reactions.

20. I also feared my eternal life was in jeopardy.

21. To read more about these troubling divorce laws and court interpretations, see Kupenda, supra note 9.


Education was decided in 1954.

Like other Blacks, I find myself still subjected to daily minor and major onslaughts of racism. One of the greatest assaults comes from those who insist that America is color blind, or those who insist that although America is not color blind, color mistreatment should not be raised as an issue of injustice.

26. Just like battery in the domestic context, acts of racial discrimination can be thought of as "racial battery" in the societal context. Even law professors are not immune to racial battery. See, e.g., Angela Mae Kupenda, Simply Put: How Diversity Benefits Whites and How Whites Can Simply Benefit Diversity, 6 SEATTLE J. FOR SOC. JUST. 649 (2008) [hereinafter Kupenda, Simply Put] (discussing racial tensions in the workplace and the tangible benefits of encouraging diversity); Angela Mae Kupenda, On Teaching Constitutional Law When My Race is in Their Face, 21 LAW & INEQ. 215 (2003) (discussing the author's difficulty in addressing racial issues when teaching introductory constitutional law); Angela Mae Kupenda, Making Traditional Courses More Inclusive: Confessions of an African American Female Professor Who Attempted to Crash All the Barriers at Once, 31 U.S.F. L. REV. 975 (1997) (discussing the racial barriers challenged by the author's entry into the legal academic field). For more discussion of the difficulties and stresses of being the target of racial battering, see the story from the 1950s of a White man who chemically altered his appearance to live as a Black man. See generally JOHN HOWARD GRIFFIN, BLACK LIKE ME (Signet 1961) (1961). Also, consider the more recent story of a young White man who tried a similar experiment but only could make it for two days as a Black person. See generally Joshua Solomon, Skin Deep: Reliving "Black Like Me": My Own Journey into the Heart of Race-Conscious America, WASH. POST, Oct. 30, 1994, at C1, reprinted in JUAN F. PEREA ET AL., RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA 533-36 (2d ed. 2007) [hereinafter RACE AND RACES].
27. Dr. Martin Luther King, Jr., addressed this sickening silence about race in his now famous Letter From Birmingham Jail:

I must make two honest confessions to you, my Christian and Jewish brothers. First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro’s great stumbling block in his stride toward freedom is not the White Citizen’s Council or the Ku Klux Klanner, but the white moderate, who is more devoted to “order” than to justice; who prefers a negative peace which is the absence of tensions to a positive peace which is the presence of justice . . . .

MARTIN LUTHER KING, JR., WHY WE CAN’T WAIT 72-73 (Signet Classics 2000) (1964). Not even all Blacks agreed back then (unfortunately some were in complacency or were benefitting from oppression), or would agree today with Dr. King. Id. at 75. U.S. Supreme Court Justice Clarence Thomas, likely in disagreement with a present application of King’s points, acknowledged recently that the state of America does have significant racial problems. See, e.g., Virginia v. Black, 538 U.S. 343, 388-90 (2003) (Thomas, J., dissenting) (Conservative Justice Clarence Thomas arguing that cross burning causes fear and intimidation in Blacks); City of London v. Kelo, 545 U.S. 461, 522 (Thomas, J., dissenting) (Thomas arguing that the takings clause has been used disproportionately against Blacks and other minorities). But according to Justice Thomas, “[T]he Court does not sit to ‘create a society that includes all Americans’ or to solve the problems of
The battering I experienced in a domestic relationship is closely akin to the battering I experience as a Black person living in the American family. Therefore, in the next section of this Article I will discuss race more specifically and offer support for the proposition that Blacks are the abused wife in their family-like relationship with America – the batterer.

III. BLACK AMERICA AS THE BATTERED SPOUSE IN ITS FAMILY RELATIONSHIP WITH AMERICA

The characteristics of a battering relationship have been well studied and documented. In this section, I first will compare racial battering to characteristics displayed in the often-used domestic violence wheel of power and control. Then, I will analogize racial battering to other features of abusive marriages.

A. Blacks’ Relationship with America, Which is Based on Power and Control, is like Battering Marriages

The wheel of power and control explains the dynamics of an abusive romantic partnership. This wheel suggests that such a relationship is not characterized by equality and mutual support, but rather it is based on power and control with the likely presence of several different forms of


29. See generally KIESEL, supra note 28, at 14 (reproduced from the Domestic Intervention Project and the National Center on Domestic and Sexual Violence).

30. Id.
abuse: isolation, emotional abuse, economic abuse, sexual abuse, using children, using male privilege, intimidation, and physical abuse. Similarly, Blacks have suffered these forms of abuse by the state of America. Before examining these themes, it is critical to point out one pervasive battering dynamic: the intergenerational aspect of abuse.

Domestic violence literature suggests the presence of an intergenerational element. Children who witness their mother’s abuse are at risk of seeing the abusive relationship as a normal one, increasing the chance that they will have violent relationships in the future. This intergenerational theme is present in my own story given the battering of my grandmother, my mother, and finally myself. This intergenerational theme, as illustrated below, shows that racial battering has been passed on from generation to generation in America, from slavery to the present.

1. Isolation

Domestic abuse is primarily about the battering husband’s desire for power and control over his battered wife. One of the first steps that a battering spouse takes in launching this control is isolating his wife from those who could help her. Blacks suffered this same isolation in America. Slavery that was condoned implicitly, but not directly sanctioned by the Constitution, was the initial generational use of this isolation that facilitated the battering of Black Americans. Separated from their families, communities, language, and culture, the ability of Blacks to change their conditions lessened as America increased its control over their destiny.

Propaganda that depicted Africa as being savage-like imposed a self-isolation, persuading Blacks that if they had any dignity, then they would not want to be associated with their home continent. In addition, along

31. Id.
32. See, e.g., WHITE, supra note 12, at 33-35; WALKER, supra note 11, at 145-64. Some studies suggest that “[s]ixty percent of all male batterers come from violent homes.” HAL ACKERMAN, THE WAR AGAINST WOMEN: OVERCOMING FEMALE ABUSE 2 (Hazledan Foundation 1985).
33. DALTON & SCHNEIDER, supra note 28, at 54.
34. Id. at 101.
35. The Constitution never explicitly mentions the word “slavery,” yet it condones slavery. See art. I, § 2, cl. 3 (3/5 compromise); art. I, § 9, cl. 1 (protecting slave trade from congressional restriction until 1808); & art. IV, § 2, cl. 3 (fugitive slave clause).
36. See generally RACE AND RACES, supra note 26, at 96-103 (discussing conditions and tools of slavery).
with this denigration of Africa, the state issued continued threats that Blacks could be sent back if they did not behave and comply with the rules set by the American government. This led to self-imposed isolation, as Blacks themselves started to hate things that seemed African to them, including darker skin, or natural hair, or wider bodies or noses.

Even today, this forced isolation continues. Those who have formal educations or are members of the middle class may especially experience this isolation. Middle-class Blacks, who hope to partake in the American dream, may subtly be forced to isolate themselves from their culture and roots or emulate the American perception of beauty in order to fit in. This same use of isolation as a tool is prevalent in abusive marriages. The battered wife is made to doubt herself, her abilities, and her attractiveness, which keeps her from seeing her potentials for freedom and connection to a supportive community and supportive self.

38. Cf. Benjamin Franklin, Observations Concerning the Increase of Mankind (1755), reprinted in RACE AND RACES, supra note 26, at 104-05, 108, 136 (discussing how Benjamin Franklin wanted to send Blacks away in 1755); Thomas Jefferson, Notes on the State of Virginia, Query XIV (1787), reprinted in RACE AND RACES, supra note 26, at 108 (discussing how Thomas Jefferson wanted Blacks removed after the end of slavery to prevent racial mixing). Blacks still hear “Love it, or Leave it” when they complain about racial battering in America, but see Kupenda, Simply Put, supra note 26, at 661-62 for a discussion on how diversity teaches patriotism by replacing “Love it, or Leave it” with love America enough to make it better.


41. Once, in my former marriage, I became determined to mail Christmas cards to my former friends and relatives in order to reconnect with them. I was sipping a cup of coffee and enjoying writing my cards at the kitchen table when my ex-husband told me that he did not want to participate in my little hobby and made fun of my efforts. Since his ridicule did not stop me, he came to the table and “accidentally” knocked my coffee all over my work.

Like my father, my ex-husband also would disconnect our phone service from time to time. In addition, he would find fault with my family or my interaction with them after a visit to illustrate why I should not spend time with them. However, he enjoyed visits with his family and my father and stepmother, even when we showed up after what looked like a battering by my father against his new family.

As if the isolation from one’s community and one’s self is not enough, the isolation is also an isolation from the batterer. The battering spouse, although isolating his wife from her own intimate relationships, still does not share that intimacy with her. Rather, the opposite occurs, because the batterer uses the withdrawal of intimacy to punish his wife and make her behave in ways completely satisfactory to him.

The same dynamic has occurred for Blacks in America. During slavery, Blacks were not considered equals to the Whites they cared for. White masters lived in separate accommodations, ate at separate tables with separate utensils, and did not engage with the slaves as humans. Even after Reconstruction, Blacks have been isolated and separated from White ascension to power in education, housing, and even prison housing. This separation or isolation results in the batterer failing to really know the battered, and it leads to the battered suffering increased feelings of abandonment. Analogously, while public laws forbid de jure segregation, private lives remain heavily segregated and isolated de facto in America.

2. Emotional Abuse

Many mistakenly believe that physical abuse is the most injurious part of a battering relationship. Some suggest, however, that the emotional

One of my former White bosses once told me that he did not want me to spend so much time with the Black community, and that he wanted to show me off in the White community. He told me that I could ignore Black people, because they would love me anyway because of my success. If I had followed his advice, then I would not have garnered support, later in my career, for challenging racially discriminatory employment practices. The isolation would have cut me off from resources and support.

42. See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. 1, 127 S. Ct. 2738, 2779 (2007) (striking down Seattle’s attempt to end some of the de facto racial isolation in education).


44. See Johnson v. California, 543 U.S. 499 (2005). The Court said, however, that the segregation in prison housing must satisfy strict scrutiny, Which requires a compelling government interest and that the segregation is narrowly-tailored to that interest. Id. at 509.

45. See Peggy McIntosh, White Privilege and Male Privilege: A Personal Account of Coming to see Correspondences Through Work in Women’s Studies, in LESLIE BENDER & DAAN BRAVEMAN, POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER 22 (West 1995) (discussing how Whites are “privileged” to live much of their lives with little contact with non-Whites, and questioning whether this is in fact a privilege).
abuse has the longest lasting effects. Regardless, primarily focusing on only the most extreme physical abuse underestimates the effect of more subtle and hidden assaults to the victim’s integrity that occur on a frequent basis. Many battered spouses find themselves subjected to ridicule, name-calling, and numerous insults by their spouses to make them feel worthless.

Blacks, too, suffer emotional abuse as the battered spouse of America. During slavery, Blacks were deprived of sufficient food, clothing, and ample rest, thus affecting their abilities to think and plan as humans. They also were threatened with whippings and being sold away from their families. Even free Blacks did not mentally and legally enjoy rights of equality or citizenship. After Reconstruction, Black Codes restricted Blacks’ humanity in business dealings and casual encounters, as Blacks risked injury if they looked a White man in the eye or stared too long at a White woman. America repeatedly reminded Blacks of the low regard in which the state held them. Today, Blacks still experience name-calling and ridicule in books, movies, the workplace, shopping centers, and even during interactions with state officers. Even when Blacks excel, they are not immune to this type of abuse.

When Blacks protest the emotional abuse, the response may be that Blacks deserve what they receive because of their personal flaws, or that they should develop thicker skin and stop being so overly sensitive and emotional. Interestingly, battering husbands give battered women similar responses when the women complain. Some even argue that many

46. See ACKERMAN, supra note 32, at 6-7 (“the mouth is a mightier weapon than the fist”).
47. Id. at 7.
49. Id. at 49, 68-69.
50. For example, in Dred Scott v. Sandford, 50 U.S. 393 (1857), the Court ruled that even free Blacks were not citizens, stating that the framers did not intend for them to be citizens as they “were considered as a subordinate and inferior class of beings.” Id. at 404-05.
52. WALKER, supra note 11, at 29.

The myth that battered women provoke their beatings by pushing their men beyond the breaking point is a popular one. Everyone can recount a story where the woman seemed to deserve what she got: she was too bossy, too insulting, too sloppy, too uppity, too angry, too obnoxious, too provocative, or too something else.
battered women want to be battered and, therefore, do not deserve freedom from the batterer’s control. Hence, with both types of battering, there is a myth that some people deserve rough treatment and are not entitled to better lives.\footnote{Id. (The myth that the battered deserve their battering is just a myth, which robs the batterer of responsibility for battering.)}

Like battered wives, Blacks that do not protest may walk around on eggshells, trying to not provoke the batterer. They inevitably fail, as the abuse is not about the battered person’s behavior, but rather about the batterer’s desire for control to keep the target off balance and susceptible to the batterer’s suggestion. Battering is a mind job. The battered is controlled, and perhaps destroyed, from the inside out. In some instances, as abuse is not confined to certain types of families, the battered wife may be the sole breadwinner, accomplished at work, and financially providing for herself and the batterer. Yet, the emotional abuse has destroyed the battered wife’s self worth, for she does not see her own accomplishments.

Analogously, Blacks were told, especially during slavery, that they were lazy and incompetent. However, why would the state condone enslaving people who were lazy and of no worth? Even today, Blacks find similar undesirable characteristics assigned to them. Again, who would find it necessary to discriminate against and hold back a Black person who could not succeed anyway? The emotional battering in both instances is, therefore, undeserved and a sick attempt to misuse the battered and keep the battered subject to control.

3. Economic Abuse

Battered wives may find themselves subjected to abusive control over their finances, including the taking of their money and restrictions on their earning power.\footnote{Id. at 127-44.} Blacks suffer the same abuse. During slavery, Blacks generally were not paid for their hard labors. Moreover, during the Jim Crow era, Blacks were denied certain work, and Blacks today are, on average, paid less than Whites for the same work.\footnote{See Marion Crain, Colorblind Unionism, 49 UCLA L. REV. 1313, 1315-17 (2002) (discussing wage inequities between Black and White employees).} While receiving less than they earn, Blacks pay more when negotiating for certain assets.\footnote{See, e.g., Ian Ayres, Fair Driving: Gender and Race Discrimination in Retail Car Negotiations, 104 HARV. L. REV. 817 (1991).}
addition, other discriminations deny them economic opportunities that could be empowering.\(^{57}\)

4. Sexual Abuse

A batterer may force the battered wife to engage in sexual conduct against her will and treat her as a sex object.\(^{58}\) Blacks have suffered the same type of abuse at the hand of America. As slaves, Blacks were bred and used as breeders.\(^{59}\) The rape of Black women occurred for the state’s own economic benefit.\(^{60}\) Black women had no legal recourse, nor did their Black husbands who also felt violated by the abuse to Black women and helpless for not being able to stop it. Black men suffered their own dehumanization and sexual objectification to profit the state of America.\(^{62}\)

Even after slavery, Black women who worked for Whites found themselves exploited and blamed for their exploitation.\(^{63}\) The sexual exploitation of Black women led to them being categorized as sexually loose or, to the other extreme, asexual and mammy-like, which was also sexual abuse.\(^{64}\) Even today, some studies suggest that Black women, still affected by racial battering, are sexually inhibited in their attempts not to be categorized as loose women.\(^{65}\) Black men also suffered sexual abuse, as they were recklessly blamed and lynched for alleged and unfounded exploits against White women.\(^{66}\)

5. Using Children

A batterer may use his children to make his wife feel guilty or to harass her.\(^{67}\) He may accuse her of being an inadequate parent and even take

\(^{57}\) Crain, supra note 55, at 1315-20.
\(^{58}\) See Walker, supra note 11, at 107-26.
\(^{60}\) Id. at 12-13.
\(^{61}\) See id. at 13.
\(^{62}\) Some White masters castrated Black men when they did not work hard enough to the masters satisfaction. See Painter, supra note 6, at 93. Additionally, “ex-slave testimony supplies abundant evidence that some owners coerced their slaves’ sexuality in the interest of profitable reproduction.” Id. at 97.
\(^{63}\) Giddings, supra note 39, at 31, 86-87, 321-22.
\(^{64}\) Id.
\(^{66}\) Giddings, supra note 39, at 27-28, 31.
\(^{67}\) See Kiesel, supra note 28, at 14 (reproduced from the Domestic Intervention Project and
away her children as punishment. Similarly, a common complaint about Blacks is their inadequate parenting skills and the lack of Black fathers who are involved with their children. Lost in this discourse is the fact that the state of America started and proliferated the “fatherlessness” of Black children.

For example, the state denied Blacks parenting rights over their children, since their children could be sold at any moment upon the master’s whim. In addition, the ultimate paternal abandonment of Black children was by White fathers, which was condoned and facilitated by the state. White masters routinely and legally treated their own flesh and blood as chattel. They sold the mixed-raced children they fathered with Black female slaves, beat them, and had no regard for their future except as mercantile livestock. The legal system facilitated this abuse by implementing laws which stated that the condition of a child followed the condition of the mother, and by the one-drop rule, which made these mixed-raced slaves legally Black. In other words, children born to Black slave mothers and White masters were slaves and could be sold by their White fathers for economic profit. These children even were used after Reconstruction to work plantations and were denied the same educational opportunities as White children. Even today, Black children receive less regard.

Just like a battering spouse, however, the blame is shifted. The batterer’s own disrespect for humanity and family is of great injury to the children, but the wife is blamed. Analogously, the state’s own multigenerational disrespect of Black children and their humanity caused great injury, but generations of Blacks are blamed.

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68. See id.
69. See Painter, supra note 6, at 97.
70. See Giddings, supra note 39, at 37-39.
71. See id.; Race and Races, supra note 26, at 13.
72. Id.
74. Cf. Angela Mae Kupenda, Seeking Different Treatment, or Seeking the Same Regard: Remarketing the Transracial Adoption Debate, 26 B.C. Third World L.J. 97 (2006) (discussing the importance of treating Black children with the same regard as White children in the adoption process).
75. See Race and Races, supra note 26, at 1020 (discussing Moynihan report and other theories that label the Black family as inferior).
6. Using Male Privilege

Because the battering relationship is about power, the use of male privilege is common. The male abuser may treat his wife as a servant, not allow her to participate in major family decisions, and act like her master. Similarly, during and after slavery, Blacks were America’s unpaid servants, who often were hindered from participating in the democratic process. Even after Reconstruction, states developed systems to inhibit Blacks from participating in the democracy. As recently as Bush v. Gore, Blacks were disenfranchised so as not to have their say. Today, unearned White privilege continues to perpetuate lesser, unprivileged, lives for Blacks.

7. Intimidation

A battering spouse also maintains control and power by keeping the spouse in fear of what the batterer may do. One technique of a batterer is the destruction of the battered wife’s property or possessions to intimidate the spouse by implying that she too could be destroyed. Likewise, White masters threatened Black slaves that they would be whipped to death or sold and taken away from their families. Later in history, the Ku Klux Klan (KKK) controlled the Black community by threatening violence, burning crosses, lynching, and destroying Black-owned property. Today, the state may allow Whites to intimidate Blacks into control in order to prevent them from complaining about or acting against battering conduct. Even the conservative Black Supreme Court Justice, Clarence Thomas, acknowledged this racial battering. He has noted the terror and intimidation imparted by the KKK as well as

76. See Kiesel, supra note 28, at 14.
77. Poll taxes, literacy tests, intimidation, and other strategies were used to maintain White supremacy by preventing Blacks from voting in the electoral process. See generally RACE AND RACES, supra note 26, at 668, 676-77.
78. 531 U.S. 98 (2000).
80. See generally RACE AND RACES, supra note 26, at 531-32.
81. Walker, supra note 11, at 95.
82. Ackerman, supra note 32, at 6.
recognized the disproportionate takings and destruction of Blacks' property by the state.\textsuperscript{84}

8. Physical Abuse

Many battered spouses are pushed, hit, slapped, choked, and restrained. Similar physical abuse of Blacks was more prevalent during slavery and throughout the Civil Rights era. Reports of such abuse continue.\textsuperscript{85} The physical abuse of Blacks is sometimes manifested in the excessive punishment of Blacks, as compared to Whites for similar wrongs. The Court has held, however, that to correct those injustices would mean a dismantling of the entire criminal justice system, which would be too much.\textsuperscript{86}

B. Other Characteristics of a Battering Relationship Also Characterize the Plight of Blacks

Other characteristics of a battering relationship also characterize the plight in which American Blacks find themselves. These include: the role of shame; the debilitating effect of learned helplessness and post-traumatic stress disorders; legal system complicity; the viewpoint that abuse occurs in isolated instances; the received complicity of the battered; the cyclic nature of battering; and the unfortunate role of religion.

1. Role of Shame

Shame and embarrassment play a role in silencing an outcry against the abuse, and this silence keeps the batterer in denial and prevents the battered from getting help.\textsuperscript{87} At the inception of the Constitution, the shame of the battering slaves kept the Framers from even using the word "slaves" in the Constitution's text. Furthermore, perhaps the KKK wore masks because of their shame and fear of being exposed. Like battered

\textsuperscript{84} Although the Constitution allows the state to take one's property with due process of law, Justice Thomas has pointed to how the takings clause has been used disproportionately in ways that injure racial minorities and the poor. \textit{See} City of London v. Kelo, 545 U.S. 461, 522 (Thomas, J., dissenting).

\textsuperscript{85} \textit{Race and Races}, \textit{supra} note 26, at 1112-14.

\textsuperscript{86} \textit{See}, \textit{e.g.}, \textit{McClesky v. Kemp}, 481 U.S. 279, 312-13 (1987). According to the dissent, "The Court next states its unwillingness . . . is based in part on the fear that recognition of \textit{McClesky}'s claim would open the door to widespread challenges to all aspects of criminal sentencing. Taken on its face, such a statement seems to suggest a fear of too much justice." \textit{Id.} at 339 (Brennan, J., dissenting).

\textsuperscript{87} \textit{Walker}, \textit{supra} note 11, at 22.
wives, Blacks suffered from the shame their abusers felt. During the Jim Crow era, some Blacks persuaded themselves that their lives were good and that they got along with Whites just fine, even though they drank out of dirty water fountains labeled “colored” or were forced to enter a restaurant through the back door. Additionally, the state often argued that there were no racial problems, especially in the South.

A battered spouse who complains may be blamed for being overly sensitive. Similarly, as far back as the late 1800s, the state grew tired of hearing Blacks complain about discrimination and determined it was time for them to fend for themselves, even in the midst of private racial battering. The Court makes similar claims today and often argues for color blindness in ways that ignore the racial battering of Blacks in America. Some Blacks agree with the proponents of color blindness, thereby continuing to create a shame-filled silence that perpetuates the dysfunctional battering relationship.

2. Debilitating Effect of Learned Helplessness and Post-Traumatic Stress Disorders

A battered spouse also may suffer soul destroying, learned helplessness. She eventually may reach the point where she does not hope or believe that she can improve her situation. She may turn on herself as a result. This desperation may explain why some Blacks commit offenses on their own communities.

Those who are not in debilitating despair and try to change their situation may still experience post-traumatic stress disorders. For example, for almost ten years after I left my battering spouse, I suffered nightmares where I dreamed that I had returned to him. I would wake up heart racing, sweating, screaming, and wondering how I could be back in that situation. Similarly, I have had nightmares about the severe racial battering I have experienced in predominantly White job settings. In those nightmares, I am a slave and unable to escape, or I escape and have nowhere to go. From

88. King, supra note 27, at 75 (describing how many Blacks remained complacent about confronting racial segregation because they felt hopeless, or because they derived a benefit from the segregated nature of society).
89. Crosby, supra note 13, at xiv-xv, 271.
90. See Civil Rights Cases, 109 U.S 3, 25 (1883) (holding that private racial discrimination was not a badge or incident of slavery and that it was time for the recently freed slaves to “cease[] to be the special favorites of the law”).
92. Walker, supra note 11, at 32-34.
these dreams, I also wake up heart racing, sweating, screaming, and wondering how I can escape what seems like inevitable racial battering. Some persuasively argue that the heightened racial stress that Black America faces explains some of the health problems that Blacks suffer at alarming rates and in disproportionate numbers.93

3. Legal System Complicity

The legal system is complicit with battered spouses. Some police officers and judges, whom the victim may seek for help, may be complicit in the abusive system and disregarding of women.94 Others may minimize complaints by a battered woman based on the historical and continuing devaluation of women by the law and society. In addition, officers may have little training and personal conflicts of interest. There may be judicial lack of understanding or a judicial distrust of the abused person’s testimony and motives. Also, the abuser typically has a heightened ability to manipulate and connect with a non-woman, non-minority power dominated legal system.

Analogously, Blacks in America face the same elements of abuse. Blacks were distrusted and discounted to the point that they were not allowed to be jurors or witnesses in a court of law.95 Even now, their testimony may be discounted, and some operatives in the system may have their own issues of racism that may hinder them in vindicating the rights of Blacks.96


94. For example, despite an existing restraining order, law enforcement responded with total inaction to a woman’s cries for help after her husband unlawfully snatched her children in Town of Castle Rock v. Gonzales, 545 U.S. 748, 751-53 (2005). Ultimately, the woman’s estranged husband killed her children. Id. at 754. The police finally reacted when the husband opened fire on the police department. Id. The Court held that the state’s failure to do anything was not a violation of the woman’s constitutional rights. Id.

95. See, e.g., Strauder v. West Virginia, 100 U.S. 303 (1879) (reversing murder conviction of Black man tried by a jury where all Blacks were excluded by law); Batson v. Kentucky, 476 U.S. 79 (1986) (addressing tactics used to exclude jurors based on race).

4. Abuse Seen as Narrow Problem and IsolatedInstances, Rather than Structural Defects

Battering continues because of the failure to see it as part of a greater societal, structural problem. Therefore, any attempts to address the issues are piecemeal and family-by-family, or incident-by-incident, rather than structural.

Battered wives actually are more susceptible to abuse because of battering by the state. The legal system’s disregard for women and the predominance of male privilege create unbalanced male power dynamics. Not only has the legal system rendered women devoid of power over their own destinies for so many years, it also has sanctioned the use of techniques to discipline women who did not submit to male dominance and power. Women also supported this male privilege and encouraged their daughters to seek out the safety of male-dominated families as a means of personal security, even if particular males did not create safe places for their own wives.

Similarly, with regard to Black Americans, the legal system sanctioned the ownership, subjection, and deprivation of the political and economic means to control their own lives. Just as the destinies of battered women are compromised by their husbands, even at their husband’s expense and at great cost to the ultimate good of their family units, the destiny and possible contributions of Blacks are sacrificed by America to maintain a system built on White privilege. This occurs even when the sacrifice leads to the underutilization of American human resources.

Although the state itself may not raise a physical hand to the victims of abuse, the state has provided the laws by which the husband’s battering of his wife and America’s battering of Blacks have a historical basis. The state acts as a joint participant with male privilege and White male privilege. The battering of wives is prevalent in our society. Some estimate that at least one-third of wives will be battered at some point in their lives. Similarly, Blacks report routine personal incidents of racial harassment and discrimination.

Nevertheless, even if a Black person lives in America without direct personal affronts, the routine structural affronts and inequities create

97. WALKER, supra note 11, at 12.
98. See, e.g., Kupenda, Negotiating, supra note 8, at 733-37 (discussing what White America stands to gain from lesser racial inequality).
99. See DALTON & SCHNEIDER, supra note 28, at 5.
100. See, e.g., Joshua Solomon, Skin Deep; Reliving ‘Black Like Me': My Own Journey Into the Heart of Race-Conscious America, WASH. POST, Oct. 30, 1994, at C1, reprinted in RACE AND RACES, supra note 26, at 533-36.
abusive contexts in which he or she lives. Given the prevalence of the battering and governmental inaction to rectify the inequalities, the state’s complicity is more obvious. The state must have some interest in maintaining a status quo and preserving order even when doing so contravenes the well-being of the state, like when a battering husband abuses his wife to the detriment of himself or his family unit.

5. Real and Imagined Complicity of the Battered

A perplexing topic is the role the battered wife plays in her own abuse. A battered spouse may have entered the relationship with lower levels of self-esteem or suffered diminished self-esteem as a result of the pounding emotional and physical abuse. She also may have conflicted feelings about her batterer. Analogously, after generations of battering, Blacks also have struggles with issues of racial self-esteem and worth. The “I’m Black and I’m proud” era suggests that empowerment is possible. Yet, to be successful, this message must be repetitive, open, and articulate in order to prevent the cycle of battering from reclaiming its victims.

6. Cycle of Battering

The two battering relationships are alike based on the cycle of abuse. When there is battering in a marriage, the battering and abuse are not constant. Rather, the relationship passes through several phases: the building of tension in the relationship; the acute battering incident; and the honeymoon/remorseful phase, where the batterer may offer small gifts or tokens to make up for the incident and buy the battered wife’s silence.101 The honeymoon lasts until the tension begins to build again. The couple might move through these phases quickly or over a long period.102 In the later years of my own marriage, I could see the tension building, and at those times, would try to walk on eggshells so as to not provoke or displease my spouse. These attempts always were futile, while moving into the next phase was almost effortless. After an incident of physical or severe emotional battering occurred, the marital issues were not resolved, and the abuse always was a memory and a future possibility.

The same is true in America’s dysfunctional family treatment of Blacks. Because the Framers of the Constitution denied the existence of slavery, Blacks endured a prolonged battering incident. Reconstruction served as a honeymoon phase in which America gave Blacks the following

102. See id.
“gifts” as an unofficial recompense for slavery: several constitutional amendments, a promise of forty acres and a mule, and Blacks elected to political office. This was followed by the building up of tension and battering as the government allowed Blacks to be battered into submission by the KKK and other White separatist groups.

When Blacks strongly rebelled during the Civil Rights movement, there was another honeymoon phase, with limited affirmative action as a small gift; but then a backlash began again, and the cycle continued. The gifts of fuller voting rights and affirmative action were offered with the implicit suggestion that Blacks should stop talking about past racial battering as well as the present or future propensity for battering. Now the tension is starting to build again, as the American family is under economic stress and Blacks are at a point of decision as to whether to endure more battering or to force a change.

7. Unfortunate Role of Religion

In my own abusive marriage, I struggled with the religious teachings in which I was immersed. My batterer was a minister and used those teachings to hinder me from leaving. He used a number of Biblical scriptures to justify his control over me, including: the husband is the head of the wife; the wife should submit herself to the husband; the only grounds for divorce is adultery; and God hates divorce. Religious emphasis can be used in controlling ways to silence the battered and, therefore, perpetuate the battering.

Interestingly, Whites also used religious teachings to justify slavery and the malevolent treatment of Blacks. Frederick Douglass added to his narrative a special appendix exposing and rebuking “slaveholding,
women-whipping, cradle-plundering” forms of religion of the land.\(^{110}\)
Thus, in both forms of battering, some batterers use their religion or the faith and religious upbringing of the battered to justify politics of oppression and a focus on heavenly rewards to compensate for the earthly battering.

Similarly, a battering spouse may use religious ideals of keeping the family together to continue this abuse. Even outsiders may tell a battered wife that she has been married for so long that she might as well stay and endure. While faith can help a battered victim maintain hope, the battered is at risk that the batterer and others will use that faith to lull the battered into an unnecessary acceptance of his or her abused condition on earth.

**IV. CONSEQUENCES OF APPROACHING AMERICA’S RACE PROBLEM IN THIS WAY**

When I delivered the lecture on which this Article is based at the University of Florida Levin College of Law, I invited the esteemed audience of faculty, students, staff, and administrators to examine the harms and benefits of addressing America’s racial problem in this way. As expected, the attendees pointed out a number of potential harms and benefits. This section is in response to their insights.

One attendee argued that the analogy of Blacks as the battered wife of America is flawed, because marriage (abusive or not) is considered by many to be a privileged state and aspiration for women. He argued, further, that this does not carry over to Black America’s marriage to America, as Black America gets no benefit for being a battered spouse of America. When this concern was raised, I did not initially have a response. However, the response is now clearer.

I agree that a battered wife may benefit from some societal privileges of marriage. Similarly, Blacks benefit from being citizens of America. To criticize the dysfunctional relationship is not to deny that there is some good in either relationship.

Ironically, one of the difficulties that many battered wives have in leaving their battering spouse is that the marriage is not always all bad.\(^{111}\) Therefore, the battered hopes that the good times will increase and the bad times will be fewer and farther between. Similarly, Blacks continue hoping that the good times (i.e., freedom from slavery, Reconstruction, end of de


jure segregation, voting rights, limited affirmative action, and more equality) eventually will keep improving and make up for the bad times of discrimination and abuse. Therefore, the analogy fits: privileges keep the battered hoping, and that hope stays alive until the tension builds and the next battering incident occurs.

Another attendee questioned whether the analogy itself, that Blacks are the battered spouse of America, victimizes Blacks. He argued that, as battered wives may suffer post-traumatic stress disorders and learned helplessness, comparing Blacks to battered wives suggests that Blacks are sick and helpless. I agree that the analogy does suggest that anyone subjected to abuse, especially prolonged and generational abuse, will likely suffer some consequences. The analogy also can suggest, however, that, like many formerly battered wives, Blacks can become survivors. Becoming a survivor involves rejecting the fears of labels (i.e., “victim”), naming the injury, and getting past the shame of having experienced the abuse to admit that one is battered yet determined to survive.

This analogy to a battered spouse may seem problematic, as it may suggest that Blacks are childlike victims who now suffer disorders because of their prolonged abuse. Actually, this approach illustrates how those who batter women must have disorders, as their abuse is self-defeating. The state, which racially batters, must also have a sickness. In a battering relationship, the batterer suffers from a loss of intimacy, financial losses from the battering incidents, shame about the nature of the relationship, resources spent on hiding the battered’s energies spent nursing her wounds of abuse.

The same is true to those who racially batter Blacks. The state, with its complicity in both types of battering, actually injures, and therefore underutilizes, its own human resources. The state of America is worse off for its battering of Blacks. The suspicions about Blacks keep the state in a hyper-vigilant state of watching the behavior of Blacks. The wasted energies the state uses in battering Blacks, along with the wasted energies Blacks expend on recovering from the battering, could be better used to benefit America’s economy. Moreover, America’s international reputation is tarnished, as other countries know about the racial abuse and America’s unwillingness to confront it.

Consequently, the analogy suggests a different and frequently unexplored pathology: the sickness and pathology of the batterer, and the sickness and pathology of America. The fact that America batters against its own interests seems to be the real pathology. This sickness may account for why the batterer would set out to destroy those who actually can help the batterer economically and emotionally and offer respect, love, and companionship.
Thus, a benefit, rather than a harm, of this analogy could be the encouragement of more work on the pathology of the batterer to figure out how those with abusive and power-bent personalities can be helped, so that they do not destroy themselves and others who could love them. In addition, exploring America’s racial dysfunction as a sickness of America, rather than as intentional actions, could help get past the response some make to attempts at racial discourse. At times when racial abuse is discussed, some defensively respond: “I know you are not calling me racist,” or “I would never hurt you intentionally, the nerve that you would suggest so,” or “How can I hurt you intentionally when some of my best friends are Black?”

Another interesting question posed at my University of Florida lecture was, since the analogy to domestic violence fits the racial battering against Blacks, as it is very difficult to stop a husband from battering whether it is hopeless for Blacks in America to stop their batterers. No, it is not hopeless for Blacks to survive in America. However, we need more work on how batterers can be helped and more studies on how a battered spouse can change herself and her relationship. Although we will have to work harder to understand battered-batterer relationships, Blacks can stay and change the dynamics.

In my own marriage, when I set very strong limits for my spouse, he never directly hit or chocked me again. Unfortunately, he did continue to use other forms of abuse, which made me feel trapped. Since he was not hitting me, I did not feel justified in leaving him. Later, I realized that even non-physical abuse and quasi-physical abuse, such as him restraining me, was destroying me inside and out. Subsequently, I left in the midst of his threats. I did not stay longer to see if, as in stopping the hitting, I could end the other abuse. To stay would have required serious intervention. Similarly, the state of America needs serious intervention to stop its self-defeating racial battering of Blacks, which is rooted in intergenerational racial battering and abuse of power.

V. CONCLUSION—BEGINNING STEPS FOR THE BATTERED

More work on breaking free from battering is needed. Hopefully, the analogy presented in this Article will be helpful to those who understand the plight of battered women, but not that of battered Blacks, and for those who understand the plight of racially-battered Blacks, but not that of battered women.

As stated at the beginning of this Article, the battered has four choices: to leave and to change; to leave and not change; to stay and not change;
and to stay and to change. Since Blacks likely are going to stay in America, they need to change the dynamics of their family-like relationship with America. The benefit of the analogy is that Blacks can see that, similar to the battered spouse, it will be very difficult to expect the batterer (i.e., America) to change its ways. However, the one battered may change the dynamics of the relationship by changing oneself, which ultimately may lead to a change in the batterer. Below, I offer five beginning steps for those who are battered.

A. Learn More about the Dynamics of Relationships Built on Power Imbalance

First, the battered must learn more about the dynamics of relationships built on power and control rather than on equality. The battered wife and Blacks in America must use this information to understand the problems of such relationships and discover the possibilities of equality-based relationships. Then, the battered may begin to regain their power and the parts of themselves that were given up for a semblance of a relationship.

B. Come Out of Isolation

Second, the battered should come out of isolation and make connections with the community, culture, and heritage that they have been forced to forsake. Blacks should learn more about Africa and Blackness and realign themselves with their communities, cultures, and other supporters. Forced isolation was the way the batterer launched control, and breaking out of the isolation is a beginning step in breaking this abusive control.

C. Build Self-confidence

Third, Blacks should attempt to rebuild self-confidence and empower themselves to believe that they have worth and are entitled to relationships built on respect. Even while being in a battered condition, one can internally refuse to continue to be a victim.

The story of Frederick Douglass exemplifies this step, as he, though still a slave externally, resolved that he would no longer be a slave internally. Realizing that he had been “broken” by racial battering by being transformed from a person to a non-person, he became determined to transform himself back to a human being. Douglass was sent to live with

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112. MONFALCONE, supra note 4, at 92-93.
a Mr. Covey who had a “reputation as a nigger-breaker.” Mr. Covey wrote:

Mr. Covey succeeded in breaking me. I was broken in body, soul, and spirit. My natural elasticity was crushed; my intellect languished; the disposition to read departed; the cheerful spark that lingered about my eye died; the dark night of slavery closed in upon me; and behold a man transformed into a brute!... I was sometimes prompted to take my life, and that of Covey, but was prevented by a combination of hope and fear. ... You have seen how a man was made a slave; you shall see how a slave was made a man. ... Covey entered the stable with a long rope; and just as I was half out of the loft... I was brought sprawling on the stable floor. Mr. Covey seemed to think he had me, and could do what he pleased; but at this moment—from whence came the spirit I don’t know—I resolved to fight; and, suiting my action to the resolution, I seized Covey hard by the throat; and as I did so, I rose. He held on to me, and I to him. ... That battle with Mr. Covey was the turning point in my career as a slave. ... I did not hesitate to let it be known of me, that the white man who expected to succeed in whipping me, must also succeed in killing me. From this time, I was never again what might be called fairly whipped, though I remained a slave four years afterwards. I had several fights, but was never whipped.114

Douglass’s efforts to free his mind are closely akin to my mother’s ripping the t-shirt from her batterer and my fighting through the use of my mind to internally free myself as a battered victim.

D. Shun Silence

The fourth step is to hold the batterer responsible and accountable without placing the battered in the way of undue harm. This step requires coming out of silence to discuss and acknowledge the battering and to refuse to be shamed115 and silenced116 anymore.

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113. DOUGLASS, supra note 48, at 100.
114. Id. at 105-13.
115. See, e.g., Jonathan R. Cohen, Coping with Lasting Social Injustice, 13 WASH. & LEE C.R. & SOC. JUST. 259, 269 (2007) (“a first step toward a subordinated person changing his or her circumstances may be recognizing, if only internally, that such is not what he or she deserves.”).
116. This Article is a continuation of my own attempts to un-silence myself.
E. Seek to Forgive

The final step is to forgive the batterer and to forgive one’s own self. This step may seem inconsistent with the third and fourth steps, to free oneself from victimhood and hold the batterer accountable. However, freedom from battering requires a complete internal freedom, in conjunction with external actions. Part of having internal freedom is to release the pain and control the batterer has on one’s emotions by forgiving him.

My own mother illustrated forgiveness. She explained to my siblings and me many times that her batterer was pathologically sick, which was why he mistreated us. She wanted us to release bad feelings toward him, so the things he said about us would not continue to haunt and control us. Just as the state has labeled Blacks with negative notions and expressions, my father was fond of calling all of us, including my mother, names, such as: crazy, dumb, fat, and ugly. As my father was bedridden for over a year and experienced a prolonged death, my mother encouraged all of us to visit him and try to forgive and release him. She too went to his hospital room and prayed with him and my stepmother. As she prayed, my father started to hum a spiritual song to the amazement of his doctors. They thought he was unconscious.

Earlier, I also had watched my mother try to forgive her own father long after his death. She did this as she wrote about her family’s story, attempting to better understand the struggles her father faced as a Black man in the early 1900s. She still, though, held him accountable and acknowledged how his actions painfully affected many lives, including her own.

Soon after my own father died, I had a dream about him. In my dream, he was wearing a bloody shirt, and he wanted to go with me somewhere. I told him, “I don’t know where you came from, but you cannot go with me” anymore. I saw that dream as my release of the hold his battering had on me. I finally realized that I did not have to be the things he called me anymore. This release enabled me to admire my father’s good traits: his strong work ethic, his wiry sense of humor and wit, and the fact that he did not smoke or drink in front of us.

117. My father died in a hospital after becoming seriously ill in a nursing home. Prior to his admission into the nursing home, he checked himself into the geriatric mental unit of a hospital. My stepmother later had him committed to Whitfield, a Mississippi state mental hospital. My mother and us children went to visit him during his long illness, even when he was in Whitfield. Interestingly, before my parents separated, my father often used to threaten my mother and us children that he was going to have us committed to Whitfield.
Forgiving my own spouse was easy. I knew his personal history. Forgiving me was harder. It was difficult to forgive myself for spending almost fourteen years of marriage, my twenties and much of my thirties in an abusive relationship.

When I was a teenager, analogously, I had a hard time understanding the generations of Blacks who submitted themselves to the racial battering of the state. At that time, I was angry at the state for its racial battering. I was also angry with all Blacks, including myself, for not having won equality in the state of America sooner. However, as I grew older, I understood more about the struggle of Blacks in America. Once I realized the debilitating effect of centuries of battering, I was able to see the resilience and love in Black America, even in the midst of our plight. I was able to see my own plight as a Black woman battered by the state. With all of this, I was able to forgive myself and other Blacks for not being able to fully break free from the state-sanctioned systems earlier, especially from those determined to break Blacks and, inevitably, the state of America itself.

Therefore, forgiveness of self is critical for Black America. Releasing the state of America emotionally, rather than, morally, or economically, will enable Blacks to tell the racial batterers what I told my father in my dream: “I don’t know where you came from,” but the negative things you’ve said about me cannot go with me in my head and heart anymore.

Like Frederick Douglass, Blacks can break free internally from the battering, and that internal freedom ultimately will cause the racially battered to change from the inside. The determination that the bruised will not mentally be subjected to the battering will lead to the pivotal points of finding strength to resist and survive the battering. And, in that, there is no shame.

Postscript

While the Journal editors were editing this Article, President Barack Hussein Obama was elected as the first Black President of the United States. The editorial staff appropriately then asked whether his election changed the thesis of this Article. There are three possible responses.

118. Even Dr. Martin Luther, King, Jr., who believed in forgiveness and in non-violent direct action, argued in an infrequently-quoted essay, that the state owed Blacks economic atonement "as the moral and practical way to bring the Negro's standards up to a realistic level." King, supra note 27, at 125. He further noted that “[w]henever this issue of compensatory or preferential treatment for the Negro is raised some of our friends recoil in horror." Id. at 124. See also id. at 116-43 (this essay is entitled, “The Days to Come”).
The first possible response is that the election of a Black man as President suggests that we are living in a post-racial society and that upon his election America was purged magically and completely of all racial battering and all effects of the generations of racial abuse. Although some believe this notion to some extent, I do not ascribe to this notion at all.

The second possible response is that the election of President Obama does not signal any difference in racism in America. The position is that the President is one person elected; therefore, his election does not signal that other Blacks will now be treated with any different respect in America. I do not ascribe completely to this notion, either.

The third response is the one that I do believe in. Just like the pivotal points I shared earlier that led to my mother’s and my leaving abusive marriages, the election of President Obama is a pivotal point for America. It is another opportunity for change, another opportunity for America to say that it does not want just a honeymoon phase from “racial battering,” rather it wants to end the racial battering and build relationships built on mutual respect. Even after President Obama’s election, racial battering still occurred. Some racial battering even appeared directed against the President himself. The election of President Obama, though a time to celebrate, did not automatically dismantle the structures in America’s systems influenced by our history of racial battering. His election, then, with positive actions from the batterer and the battered, as noted above, could help us genuinely change. My hope is that his election is not just a honeymoon phase, where America once again enters the cycle of battering. My hope is that his election is a pivotal point that brings about actual change and helps to break the cycle in which we have been shamefully immersed in for too many years.


120. For example, in Mississippi after the election, schoolchildren were disciplined for even saying “President Obama’s” name. See, e.g., Jimmie E. Gates, Can’t Say Obama’s Name? ACLU Opens Investigation, CLARION LEDGER, at 1A, Nov. 8, 2008. Even on the campus of University of Mississippi, that had heralded itself as overcoming its racial past as it hosted one of the presidential debates, racial attacks were reported after his election. Id.


122. Even conservative Justice Clarence Thomas acknowledges this history. See supra note 27. See also Jessica Millward, Teaching African-American History in the Age of Obama, CHRON. REV. at B20, Feb. 27, 2009 (“it takes time to change formal systems of government and informal mechanisms of power”).