

# The University of Chicago Law School Roundtable

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Volume 2 | Issue 1

Article 3

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1-1-1995

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### Recommended Citation

Dohrn, Bernardine (1995) "Bad Mothers, Good Mothers, and the State: Children on the Margins," *The University of Chicago Law School Roundtable*: Vol. 2: Iss. 1, Article 3.

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# KEYNOTE ADDRESS

## Bad Mothers, Good Mothers, and the State: Children on the Margins

BERNARDINE DOHRN

“Mary Francis,” a poem by the poet laureate of Illinois, Gwendolyn Brooks, speaks from a child's experience of domestic violence:

Home is a shape before me.  
I travel three blocks to Home,  
Are the dishes in the sink, still,  
with morning yellow dried on?  
And  
is there *another* color in the kitchen?  
(The kitchen is where he whips her.)  
Is red all over Mama once again?  
Is pa still Home, with a mean and sliding mouth?  
With hands like hams.  
With  
stares that are scissors, tornadoes.<sup>1</sup>

Family violence<sup>2</sup> takes place in a landscape of unequal power, control, and

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1. Gwendolyn Brooks, *Children Coming Home* 12 (David, 1991).

2. I use the term “family violence” with some trepidation. It describes the interplay of domestic violence and child abuse but the absence of gender in the term is misleading since women and their children are overwhelmingly the victims. See P. A. Klaus and M. R. Rand, *Family Violence: Bureau of Justice Statistics Special Report* (US Dept of Justice, 1984); Jan E. Stets and Murray A. Straus, *Gender Differences in Reporting Marital Violence and Its Medical and Psychological Consequences*, in Murray A. Straus and Richard J. Gelles, eds, *Physical Violence in American Families* 151, 154-55 (Transaction, 1990); Craig M. Allen and Douglas L. Epperson, *Perpetrator Gender and Type of Child Maltreatment: Overcoming Limited Conceptualizations and Obtaining Representative Samples*, 72 *Child Welfare* 543 (1993).

privilege.<sup>3</sup> Historically, both women and children were the property of men, subject to their exclusive economic, legal, and physical power. Their victimization was concealed by centuries of religious,<sup>4</sup> economic,<sup>5</sup> and ideological gloss.<sup>6</sup> Despite decades of effort, the full humanity of women and children is only beginning to be recognized. It was just twenty-seven years ago, after all, when children were accorded limited constitutional rights.<sup>7</sup> Similarly, issues such as battering, rape, and violent pornography have only recently become matters of public concern, and only through the labor-intensive efforts of the women's movement.<sup>8</sup>

Today, we are here to consider the legal methods by which poor mothers and their children are relegated to the pit called, in modern parlance, "dysfunctional families." The term "dysfunctional families" is, of course, a redundancy. All families I know are dysfunctional; one need only attend a funeral or wedding to find proof. Last week, my sixteen-year-old son informed us that everyone he knew at school was from a dysfunctional family. Then he delivered a blow to our hearts: he rated our own two-parent, obsessive, child-centered family something like a "B-minus." The larger issue, though, is clear: who is a "good enough" mother and who sets the standards?

The legal system does not rely on harsh adolescent evaluations to judge the quality of parenting. Instead, for the poor and overwhelmingly African American families that are brought before the Cook County Juvenile Court on charges of neglect or abuse, an anonymous call to the Illinois child abuse hot line triggers a stream of decisions by various state agencies. These agencies inevitably make judgments about the quality of parenting as well as child safety, and their findings help determine whether a court imposes upon parents what one commentator has called the death penalty of civil law: termination of parental rights.

Judicial judgment of "bad" mothering occurs with much of family violence fragmented and invisible. Where child neglect or abuse is adjudicated, for example, domestic violence against the mother may not be apparent. At the same time, some feminists argue that the adjudication of child neglect or abuse takes place in a troubling vacuum which rejects consideration of context: a mother's need to survive and to protect her children, their economic dependency, or their fear of physical violence. This snapshot, legal isolation from social

3. See Evan Stark and Anne H. Flitcraft, *Women and Children at Risk: A Feminist Perspective on Child Abuse*, 18 Intl J Health Serv 97, 100 (1988).

4. See Alice Miller, *For Your Own Good: Hidden Cruelty in Child-Rearing and the Roots of Violence* 63-64 (Farrar, Strauss, Giroux, 1983); Alice Miller, *Breaking Down the Wall of Silence: The Liberating Experience of Facing Painful Truth* 162-64 (Dutton, 1991).

5. See Frederick Engels, *Origins of the Family, Private Property and the State* 7, 33 (Intl, 1972).

6. See Valerie Polakow, *Lives on the Edge: Single Mothers and Their Children in the Other America* 38-39 (Chicago, 1993).

7. *In re Gault*, 387 US 1, 13 (1967).

8. Mary Becker, Cynthia Grant Bowman, and Morrison Torrey, *Feminist Jurisprudence: Taking Women Seriously* 202-353 (West, 1994).

context, institutional neglect, and complex relationships of power therefore relies exclusively on individual maternal accountability and blame. Fathers, step-fathers, and "boyfriends," as well as larger social institutions, are absent during the legal and moral adjudication of mothers.

Today, I will focus on three problems with the legal system's approach to family violence. First, I will examine the fragmented and often conflicting legal systems for addressing domestic violence and child abuse which persist despite their common ground. Second, I will look at the misogynist nature of the juvenile court system. And finally, I will discuss the invisibility of children in domestic violence courts. Together, these weaknesses too often destroy families by failing to promote safety for both mothers and their children.

### I. Separate Legal Systems for Family Violence and Child Abuse

Family violence includes two distinct but interconnected strands: domestic violence (i.e., abuse of a spouse or partner<sup>9</sup>) and child abuse.<sup>10</sup> Domestic violence and child abuse,<sup>11</sup> to an unknown extent, overlap and coincide within families; each is a strong predictor of the other.<sup>12</sup> In fact, some researchers argue that domestic violence may be "the single most important

9. Rates of violence appear to be comparable or greater among cohabiting or dating couples. See James M. Makepeace, *Courtship Violence among College Students*, 30 *Family Relations* 97, 108 (1981). Violence continues and may escalate after separation. Barbara J. Hart, *Gentle Jeopardy: The Further Endangerment of Women and Children in Custody Mediation*, 4 *Mediation Q* 7, 324 (1987).

10. I will focus on child physical and sexual abuse, although the majority of neglect and abuse cases in the Cook County Juvenile Court are petitions alleging neglect.

Other forms of family violence include violence against the elderly and violence against siblings. These other forms of family violence are beyond the scope of this discussion.

11. Accurate statistics are lacking. In the 1984 American Humane Association's National Study of Child Neglect and Abuse Reporting, only fifteen of the participating states collected data on wife abuse; in 1985, the number dropped to six states. Diane DePanfilis and Gayle Brooks, *Child Maltreatment and Women Abuse: A Guide for Child Protective Services Intervention* (Nat'l Woman Abuse Prevention Project, 1989). See Susan Schechter and Jeffrey L. Edleson, *In the Best Interest of Women and Children: A Call for Collaboration between Child Welfare and Domestic Violence Constituencies*, Briefing Paper at the Wingspread Conference, "Domestic Violence and Child Welfare: Integrating Policy and Practice for Families" (June 1994) (conference held in Racine, Wisconsin).

12. Mary McKernan McKay, *The Link between Domestic Violence and Child Abuse: Assessment and Treatment Considerations*, 73 *Child Welfare* 29, 29-30 (1994); Murray A. Straus, Richard J. Gelles, and Suzanne K. Steinmetz, *Behind Closed Doors: Violence in the American Family* 114-15 (Anchor, 1980) (finding that forty percent to seventy percent of the children of women in shelters have been abused); Lenore E. Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* 136 (Harper & Row, 1989); James Garbino and Gwen Gilliam, *Understanding Abusive Families* 113-16 (Lexington, 1980); Stark and Flitcraft, 18 *Intl J Health Serv* at 115 (cited in note 3); L. Bowker, M. Arbitel, and J. McFerron, *On the Relationship between Wife-Beating and Child Abuse* (Sage, 1988); William Stacey and Anson Shupe, *The Family Secret: Domestic Violence in America* 65, 190 (Beacon, 1983).

context for child abuse.”<sup>13</sup> Estimates of the overlap between domestic violence and child abuse range from forty percent to sixty percent.<sup>14</sup> However, these estimates provide only preliminary empirical data. The unequal power relationships within the family and society and the indications of multi-generational family violence<sup>15</sup> lead commentators to concur on the need for systematic research and practical response.<sup>16</sup>

Although domestic violence and child abuse appear to overlap and coincide, they are adjudicated by distinct and disconnected legal and social service systems. In Cook County, two courts—domestic violence and juvenile—are little more than a mile apart, yet they inhabit different planets. In domestic violence court, the state’s attorney represents women who are battered. In juvenile court, the state’s attorney prosecutes mothers for child neglect or abuse. These two courts refer women and their children into separate social service universes. They do not communicate with each other, and there is no common information system. Thus, a woman with a protective order from domestic violence court may be petitioned simultaneously into juvenile court where the judge is unlikely to be aware of the domestic violence case or the fact that the woman herself was battered. Similarly, when a child appears with her mother in domestic violence court, the court may be unaware that the child herself has been the victim of abuse or that the child has an active legal case in another court. Also, while the domestic violence court might issue a protective order against the father, the juvenile court might simultaneously order the father into counseling with the abused spouse, or the domestic relations court might issue an order for joint custody of the child.<sup>17</sup>

## II. The Misogynist Nature of the Juvenile Court System

Juvenile courts are typically misogynist and culturally biased;<sup>18</sup> they

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13. See Evan Start and Anne Flitcraft, *Woman Battering, Child Abuse and Social Heredity: What is the Relationship?*, in Norman Johnson, ed, *Marital Violence* 97 (Routledge & Kegan Paul, 1985).

14. Walker, *Terrifying Love* at 101 (cited in note 12); American Bar Association, *The Impact of Domestic Violence on Children: A Report to the President of the ABA* 18 (Aug 18, 1994); Straus, Gelles, and Steinmetz, *Behind Closed Doors* at 114-17 (cited in note 13).

15. Susan Schechter, *Family Violence across the Life Cycle*, Presentation to the American Medical Association National Conference on Family Violence (Mar 11-13, 1994).

16. See, for example, Adele Harrell, *A Guide to Research on Family Violence* (Nat’l Council on Juvenile and Family Court Judges, 1993); National Council of Juvenile and Family Court Judges, *Conference Highlights—Courts and Communities: Confronting Violence in the Family* (1994); Schechter, *Family Violence across the Life Cycle*.

17. Domestic relations courts similarly exist in a distinct but overlapping relationship with the domestic violence and child abuse legal systems. In domestic relations court, litigants are private parties, and the state appears only through the judge and the law, not as prosecutor. Yet many family violence issues are also common to domestic relations cases: violence, abuse, custody, adoption, guardianship, visitation, paternity, child support, and mental health proceedings. See Hart, 4 *Mediation Q* 7 (cited in note 9).

18. In many juvenile courts, sustained effort at reform has transformed this history. See

developed as “mother-blaming” institutions where fathers are absent and larger social forces are virtually invisible. Few would deny that racism, poverty, unequal household relations, inadequate housing, unemployment, failing schools, drugs, and other factors affect which families are petitioned into juvenile court. Yet the legal system conceals these conditions behind the cloak of legal objectivity.<sup>19</sup> Women and children have no names in juvenile court proceedings; they are referred to as “Mother” or “Minor.” With judicial caseloads of three thousand to four thousand families per judge, parties before the court cannot be viewed as individuals. Instead, they blur into one long and undifferentiated failure. Furthermore, mothers are the worst represented parties in juvenile court. Since public defenders in Cook County carry up to one thousand cases each and are assisted collectively by only one social worker, they have little time out of court to adequately meet the needs of their clients. Nationally, parents frequently have no access to counsel, or courts may only assign intermittent representation, such as in hearings to determine temporary custody or to terminate parental rights. In this context, juvenile court proceedings do not articulate, represent, or acknowledge the social conditions of women's lives.

The legal theory that created the juvenile court system ninety-five years ago was *parens patriae*, or the state as father.<sup>20</sup> Under the doctrine, the state assumes a parental role for deviant, delinquent children from inadequate homes. The juvenile court system therefore developed within a tradition of “child-saving”<sup>21</sup> and social reform,<sup>22</sup> where fathers were largely absent and where poverty and ethnicity (today, poverty and race) determined which

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*Model Code on Domestic and Family Violence* (National Council of Juvenile and Family Court Judges, 1994) (drafted by the Advisory Committee of the Conrad H. Hilton Foundation Model Code Project of the Family Violence Project and approved by the Board of Trustees, National Council of Juvenile and Family Court Judges). Note also the efforts of Unified Family Courts to integrate fragmented systems in National Council of Juvenile and Family Court Judges, *Children and Families First: A Mandate for America's Courts* (1993).

19. Kimberle Crenshaw, *Race, Gender and Violence against Women: Convergences, Divergences and Other Black Feminist Conundrums*, in Martha Minow, ed, *Family Matters: Readings on Family Lives and the Law* 230-32 (New Press, 1993).

20. Sanford J. Fox, *Juvenile Justice Reform: A Historical Perspective*, 22 *Stan L Rev* 1187, 1192-93 (1970).

21. Anthony Platt, *The Child Savers: The Invention of Delinquency* 124-34 (Chicago, 1969).

22. The first juvenile court act in the world defined a neglected and dependent child as one who, among other things, “is destitute, homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or is found living in any house of ill fame or with any vicious or disreputable person; or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; and any child under the age of 8 years who is found peddling or selling any article or singing or playing any musical instrument upon the streets or giving any public entertainment.” Act of Apr. 21, 1899, Ill Laws 131.

families the state would charge with abuse or neglect.

This broader tradition, of which juvenile court is but one important part, is profoundly misogynistic. From the beginning, the juvenile courts and the broader social welfare system intervened in the lives of destitute women to regulate and monitor their behavior, punish them for “deviant” mothering practices, and police the undeserving poor.<sup>23</sup> Women were locked at the center of the private sphere of the family; their sole responsibility was to produce healthy offspring and provide for the well-being of men. Poor women, single women, and women who worked outside the home failed, by definition, to meet this responsibility.<sup>24</sup> The legal and social welfare apparatus developed to regulate and punish these “bad” mothers by “saving” their children.<sup>25</sup> A few recent examples illustrate how the juvenile court and social welfare systems regulate and label women who are deemed “bad mothers”:

In December 1993, the Cook County state's attorney and public guardian petitioned “Mother Doe,” a young pregnant woman, into Juvenile Court. Despite the mother's religious and personal convictions, the prosecution asked the judge to order Mother Doe to submit to induced labor and an early Caesarian section that would, according to medical experts, save the life of the fetus. Not a single judge at the trial or appellate level agreed with the prosecution.<sup>26</sup> Nevertheless, the public guardian agreed to represent the fetus under the Illinois Juvenile Court Act and went on to appeal the case, albeit unsuccessfully, to the United States Supreme Court. The “maternal fetal medicine specialist” at St. Joseph Hospital and Medical Center testified at trial that he was one hundred percent certain that the fetus would die or suffer brain damage if delivered vaginally. Yet, with television cameras recording her delivery from the lobby at Northwestern Memorial Hospital, Mother Doe had a successful vaginal delivery and a healthy new child.

Vivian P., an African American mother, came to the attention of the Illinois Department of Children and Family Services when her third child, a daughter, had a positive toxicology test at birth. Vivian was an episodic drug user, not an addict. She successfully completed the required drug

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23. Linda Gordon, *Heroes of Their Own Lives: The Politics and History of Family Violence* 114 (Viking, 1988); Steven Mintz and Susan Kellogg, *Domestic Revolutions: A Social History of American Family Life* 128-29 (Free Press, 1988).

24. Adrienne Rich, *Of Women Born: Motherhood as Experience and Institution* 67-68 (Norton, 1976).

25. Feminists and historical scholars have begun to reassess the social and ideological construct of women and the various public and private entities that developed to regulate and punish them. See, for example, Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, Presentation at Columbia University School of Law (Sept 1992); Susan Moller Okin, *Justice, Gender, and the Family* 175-84 (Basic Books, 1989); Barbara J. Nelson, *Making an Issue of Child Abuse* 73 (Chicago, 1984); National Council of Juvenile and Family Court Judges, *Family Violence: State-of-the-Art Court Programs* (1992); National Council of Juvenile and Family Court Judges, *Family Violence: Improving Court Practice* (1990).

26. *Baby Boy Doe v Mother Doe*, 260 Ill App 3d 392, 632 NE2d 326 (1994).

program, but she became homeless. At the shelter, her daughter was badly burned by scalding water from a broken faucet. In juvenile court, the judge agreed with shelter administrators and the mother that the burning was an accident. Yet, the judge still blamed Vivian, concluding that she should have corrected the dangerous situation at the homeless shelter. The state took custody of Vivian's daughter and refused to allow Vivian and her daughter to have unsupervised visits. Although Vivian continues to have custody of her two sons, the state has filed criminal charges against her for her daughter's injuries.

Evelyn G. entered the hospital with a terminal illness. She left her three young children in the care of her sister, who had three children herself. One day, the sister left the children at home in the care of the eldest child. A neighbor called the child abuse hotline, and Evelyn's children were removed from the home of their aunt and placed in foster care homes. Despite efforts to provide a care plan that included responsible back-up, the aunt failed to convince the Department of Children and Family Services, the caseworker, or the court that she should regain custody of the children. Evelyn died without knowing whether her children would be raised by a relative. After her death, her children were returned to their aunt's custody. Moreover, the case was opened not as a dependency (no fault) case, but as a neglect case against Evelyn.

It is within this kind of mother-blaming framework that domestic violence cases pass through the juvenile court system. A woman who raises issues of domestic violence in juvenile court may fear, with good reason, that she will be blamed and consequently lose custody of her children.<sup>27</sup> Although she is not the abuser, the mother, not the perpetrating father, is frequently held responsible for child abuse either because of her presumed failure to protect her child or because of her silence.<sup>28</sup> The concern of most abused women for the safety and well-being of their children and their active steps to protect them are ignored or diminished.<sup>29</sup>

Juvenile court typically fails to identify domestic violence, advocate on behalf of the battered mother, or hold the abusive partner accountable for his violent behavior. The male parent most often escapes jurisdiction in juvenile court proceedings, and he is sought by public notice only when the court is ready to terminate his parental rights.<sup>30</sup> Male abusers rarely appear. The

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27. See, for example, *In re A.D.R.*, 186 Ill App 3d 386, 542 NE2d 487, 490 (1989) (holding that the continuing physical abuse of one parent by another, where the child was not physically abused, will cause emotional damage to a child and thus constitutes child neglect and an "environment injurious to the minor's welfare").

28. Susan Schechter points out that the silence of many mothers in the face of health care providers, child protection teams, or juvenile court proceedings results from being placed in an impossible dilemma by the "helping professions" because their lives, and their children's lives, are threatened if they speak up. Schechter, *Family Violence across the Life Cycle* (cited in note 15).

29. See Schechter and Edleson, *In the Best Interest of Women and Children* at 11 (cited in note 11).

30. There are some courts where effective efforts are made to bring both biological

deeply held societal expectations I alluded to earlier—that mothers are primary caretakers and protectors of children—prevail. Attorneys, judges, and case-workers still frequently blame women for their victimization. The assumption that the woman is a “bad mother,” or at least an inadequate mother in a “dysfunctional family,” may lead the state to remove her children in order to protect them even when there is no child abuse. In fact, when domestic violence is indicated in juvenile court, mothers may face an even greater risk of losing custody because of their “failure to protect” their children.

Moreover, in cases of domestic violence, poorly informed state efforts to intervene and protect children often exacerbate the problem. If her children have been taken by the state, the battered woman turns to her abuser to regain custody. She may view this as an appropriate legal punishment for her perceived failure as a wife and mother. The abuser will feel confirmed in his practice of “blaming” her. The couple may be sent to counselling or parenting classes, reinforcing the battered mother's self-blame and low self-esteem.

Juvenile courts must begin to recognize that the best way to make children safe is to make their mothers safe. Today, the child protective system often permits a mother and her children to become homeless and then removes the children from the mother's custody, placing them in separate foster homes. Instead, in those situations where the male abuser is the primary source of harm to both the children and the mother, the child protective system should remove the batterer from the home, and it should support the battered mother by providing safety plans that will allow her to protect herself and her children. This would provide the children with a safe environment and an opportunity to recover from the abuse they have suffered. Anything less constitutes “official failure to protect”—failure to protect the lives of women and of children.

If women abuse their children, or participate and collude in child abuse, they must be held to high child protection standards even though they may have been battered themselves. There is currently little or contradictory research on what proportion of battered mothers become physical abusers<sup>31</sup> and what factors increase this percentage. However, the remedy for both battered women and their children must include efforts to understand their mutual victimization. To this end, there are several important works of literature<sup>32</sup> that illuminate the complex and tangled family relationships underlying child abuse, family violence, and acquiescence.

Finally, mothers have no exit from the juvenile court system. The ubiqui-

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fathers and live-in fathers into court at the initial stages of temporary custody hearings in neglect and abuse cases. One such court is the Unified Family Court in Jefferson County, Kentucky.

31. See Stark and Flitcraft, 18 *Intl J Health Serv* at 98 (cited in note 3); see also Stets and Straus, *Gender Differences* at 151 (cited in note 2).

32. See, for example, Dorothy Allison, *Bastard out of Carolina* (Plume, 1993); Keri Hulme, *The Bone People* (Penguin, 1983); Toni Morrison, *Beloved* (Plume, 1987); Louise Erdrich, *Tracks* (Holt, 1988); Tillie Olsen, *Tell Me a Riddle* (Dell, 1956).

tous legal standard of “the best interest of the child”—added thirty-three times last summer to the Illinois Juvenile Court Act—has been turned into a bludgeon against women even when there is no evidence of danger to a child. Judges, appropriately fearful for their reputation and career, pursue risk-averse solutions for the short run: they remove children from their mothers and place them in state custody without defining clear standards for intervention; they allow mothers only supervised visits with their children; they force mothers to undergo psychiatric assessments. Under this policy, children are not saved; rather, they languish in state care. In Chicago, one in every forty children is in foster care.<sup>33</sup> Illinois's escalating rate of children in placement has almost doubled because cases remain open for years. That is a long time in the life of a child.

If mothers hope to regain custody, they must be patient, obedient, and compliant with all juvenile court mandates. Juvenile court judges have castigated mothers for wearing pants or being angry. In their view, the perfect party will plead guilty, attend every appointment the court orders, be pleasing, feminine, and drug-free forever. But the litany of parenting classes, counselling, drug testing, and psychological evaluations the juvenile court orders, ignores the mother's needs for housing, child care, drug treatment, employment, or mental health services. One cannot help but be reminded of the misogynist requirements women faced in order to be released from mental institutions that were documented by Phylliss Chessler in *Women and Madness* two decades ago.

### III. The Invisibility of Children in Domestic Violence Courts

Domestic violence courts, which focus on women who have been battered and abused, often fail to attend the forgotten victims of domestic violence—children.<sup>34</sup> The creative energy and determined effort of the women's movement has helped draft and pass new domestic violence laws, establish domestic violence courts, create a network of shelters for battered women and their children, provide domestic violence social services that include medical and police support, and initiate domestic violence awareness and prevention programs. Much of the momentum to develop connections between domestic violence and child abuse arises from the experience of women in domestic violence shelters who have observed directly the impact of family violence on children. Heroic efforts to establish child-centered play areas, therapy support, and educational programs for children of battered women have built bridges

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33. Ami Nagle, Chuck Shubart, and Regina McGraw, *Chicago Kids Count: Community by Community Profiles of Child Well-Being* 13 (Voices for Illinois Children, 1994).

34. See Mildred Daley Pagelow, *Effects of Domestic Violence on Children and Their Consequences for Custody and Visitation Agreements*, 7 *Mediation Q* 347 (1990); Louise Silvern and Lynn Kaersvang, *The Traumatized Children of Violent Marriages*, 68 *Child Welfare* 421 (1989); Joel S. Milner and Ruth G. Gold, *Screening Spouse Abusers for Child Abuse Potential*, 42 *J Clin Psych* 169 (1986).

between the worlds of child welfare and domestic violence. Yet children remain largely invisible in domestic violence courts.

Although they are listed in protective orders, children are not parties to the proceedings in domestic violence court. Clinging to their mothers' coats, they are frequently not interviewed, not asked about the violence they have witnessed, and not asked about the abuse they themselves might have suffered. Their experiences with domestic violence may never be explained or supported. At the very least, the invisibility of children means domestic violence courts fail to address the trauma children experience as witnesses to violent family relationships, and fail to address the lessons children learn: girls are trained to grow up as victims, and boys are trained to feel powerful by diminishing women. Even worse, the actual abuse children suffer may not be discovered, accounted for, or remedied by the judicial system. In extreme cases, the physical or sexual abuse of children is continued, or retaliatory abuse—formerly directed against the mother—is directed against the child during custody visits.<sup>35</sup>

In many ways, the denial of children's presence in domestic violence courts is explainable. In some feminist writing, children are only seen as obstacles to a woman's liberation and independence. As feminists have struggled to decode and dismantle the historical construction of motherhood and biology as destiny, they often describe children primarily as emotional and economic burdens. In the second feminist wave, some defined children as a consequence of compulsory heterosexuality that keeps women firmly entrenched in the patriarchy. In either case, children are object. Women alone are subject. Feminists' insistence on not inevitably linking women with children's issues is important; it arises from efforts to overturn centuries of male power, privilege, and domestic ideology, including the notion that a woman's true fulfillment lies only in motherhood. Yet, by resisting this link between women and children, theorists indirectly objectify children and therefore deny that children, too, are full human beings with human rights. We cannot ignore the possibility that women could choose and create mutual relationships with children that are rich, creative, and satisfying.

Mothers and their children—as well as advocates for domestic violence and child welfare—often have competing interests as well as bonds and common ground. This reflects the textured, nuanced, and real world we inhabit. For example, battered women's shelters, even those with expanding programs for children, frequently exclude boys over thirteen years of age. This practice is understandable because it protects the safety and confidence of residents who have survived violent abuse, but it also tears apart siblings, destroys mother/child relationships, and exacts a “Sophie's Choice” from some women fleeing their abusers. These and other issues, such as mandatory reporting of child abuse and conflicts concerning confidentiality, underscore the need for policymakers to discuss and appreciate the multiple perspectives and for

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35. See Schechter, *Family Violence across the Life Cycle* (cited in note 15).

collaboration among the domestic violence and child welfare worlds.

The invisibility of children, the silencing of women, and the fragmented systems of domestic violence and child abuse can have devastating consequences. No example more painfully illustrates this fact than the death of Lisa Steinberg, a six-year-old New York girl who was battered and terrorized by her father. This celebrated case defied the stereotypes: a Jewish professional family; years of violent, deforming, physical brutality by attorney Joel Steinberg against Lisa's mother, Hedda Nussbaum; the passive, perhaps collusive, role of the battered mother in the death of Lisa. By what standard of accountability should we judge how Hedda Nussbaum cared for her daughter? What standards of accountability should we use for a victimized group such as battered mothers? Is it helpful to distinguish ethical responsibility from legal responsibility?

#### IV. Conclusion: Building Bridges

There is much we can do to protect both mothers and children without abandoning or weakening the focus on advocacy. The common ground between child welfare and domestic violence is vast; tensions and contradictions can be recognized and overcome. Mothers in juvenile court need domestic violence resource centers. Children in domestic violence courts need to be recognized as full human beings. Moreover, children need to remain with their non-abusive parents. They need to be provided with an understanding of family violence; and they need to be given ways to survive and to heal.

All judges in cases that involve children must consider the effects of domestic violence. To this end, any "reasonable effort" to reunify families or prevent the removal of children from parents who are victims of domestic violence must include an obligation to provide a safe environment (e.g., housing and financial support) for the victimized parent and children.

We must also generate standards for mothering and parenting that are based on feminist, anti-racist, and child-centered principles. We need to (1) redefine and reconstruct the term "family" in order to both respond to changing demographic and social trends and to eliminate patriarchal assumptions, (2) establish a range of accountability for family violence, (3) address the crisis of drug and alcohol addiction in child-bearing women by developing criteria to differentiate between use, abuse, and chronic addiction and their impact on parenting, and (4) demand the kind of family supports provided in Canada and Western Europe, such as health care, child care, and paid parental leave that value parenting and invest in the common social task of raising the next generation.

We must explore the strengths and weaknesses of a unified juvenile and domestic violence court. In so doing, we must address family violence more holistically to ensure that the safety of the mother and her children takes first priority and to clarify the uses of criminalization so as to yield more equal reporting and prosecution of child abuse and domestic violence. We must also strengthen the quality of legal representation that victims of domestic violence

and child abuse receive by promoting training for lawyers and judges about family violence.

The systems organized to protect children must work with domestic violence advocates to develop legal remedies, resources, and social supports that (1) help mothers to safety, (2) encourage community agencies to identify domestic violence and plan for the safety of mothers and their children, (3) hold abusers accountable, (4) develop better child protective investigations, and (5) coordinate work among health care professionals, lawyers, and community resource providers.

We must encourage both empirical and qualitative research on family violence. To this end, we must insist, as this Symposium did, that feminism and family law are legitimate subjects of intellectual and legal discourse and that they are as complex and challenging as any other discipline. We must extend the discussion between legal scholars, public health professionals, survivors, and people who work in the domestic violence and child welfare systems. We must encourage academics to step into the practical world, and we must encourage practitioners to write.

Finally, we must work for the adoption of the U.N. Convention on the Rights of the Child. This treaty has been ratified by over 160 nations of the world, but it has not been ratified by the United States. It provides a clear floor of human rights for children and the families which raise them.

Workers in child welfare and domestic violence share common ground and interests: to stop all forms of domestic, child, and family violence; to ensure the safety of all victims within the family; to hold perpetrators accountable for harm, not the victims; to oppose gender and racial inequity; and to actively reject institutional and social abuse and neglect. Let us build bridges.

As an African proverb states, we should remember

The world was not left to us by our parents. . . .  
It was lent to us by our children.