

## MOTHERHOOD AND THE CONSTITUTION: (RE)THINKING THE POWER OF WOMEN TO FACILITATE CHANGE

*Angela Mae Kupenda\**

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\* Professor of Law, Mississippi College School of Law. This paper was presented at the American Association of Law Schools (AALS) "Workshop on Women Rethinking Equality", June 2011, in Washington, D.C. *See* <http://www.aals.org/womens2011/WomensWorkshop.pdf>. I greatly appreciate the comments of my co-panelists and the other attendees that encouraged and challenged the premises of this essay.

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I dedicate this paper to a wonderful and insightful friend, Jean Delayne (Scott) Liston, who is an expert on human relations and resources issues and challenges. She generously and joyously helped me organize and theorize my initial thoughts on this work. I agree with Jean: the underutilization of women's mothering power to reshape future generations is indeed a spiritual dilemma, requiring spirit-filled reckonings.

## I. INTRODUCTION

Women face many barriers in the journey toward equality.<sup>1</sup> Participants at American Association of Law Schools' ("AALS") recent "Workshop on Women Rethinking Equality" addressed the structural, and perhaps sometimes intentional, barriers constructed by societal forces and by the law against women's struggles for various types of equality.<sup>2</sup> At the workshop, many of us pointed to all of the things "they," meaning others, should do to help dismantle these barriers and to help women forge equality.<sup>3</sup> I agree many barriers remain that must be dismantled,<sup>4</sup> and there is much "they" should do to rectify the generations of obstacles and limitations placed on women (even by the justice system itself).

However, this essay suggests a different, or additional, approach. Rather than focusing on the many barriers to equality originating from others, this essay focuses on women's power to forge

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<sup>1</sup> These barriers are even experienced by women lawyers and law students. *See, e.g.,* Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1107–09 (2011).

<sup>2</sup> *See generally*, ASSOC. OF AMERICAN LAW SCHOOLS, WORKSHOP ON WOMEN RETHINKING EQUALITY (2011), <http://www.aals.org/womens2011/WomensWorkshop.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *See, e.g.,* Heather M. Kolinsky, *Taking Away an Employer's Free Pass: Making the Case for a More Sophisticated Sex-Plus Analysis in Employment Discrimination Cases*, 36 VT. L. REV. 327, 330–31 (2011) (discussing "glass ceilings" and "maternal walls").

equality. Some of this power is cloaked, unharnessed, and underutilized. This essay is intended to challenge women to reconstitute the power of motherhood as a means of transforming not only families, but also law and society. This essay suggests the power of women to be mothering teachers and teaching mothers. Women have a choice, even an affirmative duty, to unharness their power to facilitate change and shape a status quo of equality.

Our laws and legal structures have both hinted at and conversely smothered the power of women and motherhood. For example, *Bradwell v. State*<sup>5</sup> allegedly applauds the contributions of women to family life.<sup>6</sup> However, in that case, the Supreme Court articulated restrictive gender norms to render constitutional a state's denial of a woman's right to practice law.<sup>7</sup> Thus, a woman may subdue her mothering power for fear that this power would be seen as mutually exclusive with her ability to participate fully in the professional world.

The two, however, are not mutually exclusive. Attracting attention to women's political power to fight for equality can actually elevate the status of motherhood, perhaps with direct economic bene-

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<sup>5</sup> 83 U.S. 130 (1872).

<sup>6</sup> *Id.* at 140–42 (Bradley, J., concurring).

<sup>7</sup> *Id.*

fits to follow.<sup>8</sup> Since, historically, the mothering power may have become veiled in attempts to gain societal equality, uncovering deeply rooted and often circumvented mothering power is the focus of this essay.

## II. QUESTIONING MY ESSAY'S TITLE

As an initial matter, I must clarify my title, for perhaps it is misleading. My title might imply that this essay critiques motherhood as a whole. This assessment is only correct to an extent.

Motherhood in American case law has been historically defined as white motherhood.<sup>9</sup> In 1872, when the Court in *Bradwell* referred to “the noble and benign office . . . of mother[hood],”<sup>10</sup> it was definitely referring specifically to white motherhood.<sup>11</sup> At that time, black women were not included in the description of precious and honored womanhood as used by the Court.<sup>12</sup> The year *Bradwell* was

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<sup>8</sup> As stated by one author:

[R]ather than maintaining the invisibility of housework, feminists should encourage society to value the productive and political nature of women's labor both in the home and in the market. A recognition of the importance of women's work, regardless of the setting, would more accurately reflect women's valuable contributions to the economy.

Nancy C. Staudt, *Taxing Housework*, 84 GEO. L.J. 1571, 1573–74 (1996).

<sup>9</sup> See Twila L. Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481, 2488 (1994).

<sup>10</sup> *Bradwell*, 83 U.S. at 141.

<sup>11</sup> See Perry, *supra* note 9, at 2488–89.

<sup>12</sup> See generally Angela Mae Kupenda, Letitia Simmons Johnson, & Ramona Seabron-Williams, *Political Invisibility of Black Women: Still Suspect, but No Suspect Class*, 50 WASHBURN L.J. 109, 113–15 (2010). The unique oppressions of black women continue to be ignored. See, e.g., D. Wendy Greene, *Black Women*

decided, black women had recently been freed from the status of property or human livestock.<sup>13</sup> At the time of the *Bradwell* ruling, black women were not allowed to sit in the “ladies” (meaning white ladies’) cars on trains, but were forced to sit in the “smoking cars,” along with black men and drunk white men.<sup>14</sup>

Although this essay is uniquely about white motherhood, using the more general term “motherhood” in the title is not incorrect. Motherhood, generally recognized in America as pure and a high calling, has historically been understood to reference white motherhood specifically:<sup>15</sup> “the traditional Anglo-American ideal of women as ‘pious, pure, submissive, and domestic’ favoring white middle-

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*Can't Have Blond Hair . . . in the Workplace*, 14 J. OF GENDER, RACE & JUST. 405 (2011) (discussing the role of hair in black women’s attainment of equal employment opportunities).

<sup>13</sup> See Kupenda et al., *supra* note 12, at 113–15.

<sup>14</sup> See Cheryl Harris, *In the Shadow of Plessy*, 7 U. PA. J. CONST. L. 867, 877–78 (2005).

<sup>15</sup> See Perry, *supra* note 9, at 2488–89. While white mothers also suffered oppression, white motherhood had a different value placed upon it than black motherhood. See Omni Leissner, *Naming the Unheard Of*, 15 NAT’L BLACK L.J. 109, 137–38 (1998). Writers have distinguished the experiences of white mothers from the experiences of black mothers. Consider:

In the days before public education, the automobile, and the media, *motherhood was indeed a high calling* because the influence of mothers on future generations was nearly total. American mothers generally were not apolitical; most were ardent patriots as revolutionary as their husbands and sons, and mindful that they had a continent to populate. The Declaration of Independence may fairly be regarded as the handiwork of George Wythe’s Quaker mother who in fact rocked a cradle that rocked the world. In these very important respects, nineteenth century [white] American women were not oppressed as African Americans, or as some militant feminists might have us believe. It was the men who went to raucous political rallies and made speeches, but few of them voted for things if their mothers, wives, and daughters sternly disapproved.

Paul D. Carrington, *Tocqueville’s Aristocracy in Minnesota*, 26 WM. MITCHELL L. REV. 485, 496 (2000) (emphasis added).

class, stay-at-home mothers.”<sup>16</sup> On the other hand, when Americans challenge mothers for coming up short in their missions of raising successful and healthy families, they focus primarily on mothers of color. We discuss, criticize, and even criminalize,<sup>17</sup> mothers of color for being single parents,<sup>18</sup> for raising their children with or without strictness,<sup>19</sup> for raising their children in poverty,<sup>20</sup> for raising their children with an extended family model,<sup>21</sup> for trying to find better

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<sup>16</sup> Jill E. Adams, *Unlocking Liberty: Is California's Habeas Law the Key to Freeing Unjustly Imprisoned Battered Women?*, 19 BERKELEY WOMEN'S L.J. 217, 226 (2004).

<sup>17</sup> See generally, e.g., Kimani Paul-Emile, *The Charleston Policy: Substance or Abuse?*, 4 MICH. J. RACE & L. 325 (1999) (discussing a policy that intentionally targeted indigent black women for prosecution).

<sup>18</sup> Households headed by single black women “endure social, political, and economic disadvantage.” Cara C. Orr, *Married to a Myth: How Welfare Reform Violates the Constitutional Rights of Poor Single Mothers*, 34 CAP. U. L. REV. 211, 226 (2005). It is ineffective to place blame on these struggling women while ignoring the “combination of employment discrimination, job segregation, and [the gender and racial] earnings gap [that] serves to limit women’s income. *Id.* at 227.

<sup>19</sup> Some researchers, though, have suggested different cultural norms regarding the corporal punishment of children. See generally Jennifer E. Lansford, *The Special Problem of Cultural Differences in Effects of Corporal Punishment*, 73 L. & CONTEMP. PROBS. 89 (2010).

<sup>20</sup> See Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act*, 1 NW. J.L. & SOC. POL'Y 303, 320 (2006) (“These racial stereotypes about black family dysfunction place no value on the relationship between poor, black parents and their children”).

<sup>21</sup>For example, although President Barack Obama’s mother-in-law was not the first president’s mother-in-law to regularly live at the White House, news articles about the black family’s logical, extended family arrangement generated many negative comments. See Michael D. Shear, *A Mother-In-Law in the White House*, WASHINGTONPOST.COM (Jan. 9, 2009, 3:00 PM), <http://voices.washingtonpost.com/44/2009/01/a-mother-in-law-in-the-white-h.html> (featuring reader comments about the article that reflect a negative opinion about Mrs. Robinson’s tenancy at the White House).

lives for their children,<sup>22</sup> and so on.<sup>23</sup> This essay's challenge of motherhood, with a focus on white motherhood, is a departure from these typical criticisms.

Having given so much attention to mothers of color in the law and society, I will now issue a challenge to white mothers who parent white children;<sup>24</sup> therefore, the title of this essay could be, “[White]

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<sup>22</sup> See, e.g., Mary Romero, “Go After the Women”: *Mothers Against Illegal Aliens Campaign Against Mexican Immigrant Women and Their Children*, 83 IND. L.J. 1335, 1355–56 (2008) (discussing struggles of immigrant mothers).

<sup>23</sup> Even the perception of the value of welfare to protect motherhood changed as more black mothers participated. See Shani King, *The Family Law Canon in a (Post?) Racial Era*, 72 OHIO ST. L.J. 575, 622–23 (2011). According to Professor King:

During the Progressive Era, the image of the welfare mother was a worthy white mother who was on welfare so that she could attend to her maternal duties and take care of her children. But the change in the racial composition of the welfare mother has brought with it a new welfare dependency stigma, work requirements, reduced benefits, and a new image of the welfare mother as the “immoral Black ‘welfare queen.’”

*Id.* Cf. Dorothy Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. J. GENDER & L. 1, 6 (1993) (“the image of the black mother has always diverged from, and often contradicted, the image of the white mother”). So, motherhood as described in *Bradwell* was explicitly white. Black women’s attempt to conform to that gender role was rejected. See, e.g., PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 141 (1988) (describing black women who were publicly tarred and feathered because they were financially able to quit their jobs as domestics to white women to stay home and raise their own families); Angela Mae Kupenda, *For White Women: Your Blues Ain’t Like Mine, But We All Hide Our Faces and Cry—Literary Illumination for White and Black Sister/Friends*, 22 B.C. THIRD WORLD L.J. 67, 83 (2002) (discussing the same).

<sup>24</sup> Scholars have examined transracial adoption laws allowing white women to adopt and parent children of color. See, e.g., Ruth-Arlene W. Howe, *Redefining the Transracial Adoption Controversy*, 2 DUKE J. GENDER L. & POL’Y 131, 131 (1995); Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33, 34 (1993); Angela Mae Kupenda et al., *Law, Life and Literature: Using Literature and Life to Expose Transracial Adoption Laws as Adoption on a One-Way Street*, 17 BUFF. PUB. INT. L.J. 43, 44 (1998-99). Others have examined non-heterosexual women who parent. See generally Clifford J. Rosky, *Perry v. Schwarzenegger and the Future of Same-Sex Marriage Law*, 53 ARIZ. L. REV. 913, 944–49 (2011).

Motherhood and the Constitution: (Re)thinking the Power of [White] Women to Facilitate Change.” It is not so titled, though, as the American idea of motherhood has already been explicitly and implicitly understood to be *uncolored*, or white.

### III. QUESTIONING MY AUTHORITY TO ISSUE A CHALLENGE TO WHITE MOTHERHOOD

As a black woman, I am initially hesitant<sup>25</sup> to write about, or to, white mothers, especially because I am not white,<sup>26</sup> I do not parent white children,<sup>27</sup> and I do not parent in the traditional nuclear model often found in many white families.<sup>28</sup> I parent as a participant in an extended family norm, often found in minority communities.<sup>29</sup> Yet, I

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<sup>25</sup> *But see* Twila L. Perry, *Diversity, Discourse, and the Mission of the Feminist Law Journal*, 12 COLUM. J. GENDER & L. 466, 469 (2003) (“Personal experience is not a requirement for compelling insights or suggestions”).

<sup>26</sup> *See, e.g.*, Angela Mae Kupenda, *Loss of Innocence*, in LAW TOUCHED OUR HEARTS: A GENERATION REMEMBERS BROWN V. BOARD OF EDUCATION 36, (Mildred Wigfall Robinson & Richard J. Bonnie eds., 2009); Angela Mae Kupenda, *The Struggling Class: Replacing an Insider White Female Middle Class Dream With a Struggling Black Female Reality*, 18 AM. U. J. OF GENDER, SOC. POL’Y & LAW 725, 729–30 (2010).

<sup>27</sup> *But see* Angela Mae Kupenda, *Seeking Different Treatment, or Seeking the Same Regard: Remarketing the Transracial Adoption Debate*, 26 B.C. THIRD WORLD L.J. 97, 105 (2006) (arguing black adoptive parents of white children could help resolve issues of racial inequality in America).

<sup>28</sup> *See generally* Sacha M. Coupet, “Ain’t I a Parent?”: *The Exclusion of Kinship Caregivers from the Debate Over Expansions of Parenthood*, 34 N.Y.U. REV. L. & SOC. CHANGE 595, 613 n.73 (2010).

<sup>29</sup> *See* Laura T. Kessler, *Transgressive Caregiving*, 33 FLA. ST. U. L. REV. 1, 18 (2005) (“Resistance to dominant conceptions of black motherhood can also be found in the practice of ‘other mothering’ in the black community.”). *See generally* Angela Mae Kupenda, *Aren’t Two Parents Better Than None: Whether Two Single African American Adults (Who Are Not in a Traditional Marriage or a Roman-*



am not unduly hampered by what some may call my lack of familiarity with the struggles of white motherhood. Consider that the lack of familiarity with the experiences of people of color did not hamper the United States' Supreme Court justices when writing at length about and affecting the lives of those differently colored from them.<sup>30</sup> Having been entrenched in the lives of whites,<sup>31</sup> I approach this topic with a clear conscience and hopefully with much to contribute.

This essay is part of an ongoing exploration of how motherhood can effectuate structural progress toward equality. This essay will begin that process by telling three stories, making three points, and concluding by sharing several overwhelming responses I have

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*tic or Sexual Relationship with Each Other) Should be Allowed to Jointly Adopt and Coparent African American Children*, 35 U. LOUISVILLE J. FAM. L. 703 (1997) (proposing an additional model for adoption of children in the black community); Angela Mae Kupenda et al., *Aren't Two Parents Better Than None, Part II: Contractual and Statutory Basics for a "New" African American Coparenting and Joint Adoption Model*, 9 TEMP. POL. & CIV. RTS. L. REV. 59 (1999) (expanding on *Aren't Two Parents Better Than None?*); Cynthia R. Mabry, *A MEPA-IEP Review From Adoption Attorneys' Perspectives: Continuing to Make Assessments Based on Race for the Best Interests of Children of Color*, 38 CAP. U. L. REV. 319 (2009) (examining the Multiethnic Placement Act of 1994).

<sup>30</sup> See generally, e.g., *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Brown v. Bd. of Education*, 347 U.S. 483 (1954).

<sup>31</sup> I have studied in or worked in predominantly white environments for most of my life. See, e.g., 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, 976–77 (1997); Angela Mae Kupenda, *On Teaching Constitutional Law When My Race is in Their Face*, 21 LAW & INEQUALITY 215, 215 (2003); Angela Mae Kupenda, *Loss of Innocence*, supra note 26. See generally Angela Mae Kupenda, *Simply Put: How Diversity Benefits Whites and How Whites Can Simply Benefit Diversity*, 6 SEATTLE J. SOC. JUST. 649, (2008) (describing how whites, both in literature and in the classroom, benefit from diversity).

received to my work in the various settings where I have shared earlier drafts of this petition to white motherhood.

#### IV. MY THREE LITTLE STORIES

##### A. A Story about Not Seeing the Extent of One's Power

Several years ago, after delivering a public lecture to a Women's Studies program in Florida, I had a lovely dinner with several white female educators. They challenged my lecture premise that, under the present interpretation of the United States Constitution, women do have power to effectuate structural change. They chastised me, arguing that they, as white women, lack power, so how could I, a black woman living in the Deep South, even think I have power?

In response, I talked with them about voting power and how white women and nonwhites<sup>32</sup> are in fact the majority in America<sup>33</sup> (if this dinner discussion had taken place after November 2008, I could have also pointed them to the results of that presidential election).<sup>34</sup>

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<sup>32</sup> See U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>; U.S. CENSUS BUREAU, AGE AND SEX COMPOSITION: 2010 (2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf>.

<sup>33</sup> RACE AND HISPANIC ORIGIN, *supra* note 32.

<sup>34</sup> See Angela Mae Kupenda, *The Obama Election and a Blacker America: Lawfully Creating Tension for Change*, 1 FAULKNER L. REV. 187, 189, 198–99 (2010) (discussing how Obama received a larger percentage of votes from women than from

Then, I talked with them about how most teachers, in my experience, are women<sup>35</sup> and how those most active in the parenting role generally seem to be women.<sup>36</sup> Consequently, I argued, women have practical power beyond voting. Women have the ability to shape the lives of the next generations as mothers, through strategic and critical use of their power to teach boys and girls how to live either with a focus on the equality or a focus on the inequality of others. They also have this ability as professional educators who shape notions of fairness, harmony, and social and personal responsibility in the classroom.<sup>37</sup> The white women with whom I was dining inquired further—if their power was so immense, then why were white women not seizing it to forge a more just society in their teachings? Why are we still facing inequalities, they wondered, as everyone is born to a mother with this

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men, and more from people of color than from whites). *See generally* Angela Mae Kupenda & Tiffany R. Paige, *Why Punished for Speaking President Obama's Name within the Schoolhouse Gates? And Can Educators Constitutionally Truthen Marketplace of Ideas about Blacks?* 35 T. MARSHALL L. REV. 57 (2009) (explaining the effect of President Obama's election on negative conceptions about blacks).

<sup>35</sup> C. Emily Feirtritzer, *Profiles of Teachers in the U.S. 2011*, NATIONAL CENTER FOR EDUCATION INFORMATION 12 (2011), [http://www.ncei.com/Profile\\_Teachers\\_US\\_2011.pdf](http://www.ncei.com/Profile_Teachers_US_2011.pdf).

<sup>36</sup> *See generally* Devon W. Carbado, *Motherhood and Work in Cultural Context: One Woman's Patriarchal Bargain*, 21 HARV. WOMEN'S L.J. 1, 1 n.1 (1998).

<sup>37</sup> *See* WAYNE D. DOSICK, *GOLDEN RULES: THE TEN ETHICAL VALUES PARENTS NEED TO TEACH THEIR CHILDREN* 4 (1996). *See generally* Michelle D. Deardorff & Angela Mae Kupenda, *Negotiating Social Mobility and Critical Citizenship: Institutions at a Crossroads*, 22 U. FLA. J.L. & PUB. POL'Y 335 (forthcoming 2012); ANGELA MAE KUPENDA, *MOVING FROM FEAR TO COURAGE, AND REPLACING PREACHING WITH REACHING* 1 (Ctr. for the Study of Race and Race Relations, Univ. of Fla. Levin Coll. of Law 2006).

power, and especially when most of the people in political power have a white mother?<sup>38</sup>

B. A Story about Wondering Why Some White Mothers Limit Their Power to Effectuate Change

A few years after the above dinner with middle-aged white female academics, I led a discussion for a number of young white female law students. I presented at their school about the similarities between domestic and racial battering and discussed the law's complicity with these ongoing batterings.<sup>39</sup> The organizations that invited me to present had arranged for a group of their top female students to participate in a question-and-answer session with me to discuss some of the topics I had broached. Almost all of the invited female students were white.

I recounted for them the above story about my dinner and discussion with the white female educators in Florida. The young women generally agreed with their older peers that white women were

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<sup>38</sup> Almost all of our senators are white, most of the congressional representatives are white, and most of the Supreme Court justices are white. Even President Obama has a white mother. SUSAN NAVARRO SMELCER, SUPREME COURT JUSTICES: DEMOGRAPHIC CHARACTERISTICS, PROFESSIONAL EXPERIENCE, AND LEGAL EDUCATION, 1789–2010 6 (2010), available at <http://www.fas.org/sgp/crs/misc/R40802.pdf>. See generally JENNIFER E. MANNING, MEMBERSHIP OF THE 112TH CONGRESS: A PROFILE (2011), available at <http://www.senate.gov/reference/resources/pdf/R41647.pdf>.

<sup>39</sup> See generally Angela Mae Kupenda, *The State as Batterer: Learning From Family Law to Address America's Family-Like Racial Dysfunction*, 20 U. FLA. J. L. & PUB. POL'Y 33 (2009).

neither realizing nor using the full extent of their power to nurture a new generation focused more on principles of equality. I then asked them why as women, and particularly women who are knowledgeable about the law and society, are we raising and educating children to ignore, and therefore to perpetuate, race- and gender-based oppression?

I argued that a white child who is raised without exposure to an audible disdain for oppression, even if not raised to be overtly racist, is raised to be ignorant of his or her own unmerited white privilege and is at risk of ultimately becoming an adult who participates in racial oppression, sexism, and other patriarchal norms. Some of the law students who were white mothers said they go along with the status quo and do not try to resist it as much as they should. Bombarded by the media, societal status quos, and cues on race and gender, they thought that white mothers simply do the best they can to provide basic care for their children. As a result, I believe their children may join prevailing ideas about race and gender.

Consider the role of white women going all the way back to slavery. Wives of slave owners did not diligently resist their hus-

bands' breeding with female slaves.<sup>40</sup> White mothers witnessed their husbands, as masters, sell their own white children's half siblings as livestock.<sup>41</sup> Nor did white women sufficiently or vehemently resist their own personal injuries from their husbands' sexual exploitation of slaves or from the concurrent exploitation of the sanctity of their marriages.<sup>42</sup>

Upon reflection, the white female students thought the wives of slave owners generally seemed to acquiesce, and the students wondered aloud if many white mothers and white teachers still do so

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<sup>40</sup> This mistreatment had long-term consequences for black women. "The institution of slavery had a profound effect on the structure of black families." Twila L. Perry, *Family Values, Race Feminism, and Public Policy*, 36 SANTA CLARA L. REV. 345, 346 (1996); see, e.g., Nat'l Humanities Ctr. Resource Toolbox, *On Slaveholders' Sexual Abuse of Slaves*, 1 THE MAKING OF AFRICAN AMERICAN IDENTITY 1, 2 (2007), available at <http://nationalhumanitiescenter.org/pds/maai/enslavement/text6/mastersslavesexualabuse.pdf> (providing the narrative of Chris Franklin, who described masters' wives who did not object to their husbands sleeping with the family slaves). But see *On Slaveholders' Sexual Abuse of Slaves* at 5 (providing the narrative of Frederick Douglass, who described his master's wife's emotional state not as apathy, but rather as anger and jealousy towards the slaves with whom her husband chose for sex).

<sup>41</sup> See, e.g., *On Slaveholders' Sexual Abuse of Slaves*, *supra* note 40, at 2 (relaying a transcript of former slave Chris Franklin, who describes masters selling their children conceived by slaves).

<sup>42</sup> White women, perhaps, saw themselves as the victims, "with their dearest affection [for their husbands] trampled upon" by spouses who sexually exploited black women during and after slavery. Jason A. Gilmer, *Poor Whites, Benevolent Masters, and the Ideologies of Slavery: The Local Trial of a Slave Accused of Rape*, 85 N.C. L. REV. 489, 544 (2007) (quoting FREDERICK LAW OLMSTED, *THE COTTON KINGDOM: A TRAVELER'S OBSERVATIONS ON COTTON AND SLAVERY IN AMERICAN SLAVE STATES* 240 (Arthur M. Schlesinger ed., Alfred A. Knopf 1953)). Some white women were angry and humiliated by their husband's rapes of black slaves. Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 1, 9 (1993). Writers argue that the "sexual abuse of black women was done to intentionally humiliate or control the white woman." Martha Minow, *Forming Underneath Everything That Grows: Toward a History of Family Law*, 1985 WIS. L. REV. 819, 862 (1985).

today. After much discussion, the young white women concluded that modern white women are not using their mothering or teaching powers in a critical, reflective way; rather, many mothers and teachers seem to unquestioningly embrace the mindset of patriarchy that continues to perpetuate the status quo of subjugation. The power of women, therefore, to alter societal and legal structures that oppress, remains crippled.

One of the young white women in attendance cornered me on campus the next day. She smiled as she said her husband was now angry with her. When she had gone home the prior evening, she told him about her day and our discussions. He, also a university graduate student, disagreed furiously with the students' conclusions. Her husband said women and nonwhites had full equality, were paid the same salaries as white men, and suffered no discrimination at all. Therefore, he argued, there is no need for white women to forge a more just society, as they already have equality. The student laughed a little as she explained that, while she disagreed with her husband, she needed me to suggest some convincing readings to share with him.<sup>43</sup> She said he had great respect for the legal system and the ju-

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<sup>43</sup> See Angela Mae Kupenda, *(Re)Sculpting a Movement in the Classroom: Post-Obama Inauguration Challenges for Educators for Change*, S.U.L.C. J. RACE,

diciary. I suggested she start with the opinions of some of the female justices on the United States Supreme Court.<sup>44</sup>

### C. A Story about Choosing One's Focus

One of my former students is a white female and is married with children. As she worked with me to design a course syllabus for a class about motherhood and the Constitution, I sensed disconnect in our views based on the emphasis each of us selected for the joint course. My student's suggested emphasis was pregnancy discrimination, needed workplace accommodation for mothers and women generally, and the general way the laws and society work to the disadvantage of mothers. She had compiled a number of excellent materials for that focus. Though those materials were very important to our future course on motherhood, I was more interested in materials that emphasized how women harness their power of mothering

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GENDER, & POV. (forthcoming 2012) (questioning whether whites have an open mouth and a vocal platform to be audible speakers, yet often do not have the open eyes to see various oppressions).

<sup>44</sup> See R.A. Lenhardt, *Localities as Equality Innovators*, 7 STAN. J. CIV. RTS. & LIBERTIES 265, 273 (2011) (discussing Justice O'Connor's majority opinion in *Grutter v. Bollinger*, 539 U.S. 306 (2003), recognizing the value and need for diversity even today and for us all); Jill Yaziji, *The U.S. Supreme Court Holds That Employment Claims by 1.5 Million Women Cannot Proceed as One Claim*, 49 THE HOUS. LAWYER, Sept.–Oct. 2011, at 44 (discussing Justice Ginsburg's dissent in *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2451 (2011), where she argued gender bias can be part of a corporate culture); see also *Kelo v. City of New London*, 545 U.S. 469, 522 (2005) (Thomas, J., dissenting) (describing the displacement of black citizens in urban renewal projects); *Virginia v. Black*, 538 U.S. 343, 388–90 (2003) (Thomas, J., dissenting) (describing the legislature's measures for dealing with cross burning as a means of racial intimidation).



in nontraditional ways. We concluded that the first set of materials addressed the day-to-day plight of motherhood, while the materials I suggested tended toward revolutionary aspects of motherhood. Our disconnect was key to the tension that white mothers may face when deciding how they choose to spend their mothering energies.

This leads to the three points I want to make stemming from these three little stories.

## V. THREE POINTS OF LEGAL AND SOCIETAL SIGNIFICANCE TO MOTHERHOOD AND FAMILY

### A. A “Best Interests of Motherhood” Standard

The “best interests of the child” standard is consistently the benchmark used to determine how the law resolves parental disputes, custodial interests, guardianship contests and other issues involving children.<sup>45</sup> This test takes into consideration many issues affecting the day-to-day interests of children, including the availability of food,

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<sup>45</sup> See, e.g., CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS OF THE CHILD: SUMMARY OF STATE LAWS 1, *available at* [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/best\\_interest.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/best_interest.pdf).

shelter, clothing, social mobility, educational progress, and so on.<sup>46</sup>

While all of these are important to the health and happiness of the child, I propose here that, in reconsidering the potential of white motherhood to effectuate structural progress and societal equality, white mothers, too, focus on a “best interests of the mother” test. A best interests of the mother test would call for white mothers to examine whether mothering decisions would lead to the raising of a child so equipped that the mothers themselves would not mind encountering the child in the future as a boss (who believes in racial, gender, or age equality), as a political leader (who values peacemaking over war efforts), or as a judge (who does not use the courtroom to perpetuate bias).

#### B. Engaging in Political Parenting

White mothers have a choice: to politically parent in ways that further inequality, to parent without regard for inequality, or to politically parent in ways that further equality.

Some mothers choose the first. A picture I keep in my office is from a Southern Poverty Law Center publication.<sup>47</sup> The picture

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<sup>46</sup> *Id.* at 2–3.

<sup>47</sup> See S. POVERTY LAW CTR., FIGHT HATE: A COMMUNITY RESPONSE GUIDE (2005), available at <http://www.splcenter.org/ten-ways-to-fight-hate-a-community-resource-guide> (picture appears on inside back cover).

shows black and white officers dressed in riot gear.<sup>48</sup> The officers are protecting the Ku Klux Klan during a Klan rally.<sup>49</sup> A little white child, likely around three years old, is dressed in Klan gear, from the white pointed cap to the white robe and cape.<sup>50</sup> The child has approached one of the black police officers and is playing with the riot shield the officer is holding.<sup>51</sup> The black officer is looking down at the child with amusement, yet kindness, as other officers look on, seeming too perplexed for words.<sup>52</sup> Even before this child can imagine the impact this KKK training will have on his life, the parents seem to be indoctrinating him to believe in white supremacy. As I look at the picture, I wonder where the child's mother is. Today, when I examined the picture more intently, I see standing to the immediate right of the child is a white woman carrying a sign.<sup>53</sup>

Another journalist, seeking to document the modern-day Klan, took an equally troubling but revealing picture.<sup>54</sup> His project

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See SOUTHERN POVERTY LAW CTR., FIGHT HATE: A COMMUNITY RESPONSE GUIDE (2005), available at <http://www.splcenter.org/ten-ways-to-fight-hate-a-community-resource-guide> (picture appears on inside back cover).

<sup>53</sup> *Id.*

<sup>54</sup> James Edward Bates, *The Modern-Day Ku Klux Klan: Text and Photographs*, THE CHRONICLE OF HIGHER EDUCATION (May 15, 2011), available at <http://chronicle.com/article/The-Modern-Day-Ku-Klux-Klan/127458> (photograph contained in slideshow: *Child with Doll, Petal, Miss., Aug. 2002*).

was quite dangerous. In one instance, a white father did not object to a picture of his young son “with a black doll hanging from a noose.”<sup>55</sup> The father later tried to recover the picture, with his shotgun.<sup>56</sup> This attempt signaled to the journalist that “it was important [for him] to keep the photograph.”<sup>57</sup> The journalist added, “[t]he fact that children are a huge part of the Ku Klux Klan is a significant part of this story. Mothers and fathers want to pass down their beliefs to their kids.”<sup>58</sup>

Courts have generally ruled that white mothers have a right to choose to politically parent, and to choose to raise their children immersed in doctrines of hate.<sup>59</sup> For example, in *Runyon v. McCrary*, the Court held a private school that discriminated based on race, but which had publicly advertised as being open to all, violated civil rights law.<sup>60</sup> Still, the Court assumed that parents have a right to seek out segregated and discriminatory educations for their children.<sup>61</sup>

The Court stated:

[I]t may be assumed that parents have a First Amendment right to send their children to educational institutions that promote the belief that racial segrega-

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *See generally* *Runyon v. McCrary*, 427 U.S. 160 (1976).

<sup>60</sup> *Id.* at 172–73

<sup>61</sup> *Id.* at 176.

tion is desirable and that the children have an equal right to attend such institutions. But it does not follow that the *practice* of excluding racial minorities from such institutions is also protected by the same principle.<sup>62</sup>

While the Court recognizes a right to raise children as separatists or segregationists, in other cases courts have chastised parents for such tendencies and the impact they may have on their children.<sup>63</sup> In *United States v. Stewart*, the Eleventh Circuit upheld a white defendant's conviction and sentence although the trial court had publicly chastised the defendant and his wife.<sup>64</sup> The white defendants were tried for burning a cross in the yard of a black family and trying to intimidate them to move out of the neighborhood.<sup>65</sup> Before sentencing the defendants, the trial court stated:

You and your wife were both members of the Klan, and you have two children. I don't need to tell you this, but children aren't born with prejudice. It's a wonderful thing to think about that children are born in this world with—they don't have any prejudices. Children learn prejudice. I hope that this event will not cause your sons to believe somehow that the Ruffins or someone else is responsible for the sentence you will now receive. I hope somehow that they can recognize that America is great because of our cultural diversity. Our diversity in America is a strength, not a weakness.<sup>66</sup>

Generally, though, judges do not decide if a parent's teachings "risk molding [a child] into an immoral person."<sup>67</sup>

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 176–77.

<sup>64</sup> *U.S. v. Stewart*, 65 F.3d 918, 930–32 (11th Cir. 1995).

<sup>65</sup> *Id.* at 921–22.

<sup>66</sup> *Id.* at 930–31.

<sup>67</sup> Eugene Volokh, *Parent Child Speech and Custody Speech Restrictions*, 81 N.Y.U. L. REV. 631, 673–74 (2006) (noting few exceptions).

The second choice, to choose to mother children without regard to ending or furthering inequality, is actually a choice to further inequality. This is effectively a choice to maintain a status quo of inequality by not refuting the abundant messages of inequality, racism, sexism and other “-isms” that persist.

In order to mother children in the best interests of motherhood, the only choice is to engage in revolutionary mothering emphasizing equality. If some white mothers can diligently seek to raise their children to perpetuate racial hate, then it seems quite logical that other white mothers could diligently use their motherhood to teach equality.

Many years ago, the civil rights movement was criticized for allowing children to participate.<sup>68</sup> Dr. King’s response was direct, and went to the essence of the “best interests of the mother” test, by supporting the necessity for political parenting where the cause is just.<sup>69</sup> He suggested black children would be at risk if they had to

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<sup>68</sup> See *Children’s Crusade*, MARTIN LUTHER KING, JR. AND THE GLOBAL FREEDOM STRUGGLE, [http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc/childrens\\_crusade](http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc/childrens_crusade) (last visited Feb. 25, 2012).

<sup>69</sup> PETER PARIS, *BLACK RELIGIOUS LEADERS CONFLICT IN UNITY* 122–23 (2d ed. 1978) (quoting King’s descriptions of his efforts to educate young people about the civil rights movement).

live with racism as it existed in America.<sup>70</sup> Therefore, the children's only choice was to be involved in their own liberation.<sup>71</sup>

For mothers especially, courts have upheld a right to mother for equality and justice.<sup>72</sup> Over time, courts have recognized parental authority to “establish a home and bring up children”<sup>73</sup> and to direct the child’s upbringing and education.<sup>74</sup> Motherhood has been given increasing authority; in *Shepp v. Shepp*, the Court barred the father from teaching polygamy to his daughter,<sup>75</sup> and in *Elk Grove Unified School District v. Newdow*,<sup>76</sup> the Court implicitly recognized the custodial mother’s right to certain instruction over her daughter.<sup>77</sup>

So, why is there a seeming fear by white mothers to own the political power of white motherhood to effectuate structural change for equality? Some scholars have argued that, although some conservatives attack mothers who do not fit stereotypical norms, some

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<sup>70</sup> See MARTIN LUTHER KING, JR., *I HAVE A DREAM: WRITINGS AND SPEECHES THAT CHANGED THE WORLD* 35 (HarperSanFrancisco 1986) (providing a speech given before the youth march).

<sup>71</sup> *Id.* at 36.

<sup>72</sup> See, e.g., *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925); *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 2 (2004); *Shepp v. Shepp*, 906 A.2d 1165, 1172 (Pa. 2006).

<sup>73</sup> *Meyer*, 262 U.S. at 399.

<sup>74</sup> *Pierce*, 268 U.S. at 534–35.

<sup>75</sup> *Shepp*, 906 A.2d at 1172.

<sup>76</sup> *Elk Grove*, 542 U.S. at 2.

<sup>77</sup> See Stephen L. Carter, *Parents, Religion, and Schools, Reflection on Pierce, 70 Years Later*, 27 SETON HALL L. REV. 1194, 1224 (1997) (arguing that parents, rather than the state, should be trusted to decide the education of their children).

liberals remain silent about the joys and duties of motherhood.<sup>78</sup> According to one scholar,

This silence may be partially attributed to a general reticence among feminists to discuss women's roles as mothers. The concern is that motherhood is the

ultimate stereotyped role for women and that by affirming motherhood we are reinforcing the "barefoot and pregnant" patriarchal vision of the way women should be.<sup>79</sup>

Perhaps there is actually a fear that white motherhood will more closely end up resembling black motherhood in terms of its political agency.<sup>80</sup>

### C. One Final Story

While I formulated this essay, I had lunch with a very wise black female friend, Jean. We talked about this paper and my search for my final point and for cohesion in my argument. She suggested

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<sup>78</sup> Linda J. Lacy, *As American as Parenthood and Apple Pie: Neutered Mothers, Breadwinning Fathers, and Welfare Rhetoric*, 82 CORNELL L. REV. 79, 81 (1996) (reviewing MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) and DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* (1995)).

<sup>79</sup> *Id.*

<sup>80</sup> According to one scholar:

In the early twentieth century United States, women of African descent constructed a political voice that refused to be bounded by the separation of public from private, of work from home. Just as African-American women lived lives that knew no such false divisions, so those active in national and local women's organizations drew upon their strength as mothers to argue for a legal equality that recognized their difference as black and female from the dominant white society. They offered an interpretation of political life that emphasized the role of women as saviors of the race, justifying their activity because they were mothers. Indeed they connected women's rights, unlike men's, to the experience of motherhood.

Eileen Boris, *The Power of Motherhood: Black and White Activist Women Redefine the Political*, 2 YALE J. L. & FEMINISM 25, 25-26 (1989).



this unharnessed power of white mothers is also a spiritual problem. During slavery and reconstruction, many white mothers allowed their children to attend the lynching of blacks and others struggling for equality, those wrongly accused, or even those rightly accused but subjected to mob justice.<sup>81</sup> As these mothers raised their children to hate, the hate surpassed a racial hate; this type of hate condemned being different and planted disrespect for the sanctity of life.

Yet as Jean and I analyzed white motherhood, we wondered aloud why people (often those from the South) raised by black female servants also become racially prejudiced or thrive on sexism. Black women, either as slaves or as maids and nannies after slavery, raised many whites' children.<sup>82</sup> Why did the mothering of whites by black women not lessen or eliminate racism? I started to doubt my own thesis. If black women who served as mother-like figures to white children could not raise them for justice, how could I expect white women to raise their own children for racial or gender justice?

The answer appears from the historical roles of these black female servants. Many households attempted to subjugate the black

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<sup>81</sup> Kris DuRocher, *Violent Masculinity: Learning Ritual and Performance in Southern Lynchings*, in *SOUTHERN MASCULINITY, PERSPECTIVES ON MANHOOD IN THE SOUTH SINCE RECONSTRUCTION* 47 (Craig Thompson Friend ed., 2009).

<sup>82</sup> See KIMBERLY WALLACE-SANDERS, *MAMMY: A CENTURY OF RACE, GENDER, AND SOUTHERN MEMORY* 6 (2008).

female role of “mothering” into a “mammy” relationship.<sup>83</sup> The servant who cared for the young white children could look forward to the day when these very same young whites would treat the black hired (or enslaved) mother or mammy figure with dehumanizing disrespect rather than devotion and adoration.<sup>84</sup>

Thus, these black women, restricted to the limited authority of mammy figures, did not care for them as adults with either authority over them or the authority to demand respect from them. Many of these white babes cared for by black women were allowed to call the black women by their first names, or worse as the babes aged.<sup>85</sup> The white children could see from observing their own parents that their black mammy figures did not garner equal respect from those who were adult and white. The female black caretakers had no power to instruct the white children, especially if it was against the child’s will, for the ability to dispense justice was not abundant in the hands of these black women.

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<sup>83</sup> DEBORAH GRAY WHITE, *AR’N’T I A WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH* ch. 1 (1999).

<sup>84</sup> *Id.*

<sup>85</sup> WALLACE-SANDERS, *supra* note 82, at 6.

Surely, though, white women have more mothering power over white children than the black mother mammy figures did. Or, do we only hope they do?

Thus, why do some white women seem to reject their power to mother for equality? I wonder if some white women partially reject the power of white motherhood in a deviation from the legal theory asserted in *Bradwell*.<sup>86</sup> *Bradwell* was incorrect on the day it was decided and is no longer good law;<sup>87</sup> however, one can reject *Bradwell* without rejecting the power of white motherhood.<sup>88</sup> Rethinking the premises of *Bradwell*, one may find buried beneath the stereotypical presuppositions a more expanded power of women to shape destiny by intentionally raising children focused on equality.<sup>89</sup> This power of white and of nonwhite motherhood is not frail, but is strong; according to one poet, “the hand that rocks the cradle is the hand that rules the world.”<sup>90</sup>

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<sup>86</sup> Roberts, *supra* note 42, at 16.

<sup>87</sup> *Bradwell v. State*, 83 U.S. 1390 (1873).

<sup>88</sup> *Mueller v. Auken*, 576 F.3d 979, 999 (9th Cir. 2009).

<sup>89</sup> *Reed v. Reed*, 404 U.S. 71, 77 (1971); *Frontiero v. Richardson*, 411 U.S. 677, 685 (1973).

<sup>90</sup> William Ross Wallace, *The Hand That Rocks the Cradle Is the Hand That Rules the World*, available at <http://www.theotherpages.org/poems/wallace1.html> (last visited Jan. 13, 2012).

## VI. CONCLUSION: THE OVERWHELMING RESPONSES

While I stand by my position on the intentionality of parenthood—that white motherhood can effectuate structural change by mothering for equality—some disagree, and vehemently. In the conclusion of this essay, I want to share frequent responses I have received as I discuss this essay with whites.

At one conference, a white female approached me at the end of my presentation. She said even if I was right, even if white women could mother for gender equality, why *should* white women mother for racial equality? She argued that gender inequality affects the personal lives of white women and is not in the best interests of white motherhood, but racial inequality does not affect white women at all.

I must confess I was initially speechless. To me, inequality is inequality. Inequality and oppression condoned in one place necessarily affects other places and the society in which we live. However, I did not have the proof for which she was looking. Without that proof, she argued, white women have no reason to mother against racism. Perhaps she will be persuaded in the coming years when whites no longer make up the majority in this country and may be subjected to non-white rule. Furthermore, separating white women's

core issues from those of others oppressed by white patriarchy has not succeeded in eliminating the disparities white women face. As long as racial inequities continue, white motherhood “will continue to be subjected to an idealized image of sexual purity—a stereotype that, while certainly constituting a form of white privilege that protects from harm in some cases, also subjects to harm in others.”<sup>91</sup>

Many years ago, black female activist Mary Church Terrell made a plea to white mothers to raise their children for equality.<sup>92</sup> She appealed: “In the name of the children of my race, Mothers of the National Congress, I come, asking you to do all in your power by word and deed to give them the opportunities which you desire for your own.”<sup>93</sup> Scholar Eileen Boris adds,

[b]y virtue of a shared motherhood, Terrell asked white women to provide equal opportunity for black children by teaching their own children to be just and broad enough to judge men and women by their intrinsic merit, rather than by the adventitious circumstances of race, or color or creed. Here the experience of motherhood, based on women’s difference from men, opens the door to the argument for justice on the basis of universal human qualities.<sup>94</sup>

A second major response I received came from those who were in romantic relationships with white women. The response generally was: “How dare you blame white women? It is not the

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<sup>91</sup> Nancy S. Ehrenreich, *O.J. Simpson & the Myth of Gender/Race Conflict*, 67 U. COLO. L. REV. 931, 944 (1996).

<sup>92</sup> Boris, *supra* note 80, at 36.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

fault of white women!” My initial reply is always to explain that I am not saying it is the fault of white women. Rather, I am saying that white mothers have the power, and a responsibility, to effectuate change. Those married to or dating white women usually follow their response with the justification that, even if white mothers do change, peer pressure would continue to cause oppression. Thus, some white women’s partners conclude that white mothers should not worry about equality.

I wonder if these partners are worried about defeating the empowerment of white women and are fearful of how white women mothering for equality may affect their potentially unbalanced domestic relationships and work equities. This suggestion is usually countered with: “You are doing the same thing to white women that has been done to women of color! Leave this subject alone if you do not have definite proof that political mothering by white women will better society.” I find this defense of white motherhood fascinating. The argument has historical roots, which also led to many black men being lynched for doing nothing.<sup>95</sup> As a black woman, this defense amazes me and is something for which I lack historical similarities in my fe-

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<sup>95</sup> IDA B. WELLS, *A RED RECORD* (1895), *available at* [http://www.digitalhistory.uh.edu/learning\\_history/lynching/wells2.cfm](http://www.digitalhistory.uh.edu/learning_history/lynching/wells2.cfm).

male ancestors' experiences. Also, this defense supports the stereotypical norm of white motherhood with roots in patriarchy.<sup>96</sup>

Another typical response is: "If white mothers did embrace this power, what would society look like? If we don't know exactly what an equal society looks like, we should not try it." My guess is that this response is based on fear: fear of the loss of unmerited privilege by some, fear of the empowerment of white women and those oppressed by others, and fear of the loss of outdated norms and stereotypes.

As one can likely guess at this point, my favorite response was from a black female: the need for white mothers to seize their power and to mother for equality is a spiritual issue. Their unwillingness to seize power in this area can be traced back to their oppression during slavery, too. The underutilization of female power to shape future generations is indeed a spiritual dilemma, requiring spirit-filled reckonings. These reckonings may bring even greater meaning to the power of motherhood, and then perhaps "the hand that rocks the cradle [will indeed be] the hand that rules [her] world."<sup>97</sup>

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<sup>96</sup> See CAROLE PATEMAN, *THE SEXUAL CONTRACT* 33–34 (1988).

<sup>97</sup> Wallace, *supra* note 90.

