Black Feminist Thought Grounds and Centers Us:
A Reflection by Two Activists and Legal Workers

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Working in and around the law for the past several years, we became acutely aware of—have felt in our bones—a certain paradox in the law: how legal resources and opportunities to shape the law are completely unavailable to the vast majority of people in the United States, and yet legal structures exert an enormous, tsunami-like force on those people, even those who are trained to work within those structures. Give birth to a baby who tests positive for opioids? The law says the state can take your baby away. How does the law govern when and how you can get your child back? Can you—and how often can you—visit your baby? What must you do to be reunited? How long can the agency that took your kid away stay in your life? The answers to all these questions should be readily available to you, but instead, they will likely be made up as you churn through the system.

The knowledge of this paradox exerts a magnetic force on our moral compass, making it go haywire as we try to navigate our place and role in social justice work. Do we try to make change from within or outside? Do we try to do legal work that will impact people in the here and now—for example, make laws more accessible, or work on small but measurable policy change? Or do we not even try to address this whole system of laws and

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policies that seem hellbent on our people’s oppression and instead focus on building the new world we want to see? What is the role of the law in social change, and how do we position ourselves in relation to the law? Despite the cognitive dissonance these questions cause, we have found some clarity on how we move in this work—and we have Black and women of color feminists to thank for these clarities. We share this with you to provide some background for this Essay:

1. We believe that how social change is achieved is just as important as the social change that is achieved. That is to say, we believe how a policy change happens and who makes it happen is just as important as whether it happens. We believe that the people and communities most impacted by injustice are best positioned to lead us towards justice and liberation.2
2. We believe we have to be in this work for the long haul, for generations to come.
3. We believe solution generation is just as important as problem analysis, and that time and space must be given for evolutionary change.

The question of whether we make change from the inside or outside is especially complicated by an essential aspect of our legal system that Black feminists have elucidated and that we have come to see in our own practice—white supremacy and patriarchy have saturated the American legal system from the system’s inception. The legal field has always been predominantly led by white cisgender men. By identifying this, we are not merely describing what these men look like but what they believed and who held, defended, and protected white power and white power dynamics through the law and legal systems. What our “forefathers” thought and subsequently put on paper very much reflects the values associated with white cisgender male patriarchy. For example, from the early Republic to the present, lawmakers have written laws in unnecessarily complicated language, making them inaccessible to everyday people (for example, legal procedure “gives light most favorable to the state”). White men did not think about accessibility—or maybe they did and deliberately created the system this way. We believe, had Black or brown

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2 For this learning, we have many people to thank. We quote Andrea James, who serves as the director of the National Council for Incarcerated and Formerly Incarcerated Women and Girls. The National Council is the largest membership-based organization working to end the incarceration of women and girls. Based in Roxbury, Massachusetts, this organization is unapologetically abolitionist and unapologetically feminist. Director James wrote in an email to an audience of thousands of formerly incarcerated women and girls agitating in their communities across the country, “I continue to encourage our Sisterhood to stay on the ground in your local neighborhoods, doing the community-building work that can only be led by our people from within our neighborhoods. How we define this work, the narrative that moves it, who it is led by, and the outcomes we need for our communities, is just as important as getting wins that will be hailed as created and driven by big non-profits.” Email from Andrea James, Director, National Council for Incarcerated and Formerly Incarcerated Women and Girls, to NCIFIWG listserv (Oct. 21, 2019) (on file with author).
women written the Constitution, there is a good chance that one of their first thoughts would have been, “If the law is to govern the people, the law should be written in a language that the people can read and understand.” But, of course, that was not the case, and nothing has been done to change this. Black feminism, on the other hand, is precisely defined by intersectionality and inclusivity; by centering the most marginalized, we bring everyone along with us. In studying Black feminism and Black feminist legal thought, we have found some refuge from the cognitive dissonances we mention earlier in this Essay.

We emphasize Black feminism because we have found that even when white women gain a foothold in predominantly white cisgender male spaces, Black and brown women are either excluded or their unique priorities and needs are not recognized nor valued—that’s to say, feminism, without it being Black-led, is not enough. This is shown historically too. For example, consider the white feminist movement, which fought for the inclusion of women in predominantly white male institutions. Though the language of their movement did not explicitly exclude women of color, their goals were not inclusive of women of color. At the end of the day, the white feminist movement was not looking to fundamentally shift the nature of the institutions that benefit their whiteness. For example, during the second wave feminist movement, Black, Indigenous, and immigrant women (self-named Welfare Mothers) were asking for more generous government support to allow them to stay at home and build their lives with their families and communities. Low income Black women and women of color did not share in the goal of entering white male spaces, such as elite law firms, to further white cisgender male neoliberal agendas. That the white feminist movement moved in this way is not surprising, of course. A deeply rooted, subconscious and conscious, racist strategy of exclusion (of us, our needs, priorities, ways of being, our goals and visions) has always benefited pursuit of white wealth and power in America.

The absence of Black and women of color feminist thought—our ideologies, logistics, concepts, and social science—results in a deliberately biased legal system that embodies white cis male patriarchy and furthers

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neoliberal agendas. Black women, brown women, and immigrant women would not have built the world this way.

We now turn to an area of injustice we are intimately familiar with: the child “welfare” system, or what activists are increasingly calling the “family regulation system” or “the family policing system.” That this system claims the mantle of child welfare or child protection is astonishing; its primary weapon is forcible family separation, which is extremely damaging to children, families, and society as a whole. Black and brown feminists would not have built a system intended to ensure the wellbeing of children and families that actually replicates police, prisons, and jails. Nor would we have built a system that kidnaps children from their families before first providing aid and resources. Women of color feminists are not seeking to perpetuate neoliberal agendas nor reinforce the white accumulation of power and wealth. When we see an unhoused family, we see generations of redlining as the villain and universal guarantee of housing as the solution. Under the family regulation system, when the government sees an unhoused family, it blames the parent, thereby hiding the actual villains: racism and capitalism. The system built by whiteness and patriarchy blames those who are harmed the most for the harm they experience.

Such obviously discriminatory practices have no place within the halls of justice. But it was built this way, and many of us have allowed it to

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7 Research shows that providing basic life necessities dramatically decreases what the family regulation system calls “indicated instances” of “maltreatment.” In other words, this decreases poverty, or what the child welfare system calls parental neglect or abuse. See, e.g., Mi-Youn Yang et al., Child Care Subsidy and Child Maltreatment, 24 CHILD & FAM. SOC. WORK 547 (2019); Emily C. B. Brown et al., Assessment of Rates of Child Maltreatment in States with Medicaid Expansion vs States Without Medicaid Expansion, 2 JAMA NETWORK OPEN e195529 (2019); Kerri M. Raissian & Lindsey Rose Bullinger, Money Matters: Does the Minimum Wage Affect Child Maltreatment Rates?, 72 CHILD. & YOUTH SERVS. REV. 60 (2017); Ruth White, Understanding the Nexus of Housing and Child Welfare in America, CENTER FOR ADVANCED STUDIES IN CHILD WELFARE (Spring 2017); Jeff Laremore, Does a Higher Income Have Positive Health Effects? Using the Earned Income Tax Credit to Explore the Income-Health Gradient, 89 MILBANK Q. 694 (2011); Maria Cancian, Mi-Youn Yang & Kristen Shook Slack, The Effect of Additional Child Support Income on the Risk of Child Maltreatment, 87 SOC. SERV. REV. 417 (2013).

8 Home ownership, one of the greatest engines of wealth building in the United States for middle class whites, was historically intentionally withheld from Black communities. See Sophie House & Krystle Okafor, Under One Roof: Building an Abolitionist Approach to Housing Justice, N.Y.U. J. LEGIS. & PUB. POL. ’Y QUORUM (2020) (discussing this history and the need for a universal housing guarantee).

9 See generally CEDRIC J. ROBINSON, ON RACIAL CAPITALISM, BLACK INTERNATIONALISM, AND CULTURES OF RESISTANCE (2019). Several studies show that upwards of thirty percent of the children in the family regulation system could go home to their families if their parents had access to housing. See White, supra note 7.
live in a mansion with several bathrooms fashioned as a courthouse. Family
courts in many cities have rarely, if ever, witnessed a white respondent parent
walk through its doors.\(^\text{10}\) Black and indigenous families, poor families,
families with members who have disabilities, are far more likely to be
involved with the family regulation system at every juncture: from
investigations, adjudications, removals, and terminations—and not because
they are worse parents!\(^\text{11}\) If courts were actual purveyors of justice, racism
and capitalism would not survive. It is time we put our judicial system on
trial. We don’t need mountains of social science research and data to tell us
that it is time that we foreclose on this mortgage and find a better buyer more
suited for justice. We have our co-conspirators in Black and women of color
feminist thought to thank for leading us to this conclusion—now, let us figure
something else out that works for our people.

If we fail to do this, then we become a part of the problem. In our
experience, people working in legal spaces, such as family court, who do not
possess a social justice movement mindset assimilate into these racist spaces.
These people want nothing more than to be accepted, heard, and
acknowledged for a job well done by the very system that is tearing families
apart. Like Stockholm Syndrome, the amount of cognitive dissonance one
must bury themselves in to work in these spaces of intentional conflict and
adversity is incredible. Our advice to those working within this system is to
sustain emotional connection by finding compassion and grace within one’s
self—and to simply embrace good, old-fashioned common sense, given that
embracing the illuminating moral compass embedded in Black feminism is
dangerous and discouraged.

The way forward

A sharp, thoughtful analysis of the problem is a necessary precursor
to building solutions. We appreciate Black feminist scholarship for giving us
the foundations and scaffolding for building solutions. What we, Black and
women of color feminists, now ask for is the necessary space for building
these solutions. We are not asking anyone for the solutions now, because
those may take centuries to build. Solutions put forth by Black and women
of color feminists must be granted the space necessary to be generated, heard,
implemented, and tested. Black and brown thought has always been
challenged and deemed inferior to that of our white counterparts. It is rarely
given oxygen. We want space to breathe and dream.

\(^\text{10}\) Frank Edwards, Sara Wakefield, Kieran Healy & Christopher Wildman, *Child Protective

\(^\text{11}\) See Youngmin Yi, Frank R. Edwards & Christopher Wildeman, *Cumulative Prevalence of
Confirmed Maltreatment and Foster Care Placement for U.S. Children by Race/Ethnicity*, 2011-2016,
110 AM. J. PUB. HEALTH 704 (2020); Christopher Wildeman, Frank R. Edwards & Sara Wakefield, *The
Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*, 25 CHILD
MALTREATMENT 32 (2020).
In the legal world, we need to build up the bench of legal dreamers. Far more Black and brown people should be attending law school for free, or their tuition should be substantially reduced in order to allow more people of color to become attorneys. Lay people should be able to enter into the field of law under other legal workers to bridge our legal access gap. The law needs to be heard and discussed; it needs to have a life outside courtrooms, law schools, and law journals. Just because this is not the norm does not mean it cannot happen and that it won’t work to address and solve societal problems. In fact, trying something new is how we discover new solutions. If white men built up this legal world to be totally inaccessible, let us Black women and women of color act as a force against that. Let’s make these otherwise hallowed and inaccessible halls of power accessible to every last person in the community in order to solve problems, rather than exacerbate harm.

As it relates to the family regulation system, we need to continue to generate solutions to keep our children and families safe. We need to demand restitution and reparations for all the families who have been so violently and senselessly torn apart. We need to get back to creating systems of support that decenter the nuclear family (a white concept, after all) and instead center the idea of the village: that it takes a village to raise a child and to nurture a family. Caretaking for our children, elders, family, and community—work that capitalism has so devalued that it is either unpaid or extremely low paid labor—must return to its rightful place as our most valued and shared responsibility. With our values, visions, ideas, and thoughts at the center, with our bench of dreamers built up, we can build a freer and more just world.

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