



The Long Shadow of Family Separation: a Structural and Historical Introduction to Mandated Reporting in the Domestic Violence Context

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Abstract

When intimate partner violence survivors seek help from public institutions, including domestic violence programs, they necessarily submit to the scrutiny of staff who are required to report suspicions of child abuse or neglect to the state child protective system. This prospect would frighten anyone but has particular weight for survivor-parents who – during a period of enormous stress, chaos, and trauma - are often held responsible for the conditions of abuse they are trying to end or escape. So, what happens when they enter such systems? How do survivors think about and manage the experience of being evaluated, and more acutely, the looming possibility of a mandated report? And how do advocates, trained to restore power to survivors navigate their roles as mandated reporters? Each of the articles in this special section describes a piece of this puzzle. But the profound implications of their findings cannot be understood clearly without an understanding of the historical and structural contexts of oppression in which they play out – contexts that many survivors know only too well. This article aims to review briefly the broader social, historical, and structural contexts of mandated reporting and the linked phenomena of parenting surveillance and the forced separation of families of color. Centering these broader legacies of violence and other harms expands our capacity to ask the right research questions and support survivors more effectively as they seek help from systems they need for safety and healing, but that they also rightly fear.

Keywords Domestic violence · Intimate partner violence · Mandated reporting · Empowerment · Race

For many poor and marginalized communities in the United States, the threat of state intrusion into family life casts a long shadow, profoundly affecting individual and community safety, trust in social institutions, the quality of social relationships, and parental control (Richie 2017; Roberts 2002). This is certainly the case for survivors of intimate partner violence who turn to public systems for support, often as a last resort to protect their children from the chaos, terror, and unpredictability of partner abuse (Liang et al. 2005). Many such survivors are able to shield and care for their children even as they try to protect themselves, showing tremendous

strength, nurturance, and parental resourcefulness within tight constraints (e.g. Letourneau et al. 2007; Macy et al. 2013; Nixon et al. 2017). Some, however, simply cannot do so without additional supports (Brooks and McFarlane 2018). And still others struggle with impaired parenting themselves, perhaps as a result of physical and mental health challenges (Levendosky et al. 2000), abuser-imposed limits on personal freedom (Bancroft and Silverman 2002; Radford and Hester 2006), and lack of access to resources (e.g., Semaan et al. 2013).

When these survivors seek help, they necessarily submit to the scrutiny of staff who are required to report suspicions of child abuse or neglect to the state child protective system. Once a report is substantiated, survivors are offered and often required to undertake a range of activities in order to address areas of risk in the family. In certain situations, these interventions are presented as conditions to be met in order to keep their children with them or to have them returned once removed, including attending parenting programs that have little empirical evidence for effectiveness and are rarely attuned to

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the unique needs of IPV survivors (Austin et al. (2017)). As will be discussed below, this prospect can be frightening for any parent, and may have particular weight for help-seeking survivors, who are often held responsible for the conditions of abuse they are trying to escape. It is therefore easy to understand what research shows – that for many survivors taking care of children, often at a most vulnerable and desperate moment, seeking help from a public agency is a frightening prospect (DeVoe and Smith 2003). And yet, they nonetheless do so, over and over again, from a range of formal systems, including health care settings, mental health programs, family shelters, and domestic violence (DV) programs (Hanson et al. 2019).

So, what happens when they enter such systems? How do survivors think about and manage the experience of being evaluated, and more acutely, the looming possibility of a mandated report? And how do advocates, trained to restore power to survivors whose abusers may have coerced and controlled them, navigate their roles as mandated reporters? Each of the articles in this special section describes a piece of this complex puzzle, but they are incomplete without a clear articulation of the broader social, historical, and structural contexts of mandated reporting and the linked phenomena of parenting surveillance and forced family separation for poor families and families of color throughout this country's history. This article aims to review these contexts, albeit briefly. It is divided into four sections. The first describes the historical development of mandated reporting laws. The second describes how mandated reporting fits within the broader context of the surveillance of mothers, a phenomenon that has disproportionately targeted low-income women and women of color. The third describes legacies of family separation that may still inform the experience of women of color. Finally, the fourth section gives a brief preview of what is to come in the subsequent articles that comprise this special section.

History of Mandated Reporting Laws

The current mandated reporting structure is rooted in over five decades of United States history. In 1962, Dr. C. Henry Kempe, a Denver pediatrician, and his colleagues published a seminal report on child abuse, *The Battered Child Syndrome* (Kempe et al. 1962), exposing the frightening nature and extent of child abuse in the United States and triggering a growing sense of urgency in the medical community to address it as a social and public health problem rather than a private family matter (Sussman 1974). In 1963, the Children's Bureau of the United States Department of Health, Education, and Welfare published model statutes for individual states to adopt as they developed legal requirements for physicians to report child maltreatment. These focused on the "protection of children and prevention of abuse." Later definitions expanded to

include a focus on neglect, characterized as insufficient food, shelter, and clothing, a definition that, as will be discussed below, came uncomfortably close to the condition of poverty (Bridges 2017; Raz 2017). By 1967, 49 states had passed child abuse laws with a mandatory reporting requirement. Reluctant for physicians to be singled out as the sole professionals responsible for reporting suspicions of abuse and neglect, the American Medical Association advocated for an expansion of responsibility, and by 1973, 32 states included social workers as mandated reporters and 30 states included teachers and administrators. In 1974, Congress passed the Child Abuse Prevention and Treatment Act (CAPTA), the current major funding source for child welfare, which required states to have a mandated reporting law in order to receive federal funding. In response to CAPTA, Child Protective Services (CPS) agencies were established to investigate allegations of child maltreatment and, when appropriate, to provide protective and preventive services that typically range from counselling and support (e.g. coordination of services) to temporarily or permanently removing the child from the home to ensure his or her safety and well-being (Nixon et al. 2007). Over the past decades, most states have considerably expanded their mandatory reporting laws, in terms of both what is reportable and who is mandated to report (Raz 2017).

In the 1990s, as researchers and practitioners developed new awareness of the profound risks associated with a child's exposure to intimate partner violence (IPV; Kitzmann et al. 2003), a number of jurisdictions deemed such exposure itself to be a serious form of child maltreatment (Jaffe et al. 2003) and some states expanded their definition of abuse or neglect to include "failure to protect" a child from witnessing or experiencing such abuse. This policy directly affected mothers facing IPV, who could be held responsible for the harm their children endured at the hands of the same person abusing the mothers (see, e.g. Edleson et al. 2006). It is not clear how many mothers have been sanctioned as the result of failure to protect laws; however, the double jeopardy it imposes on mothers has been highlighted across multiple states, including in the now famous 2003 *Nicholson v. Williamson* case (Edleson 2006), where several New York City mothers lost custody of their children for "being engaged in domestic violence" – as nothing other than victims of the abuse. Though the mothers in this case filed and won a class action suit, and some of these policies have been criticized and revised (Edleson 2004; Ewen 2007; Nixon et al. 2015), at least 29 states still have laws that explicitly criminalize parents' failure to protect their children from abuse, variously called injury to a child "by omission," "permitting child abuse," or "enabling child abuse" (Campbell 2014).

Of course, children living in the context of IPV can face grave danger when their caregivers, including their mothers, cannot or do not protect them for any numbers of reasons (e.g. economic constraints, fear, love of their partners). These

dangers could necessitate a range of interventions, depending on the situation. Yet, “failure to protect” laws illustrate how survivor-mothers may be particularly at risk for judgment and sanctioning of their parenting in the name of child protection even in situations where it is clear that they themselves are at great risk too, and that others are responsible for the risks both to them and to their children (Edleson 2006). As the next section shows, survivor-mothers marginalized by poverty and racism are at heightened risk for such judgment and sanctioning.

Parenting Surveillance as a Context for Mandated Reporting

Though mechanisms of mandated reporting are relatively recent in our country’s history, the monitoring or “surveillance” of parenting by social service systems, as well as state intervention into family life, is far from new, nor is it limited to situations in which children are at risk. Surveillance – broadly defined as oversight, monitoring, or tracking by an authoritative body (Bridges 2017; Eubanks 2017; Monahan 2017) – has long been a feature of health and social service systems, particularly those designed for the poor (Bridges 2011, 2017; Eubanks 2014, 2017). In her sweeping history of poverty management policies from the 1600s until today, Virginia Eubanks (2017) describes how surveillance (in this case, investigating peoples’ personal, familial, economic, and medical circumstances) has historically been key to determining who deserves government support and who does not. Today, poor families seeking help from public systems must undergo interpersonal and increasingly technological forms of surveillance to determine eligibility for desperately needed resources (Bridges 2011, 2017; Eubanks 2017; Friedman 2012). This is especially the case for impoverished mothers who are usually the point of family contact with public assistance programs, and even more prominent for mothers of color, who are disproportionately struggling with poverty (e.g., Bridges 2011, 2017; Brush 2011). Even when these mothers seek services or resources for needs that have nothing to do with them as mothers, their parenting may come under scrutiny by social service providers obligated to evaluate a child’s safety and/or the mother’s parenting (Eubanks 2017). Such exposure is not optional. In order to access resources, a mother must share intimate details of her family life. In many cases, she may have her children with her when she seeks help, in which case her children and her parenting come under direct surveillance even if she never utters a word about her parenting needs or experiences.

In addition to heightened exposure to public systems, impoverished mothers are disadvantaged by state intrusion into their family life in other ways as well (Bridges 2017). First, public systems that control access to critical resources,

including health and social service systems, disproportionately monitor and question poor mothers because their very poverty raises concerns about their capability as parents, marking them as “untrustworthy,” “pathological,” or vulnerable to character flaws that could lead to harm to their child (e.g., Bridges 2017; Eubanks 2017; Monahan 2009). Although beyond the scope of this paper, evidence for this perspective abounds across levels of analysis. Take, for example, Temporary Assistance to Needy Families (TANF), the federal program that partners with states to provide cash assistance to impoverished families. Passed in 1997, TANF paces dual emphasis on getting its beneficiaries into the wage labor market and into marriages. The assumption underlying these pieces of the program are clear: that poverty is the result of individually deficient behaviors, easily corrected if only the recipient would get a job and get married (Bridges 2017).

Women of color are especially susceptible to scrutiny based on this narrative. One well-known example is the tenacious racialized figure of the welfare queen, whose family planning decisions rested on a selfish desire to expand her monthly benefit check by a few dollars rather than on a desire to have and care for a child. Though factually discredited, President Ronald Reagan used this image of immorality and selfishness to help dramatize the problems of big government (Levin 2019). And, because it resonates with pervasive deficit-based narratives of Black motherhood, this and similar images continue to haunt public imagination and discourse about impoverished mothers of color even today, serving to justify or normalize the idea that these mothers require oversight and intervention (Bridges 2017; Monahan 2017; Roberts 1993, 2012). Indeed, Black mothers are involved in child protective services at disproportionately high rates compared to their numbers in the general population, with low-income Black women being the most grossly overrepresented (e.g., Courtney and Skyles 2003). A recent *New York Times* article proclaimed the excessive targeting of Black mothers by child protective services as the new “Jane Crow,” a nickname given by lawyers working in the field who bear witness to what they see as clear patterns of racial targeting and criminalization (Clifford and Silver-Greenberg 2017).

Finally, hand-in-hand with false assumptions about poor women’s capabilities as mothers is the frightening reality that poverty can be easily (mis)interpreted as neglect (Bridges 2017; Eubanks 2017). As Bridges (2017) argues, our very conceptualization of neglect is “a description of what it means to be poor” (p. 116). She elaborates, making connections to specific forms of neglect, such as the absence of sufficient food, clothing, or medical care:

“When one is poor, one will be hungry repeatedly, sometimes for long periods of time...one will not have appropriate clothing for the weather. One will not be able to visit the doctor when one is ill. One will live in unsafe neighborhoods that lack resources” (p. 116).

Ideally, poverty-related neglect would result in increased services and supports; however, this is not always the case (Eubanks 2017). When a mother is judged as deficient and then sanctioned rather than supported, her poverty is effectively criminalized as maltreatment (Monahan 2009).

Thus, in turning to public systems to meet their basic needs, women in poverty, especially women of color, are disproportionately exposed to the mechanisms (e.g. monitoring), consequences (e.g. sanctions), and messages (e.g. blame) of surveillance. Given the well-established intersection between poverty and IPV (Goodman et al. 2009), some survivor-mothers will likely have experienced this long before they seek help for IPV, and again when they seek help for needs that are ostensibly unrelated to poverty.

Finally, as the next section describes, parenting surveillance, with its shadow specter of child removal, may have a very particular meaning to specific groups of women of color given historical legacies of state sponsored separation of children and their parents (Bridges 2011, 2017; Eubanks 2006, 2017; Ritchie, 2017; Roberts 1993, 2012).

Historical Legacies of Family Separation as a Context for Mandated Reporting

Family separation and child removal have different historical legacies, and thus different structural realities and psychological significance, across racial and cultural lines. For many groups—for example, American Indians, Black Americans, and immigrant women of color—the possibility of losing one’s child is rooted in brutal historical realities that continue to echo in the cultural narratives of these communities, as well as in our national landscape. American Indian Children were removed from their families and communities through forced placement in Indian Boarding Schools from 1875 throughout the mid twentieth century, and then, through unregulated “adoptions” that allowed Native children to be taken by White families until the passage of the Indian Child Welfare Act in 1978 (Bombay et al. 2014). For Black Americans, the institution of slavery separated families for centuries (from 1619 to 1877)—with children often being forcibly removed and sold (Roberts 2002). Today, Black families are separated from one another at staggeringly high rates through detention and incarceration—a pattern that echoes the legacy of slavery and anti-Black Jim Crow policies (Alexander 2012). For many immigrant women, the history of immigration includes family separation, child loss, or punitive practices that divided families (see Richie 2017 for an extended discussion). Today, the threat of deportation—a barrier to help-seeking itself—involves the possibility of being temporarily or permanently separated from one’s children. As these papers are being published, we are witness to the forced separation of families at the U.S.-Mexico border; and recent changes in immigration

enforcement have resulted in striking declines in help-seeking among immigrant survivors of color, highlighting the powerful influence of this fear for survivor-mothers (e.g., Medina 2017). These histories and realities not only contribute to enduring trauma and contemporary structural inequalities, but also may confer different personal and psychological meanings to surveillance and state intervention for survivor-mothers from these groups, shaping their expectations and experiences as they seek support from presumably “helping” institutions (e.g., Boyd-Franklin 2003; Tummala-Narra 2007).

Special Section Articles

Taken together, this literature illustrates that the specter of mandated reporting is a common feature of help-seeking for poor mothers and mothers of color—one often characterized by actual or feared intrusion and control, and saturated with meanings that may be invisible to those who do not know or live the historical legacies just described—even as it may also function to identify children at risk and families in need of support. Yet, strikingly little attention has been paid to the perspectives of people on the ground in DV service contexts – whether survivors or staff -despite the fact that DV advocates, like all human service professionals, are mandated reporters. This special section begins to fill this gap.

The first two articles describe qualitative studies that illuminate how advocates and survivors participating in DV programs, respectively, experience, and manage the dynamics of parental surveillance and the possibility of mandated reporting. Both studies are grounded in a survivor-centered, relational perspective that begins with the assumption that even within the context of structural oppression and legal constraints, policies and practices are experienced through relationships that can be more or less survivor-centered, more or less empowering, and more or less sensitive to the ways that mandated reporting and accompanying parenting surveillance and family separation have affected marginalized communities, as described above.

The first article (Goodman et al. 2019) explores how a group of experienced DV advocates who are committed to survivor-centered, anti-oppressive, and trauma-informed practice navigate the tension between their commitment to helping restore survivors’ choice and control, a process that involves sharing power *with* survivors, and their obligations as mandated reporters, a process that involves power *over* survivors, especially in the context of working across social identities and fraught histories. Although research has long documented the pragmatic and philosophical tensions between systems that foreground the needs of DV survivor-mothers and systems that prioritize the needs of their children – and made important recommendations to address them (see, e.g. Schechter and Edleson 1998; Massachusetts Department of

Children and Families 2009) – almost no research has explored how advocates think about and manage on a daily basis these perhaps contradictory roles, especially in the context of their relationships with survivors. Advocates described a range of inward-facing, survivor-facing, and systems-facing strategies that serve as a beginning outline for a trauma-informed approach to working with mothers in the context of mandated reporting. The recommendations that emerged from this study can be found here: <https://sites.google.com/bc.edu/goodman-research-team/research/resources?authuser=0>

The second paper (Fauci and Goodman 2019) shifts the focus to survivors themselves, exploring how surveillance shows up in their experience of seeking help in DV shelters—even as they also experience critical support. This study explores the negative psychological effects of such surveillance, how it shapes their relationships with advocates, how they cope with and resist it, and what recommendations they have for improving advocacy services and relationships. These recommendations amplify and expand the suggestions offered in the first paper and are included in the above link.

The third article (Lippy et al. 2019) uses a broader lens to explore the influence of mandated reporting on the help-seeking behaviors of survivors across systems. Based on a large sample of survivors calling in to the national domestic violence hotline, study findings shed light on how participants think about mandated reporting and its effects on their willingness to seek help. This study is among the first to explore how race, gender, and sexual orientation mediate mandated reporting experiences in the IPV context, and the results dramatic, indicating, among other things, that mandated reporting laws reduce help-seeking for one third of survivors.

The fourth article (Carlson et al. 2019) returns to the question of how DV advocates balance their obligations as mandated reporters and as survivor-centered practitioners, this time using a quantitative approach. Among the 142 DV shelter advocates who participated in the study, the greater their holistic concern for the target family – that is, their consideration of the impact of a mandated report, the family’s context, and their own biases – the less likely they were to make a report to child protective services. These are fascinating results, suggesting the possibility that the more advocates consider the family’s situation as a whole, the more likely they are to find alternatives to making a report. At the same time, the degree to which they perceived that they had a good relationship with child protective services staff, the more likely they were to report. This too is fruitful territory for further research, suggesting the possibility that reporting may be perceived as less damaging when collaboration between the advocate and child protective services worker is tighter.

Finally, the last article (Stylianou et al. 2019) offers a view into how one program has tried to approach the task of mandated reporting in a way that is survivor-centered and trauma-

informed. Their perspective is compelling, and aligns with a range of new initiatives now unfolding across the country. In 2016, for example, the United States Department of Health and Human Services’ Children’s Bureau launched the national Quality Improvement Center on Domestic Violence in Child Welfare (QIC-DVCW) to test interventions to improve how child welfare agencies and their partners work with DV-affected families. Under the leadership of Futures Without Violence, the Center is collaborating with sites across the country to develop, implement and evaluate practices and policies that attend to the safety and well-being of both child and adult survivors jointly.

We hope that the articles in this special section, which bring forth the critical voices of DV advocates and survivors, will deepen our capacity to ask the right research questions in this critical and complex area, and support survivors more effectively as they seek help from systems they need for safety and healing, but that they also rightly fear.

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