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## Children and Racial Injustice in the United States: A Selective Annotated Bibliography and Call to Action

### Authors

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## Children and Racial Injustice in the United States: A Selective Annotated Bibliography and Call to Action

*Christina Cullen, Olivia Alden, Diana Arroyo, Andy Froelich, Meghan Kasner, Conor Kinney, Anique Aburaad, Rebecca Jacobs, Alexandra Spognardi, & Alexandra Kuenzli\**

### INTRODUCTION

For many reasons, 2020 became a year of reckoning for racial injustice. While a strong and deserved focus has been paid to criminal justice and police brutality, the systemic racism that underlies those institutions and many others affects more than just adults. Children are impacted by systemic racism in myriad ways that can be tragic, maddening, life-altering, and even fatal. The clearest connection can be made to the juvenile justice system, which disproportionately surveils, arrests, convicts, incarcerates, and harms children of color.<sup>1</sup> But on a more basic level, children of color<sup>2</sup>—although born into the twenty-first century—are still living with the repercussions of hundreds of years of oppression: from slavery to Jim Crow; from redlining to the War on Drugs; and many more ongoing instances of discrimination, racism, and bias. Our nation’s history of structural racism continues to permeate modern society, resulting in disparities in access to basic necessities like housing, food, healthcare, education, and more.<sup>3</sup> Further, children of color are disproportionately subject to investigations, removals, and permanent separation from their families by the child welfare system.<sup>4</sup> The policies, institutions, practices, and biases that disproportionately impact children and families of color severely infringe on and limit their rights.

This annotated bibliography reviews a selection of legal and other academic journal articles from the past ten years that address the nexus of children and racial injustice in the United States. It is organized into six sections: poverty, health, child welfare, education, juvenile justice, and domestic relations.<sup>5</sup> With this annotated bibliography, the authors hope to shed light on legal and academic scholarship that has exposed the ways in which

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\* The authors are 2020-2021 editorial board members and staff members of the *Children’s Legal Rights Journal*. They would like to thank CLRJ faculty advisor Diane Geraghty for suggesting this project.

<sup>1</sup> See, e.g., Brian J. Smith, *Justice, Social Control, and Social Inequality: Framing the U.S. Juvenile Justice System’s Racial and Ethnic Disparities*, in 22 RACE, ETHNICITY, & LAW 237, 243 (Mathieu Deflem ed., 2017).

<sup>2</sup> While the general term “children of color” is used here, throughout the rest of the bibliography the terminology (e.g., Black versus African American children, Native American versus American Indian, etc.) matches that of the specific article annotated, except for the replacement of Latino with the more gender inclusive Latinx. The bibliography focuses strongly on Black children and families, but it is also intended to be relevant for Indigenous children, Latinx children, and other children of color.

<sup>3</sup> See *infra* Parts I, II, IV.

<sup>4</sup> See *infra* Part III.

<sup>5</sup> These sections are for organizational purposes only. The authors recognize the pervasive and interconnected nature of structural racism across topics and systems. Some articles, like those addressing the link between poverty and child maltreatment or the connection between school discipline and juvenile justice involvement, could fit into multiple categories but were only placed in one.

children of color suffer due to systemic racism, and to illuminate proposed solutions for battling and ending racial injustice. This bibliography further seeks to highlight gaps in scholarship and push for further exploration of solutions and necessary reforms. Finally, the authors hope to instigate immediate action around implementing the many brilliant legal, policy, and institutional reforms and transformations suggested by the articles that follow. The authors call on readers, particularly those who have the privilege of advanced education and the power of their professions, to thoughtfully consider the ways in which their work may contribute to racial injustice; to work tirelessly to safeguard the rights of children of color; and to advocate for anti-racist policies, practices, and institutions that will help ensure all children are given a true opportunity to thrive in their families and communities.

## I. POVERTY

In the United States, nearly one in six children live in poverty.<sup>6</sup> Children of color comprise a disproportionate percentage of children in poverty; approximately 73% of impoverished children in the United States are children of color.<sup>7</sup> Almost one in three Black children, one in three American Indian-Alaska Native children, and one in four Latinx children live in poverty compared to one in eleven white children.<sup>8</sup> These disparities in wealth can have long-term negative implications on the well-being of children of color.<sup>9</sup> Thus, when examining the causes of and solutions to childhood poverty, it is essential to consider the disproportionate rate at which children and families of color experience poverty. The articles below discuss children's inequitable experiences of poverty and suggest different theories for understanding and addressing this important issue.

Wendy Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J. L. & FEMINISM 317 (2014), <https://digitalcommons.law.yale.edu/yjlf/vol25/iss2/3/>.

Although not focused on children, this article provides a useful analysis of how American ideals of individual autonomy and meritocracy have been used to justify economic and racial inequalities. Specifically, it argues that these ideals fail to account for vulnerability of children, the ill, the elderly, and populations systematically disadvantaged based on race, class, and gender. It examines how social welfare programs available to impoverished people and families of color come at the cost of stigmatization, privacy intrusions, and punitive responses from the child welfare, public health, and criminal justice systems. Instead, the author

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<sup>6</sup> CHILD.'S DEF. FUND, THE STATE OF AMERICA'S CHILDREN 2020, at 12 (2020), <https://www.childrendefense.org/the-state-of-americas-children-2020/>.

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

<sup>8</sup> *Id.*

<sup>9</sup> See TRINA SHANKS, INSIGHT CTR. FOR CMTY. ECON. DEV., DIVERGING PATHWAYS: HOW WEALTH SHADES OPPORTUNITY FOR CHILDREN 2 (2011), <http://www.insightcced.org/uploads/CRWG/DivergingPathways.pdf> (finding differences in child educational and health outcomes based on race and wealth disparities).

advocates for a supportive state that provides more universal benefits programs for families, strengthens privacy protections, and separates poverty-alleviating programs from punitive systems.

Jessica Dixon Weaver, *Beyond Child Welfare-Theories on Child Homelessness*, 21 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 16 (2014), <https://scholarlycommons.law.wlu.edu/crsj/vol21/iss1/6/>.

This article examines child homelessness in the United States, focusing on its disproportionate impacts on children of color. It highlights the increased risk of removal by the child welfare system for homeless children experiencing poverty-based neglect. The author traces racial disparities in homelessness to the country's history of housing discrimination, racist housing and property laws, and welfare gutting based on racialized stereotypes. The author uses various theories and principles to craft a framework for communities, private charities, and the state to unify in support of families. Some suggestions include home sharing, fostering families (rather than removing a child from a family experiencing homelessness), and neighborhood-based Community Courts.

Jeffrey M. Timberlake, *Racial and Ethnic Inequality in the Duration of Children's Exposure to Neighborhood Poverty and Affluence*, 54 SOC. PROBS. 319 (2007), <https://doi.org/10.1525/sp.2007.54.3.319>.

This study measures racial differences in cumulative childhood exposure to neighborhood poverty using data from the Panel Study of Income Dynamics, tract-level poverty rates from the U.S. Census, and multi-state period life table techniques. The study found that Black and Latinx children tend to live in high poverty neighborhoods for much more of their childhoods compared to white children. It concludes that racial inequality is in large part due to racial differences in the probability of being born into a poor neighborhood, which likely result from housing discrimination and racial segregation. The author suggests solutions, such as financial incentives for desegregation and targeted investments in impoverished neighborhoods, but laments the lack of political will to implement these changes.

Wouter Vandenhole, *Child Poverty and Children's Rights: An Uneasy Fit?*, 22 MICH. ST. L. REV. 609 (2014), <https://digitalcommons.law.msu.edu/ilr/vol22/iss2/6/>.

This article frames children living in poverty as a children's rights issue. The author emphasizes that Black, Latinx, and American Indian children are at a much higher risk of living in poverty, raising overarching issues of discrimination and inequality. Looking to international human rights law, the author suggests a rights-based approach to addressing child poverty, which would provide minimum thresholds for economic assistance to children, even in times of financial crisis. The article notes that a children's rights-based approach has strengths, but may

obfuscate structural causes of poverty and inequality and be mobilized against poor parents.

## II. HEALTH

The environment in which children grow up, including their homes and broader community spaces, can have a profound impact on their physical and mental health throughout their lifetimes. Accordingly, when Black, Latinx, and Native American children experience inequitable access to healthcare and healthy environments, they are also more likely to experience inequitable health concerns as adults.<sup>10</sup> Such health disparities have only been emphasized by the COVID-19 pandemic.<sup>11</sup> The articles below discuss the interplay between racial disparities and health outcomes in children, and how these disparities impact children's abilities to learn, grow, form healthy relationships, and even to live. In order to address these inequities and create a better future for children of color, children's advocates must go beyond acknowledging the social determinants of health. As the articles below will discuss, health equity for children cannot be achieved until we recognize and address the systemic racism that pervades our society.

Zinzi D. Bailey et al., *Structural Racism and Health Inequities in the USA: Evidence and Interventions*, 389 THE LANCET 1453 (2017), [https://doi.org/10.1016/S0140-6736\(17\)30569-X](https://doi.org/10.1016/S0140-6736(17)30569-X).

While not specifically focused on children, this report illustrates the negative impacts of discrimination and structural racism on the health of Black people, Indigenous people, and other people of color in the United States. The authors conducted a review of scientific research on the relationship between public health and structural racism and found that research tends to focus on interpersonal rather than structural causes of racial inequality. The report suggests that promoting health equity requires focusing on "leverage points" in residential segregation, healthcare quality and access, and discriminatory incarceration. The authors indicate that advancing health equity is not possible without directly addressing structural racism and properly training the next generation of health professionals.

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<sup>10</sup> See, e.g., Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275 (2015).

<sup>11</sup> *Health Equity Considerations and Racial and Ethnic Minority Groups*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 12, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fracial-ethnic-minorities.html](https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fracial-ethnic-minorities.html).

Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275 (2015), <http://www.aulawreview.org/health-justice-a-framework-and-call-to-action-for-the-elimination-of-health-inequity-and-social-injustice/>.

This article is a call to action to treat the causes of illnesses that appear in the areas where children live, eat, play, and grow. It provides a comprehensive overview of the social context, history, and institutions that perpetuate poor health and create a disproportionate prevalence of disease in minority and impoverished communities. The author takes careful notice of how these systems yield long-term social and economic consequences for children exposed to health harming hazards in their day-to-day lives. The article suggests solutions to achieve health equity, such as addressing implicit and explicit racial biases, changing discriminatory practices, and empowering communities and individuals.

Alina Das, *The Asthma Crisis in Low-Income Communities of Color: Using the Law as a Tool for Promoting Public Health*, 31 N.Y.U. REV. L. & SOC. CHANGE 273 (2007), <https://socialchangenyu.com/review/asthma-crisis-in-low-income-communities-of-color-using-the-law-as-a-tool-for-promoting-public-health-the/>.

This article addresses the disproportionate rate of asthma among children of color in low-income communities and its root causes, such as substandard housing, environmental hazards, and inadequate healthcare access. It argues that attorneys should partner with public health professionals to create innovative solutions to the asthma epidemic, like a New York City program that uses interdisciplinary teams to address childhood asthma at its source. The article is especially relevant in the time of COVID-19; with children spending more time at home, it is more critical than ever to address the inequitable environmental causes of asthma and to implement both public health and legal strategies to help children of color who are at a higher risk of dying from asthma.

Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POL'Y 59 (2016), [https://scholarship.law.ua.edu/cgi/viewcontent.cgi?article=1130&context=fac\\_articles](https://scholarship.law.ua.edu/cgi/viewcontent.cgi?article=1130&context=fac_articles).

This article argues that eviction should be viewed as a health equity issue that threatens the safety and stability of women of color and their children. It highlights how Black women are disproportionately saddled with eviction records, which can make it nearly impossible to obtain safe, healthy housing for their families. The article explores the damaging health impacts of eviction and inadequate housing, such as asthma, lead poisoning, and elevated blood pressure. The author argues that current legal remedies provide inadequate protection from the adverse health consequences of an eviction record. Suggested solutions include providing legal

counsel for tenant-defendants, limiting third-party access to eviction records, and decreasing the time period for reporting eviction records.

Neal Halfon et al., *Measuring Equity from the Start: Disparities in the Health Development of US Kindergartners*, 39 HEALTH AFFS. 1702 (2020), <https://doi.org/10.1377/hlthaff.2020.00920>.

This study examines health inequities related to neighborhood income and race in a sample of 183,717 kindergartners in ninety-eight U.S. school districts. It found that 30% of children in the lowest-income neighborhoods were vulnerable in one or more domains of health development, such as physical health and well-being, emotional maturity, and language and cognitive development. Black and Latinx children demonstrated higher levels of vulnerability across all domains, even when controlling for income. The authors conclude that race is an important predictor of health outcomes for children in the United States, evident by the time children enter school. The study shows the strong need for equity-focused health policy strategies that directly address structural racism in early childhood.

Hope Kerpelman, *Let Them Eat Paint: Childhood Lead Paint Poisoning as the Denial of Constitutional and Civil Rights*, 51 COLUM. HUM. RTS. L. REV. 828 (2020), [http://hrlr.law.columbia.edu/files/2020/02/7-Kerpelman\\_FINAL.pdf](http://hrlr.law.columbia.edu/files/2020/02/7-Kerpelman_FINAL.pdf).

There has been substantial scholarship written on childhood lead poisoning and its disproportionate impacts on children of color, but this recent note on the topic provides new insight. After demonstrating the ways in which the lead epidemic has been undergirded by race and class discrimination, evident in part by the lack of public will to end this entirely preventable scourge, the note argues that current legislative strategies and legal remedies for lead poisoning are inadequate and fail to address the underlying racial injustices that have perpetuated the epidemic. The author recommends that advocates should creatively utilize the Fourteenth Amendment, the Fair Housing Act, and Title VI of the Civil Rights Act to bring race and class-based lead poisoning claims.

Patrick D. Murphree, *For the Least of These Brothers and Sisters of Mine: Providing Mental Health Care to Undocumented Immigrant Children*, 15 SEATTLE J. FOR SOC. JUST. 65 (2016), <https://digitalcommons.law.seattleu.edu/sjsj/vol15/iss1/11/>.

This article addresses the surge of unaccompanied children migrating to the United States, using real examples that illustrate the trauma they face on their journeys. The article discusses how the United States has failed to address these children's mental health needs, which often result from complex trauma. It advocates for using pre-existing tools to address these mental health needs by expanding the eligibility criteria for Medicaid and the Children's Health Insurance Program. The author argues for this legislative change by applying the case of *Plyler v. Doe* by analogy

and by arguing that protection of minors is a fundamental public policy of the United States.

David Dante Troutt, *Trapped in Tragedies, Childhood Trauma, Spatial Inequality, and Law*, 101 MARQ. L. REV. 601 (2018),  
<https://scholarship.law.marquette.edu/mulr/vol101/iss3/2/>.

The author outlines the disproportionate chronic trauma exposure many Black, Latinx, and impoverished children experience within their homes and communities, and argues that this crisis is caused by legally sanctioned structural and spatial inequality. The author contends that complex trauma and the environments that engender it are symptoms of structural inequality, which works to trap families of color in segregated areas of concentrated poverty and disadvantage. The author suggests both addressing the symptoms of trauma, for example through school-based legal interventions, and implementing prevention strategies based in civil rights and local law to alleviate the root, structural causes of inequities in childhood trauma.

Katherine Unger Davis, *Racial Disparities in Childhood Obesity: Causes, Consequences, and Solutions*, 14 U. PA. J. L. & SOC. CHANGE 313 (2011),  
<https://scholarship.law.upenn.edu/jlasc/vol14/iss2/4/>.

This article highlights racial disparities in childhood obesity and how healthcare inequities compound the consequences of childhood obesity. It explores the possible causes of childhood obesity disparities, such as food deserts, lack of access to parks and recreational facilities, and television advertising. The author suggests passing legislation that focuses on the causes of the disparities: banning television marketing of food to children; reforming land use planning to address food access and the built environment; and improving physical education requirements. The article provides a clear analysis of the childhood obesity epidemic and its racial disparities but could have benefitted from a discussion of structural racism as a root cause of the disparities.

### III. CHILD WELFARE

While the child welfare system intends to protect maltreated children, it is vital to examine how its practices and policies actually impact children and their families. The majority of children are removed from their families for neglect, not abuse.<sup>12</sup> Neglect, like

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<sup>12</sup> CHILD'S BUREAU, CHILD MALTREATMENT 2018, at 21 (2020), <https://www.acf.hhs.gov/cb/report/child-maltreatment-2018> (stating that in fiscal year 2018, approximately 60% of maltreated children were indicated for neglect, 10% for physical abuse, 7% for sexual abuse, and 15% for a mix of maltreatment types).

a child's "best interests," is often loosely defined statutorily<sup>13</sup> and thus is open to interpretation based on class, race, and other biases. Children of color are removed from their homes,<sup>14</sup> linger in foster care,<sup>15</sup> and are permanently separated from their families at alarmingly disproportionate rates.<sup>16</sup> This bibliography questions whether a system that protects some children at the cost of reproducing racial inequality and permanently separating families of color en masse is a system worth continuing in its current form. The following articles examine racial disproportionality and disparity in child welfare from various disciplines and provide suggestions and strategies worth implementing.

Richard P. Barth et al., *Outcomes Following Child Welfare Services: What Are They and Do They Differ for Black Children?*, 14 J. PUB. CHILD WELFARE 477 (2020), <https://doi.org/10.1080/15548732.2020.1814541>.

The authors conducted a metaanalysis of research on the outcomes of children who experience child welfare involvement. Despite acknowledging mixed results and the fact that few studies had all the features necessary for a "confident comparison," the authors conclude that child welfare-involved children do not fare worse than other children, and that Black children do not experience poorer outcomes as a result of child welfare involvement. Based on this analysis, the article stands against abolishing the child welfare system, which it calls "the only available safety net for Black children." This raises the question of what other safety nets are available to non-Black children. The harm the system causes to Black children and families through disproportionate separation seems to be absent from its analysis.

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<sup>13</sup> See, e.g., 705 ILL. COMP. STAT. ANN. 405/2-3(1) (West, Westlaw through P.A. 101-651) (defining neglect as including a minor "not receiving proper or necessary support, education as required by law, or medical or other remedial care recognized under State law as necessary for a minor's well-being, or other care necessary for his or her well-being, including adequate food, clothing, and shelter, or who is abandoned by his or her parents"; a minor's exposure to an "injurious" environment; and leaving a minor "without supervision for an unreasonable period of time"). What is considered "proper and necessary support," an "injurious" environment, or an "unreasonable" amount of time to leave a minor unsupervised likely varies from person to person and community to community.

<sup>14</sup> See SHAMINI GANASARAJAH ET AL., NAT'L COUNCIL OF JUV. & FAM. CT. JUDGES, DISPROPORTIONALITY RATES FOR CHILDREN OF COLOR IN FOSTER CARE (FISCAL YEAR 2015) 20 (2017), [https://www.ncjfcj.org/wp-content/uploads/2017/09/NCJFCJ-Disproportionality-TAB-2015\\_0.pdf](https://www.ncjfcj.org/wp-content/uploads/2017/09/NCJFCJ-Disproportionality-TAB-2015_0.pdf) (indicating that in fiscal year 2015, African American children and American Indian-Alaska Native children were overrepresented in foster care at rates 1.7 times and 2.6 times their presence in the general population, respectively).

<sup>15</sup> See *id.* (indicating that African American, American Indian-Alaska Native, and multiracial children spent more time in foster care before achieving permanency than white children).

<sup>16</sup> See Christopher Wildeman et al., *The Cumulative Prevalence of Termination of Parental Rights for U.S. Children, 2000-2016*, 25 CHILD MALTREATMENT 32, 33 (2020) (finding that American Indian-Alaska Native children and African American children are 2.7 times and 2.4 times "more likely than White children to experience the termination of parental rights," respectively).

Rakesh Beniwal, *Implicit Bias in Child Welfare: Overcoming Intent*, 49 CONN. L. REV. 1021 (2017), [https://opencommons.uconn.edu/law\\_review/365/](https://opencommons.uconn.edu/law_review/365/).

This note examines the ways in which implicit bias draws more families of color into the child welfare system at every step, from reports to removals. The note makes a strong argument for a heightened level of scrutiny in disparate impact claims against child protective services based on the fundamental right at risk—the right to parent one’s child. It argues that intent should not be required for these claims because of the clearly unequal impact on families of color, which results largely from discrimination that is hidden and implicit. To address the child welfare system’s disparate racial impact, the author proposes decreasing the caseloads of social workers, using peer review decision-making, and improving staff retention.

Michelle Burrell, *What Can the Child Welfare System Learn in the Wake of the Floyd Decision?: A Comparison of Stop-and-Frisk Policing and Child Welfare Investigations*, 22 CUNY L. REV. 124 (2019), <https://academicworks.cuny.edu/clr/vol22/iss1/14/>.

This article describes the ways in which child welfare investigations parallel stop-and-frisk police practices: the low burdens of proof, the disparate impact on people of color, the lasting ripple effects in the communities impacted, overbroad interventions that infringe on fundamental rights, and a lack of recourse against “rogue” officers or caseworkers. However, the article posits that there are aspects of child welfare investigations that may be worse than stop-and-frisks, such as lengthy, intrusive investigations and caseworkers acting under the guise of helpers while actively building cases against parents. The author provides helpful suggestions for advocates seeking change, like highlighting stories that show the true cost of investigations and pushing for a higher burden of proof and a form of *Miranda* rights for parents under investigation.

Erin Cloud, *Family Defense in the Age of Black Lives Matter*, 20 CUNY L. REV. F. 68 (2017), <https://academicworks.cuny.edu/clr/vol20/iss1/14/>.

The article scrutinizes three ways the child welfare system controls, disrupts, and ultimately destroys Black families: (1) removals of Black children where no imminent safety concern exists; (2) drug testing Black pregnant women without their consent; and (3) the monitoring and control of Black families outside of the court system. The article also argues that the Adoption and Safe Families Act essentially “kills” Black families, who are vastly overrepresented in the system, by fast tracking termination of parental rights. The author calls on Family Defense practitioners to ally themselves with the Black Lives Matter (BLM) movement and advocate for the addition of child welfare policy reforms to the BLM platform.

Tanya Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215 (2013), <https://scholarship.law.marquette.edu/mulr/vol97/iss2/3/>.

This article examines the disproportionate number of Native American and Black children in foster care and two opposing rationales for this bias. Using systems change theory, the author maps possible sources of bias in the foster care system and then proposes two ways forward: work on racial bias within the existing system or change the system itself. The systems framework utilized provides a helpful and practical way to examine this issue and to envision meaningful changes. The article also suggests solutions, such as using litigation to challenge the vague “best interests” standard, providing high-quality parent representation, changing funding priorities, and moving towards community-based control of foster care.

Suzanne R. Dakil et al., *Racial and Ethnic Disparities in Physical Abuse Reporting and Child Protective Services Interventions in the United States*, 103 J. NAT’L MED. ASSOC. 926 (2011), [https://doi.org/10.1016/S0027-9684\(15\)30449-1](https://doi.org/10.1016/S0027-9684(15)30449-1).

Analyzing 2006 data from the National Child Abuse and Neglect Data System, this study finds that African American, multiracial, and Asian/Pacific Islander children have slightly higher rates of reported and substantiated physical abuse compared to white children. The study concludes that African American children are at higher risk of physical abuse. However, the study does not examine how a substantiated report does not mean a child was abused, but that a caseworker deemed—based on a low standard such as a “credible evidence”<sup>17</sup>—that abuse occurred. Further, the study does not analyze how racial bias in reporting and caseworker decision-making could affect this data.

Alan J. Dettlaff et al., *It Is Not a Broken System, It Is a System That Needs to Be Broken: The upEND Movement to Abolish Child Welfare*, 14 J. PUB. CHILD WELFARE 500 (2020), <https://doi.org/10.1080/15548732.2020.1814542>.

This article argues that the child welfare system should be upended because it cannot achieve its goal of protecting abused children without harming, oppressing, and further marginalizing Black families. The authors posit that an anti-racist framework must be used to shift from responding to existing disparities to proactively fixing the policies and practices that produce them. While pushing for the abolition and replacement of the child welfare system with community-based supports, the article backs some short-term reforms, such as strengthening the

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<sup>17</sup> *E.g.*, ILL. ADMIN. CODE tit. 89, § 300.110(i)(2) (2020) (stating that the determination of whether a child has been abused or neglected “shall be based upon whether the information gathered from other persons during the investigation and the direct observations made by the investigative staff during the investigation constitute credible evidence of child abuse or neglect”). Credible evidence is defined as “the available facts, when viewed in light of surrounding circumstances, would cause a reasonable person to believe that a child was abused or neglected.” *Id.* § 300.20.

safety net for families, requiring “active efforts” for all child welfare cases, and ending the use of “arbitrary timelines to terminate parental rights.”

Frank Edwards, *Family Surveillance: Police and the Reporting of Child Abuse and Neglect*, 5 RSF: RUSSELL SAGE FOUND. J. SOC. SCIS. 50 (2019), <https://doi.org/10.7758/rsf.2019.5.1.03>.

Analyzing data from the National Child Abuse and Neglect Data System and Uniform Crime Reports, this study finds a close connection between arrest rates in communities and police reports of child maltreatment, especially for American Indian-Alaska Native children. Interestingly, the study results show that arrest rates are more predictive of maltreatment reports for children of color than child poverty rates. It also finds that Black children are almost twice as likely to be investigated for maltreatment by police than white children. The study indicates that child welfare involvement may be a “spillover consequence of arrest” and police surveillance. It also suggests that disproportionate policing of communities of color may simultaneously lead to the unnecessary removals of children of color and to missing cases of actual maltreatment in other communities.

Ruby M. Gourdine, *We Treat Everybody the Same: Race Equity in Child Welfare*, 34 SOC. WORK PUB. HEALTH 75 (2019), <https://doi.org/10.1080/19371918.2018.1562400>.

This study conducted a qualitative analysis of a project that integrated Racial Equity Standards Areas (RESA) into accreditation standards for two participating agencies. Developed by the Black Administrators in Child Welfare, RESA include ten different areas, but this study focuses solely on data. The study found that “[w]hile the sites felt they ‘treat everybody equally,’” the little data the agencies had indicated racial disparities in service provision. The author proposes implementing consistent data collection on service delivery by race, providing training on cultural competency and implicit bias, and improving policies for worker burnout. The article provides a strong and hopeful perspective: because race is a man-made concept, our society can dismantle racial inequality at any time if it only chooses to do so.

Effrosyni D. Kokaliari et al., *African American Perspectives on Racial Disparities in Child Removals*, 90 CHILD ABUSE & NEGLECT 139 (2019), <https://doi.org/10.1016/j.chiabu.2018.12.023>.

This study conducted focus groups with child welfare-involved African American parents from impoverished areas in Florida on their perspectives on child removals. The participants expressed strong distrust of child welfare agencies and shared personal trauma histories as well as the immense trauma of having their children removed. They also described how poverty, deficient housing, mental health challenges, substance use, unsafe neighborhoods, and poor school systems led to

removals and hindered service participation and reunification efforts. The authors recommend that child welfare agencies should provide preventative services, use trauma-informed interventions, build community trust through regular focus groups, and advocate for removal of barriers to equal treatment for families exposed to concentrated poverty and trauma.

Tina Lee, *Processes of Racialization in New York City's Child Welfare System*, 27 CITY & SOCIETY 276 (2016), <https://doi.org/10.1111/ciso.12093>.

Based on an ethnographic study of New York City's child welfare system, this paper argues that the child welfare system plays a role in the process of "racialization," meaning it helps create and recreate racial categories, meanings, and inequalities. Drawing parallels to mass incarceration, the author argues that the child welfare system "disproportionately targets poor African American mothers for investigation, judging them on the basis of racialized stereotypes, and constructs them as a group who are assumed to be irresponsible and in need of state supervision." The author also discusses the role the child welfare system plays in the criminalization and incarceration of African American foster youth through trauma, educational disruption, group homes, inadequate mental health services, and low expectations.

Amy Mulzer & Tara Urs, *However Kindly Intended: Structural Racism and Volunteer CASA Programs*, 20 CUNY L. REV. 23 (2016), <https://academicworks.cuny.edu/clr/vol20/iss1/3/>.

This article examines how predominately white, female volunteer child advocates, known as "CASAs" (Court Appointed Special Advocates), impact child welfare decision-making in cases predominately concerning children of color. It contends that CASAs are a continuation of our nation's history of ostensibly well-meaning white women attempting to "rescue" children of color, for instance, by sending Native American children en masse to boarding schools. The article questions CASAs' standing as parties when they have no stake in case outcomes, their treatment as quasi-experts when they lack expertise in the subject matter, and the weight given to their recommendations on the child's "best interests." It concludes that this is visible structural racism in action—unqualified, white, middle-class women defining what parenting should look like for impoverished families of color.

Jessica Pryce et al., *A Case Study in Public Child Welfare: County-Level Practices That Address Racial Disparity in Foster Care Placement*, 13 J. PUB. CHILD WELFARE 35 (2019), [http://onevisiononevoice.ca/wp-content/uploads/2019/03/Pryce\\_Racial-Disparity-in-Foster-Care.pdf](http://onevisiononevoice.ca/wp-content/uploads/2019/03/Pryce_Racial-Disparity-in-Foster-Care.pdf).

The article describes a comparative case study of two New York counties that successfully reduced disparate rates of foster care entry for Black children. It

considers common strategies between the counties, such as the provision of preventive services and engaging in community collaboration, as well as strategies specific to each county. Two notable strategies include: implementing blind removal meetings, which involve the presentation of cases to determine the need for removal without any information that may identify the family's race and socioeconomic status; and creating an integrated System of Care, which allows families to access services from multiple agencies through one phone call.

Emily Putnam-Hornstein et al., *Racial and Ethnic Disparities: A Population-Based Examination of Risk Factors for Involvement with Child Protective Services*, 37 CHILD ABUSE & NEGLECT 33 (2013), <https://doi.org/10.1016/j.chiabu.2012.08.005>.

This study reviewed child protection records for more than 530,000 children born in California in 2002 in order to compare child maltreatment rates from birth to age five for various racial and ethnic groups. It found that Black and Latinx children were reported, substantiated, and removed for maltreatment at rates 1.5 to 2 times that of White children. However, when adjusted for correlates of socioeconomic status (SES), such as public health insurance at birth, the reverse was true: low SES White children were more likely to be referred, substantiated, and removed for maltreatment than low SES Black and Latinx children. This study suggests a strong relationship between poverty and child removals and that addressing poverty is key to effecting change for racial disparity.

Dorothy E. Roberts, *Child Protection as Surveillance of African American Families*, 36 J. SOC. WELFARE & FAM. L. 426 (2014), <https://doi.org/10.1080/09649069.2014.967991>.

This article posits that racial disparities in the child welfare system are the result of both bias in the system and political choices that seek to reinforce the unjust social hierarchy. Addressing disparity, the author argues, requires radically transforming child welfare philosophy from putting blame on individual parental deficits to considering the inequitable social context in which families of color live. The author's argument is supported by statistics that show the disproportionate removal of African American children and how poor urban neighborhoods of color experience a concentrated presence of child welfare agencies. The article also draws connections between the gutting of the welfare safety net, the rise in imprisonment of African American mothers, and the push towards removal and adoption in the 1990s. The author advocates for generous social support for families rather than a punitive response.

Kathleen B. Simon, *Catalyzing the Separation of Black Families: A Critique of Foster Care Placements Without Prior Judicial Review*, 51 COLUM. J. L. & SOC. PROBS. 347 (2018), <http://jlsplaw.columbia.edu/wp-content/uploads/sites/8/2018/06/Vol51-Simon.pdf>.

This note examines the link between emergency removals of allegedly maltreated children and racial disparities in foster care, finding that states with more flexible emergency removal laws have higher rates of disparity. The author posits that without a judicial check, overloaded caseworkers may use cognitive shortcuts such as racial biases in their removal decisions. The article thoroughly considers the individual harm inflicted on Black children and the oppression wreaked on Black communities when children are unnecessarily removed. It recommends passing stringent removal laws that only allow immediate emergency removal if taking the time to obtain judicial authorization would jeopardize the child's safety.

Stephanie Smith Ledesma, *The Vanishing of the African-American Family: "Reasonable Efforts" and Its Connection to the Disproportionality of the Child Welfare System*, 9 CHARLESTON L. REV. 29 (2014), available on HeinOnline.

This article focuses on the inconsistent application of "reasonable efforts" in child abuse and neglect cases and connects it—along with implicit bias and the demonization of poor parents—to racial and ethnic disproportionality in child welfare and the dissolution of the African-American family. The author advocates for a clear federal definition of "reasonable efforts" to guide judges on whether caseworkers actually made efforts to prevent removal of children from their families. The article appears to advocate for the "active efforts" requirement of the Indian Child Welfare Act (ICWA) without explicitly saying so, while explicitly advocating for ICWA's higher burden of proof for removal, clear and convincing evidence, and other suggested reforms.

Crystal Soderman Duarte & Alicia Summers, *A Three-Pronged Approach to Addressing Racial Disproportionality and Disparity in Child Welfare: The Santa Clara County Example of Leadership, Collaboration and Data-Driven Decision*, 30 CHILD & ADOLESCENT SOC. WORK J. 1 (2013), <https://doi.org/10.1007/s10560-012-0279-8>.

This paper discusses efforts in Santa Clara County, California, to reduce the disproportionate number of African American and Latinx children in the child welfare system. A local taskforce led by leadership within the child welfare agency, the juvenile court, and the community used data-driven decision-making to implement a variety of promising practices. The paper provides practical strategies for counties seeking to address racial disparity, such as providing implicit bias training, using standardized safety and risk assessments, requiring agency director approval to bypass reunification services, and using benchcards to provide an objective framework for judicial decision-making.

#### IV. EDUCATION

All students deserve access to a high-quality education<sup>18</sup> in a safe and nurturing school environment. But as the following articles demonstrate, this is not the reality for students of color in the United States. With disparities in academic achievement,<sup>19</sup> in the prevalence of Adverse Childhood Experiences,<sup>20</sup> in the rates of exclusionary discipline,<sup>21</sup> and in the prison-like school environments that exist in many communities of color,<sup>22</sup> students of color face an uphill battle toward achieving a meaningful education in America. However, the authors of the articles listed below offer a clear roadmap forward and persuasively identify the roots of systemic racism in American schools.

Maryam Ahranjani, *The Prisonization of America's Public Schools*, 45 HOFSTRA L. REV. 1097 (2017), [https://digitalrepository.unm.edu/law\\_facultyscholarship/471](https://digitalrepository.unm.edu/law_facultyscholarship/471).

This article presents a concise yet comprehensive review of how schools have steadily transformed into hardened, prison-like environments, particularly in low-income communities and communities of color. It explores how this prisonization results from modern-day zero tolerance policies and school shootings that created a disproportionate fear of school violence. Throughout the article, the author looks beyond fear-based policies to identify the real causes of violence in our schools. The author also offers practical, research-based solutions to create safer, more nurturing school environments, including strengthening the Family Medical Leave Act and rethinking our nation's gun control laws.

Derrick A. Bell Jr., *The Unintended Lessons in Brown v. Board of Education*, 49 N.Y. L. REV. 1053 (2005), [https://digitalcommons.nyls.edu/nyls\\_law\\_review/vol49/iss4/3/](https://digitalcommons.nyls.edu/nyls_law_review/vol49/iss4/3/).

The author argues that there are four lessons to be learned from *Brown v. Board of Education*. First, *Brown* was not the result of changing minds, but rather the convenient timing of White America's interests aligning with those of Black people. Second, relief from racial injustice has depended less on the level of harm

<sup>18</sup> *Contra* San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) ("Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.").

<sup>19</sup> See, e.g., Jamie Gullen, *Colorblind Education Reform: How Race-Neutral Policies Perpetuate Segregation and Why Voluntary Integration Should Be Put Back on the Reform Agenda*, 15 U. PA. J. L. & SOC. CHANGE 251, 254-55 (2012).

<sup>20</sup> See, e.g., Erin M. Carr, *Educational Equality and the Dream That Never Was: The Confluence of Race-Based Institutional Harm and Adverse Childhood Experiences (ACES) in Post-Brown America*, 12 GEO. J. L. & MOD. CRITICAL RACE PERSP. 115, 117-23 (2020).

<sup>21</sup> See, e.g., Paul J. Hirschfield, *The Role of Schools in Sustaining Juvenile Justice System Inequality*, 28 FUTURE OF CHILD. 11, 13-16 (2018).

<sup>22</sup> See, e.g., Maryam Ahranjani, *The Prisonization of America's Public Schools*, 45 HOFSTRA L. REV. 1097 (2017).

committed against Black people and more on this convergence of interests. Third, remedies for racial injustice that result from interest convergence are often shallow and tenuous. Last, the author shows how *Brown* created “definitional” equality by striking down segregated schools, but did not result in actual educational equality for Black students. The author suggests that interest convergence can be used as a tool to advance civil rights but warns the real battle is combatting norms of white dominance, often hidden by a facade of color-blindness.

Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 STAN. L. REV. 735 (2018), <https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/03/70-Stan.-L.-Rev.-735.pdf>.

This article argues that, despite rejecting education as a fundamental right in *San Antonio Independent School District v. Rodriguez*, the Supreme Court has stressed the importance of education and may be open to reconsider if a compelling constitutional theory was presented. The author provides a citizenship-based theory, demonstrating that the Framers of the Fourteenth Amendment intended to guarantee education as a “core aspect of state citizenship.” In support, the author points to the fact that for southern states to be readmitted to the Union, they had to ratify the Fourteenth Amendment *and* include educational guarantees in their new constitutions. The article admits that while this theory does not create a fundamental right to quality education, it would provide procedural protections from state abuses in the delivery of education, such as inconsistent funding, partisan manipulation of education, and large systemic gaps in educational opportunity.

Jalise Burt, *From Zero-Tolerance to Compassion: Addressing the Needs of Girls Caught in the School-to-Prison Pipeline Through School-Based Mental Health Services*, 6 GEO. J. L. & MOD. CRITICAL RACE PERSP. 97 (2014), available on HeinOnline.

This note addresses the lack of scholarship on Black girls caught in the school-to-prison pipeline, observing that their disproportionate sexual and physical victimization often triggers entry into the pipeline. It argues that policymakers, school administrators, and teachers should consider these students’ unique needs and experiences and take action to prevent the criminalization of their behavioral responses to trauma. The note suggests that ending zero-tolerance discipline policies and providing comprehensive, gender-specific mental health services in schools would help end the school-to-prison pipeline. The author provides a helpful step-by-step strategy for implementing the suggestions on a local level.

Erin M. Carr, *Educational Equality and the Dream That Never Was: The Confluence of Race-Based Institutional Harm and Adverse Childhood Experiences (ACEs) in Post-Brown America*, 12 GEO. J. L. & MOD. CRITICAL RACE PERSP. 115 (2020), available on HeinOnline.

This work highlights the links between the high prevalence of Adverse Childhood Experiences (ACEs) among children of color, the failed desegregation of schools following *Brown v. Board of Education*, and more recent forms of educational inequality—zero-tolerance discipline policies and the school-to-prison pipeline. The article explores how school discipline policies and practices perpetuate race-based ACEs, criminalize youth of color, and reinforce racial inequality. It suggests a new trauma-informed, social justice-based restorative paradigm and accompanying reforms, such as funding therapeutic services for students, limiting exclusionary discipline, and incentivizing the use of restorative justice practices. However, the article ultimately concludes that the only way to undo the damage is through structural change.

Barbara Fedders, *Schooling at Risk*, 103 IOWA L. REV. 871 (2018), <https://ilr.law.uiowa.edu/print/volume-103-issue-3/schooling-at-risk/>.

This article explores how school districts across America have implemented a “new version of school exclusion,” which has subverted the promises of *Brown v. Board of Education* and the Individuals with Disabilities Education Act. It invokes the history of “separate and inferior” education to expose how the use of Alternate Education Programs (AEPs) and school exclusion has created modern-day school segregation and vast disparities in academic achievement for African American students and students with disabilities. The author argues that AEPs are “inferior by design” and that districts engaging in the widespread transfer of students to alternative schools reinforce the historical racist notion that some students are undeserving of a quality, mainstream education. The article presents opportunities for reform, such as providing due process protections for students facing AEP transfers, while also arguing that the flawed AEP system may be beyond reform.

Deborah Fowler et al., *Making the Case for a School-and-Neighborhood Desegregation Approach to Deconstructing the School-to-Prison Pipeline*, 42 U. ARK. LITTLE ROCK L. REV. 723 (2020), available on WestLaw.

The authors analyze a study completed by public interest justice center Texas Appleseed, which explored the intersection of school segregation and the school-to-prison pipeline in Texas schools. Persuasively, the study found that students who attend integrated schools have better academic outcomes and lower rates of school discipline than students who attend segregated schools, particularly schools with majority student-of-color enrollment. The study also found that while Latinx students are the majority of students of color in Texas, Black students experience

higher rates of harsh disciplinary practices. The article contends that desegregation of schools is key to closing off the school-to-prison pipeline. It explores the difficulties in directly fighting school segregation and instead suggests education and housing advocates work together for neighborhood desegregation.

Paul J. Hirschfield, *The Role of Schools in Sustaining Juvenile Justice System Inequality*, 28 FUTURE OF CHILD. 11 (2018), <https://futureofchildren.princeton.edu/sites/futureofchildren/files/media/vol28issue1.pdf>.

This article explores how disparate school practices and segregation of schools contributes to racial inequality in the juvenile justice system. Black students are more likely than white students to be suspended, arrested, and transferred to alternative schools; and they are also more likely to attend schools that use harsh discipline and have strong police presences. The author suggests that massive funding redistribution and desegregation would attack the root causes, but are politically untenable solutions. Instead, recommendations include implementing restorative justice practices and Positive Behavioral Interventions and Supports at schools that predominately serve low-income students and students of color.

Kate Mitchell, "*We Can't Tolerate That Behavior in This School!*": *The Consequences of Excluding Children with Behavioral Health Conditions and the Limits of the Law*, 41 N.Y.U. REV. L. & SOC. CHANGE 407 (2017), <https://socialchangenyu.com/review/we-cant-tolerate-that-behavior-in-this-school-the-consequences-of-excluding-children-with-behavioral-health-conditions-and-the-limits-of-the-law/>.

The author advocates for an overhaul of laws and policies designed to protect students with disabilities from exclusionary discipline. Throughout the article, the author discusses the disproportionate punishment of students of color with disabilities and students with behavioral conditions. The author argues that disparities in exclusionary discipline and removals exacerbate behavioral problems, negatively impact students' educational success, and lead to juvenile justice involvement. Proposed solutions include amending the Manifestation Determination Review provision of the Individuals with Disabilities Education Act (IDEA) to require reviews before placement changes, improving federal and state oversight of IDEA compliance, and providing more funding for education attorneys and advocates.

Jyoti Nanda, *The Construction and Criminalization of Disability in School Incarceration*, 9 COLUM. J. RACE & L. 265 (2019), <https://journals.library.columbia.edu/index.php/cjrl/article/view/3411>.

This article covers the intersection of race and disability in schools, particularly how race is used to criminalize disability. The author asserts that for students of color, disability is treated with punishment and segregation rather than as a

condition deserving of resources. It also explores how, in a criminalized school setting, disability can be a mechanism through which Black and Latinx students are pushed into the juvenile justice system. The article sheds light on the role schools' and school officials' biases play in this process and calls for a better understanding of how disability is constructed, construed, and criminalized in such settings.

Elizabeth A. Shaver & Janet R. Decker, *Handcuffing a Third Grader? Interactions Between School Resource Officers and Students with Disabilities*, 2017 UTAH L. REV. 229 (2017), <https://dc.law.utah.edu/ulr/vol2017/iss2/1/>.

The authors discuss the rise and dangers of School Resource Officers (SROs) in K-12 schools. Although the article focuses on SROs' interactions with students with disabilities, many of its assertions are analogous to the harms caused by police officers in schools to students of color. The article presents a thorough review of the many ways students with disabilities can be harmed by SROs, for example by becoming victims of the school-to-prison pipeline. While offering comprehensive recommendations for reform, the authors fail to explicitly acknowledge the intersectionality of students with disabilities and students of color, who comprise a vast majority of special education students in the United States.

David Stovall, *Are We Ready for 'School' Abolition?: Thoughts and Practices of Radical Imaginary in Education*, 17 TABOO: J. CULTURE & EDUC. 51 (2018), <https://digitalcommons.lsu.edu/taboo/vol17/iss1/6/>.

Using an abolitionist framework, this article argues that education and "school" are radically different concepts, and in order to properly educate we must radically alter schools. It asserts that the existing school structure does not operate to educate but instead teaches order and compliance with current systems and power structures, including white supremacy and racism. The article seeks to eliminate compliance and dehumanization in schools in favor of an environment that emphasizes creativity, accessibility, and student needs. This new radical idea is still in its formative phase, but the author does suggest some practical steps, such as advocating for resources for historically disenfranchised schools, resisting voucher programs that siphon funds from public schools, and challenging high-stakes standardized testing.

## V. JUVENILE JUSTICE

The juvenile justice system is host to clear racial inequities. Despite making up only 34% of the U.S. population, youth of color represent 62% of those charged in the juvenile justice system.<sup>23</sup> Furthermore, when charged, youth of color often receive harsher

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<sup>23</sup> Renne Rodriguez Dragomir, *Exploring the Impacts of Racial Disparity Within the American Juvenile Justice System*, 71 JUV. & FAM. CT. J. 61, 63 (2020).

sentences than their white counterparts.<sup>24</sup> Black youth are five times more likely to be incarcerated than white youth, and Latinx youth are two to three times more likely.<sup>25</sup> As the following articles will show, racial profiling and implicit biases held by members of law enforcement and legal system stakeholders are two factors that have led to the overcriminalization, and sometimes deaths, of Black and Latinx youth.<sup>26</sup> This bibliography asserts that, rather than offering rehabilitation and support as the original juvenile justice court intended, the disparate and harsh punishment of youth of color steals their adolescent years, lays roadblocks for their futures, and perpetuates racial inequality. The articles below examine these issues in depth and offer comprehensive suggestions for improvement.

Tamar R. Birckhead, *The Radicalization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. REV. 379 (2017), <https://lawdigitalcommons.bc.edu/bclr/vol58/iss2/2/>.

This article addresses how structural racism operates within and is perpetuated by the juvenile justice system. It discusses the roots of racism and racial biases within juvenile courts and the “racialization” of Black children and other children of color who are charged with crimes and do not conform to mainstream, white norms. The article also considers the role of the juvenile defense attorney in perpetuating and combatting racialized narratives and stereotypes and what ethical obligations they must observe. Finally, it calls for more diverse representation in the bar and on the bench to create a legal culture that emphasizes fairness and equity.

Shantel D. Crosby, *Trauma-Informed Approach to Juvenile Justice: A Critical Race Perspective*, 67 JUV. & FAM. CT. J. 5 (2016), <https://doi.org/10.1111/jfcj.12052>.

Using a critical race theory framework, this article argues that trauma-informed practices are crucial to improving outcomes for the disproportionate number of youth of color who encounter the juvenile justice system. It cites research that found that trauma increases the likelihood of delinquent behavior through its impact on development, causing issues with dissociation, behavioral control, and cognition. Unsurprisingly, the majority of detained youth report past experiences of trauma. The article advocates for a trauma-informed, rehabilitative approach in which law enforcement, courtrooms, juvenile detention centers, and aftercare programs treat youth of color as a vulnerable population, not a threat. It also calls for further research on the needs of traumatized youth in the juvenile justice system.

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<sup>24</sup> *Id.* at 62.

<sup>25</sup> *Id.* at 63.

<sup>26</sup> See, e.g., Janaya Trotter Bratton & Rickell Howard Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests*, 45 N. KY. L. REV. 137 (2018).

Jamie J. Fader et al., *The Color of Juvenile Justice: Racial Disparities in Dispositional Decisions*, 44 SOC. SCI. RSCH. 126 (2014), <https://doi.org/10.1016/j.ssresearch.2013.11.006>.

This study examines the factors that influence juvenile court decision-making in residential program selection for youth offenders. It found that there are drastic disposition differences between white, Latinx, and Black youth. Specifically, white youth are more likely to be committed to therapeutic treatment programs, while Black youth, and to a lesser extent Latinx youth, are more likely to be committed to physical regimen programs like boot camps or wilderness programs. The study hypothesizes that court actors view Black and Latinx youth as more blameworthy and less likely to reform in comparison to white youth, which consequently impacts their placement decisions.

Barry C. Feld, *Race, Rights, and the Representation of Children*, 69 AM. U. L. REV. 743 (2020), <http://www.aulawreview.org/race-rights-and-the-representation-of-children/>.

This article argues that *In re Gault* exacerbated racial injustice in the juvenile court in three ways. First, by endorsing an adversarial court process, *Gault* in effect criminalized the juvenile court and the children before it. Second, the decision granted weaker constitutional protections to children than those afforded to adult defendants. Third, the expansion of juvenile rights triggered a political backlash that labeled youth as “super predators” and led to restrictive juvenile laws and policies. This backlash resulted in even more Black children arrested, charged, detained, and transferred to adult criminal court. Ultimately, the author suggests that racial disproportionality in the juvenile justice system can be lessened by adding procedural protections, decriminalizing non-violent youthful behavior, expanding diversion programs, and constraining juvenile punishment.

Kristin Henning, *The Challenge of Race and Crime in a Free Society: The Racial Divide in Fifty Years of Juvenile Justice Reform*, 86 Geo. WASH. L. REV. 1604 (2018), <https://www.gwlr.org/wp-content/uploads/2018/12/86-Geo.-Wash.-L.-Rev.-1604.pdf>.

Seeking to provide guidance to a proposed National Criminal Justice Commission, the author discusses the 1967 Commission on Law Enforcement and Administration of Justice and its glaring failure to address racial inequities within the juvenile justice system. The author ties the Commission's prediction of a rise in youth crime to the racialized “super predator” myth of the 1990s, which led to the mass incarceration of Black youth. The author reasonably suggests that the new Commission focus on eliminating racial inequity in juvenile justice and ground its recommendations in adolescent brain science, implicit bias, and procedural justice. Recommendations include robust data collection, the decriminalization of normal adolescent behavior, and requiring system stakeholders—cops, corrections officers, and courts—to take responsibility for alleviating racial disparities.

Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383 (2013), <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3262&context=clr>.

This article discusses how contemporary narratives of Black and Latinx youth as “dangerous and irredeemable” feed into juvenile prosecutors’ implicit biases and contribute to the overrepresentation of youth of color within the juvenile justice system. It states that prosecutors disproportionately reject age as a mitigating factor when charging youth of color, despite long standing research on adolescent brain development that applies to all youth. The article argues that prosecutors have a duty to address racial disparities at the charging stage of cases and to develop fair and equitable charging standards. The author also suggests prosecutors increase transparency through data collection and work with community stakeholders and policymakers to implement community-based alternatives to prosecution.

Renne Rodriguez Dragomir & Eman Tadros, *Exploring the Impacts of Racial Disparity Within the American Juvenile Justice System*, 71 JUV. & FAM. CT. J. 61 (2020), <https://doi.org/10.1111/jfcj.12165>.

This article addresses racial disparity within the juvenile justice system and its impact on youth of color. Specifically, it points to the drastic disproportionality in the number of youth of color charged in the juvenile justice system, even controlling for criminal behavior, substance use, and mental health factors. The article discusses how juvenile justice involvement leads to poorer health and social outcomes for youth of color and creates a cycle of criminal justice involvement, as youth in the system are much more likely to reoffend as adults. It states that family services and mental health treatments within juvenile facilities are crucial to helping youth cope and reduce recidivism. However, it also fairly recognizes that mental health treatment is not the solution to the structural racism that plagues the system.

Brian J. Smith, *Justice, Social Control, and Social Inequality: Framing the U.S. Juvenile Justice System’s Racial and Ethnic Disparities*, in 22 RACE, ETHNICITY, & LAW 237-250 (Mathieu Deflem ed., 2017), <https://doi.org/10.1108/S1521-613620170000022018>.

This chapter places the issue of racial and ethnic disparity in the juvenile justice system within the context of traditional concepts of justice, equality, and rehabilitation. It argues that the disparities are a clear result of social inequality and that youth social inequality dishonors the rights of minority youth. The chapter concludes that racial disparities in juvenile justice are unjust, whether they result from inequality-related disadvantages, such as poverty, over-policing, and unsafe neighborhoods; from institutional discrimination; or from a combination of both. While the chapter does not suggest concrete solutions, it provides a strong framework for the issue and calls for addressing the underlying social conditions and unequal treatment of minority youth.

Janaya Trotter Bratton & Rickell Howard Smith, *Growing Up a Suspect: An Examination of Racial Profiling of Black Children and Effective Strategies to Reduce Racial Disparities in Arrests*, 45 N. KY. L. REV. 137 (2018), available on Lexis.

This article focuses on how racial profiling by law enforcement officers harms Black children. It suggests that juvenile justice reforms, in tandem with law enforcement policy reform, could be utilized to confront racial profiling and decrease arrests of Black children. The article considers already existing juvenile legislation, litigation, and policy and examines data on implicit bias, the negative effects of racial profiling on Black children's health, and relevant psychological research on child-appropriate differential treatment in the justice system.

## VI. DOMESTIC RELATIONS

Domestic relations courts are often primarily viewed as spaces in which adults argue and resolve issues related to their own relationships, whether they were married or not. However, even rules and decisions that are primarily intended to control the actions of parents can, and often do, have profound impact on their children. When making a decision about a parent's future based on racial biases, a judge also affects the future of his or her child. Conversely, a judge who is "color-blind" to a parent's race may fail to consider aspects of that parent's experience that result from structural inequality.<sup>27</sup> The articles that follow suggest that decisions based on this color-blindness, or on racial bias, can have serious impacts on the parent's child in the form of financial support, ability to have a relationship with that parent, and on communities of color as a whole by masking or perpetuating structural racism.

Kathryn Beer, *An Unnecessary Gray Area: Why Courts Should Never Consider Race in Child Custody Determinations*, 25 J. CIV. RTS. & ECON. DEV. 271 (2011), <https://scholarship.law.stjohns.edu/jcred/vol25/iss2/4/>.

This note argues for a color-blind approach to judicial "best interests" determinations in child custody matters. It contends that judges should be prohibited from considering race and instead focus solely on which parent provides a loving, stable environment for the child. This note fails to consider how an ostensibly color-blind approach ignores the realities of structural racism in the United States. It seems to suggest that if race is not explicitly discussed, racism will simply cease to exist. Tellingly, it does not advocate for barring the consideration of other factors that may be ripe for bias, such as gender, disability, or proxies for class.

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<sup>27</sup> See, e.g., Tonya L. Brito et al., *"I Do for my Kids": Negotiating Race and Racial Inequality in Family Court*, 83 FORDHAM L. REV. 3027 (2015).

Tonya L. Brito et al., *"I Do for My Kids": Negotiating Race and Racial Inequality in Family Court*, 83 *FORDHAM L. REV.* 3027 (2015), <https://ir.lawnet.fordham.edu/flr/vol83/iss6/7/>.

Focusing on access to justice, this article considers how low-income litigants and legal actors navigate race in family court. In court observations, the authors found that the unrepresented litigants were largely Black fathers and the legal actors were predominately white. Despite this explicit racial contrast, the family court judges adopted a "myopic" color-blind approach in child support cases. The authors argue that this approach enables courts to deem Black fathers "deadbeats" and "failures," rather than contend with the reality of race-based employment discrimination and economic inequality facing the fathers. The authors note that Black fathers often pay the price of this approach with civil incarceration, which serves to further reinforce racial inequality.

Kristin A. Collins, *Illegitimate Borders: Jus Sanguinis Citizenship and the Legal Construction of Family, Race, and Nation*, 123 *YALE L.J.* 2134 (2014), <https://www.yalelawjournal.org/article/illegitimate-borders-jus-sanguinis-citizenship-and-the-legal-construction-of-family-race-and-nation>.

This article addresses the United States' history of using domestic relations law principles to exclude nonwhite children from citizenship, for example, by ensuring that children of slaves remained slaves through use of the maternal line for citizenship purposes. It notes that some principles like the transmission of *jus sanguinis* citizenship were facially race neutral, but in practice were used as instruments of racial exclusion. The article posits that these racialized practices were incorporated into principles governing citizenship and enabled the "racial construction of family and nation." It concludes that this history and the entanglement of gender-based citizenship principles and race may continue to shape the politics of citizenship.

Katie Eyer, *Constitutional Colorblindness and the Family*, 162 *U. PA. L. REV.* 537 (2014), [https://scholarship.law.upenn.edu/penn\\_law\\_review/vol162/iss3/2/](https://scholarship.law.upenn.edu/penn_law_review/vol162/iss3/2/).

This article focuses on a divergence in the Supreme Court's precedent between the holding that all governmental distinctions based on race must be analyzed under strict scrutiny—even those intended to benefit a minority group—and the Court's apparent acceptance of considerations of race in family courts. It specifically focuses on the logical discrepancy between the Court's application of strict scrutiny to affirmative action programs and its facial acceptance of race-matching adoption rules. The article argues that the Court manifests this acceptance through careful language declining to extend relevant decisions to race-matching adoption cases, and by declining to accept cases that specifically raise such issues. It proposes a potential solution: the Court should recognize that there are situations, like the

family law practice of accepting race-based adoption requirements, in which more lenient standards of review may be appropriate for race-differentiating policies.

Dustin C. Jones, *Adoptive Couple v. Baby Girl: The Creation of Second-Class Native American Parents Under the Indian Child Welfare Act of 1978*, 32 LAW & INEQ. 421 (2014), <https://scholarship.law.umn.edu/lawineq/vol32/iss2/15/>.

This comment considers the negative implications of the Supreme Court's decision in *Adoptive Couple v. Baby Girl* on Native American parents. In *Adoptive Couple*, the Court determined that an absentee Native American parent is not entitled to federal protections under the Indian Child Welfare Act of 1978 (ICWA)<sup>28</sup> based on its assumption that Congress did not intend to give abandoning Native American parents the same protection as custodial Native American parents. The comment argues that this decision unfairly bars certain Native American parents from ICWA protections against involuntary revocation of parental rights and created two classes of Native American parents: custodial parents who maintain nuclear Western families and are afforded the protections of ICWA, and inferior absentee parents who are not.

Shani King, *The Family Law Canon in a (Post?) Racial Era*, 72 OHIO ST. L.J. 575 (2011), <https://scholarship.law.ufl.edu/facultypub/232/>.

This article details the impact that race-consciousness has on family law and how the family law canon feeds into the notion of a post-racial society, meaning a society where “race is no longer meaningful.” The author asserts that family law precedent inaccurately describes family law as post-racial, which immunizes racism and perpetuates racial inequality. For example, the author describes how color-blindness obscures the difficulties structural racism creates for African American families. The article argues against the color-blind approach in family law, explains how it oversimplifies the role of race, and advocates for questioning and broadening the family law canon.

R.A. Lenhardt, *The Color of Kinship*, 102 IOWA L. REV. 2071 (2017), <https://ilr.law.uiowa.edu/print/volume-102-issue-5/the-color-of-kinship/>.

This article acknowledges that there is ample research and debate on the twenty-first century shifts away from stereotypical nuclear families and the increasing rates of kinship familial relationships that are not based on marriage. However, its primary focus is highlighting the disparity in scholarship on this topic specific to

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<sup>28</sup> The authors acknowledge that ICWA only applies to “Indian children,” which is determined by their eligibility for membership in a tribe—not by reference to race. However, because our nation has a history of removing thousands of Indigenous children from their families to send to boarding schools and to adopt into white families, and because Indigenous children are still disproportionately separated from their families and tribes, the authors felt that it was important to include this scholarship.

race, which it finds particularly inappropriate given that families of color are overrepresented in kinship care. More broadly, the article laments the lack of scholarship on the intersection of race and family life and the ways in which family law may create or shape ideas and disadvantages related to race. It therefore calls for scholarly study that centers issues of race when examining shifting familial norms, family law, and policy.

Solangel Maldonado, *Bias in the Family: Race, Ethnicity, and Culture in Custody Disputes*, 55 FAM. CT. REV. 213 (2017), <https://doi.org/10.1111/fcre.12274>.

This article explores various custody cases and how judges either consider or ignore parents' racial, ethnic, and cultural backgrounds. The author discusses the risks that judges and custody evaluators may either assess parenting capabilities in accordance with predominately white middle-class ideals or place too much weight on race or ethnicity, which may not further the child's best interests. The article addresses the presence of implicit bias in family law decisions and ultimately concludes that it is necessary to consider factors like race and ethnicity in order to make some custody decisions. The author provides a helpful discussion of strategies to reduce implicit bias.

Twila L. Perry, *Race, Color, and the Adoption of Biracial Children*, 17 J. GENDER RACE & JUST. 73 (2014), available on HeinOnline.

This article discusses the debate over transracial adoptions, but concentrates on the placement of biracial children, citing a lack of scholarship on transracial adoptions of children with parents from two racial backgrounds. Given the continued significance of race in our society, the article recommends that preference be given to African American families when placing a child with one African American birthparent. However, it specifies that adoptive parents of any race should be evaluated for their ability to meet the child's needs, which includes understanding and respecting the child's racial identity.