CAN A BIOLOGICAL INQUIRY HELP REDUCE MALE VIOLENCE AGAINST FEMALES? OR WHAT'S A NICE "GAL"[1] LIKE ME DOING AT A CONFERENCE LIKE THIS?

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INTRODUCTION

When the *Vermont Law Review* asked me to speak at this symposium on the intersection of biology and male violence against women, I was understandably cautious. I knew little about evolutionary psychology, sociobiology, serotonin levels in primates, and other concepts feminist scholars like me seldom encounter and actively avoid. Nevertheless, I decided to delve into the subject with an open mind to see what I might learn. My presumption was, however, that biology had little, if anything, to offer to those of us working on issues of violence against women and, in fact, that such an inquiry could result in more harm than good.

Soon after I began to prepare this talk, a friend inquired about the unusual array of books piled on my desk. His eyes rolled back into his head as I explained my charge.

"Oh great!" he sighed. "What will you title your talk? *Women Good. Men Bad*"?

"Of course not," I proclaimed. "One need not be so reductionist. Biological research suggests that a far more complex interaction between nurture and nature gives rise to male violence against women. In fact,

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1. *See* Natalie Angier, *Where Woman Was, There Gal Shall Be*, N.Y. TIMES, Nov. 19, 1995, § 4, at 1 (finding that "gal" is now a term that is gaining political legitimacy).

> Restless once again, we are struggling to find a word that conveys snazziness and style, a casual term for the double-X set, a word without condescension or sneer, something more relaxed than "woman," something less fussy than "female," our equivalent of guy. A delicious egalitarian word like . . . gal.
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> . . . A gal is a grown person with a sense of humor whom you'd better take seriously.

Id.

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research on primate behavior suggests that criminalization may create incentives to modify criminal behavior."

I excitedly parroted back all of my recently acquired expertise. But, alas, it was to no avail. I could not convince him that this talk would have intellectual merit.

"Perhaps you are right," I conceded. "But, I think I shall call it: *Women Evil. Men Stupid.*"

Humor aside, my friend's skepticism is well taken. A few years ago, *The Journal of Criminal Law and Criminology* held a symposium on gender issues and the criminal law. As a forward to that symposium, Dorothy Roberts asked "whether studying biological predictions for criminal behavior is the way to seek gender equality," and answered "probably that it is not."[2]

Roberts, like many feminists, views crime and biology as a dangerous intersection leading to further oppression and the wrong solutions to crime.[3] For example, Caesar Lombroso's work, *The Female Offender*,[4] rooted female criminality in assumptions about women's natural psychologically deviant nature. While Lombroso's work has largely been discredited, biological arguments have been used to stereotype women as inherently weak.[5] Even some modern legal scholars explain women's lack of advancement in the workplace by inherent biological differences in temperament, rather than by social and legal structures which support gender discrimination.[6]

I share Roberts' concerns. Much of the early and some of the current research linking biology and deviance was and is bad science, with generalizations about human nature based upon pure conjecture. "Because the concept of fitness maximization is essentially a tautology, sociobiology risks degenerating into a set of 'just-so' stories: post hoc rationalizations that find fitness-maximizing effects for every existing behavior."[7] Biological research into human behavior, in particular, ought to be closely scrutinized for its scientific basis.

Even more troubling, some thinking in this area endorses the naturalistic fallacy—the argument that that which is natural is also good. Biology could be used to justify male violence against women as the natural order of things.

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2. Dorothy Roberts, *Foreword: The Meaning of Gender Equality in the Criminal Law*, 85 J. CRIM. L. & CRIMINOLOGY 1, 8 (1994).

3. *See id.* at 9-10.

4. *See generally* CAESAR LOMBROSO & WILLIAM FERRERO, THE FEMALE OFFENDER (1958).

5. For a review of biological theories of women and crime, see generally Dorie Klein, *The Etiology of Female Crime: A Review of the Literature*, *in* THE CRIMINAL JUSTICE SYSTEM AND WOMEN: WOMEN OFFENDERS, VICTIMS, WORKERS 35 (Barbara Raffel Price & Natalie J. Sokoloff eds., 1982).

6. *See generally* Kingsley R. Browne, *Sex and Temperament in Modern Society: A Darwinian View of the Glass Ceiling and the Gender Gap*, 37 ARIZ. L. REV. 971 (1995).

7. Amy Wax, *Against Nature—On Robert Wright's The Moral Animal*, 63 U. CHI. L. REV. 307, 325 (1996).

If a biological inquiry suggests that men are predisposed to violence, the naturalistic fallacy would conclude that this behavior is acceptable. Such reasoning has potentially frightening implications for the law. The idea that "my genes made me do it" could lead to defenses which excuse male aggression as "boys being boys."[8] Rather than activism, it could further lead to passivity, thereby undermining political and legal reform in this area.

Furthermore, the insistence on group characteristics of males and females has the tendency to downplay human autonomy and individualism.[9] The notion that evolutionary forces have produced "biologically programmed differences in the psychology of male and female," resulting in a wide range of differences between the sexes in attitude, emotion, interest, and behavior is one of the most controversial applications of evolutionary biology.[10] General premises about the reproductive differences between males and females often spin out of control, with biology used to essentialize women as weak and sexually passive and men as strong and sexually aggressive. In turn, these stereotypes might be used to justify the status quo and further oppress women. Gendered universalisms ignore wide variations in human behavior, as well as the social and environmental structures which, for example, encourage women's passivity and reward male violence. Mary Ann Case has argued in her critique of the use of sociobiology to explain gender relations: "I am a full person, free, rational and autonomous. I would much rather have my libertarian individualist self taken into account, than have [a sociobiologist] reduce me to my reproductive organs and raging hormones or to a member of a less than fully human class of women."[11]

I. Is It Possible to Intersect Feminism and Biology?

Biology and feminism would seemingly have little in common. Interestingly, while both focus on the conflicts between the sexes, grappling with issues like sexual harassment, rape, and domestic violence, the two disciplines approach these issues through very different lenses. It is critical to note that neither feminism nor evolutionary biology represent monolithic perspectives. There is great diversity and disagreement among feminists and biologists as well as between the two disciplines. Nevertheless, some basic observations can be made.

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8. Dorothy Nelkin & M. Susan Lindee, *"Genes Made Me Do It": The Appeal of Biological Explanations*, POL. & LIFE SCI., Mar. 1996, at 95.

9. *See* Mary Anne Case, *Of Richard Epstein and Other Radical Feminists*, 18 HARV. J.L. & PUB. POL'Y 369, 378 (1995).

10. Wax, *supra* note 7, at 314-15.

11. Case, *supra* note 9, at 380-81.

The causal forces each discipline uses to explain human behavior are the greatest point of departure. The unequal power relations between men and women constitute the starting point for any feminist analysis of domestic violence. A feminist analysis presumes that violence against women is a social and cultural by-product and that we can therefore deconstruct and then reconstruct gender relations to reduce violence against women.[12] Feminism is also concerned with a social and political agenda. It is both descriptive and normative. Indeed, feminists have largely been responsible for naming domestic violence as a crime and instituting a variety of legal reforms, such as the Violence Against Women Act,[13] intended to redistribute the power of an historically male legal system. Feminists fear that if we accept the premise that certain behaviors—such as male violence against women—are *hard wired*, evolutionary biology could undermine arguments for political and legal reform.

In contrast, evolutionary biology considers itself a scientific discipline, primarily concerned with explaining what exists through descriptive and scientific data. It begins with the premise that "[t]o attain a deep understanding of the relationship between women and men, it [is] essential that the issue be situated within larger biological issues, namely the comparative characterization of the human animal and the general significances of sex and sociality in the living world."[14] While evolutionary biology has been used to further many political agendas, including eugenics, it has not, until recently, claimed to be a discipline concerned with normative and political applications of its theories, worrying that "mingling a political agenda with the scientific enterprise sacrifices and distorts the objective search for the truth."[15] Furthermore, while sensitive to the attack that evolutionary biology is only a series of just-so stories, it claims only to account for predispositions—a concept that is useful in making group, not individual comparisons. Biologists explain predispositions as behaviors which are encountered with unusual frequency over a range of observed situations:

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12. *See generally* FEMINIST PERSPECTIVES ON WIFE ASSAULT (Kersti Yllö & Michele Bograd eds., 1988).

13. *See* Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902 (codified as amended in scattered sections of 8, 18 and 42 U.S.C.).

14. Martin Daly & Margo Wilson, *Evolutionary Psychology and Marital Conflict: The Relevance of Stepchildren*, *in* SEX, POWER, CONFLICT: EVOLUTIONARY AND FEMINIST PERSPECTIVES 9 (David M. Buss & Neil M. Malamuth eds., 1996).

15. David M. Buss & Neil M. Malamuth, *Introduction* to SEX, POWER, CONFLICT, *supra* note 14, at 3, 4. *But see generally* Owen D. Jones, *Evolutionary Analysis in Law: An Introduction and Application to Child Abuse*, 75 N.C. L. REV. 1117 (1997) (applying these theories to child abuse).

> It makes sense to say that males and females, on average, have different predispositions for aggression if the conditions for eliciting aggression are different for the two sexes. If, for example, males, on average, engage in physical violence more often, and in a greater number of circumstances, than females, then we would say that males have a greater predisposition for violence. That would be so even if we observed that males refrain from violence most of the time.[16]

Nevertheless, feminists sometimes respond to such arguments about scientific claims as so infused with unrecognized biases and values that any claims that evolutionary biology is grounded in science are merely "self-delusional."[17]

These divides between biology and feminism suggest that undertaking this inquiry poses too many dangers. Yet tempering our arrogance about who *gets it* and who *doesn't* might open up more avenues for common understanding. There is nothing intellectually dishonest about drawing from a variety of theoretical disciplines as we search for solutions, so long as we proceed with caution.[18] Violence may be socially constructed, and it may be gender motivated, but no single theoretical construct seems able to provide a complete understanding of why men abuse women. Until we have a deeper understanding of human behavior, it is imperative that we not become so wed to any particular school of thought that we lose sight of our practical goals.

In particular, it remains unclear to what extent feminist-informed legal strategies are reducing violence against women or simply providing false hope.[19] This biological inquiry highlighted for me how little we still know about the complex motivations that lead men to engage in violence against their intimate partners. If a biological inquiry can shed new light on this old problem, the pragmatist side of me says, "show me the data." At the same time, the feminist side of me is cautioned that the data might be used to reinforce rather than to eliminate the problem. Hence, as Margaret Jane Radin would suggest, I face a double bind: we are always caught between solutions

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16. Wax, *supra* note 7, at 329.

17. Buss & Malamuth, *supra* note 15, at 4.

18. *See* Stephen J. Shulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151 (1995) (urging a more pragmatic approach to inquiries about gender and the criminal law).

19. *See generally* DO ARRESTS AND RESTRAINING ORDERS WORK? (Eve S. Buzawa & Carl G. Buzawa eds., 1996) (examining the effectiveness of the criminal justice system in preventing domestic violence); DOMESTIC VIOLENCE: THE CHANGING CRIMINAL JUSTICE RESPONSE (Eve S. Buzawa & Carl G. Buzawa eds., 1992) (providing studies which question the extent to which feminist-informed legal strategies, such as mandatory arrests and restraining orders actually reduce violence against women); Cheryl Hanna, *No Right to Choose: Mandated Victim Participation in Domestic Violence Prosecutions*, 109 HARV. L. REV. 1850 (1996) [hereinafter *No Right to Choose*] (arguing that feminism fails to provide the answer as to whether women should be mandated to participate in the prosecution of men who abuse them).

which have both good and not so good implications.[20] From a feminist perspective, it would be best if I could entirely eliminate the risk that biological explanations for behavior could hurt women. Yet, from a pragmatist's perspective, I do not want to forgo that which is helpful. At the very least, discussing a biological approach to violence against women in a symposium like this one can better inform our understanding of human behavior, even if one ultimately rejects a biological conclusion. As my colleague Oliver Goodenough stated in his introduction to this conference, "If intellectual arrogance by their proponents invalidated otherwise plausible ideas, we in academia would have damn little to talk about."[21]

I found, much to my surprise, that there are some common intersections between biological and feminist perspectives on male violence against women. First, both feminists and biologists agree that male violence against females is not inevitable, but conditional. Contrary to the biological determinism of the past, modern biology tries to provide information which is probabilistic, not deterministic. It reminds us that human behavior is complex and influenced by a variety of biological and environmental factors,[22] thus helping us understand how the policy choices we make are likely to affect human behavior.[23] Biology does not claim to have discovered our destiny. It simply provides information to make better moral and legal choices. "[M]an does indeed have tendencies, some stronger, more pervasive, and more 'hard wired' than others. To say that, however, is not to say that the tendencies cannot be curbed or overcome by the forces of culture or morality."[24]

Second, biology can inform feminists about the trade offs and unintended consequences that may result when pursuing a particular political strategy. For example, there may be a potential conflict between promoting women's sexual autonomy and freedom, on one hand, and reducing male violence against them on the other. From a biological perspective, male coercion is used to limit the choices of mating partners that females make. As women gain more sexual independence from men, thus having greater choice in their partner selection, they will likely face more violence from them as a strategy to limit those choices. A biological perspective on human behavior suggests that women's sexual liberation would predictably lead to more violence

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20. *See* Margaret J. Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1702 (1990).

21. Oliver Goodenough, *Biology, Behavior, and Criminal Law: Seeking a Responsible Approach to an Inevitable Interchange*, 22 VT. L. REV. 263, 271 (1997).

22. *See* David E. Comings, *Both Genes and Environment Play a Role in Antisocial Behavior*, POL. & LIFE SCI., Mar. 1996, at 84.

23. *See generally Symposium on the Meaning and Significance of Research on Genetics and Criminal Behavior*, POL. & LIFE SCI., Mar. 1996, at 83.

24. Wax, *supra* note 7, at 329-30.

against them. This observation highlights the need to provide women with greater economic, as well as sexual, autonomy in order to reduce violence.[25]

Finally, from both disciplinary perspectives, male violence against women is about gaining control, not losing it. From a biological perspective, male violence against women has its origins in sexual strategies, not individual pathology. Feminism also argues that male violence is rooted in men's desires to exert power and control over women. Both disciplines agree that because male violence against women is strategic, it can be responsive to social controls, particularly if those controls result in a loss of power and status for men who are abusive.[26]

As Owen D. Jones has argued, "For while biology typically supplies no independent content to policies themselves, it can significantly contribute to that body of knowledge that helps us to pursue the policies we set."[27] In fact, arguments for the criminalization of domestic violence from a biological perspective are not so different from those posed by feminists who argue criminalization corrects an historically sexist legal system that has, until recently, condoned and encouraged male violence against women.[28] Understanding violence as a control strategy has legal implications. Using the powers of the state to criminalize assaultive behavior is more likely to change behavior than if the state excuses it, since criminalization arguably takes away the strategic advantage of violence.

This Essay will first provide a brief overview of evolutionary perspectives on male violence and discusses current research on primates and violence. While one ought to be careful not to overdraw the connection between animal and human behavior, at the very least such comparisons provide an opportunity to challenge our thinking and excite our imaginations about the relationship between nature and nurture. The Essay will then suggest some hypotheses drawn from a biological perspective about social factors that might influence male violence. These hypotheses are not scientifically testable, but may lead us to re-examine the premises upon which current policies are based. I also suggest how feminists and biologists may be

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25. *See infra* PART II.

26. *See infra* PART II.C.

27. Jones, *supra* note 15, at 1124.

28. For example, the Violence Against Women Act, controversial because of its feminist origins, is premised on the view that "crimes motivated by the victim's gender constitute bias crimes in violation of the victim's right to be free from discrimination on the basis of gender." Reva B. Siegel, *The Rule of Love: Wife Beating As Prerogative and Privacy*, 105 YALE L.J. 2117, 2197 (1996) (quoting S. REP. NO. 102-197, at 127-28 (1991)); *see also* Sally Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications and Litigation Strategy*, 4 J.L. & POL'Y 391, 392-93 (1996). *See generally* Joan Zorza, *Must We Stop Arresting Batterers?: Analysis and Policy Implications of New Domestic Violence Studies*, 28 NEW ENG. L. REV. 929 (1994) (arguing that mandatory arrest corrects gender discrimination by police).

able to develop deeper interdisciplinary insights into male aggression. As a result of this inquiry, I have come to agree with Case's conclusion about evolutionary biology and feminism: feminists should welcome biologists into our midst.[29]

II. THE STORY OF SEX SELECTION STRATEGIES

One of the fundamental principles of evolutionary biology is that the forces of evolution are responsible for each person being born with a patterned set of emotional and intellectual responses that are encoded into our genes. This behavioral repertoire for species arises and evolves as each individual attempts to survive and thrive in the environment in which it finds itself. Because we live in a world of limited resources, some will survive at the expense of others. Charles Darwin called this process "natural selection."[30] Over generations, certain successful attributes and behaviors (as opposed to individuals)[31] survive because they help those who carry them to adapt to their environment, thus increasing their chances of survival. From a simplified evolutionary perspective, then, a goal of each individual's existence is to have equal or greater reproductive success than the other members of one's species.

Like other primates, humans are *hard wired* to mate. "Male eagerness to mate, combined with female reluctance to reproduce with any male who comes along, creates an obvious sexual conflict of interest that is virtually universal."[32] Male reproductive success is limited both by the ability to fertilize females and by ultimately finite resources. "Sexual reproduction requires mating, and mating requires mates."[33] While, theoretically, males benefit by mating with any potentially fertile female, "females do not benefit by mating with every male who comes their way."[34] "[S]ome males provide better genes than others[,] . . . [and] some males are better able or more willing to provide the female with resources, parental care," or protection from others.[35]

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29. *See* Case, *supra* note 9, at 404-07.

30. ROBERT WRIGHT, THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE 23 (1994).

31. Note the contrast between this modern understanding of the survival of the fittest idea, and the fact that in years past, Darwinism was used to justify eugenics. *See, e.g.*, Buck v. Bell, 130 S.E. 516 (Va. 1925) (Justice Oliver Wendell Holmes' infamous decision stating that "three generations of imbeciles are enough").

32. Barbara Smuts, *Male Aggression Against Women: An Evolutionary Perspective*, *in* SEX, POWER, CONFLICT, *supra* note 14, at 232-33 (citation omitted).

33. Jones, *supra* note 15, at 1144.

34. *Id.*

35. *Id.*

When biologists add in the concept of "parental investment," the reproductive game becomes even more complex. Parental investment is "any investment by the parent in an individual offspring that increases the offspring's chance of surviving . . . at the cost of the parent's ability to invest in their offspring."[36] Females plainly make more of an investment up until birth, and this disparity generally continues throughout the life of the offspring. In humans, where there is high parental investment by both sexes in comparison to primates, females will be far more choosy about mating partners, or so the theory goes. When there is the potential for a high degree of male parental investment, "[s]uddenly the female is concerned not only with the male's genetic investment, or with a free meal, but with what he'll bring to the offspring after it materializes."[37] (*Evidence, my friend suggests, that women are indeed evil.*)

That is not to say that men are not selective, however.

> They will, on the one hand, have sex with just about anything that moves, given an easy chance, like males in a low-MPI [male parental investment] species. On the other hand, when it comes to finding a female for a long-term joint venture . . . over a lifetime, . . . the genes that the partner brings to the project—genes for robustness, brains, whatever—are worth scrutinizing.[38]

(*Evidence, my friend concedes, that men are indeed stupid.*)

There is evidence suggesting that there might be a male predisposition towards violence as a way of controlling women's sexuality across both the primate and, arguably, the human world as well. As part of their sexual strategy, "males improve their chances of mating by offering benefits to females, such as food, protection, or assistance in rearing young. But, sometimes males attempt to overcome female resistance by employing force or the threat of force."[39] Thus, from a biological perspective, male aggression is rooted in reproductive strategies aimed at gaining control over females in order to improve their mating success and ensure their paternity. Violence is part and parcel of the sexual reproductive game for both primates and humans.

Recently, Barbara Smuts, an evolutionary anthropologist, documented male aggression against females across the primate world. She suggests, "When we look closely, we find that, in many primates, hardly an aspect of female existence is not constrained in some way by the presence of aggressive

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36. Robert Trivers, *Parental Investment and Sex Selection*, *in* SEXUAL SELECTION AND THE DESCENT OF MAN 136, 139 (Bernard Campbell ed., 1972).

37. WRIGHT, *supra* note 30, at 60.

38. *Id.* at 64.

39. Smuts, *supra* note 32, at 233 (citation omitted).

males."[40] In many monkeys and apes, when a female is fertile and sexually receptive, she receives significantly more aggression from males, and often receives more wounds, than at times when she is not fertile. For example, among wild chimpanzees, if a female is unwilling to mate with a low-ranking male, resisting his attempts to lure her into the forest and away from the other chimps so that they can mate in peace, the male will employ what Jane Goodall characterized as "a fair amount of brutality" to try to force the female to accompany him.[41] Furthermore, Goodall suggests that it is impossible to tell how many encounters involve willing females, since past aggression by the males intimidate the female so that she is less likely to resist.[42]

Male orangutans engage in the rape of females as a way to reproduce with them and prevent them from mating with other males.[43] Some researchers have found that "nearly half of all copulations by adult [orangutans] occur after the female's fierce resistance has been overcome through [male] aggression."[44] Among baboons, males are twice the size of females and have canine teeth as strong as a panther's.[45] The females have no such weaponry, leaving them both dependent on and vulnerable to male aggression.[46]

Male primates also use infanticide to increase their sexual access to females. Among many primates, males will kill the young sired by other males. Nursing an infant impedes a female from further conception. The death of an infant restarts the female's capacity to conceive, which also then accelerates her availability to males as a reproductive source.[47] Thus, infanticide by males is sexually coercive; force is used to manipulate the female's sexual state to the male's advantage.[48]

Yet, we must be cautious before concluding that females are powerless to overcome male aggression and control their sexual reproduction. In recent studies of chimpanzees, researchers have found that female chimps use much more subtle strategies to control their reproduction than was otherwise thought to be the case. Female chimps often foray out into other colonies during

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40. *Id.* at 235.

41. *Id.* at 235 (quoting JANE GOODALL, THE CHIMPANZEES OF GOMBE: PATTERNS OF BEHAVIOR 453 (1986)).

42. *See id.*

43. *See, e.g.*, Smuts, *supra* note 32, at 234 (citing B. M. F. Galdikas, *Subadult Male Orangutan Sociality and Reproductive Behavior at Tanjung Puting*, 8 AM. J. PRIMATOLOGY 87-99 (1985); J. C. Mitani, *Mating Behavior of Male Orangutans in the Kutai Reserve*, 33 ANIMAL BEHAVIOR 392-402 (1985)).

44. Smuts, *supra* note 32, at 234.

45. *See id.*

46. *See* FRANS DE WAAL, BONOBO: THE FORGOTTEN APE 4 (1997).

47. *See* Jones, *supra* note 15, at 1178-79.

48. *See* Smuts, *supra* note 32, at 234-35.

ovulation, managing to mate with males whom they consider superior to those available in the local gene pool. They also compete with other female chimps for status using low-key cues like grunting, adding up to "a lifetime of covert rivalry."[49] Even female primates appear capable of controlling their reproductive capacities through nonaggressive means. (*Further evidence, my friend suggests, that women are indeed evil.*)

Strong social alliances formed by females with both other females and males seem to be another counter-strategy which ultimately protects them. Male aggression against females is constrained when "females form strong, lifelong bonds with their female kin, and females cooperate to protect their female relatives against male aggression."[50] These lifelong bonds, common in Old World monkeys, suggest that female alliances can reduce male violence. Female primates also form alliances with other males, who, in turn, protect them from outside aggressors.[51] Interestingly, Smuts suggests that "[t]he advantage males gain . . . through their larger size is countered by the fact that females cooperate against males, whereas males seldom cooperate [with each other] against females."[52] Rather, males compete among themselves for females. (*Further evidence, my friend concedes that men are indeed stupid.*)

An evolutionary understanding of male violence as part of sexual reproductive strategies has not been confined to the primate world. For example, Margo Wilson and Martin Daly examined marital conflict from an evolutionary perspective and concluded that male violence against females is linked to male sexual jealousy, which is rooted more deeply in male sexual strategies.[53] They argue that men kill other men as part of competition for the reproductive capacities of females.[54] Male violence arises out of men's efforts to exert control over women and their reproductive capacities, and women's efforts to retain some independence in the face of male coercion.[55] In studying homicide patterns, they find that the most explosively dangerous source of marital conflict is female infidelity.[56] They conclude:

> This has always been an especially potent threat to a husband's fitness insofar as it entails risk that he will make a prolonged

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49. Rick Weiss, *Female Chimps Use Subtle Strategies to Exert Control Over Reproduction*, WASH. POST, Aug. 8, 1997, at A3 (quoting Richard W. Wrangham).

50. Smuts, *supra* note 32, at 235 (citation omitted).

51. *See id.* at 236.

52. *Id.*

53. *See* MARTIN DALY & MARGO WILSON, HOMICIDE 196-200 (1988).

54. *See id.* at 179, 184.

55. *See id.* at 197.

56. *See id.* at 196.

> investment in the upbringing of unrelated children ('cuckoldry'), and this threat is presumably of evolutionary relevance to the fact that the jealousy of men is more focused on the copulatory act than is that of women.[57]

Evolutionary psychologist David Buss has argued that in order to understand the "battle of the sexes," it is necessary to understand how evolution has shaped our psychology.[58] "Because men's and women's [sexual] strategies sometimes interfere with one another, conflict between the sexes ensues. Because men's and women's strategies commonly interfere with members of their own sex, conflict among women and conflict among men ensues."[59] Buss goes on to suggest that evolutionary psychology can help identify the contexts most likely to trigger conflict between the sexes. For example, if a woman smiles at a man, is friendly to a man or goes to a bar alone, a man is far more likely to infer greater sexual interest on the part of the woman than the woman intends.[60] He also finds "that men seriously underestimate how upsetting sexual aggression is to women victims," while "women overestimate how upsetting [it] is to male victims."[61] These conflicts, he argues, have their basis in evolutionary strategies as much as in social conventions.[62]

Admittedly, the biological documentation of male aggression against females through both the primate and human world could lead one to conclude that indeed "men are stupid," or as Mary Ann Case suggests, "men are slime."[63] Violence against women by men is well-documented cross-culturally; sadly, aggression seems to be part of human nature, and humans channel that aggression into violence against their mates as well as against others.[64] Like Charlotte Perkins Gilman's *Herland*, it would seem we have to eliminate men in order to eliminate male violence.[65] Unlike in Gilman's female utopia, however, we cannot (yet) live with men and we cannot (yet) live without them.

All hope is not lost, however. Recently, primatologists have suggested that violence by males against females is neither inevitable nor universal. Both Richard Wrangham and Dale Peterson's recent book, *Demonic Males*,

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57. DALY & WILSON, *supra* note 53, at 16 (citations omitted).

58. David M. Buss, *Sexual Conflict: Evolutionary Insights into Feminism and the "Battle of the Sexes," in* SEX, POWER, CONFLICT, *supra* note 14, at 314.

59. *Id.*

60. *See id.* at 315.

61. *Id.* (citation omitted).

62. *See id.*

63. Case, *supra* note 9, at 397.

64. *See* Smuts, *supra* note 32, at 231.

65. *See generally* CHARLOTTE PERKINS GILMAN, HERLAND (1979).

as well as Frans de Waal's book, *Bonobo: The Forgotten Ape*, document the bonobos, close relatives of chimpanzees. The bonobos engage in much less violent behavior than other primate species.[66] While the bonobo and the chimpanzee are biologically similar, their use of aggression is markedly different. Chimpanzees are aggressive, violent, and dominated by males; bonobos are "amicable, amorous, and run by females."[67] In fact, of late, the bonobos have become the primate poster children for peace.[68] "Bonobo society seems ruled by the 'Make Love, Not War' slogan of the 1960s rather than the myth of a bloodthirsty killer ape that has dominated textbooks for at least three decades."[69]

The bonobos are restricted to an area south of the Zaire River in East Africa[70] and may be our closest evolutionary relative. Frans de Waal suggests that, according to DNA analysis, humans share over ninety-eight percent of their genetic material with the bonobo and the chimpanzee.[71]

What gives the bonobo species its popular appeal is that it seems to have replaced violence with sex. Whereas in most other species sex is used primarily for reproductive purposes, the bonobos are very sexually liberated. They have sex to make friends, to calm down, to alleviate competitiveness, and to form alliances. Furthermore, sex is not simply limited to adult male-female contact.[72] "Bonobos engage in sex in virtually every partner combination: male-male, male-female, female-female," and between the young and old.[73] There is also a great variety of sexual acts, including intercourse, genital to genital rubbing (or G-G rubbing), oral sex, and kissing. Both the males and the females have been able to evolve their hyper-sexuality.[74]

Even more intriguing than the sexual practices of the bonobos is the fact that they engage in very little violence. "Among bonobos there are no reports of males forcing copulations, battering adult females, or killing infants" in either captivity or in their natural habitat.[75] "The chimpanzee resolves sexual

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66. *See* RICHARD WRANGHAM & DALE PETERSON, DEMONIC MALES: APES AND THE ORIGINS OF HUMAN VIOLENCE 26 (1996); DE WAAL, *supra* note 46, at 9.

67. Natalie Angier, *Bonobo Society: Amicable, Amorous, and Run by Females*, N.Y. TIMES, April 22, 1997, at C4.

68. *See id.*

69. DE WAAL, *supra* note 46, at 2.

70. *See* WRANGHAM & PETERSON, *supra* note 66, at 224, 225.

71. *See* DE WAAL, *supra* note 46, at 5.

72. *See id.* at 4.

73. *Id.*

74. *See* WRANGHAM & PETERSON, *supra* note 66, at 221.

75. *Id.* at 205.

issues with power; the bonobo resolves sexual issues with sex."[76] Indeed, in studying the bonobos, one might conclude that paradise is possible.

Although it is quite seductive to romanticize the bonobos, we ought to be cautious. Clearly, the bonobos engage in much behavior which humans would not tolerate, such as sex with their young. We can no more replicate the bonobo society than we can replicate Gilman's utopia.[77] Nevertheless, the bonobos may help us gain greater insight as to how nature and nurture interact to promote a more peaceful and pleasurable existence. As Wranghan and Peterson have so eloquently stated:

> [T]he imaginary human society of Herland as well as the actual nonhuman society of bonobos both provide useful tools for thinking. In the case of bonobos, the balance has been tilted from the male-dominated system of the chimpanzees to a male-female sharing of power enforced through female alliances. In the human world, we have no complete, working example of what female power could mean for a society. And thus the importance of the evocative fantasy of Herland is that it, like the bonobo world, allows us to imagine what might happen if women shared power equally with men. Both Herlanders and bonobos guide us into speculating about the meaning of female power, and both suggest the important idea that true female power is not simply a direct or inverted image of male power, but something different entirely, in scope and quality.[78]

III. THE MORALS OF THE STORY

Exploring biology is much like exploring literature. "In a sense, dreaming up plausible stories *is* what evolutionary biologists do."[79] Some stories are better than others, and some ring truer than others when tested against human experience. The value of biology, like the value of literature, is that it stretches our imagination and offers some credible explanations to perplexing questions about the human condition.

I am often asked if male violence against women is getting worse. The conservative social scientist side of me answers, "We don't know." While it is clear that male violence against women is nothing new, it is difficult to measure.[80] There are several factors leading to this difficulty. Most

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76. DE WAAL, *supra* note 46, at 32.
77. *See* WRANGHAM & PETERSON, *supra* note 66, at 238.
78. *Id.* (citation omitted).
79. WRIGHT, *supra* note 30, at 47.
80. There are two "official" federal measures of crime, the National Crime Victimization Survey

problematic, we have no *baseline* from which to measure the severity and prevalence of violence against women. It is only recently that violence against women has even been considered a social problem.[81] Thus, while more violence against women is being reported in official measures, the increased reporting coincides with increased attention to such violence. However, my hunch is that violence against women in American society is getting worse, not better, despite the legal reforms of the last two decades.

Biology tells a story as to why this might be. In this Part, I offer hypotheses about social and biological factors which might influence violence against females by males. Although these hypotheses have normative and legal implications, my primary purpose in posing them is to suggest that there

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(NCVS) and the Uniform Crime Reports (UCR). The first consists of interviews from approximately 50,000 housing units and 100,000 persons. All members of a selected household were interviewed every six months for three years. While problems remain with the this source of data collection, the NCVS reports that in 1992-1993 women reported about 3.8 million assaults to National Crime Victimization Surveyors. *See* RONET BACHMAN & LINDA E. SALZMAN, U. S. DEP'T JUSTICE, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 2 (1995). In 29% of those cases, the offender was an "intimate"— a husband, ex-husband, boyfriend or ex-boyfriend. In other words, approximately one million women report being the victim of domestic violence each year. *See id.* at 3.

We do not have an official measure of how many of those self-reported cases actually make it into the criminal process. The Uniform Crime Report published by the FBI does not require local law enforcement to maintain data on the victim and offender except in the case of murder. *See* Justice Research and Statistics Association, *Domestic Violence Data Collection: A Report to Congress Under the Violence Against Women Act*, July 1996, at 4. In 1995, for those cases where the relationship between the victim and the perpetrator was known, 732 women were murdered by their husbands, and 482 were murdered by their boyfriends. *See* U.S. DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION, FBI UNIFORM CRIME REPORTS 19 (1995). Among all female victims, 26% were slain by a husband or boyfriend. *See id.* at 17.

Interestingly, this percentage differs dramatically from a recent study done by the New York City Department of Health. In order to better understand the patterns in homicide of women, the Department studied the medical examiners' records of all women age 16 or older killed in New York City between 1990 and 1994. The perpetrator's relationship to the victim was known in 42% of those cases. Forty-nine percent of these known perpetrators were intimate partners. *See* SUSAN A. WILT ET AL., NEW YORK DEPARTMENT OF HEALTH INJURY PREVENTION PROGRAM: FEMALE HOMICIDE VICTIMS IN NEW YORK CITY, 1990-1994 (Mar. 1997). In both the UCR and the New York Department of Health study, information on the perpetrator is gathered from police reports. These studies do not reflect whether anyone has actually been convicted of the offense.

The National Incidence Base Reporting System (NIBRS) authorized under the Federal Crime Bill of 1995 is aimed at changing the way in which these statistics are gathered. However, until the new system is in place and refined, much of the information about domestic violence criminalization is based on individual jurisdictions, making it an uncertain measure at best.

81. *See No Right to Choose*, *supra* note 19, at 1857 n.25; *see also* Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801 (1993); Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 522 (1992) (noting that the construct of a battering male developed only within the last twenty years).

is great value in thinking about violence against women from a perspective entirely different from a feminist-based mode of analysis.[82]

A. Moral #1—As Females Gain More Sexual Independence, They May Also Face More Violence From Males

Is it possible to substitute sex for violence? One *just so* story is that if females are willing participants in the reproductive game, then there is little need for males to use violence to coerce them into having sex. Feminists hoped that sexual liberation would bring equality (and peace) among the sexes. Part of the dream has been realized. Americans, like the bonobos, engage in sex for many reasons other than reproduction. Sexual liberation among American women is often linked to the advent of birth control methods, giving women greater control over reproductive choices and allowing them to engage in sex for pleasure and self-fulfillment. Although the bonobos do not have artificial birth control, it is impossible for the male of the species to detect when the female is ovulating.[83] Disguised ovulation, like the use of birth control, reduces both male-on-female conflict, as well as male-on-male competition for mating.

However, the notion that we can replace violence with sex runs counter to other biological research and human experience. In fact, the opposite holds truer universally—females are safer if they pair bond than if they have multiple mates.[84] For example, Smuts found that pair bonding benefits females "because of the protection mates provide against other males."[85] She hypothesizes that once males began to claim particular females as mates and to respect the mating relationships of their allies, an inhibition against attacking his mate and his mate's offspring developed.[86] Once males benefitted from more-or-less exclusive mating bonds with particular females,

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82. While feminist theory continues to be rich and diverse, and often contradictory in its conclusions, the unequal power relations between the genders is a common thread that runs through feminist discourses on domestic violence. For example, the Violence Against Women Act, controversial because of its feminist origins, is premised on the view that "crimes motivated by the victim's right to be free from discrimination based on gender." Sally Goldfarb, *The Civil Rights Remedy of the Violence Against Women Act: Legislative History, Policy Implications and Litigation Strategy*, 4 J.L. & POL'Y 391, 392-93 nn.14-15 (1996); *see also* Reva B. Siegal, *The Rule of Love: Wife Beating As Prerogative and Privacy*, 105 YALE L.J. 2117, 2197 (1996). To restructure society and reduce violence against women, feminist legal reforms have focused on providing women with greater access to the legal system. These reforms have included the greater availability of orders of protection, the passage of stalking laws, divorce and custody legislation which recognizes the existence of domestic violence, and tort and civil rights remedies under the Violence Against Women Act. *See also supra* note 13 and accompanying text.

83. *See* WRANGHAM & PETERSON, *supra* note 66, at 212.

84. *See* Smuts, *supra* note 32, at 240.

85. *Id.* at 238.

86. *See id.* at 239.

females would find noncompliance very costly.[87] "The benefits to females of maintaining a promiscuous mating pattern would have to be quite large to compensate for these costs."[88] Yet, pair bonding is not entirely safe for females. Bonded females may be protected from other males, but they are exposed to increased violence from their own mates because other males are less likely to interfere to protect the female.[89] Thus, females seem to engage in trade-off strategies. Females may accept some force from their male mates to protect themselves from worse force by other males.

Furthermore, pair bonding increases male parental investment since paternity is more certain if one mates for life.[90] Thus, men give more to their children than simply their sperm. Bonding arguably reduces violence and provides reproductive benefits to both men and women in terms of material investment. Likewise, such bonding benefits children by providing parental love and devotion. On balance, females may prefer pair bonding to promiscuity because they ultimately reap more benefits. This hypothesis cannot be proven, but it does provide an alternative explanation as to why pair bonding has evolved in human society apart from division of labor theories.[91]

In American society, marriage may, in fact, protect women from intimate violence. Contrary to the myth of the *battered wife*, women are more likely to be victimized by an intimate partner when they are young and unmarried (i.e., when they are *not* a *wife*).[92] Today, women can be choosier and have children later in life. Consequently, they will also face increased opportunities to be violated by men with whom they are sexually involved or who want to be sexually involved with them.

Consistent with this male sexual coercion scenario is the fact that most human societies condone, to some degree, male aggression against their wives in response to suspected or actual adultery.[93] For example, the "heat of passion" defense provides a partial excuse for mostly male defendants to receive a lesser charge than murder when their victim is their wife's lover or their wife who is committing adultery.[94] This can be viewed as an

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87. *See id.*

88. *Id.* at 240.

89. *See id.*

90. *See* WRIGHT, *supra* note 30, at 64-65.

91. *See* Smuts *supra* note 32, at 238-41 (citations omitted).

92. *See* Holtzworth-Munroe et al., *An Overview of Research on Couple Violence: What Do We Know About Male Batterers, Their Partners and Their Children?*, 2 PSYCHOTHERAPY IN PRACTICE 7 (1996).

93. *See* DALY & WILSON, *supra* note 53, at 196-202.

94. *See* Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/ Women Who Kill*, 2 S. CAL. REV. L. & WOMEN'S STUD. 71, 72, 75 (1992) (arguing that the law implies a "dubious distinction between men who premeditate the murders of wives and lovers, and 'innocent' men who catch their wives in bed with someone else").

evolutionary outgrowth of a male biological need to control his partner's sexuality.

Furthermore, evolutionary biologists have suggested that the lack of pair bonding also increases violence against children. For example, Daly and Wilson found that children living with at least one substitute parent were about one hundred times more likely to be fatally abused than when living with both natural parents.[95] From this evidence, one could conclude that women's sexual autonomy increases the likelihood that males will have to use aggression to control female sexuality.

The moral of this story is not "marriage good, sexual autonomy bad." By no means does this discussion suggest that marriage be encouraged and divorce laws tightened as a matter of public policy. Evolutionary Darwinism has been selectively (mis)used by the family values movement to promote policies, such as women's economic dependence on men via marriage, which clearly undermine women's autonomy and freedom.[96] The so-called "dangers of divorce" debate often overlooks the fact that, from an evolutionary perspective, "one of the best ways to strengthen monogamous marriage is to more equally distribute income."[97] Worse, still, is that family values proponents often ignore the costs of marriage for both sexes, particularly the trade-offs women face.[98]

Nevertheless, feminists can take something away from these evolutionary tales just as their biological brothers and sisters should. The message to all is that the promise of sexual liberation may have gone unfulfilled by exposing women to *more*, not less, male violence against them—at least in the context of our current social and economic environment. The moral of the story is that neither proponents nor opponents of marriage should promote the myth of happy endings because the reality for women is always bittersweet.

B. Moral #2—Economic Dependence on Males Leads to Increased Violence, While Strong Female Coalitions Decrease Violence

Why does the sexual liberation hypothesis not square with the experience of the bonobos since they are both sexually free and physically safe? One important observation that is often overlooked when discussing the bonobos

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95. *See* DALY & WILSON, *supra* note 53, at 89; *see also* Jones, *supra* note 15 (discussing a biological explanation for child abuse and offering normative conclusions).

96. *See generally* CARL N. DEGLER, IN SEARCH OF HUMAN NATURE: THE DECLINE AND REVIVAL OF DARWINISM IN AMERICAN SOCIAL THOUGHT 26-31 (1991).

97. WRIGHT, *supra* note 30, at 105.

98. *See* Case, *supra* note 9, at 396-97 (critiquing Richard Epstein, who argues that we ought to promote marriage but ignores the other half of the evolutionary evidence that men indeed are violent or "slime").

is the quantity and control of resources available to the females.[99] Bonobos live in surroundings where there is an abundance of food and water.[100] Since there is little competition for food, the bonobos are able to travel in groups, rather than alone. Females are freer to form alliances with males, as well as other females.[101] Nor are female bonobos dependent on males to provide them with food or protection.[102] Abundant resources give rise to strong female alliances—or "bonobo gal gangs"—because there is less competition among females for males who can provide for them.[103]

Among most primates, the males leave their birthplaces upon reaching maturity, which is one way of avoiding incest, while females stay with their kin.[104] In contrast, bonobo females disperse at adolescence, integrating themselves into a group of unrelated females.[105] Females travel together, share food, protect each other, and remain together both day and night. They bond via sexual acts and then organize into alliances which have many advantages.[106] For example, since males are unable to monopolize females, female bonobo alliances help reduce male-against-male violence, as well as reduce infanticide.[107]

Bonobo females can be choosy—they do not need the males and apparently will not tolerate male aggression.[108] Female bonobos will gang up on and hiss at males who try to show aggression towards a female.[109] In biological speak—because male violence against females does not improve reproductive (or sexual) success, it has not thrived among the bonobos. Violence is no longer evolutionarily strategic.

Other researchers have documented, both in the primate world and cross-culturally, that strong bonds between females can reduce male aggression against women.[110] In reviewing literature on female alliances, Smuts describes the Carib community of Belize:

> [M]arried women typically reside near their mothers, and, if a husband beats his wife, neighbors immediately alert her mother. The mother's arrival on the scene, combined with the shaming gaze

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99. *See* DE WAAL, *supra* note 46, at 64-68 (describing the feeding practices of the bonobos).
100. *See id.*
101. *See id.*
102. *See id.*
103. *See* WRANGHAM & PETERSON, *supra* note 66, at 223-27.
104. *See* DE WAAL *supra* note 46, at 115-23.
105. *See* WRANGHAM & PETERSON, *supra* note 66, at 208-09.
106. *See id.* at 210.
107. *See* DE WAAL, *supra* note 46, at 139.
108. *See* WRANGHAM & PETERSON, *supra* note 66, at 207-08.
109. *See id.* at 208.
110. *See* discussion *supra* note 50, Part II.

> of other female witnesses, is usually sufficient to stop the beating. It is interesting that, in this community, even unrelated women will help one another because, they say, "We're all women and it could happen to any of us."[111]

In *Fighting Women: Anger and Aggression in Aboriginal Australia*, Victoria Katherine Burbank examines how Aboriginal women experience aggression as compared to Western women.[112] Her study presents a unique cross-cultural comparison of how different cultures experience violence. Like Smuts, Wilson, and Daly, she finds that aggression is used for control and domination, often caused by jealousy and tension in relationships.[113] Although women in this culture do not appear to compete for resources, they do compete for men.[114] Nevertheless, like the bonobos and women in the black Carib community, family and social ties prevent violence from escalating too far.[115] A woman can usually rely on certain people, particularly other women, such as her mother or sister(s), coming to her aid and protecting her from serious injury.[116]

These observations challenge us to further explore the relationship between the availability of economic resources to women, women's alliances, and male aggression. Violence arguably improves the mating (and dating) success of men relative to the economic status of their females partners. In the United States, women's economic status correlates to family violence.[117] Although violence against women happens across all socio-economic classes, women who lack financial means report more violence against them by their intimate partners.[118] For example, a recent study by the New York City Health Department found that when a woman is murdered by a husband or boyfriend, she is more likely to be from a poor, minority neighborhood.[119]

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111. Smuts, *supra* note 32, at 242.

112. *See generally* VICTORIA KATHERINE BURBANK, FIGHTING WOMEN: ANGER AND AGGRESSION IN ABORIGINAL AUSTRALIA (1994).

113. *See id.* at 68.

114. *See id.* at 70-104.

115. *See id.* at 126-27.

116. *See id.* at 127.

117. *See* Gerald T. Hotaling & David B. Sugarman, *Prevention of Wife Assault*, *in* TREATMENT OF FAMILY VIOLENCE: A SOURCE BOOK 385, 400 (Robert T. Ammerman & Michael Hersen eds., 1990) (discussing empirical evidence pointing to a connection between domestic violence and low family income); *see also* Jeffery Fagan, *Cessation from Family Violence: Deterrence and Discussion*, in CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 21 (Lloyd Ohlin & Michael Tonry eds., 1989); Holtzworth-Munroe et al., *supra* note 92, at 7.

118. *See* Hotaling & Sugarman, *supra* note 117, at 385, 400.

119. *See supra* note 82.

There are many plausible explanations for the disproportionate representation of poor women in official measures of domestic violence.[120] However, one story—from a biological perspective—is that males have increased incentive to use personal violence to sexually control their mates when females have greater choice regarding their mating partners. At the same time, when those women have few economic resources, they will be more dependent on men, exposing themselves to continued violence.[121] This lack of personal resources for women creates greater competition among them to mate with *high status* men who can provide resources. Thus, women become competitors, forming weak, rather than strong, female alliances, losing the protection of other women. Therefore, women might stay in violent relationships as a trade-off strategy—choosing violence over the loss of economic and other resources.

Nevertheless, some biologists would caution us not to conclude that women can break this cycle of dependence with economic equality. Women do compete with each other for men just as men compete with each other for women.[122] While men compete through gaining status and resources, women compete through the enhancement of their own beauty, fostering the competition.[123] Even if society were to change the dimensions along which men value women, such as intelligence, sense of humor, and kindness, a biological perspective might suggest that women would still compete for mates along these variables.

What would happen if women were to gain greater access to financial resources, thereby reducing their need to compete with each other for high status men? Some biologists suggest that women, regardless of their own economic independence, "favor as mates men who possess status and resources" over men who do not.[124] Thus, even if women were to gain more access to resources, the game would not change—the stakes would be higher.

The bonobos offer a contrasting view to this inherently competitive sexual game posed by this strand of evolutionary biology. If women have more economic resources, they might be able to form deeper and more meaningful alliances with other women. Such alliances might protect women from male violence. Sisterhood can be powerful. Just as male aggression is not inevitable, neither is female competition for men:

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120. *See generally* Cheryl Hanna, *The Paradox of Hope*, 39 WM & MARY L. REV. (forthcoming Apr. 1997) (manuscript at 94, on file with author) (discussing theories as to why poor women and men of color tend to be overly represented in domestic violence measurements) [hereinafter *The Paradox of Hope*].

121. *See* Smuts, *supra* note 32, at 249.

122. *See* Buss, *supra* note 58, at 309-10.

123. *See id.* at 311.

124. *Id.* at 307.

> If there is no human group where women have achieved a comparable equality [to the bonobos], women everywhere nevertheless have much of the same potential as bonobo females to change the system. Everywhere, women develop supportive social networks with each other. Everywhere, women wield some influence over their husbands and sons and other males—a power often much stronger than at first appears. The problem is that everywhere, women are caught in a trap. If they support each other too much, they become vulnerable to losing what they want, the investment and protection of the most desirable men. . . . Bonobos have shown us that the trap can be broken through female alliances.[125]

The moral of this story is that sexual equality without economic equality is merely an illusion. Unless women and men have both personal and financial options, aggression is likely to continue to be channeled into violence. If we are serious about reducing violence against women, we might best concentrate our efforts in those communities with the fewest resources, recognizing that poverty and violence go hand-in-hand.

Also, we ought to imagine strategies to promote female alliances as well as economic independence. While the feminist-consciousness-raising models[126] of the 1970s seem dated today, the concept of strong women's coalitions might have had more value than we realized. Encouraging non-violent gangs among women as we enter the next century might provide some of the greatest opportunities for creating a more egalitarian existence.

C. Moral #3—Criminalizing Violence is a Prudent Legal Strategy

Evolutionary biology does not undermine the concept of free will. Rather, it suggests that all behavior can be responsive to social controls. In particular, males are motivated by hierarchy. Violence promotes male status when it is used to attract and control the most desirable females. If there is no group condemnation of that behavior, then it serves to promote the use of sexual aggression. Furthermore, biologists suggest that males are programmed to fear group disapproval which results in a loss of status.[127] Thus, group norms can have a powerful effect, particularly on moral behavior. If violence against one's intimate partner results in group disapproval, it is a behavior

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125. WRANGHAM & PETERSON, *supra* note 66, at 242-43.

126. *See* Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U L. REV. 589 (1986) (describing the feminist movement of the 1960s and advocating the value of collective identity).

127. *See* Smuts, *supra* note 32, at 249.

unlikely to survive. One way of restructuring the hierarchy between men and women and among men is using criminal law to enforce negative sanctions against males who use violence. Criminalizing the behavior removes the benefits and status gained by violent aggression, at least when incarceration is the final disposition.

Like any strategy aimed at changing human behavior, criminalization will also have trade-offs for women, particularly for those who do not want to proceed through the criminal process for a variety of reasons.[128] In particular, if the state enforces social norms by condemning violence, decisions to proceed in cases—despite a woman's unwillingness to go forward—will have costs to women's autonomy. One of the reasons most often given for not criminalizing violence against women, or at least not incarcerating abusers, is the loss to the family of economic benefits provided by the abuser.[129] However, while a benefit of the violence to women may be economic security, it is precisely the *loss* of that economic security or dependence which might free most women from abusive mates. Once the benefit is removed, there is less reason to stay in the abusive, dependent relationship. In the interim, women may find themselves living with fewer resources, but also with less violence. Therefore, a biological perspective suggests that strategies aimed at changing the relationship between men and women are not cost-free.

A biological perspective on male violence also suggests that some twists on the criminalization movement may be misguided. For example, one of the most disturbing trends in recent years has been the tendency of the legal system to locate male violence against women in individual pathology.[130] This is evident in the use of battered women's syndrome to explain women's

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128. *See No Right to Choose*, *supra* note 19, at 1909. In *No Right to Choose*, the author argues that ultimately the decision to go forward with a criminal domestic violence case should rest with the prosecutor, not the victim. Prosecutors should base their decisions to pursue cases on the sufficiency of the evidence and the seriousness of the offense. Mandated participation policies might mean that in some cases a victim will be compelled to testify against her wishes. In the long term, the author argues that policies which mandate victim participation keep women safer by removing the incentive of the abuser to intimidate and harass the victim, as well as reinforce the belief that domestic violence is a public crime, not a private affair. *See id.*

129. *See supra* note 82; *see also* Holtzworth-Munroe, *supra* note 92, at 7. Although some research has suggested a correlation between minority status and domestic violence, the difference tends to lie not with race or ethnicity itself, but with other factors such as income, employment status and age. For example, in a nationally representative survey, rates of abuse were approximately 17% from African-American couples, 17% from Latino couples, and 12% from White couples. However, when controlling for socio-demographic variables, ethnicity and race are no longer significant variables. *See id.* at 8.

130. *See No Right to Choose*, *supra* note 19, at 1877-79; *see also* Anne M. Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 7 (1994) (arguing that the defense of battered women who kill their abusers often defines the women as a "collection of mental symptoms, motivational deficits, and behavioral abnormalities"); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias and the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 646 (1980) (voicing concern that expert testimony on learned helplessness may promote stereotypes of women).

reactions to violence as well as the over-emphasis on the psychological treatment as a preferred disposition to criminal cases for men who abuse.[131] The federal government and most states have endorsed the use of treatment over incarceration as the preferred punishment for men accused of domestic violence; thus, few of these cases ever end with incarceration.[132]

There are two problems with pathologizing violence. First, the scientific data supporting both the battered women's syndrome[133] and the effectiveness of batterer treatment programs[134] are questionable, at best. Feminists must be careful not to use bad science that supports a particular political agenda and then reject science when the outcomes are not what they hope. In some respects, feminists have been just as guilty of spinning out *just so* stories as have evolutionary biologists. The (mis)use of science is dangerous, regardless of which discipline claims to have *proven* it has found the answers to human behavior.

Second, pathologizing violence ignores the larger social and moral structures which reward male violence. For example, individual psychological explanations for why women stay in abusive relationships, such as the battered women's syndrome, ignore the economic trade-offs that women regularly make. Using syndromes to explain human behavior undermines efforts to provide women with greater economic, as well as sexual, control over their lives. *Syndromization*—the characterization of human behavior as a syndrome—also has the unintended consequence of treating women as irrational. This gives men further justification that they should govern their irresponsible wives.[135]

Likewise, referring most abusers to treatment programs, rather than jail, undermines individual accountability. Men who abuse are considered *sick* rather than engaging in strategic behavior. Treatment fails to remove strategic rewards by continually giving violent men the ability to control their partner's

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131. *See* D.G. Dutton, *The Outcome of Court-Mandated Treatment for Wife Assault: A Quasi-Experimental Evaluation*, 1 VIOLENCE & VICTIMS 163 (1986); M. Waldo, *Relationship Enhancement Counseling Groups for Wife Abusers*, 10 J. MENTAL HEALTH COUNS. 37 (1988).

132. *See The Paradox of Hope*, *supra* note 120, at 25-26 & nn.56-57 (reviewing current data and concluding that few domestic violence cases ever end with incarceration).

133. *See* David L. Faigman & Amy J. Wright, *The Battered Women's Syndrome in the Age of Science*, 39 ARIZ. L. REV. 67, 75-76 (1997) (reviewing scientific data on Battered Wives Syndrome and concluding that it was never a matter of good science).

134. *See generally The Paradox of Hope*, *supra* note 120 (reviewing literature on batterer treatment programs and finding that no good empirical research supports the proposition that treatment causes a reduction in recidivism).

135. *See* Anne Coughlin, *Excusing Women*, 82 CAL. L. REV. 1, 5 (1994); *see also* Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195 (1986) (discussing dilemmas posed by the Battered Wives Syndrome from feminist perspectives).

sexuality through violence because such treatment programs make it possible for the abuser to return to the family. Therefore, one important lesson we can learn from a biological inquiry is that humans choose violence, not because they are mentally ill, at least in most cases, but because it provides benefits. Thus, criminalization strategies must take into account the relative trade-offs people make when engaging in violence so that policies can be developed which change the social and legal hierarchy. The moral of this story is that "my genes made me do it" is no excuse.

CONCLUSION

Biological stories lend some plausible explanations as to why male violence is so prevalent and why it is so hard to curb. Maybe men are predisposed to violence and use it to control women's sexuality. Maybe exploring the hidden costs of sexual liberation can help us understand other trade-offs we are likely to encounter as women seek greater equality with men. Maybe sisterhood is powerful—both socially and biologically speaking. Maybe what prevents women from sticking together is our predisposition to compete with each other for men with resources. Maybe criminalization is one way to remove the benefits of violence, albeit an imperfect strategy. All of these theories, I hope, will challenge us to think harder about what policy choices we might make in this context, as well as recognize that no solution to a problem as complicated as male violence against women will be cost-free.

There are many questions which remain unanswered by either a feminist or a biological analysis of male aggression. It is in future research, perhaps, that we can merge these two disciplines in order to have a better understanding of the nature of violence. First, and most important, we need good data to test both feminist and biological hypotheses. Research must measure both the incidence and severity of violence, as well as contain more complete qualitative descriptions about both the costs and the benefits for each sex when violence is used in the context of an intimate relationship. We have to be able to test our *just so* stories against good empirical data.

Second, this inquiry highlighted for me the value of doing cross-cultural and cross-primate research. Evolutionary biology offers a vocabulary and frame of reference to make meaningful comparisons. At the same time, it is imperative to investigate individual *and* group behavior. This inquiry should temper our arrogance about how little we know about men, women, and violence.

Third, more research needs to be done about relationships among the sexes, as well as between the sexes. A feminist emphasis on patriarchy often obscures the ways in which women treat women and men treat men in relation to violent aggression. To understand violence, we have to examine multi-

relational aspects of human behavior and explore the ways in which sisterhood and brotherhood can be strengthened.

Fourth, evolutionary theories remind us that there is a false dichotomy between the biological and the social. Sadly, the debate continues about which behaviors and characteristics of the genders are inherent and which ones are socially constructed. This debate is no longer useful. As feminists, we might do better to simply accept the premise that all behavior is conditional and move our analysis towards a more pragmatic understanding of any strategy we pursue, recognizing that, especially for women, there are no guarantees that by gaining freedom in one area, we will not sacrifice it in another.

Finally, I have been reminded that neither sex is the superior one. In contrast to the argument that patriarchy is always victimizing to women, a biological inquiry raises questions of both how and why women might participate in their own oppression. It suggests that as women, we are not captive to either our biological selves or to our male counterparts. We are capable of devising strategies to overcome violence. Males and females share much in common and have much to learn from each other about how to experience pain and pleasure in our lives. And we can alter gender relations, individually, through time, and across generations by making conscious and informed choices about how we will structure our social relationships with one other.

When I explained to my skeptical friend about the bonobos and their peace-loving and love-making ways, he became an instant biological convert, proclaiming: "It sounds like the bonobos live in paradise."

I might have initially agreed. But unlike the bonobos, we can make choices about how we live. Aggression may be part of human nature, but how we channel aggression is up to us. We can wage war against ourselves and others or we can create our own kind of utopia. We are neither inevitably evil nor stupid. We are human.