SEXUAL COERCION IN PRIMATES AND HUMANS

An Evolutionary Perspective on Male Aggression against Females

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Sexual Coercion, Patriarchal Violence, and Law

Diane L. Rosenfeld

This chapter considers how evolutionary perspectives on male sexual coercion can usefully inform legal policy. The underlying conceit is that by analyzing the law's treatment of male sexual coercion through an evolutionary lens, we can help explain the law's failure to effectively prevent or redress much violence against women. I briefly explain the current state of law in the United States and suggest ways in which a legal approach that focuses on the sexual coercion underlying much violence against women might advance us toward the goal of gender equality.

I refer to sexual coercion using Smuts's definition: "male use of force, or its threat, to increase the chances that a female will mate with the aggressor or to decrease the chances that she will mate with a rival, at some cost to the female" (Smuts and Smuts 1993: 2–3). I apply Smuts's theories regarding intragender alliances throughout this chapter, arguing that male-male alliances to refrain from interfering with one another's property (including, notably females) are reflected within the law. The chapter has four proposals.

The first is that an evolutionary perspective reveals the vast prevalence of male sexual coercion in almost all human societies—informing us that this behavior is commonplace rather than aberrational. Yet, the laws of these societies fail to provide recourse for most forms of sexual coercion, recognizing only the most extreme (and uncommon) behaviors.

My second proposal is that law reflects—rather than interrupts—the role of male sexual coercion in establishing and maintaining a patriarchal agreement not to intervene in another male's coercive tactics. The three stages of

law relevant to this analysis are, first, the passage of legislation through a law-making body; second, the enforcement of laws; and third, the interpretation of laws through the courts. Women have had the most success in the passage of legislation to protect them against male aggression; less success at compelling law enforcement—meaning police and prosecutors—to implement the laws; and possibly the least success in judicial interpretation of protective laws.

The third proposal offers a theory of "patriarchal violence" that explains the variability in the forms and severity of male sexual coercion as that which is necessary to preserve a patriarchal social order. Although others have theorized about patriarchy and violence against women (MacKinnon 1989; Smuts 1995), my contribution is to offer the term *patriarchal violence* to connect the occurrence of male sexual coercion in primates and in humans in a way that describes the functionality of such behavior and explains its possible source of variation. Support for this theory comes from an analysis of the two most important Supreme Court cases involving gender violence, which found that democratically achieved legislative gains, enabling women to challenge male sexual violence, exceeded constitutional limitations.

My fourth proposal is that the potential of female-female alliances to resist male sexual coercion would be strengthened by confronting directly the ways in which male sexual coercion fractures female bonding, as well as incorporating collective physical resistance to male aggression in a bonobo-like fashion.

First Proposal: The prevalence and variation of male sexual coercion indicates that it is commonplace rather than aberrational, and for the law to effectively prevent and punish sexual coercion, it must recognize its prevalence and functionality.

Violence against women is a worldwide problem, with women in every country living under the threat of physical, mental, and sexual abuse at the hands of men. The World Health Organization's (WHO) Multi-Country Study on Women's Health and Domestic Violence against Women in 2005 showed that women are more at risk of experiencing violence in intimate relationships than anywhere else, "challenging the notion that home is a safe haven" (WHO 2005:9). The vast majority of abuse occurs at the hands of a partner rather than a stranger; over 75% of women physically or sexually abused since the age of 15 reported abuse by a partner, and between 20 and 75% of women had experienced emotional abuse. The study found that men who physically abuse their partners also exhibit higher rates of controlling behavior than men who do not, including

isolation (keeping her from seeing or communicating with friends and family), sexual jealousy, and wanting to know where she is at all times. In addition, the study found "a great variation in the degree to which such behaviour is acceptable (normative) in different cultures" (WHO 2005:19). Because these milder forms of coercive behavior often escalate, we need to learn to recognize the significance of even subtle and seemingly benign instances of controlling and sexually coercive behaviors.

The WHO report showed that not only are women experiencing violence from the people who should pose the least threat to them, but they are also subjected to violence at a time when one would least expect it to occur: during pregnancy. Between one-quarter and one-half of the women who were physically abused during pregnancy were kicked or punched in the abdomen. The study reported that over 90% of these women were abused by the biological father of the child the woman was carrying. Many said they were beaten for the first time during pregnancy (WHO 2005:26–27).

Although the United States was not included in the WHO study, other research shows that the prevalence of rape, domestic violence, and domestic violence homicide in the United States remains distressingly high. In 2001, more than half a million American women were victims of nonfatal violence committed against them by an intimate partner, and as many as 324,000 women experience intimate partner violence against them during pregnancy. Studies also reveal that pregnant and recently pregnant women are more likely to die as a result of domestic homicide than any other cause. On average in the United States, more than three women per day are murdered by their husbands, boyfriends, ex-husbands, estranged husbands, or ex-boyfriends (Bureau of Justice Statistics 2001; Family Violence Prevention Fund 2007).

Despite the prevalence of male sexual coercion, the law does not reflect its commonality. Thus the most frequent occurrences are either not prosecuted (acquaintance rapes) or inadequately enforced (typical domestic violence cases). Although society devotes resources and time to stranger rapes, it pays very little attention to acquaintance rapes, even though these account for the vast majority of rapes (Emery Thompson, Chapter 14 in this volume). Most colleges offer self-defense programs to women based on the paradigm of stranger rape, whereas estimates are that one in four college women will experience a rape or attempted rape by an acquaintance or intimate partner during her time at school (Karjane et al. 2005).

As for domestic violence, its everyday occurrence receives little public atten-

tion except when associated with a homicide case. As a result, wife-beating is presented as though it were an unusual event. Tracy and Crawford (1999) argue that this treatment of violence against women as pathological rather than commonplace contributes to the law's failure to counteract it. "As long as wife-beating is viewed as a bizarre event, with blame placed on both batterer and victim—rather than as a remnant of our ancestral past, when it was 'beneficial'—it will continue to occur. Effective remedies cannot be undertaken at the individual level unless societies choose to censure wife beating" (Tracy and Crawford 1999:39).

Legal scholar Duncan Kennedy has likewise argued that the popular understanding of sexual abuse as pathological rather than normal tends to sustain "the view that [sexually coercive acts] play no significant structural role in the relations between 'normal' men and women" (1992:1321). Kennedy states:

> The combination of the limits of the formal law and the actual workings of the legal system has the result that men can and do commit large numbers of sexual abuses of women without any official sanction. Although, by hypothesis, most people would regard the conduct as clearly wrong, and injurious, there is no punishment and no redress. The crucial point . . . is that *some* abuse, what I will call the "tolerated residuum," is plausibly attributed to contestable social decisions about what abuse is and how important it is to prevent it. The law defines murder quite clearly, and the "system" devotes substantial resources to catching and punishing perpetrators. It defines rape much less clearly, and devotes less resources to it, some of the time, than to less important crimes. (Kennedy 1992:1321).

Kennedy goes on to consider the "consequences of setting up the legal system to condemn sexual abuse of women by men in the abstract, but at the same time operating the system so that many, many instances of clearly wrongful abuse are tolerated . . . men and women gain and lose from the practices of abuse, *whether or not* they themselves are actually abusers or victims." One very clear consequence of this is that women operate and live within this structure, bargaining in the shadow of a legal system that does not provide real protection against male sexual abuse (Kennedy 1992; Rosenfeld 2004).

Yet, low-level coercion forms the basis for the more extreme commission of sexual violence against women. Male coercion is understood to occur on a continuum ranging from simple gender-role enforcement to domestic violence homicide. I refer to this as a "continuum of male entitlement" over an intimate partner. This coercive and violent behavior is widely understood to be motivated by a desire to exercise control over the victim (Duluth Project 1989).

At the least serious end of the continuum is behavior based on gendered expectations of male supremacy and female subordination exemplified in stereotypes of American housewives from the 1950s. This behavior enforces the idea that a man should be served his meals and is generally exempt from household chores and other "women's work." The continuum moves on to emotional abuse and economic abuse, which can include isolation, an important tactic of abusers (Duluth Project 1989). A batterer will typically criticize his partner's relationships with her family and friends gradually, until she is cut off from resources and alliances that might help her escape her partner's abuse. Similarly, an abusive partner might gradually gain control of his partner's finances either by insisting she is incapable of managing them herself or by forcing her to quit her job and become financially dependent on him. In either case, the abusive partner deliberately reduces his partner's agency by forcing this financial and economic dependence.

Physical and sexual assault occur next on the continuum. This violence is deliberate, habitual, and often premeditated. As with the case of emotional and financial abuse, a batterer uses chronic physical abuse to reduce his partner's agency and ensure that she becomes dependent on him and submissive to him. Thus, the assumption that a man will only physically abuse his partner when he is moved by extreme emotion or exceptional circumstances is mistaken. Indeed, the common claim of batterers that they "just lost control" (Adams 2007:171–172) should be rejected, for most batterers do not similarly lose control with other people in their lives, such as bosses or strangers (Rosenfeld 1994). Far from an aberration in the batterer's behavior or an exceptional case of loss of control, chronic physical abuse should be viewed as a tactic that batterers use to exert control over their female partner's behavior.

Legal recognition of the prevalence and functionality of male sexual coercion is necessary to the design of an effective deterrent to such behavior. Evolutionary perspectives about the cross-cultural prevalence of sexual coercion could help legal policymakers see the larger context of this everyday behavior. Thus, we can begin to address it as a social norm rather than an aberration, and refocus our legal efforts to prevent and punish it accordingly.

Second Proposal: Law reflects—rather than interrupts—a patriarchal agreement among males not to intervene in each other's sexually coercive tactics.

> Human patriarchy has its beginning in the forest ape social world, a system based on males' social dominance and coercion of females. . . . Language

> would eventually generate both marriage and the patriarchal rules that favor married men. Men, following an evolutionary logic that benefits those who make the laws, would create legal systems that so often defined adultery as a crime for women, not for men—a social world that makes men freer than women. (Wrangham and Peterson, 1996:242).

Law represents the regulation of violence, as well as the means through which violence is authorized or inflicted by the state on the individual (Cover 1986). It is a set of rules by the state that regulate under what circumstances violence may be used, as well as the punishment for using violence outside of permitted circumstances. Judicial decisions in themselves authorize the use of violence to punish an offender, or may inflict violence on the victim of a crime by not punishing the offender (Cover 1986). Law enforcement represents the state's authorized use of violence to enforce the laws according to the discretion and priorities of political leaders.

Critically, laws have historically and traditionally been the province of men. Law reflects agreements and understandings between men, and laws regulating sexual violence reflect men's agreements about access to women (MacKinnon 2000:175). These laws form the basis of our patriarchal society and reflect an unwillingness of men to intervene in other men's coercive tactics. For example, before women had representation in the legal system, laws were forthright about the status of women as the property of men. Now that women have acquired the right to vote and to participate fully as citizens, laws reflect this more equal status. However, the prevalence of violence against women belies the idea that women are truly equal and that all citizens are treated the same under the law.

But even if women enjoyed equal status under the law, law enforcement remains a critical juncture at which many legal protections intended to protect women from male violence fail. As Wrangham and Peterson (1996) noted, political power is built on physical power, which is ultimately the power of violence or its threat. It is also being able to "count on someone coming to their aid—the police or the military or the mob or the family, or the royal guard" (Wrangham and Peterson 1996:242). Law enforcement, however, more often reflects male-male alliances and policies of nonintervention than it does straightforward implementation of protective laws. For example, some studies have estimated that 40% of police officers have been involved in abusing their own intimate partners (Johnson 1991, Neidig et al. 1992), suggesting that police officers might be inclined to empathize with, rationalize, or ignore the severity of a batterer's

actions. This kind of problem is aggravated by the ability of batterers to bond with police officers over sports or common friends in the military. Indeed, these tactics are so prevalent that officers are specifically trained to recognize such attempts as manipulation (O'Dell 1997).

In order to understand how male alliances visibly contribute to violence against women, one might consider the claim of a woman in the United States trying to escape a polygamist cult in which sexual abuse was rampant. Carol Jessup, in her recent memoir, described how the police were of the same cult in the area and would return the runaway wives to their husbands instead of aiding them in escaping or addressing the abuse (Jessop 2007). She also noted the noninterventionist agreement among males when she stated that she could not go to the hospital without her husband's permission because "the volunteer ambulance drivers . . . were all members of the FLDS. Because of this they were under enormous pressure not to interfere with another man's family" (Jessop 2007:214). Women's attempts to resist male sexual coercion can thus easily be undermined by informal male-male alliances, in particular among law enforcement.

A major source of the problem is that because men tend to be bigger and stronger than women, women most often cannot defend themselves directly against threats of men's violence. In addition to the sexual dimorphism, however, there is a significant difference in the proclivity of men and women to use violence. In the United States, for example, men commit 85% of all violence and 85% of intimate partner violence (Bureau of Justice Statistics 2001). Women could theoretically use weapons to compensate for the inequality in body strength, but generally do not. Women's two main sources of protection from violence thus appear to be a male guardian, such as an intimate partner or family member, or the state. This gender disparity in personal strength and in the use of violence leads to what has been called a "male protection racket"—a phenomenon in which females learn to rely on males for protection from other males (Griffin 1970:10–11). A similar dynamic is in evidence in primates where females form friendships with males in order to gain protection from other males (Smuts 1985; Palombit, Chapter 15 in this volume). The unfortunate irony in this arrangement is that women are at a much greater risk of male sexual violence at the hands of their intimate partners than from strangers (Bureau of Justice Statistics 2001).

The male protection racket has particular salience in the U.S. Constitution's promise of "equal protection under the laws" (U.S. Constitution, Fourteenth Amendment, Section One). Equal protection under the laws has a unique

meaning as applied to questions of sexual violence. If women generally do not use violence, but must rely on state intervention for protection, then perhaps equal protection means something different for women citizens than for men. For the state to provide meaningful equal protection, it must take into account the gendered disparity in the use of violence, and the need to protect women from male sexual coercion. An analysis of the laws concerning rape and domestic violence illustrates the problems we must overcome to effectively address male sexual coercion through the law.

Rape

Rape was initially a crime of trespass to property, and the right to bring an action used to lay in the hands of the offended property owner—either the husband or the father, depending on the woman's marital status. Therefore, when a woman was raped, the offense was deemed to be committed against a man, not against her own person.

According to William Blackstone, whose *Commentaries on Law from 1765–1769* are regarded as the most authoritative British legal text, rape was known as "carnal knowledge of a woman forcibly and against her will." Blackstone cited the injunction made famous by British Chief Justice Lord Hale in 1680 that rape "is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent." If a rape was proven, the punishment was quite severe and sometimes resulted in capital punishment for the offender. The severity of the punishment was given as the reason for the law's encoding of suspicion of a woman's word that she had been raped. Blackstone states: "in order to prevent malicious accusations, it was then the law, (and, it seems, still continues to be so in appeals of rape) that the woman should immediately after, go to the next town, and there make discovery to some credible persons of the injury she has suffered; and afterwards should acquaint the high constable of the hundred, the coroners, and the sheriff with the outrage" (Blackstone, Book I, 1765–1769).

Of all regulations of gender-motivated violence, rape law has proven to be the most resistant to legal reform, and the historical notions from the seventeenth century are still very much in evidence today. "Although Hale's warnings are no longer a part of the court process, rape proceedings are still conducted as if all women tend to lie, or at least become confused about violations of their own body" (Madigan and Gamble 1991:15). Even today in law schools across

the country, students are taught this maxim underlying rape law. Society routinely questions the victim for her lack of control or veracity and fails to accurately question the perpetrator for his lack of control or veracity. Juries are still instructed with Hale's centuries-old warnings. Formally, this principle has been codified in court rules specific to proving rape cases. These rules included (and sometimes still include—formally and informally) fresh complaint rules and the necessity for corroboration through witnesses or physical evidence (Schulholfer 1998:18–19). The fresh complaint rules—which act as a reminder of Hale's expectation of running to the next village—provide that a rape victim is expected to report her rape promptly after the incident. The requirement for prompt reporting assumes that the victim, having undergone the trauma of rape, will be willing and able to report her rape, yet this notion is in tension with the reality of rape victimization. Research has shown that some victims never report their rape; some report only upon being re-victimized, some report months later, some immediately (Herman 1992, 1997).

The FBI, which records the nation's rape statistics, currently defines rape as "carnal knowledge of a female forcibly and against her will" (FBI Uniform Crime Reports 2004), a definition quite similar to that found in Blackstone's *Commentaries* hundreds of years earlier. Most state rape statutes reflect some aspect of these rules. In the recent past, rules that would require the victim to prove her "utmost resistance" have been removed from formal statutory requirements, but still persist in society's expectations of how a rape victim should act. Yet, such an attitude fails to account for the reality of rape perpetration. Given the grave bodily danger that a victim faces during rape, and the fear of being beaten or killed in addition to being raped, many women resist fighting back as a matter of survival. The sexual dimorphism in body size between men and women also makes it unreasonable in many cases to expect a woman to fight back. Further angering a sexually aggressive male can make him increasingly violent and deter a woman from "forcibly" resisting rape to the utmost (Hartman 2008).

The force requirement coupled with the "against her will" language meant that a rape victim had to prove that she did not want to have sexual intercourse with the perpetrator at the time in question. This notion presumes that, unless proven otherwise, she *did* want to have sex with him (MacKinnon 1989:175). This presumption has been criticized by a number of diverse scholars, including one who proposes that exactly the opposite presumption should be held. Stephen Schulhofer compares rape to the following situation: "when a doctor

asks if a patient wants a probe inserted into his rectum to check for tumors, we do not assume that the patient's silence indicates consent. The patient's willingness must be made explicit. And even then, because the doctor has a special duty of disclosure, the patient's permission is not sufficient until he considers the risks and gives 'informed consent.'" When considering the importance of consent to any invasion to a human's bodily integrity, the presumption should be, as we recognize in other cases, that the intrusion was not wanted. By assuming the opposite, that consent is given unless explicitly proven otherwise, the law suggests that women's bodies are readily available for the use and abuse of others.

Unlike any other crimes, victims of rape who decide to report the attacks that they have suffered are forced to go through a series of police, judicial, medical, and mental health proceedings, which are often described as being worse than the rape itself. Because of the humiliation and degradation that rape victims experience in these proceedings, it is not surprising that they have become known as the "second rape" (Madigan and Gamble 1991). Madigan and Gamble have described this "second rape" as "the act of violation, alienation, and disparagement a survivor receives when she turns to others for help and support. It can occur only if she has been brave enough to tell someone of her assault." They note that the only way to prevent the second rape is by "[k]eeping the [initial] rape a secret" (Madigan and Gamble 1991). Rates of rape underreporting indicate that this is exactly what most rape victims do.

Domestic Violence and Marriage Laws

According to Angela Browne, the first law of marriage (credited to Rome's mythical founder, Romulus) required married women "as having no other refuge, to conform themselves entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions" (Browne 2000). Although centuries old, this statement has resonance in today's society. The idea of women being required "to conform themselves entirely to the temper of their husbands" is evident in the current dynamics of domestic violence, where the violence serves as the punishment for women's failure to obey the behavioral dictates of their intimate partners.

"Statutes of chastisement" indicate patriarchal support for the acceptability of wife-beating. According to Blackstone's *Law Commentaries,* chastising one's

wife was not only regarded as a right, but as a husband's duty, for "for as the husband is to answer for her misbehavior, the law thought it reasonable to entrust him with this power of chastisement, in the same moderation that a man is allowed to correct his apprentices or children. . . . The civil law gave the husband the same, or a larger, authority over his wife: allowing him for some misdemeanors, to beat his wife severely with scourges (whips) and cudgels (stout sticks with rounded heads) . . . for others only moderate chastisement" (Blackstone's *Commentaries,* Book I).

The most significant lesson from legal history is the difference between a husband killing his wife and a wife killing her husband. Blackstone describes this legal difference as follows:

> Husband and wife, in the language of the law, are styled baron and femme . . . if the baron kills his femme, it is the same as if he had killed a stranger or any other person, but if the femme kills her baron, it is regarded by the laws as much more atrocious crime, as she not only breaks through the restraints of humanity and conjugal affection, but throws off all subjection to the authority of her husband. And therefore the law denominates her crime a species of treason, and condemns her to the same punishment as if she had killed the king. And for every species of treason . . . the sentence of the woman was to be drawn and burnt alive. (Blackstone's *Commentaries,* Book I)

The disproportionate punishment meted to a woman for rising up against her king reflects the patriarchal agreement that the man is "king of his castle" and that the state will most severely punish a challenge to his authority. The statutes of chastisement indicate that a man's reign has been specifically delegated to him by the state. This delegation of regulatory responsibility to the husband leaves unfettered his discretion to rule his wife as he sees fit, with checks and balances only for extreme violence. As such, violence and rule of law produce what can be described as "controlled violence"—much like sports such as boxing, where violence is permitted and encouraged, provided it is not excessive or results in death (Balfour 2008).

It is against this background that wife-beating has gone from a legal entitlement or duty in the eighteenth century as described by Blackstone to a legal prohibition in the late nineteenth century. As late as 1824, the Mississippi Supreme Court upheld the right of the husband to chastise his wife, but only to a "reasonable" degree. The Court in that case invoked a deep reluctance to engage itself in matters of domestic relations ". . . in order to prevent the de-

plorable spectacle of the exhibition of similar cases in our courts of justice. . . . To screen from public reproach those who may be thus unhappily situated, let the husband be permitted to exercise the salutary restraints in every case of misbehaviour, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned" (*Bradley v. State,* 1 Miss. 156, Supreme Court of Mississippi, 1824).

The nineteenth-century feminist movement brought about legal reforms that challenged the chastisement prerogative of the husband. Although these reforms resulted in some measure of status improvement for wives, they still did not achieve equality with their husbands (Siegel 1996). Instead, the challenge led to a change in justificatory rhetoric, in which judges adopted a privacy consideration and asserted that the law should not interfere in cases of wife-beating to protect marital harmony (Siegel 1996). Siegel refers to this process as "preservation through transformation" referring to preservation of the underlying discriminatory behavior through a transformation of the public rationale given to explain its existence or tolerate it under the law (Siegel 1996). Privacy rhetoric became the cloak behind which patriarchal violence continued at home unchecked by the law.

Thus, in both rape and domestic violence (including homicide), our legal rubric is based on centuries-old notions of male entitlement to control female sexuality. Women are still disbelieved when they bring forth rape charges (Torrey 1991), are overwhelmingly victims of domestic violence (Bureau of Justice Statistics 2001), and are punished disproportionately for killing their abusive spouses (Jones 1996).

Third Proposal: The theory of "patriarchal violence" explains the variability in forms and severity of male sexual coercion as that which is necessary to preserve a patriarchal social order.

Several chapters in this volume demonstrate the variability of human male sexual coercion and show that one function is to promote a male's reproductive success. However, consistent with Smuts's prediction that humans "exhibit more extensive male dominance and male control of female sexuality than is shown by most other primates" (Smuts 1995:1), men also exhibit more extreme forms of sexual violence against women; some of these do not appear to be functional with respect to reproductive success. Here I discuss two types of male sexual violence that seem to be unique to the human species: gang rape

and domestic violence homicide. Both were at issue in two landmark Supreme Court cases that addressed women's rights to challenge gender-based violence. These cases demonstrate how weak the American legal system can be in protecting women from sexual violence, and support my proposal that sexual coercion promotes the patriarchal order. I consider the two types of violence in turn.

Gang Rape

> Cross-cultural research demonstrates that whenever men build and give allegiance to a mystical, enduring, all-male social group, the disparagement of women is, invariably, an important ingredient of the mystical bond, and sexual aggression the means by which the bond is renewed. As long as exclusive male clubs exist in a society that privileges men as a social category, we must recognize that collective sexual aggression provides a ready stage on which some men represent their social privilege and introduce adolescent boys to their future place in the status hierarchy. (Peggy Reeves Sanday, *Fraternity Gang Rape,* 19–20 [1990])

Gang rape presents the most obvious, and the only commonly recognized, example of men conspiring to violently harm women (Schaffer 2006). Gang rape is a crime in which the importance of male bonds is clearly visible. It is the apotheosis of the male-male alliances that form the basis of patriarchy in that the men demonstrate and enact male supremacy over women. An analysis of gang rape cases that were heard in the appellate courts in 2005 and the first half of 2006 revealed that "every single one of the rapes featured groups of men bonding with one another by committing violence against women. While the twisted details of these appellate gang rape cases differ, the cases' basic contours are identical every time. All of the cases center on all-male groups of perpetrators, whether formal gangs or informally affiliated friends, who consciously conspire to harm female victims as a unifying amusement" (Schaffer 2006:1–6).

The South American Mehinaku tribe, where women are systematically punished by gang rape for simply looking at flutes used in certain male rituals, provides a poignant example of a patriarchal society that uses gang rape to communicate loyalties between males at the expense of fracturing alliances males have with females (Smuts 1996, citing Gregor 1990:493). These alliances begin to form at an early age when boys and girls mimic the

gang rape scenario in games of pretend (Smuts 1996 citing Gregor 1980: 114). For the Mehinaku the gang rape has become a methodical reaction to female insubordination.

Although different theories might explain the cultural significance of gang rapes, bonding between the males is widely concluded to be a major driving force. In gang rape cases in the United States, one man often has sex with his girlfriend and then offers to share her with his friends, as if she is a tradable commodity owned by the male. Pornography, commonly used as a male bonding medium among fraternity members (Sanday 1990:34–35), has reflected a significant increase of gang rapes in the past few years (Jensen 2004). This may well contribute to the normalization of gang rapes and the proliferation of such cases in recent years (Schaffer 2006:1–6).

Researcher Robert Jensen has studied the increasing violence in mainstream pornography, as well as the increase in the demand for "double penetration" scenes in which two men simultaneously anally and vaginally penetrate a woman (Jensen 2004:9). The degradation of the female and her reduction to "three holes and two hands" in pornography is a recurrent and necessary theme (Jensen 2004:12). In his study of mainstream pornographic videos, Jensen found the "Gang Bang Girl" video, which involved a football coach chiding his team that he did not want to lose with a bunch of "fags," so the men were to prove their masculinity by all having sex with Kimberly, one of the cheerleaders. This genre was so popular that at the time he published his findings, there were 34 videos made in the series (Jensen 2004). Multi-perpetrator sexual assaults on campus have become so prevalent that educational institutions receiving federal funding under the Violence against Women Act have been advised by the Department of Justice to institute specific training on prevention (Rosenfeld 2007).

Domestic Violence Homicide

Evolutionary perspectives on domestic violence homicide, or uxoricide (wife-killing), as well as studies in the domestic violence field, converge on the finding that sexual jealousy and possessiveness are central motivating factors present in these cases. But killing one's intimate partner seems counterintuitive to reproductive fitness. Killing a female intimate prevents her from being either a reproductive or a labor resource for the household. However, the theory of patriarchal violence contends that even though domestic violence homicide

might seem counterproductive, it contributes to the overall strength of the patriarchal order. It considers the male-male alliance implications of domestic violence homicide outside of the implications for the individual couple.

Similar but distinguishable from the male entitlement continuum is the theory that male sexual proprietariness is a driving force behind coercive violence against wives (Wilson and Daly, Chapter 11 in the present volume). Male sexual jealousy and proprietariness motivate over 80% of wife-killing cases (Wilson and Daly 1998). This is a key insight and comports well with other work in the field of domestic violence homicide. Jacqueline Campbell's studies on domestic violence homicides and attempted homicides enabled her to develop a danger assessment tool for use in domestic violence cases. The danger assessment is a list of lethality indicators that were commonly present in these cases. Sexual jealousy, possessiveness, and threats to kill a woman if she leaves the abuser are key indicators of a potential homicide (Campbell 2003; Adams 2007).

According to Wilson and Daly (1992a):

> Because human male fitness is and always has been limited primarily by access to the reproductive efforts of fertile women, we have proposed that male sexual proprietariness is an evolved motivational/cognitive subsystem of the human brain/mind. . . . In proposing that men take a proprietary view of women's sexuality and reproductive capacity, we mean that men are motivated to lay claim to particular women as songbirds lay claim to territories. . . . But proprietariness has further implication of a sense of entitlement, which if not unique to our species, is at least uniquely highly developed. Trespass against one's property provokes not only a hostile response to the trespasser, but moralistic feelings of aggrievedness and indignation as well . . . moral indignation against those who violate one's property rights is, arguably, a human universal and an aspect of our evolved psychology that would be pointless without the social complexity entailed by coalitions, reputations and politics.

The concept of male sexual proprietariness usefully focuses on the idea of women as property, reflected in the legal history of male sexual coercion. It also acknowledges the possibility of the larger social implications of uxoricide, beyond the question of individuals being motivated by reproductive concerns. Thus Wilson and Daly (Chapter 11 in this volume) mention the "social complexity entailed by coalitions, reputations and politics," while Rodseth and Novak (Chapter 12) observe that "wife abuse became more of an arena for men to

demonstrate or jockey for political power (citation omitted) . . . once again, male aggression against women seems to involve, if not require, a masculine audience."

A critical political and social context of domestic violence homicide is that it sends a clear message to all victims of domestic violence: it tends to further silence and subordinate battered women. Women who are in abusive relationships get the message that murder is a possibility; batterers may use the information intentionally to intimidate and threaten their victims. Batterers are known to use news of domestic homicides as specific examples of what could happen to their victims.

For example, when O. J. Simpson was accused of murdering his wife Nicole Brown Simpson and her friend Ron Goldman, men around the country threatened to "O. J" their female partners. When Carol Cross was murdered by her longtime abusive partner from whom she had recently obtained an order of protection from court, men in Lewiston (Maine) used the murder as a threat to their own victims: "newspaper articles about the murder . . . leaving them around the house threatening that the women could end up like Cross if they dare to leave." (*Boston Globe,* September 1999; Abused Women's Advocacy Program 1999). Although the "official" number of honor killings in Turkey was 43 victims in 2004, one survey indicates that fully 66% of female respondents in eastern Turkey fear that they could become victims of honor killings (Women Living Under Muslim Laws 2001:11–12). The symbolic meaning of femicide is not lost on either other batterers or their victims.

The Supreme Court Rulings on Gang Rape and Domestic Violence Homicide

Out of several thousand petitions, the Supreme Court selects less than 100 cases for review each year. Although I am not claiming any conspiratorial action on the part of the highest court in the United States, it is remarkable that the two most important cases concerning the rights of women to challenge male sexual violence involved a gang rape and domestic violence homicide.

The first case, *United States v. Morrison,* (120 S. Ct. 1740 (2000)) concerned the constitutionality of a provision of the federal Violence against Women Act (VAWA), which created a right to be free from gender-motivated violence. The Civil Rights Remedy, as it became known, was the product of four years

of extensive congressional testimony that included unanimous approval from the National Association of Attorneys General and testimony from 38 state attorneys general stating that "the 'current system for dealing with violence against women is inadequate,' . . . it was against this record of failure at the state level that the Act was passed."

Very briefly, the following facts were set forth in *Morrison.* Christy Brzonkala alleged that she was gang raped by two football players at the Virginia Technical Institute University when she was a freshman. The attack occurred in her dorm room about a half hour after she met them. The two assailants took turns raping her, stating that she "better not have any diseases" because they refused to use condoms. In the months following the assault, one of the assailants stated publicly in the cafeteria that "he liked to get girls drunk and f—— the s—— out of them." Although the Court recognized that the rape would qualify as "gender-motivated violence," it held that the federal courts were not the proper forum to address the problem of such violence. Echoing nineteenth-century jurisprudence around domestic violence, the late Chief Justice William Rehnquist had publicly objected to the Civil Rights Remedy before it was passed, expressing concern that the statute "could involve the federal courts in a whole host of domestic relations disputes" (Siegel 1996). In a sense, the decision represents federal nonintervention in the matters of the state in a homologous way to male judges not wanting to tell another man what he can do or not do in his own home. Indeed, "one of the primary goals of supporters of the Act was to overcome centuries of assumptions about the public and private spheres that have operated to deny women full equality under the law" (Goldfarb 2000).

Although a full discussion of this decision is beyond the scope of the current chapter, the salient point is that the Supreme Court, without overtly recognizing the plight of abused women, struck down the right to be free from gender-motivated violence. It found that the remedy exceeded the limits of congressional power to regulate under the Commerce Clause. To regulate under this Clause, Congress must find a substantial effect on interstate commerce, which it explicitly did in this case. Finding violence against women to be insufficiently related to interstate commerce, the Court found no federal jurisdiction. Instead, it found that the appropriate forum for relief would be the state court.

The second case, *Town of Castle Rock v. Gonzalez* (2005: 125 S. Ct. 2796), arose after Simon Gonzales, the estranged husband of Jessica Gonzales, kid-

napped and murdered their three young daughters. Ms. Gonzales called the police upon learning that her daughters were missing. Despite having an order of protection against him and a history of threatening behavior that was known to the police, the police ignored multiple calls from Jessica over the course of the evening, repeatedly telling her to call back if Simon did not return the children. After midnight when Simon had still not returned the children, she went to the police station and filed a report. The officer took the report and then went out to dinner. In the early hours of the next day, Simon opened fire on the Castle Rock Police station. The officers returned fire and killed him. The three girls were found already murdered in Simon's truck, with a gun he had purchased that night.

The Court ruled that Jessica Gonzales had no right to enforcement of her order of protection. Justice Scalia, writing for the majority, noted that while he usually defers to the state's judgment in passing legislation, Colorado could not have meant to pass a statute mandating police to enforce orders of protection. The decision overrode the legislative history and intent of the statute, which provided specifically for mandatory action to counteract the traditional inaction of police departments in response to domestic violence. The decision restored police discretion to do nothing in response to pleas from an abused woman to enforce a state-granted order of protection.

The jurisdictional questions in both cases are important. In the case involving federal legislation, the Court said that women should go to the state for relief. In the case involving the state statute, the Court overrode the state legislature and invalidated the statute. In both *Morrison* and *Castle Rock,* the Court professed to care about women's rights but struck down the very basis on which women could assert them. The result is the upholding of a patriarchal right to rule at home and to use male sexual coercion and violence. Catharine MacKinnon (MacKinnon 2000:175) best describes this patriarchal agreement and its translation into law:

> [W]omen are the least equal at home, in private; they have had the most equality in public, far from home. It is in the private, man's sovereign castle, where most women remain for a lifetime, where women are most likely to be battered and sexually assaulted, and where they have no recourse because the private, by definition, is inviolable and recourse means intervention. For physically and sexually violated women, going public with their injuries has meant seeking accountability and relief from higher sovereigns, men who have power over the men who abused them because they are above, removed

> from, hence less likely to be controlled by those abusers. . . . One way to describe this dynamic is to observe that men often respect other men's terrain as sovereign in exchange for those other men's respect for their own sovereignty on their own terrain. As a result of such balances that men with power strike among themselves, represented in the shape of public institutions, men have the most freedom at home, and women gain correspondingly greater equality, hence freedom, the further from home they go.

Fourth Proposal: The potential of female-female alliances to overcome male sexual aggression would be strengthened by confronting directly the ways in which male-male alliances fracture female bonding.

In both rape and domestic violence, male-male alliances function to fracture the formation of female-female alliances in profoundly important ways. Because of the prevalence of male sexual violence, women learn to seek male protectors as the first line of defense. Such learned dependence might blind women from recognizing their own collective power to defend against male aggression. In rape cases, women divide against themselves by subscribing to rape myths that blame the victim rather than the perpetrator. In domestic violence cases, abusers typically isolate their victims as a tactic to increase control over them and limit their ability and willingness to seek help outside the home.

Rape myths are powerful forces that keep victims from obtaining justice and redress for rape. These include the idea that rape is sex, that a woman changed her mind, and that she was "asking for it" by sexually provocative behavior or by being in the wrong place. For women, to blame another woman for provoking her own attack preserves the idea that rape is something within her control rather than something for which she is at risk. This may explain why rape myths are still so prevalent today, as they "protect non-victims from feeling vulnerable" (Benedict 1992:18). Victim blaming represents an important fracture of female-female alliances, as women try to distance themselves from other women who are raped in this attempt at self-protection. Furthermore, the belief that a woman can provoke her own rape assumes that men cannot control—or are not responsible for controlling—their own sex drives. Focusing on the rape victim rather than the perpetrator prevents women from recognizing the systemic and pervasive occurrence of rape.

In domestic violence cases, isolation is a well-known tactic of batterers. This tactic is described as "Controlling what she does, who she sees and talks to,

what she reads, where she goes; limiting her outside involvement; using jealousy to justify actions" (Domestic Abuse Intervention Project: Duluth:1989). Isolating a victim from her female kin and other alliances further increases the batterer's power over her. An example of this isolationist behavior by male chimpanzees was described by Goodall (1986). Males sometimes attempt to isolate a female from other males by forcing her, through violence or threats of violence, into accompanying him to a remote part of their community range. If she tries to call out or flee, he may beat her. On these "consortships" the male has exclusive sexual access to the female and may impregnate her (Tracy and Crawford 1999:35).

This chimpanzee behavior is strikingly similar to the behavior of batterers who commonly rip the telephone out of the wall to prevent the woman from calling for help. This tactic is so widespread that some order of protection forms now provide a box to check for restitution if the batterer has damaged the victim's cell phone.

Preventing the female from seeking help in this way punishes the victim both for seeking assistance from the legal system and for trying to access or form female alliances that might provide protection from further abuse. Forms of male sexual coercion that prevent communication of the abuse to others can be seen to directly fracture the formation of female alliances.

However, bonobos offer an inspiring model of strong female-female alliances (Wrangham and Peterson 1996). The lesson of bonobos—that male sexual coercion can be eliminated through collective physical resistance—could inspire women to form coalitions that engage in some element of physical resistance to male domination. For example, these could take the form of women-led law enforcement agencies created and staffed primarily by women.

Bonobo females seem to operate from an understanding that if one can be aggressed upon, than all or any could be as well. This lesson could be particularly applicable to prostitution. The high levels of posttraumatic stress and sexual violence suffered by prostituted women are devastating (Farley 2003). Moreover, in the United States the vast majority (around 75%) of women who enter prostitution were victims of child sexual abuse and became prostituted between the ages of 14 and 17 (Center for Prostitution Alternatives 2003). Female-female alliances that recognize female vulnerability to male sexual coercion and the collective ability to physically resist should therefore be encouraged. Such alliances could alter the patriarchal structure of our society.

Conclusions

Evolutionary perspectives deepen our understanding of the dynamics of male sexual coercion and thus our ability to understand the law's potential to disrupt it. Such critical knowledge informs this chapter in important ways, as described in this section.

The proposals set forth in this article suggest several related conclusions.

1. Law should address male sexual coercion as a prevalent, rather than an aberrant, behavior, whatever its functions and origins might be.
2. Law enforcement should recognize the male-male alliances that perpetuate male dominance if it is serious about disrupting the occurrence of such violence.
3. Understanding the function of patriarchal violence can help legal policymakers develop more meaningful responses to male sexual coercion and promote the rights of women to be free from such violence, promoting the thriving of all.
4. The potential of female-female alliances to stop male sexual coercion could be more fully realized by understanding the way male alliances fracture female coalitions; addressing the prostitution of women by men is recommended as an effective campaign to attack the root of patriarchal violence.

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