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A Scary Tale: Battered Women Who Kill Their Abusers

VICTORIA MIKESELL MATHER*

During the 1970's, public attention in the United States and Great Britain was drawn to the problem of the battered and abused spouse.¹ People gradually became aware that the fairy tale story of romance, of meeting your prince and living happily ever after was exactly the opposite experience for large numbers of women, including many members of the upper economic and social classes.

In the late 1970's and early 1980's, the attention of the legal and psychological community specifically focused on the issue of the battered woman who killed her abuser, arguably in self defense.² At

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1. The battered women's movement is said to be founded by British author and activist, Erin Pizzey, who established the first battered woman's shelter in 1971. DEL MARTIN, *BATTERED WIVES* 6 (1976). Several books discussing the plight of battered women were published during the 1970's and early 1980's. See, e.g., *BATTERED WOMEN* (Donna M. Moore ed., 1979); *BATTERED WOMEN: A PSYCHOSOCIOLOGICAL STUDY OF DOMESTIC VIOLENCE* (Maria Roy ed., 1977); R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES* (1979); DAVID FINKELHOR ET AL., *THE DARK SIDE OF FAMILIES* (1983); JENNIFER B. FLEMING, *STOPPING WIFE ABUSE* (1979); MARTIN, *supra*; ERIN PIZZEY, *SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR* (1974); MARIA ROY, *THE ABUSIVE PARTNER: AN ANALYSIS OF DOMESTIC BATTERING* (1982) [hereinafter ROY, *THE ABUSIVE PARTNER*]; SUSAN SCHECTER, *WOMEN AND MALE VIOLENCE* (1982); DANIEL SONKIN ET AL., *THE MALE BATTERER: A TREATMENT APPROACH* (1985); MURRAY STRAUS ET AL., *BEHIND CLOSED DOORS: VIOLENCE IN THE AMERICAN FAMILY* (1980); LENORE E. WALKER, *THE BATTERED WOMAN* (1979) [hereinafter WALKER, *BATTERED WOMAN*]; LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* (1984) [hereinafter WALKER, *BATTERED WOMAN SYNDROME*].

2. In addition to the books reviewed here, see, e.g., *WOMEN'S SELF-DEFENSE CASES* (Elizabeth Bochnak ed., 1981); Clement Brown, *Expert Testimony on Battered Woman Syndrome: Its Admissibility in Spousal Homicide Cases*, 19 SUFFOLK U. L. REV. 877 (1985); Phyllis L. Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense*, 8 HARV. WOMEN'S L.J. 121 (1985); Loraine P. Eber, *The Battered Wife's Dilemma: To Kill or to be Killed*, 32 HASTINGS L.J. 895 (1981); M. Julianne Leary, *A Woman, a Horse, and a Hickory Tree: The Development of Expert Testimony on the Battered Woman Syndrome in Homicide Cases*, 53 UMKC L. REV. 386 (1985); Victoria M. Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense, and Expert Testimony*, 39 MERCER L. REV. 545 (1988); Marilyn H. Mitchell, *Does Wife Abuse Justify Homicide?*, 24 WAYNE L. REV. 1705 (1978); Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623 (1980); Roberta K. Thyfault, *Self-Defense: Battered Woman Syndrome on Trial*, 20 CAL. W. L. REV. 485 (1984); Lenore E. Walker et al., *Beyond the Juror's Ken: Battered Women*, 7 VT. L. REV. 1 (1982) [hereinafter Walker et al., *Beyond the Juror's Ken*]; Colleen Cacy, Comment, *The Battered Woman's Syndrome Defense*, 34 U. KAN. L. REV. 337 (1985).

Some other works of interest in this area are two books cited by Angela Browne on "partners killing partners." PETER D. CHIMBOS, *MARITAL VIOLENCE: A STUDY OF INTERSPOUSAL HOMICIDE* (1978); JANE TOTMAN, *THE MURDERESS: A PSYCHOSOCIAL STUDY OF CRIMINAL HOMICIDE* (1978). Two other books on women and crime are FREDA ADLER, *SISTERS IN CRIME* (1975), and LEE H. BOWKER, *WOMEN AND CRIME IN AMERICA* (1981).

least twenty appellate court cases decided during 1989-1990 involved a battered woman who killed her abuser.³ During the period 1987-1989, four books were published on this subject: *Terrifying Love*, by Lenore E. Walker;⁴ *Justifiable Homicide*, by Cynthia K. Gillespie;⁵ *When Battered Women Kill*, by Angela Browne;⁶ and *Battered Women Who Kill*, by Charles Patrick Ewing.⁷

Most of the writing by legal and other scholars in the area tends to focus on the end result: What do we do with the batterer who abuses his mate, and what do we do with the battered woman who has killed her abuser?⁸ Some of the earlier scholarly efforts dealt with attitudes and institutional policies of police, prosecutors, judges, social workers, juries, and the general public in dealing with battered women and abusive men.⁹ Substantial changes in many of these policies and attitudes have resulted.¹⁰ However, the focus remains on cleaning up the mess after the situation is out of control, perhaps even after

3. See, e.g., *People v. Aris*, 264 Cal. Rptr. 167 (Cal. Ct. App. 1989), *appeal denied*, Cal. LEXIS 906 (Cal. Mar. 1, 1990); *People v. Hare*, 782 P.2d 831 (Colo. Ct. App.), *cert. granted*, 1989 Colo. LEXIS 555 (Colo. Nov. 27, 1989), *and aff'd*, 800 P.2d 1317 (Colo. 1990); *Chapman v. State*, 386 S.E.2d 129 (Ga. 1989); *Nunnelley v. State*, 373 S.E.2d 755 (Ga. 1988); *Motes v. State*, 384 S.E.2d 463 (Ga. Ct. App. 1989); *Pugh v. State*, 382 S.E.2d 143 (Ga. Ct. App. 1989); *People v. Jackson*, 535 N.E.2d 1086 (Ill. Ct. App.), *appeal denied*, 541 N.E.2d 1111 (Ill. 1989); *State v. Stewart*, 763 P.2d 572 (Kan. 1988); *Commonwealth v. Craig*, 783 S.W.2d 387 (Ky. 1990); *State v. Moore*, 568 So. 2d 612 (La. Ct. App. 1990); *State v. Hennum*, 441 N.W.2d 793 (Minn. 1989); *State v. Anderson*, 785 S.W.2d 596 (Mo. Ct. App. 1990); *State v. Briand*, 547 A.2d 235 (N.H. 1988); *State v. Myers*, 570 A.2d 1260 (N.J. Super. Ct. App. Div. 1990); *State v. Norman*, 378 S.E.2d 8 (N.C. 1989); *State v. Clark*, 377 S.E.2d 54 (N.C. 1989); *State v. Koss*, 551 N.E.2d 970 (Ohio 1990); *State v. Furlough*, 797 S.W.2d 631 (Tenn. Crim. App. 1990); *State v. Hanson*, 793 P.2d 1001 (Wash. Ct. App.), *appeal denied*, 803 P.2d 325 (Wash. 1990); *Griffin v. State*, 749 P.2d 246 (Wyo. 1988).

4. LENORE E. WALKER, *TERRIFYING LOVE* (1989) [hereinafter WALKER, *TERRIFYING LOVE*].

5. CYNTHIA K. GILLESPIE, *JUSTIFIABLE HOMICIDE* (1989).

6. ANGELA BROWNE, *WHEN BATTERED WOMEN KILL* (1987).

7. CHARLES P. EWING, *BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION* (1987).

8. See, e.g., sources cited *supra* notes 1-2 and 4-7, as well as the four books reviewed herein.

9. See sources cited *supra* notes 1-2; see also JULIE BLACKMAN, *INTIMATE VIOLENCE: A STUDY OF INJUSTICE* (1989); Michael A. Buda & Teresa L. Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. FAM. L. 359 (1984); Sunny Graff, *Battered Women, Dead Husbands: A Comparative Study of Justification and Excuse in American and West German Law*, 10 LOY. L.A. INT'L & COMP. L.J. 1 (1988); Christine Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23; Kathleen Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 WASH. L. REV. 267 (1985).

10. Media coverage of domestic violence has increased. *The Burning Bed*, a television movie based on a true story, see *THE BURNING BED* (CBS/Fox 1986), was widely discussed. FAITH McNULTY, *THE BURNING BED* (1981). Battered women's shelters, common in 1991, were unheard of twenty years ago when Erin Pizzey began the fight to recognize the plight of abused women. MARTIN, *supra* note 1, at 6. Gloria Steinem points out that even the phrase "battered women" is new. GLORIA STEINEM, *OUTRAGEOUS ACTS AND EVERYDAY REBELLIONS* 149, 159 (1983).

someone is dead, rather than on preventing the abuse in the first place. This is a far more difficult problem to grapple with, since it is not capable of resolution by a change in a legal test or standard of proof, or even by mere enforcement of existing laws.

This focus on the end result tends to be true of the feminist scholarship in this area. The battered woman's movement is a feminist cause and has long been identified as such.¹¹ This makes sense, since it is basically a woman's issue in that it disproportionately affects women and, indirectly, children, and that it was not treated as a serious or important problem until very recently. However, it is interesting that most of the literature in this area focuses almost exclusively on the male-female dichotomy in law and society and virtually ignores the pervasive effect of violence. Violence, I think, is the other half of the equation. In fact, some studies show that women may be abusive to men almost as often as men are abusive to women, although the physical consequences of abuse tend to be less severe for men than for women.¹² Also, women tend to physically abuse their children more than men.¹³

All four books (the Ewing book is somewhat distinctive) take a feminist, or at least revisionist, approach in their recommendations for the legal system in dealing with battered women. This article will review the four books and comment on where the legal system and society stand today on the issues of violence in general and spousal violence in particular. In general, it is my view that although the feminist or revisionist approach is useful, it is only one facet of what we should be evaluating when we deal with family violence issues.

Lenore Walker is a well known authority on the subject of the battered woman syndrome. She has written two other books in this area and has frequently testified as an expert witness for the defense in cases where a battered woman has killed her abuser.¹⁴ Unlike her previous works, *Terrifying Love* goes beyond a compilation of stories told by battered women interviewed by Walker.¹⁵

11. In addition to the feminist perspectives of Browne, Gillespie, and Walker, many other writers in this area are active feminists—for example, Christine Littleton, Del Martin, Susan Schechter, Elizabeth Schneider, and Maria Roy.

12. See ANSON D. SHUPE ET AL., *VIOLENT MEN, VIOLENT COUPLES: THE DYNAMICS OF DOMESTIC VIOLENCE* 45-68 (1987); MURRAY A. STRAUS & RICHARD J. GELLES, *PHYSICAL VIOLENCE IN AMERICAN FAMILIES: RISK FACTORS AND ADAPTATIONS TO VIOLENCE IN 8,145 FAMILIES* 161-65 (1990) [hereinafter STRAUS & GELLES, *PHYSICAL VIOLENCE*].

13. See STRAUS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 247-49.

14. See WALKER, *BATTERED WOMAN*, *supra* note 1; WALKER, *BATTERED WOMAN SYNDROME*, *supra* note 1; WALKER, *TERRIFYING LOVE*, *supra* note 4, at 302-27.

15. See sources cited *supra* note 14.

Walker's book is subtitled *Why Battered Women Kill and How Society Responds*.¹⁶ The book is divided into three sections. The first part, called "Cheating Their Destinies," presents some introductory material and reviews Walker's cycle of violence theory of spousal abuse.¹⁷ She then discusses the psychological concepts of intermittent reinforcement, learned helplessness, and post traumatic stress disorder as they relate to the phenomenon of the battered woman.¹⁸ The first section also contains a chapter on terror—how it is created in the mind of the battered woman, and how it affects her thinking.¹⁹

Part two of the book attempts to explain why a battered woman would kill her abuser.²⁰ Although Walker indicates that, in her experience, there is not a large difference between a battered woman who kills and one who does not, certain factors are more frequently seen in the situation where the woman killed her abuser. These include the severity of the physical and psychological abuse inflicted on her, alcohol or drug use by the batterer, sexual violence, and incest or other danger to children.²¹ She also emphasizes the fact that many battered women are themselves survivors of incest.²²

In the latter sections of part two, and in the last section of the book concerning the legal system and its treatment of the battered woman who has killed, Walker states the central thesis of *Terrifying Love*. She defends the action of a battered woman who has killed her abuser as quite possibly a normal, reasonable and psychologically healthy response to her situation.²³ In contrast to her previous works,

16. WALKER, *TERRIFYING LOVE*, *supra* note 4.

17. *See id.* at 42-47. According to the cycle of violence theory, the parties involved in an abusive relationship continuously go through a three-phase pattern in their interaction with each other. *Id.* at 42. The first phase is called the tension-building phase, and it is characterized by initially minor forms of battering (verbal and physical), which gradually escalate over time until the parties reach phase two—the acute battering incident. *Id.* at 42-43. This is a serious severe beating, which is characterized by the batterers' lack of control during the beating. *Id.* at 43-44. Finally, during the reward phase, the batterer is contrite, loving, generous, and kind to his partner. *Id.* at 44-45.

18. *Id.* at 47-53. Walker finds the concept of learned helplessness particularly applicable to the situation of the battered woman. *Id.* at 50-51. The concept was developed by Martin Seligman, a psychologist at the University of Pennsylvania. *Id.* at 49. He placed dogs in cages and administered electrical shocks at random. *Id.* The dogs eventually became passive and would not leave their cages to escape the shocks even when the doors were left open. *Id.* at 49-50. The dogs had learned helplessness and had to be re-trained to escape the shocks. *Id.* at 50.

19. *Id.* at 64-97.

20. *Id.* at 101-68.

21. *Id.*

22. *Id.* at 152. Walker believes that there may be a connection between early incestuous relationships and the ability of a batterer to attract a woman who was the victim of such a relationship. *Id.* at 152-53.

23. *Id.* at 169-200.

this book reveals a distinctly personal and feminist perspective.

From the feminist viewpoint, Walker argues that the mental health profession has done a great disservice to many of these battered women over the years in diagnosing them as "crazy" or insane when they strike back at their attackers.²⁴ She also points out that some of the stereotypes of women that our society maintains are harmful and unfair to the battered woman.²⁵ Women are expected to be emotionally unstable, and may act in an irrational manner.²⁶ However, society does not expect, and may in fact fear, the woman who dares to use violence or anger in response to the life-threatening behavior of a man.²⁷ Walker also raises the issue of racism and economic discrimination in this context, pointing out that a black or a poor woman is far more likely to be convicted of a crime if she strikes back and kills her abuser.²⁸

Walker includes a critique of the legal system, both generally and as it affects the battered woman.²⁹ The bureaucracy is reluctant to actually harm the batterer, even though he may be harming his mate.³⁰ The family law courts can be slow, protective orders difficult to obtain, and legal representation expensive.³¹ The law is protective of parental rights, and unsupervised visitation of children may be allowed even if abuse is suspected.³² The law of both homicide and self defense tends to follow traditional male notions of strength, of what is a reasonable fear, and when one has a duty to retreat.³³ In this section, Walker borrows from other feminist theories and argues that women think differently than men: Women see events in context and relate

24. *Id.* at 176-78.

25. *Id.* at 188-89.

26. *Id.* at 186. In this regard, Walker specifically stated:

The common cultural image of a woman gone crazy from the pain of a broken heart is so much a part of our folklore that it's natural for people, including people on a jury, to believe that any woman who kills a man she loves does so because of jealousy or out of a sense of betrayal.

This stereotype feeds into the cultural myth of women being biologically predestined to greater emotional instability than men, in more ways than one the "weaker" sex.

Id. at 188.

27. *Id.* Walker stated: "I believe that there is a tacit understanding, in Western culture, that violence lies in the province of male prerogative. A woman adopting 'male' survival techniques is likely to be punished." *Id. See id.* at 218-20.

28. *Id.* at 207-08.

29. *See id.* 235-63.

30. *Id.* at 241.

31. *Id.*

32. *Id.* at 242-43.

33. *See id.* 258-63. *See also* sources cited *supra* note 2.

them in a narrative form, whereas men see events in discrete increments and relate them as factual building blocks.³⁴

Terrifying Love contains several personal anecdotes. For example, when discussing the terror that a battered woman might feel, Walker tells the story of a friend, a female attorney, who was shot by the abusive husband of a battered client.³⁵ This struck a chord for Walker, making her share some of the fear and helplessness that a battered woman must feel, knowing that her abusive mate is always a potential threat, a time bomb waiting to explode.³⁶ Walker says, "And this confirms my belief: [A]s long as there is even one batterer left, none of us are truly safe."³⁷ The most horrific part of the battered woman's situation is that the person most threatening to her is also someone that she may love, or at least shares her life or home with. There is often nothing that the legal system can do to protect such a woman until her situation has reached extremes.

Walker tells of how her working directly as a clinical psychologist with battered women clients eventually led to health problems for her, and to an end of that particular portion of her career.³⁸ In fact, the first and the last chapters are mostly personal accounts of her experiences as a psychologist and an expert witness. This book is distinct from her previous works in that Walker reveals how the entire process of working with and researching the lives of battered women has taken its toll on her in a very personal way.

Walker's latest book is no less interesting than her previous efforts, and the personal stories of women who have actually lived through the abusive relationships (which Walker used more extensively in her previous books) are still very compelling. *Terrifying Love* demonstrates the transformation of one female clinical psychologist into an ardent feminist advocate for non-violence. Walker indicates that she wrote the book not only to inform the public about the problems of abused women, but also "in the hope that some day violence . . . will never again be inflicted on any human being, anywhere."³⁹ Although her vision is ambitious, I do think books such as her's serve a critical function. Only by reading story after story about such severely abused women will those who do not have first hand experience in this area begin to be aware of how serious and

34. WALKER, *TERRIFYING LOVE*, *supra* note 4, at 255-58. See CAROL GILIGAN, *IN A DIFFERENT VOICE* (1982).

35. WALKER, *TERRIFYING LOVE*, *supra* note 4, at 92-97.

36. *Id.*

37. *Id.* at 97.

38. *Id.* at 253-55.

39. *Id.* at 5. Walker also believes that the need to abolish all violence is at the very heart of the feminist cause. *Id.*

how widespread the problems are, and to care about the people involved.

For example, when I was working on this article, I had my research assistant find and summarize recent cases on the issue of battered women who killed their abusers and then claimed self-defense.⁴⁰ During the process of summarizing them, he later told me that he was having nightmares about the cases, and that his wife would sometimes have to awaken him in the middle of the night. While I certainly was sorry that his sleep was disrupted, I did feel that, as a result of this exposure, there was one more person who would probably never take the issue of battered women for granted. As another example, in her book Walker recalls giving a talk at a woman's prison.⁴¹ She was nervous, and in order to break the tension, she asked the audience about abuse in their families.⁴² Almost every woman present indicated that she had experienced or witnessed abuse first hand.⁴³ At least one of my teaching colleagues found this to be amazing when I recounted the story. I must say that it did not surprise me, as I have researched this area and am more aware of just how widespread abuse is in our society. I just took it for granted.

On the other hand, my main criticism of Walker's book is that she defends the actions of each and every battered woman she writes about as being reasonable reactions to the phenomenon of being abused. I can understand why she takes this view, since she has worked closely with battered women and studied the patterns and cycles of abuse for so many years. It certainly has been a radicalizing experience for her, but Walker's mostly sympathetic view of the battered woman's violent actions toward an abusive man is bound to repulse those who are less involved with the "cause" of battered women.

Cynthia K. Gillespie's book, *Justifiable Homicide*, focuses more closely on the legal, rather than the psychological, aspects of the situation where a battered woman kills her abuser. Not surprisingly, the book is subtitled: *Battered Women, Self-Defense, and the Law*.⁴⁴ Unlike Walker, Gillespie is an attorney. She indicates in her preface that she became interested in the issue of battered women who kill their abusers in self-defense several years ago, when she wrote a brief defending a woman who killed her abusive stepson.⁴⁵ Despite the focus on the legal system, Gillespie still maintains the humanity and

40. See cases cited *supra* note 3.

41. WALKER, *TERRIFYING LOVE*, *supra* note 4, at 230.

42. *Id.* at 230-32.

43. *Id.*

44. GILLESPIE, *supra* note 5.

45. *Id.* at vii-viii.

the horror of the battered woman's situation by using the anecdotal technique throughout the book.

Gillespie has a distinctly feminist viewpoint in her work. She believes that the problems that the battered woman encounters are the result of the masculine assumptions that dominate the law of the United States, as well as "our society's ambivalent and biased attitudes about women and its acceptance of violence against them."⁴⁶ Her argument is that, although the law of self-defense is neutral on its face, it is not applied fairly to men and women who act in self-defense.⁴⁷

In the introductory chapter, she outlines some of the legal problems encountered by battered women in general and, more particularly, those who have killed their batterers. The problem of pervasive sexism is emphasized. Gillespie argues that our society simultaneously deplors and excuses violence against women but never really admits that a woman might need to use deadly force to protect herself:

A woman who wields a deadly weapon, even to defend herself, presents a deeply disturbing image. Our prevailing idea of women's true nature is that they are nurturers and life-givers, not life-takers. There is something that strikes us as obscene, against nature, or unholy about a woman who kills, that goes way beyond the illegality or even the immorality of her act. It shakes some of our most deeply held cultural stereotypes to their roots.⁴⁸

The focus in chapter one centers on the sexist and stereotyped attitudes of the police (who Gillespie characterizes as sometimes complacent, careless or vindictive); the prosecutors (overly zealous and self-interested, in Gillespie's view); defense lawyers (who may give bad advice); and judges (who may share the same prejudices as the rest of the legal society).⁴⁹

Gillespie then proceeds to attempt to prove her two-part thesis.⁵⁰ First, she describes how the law itself is permeated with male concepts and attitudes. For example, in the second chapter, called "A Law For Men," she gives a very complete and sometimes horrifying discussion of the history of the law of self-defense from 1066 in England to the present in the United States.⁵¹ This chapter includes information about the role and the rights of women in medieval times and in the early years of United States history with regard to self-defense. For

46. *Id.* at xi.

47. *Id.* at xi-xiii.

48. *See id.* at 12.

49. *Id.* at 13-30.

50. *Id.* at xi.

51. *Id.* at 31-92.

example, in medieval times a woman was subject to her husband as her baron, or lord.⁵² To kill one's husband was to commit treason, and was punishable by being burned at the stake.⁵³ American law did not limit a man's right to beat his wife until the 1960's.⁵⁴

Gillespie then proceeds to a description of how the law in action operates to discriminate against women in the area of self defense. This is a common theme among feminists and legal writers when discussing the claim of self-defense raised by a battered woman in a homicide case.⁵⁵ Gillespie specifically addresses the legal issues of women's perceptions of the seriousness of the threatened harm, the imminence of harm, and the duty to retreat in the context of a self-defense claim.⁵⁶

The "heart" of the book can be found in the chapters where Gillespie discusses the doctrines of reasonableness as it applies to women generally and as it applies in the case of the battered woman.⁵⁷ In Gillespie's view, the question of reasonableness, although neutral on its face as a legal doctrine, is a masculine concept.⁵⁸ In our analysis of what is reasonable, society reveals its deepest fear, ambivalence and prejudice about violence against women and women who are violent.⁵⁹ In fact, Gillespie voices doubts about whether a jury would ever find it to be reasonable or rational for a battered woman to kill her mate in self-defense.⁶⁰ One of these chapters also contains an

52. *Id.* at 37.

53. *Id.*

54. See ELIZABETH H. PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* (1987) (a thorough treatment of family violence in the United States).

55. GILLESPIE, *supra* note 5, at 50-92. See sources cited *supra* note 2.

56. GILLESPIE, *supra* note 5, at 50-92.

57. *Id.* at 93-156.

58. *Id.* at 98-99.

59. *Id.* at 94.

60. *Id.* Specifically, Gillespie stated:

The question of reasonableness is the point at which our society's ambivalence about violence against women and all of our collective prejudices and stereotypes about women who are victims of male violence are apt to be injected into the jury's deliberations. Every juror enters the jury box with deeply held, if unconscious, ideas about human nature and how reasonable people behave and about marriage and the proper roles of men and women within it. These beliefs, and many others (as well as individual jurors' own life experiences) will naturally color the way the jury evaluates the reasonableness of a woman defendant's claim of self-defense. A juror who shares the old stereotype of women as irrational, emotional, inherently unreasonable creatures will not be receptive to a woman's argument that what she did when she took someone's life was reasonable. A juror who accepts the widespread myths—that battered women are masochists who want to be hurt or nagging shrews who drive their long-suffering mates to violence—will not be inclined to find any defense against such "invited" beatings reasonable. A juror who has grown up with our society's centuries-old conspiracy of silence about domestic violence, and cannot

interesting and lengthy discussion of how sex stereotypes in our society begin in the very early years of childhood and continue into adult life.⁶¹ For example, studies show that from a very early age, girls are not encouraged to play as actively or develop their physical abilities in the same way as boys. Parents perceive boys and girls differently, even as infants. As they grow, boys are expected to be stronger and more active, girls to be more delicate and quiet. However, these perceived differences are not supported by the evidence.⁶²

These differing expectations continue to affect activities. Boys are encouraged to develop their physical skills, to spend time outdoors, and (most importantly) to learn to deal with physical conflict. Girls are not expected to do these things. Such attitudes pervade children's fairy tales and books, television shows and even the educational system. In Gillespie's view, all of this adds up to one conclusion: Women are trained to be physically helpless, and to be *victims*.⁶³ This conclusion is something of a logical leap. It might be more accurate to say that women are permitted and encouraged to be passive, helpless, and victims, but that such attitudes are not tolerated in men.

Finally, Gillespie covers the issue of the use and admission of expert testimony to explain the battered woman syndrome in order to bolster a claim of self-defense in cases where an abused woman has killed her abuser.⁶⁴ She describes the legal problems and goes a step further, criticizing the use of such expert testimony. She argues that using experts to "explain" why a battered woman would take drastic action in response to a certain situation reinforces feminine stereotypes, and even creates a new stereotype of the bona fide battered woman, or a middle class battered woman.⁶⁵

Justifiable Homicide is a well-researched and well-written book. It contains some useful endnotes and an excellent list of cases and other sources of information. Gillespie shares much of Walker's strong

believe that men who appear to be normal and nice ever kill or injure their wives, will have a very hard time seeing a woman's fear that she was about to be killed or seriously hurt as reasonable. A juror who believes that acquitting any woman who kills her husband will give all wives a "license to kill," and will result in an "open season on men," will surely not find any such killing reasonable, no matter what the circumstances. The reasonableness requirement, above all, allows those many jurors—who, for no very clear reason, are appalled or frightened by the idea of a woman taking a life; or who simply believe that no woman is ever, under any circumstances, justified in killing her husband—to act on those feelings by finding the woman guilty because her action was not reasonable.

Id.

61. *Id.* at 99-116.

62. *Id.* at 108-13.

63. *Id.* at 106.

64. *Id.* at 157-81.

65. *Id.* at 179-81.

feminist viewpoint, although her emphasis is on the legal system, rather than the psychology of the abusive relationship. She also shares much of Walker's uncritical, accepting attitude toward the battered woman's violent acts. I found the book's greatest strength to be some of the strong feminist rhetoric voiced by the author. I found the history and the studies cited, as well as Gillespie's analysis of them, to give a fascinating perspective to our present law and culture. In a way, Gillespie may be said to be stating the obvious: Men and women are different, if for no other reason than that they are raised differently. But her argument for how we deal with that difference in the legal system was very eloquent—we should not have two different sets of laws, one for men and one for women, but that we should have laws that are flexible enough to accommodate both the male and the female perspectives.

Angela Browne, the author of *When Battered Women Kill*, has worked with Lenore Walker for several years, and has written several articles on the subject of battered women.⁶⁶ For her book, Browne interviewed forty-two women in fifteen states who were accused of killing or seriously injuring their abusers.⁶⁷ The interview questions followed a common format but permitted the women to comment or discuss other aspects of their relationships.⁶⁸ For comparison, Browne also interviewed 205 battered women who had not killed or attempted to kill their mates.⁶⁹

At least partially as a result of her research technique, Browne uses the anecdotal story, alternating with statistics and summaries of her study results as the basic format of the book. The book is organized as a chronology of a "typical" battering relationship. In chapter two, entitled "Childhood Roots of Violence," Browne discusses the impact that either experiencing or observing violence as a child has on people as adults.⁷⁰ She found that the strongest predictor of experiencing future violent behavior for both sexes is the *witnessing* of violence as a child between parents or parent figures.⁷¹

66. See, e.g., Roberta Thyfault et al., *When Battered Women Kill: Evaluation and Expert Witness Testimony Techniques*, in *DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE* (Daniel J. Sonkin ed., 1987); Lenore E. Walker & Angela Browne, *Gender and Victimization by Intimates* 53 *J. PERSONALITY* 179 (1985); Walker et al., *Beyond the Juror's Ken*, *supra* note 2.

67. BROWNE, *supra* note 6, at 12.

68. *Id.* at 12-13.

69. *Id.*

70. *Id.* at 19-35.

71. *Id.* at 30-31. Browne cites several studies that support this conclusion. See WALKER, *BATTERED WOMAN SYNDROME*, *supra* note 1, at 149 (battering present in 80% of batterers' homes in a study of over 400 women); ROY, *Four Thousand Partners in Violence: A Trend Analysis*, in *THE ABUSIVE PARTNER*, *supra* note 1, at 34 (80% of abusers in 4,000 cases studied were abused as children or witnessed the abuse of their mothers).

In the chapter, "The Psychology of Intimate Relating: Differences in Men and Women," Browne abandons the storytelling approach.⁷² Browne discusses how the partners in an abusive relationship may share many of the characteristics found in any other romantic relationship, but in this situation otherwise positive qualities become warped.⁷³ For example, a battered woman may identify with her abuser, or hold herself responsible for his behavior, and believe that she can change it. An abusive man may actually have a very strong romantic attachment to his partner, but reacts to his feelings of vulnerability with panic and anger. He may then, in Browne's view, refuse to recognize the true source of these feelings and blame his mate, punishing her for making him feel insecure or angry.⁷⁴

In later chapters, Browne attempts to answer her initial question and to isolate the factors that drive some women, but not others, to strike back at their abusing partner with deadly force. Some portions of this section are particularly painful to read, as Browne presents some of the worst battering episodes related by the women.⁷⁵ She pinpoints some key elements that were predictive of homicide: Frequency of abuse, severity of previous injuries, forced sexual acts, man's intoxication, man's drug use, man's threats to kill woman, and woman's threats to commit suicide.⁷⁶ She also mentions the concept of a "turning point," where the abusing partner does something, or threatens to do something, that is completely beyond the battered woman's present perception of an "acceptable" level of brutality.⁷⁷ It is at this turning point that most homicides seem to occur. Another important factor may be that the woman often lost all hope for an improvement in the relationship at the time that violence escalates beyond their previous experiences.⁷⁸

Browne also relates two other intriguing ideas in this part of her book. First, she points out that whether the abused woman resorts to homicide has as much or more to do with the characteristics of the batterer, or the severity of abusive conduct, than it does with her own characteristics.⁷⁹ Second, she recounts how several of the women

72. See BROWNE, *supra* note 6, at 75-87.

73. *Id.*

74. *Id.*

75. *Id.* at 95. For example, Browne presents some horrific stories of violent and bizarre sexual abuse. The batterers would frequently rape their wives after a beating. Some men inserted objects into the woman's vagina, forced anal or oral sex, sex with third parties or sex with animals. Many of the women saw the sexual assaults as the worst forms of brutalization. *Id.* at 95-103.

76. *Id.* at 127.

77. *Id.* at 128-30.

78. *Id.* at 127-30.

79. *Id.*

reacted with sorrow and disbelief when told of the death of their abusing mates, even though they themselves brought about the deaths.⁸⁰

In one of the final chapters, "The Legal System and Battered Women," Browne discusses the legal system's treatment of the battered woman from the perspective of the battered woman herself.⁸¹ Not surprisingly, this view is again highly critical of the traditional legal responses to these situations. This chapter also covers negotiated pleas, trials, and the use of self-defense claims in some detail.⁸² This section is written for the layman and is not of great use to the legal professional.

Finally, Browne concludes with some recommendations for the prevention or reduction in the number of such killings, such as further study, early intervention, and counseling.⁸³ She also includes an interesting epilogue, detailing how each of the cases in her book was finally resolved.⁸⁴

The book is interesting as a study, particularly since there has been a great deal of litigation and discussion about this issue, but not much previous analysis or research into why and when an abused woman herself reacts with deadly violence. Browne shares some of Walker's and Gillespie's themes in her book—the role of fear and learned helplessness in the battered woman's situation, and the role of women as caregivers.⁸⁵ Unlike Walker's conclusion, Browne does appear to believe that there is a discernible difference in the situations of those women who do kill their abusers and those who do not. The value of this book is in its psychology, the "why" of the homicide when a battered woman kills. Browne sees some rational connection between previous conduct and the ultimate conclusion of each story in death. This is both painful and hopeful since, if we can understand the why, we may someday be able to prevent some of the violence.

Battered Women Who Kill, by Charles Patrick Ewing, is an unusual combination of psychological and legal scholarship. At the time the book was written, Ewing was an Associate Professor of Law and an Associate Professor of Psychology. His work is less clinical and more scholarly than the other three books. I think that perhaps for both of these reasons the book is somewhat less compelling and the ultimate effect less appalling than the other books reviewed here,

80. *Id.* at 141-43.

81. *Id.* at 159-77.

82. *Id.*

83. *Id.* at 179-86.

84. *Id.* at 187-90.

85. *Id.* at 75-87, 109-30.

particularly since it is less personal. In fact, the first time I read the book, it struck me as an expanded law review article.

In the initial chapters, Ewing presents basic information about the patterns of abusive behavior between couples, and discusses such concepts as learned helplessness, depression, suicidal tendencies, and the physical and emotional barriers the battered woman faces in seeking help.⁸⁶ He reviews one hundred cases where battered women killed their abusers, and uses the facts of these cases throughout his book.⁸⁷ This book, like the others in the area, contains a discussion of the legal issues that the women in these cases face and also includes an appendix which summarizes the one hundred cases.⁸⁸

The central thesis of Ewing's book is a legal one; he argues for a new theory of self-defense, based on a psychological theory of what one's "self" is.⁸⁹ Ewing explains that one's self is "one's physical appearance, mannerisms, character, beliefs, attitudes, values, identity, perception, cognition, memory, etc. . . . [T]he self is continually evolving and being shaped by one's life experiences."⁹⁰ According to the theory, if a person's life experiences are self-validating, then that person has a sense of being autonomous, alive, whole, and worthwhile.⁹¹ However, if the experiences are negative, a person risks the loss of their sense of self, and may need to take action to save it.⁹²

Ewing, like Walker, draws an analogy between battered women and the victims of other forms of terrorism, where victims and captors may form some sort of traumatic bonding.⁹³ The study of the relationship between victim and criminal is known as victimology, an interdisciplinary behavioral science.⁹⁴ Ewing focuses on the studies involving prolonged contact between victim and criminal: Rape, kidnapping, and armed robbery.⁹⁵ He finds many psychological similar-

86. EWING, *supra* note 7, at 1-21. Ewing also lists several factors that differentiate battered women who kill from those who do not, including more frequent physical abuse, more serious injuries, more frequent death threats (to self or others), more frequent child abuse (abuse by the batterer of the woman's children), and more frequent sexual abuse. *Id.* at 35-36.

87. *Id.* at 31-34.

88. *Id.* at 99-142. The one hundred cases were compiled from a variety of sources—media reports, books, articles, and court opinions—all published between 1978 and 1986. *Id.* at 31.

89. *Id.* at 63.

90. *Id.*

91. *Id.*

92. *Id.* Ewing refers to R.D. LAING, *THE DIVIDED SELF* (1970), and to HEINZ KOHUT, *THE RESTORATION OF THE SELF* (1977), in this section. EWING, *supra* note 7, at 63-66.

93. EWING, *supra* note 7, at 70-76.

94. *Id.* at 73-75.

95. *Id.* at 70-75. Ewing cites frequently to the following articles and essays: Rona M. Fields, *Research on the Victims of Terrorism*, in *VICTIMS OF TERRORISM* 137 (Frank M. Ochberg & David A. Soskis eds., 1982); Irene Frieze et al., *Describing the Victims of Crime and Violence*,

ities in the reactions of both groups to their trauma. In the case of the abused woman, the victim may be married to, live with, and in some sense "love" her captor, making her situation even more difficult.⁹⁶

Thus, Ewing proposes a theory of psychological self-defense, where the use of deadly force would be justified where "reasonably necessary to prevent the infliction of extremely serious psychological injury."⁹⁷ The key term *extremely serious psychological injury* is defined as "gross and enduring impairment of one's psychological functioning which significantly limits the meaning and value of one's physical existence."⁹⁸ Ewing would also limit the use of this defense to persons who were being physically threatened at or near the time of the killing.⁹⁹ Furthermore, the burden of proof of psychological harm would be on the defendant.¹⁰⁰

Ewing then attempts to defend the theory, first arguing that it is not inconsistent with current self-defense law.¹⁰¹ He interprets several legal rules associated with current self-defense doctrine, such as the no-retreat rule,¹⁰² or the castle doctrine,¹⁰³ as being designed to protect certain psychological interests, such as the right to personal autonomy and the principle of lesser evils.¹⁰⁴ For example, the no-retreat rule provides that when a person is attacked with an imminent threat of death or serious bodily injury, he is not required to run away, even though he could do so safely; he may stand his ground and defend himself.¹⁰⁵ In Ewing's view, we have this rule for two reasons. First, we will not require a person to be passive in the face of attempted

in VICTIMS OF CRIME AND VIOLENCE: REPORT OF THE APA TASK FORCE ON THE VICTIMS OF CRIME AND VIOLENCE 19 (Arnold S. Kahn ed., 1984); Martin Symonds, *Victims of Violence: Psychological Effects and Aftereffects*, 35 AM. J. PSYCHOANALYSIS 19 (1975); Thomas Strentz, *The Stockholm Syndrome: Law Enforcement Policy and Ego Defenses of the Hostage*, in FORENSIC PSYCHOLOGY AND PSYCHIATRY 137 (Fred Wright et al. eds., 1980).

96. EWING, *supra* note 7, at 83-85.

97. *Id.* at 79.

98. *Id.*

99. *Id.* at 91.

100. *Id.* at 89-91.

101. *Id.* at 89.

102. In a majority of American jurisdictions, one who is not the aggressor need not retreat before responding to an attack with deadly force, even if one can do so in complete safety. WAYNE LAFAVE & AUSTIN SCOTT, CRIMINAL LAW 460-61 (2d ed. 1986); ROLLIN PERKINS & RONALD BOYCE, CRIMINAL LAW 1133-34 (3d ed. 1982).

103. EWING, *supra* note 7, at 81-82. The castle doctrine is a corollary to the no-retreat rule. It is universally recognized that an innocent party who is attacked need not retreat from her home or "castle." The concept of castle has been extended to include one's place of business. LAFAVE & SCOTT, *supra* note 102, at 461; PERKINS & BOYCE, *supra* note 102, at 1134-36.

104. EWING, *supra* note 7, at 83-85.

105. *Id.* at 80-81.

physical domination or a humiliating role.¹⁰⁶ Secondly, the culpability of the attacker changes the balance in favor of the preservation of the defender's personhood.¹⁰⁷

Ewing also tries to anticipate and answer some practical objections to his theory in this section. He discusses problems of spurious claims, lack of deterrence, difficulty of jury evaluation, and understanding of the concept of psychological self-defense.¹⁰⁸ Ewing would reduce spurious claims by limiting the defense to persons who were being threatened at or near the time of the killing and by putting the burden of proof of psychological harm on the defendant.¹⁰⁹ Ewing advances several arguments relating to the lack of deterrence issue. First, it is unlikely that battered women seriously evaluate the costs and benefits of killing their abusers and, even if they do, they might opt for the killing since the only alternative they face is the destruction of their ultimate "self."¹¹⁰ Second, it is unlikely that a layperson would take advantage of such an abstract legal rule since she would neither understand it nor could she be certain that it would apply to her.¹¹¹ Third, even if a lay person could understand the concept, it might serve to deter a *batterer* from excessive violence.¹¹² Fourth, spousal homicide is not usually a crime that is repeated.¹¹³ As to the jury issue, Ewing argues that our system of justice frequently requires this difficult level of evaluation.¹¹⁴

Ewing's proposal is both unique and revolutionary. He presents and argues it well, and appears to base it on solid research. His analogies to other self-defense doctrines are well taken. However, the theory has a basic flaw that Ewing himself notes but fails to deal with adequately. Specifically, the flaw is the abstract, esoteric, and chimerical nature of the basic self-defense question "When has extremely serious psychological harm occurred?" The other legal self-defense doctrines discussed by Ewing are based on fundamental psychological concepts, but are capable of proof, at least partially, by physical evidence. For example, when using the castle doctrine, the defense will show evidence that the defendant was attacked in his or her own home and thus had no duty to retreat. Ewing's theory is completely subjective, looking into the mind of this individual person

106. *Id.* at 83-85.

107. *Id.* at 84-85.

108. *Id.* at 85-94.

109. *Id.* at 89-91.

110. *Id.* at 87-88.

111. *Id.* at 88-89.

112. *Id.* at 87-89.

113. *Id.* at 89.

114. *Id.* at 86-91.

to see when their sense of self is at risk of annihilation, rather than looking at what an objectively reasonable person would believe.

This theory is interesting and laudable, for it attempts to take the moral high road, elevating substance over form. However, it is limited by the realities of our current legal system and pre-existing attitudes, ideas, and biases about the way the law should operate. Although an interesting piece of scholarship, Ewing's book would be of most interest to the legal theorist or philosopher.

In recent years there has been a lot of attention focused on the specific issue of the battered woman, and the battered woman who eventually fights violence with violence. This is with good reason, since it is a widespread, serious problem for our society. The authors whose works are discussed above struggle with notions of male dominance, experiment with legal tests, and manipulate the instruments of law enforcement in an attempt to figure out exactly what to do with, and for, these people in abusive relationships. However, as the authors themselves sometimes indicate, the problem is so much deeper in our culture that these issues just scratch the surface.

In our society, violence is almost completely acceptable as entertainment in a wide variety of situations (e.g., sports, television, movies) and as an appropriate form of punishment both within and outside of the criminal justice system. Weapons are commonly found in our homes. In fact, in many cases where a battered woman kills her abuser, she does so with a gun that she finds or is readily accessible to her.¹¹⁵

Studies tend to show that violence has a spillover effect.¹¹⁶ Repeated exposure to violence in the media can lead to a more casual or jaundiced attitude toward violence in real life.¹¹⁷ The authors of one study on spousal abuse in the military found the abuse encountered was more severe and frequent than what was found in compa-

115. See, e.g., *People v. Aris*, 264 Cal. Rptr. 167, 171 (Cal. Ct. App. 1989), *appeal denied*, 1990 Cal. LEXIS 906 (Cal. Mar. 1, 1990); *People v. Hare*, 782 P.2d 831, 831 (Colo. Ct. App.), *cert. granted*, 1989 Colo. LEXIS 555 (Colo. Nov. 27, 1989), and *aff'd*, 800 P.2d 1317 (Colo. 1990); *State v. Stewart*, 763 P.2d 572, 575 (Kan. 1988); *State v. Moore*, 568 So. 2d 612, 614 (La. Ct. App. 1990); *State v. Hennum*, 441 N.W.2d 793, 796 (Minn. 1989); *State v. Norman*, 378 S.E.2d 8, 11 (N.C. 1989); *State v. Koss*, 551 N.E.2d 970, 971 (Ohio 1990); *State v. Furlough*, 797 S.W.2d 631, 637 (Tenn. Crim. App. 1990); *State v. Hanson*, 793 P.2d 1001, 1001 (Wash. Ct. App.), *appeal denied*, 803 P.2d 325 (Wash. 1990); *Griffin v. State*, 749 P.2d 246, 249 (Wyo. 1988).

116. STRAUS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 520-21.

117. For example, the 1986 Attorney General's Commission on Pornography found a causal relationship between exposure to violent pornography and increasingly violent attitudes toward women. ATT'Y GEN.'S COMM'N ON PORNOGRAPHY, U.S. DEP'T OF JUSTICE, FINAL REPORT 322-49 (1986). See STRAUS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 520-21.

rable civilian relationships.¹¹⁸ The authors hypothesize that the "military effect, a term meaning the total impact of the military indoctrination/socialization experience . . . legitimizes a pervasive sense (and expectation) of violence."¹¹⁹ The authors even found some evidence of a spillover violent effect into the community where military bases dominated the area.¹²⁰

As Richard Gelles and Murray Straus, two prolific writers in the area of domestic violence, point out, violence is essentially a political question, not a legal one.¹²¹ Why are people violent? Why are parents, spouses, and children abusive towards their own family members? Gelles and Straus say it is because society lets them.¹²² Individuals are violent and abusive because they can be. We as a society decide what is an acceptable level of violence and what is an acceptable level of interference with individual privacy. We as a society decide what is "deviant" violence. As a result, the question is political, an issue of public policy.¹²³ The answers to what is an acceptable or appropriate level of violence vary across economic, racial, social, professional and religious, as well as sexual, lines.

When dealing with the problem of child abuse, the question shifts the debate from issues of family privacy to more general, but still important, questions of what societal consensus is and should be on our tolerance of parental violence towards children. Gelles and Straus give the example of Sweden's ban on the spanking of children.¹²⁴ Sweden only changed its criminal code, not its penal code, so there is no punishment for parents who spank their children.¹²⁵ However, the authors point out that the purpose of the law is to demonstrate a moral objection to certain kinds of conduct and that it is enforced by internal and social, not necessarily legal, controls.¹²⁶ Sweden also prohibits corporal punishment in schools, has abolished capital punishment, and strictly controls television and movie violence, particu-

118. SHUPE ET AL., *supra* note 12, at 75-79. The authors indicate that the worst forms of violence in civilian families were the norm for the military families. *Id.* at 79.

119. *Id.* at 82. This military indoctrination would include boot camp, the "fighter spirit," a hierarchical authority structure and the creation of stressful situations for the soldiers. *Id.* The authors also found that military families experienced more violence than veteran's families, who in turn experienced more violence than civilian families. *Id.* at 83-84.

120. *Id.* at 83-86.

121. See RICHARD GELLES & MURRAY STRAUS, *INTIMATE VIOLENCE* 57 (1988) [hereinafter GELLES & STRAUS, *INTIMATE VIOLENCE*].

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

larly for children.¹²⁷ This attitude is in stark contrast to the American view, where a large majority of those surveyed in one study believed that parents have not just the legal right, but the moral obligation to spank or slap their children.¹²⁸

Many feminists would agree with Gelles and Straus in principle, but they believe the political view is almost entirely shaped by gender-related discrimination, both past and present. In the eyes of many, feminism is a seamless web where all issues affecting women are related by concepts of male dominance and female oppression in our culture.¹²⁹ As a result, the feminists tend to distrust a "political" (male-dominated) solution to what they see as an inherently feminist problem of male violence against women.¹³⁰ Personally, although I can see the vital feminist component of this issue, I tend to believe the problem is a combination of societal attitudes about women *and* attitudes about violence.

Aren't these concepts related? Certainly. However, I tend to agree with authors like Gelles and Straus who point out that the focus should be on the vulnerability of the victims of violence, and that this vulnerability is not exclusively linked to sexism in the system, legal or social. We need to change the way we view women, and the way we treat women. Part of that change will in fact be accomplished through the revision of legal rules, consciousness-raising, and education. But the sea of change will have to come about through deeper, tougher, and more fundamental revision of our thoughts about violence.

Many American liberal thinkers become very threatened when we talk about changing fundamental attitudes about something as subjective as violence. The very idea seems to tread on traditional civil liberties because it smacks of censorship, big brother, or thought control. The debate about control of pornography is a good example of this type of fear.¹³¹ This is where feminist thought and scholarship

127. *Id.* at 195.

128. *Id.* at 195-96. STRAUS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 516. Studies cited show that 80% to 90% of the adult population believe that there is such an obligation. *Id.*

129. See generally CATHARINE MACKINNON, *FEMINISM UNMODIFIED* (1987); STEINEM, *supra* note 10; Christine A. Littleton, *Equality and Feminist Legal Theory*, 48 U. PITT. L. REV. 1043 (1987) [hereinafter Littleton, *Feminist Legal Theory*]; Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

130. See STRAUS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 11-14, 384-86 (feminists distrust empirical or quantitative research as inherently male-biased).

131. Andrea Dworkin and Catharine MacKinnon, two prominent feminist authors and activists, drafted a controversial law designed to eliminate pornography. Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1-2 (1985) [hereinafter MacKinnon, *Pornography*]. The law was adopted by the city of Indianapolis, but

can come back into play. Feminism asks the key question—civil liberties for whom? Civil liberties should be a part of everyone's rights, including children, the old, the infirm, as well as women, to be free of violence and terror in their own homes, particularly from members of their own families. Any sort of protection of the right of a parent, a man, or a stronger person to abuse another human being because of a "privacy" interest is abhorrent. If we try to protect such rights, it should make us question our values.

On the other hand, the change in society need not, and probably should not, come exclusively from strictly legal sanctions, which are a form of violence in themselves. We, as a society, could do many things, both within and outside of the legal system, to reduce the amount and severity of violence and abuse in the culture. Some progress has been made in the area of family violence in the past several years. For example, mandatory reporting requirements for suspected cases of child abuse appear to have increased public awareness of the problem.¹³² There is some evidence that quick, no-nonsense intervention and arrest in spousal abuse cases decreases further incidents of abuse.¹³³ Other, more general, proposed actions include: Abolition of capital punishment, elimination of corporal punishment from the school system, strict gun control legislation, and regulation of violent toys and television programming for children.¹³⁴ Another alternative that exists is to boycott violent films, plays, sports, or

the Seventh Circuit held it to be unconstitutional in *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323, 324 (7th Cir. 1985). Dworkin and MacKinnon's thesis is that pornography, like Gelles and Straus' view of violence, is a political, not a legal question. MacKinnon, *Pornography*, *supra*. In their view, pornography reflects male dominance and male objectification of women. Pornography thus creates a viewpoint that is evil and should be eliminated. See, e.g., Andrea Dworkin, *Pornography is a Civil Rights Issue for Women*, 21 U. MICH. J.L. REF. 55 (1987-1988); Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL'Y REV. 321 (1984) [hereinafter MacKinnon, *Moral Issue*]; MacKinnon, *Pornography*, *supra*, at 1-2. Other feminists are very critical of this ordinance, arguing that it is unconstitutional and that sexually explicit material can be both positive and liberating for women and men. See Nan D. Hunter & Sylvia A. Law, *Brief Amici Curiae of Feminist Anti-Censorship Task Force et al.*, in *American Booksellers Ass'n v. Hudnut*, 21 U. MICH. J.L. REF. 69 (1987-1988).

132. In their survey, Gelles and Straus found a decrease in child abuse between 1975 and 1985. STRAUSS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 116-17, 121. They also mention that educational efforts and an increase in the number of social workers for child abuse cases may account for the decreasing numbers. *Id.* The author personally doubts that a decrease in child abuse is widely documented.

133. See SHUPE ET AL., *supra* note 12, at 103-21; STRAUSS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 482-83. See also Littleton, *Feminist Legal Theory*, *supra* note 129, at 53.

134. See GELLES & STRAUSS, *INTIMATE VIOLENCE*, *supra* note 121, at 196-99; STRAUSS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 521. See also Elissa Benedek, *Baseball, Apple Pie, and Violence: Is it American?*, in *FAMILY VIOLENCE: EMERGING ISSUES OF A NATIONAL CRISIS* 9-12 (Leah Dickstein & Carol Nadelson eds., 1989) [hereinafter *EMERGING ISSUES*]; Littleton, *Feminist Legal Theory*, *supra* note 129, at 55-56 (suggests legal recognition of relationships outside the traditional, heterosexual model be recognized).

other forms of "entertainment." A variety of educational programs could be conducted through public school systems or through church and community organizations. Possible topics include parenting, dealing with stress in relationships, marriage, and conflict resolution. Alcohol and drug information, education, and counseling could include more information on the connection between the use of drugs and possible violent behavior.¹³⁵ More ambitious plans might call for a complete prohibition of corporal punishment, or any act that physically hurts or intends to hurt any person, not just a child.¹³⁶

In the broadest sense, researchers seem to agree that family violence would decrease in many quarters if society would work on several general issues. To return to part of the feminist agenda, researchers have found both child and spousal abuse to be more common in male dominant families. This is attributed to the fact that the man, as head of the family, may feel that he has the definitive word in all decisions. If the man, as head of the family, does not get the final word, he may use force as the last resort. Straus and another researcher, Christine Smith, state: "One cannot emphasize too strongly the preventative value of sexual equality, both within and outside the family."¹³⁷ One of the most interesting conclusions of Gelles and Straus' research on family violence is that women who are housewives are more violent toward their children than women who work outside the home.¹³⁸ The authors hypothesize that working mothers spend less time with their children and therefore are less at risk for abusive conduct.¹³⁹ Straus and Gelles also believe that employment outside the home gives women more status, power, and control within the family structure.¹⁴⁰

Researchers also mention the importance of poverty programs. Families in stress tend to have higher levels of violent behavior. If

135. See GELLES & STRAUS, INTIMATE VIOLENCE, *supra* note 121, at 199; STRAUS & GELLES, PHYSICAL VIOLENCE, *supra* note 12, at 516-17; Benedek, *supra* note 134, at 9-12; Mary Lystad, *Community Prevention Programs in Family Violence*, in EMERGING ISSUES, *supra* note 134, at 221-25.

136. Gelles and Straus strongly advocate this rule. See GELLES & STRAUS, INTIMATE VIOLENCE, *supra* note 121, at 197-99; STRAUS & GELLES, PHYSICAL VIOLENCE, *supra* note 12, at 517-20. They point out that the informal, and formal, rule outside the family is "that you cannot hit anyone, even if he or she behaves terribly," except for self-defense. *Id.* at 516. The rule is just the opposite within the family. *Id.* at 515.

137. See STRAUS & GELLES, PHYSICAL VIOLENCE, *supra* note 12, at 515. See also GELLES & STRAUS, INTIMATE VIOLENCE, *supra* note 121, at 203; SHUPE ET AL., *supra* note 12, at 89-99; David Adams, *Stages of Anti-Sexist Awareness and Change for Men Who Batter*, in EMERGING ISSUES, *supra* note 134, at 63-94; Littleton, *Feminist Legal Theory*, *supra* note 129, at 53-55.

138. STRAUS & GELLES, PHYSICAL VIOLENCE, *supra* note 12, at 248-49.

139. *Id.* at 248.

140. *Id.* at 248-49, 274-77.

employment opportunities, health care and other support is available, it is believed that stress, and hopefully the resulting violence, can be reduced.¹⁴¹

In my Family Law class, we cover the notions of punishment versus child abuse. I usually tell the class about the Swedish idea of spanking as an improper form of punishment. The typical reaction is either one of incredulity or of amusement. Class members sometime become angry when I discuss some other proposals for controlling exposure to violence and to instruments of violence. I do not mean to pick on the students, but I think their attitude is typical of the kind of prejudice that advocates of non-violence encounter. This opinion emerges from an educated, comparatively young, and relatively open-minded group of people.

In summary, I believe the feminist approach is not the ultimate solution to the problem of family violence. Although the feminist view has done a valuable service in opening our collective eyes and making us aware of the hidden problem of spousal abuse and of helping many women who were and are in truly desperate situations, I do not think it goes far enough. Prevention is the key, and this will affect both men and women. Sexism in the family, in the social system, and in the legal system must go, but so must violence.

141. See GELLES & STRAUS, *INTIMATE VIOLENCE*, *supra* note 121, at 201-03. Straus and Gelles' 1985 study found that blue collar workers and low income families had higher rates of assaults by husbands, STRAUS & GELLES, *PHYSICAL VIOLENCE*, *supra* note 12, at 194-96, and found that there is some evidence of higher rates of child abuse in blue collar and low income families. *Id.* at 249-51.