

# LOVE MATTERS

Tamara L. Kuennen\*

*Love matters to women in abusive relationships. Consequently, matters of love should mean something to both the legal regime redressing intimate partner violence (“IPV”) and to feminist legal scholars seeking to reform the same. Currently the law ignores matters of love by conditioning legal remedies on the immediate termination of the intimate relationship by the victim.*

*Feminist legal scholars unwittingly ignore love by failing to be sufficiently specific about the type of abuse we most wish to eradicate: coercive control. This is a pattern of acts—both violent and nonviolent—in which one partner seeks to control and dominate the personhood and liberty of another. In addition, IPV scholars contribute to binary notions of what constitutes IPV (physical violence versus no violence) and intimate relationships generally (abusive versus nonabusive) when we fail to be discerning. These dichotomies mystify, rather than illuminate, the complexity of intimate love as a context in which harm can occur, making the coexistence of love and abuse something “other,” distant from us, our relationships, and the law.*

*This Article explores where the line should be drawn between abusive and nonabusive relationships so that the love many women experience, even in the context of abuse, can be taken seriously. Moving the line from zero tolerance sheds light on the normalcy of love in the context of abuse, by allowing for a more expansive view of “normal” relationships—as often involving some use of physical and nonphysical aggression. With a more nuanced view of the coexistence of love and “abuse,” we can better understand love even in the context of the most serious type of intimate partner violence: coercively controlling violence. Many women experiencing coercive controlling violence describe the love they feel as a source of strength and as a survival mechanism. Until feminist legal scholars expose and accept the coexistence of love and violence in intimate relationships, our denial of it will continue to have a profound impact on the development of explanations of women’s experience and behavior that reflect reality, and that can fit within the conceptual structure of the law.*

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\* Associate Professor of Law, University of Denver Sturm College of Law. I wish to thank: Larry Boylan, Alan Chen, Sarah Despres, Jennifer Dieringer, and Laura Rovner for their insightful comments, and Diane Burkhardt and Matthew Tanda for their wonderful research.

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## INTRODUCTION

Love matters to women in abusive relationships.<sup>1</sup> Consequently, matters of love should mean something to both the legal regime redressing intimate partner violence (“IPV”) and to feminist legal scholars seeking to reform the same.

Currently, the regime ignores matters of love by conditioning legal remedies on the immediate termination of the intimate relationship by the victim.<sup>2</sup>

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1. See *infra* Part I.C. and accompanying notes.

2. See LEIGH GOODMARK, A TROUBLED MARRIAGE, DOMESTIC VIOLENCE AND THE LEGAL SYSTEM 81 (2012) (describing the evolution of domestic violence law and policy and documenting the “demand that women subjected to abuse separate from their intimate partners” as a “litmus test for determining whether a victim is worthy of assistance”); see also Jeannie Suk, *The Criminal Law Comes Home*, 116 YALE L.J. 2, 8 (2006) (arguing generally that separation of the parties is the ultimate goal of the criminal response to domestic violence).

If the victim says she loves her partner, the legal system often responds: you must not really be abused; you are partially to blame for the abuse; you are crazy; we cannot help you.

Although feminist legal scholars have unearthed the many rational reasons women experiencing abuse may choose to preserve, rather than sever, their intimate relationships, we (feminist legal scholars) have ignored love as a reason for staying. Previously, I have argued that we have done so deliberately, for strategic and political reasons.<sup>3</sup> This Article, however, argues that we unwittingly ignore love when we fail to be sufficiently specific about the type of abuse we most wish to eradicate: a pattern of acts—both violent and nonviolent—in which one partner seeks to control and dominate the personhood and liberty of another.

The pattern is called coercive control.<sup>4</sup> It bears little resemblance to most states' statutory definitions of IPV, which center on discrete acts of physical violence. Both its prevalence and its consequence—"entrapment" of women in their relationships—are widely misunderstood. Coercively-controlling violence accounts for only a fraction of IPV, yet it is the image that comes to mind for most people when they think of IPV. Women become entrapped in coercively controlling relationships because of societal institutions that reinforce gender discrimination, yet the public image of women experiencing abuse is that as individuals they are too weak, passive, or helpless to leave.

The thrust of this Article is thus threefold. First, by failing to be specific about the type of IPV we wish to target, and instead conflating coercive control with all forms of IPV, feminist legal scholars contribute to binary notions of what constitutes IPV (physical violence versus no violence), who is a deserving victim (one who leaves versus one who stays), and intimate relationships generally (abusive versus nonabusive). Second, these dichotomies mystify, rather than illuminate, the complexity of intimate love as a context in which harm can occur, making the coexistence of love and abuse as something "other"—distant from us (feminist legal scholars), our relationships, and our legal system. Finally, as a result, we have crafted a legal response that views women who wish to preserve relationships with partners they love as incredible, blameworthy, and masochistic.

Part I of this Article demonstrates that many women and men in "nonabusive"<sup>5</sup> relationships think long and hard before ending their relationships.

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and specifically that "prosecutors use the routine enforcement of misdemeanor DV to seek to end (in all but name) intimate domestic relationships").

3. Tamara L. Kuennen, *"Stuck" on Love*, 91 DENV. U. L. REV. 171, 178–81 (2014) [hereinafter Kuennen, *Stuck*].

4. The term was coined by Susan Schechter, SUSAN SCHECHTER, GUIDELINES FOR MENTAL HEALTH PRACTITIONERS IN DOMESTIC VIOLENCE CASES 4 (1987), and expanded by Evan Stark, with whom it is now most associated. EVAN STARK, COERCIVE CONTROL AND THE ENTRAPMENT OF WOMEN IN PERSONAL LIFE (2007). Coercive control is discussed in detail *infra* Part II.B.2.

5. I believe the term "nonabusive" to be a fiction—a black-and-white demarcation of the nature and character of relationships with which I disagree. Until I argue

Despite having doubts, people often persist in relationships that are dissatisfying or even hurtful; experience anguish in decision-making; hold onto hope of reconciliation long into the breakup process; leave the relationship, return, and then leave again; and experience prolonged feelings of attachment well after the relationship has ended.<sup>6</sup> This Part demonstrates that women in abusive relationships experience much of the same. Yet, in nonabusive relationships, when people are deciding whether to stay or leave, love is considered a legitimate factor in decision-making—in abusive relationships, it is not.

In Part II, the Article asks where the line should be drawn between a nonabusive relationship and an abusive one, so that the love felt by women in abusive relationships can be seen as a legitimate factor in stay–leave decision-making. Should the line be drawn where the law currently draws it—where *any* act of physical aggression between partners constitutes an abusive relationship—thereby diminishing, if not negating, love as a legitimate reason for staying? Or are there certain amounts or types of violent acts that must occur in order for the line to be crossed? For that matter, what constitutes violence? Is it *any* use of physical force against a partner? What about destroying a partner’s property in front of her? As observed by Martha Mahoney more than two decades ago: “It is, relatively speaking, normal for a woman to watch a man smash up the furniture. Many of the women in the room have seen something like it—and called it ‘marriage’ and not ‘staying.’”<sup>7</sup>

I argue that the line cannot remain where the law places it, currently making any use of physical force the litmus test for abuse.<sup>8</sup> The line must be moved away from a zero-tolerance point on the continuum and toward coercively controlling violence. I do not mean to suggest that serious, physical assaults between intimate partners should be excused; rather, I argue that coercive control is a different and more serious type of aggression, and as such it deserves to be measured by a different yardstick. Currently, the law of IPV treats minor fights and coercive control the same: a woman who slaps her partner once is as guilty of the crime of IPV as a man who both slaps his partner once *and* controls her finances, employment, access to friends, and every other aspect of her day-to-day life.<sup>9</sup>

Other scholars have argued for a more nuanced definition of IPV that would move the line. For example, several scholars have argued that the crime of domestic violence should include proof that the perpetrator intended to or did exert power and control over the victim.<sup>10</sup> The thrust of this Article is to illustrate how

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this point explicitly in Part II, *infra*, I use the term nonabusive to describe relationships in which no physical violence occurs.

6. See *infra* Part I.B. and accompanying notes.

7. Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 16 (1991).

8. STARK, *supra* note 4, at 83–84.

9. GOODMARK, *supra* note 2, at 30 (arguing that very few states prosecute nonphysical violence such as these types of coercive tactics).

10. See, e.g., GOODMARK, *supra* note 2 at 139; Alafaire S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 GEO. WASH. L. REV. 552 (2007); Deborah Tuerkheimer, *Recognizing and Remediating the Harm of*

moving the line allows the law, feminist legal scholars, and the public at large to acknowledge love as a legitimate factor in stay–leave decisions for women experiencing types of IPV shy of coercive control. Moving the line also allows us to meaningfully discuss the significance of love to women experiencing coercive control. Unidirectional love within a context of domination and subjugation is unlikely how most of us would define healthy, intimate love.<sup>11</sup> It does not necessarily follow, however, that the love women feel is crazy or masochistic. Here, I rely on the work of Catharine Donovan and Marianne Hester, who argue that women experiencing coercively controlling violence construct themselves as strong, and that they view their love as a source of strength.<sup>12</sup> In this way, love can be a survival mechanism. The authors also argue, however, that the love women feel may be a response to the coercive control itself, in which the abusive partner’s “practice of love” is a form of emotional violence.<sup>13</sup> Their careful examination sheds light on the experience of love in the context of coercive control, without diminishing it.

Part III demonstrates how feminist legal scholars, and other scholars researching IPV, use the terms “IPV” and “coercive control” interchangeably, rather than distinguishing between the two.<sup>14</sup> I wonder whether this lack of discernment has a snowball effect. When we fail to distinguish coercive control from other forms of IPV, we overstate its prevalence. By overstating its prevalence, we may, albeit inadvertently, imply that all women who experience IPV are entrapped in their relationships. And this notion—that women are entrapped—contributes to a public story that victims of IPV would leave if only they could, if only they were not trapped. Accordingly, legal and social-service systems designed to address IPV view their jobs as helping women leave. Their perception, then, is that women are aberrant when they love their partners and do not want to leave them.

Finally, Part IV draws upon the work of a handful of scholars who forge paths that show us how legal and social interventions might change if love were taken seriously. Legally, protection orders would allow contact between parties, but prohibit abuse; stalking might be criminalized without requiring the parties to formally breakup; and new remedies that facilitate women’s safety while preserving their partnerships might be envisioned. Socially, women would be provided counseling to decrease the current shame and stigma surrounding loving a partner who has been abusive, and to educate women that they, like people in nonabusive relationships, may feel love long after the breakup; shelters and other social services

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*Battering: A Call to Criminalize Domestic Violence*, 94 J. CRIM. L. & CRIMINOLOGY 959 (2004); Joan Erskine, Note, *If it Quacks Like a Duck: Recharacterizing Domestic Violence as Criminal Coercion*, 65 BROOK. L. REV. 1207 (1999).

11. These are the remarks of Evan Stark made to me in a telephone conversation on February 27, 2014 (notes on file with author).

12. Catherine Donovan & Marianne Hester, *I Hate the Word “Victim”’: An Exploration of Recognition of Domestic Violence in Same Sex Relationships*, 9 SOC. POL’Y & SOC’Y 279, 283 (2010), discussed *infra* Part II.C.

13. Donovan & Hester, *supra* note 12, at 283.

14. For example, and as will be discussed *infra* Part III.A., a scholar might argue that IPV is perpetrated to obtain or maintain power and control. But, only a fraction of IPV—what sociologists call “coercively controlling” IPV—is perpetrated for this purpose.

would not require women to leave their partners to get help; and constructivist modalities of service provision designed to empower women who choose to stay would strike a better balance between their needs, desires, and rights.

In addition to offering pragmatic remedies, Part IV weighs the pros and cons of acknowledging love in the context of abuse on theoretical, strategic, and political levels. As summed up by Christine Littleton: “How could we possibly take seriously women’s accounts of love and hope without undermining the little protection from male violence women have been able to wrest from the legal system, without indeed increasing our already overwhelming vulnerability?”<sup>15</sup> While acknowledging the risks, I argue that until feminist legal scholars expose and accept the coexistence of love and aggression in intimate relationships, our denial of it will continue to have a profound impact on the developing explanations of women’s experiences and behaviors.<sup>16</sup> Further, by denying the coexistence, we are less likely to construct law that responds to this reality. Unless the law, and the judges, jurors, and attorneys tasked with applying it, recognize the coexistence of love and violence, stereotypical beliefs about women will continue to eclipse women’s actual experiences; women’s decisions to preserve their relationships will never be fully understood; and the law will continue to insist on severing the intimate partnership as the only solution to IPV.

## I. LOVE, AND HOW IT MATTERS

### A. *The Concept of Love*

Love is a complicated thing. The struggle to define it has been taken up by countless parties across history, from the ancient Greeks<sup>17</sup> to contemporary psychologists.<sup>18</sup> The conundrum is one that has fascinated poets, philosophers, scientists, and the popular imagination.

In a recent TED-Ed video lesson, Wisconsin high school educator Brad Troeger posed the question thusly: “What is love? Is it a verb? A noun? A universal truth? An ideal? The common thread of all religions? A cult? A neurological phenomenon?”<sup>19</sup> An experiment conducted by *The Huffington Post* via Twitter and Facebook challenged readers to define love in a single word. The responses ranged from “happiness” and “loyalty” to “work,” “uncontrollable,” “sacrifice,” and

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15. Christine A. Littleton, *Women’s Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U. CHI. LEGAL F. 23, 47.

16. Mahoney, *supra* note 7, at 13.

17. See Donald Levy, *The Definition of Love in Plato’s Symposium*, 40 J. HIST. OF IDEAS 285 (1979) (discussing and comparing the definitions of love provided by Aristotle, Socrates and Plato).

18. See Arthur Aron & Elaine N. Aron, *Love and Sexuality*, in *SEXUALITY IN CLOSE RELATIONSHIPS* 25–26 (Kathleen McKinney & Susan Sprecher eds., 1991) (discussing and reviewing the social science research on love).

19. Brad Troeger, *What is Love?*, <http://ed.ted.com/lessons/what-is-love-brad-troeger#watch> (last visited Sept. 29, 2014).

“elusive.”<sup>20</sup> Daniel Jones, editor of *The New York Times*’s column “Modern Love,” published *Love, Illuminated*—a book drawing upon his professional experience with “read[ing] other people’s love stories for a living.”<sup>21</sup> He notes (and queries):

Love is unrivaled in its power to thrill, crush, and sustain. No subject in human history has been more thoroughly examined. And yet, as desperately as we have tried to unlock love’s mysteries—to “decode” it through scientific experimentation, philosophical inquiry and even mathematical algorithms—do we really understand love any better today than Shakespeare did nearly five hundred years ago?<sup>22</sup>

Jones’s question is apt. In the scientific literature, love has been identified as a biological response,<sup>23</sup> a set of neurological phenomena,<sup>24</sup> a cognition,<sup>25</sup> an

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20. *What is Love? 40 Words That Define It*, HUFFINGTON POST (May 30, 2013), [http://www.huffingtonpost.com/2013/05/30/what-is-love-40-words-tha\\_n\\_3361909.html](http://www.huffingtonpost.com/2013/05/30/what-is-love-40-words-tha_n_3361909.html).

21. DANIEL JONES, *LOVE ILLUMINATED: EXPLORING LIFE’S MOST MYSTIFYING SUBJECT (WITH THE HELP OF 50,000 STRANGERS)* 1 (2014).

22. *Id.* (front flap of book cover).

23. *See, e.g.*, William R. Jankowiak & Edward F. Fischer, *A Cross-Cultural Perspective on Romantic Love*, 31 *ETHNOLOGY* 149, 149–50 (1992) (“[E]volutionary-oriented anthropologists and psychologists have explored the possibility that romantic love constitutes a human universal . . . . In this view romantic love centers on a biological core that is expressed as love and enacted in courtship . . . . [This view] draws upon biochemical research that suggests the giddiness, euphoria, optimism, and energy lovers experience in early stages of infatuation is caused by increased levels of phenylethylamine, an amphetamine-related compound . . . . This evolutionary perspective suggests that romantic love arises from forces within the hominid brain that are independent of the socially constructed mind.”) (citations omitted).

24. Arthur Aron et al., *Reward, Motivation, and Emotion Systems Associated With Early-Stage Intense Romantic Love*, 94 *J. OF NEUROPHYSIOLOGY* 327, 327 (2005) (study in which participants were asked to think of their romantic partners). Although functional magnetic resonance imaging scans showed a diverse array of activation patterns, all participants demonstrated activation of the dopamine-rich areas of the brain which are generally associated with deep need, focus, and addiction. *Id.*

25. *See generally* Beverly Fehr, *Prototype Analysis of the Concepts of Love and Commitment*, 55 *J. PERSONALITY & SOC. PSYCHOL.* 557 (1988).

emotion,<sup>26</sup> a behavior,<sup>27</sup> an attitude,<sup>28</sup> and a social construct.<sup>29</sup> Social scientists have identified multiple subtypes: sexual, platonic, passionate, romantic, familial, puppy, true, unrequited, unconditional, to name but a few; the number is indefinite.<sup>30</sup> In addition, love is contextually dependent—any definition of it varies across culture, class, and time.<sup>31</sup>

Given the multiple layers of love, and the multiple lenses through which one might view it, social scientists, similar to readers of *The Huffington Post*, concede that the concept is “elusive.”<sup>32</sup> Many side-step the challenge of defining it;<sup>33</sup> others agree-to-disagree about it;<sup>34</sup> and some candidly abandon altogether any attempt to explain it.<sup>35</sup>

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26. See generally Phillip R. Shaver et al., *Emotion Knowledge: Further Exploration of a Prototype Approach*, 52 J. PERSONALITY & SOC. PSYCHOL. 1061 (1987); see also Beverly Fehr & James Russell, *The Concept of Love Viewed From a Prototype Perspective*, 60 J. PERSONALITY & SOC. PSYCHOL. 425, 426 (1991) (“Love can be studied as a relationship, as an attitude, as an experience, and so on. In this article, we focus on love as an emotion. Indeed, love is a prototypical emotion . . .”).

27. See Clifford H. Swensen, Jr., *The Behaviors of Love*, in LOVE TODAY (A. Otto ed., 1972).

28. Fehr & Russell, *supra* note 26, at 427 (reviewing divergent perspectives on love and observing that some have “defined love as an attitude held by one person toward another, involving a predisposition to think, feel, and behave in certain ways toward that person”) (citation omitted); see also Stephen B. Levine, *What Is Love Anyway?*, 22 J. SEX & MARITAL THERAPY 191, 198 (1996) (“Loving the partner, which originally began as an ambition, is now closer to an attitude forged by commitment to values and persona discipline than to mere emotion.”).

29. See generally Anne E. Beall & Robert J. Sternberg, *The Social Construction of Love*, 12 J. SOC. & PERS. RELAT. 417 (1995).

30. Fehr & Russell, *supra* note 26, at 426 (“Again, the number of subcategories of love is indefinite.”).

31. See Beall & Sternberg, *supra* note 29, at 420 (“With respect to love, the social constructionist perspective is that societies differ in their understanding of the nature of love. Cultures in different time periods have defined love quite differently. In some time periods, people have believed that love includes a sexual component, whereas in other eras people have believed that it is a lofty, asexual experience. In the past two centuries, love has become a foundation for marriage, which is a new development.”) (citations omitted).

32. Fehr & Russell, *supra* note 26, at 425 (describing love as an elusive concept).

33. Aron & Aron, *supra* note 18, at 25 (“There is now a fair amount of systematic work on love, yet . . . most researchers and theorists have side-stepped defining it.”) (citation omitted).

34. See, e.g., SHARON S. BREHM, INTIMATE RELATIONSHIPS 90 (1985) (“Social scientists have had as much trouble defining love as philosophers and poets. We have books on love, theories on love, and research on love. Yet no one has a single, simple definition that is widely accepted by other social scientists.”).

35. See Beall & Sternberg, *supra* note 29, at 417 (“[I]t is difficult, if not impossible, to answer the question: ‘What is love?’ because any answer must reflect its time period and place, and in particular, the functions that romantic love serves there. More useful questions are: ‘Why does love differ across time periods or cultures?’ or perhaps, ‘What is the function of love for a given culture?’”); see also Levine, *supra* note 28 (“The same word [love] is used to describe our pleasure in wearing a favorite sweater and our complex synthesis



Arthur Aron and Ellen Aron argue that one common point found in social science literature is that “love has to do with wanting to be intimate with some individual,” and thus operationalized love as “the constellation of behaviors, cognitions, and emotions associated with a desire to enter or maintain a close relationship with a specific other person.”<sup>36</sup> Professor Stephen Levine, co-director of the Center for Marital and Sexual Health and Clinical Professor of Psychiatry at Case Western Reserve University School of Medicine, likewise stresses the importance of mutuality of this desire.<sup>37</sup> He also describes love as:

[A] grand, culturally reinforced ambition energized by an arrangement that is made between two people who make a moral commitment to one another and then privately struggle with the vagaries of their perceptions of the partner and the growing dimensions of their previous commitment.<sup>38</sup>

This Article acknowledges that love is not a single feeling, cognition, or attitude, but rather a complex interaction of often conflicting feelings informed by culture (and subculture within that culture), the intent of the speaker, the perception of the listener, and the relationship between the two. Further, this Article recognizes that the interplay between, the importance of, and the very presence of passion, friendship, commitment, understanding, and other factors that make up what people may commonly understand as love are constantly in flux and variable. The relationship and feelings between two people that can be labeled as “love” are probably always evolving and changing.

Even if one’s definition of love is significantly vague, subjective, and idiosyncratic, people report feeling “love”—however one defines it—in their intimate relationships. And they report that falling out of love is a primary factor in determining whether to leave these relationships, as demonstrated in the next Subpart.

### ***B. Love Matters in Nonabusive Relationships***

Recently, in *The New York Times*, Daniel Jones observed:

As the editor of the Modern Love column for nearly a decade, I have sifted through roughly 50,000 stories that have crossed my desk. I have noticed people wrestling with two questions above all others.

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of experience with a spouse of 50 years: we say we love a particular musical group and we label the rush of emotions at our child’s wedding ceremony with the same word. It is useless to try to delineate a singular meaning for ‘love’ in our language.”).

36. Aron & Aron, *supra* note 18, at 26.

37. See Levine, *supra* note 28, at 192 (discussing significance of mutual respect); *id.* at 194 (“Reciprocity between two people is required to create the full intensity of falling in love.”); *id.* at 198–99 (“Loving the partner rests upon our appraisal of the degree to which mutual respect . . . exist[s] in our relationship.”). Even Plato understood the importance of a “reciprocal exchange.” See Beall & Sternberg, *supra* note 29, at 425.

38. Stephen B. Levine, *What is Love Anyway?*, 31 J. SEX & MARITAL THERAPY 143, 145 (2005).

From the young: “How do I find love?” And from those wallowing through marital malaise: “How do I get it back?”<sup>39</sup>

When intimate relationships become less than ideal, or less desirable than when they were entered into, people naturally begin to question their involvement in the relationship.<sup>40</sup> Both women and men think long and hard before leaving their relationships.<sup>41</sup> Despite having doubts, people often: persist in relationships that are dissatisfying or even hurtful;<sup>42</sup> stay in unhappy relationships for the long-term;<sup>43</sup> experience anguish in decision-making;<sup>44</sup> hold hope long into the breakup process;<sup>45</sup>

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39. Daniel Jones, “*Good Enough? That’s Great.*” N.Y. TIMES, Feb. 2, 2014, at ST1.

40. Ximena B. Arriaga et al., *Individual Well-Being and Relationship Maintenance at Odds: The Unexpected Perils of Maintaining a Relationship with an Aggressive Partner*, 4 SOC. PSYCHOL. & PERSONALITY SCI. 676, 676 (2013) (“Romantic involvements entered by choice typically have desirable qualities. When desirable relationships become undesirable, however, people who chose to be together may question their involvement.”).

41. See Gay C. Kitson et al., *Withdrawing Divorce Petitions: A Predictive Test of the Exchange Model of Divorce*, 7 J. DIVORCE 51, 55 (1983) (reviewing literature and stating couples knew their relationships were beginning to sour about three years prior to filing for divorce, which some have called the “emotional divorce” period); see also Paul R. Amato & Stacy J. Rogers, *A Longitudinal Study of Marital Problems and Subsequent Divorce*, 59 J. MARRIAGE & FAMILY 612, 622 (1997) (observing that couples’ awareness of problems precipitating divorce occurs 9–12 years before filing for divorce); Larry W. Taylor, *The Transition to Mid-Life Divorce*, 9 REV. ECON. HOUSEHOLD 251, 254 (2011) (analyzing the results of a web-based survey of 581 men and 566 women who divorced at least once and finding that the median interval for divorce deliberations is 1–2 years).

42. Arriaga et al., *supra* note 40, at 676 (“Despite having some doubts, individuals often persist in relationships that are dissatisfying or even hurtful.”) (citations omitted).

43. Robert H. Lauer & Janice C. Lauer, *Factors in Long-Term Marriages*, 7 J. FAMILY ISSUES 382, 385 (1986) (nonrandom sample of 351 couples married 15 years or longer surveying reasons people happily and unhappily stay in long-term marriages, finding that for those reporting unhappy marriages the belief in marriage as a long-term commitment was the primary reason for staying together).

44. Miriam R. Hill, *Dreams to Cherish, Dreams to Grieve: An Intervention for the Decision-Making State of Divorce Therapy*, 10 J. FAMILY PSYCHOTHERAPY 49, 50 (2008) (describing the process of deciding to divorce as filled with ambivalence, stress, inner turmoil, power struggles, and soul searching).

45. Alan J. Hawkins et al., *Reasons for Divorce and Openness to Marital Reconciliation*, 53 J. DIVORCE & REMARRIAGE 453, 458 (2012) (surveying 886 individual divorcing parents after mandated parenting class, finding 26% of respondents still hoped for reconciliation and believed the marriage could be saved even at a late stage in the process).

separate and reunite before deciding to stay<sup>46</sup> or to leave,<sup>47</sup> and experience prolonged feelings of attachment,<sup>48</sup> grief, and mourning.<sup>49</sup>

Large-scale longitudinal studies demonstrate that, despite the presence of conflict and violence in relationships, neither conflict nor violence is necessarily the primary reason that people decide to terminate their relationships. For example, in one longitudinal study of divorcing couples in the mid-1980s, out of a 27-factor list, the two most commonly cited reasons for divorce were “gradual growing apart, losing feelings of closeness,” and “not feeling loved and appreciated.”<sup>50</sup> Additionally, while a clear majority of respondents reported high levels of conflict and tension during their marriage, “feelings of emotional barrenness and boredom with the marriage” were cited far more frequently as a primary causes of divorce.<sup>51</sup>

As the authors noted, these finding bore a striking similarity to two other large-scale studies conducted 5 and 15 years prior, in which “growing apart” and “feeling unloved” were frequently mentioned factors in divorce decision-making.<sup>52</sup> The earlier large-scale studies concluded that:

Whereas before, divorce was a solution more often limited to such stark and specific circumstances as desertion or chronic alcoholism, in the mid-[19]80s, divorce appears to be most commonly sought because of a more general dissatisfaction with the emotional or affective deficiencies and tenor of the marital relationship. As indicated elsewhere, a substantial number of these divorces were not

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46. Regina L. Donovan & Barry L. Jackson, *Deciding to Divorce: A Process Guided by Social Exchange, Attachment and Cognitive Dissonance Theories*, 13 J. OF DIVORCE 23, 24 (1990) (noting that “[m]any people who are dissatisfied or unhappy in marriage or who separate from their spouses do not ultimately divorce. More than 20% of the divorce petitions filed are retracted each year . . . . And finally there are an untold number of informal separations in which the spouses simply cease to live as a married couple. Such informal separations are considered to be quite frequent.”) (citations omitted).

47. Kitson et al., *supra* note 41, at 52 (finding that 44% of a court record-based survey (N=209) withdrew their petitions).

48. William H. Berman, *Continued Attachment After Legal Divorce*, 6 J. FAMILY ISSUES 375, 375 (1985) (“[A]t least 25% of the divorced population have significant difficulty completing the psychological divorce and remain attached to their ex-spouses for significant periods of time.”).

49. Cathleen A. Gray & Joseph J. Shields, *The Development of an Instrument to Measure the Psychological Response to Separation and Divorce*, 17 J. DIVORCE & REMARRIAGE 43, 44 (1992) (describing mourning for the loss of the relationship).

50. Lynn Gigy & Joan B. Kelly, *Reasons for Divorce: Perspectives of Divorcing Men and Women*, 18 J. DIVORCE & REMARRIAGE 169, 173 (1993).

51. *Id.* at 183.

52. *Id.* at 184 (citing Koch-Nielsen & Lone Gundelach, *Women at Divorce*, in *THE AFTERMATH OF DIVORCE: COPING WITH FAMILY CHANGE: AN INVESTIGATION IN EIGHT COUNTRIES* 99–121 (Akademai Kiado ed., 1985); Joan B. Kelly, *Divorce: The Adult Perspective*, in *HANDBOOK OF DEVELOPMENTAL PSYCHOLOGY* 734–50 (Benjamin B. Wolman & George Stricker eds., 1982)).

characterized by extreme anger, retaliatory behaviors, or a serious breakdown in communication and cooperation.<sup>53</sup>

Recent data indicate the same. For example, in 2012, after reviewing the body of research on reasons people file for divorce, Hawkins et al. concluded that “most divorces are initiated because of problems such as falling out of love, changing personal needs, lack of satisfaction, and feelings of greater entitlement, especially for more educated individuals, whereas severe problems such as abuse and addiction are noted less frequently.”<sup>54</sup> The authors concluded that a number of breakups might be prevented without threat to the health and safety of the couple, and that there is more potential to repair relationships than is often assumed.<sup>55</sup>

Indeed, a number of researchers suggest that we as a society might do more through social policy and public education to encourage intimate partners—particularly those who are married—to work things out and to stay together.<sup>56</sup>

Paul Amato, a leading sociologist in the study of marital quality and causes of divorce, advocates for the preservation of “good enough” marriages.<sup>57</sup> He argues that, where conflict is at a low- or even medium-level but is not abusive, such partnerships are good enough, from the point of view of the children involved.<sup>58</sup>

Daniel Jones<sup>59</sup> also explores the concept of good enough marriages.<sup>60</sup> Jones advocates for good enough marriages from a spouse’s perspective rather than a child’s; accordingly, good enough requires distinguishing between the loss of passion and the loss of love.<sup>61</sup> When love remains, the relationship is good enough. And, as the title of Jones’s column indicates, good enough is, actually, great.<sup>62</sup>

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53. *Id.* at 186.

54. Hawkins et al., *supra* note 45, at 453.

55. *Id.* at 454.

56. *Id.* (arguing that the results of their literature review and data showed that the most common factors that contribute to seeking a divorce are the ones most amenable to intervention, and citing three additional sources finding the same, and advocating for policies encouraging couples to work things out) (citations omitted).

57. Paul R. Amato, *Good Enough Marriages: Parental Discord, Divorce, and Children’s Long-Term Well-Being*, 9 VA. J. SOC. POL’Y & L. 71 (2001).

58. *Id.* at 71 (“Children’s adjustment to divorce depends upon the level of discord between parents prior to disruption. When discord is high, divorce appears to benefit children, but when discord is low, divorce appears to harm children. Low discord marriages that end in divorce represent ‘good enough’ marriages from a child’s perspective. Because relations between spouses in these marriages are generally positive, the potential for reconciliation is considerable. Attempts should be made to screen these couples prior to marital dissolution and provide appropriate educational and support services.”).

59. Jones’s quotation began this Subpart. *See* JONES *supra* note 21.

60. The concept of “good enough” love is similarly discussed by Professor Levine. *See* Levine, *supra* note 28, at 193 (“When the buffering system [defense mechanisms for distress in relationships] works, one’s love, while not continuously or completely harmonious, may be felt as good enough.”).

61. Jones, *supra* note 39.

62. *Id.*

In sum, both popularly and scientifically, there is a large and growing body of data illustrating that when love exists, intimate relationships should not be abandoned, if those relationships are nonabusive.

### *C. Love Matters in Abusive Relationships*

In stark contrast, both popularly and scientifically, the question “why does she stay?” is the most pervasive question asked in the context of abusive relationships.<sup>63</sup> Indeed, “battered women who stay” are viewed as a deviant group.<sup>64</sup>

The question “why does she stay?” might seem rhetorical at first blush. If a partner is causing physical and emotional pain, it is intuitive to think that leaving the partner would end that pain. Alas, for years social scientists have documented that leaving puts many women<sup>65</sup> at risk for heightened, and even lethal, violence at the hands of their former partners.<sup>66</sup> We know this because women do not, in fact, always stay. To the contrary, around 80% of women leave abusive partners at least once.<sup>67</sup> Statistics show that women living apart from their abusive partners are more likely to be abused than married or cohabiting women.<sup>68</sup>

Yet researchers continue to be preoccupied with the question of why women stay, and with figuring out how to get them to leave. For example, a 2013

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63. See ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 77–79 (2000) (concisely explaining how the question is asked popularly); see also Mahoney, *supra* note 7, at 15 (arguing that most of us do not think of ourselves as “staying” in our current relationships; rather, we think of ourselves as “being” in our current relationships and discussing the problems with the word “stay” to describe women in abusive relationships versus women, and men, generally in their relationships, and asking: “Do we ‘stay’ or are we simply married?”). For an excellent discussion of how the question of staying has influenced the collection of empirical data amongst social scientists, see Einat Peled, et al., *Choice and Empowerment for Battered Women Who Stay: Toward a Constructivist Model*, 45 *SOCIAL WORK* 9, 10–11 (2000) (critiquing three themes in the literature that purport to explain the “so-called problem of battered women who stay” as: (1) the inaccurate assumption that separation from the abuser terminates the violence; (2) theories that women’s psychological makeup, relationship skills, and personal and situation factors contribute to their entrapment in destructive and dysfunctional relationships; and (3) theories that patriarchal notions regarding gender roles and nonsupportive formal and informal social networks, along with economic dependency and lack of alternative housing explain women’s entrapment).

64. Peled et al., *supra* note 63, at 9 (arguing there exists a category of women called “battered women who stay” and observing that these women “often are characterized as incompetent, weak, and lacking coping skills, which further engulf them in the victim role and contribute to their powerlessness.”) (citation omitted).

65. But not *all* women experiencing violence in their relationships are at heightened risk when they leave their partners. It depends upon the type of violence. For example, women involved in “fights” may not be at the same risk as women involved in “coercive control.” See *infra* Part III.A (discussing the varying types of IPV).

66. Martha Mahoney coined the term “separation assault” to describe this phenomenon. See Mahoney, *supra* note 7, at 6.

67. STARK, *supra* note 4, at 115.

68. *Id.* at 91 (noting that men are also more likely to be assaulted by female partners if they are living separately rather than cohabiting).

study ultimately concluded: “Perhaps when an abused woman feels understood about her love for her abusive partner she will be more perceptive to learning about mutual mature love, thus increasing her likelihood of leaving the relationship.”<sup>69</sup>

The misconceptions that women always stay, and are in more danger by staying, along with the preoccupation with victims’ conduct rather than with perpetrators’ conduct, long have been the subjects of IPV-related feminist scholarship. Evan Stark’s observation concisely captures the general tone of this body of work: “It’s the Men, Dummy . . . [I]t is the men who *stay*, not their partners. Regardless of whether their dependence on their partner is primarily material, sexual, or emotional, there is no greater challenge in the abuse field than getting men to exit from abusive relationships.”<sup>70</sup>

Putting the question of whether it is physically safe for a woman to leave an abusive relationship aside momentarily, data show that a primary reason women stay in abusive relationships is for love.<sup>71</sup>

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69. Marilyn Smith et al., *Intimate Partner Violence and the Meaning of Love*, 34 ISSUES IN MENTAL HEALTH NURSING 395, 400 (2013).

70. STARK, *supra* note 4, at 130 (emphasis in original).

71. See Donovan & Hester, *supra* note 12, at 283 (conducting a national community survey in Great Britain, obtaining 746 useable questionnaires; conducting focus groups and interviewing 67 respondents, 44 of whom self-identified as lesbian/gay/bisexual or queer and 23 heterosexual; and not naming “domestic violence” as the topic of the study but rather “what happens when things go wrong in relationships”; finding “love for a partner and hope for the future of the relationship are amongst key reasons given by people in heterosexual and same sex relationships for staying in or returning to domestically violent relationships”); see also Sascha Griffing et al., *Domestic Violence Survivors’ Self-Identified Reasons for Returning to Abusive Relationships*, 17 J. INTERPERSONAL VIOLENCE 306, 313 (2002) (conducting structured interviews of 90 female residents of an urban domestic violence shelter, with all respondents identifying as African American, Latina or Caribbean; finding that 73.3% of the respondents who previously left their partners in the past reported that emotional attachment would be an influential factor in their decision-making about whether to return in the future); Margaret H. Kearney, *Enduring Love: A Grounded Formal Theory of Women’s Experience of Domestic Violence*, 24 RESEARCH IN NURSING & HEALTH 270, 271 (2001) (reviewing 13 qualitative studies between 1984 and 1999, which created a sample of 282 ethnically and geographically diverse women between ages 16–67, hypothesizing the concept “enduring love” and illustrating a primary reason women stayed or returned to violent relationships was a “continued emotional bond and hope for a return to a better time in the relationship”); Jennifer Langhinrichsen-Rohling, *Top 10 Greatest “Hits”: Important Findings and Future Directions for Intimate Partner Violence Research*, 20 J. INTERPERSONAL VIOLENCE 108, 114 (2005) (reviewing literature of the past decade and finding that “one of the main reasons that physically victimized married women give for staying is love – rather than fear or obstacles for leaving such as money or children”); CLAIRE M. RENZETTI, VIOLENT BETRAYAL: PARTNER ABUSE IN LESBIAN RELATIONSHIPS 77 (1992); Anna Aizer & Pedro Dal Bo, *Love, Hate and Murder: Commitment Devices in Violent Relationships*, 93 J. PUBLIC ECON. 412 (2009); Arriaga et al., *supra* note 40; Ola W. Barnett, *Why Battered Women Do Not Leave, Part 2: External Inhibiting Factors – Social Support and Internal Inhibiting Factors*, 2 TRAUMA VIOLENCE ABUSE 3, 9 (2001); Pamela Choice & Leanne K. Lamke, *A Conceptual Approach to Understanding Abused Women’s Stay/Leave Decisions*, 18 J. FAMILY ISSUES 290 (1997); James C. Roberts et al., *Why Victims of Intimate Partner Violence*

Notably, these data suggest that women in abusive relationships care a lot about the same things that women, and men, in nonabusive relationships care about. Like people in nonabusive relationships, women who experience abuse feel a deep sense of commitment to their partners<sup>72</sup> and, like people in nonabusive relationships, women in abusive relationships feel hope that their relationships can work out even during late stages of the emotional and psychological breakup period.<sup>73</sup>

#### *D. Matters of Love are Illegitimate in Abusive Relationships*

Leigh Goodmark persuasively makes the case that there is a paradigmatic domestic-abuse victim that exists in legal actors' (police, judges, and jurors) psyches, and that victim desperately wants to leave her intimate relationship but is powerless to do so.<sup>74</sup>

When the justice system comes across a woman who does not fit this mold, it offers almost no solutions. Restraining orders, the most widely used civil legal remedy, prevent any contact between the parties and thus are practicable only if the woman wants to separate.<sup>75</sup> If a woman calls the police for help, most state statutes strongly encourage, if not require, the police to arrest the perpetrator.<sup>76</sup> If criminal charges are filed, the court issues a criminal restraining order that prohibits contact between the parties.<sup>77</sup> If a district attorney decides to move forward with criminal charges, many jurisdictions follow policies that assure that cases will be prosecuted regardless of the woman's wishes.<sup>78</sup> In short, separation *is* the justice system's solution to the problem of IPV.<sup>79</sup>

Women experiencing abuse are considered blameworthy or masochistic when they want to preserve their intimate relationships.<sup>80</sup> Particularly when their

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*Withdraw Protection Orders*, 23 J. FAM. VIOL. 369 (2008); Caryl E. Rusbult & John M. Martz, *Remaining in an Abusive Relationship: An Investment Model Analysis of Nonvoluntary Dependence*, 21 PERSONALITY SOC. PSYCHOL. BULL. 558 (1995); Smith et al., *supra* note 69, at 395.

72. See Aizer & Dal Bo, *supra* note 71.

73. *Id.*; Donovan & Hester, *supra* note 12, at 282; see Kearney, *supra* note 71, at 275.

74. GOODMARK, *supra* note 2, at 63–70 (2012) (Goodmark titles this subsection of her book *The Paradigmatic Victim and Her Non-Conforming Sisters*).

75. Sally F. Goldfarb, *Reconceiving Civil Protection Orders for Domestic Violence: Can Law Help End the Abuse Without Ending the Relationship?*, 29 CARDOZO L. REV. 1487 (2008).

76. GOODMARK, *supra* note 2, at 110.

77. Suk, *supra* note 2.

78. Tamara L. Kuennen, *Private Relationships and Public Problems: Applying Principles of Relational Contract Theory to Domestic Violence*, 2010 BYU L. REV. 515, 592 [hereinafter *Relational Contracts*] (discussing appendix setting forth jurisdictions claiming to follow no-drop prosecution policies).

79. Suk, *supra* note 2, at 8.

80. Kuennen, *Relational Contracts*, *supra* note 78, at 587 (citing the feminist legal literature on point).

desire is based, even partially, on love, it is viewed as maladaptive and even pathological.<sup>81</sup>

These views, combined with empirical data indicating the importance of love to abused women, would lead one to think that feminist legal scholars would be interested in constructing a legal response to IPV that accounts for love. Yet by and large, this is not the case.<sup>82</sup> In past decades, feminists dismissed love in the context of abuse as a product of false consciousness or gender-role socialization.<sup>83</sup> Even cultural feminists, who controversially argue that relationships and connections are uniquely important to women, have supported a legal regime that dismisses love.<sup>84</sup>

There are important strategic and political reasons for these feminist responses, as discussed *infra* Part V. In this Part, I am interested in the body of legal scholarship that argues in favor of legal reform that accounts for the many pragmatic reasons women choose to stay with abusive partners (putting aside the strategic and political). This body of work avoids love as a reason for staying.<sup>85</sup> On the rare occasions when we (and I include myself specifically) as legal scholars acknowledge the concept of love, we rarely use the word *love* in our writing. Rather, we opt for more clinical, sanitized terms. Instead of love, scholars use terms such as “connection” and “emotional attachment.”<sup>86</sup> Previously I have observed:

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81. GOODMARK, *supra* note 2, at 98 (“Love becomes pathology . . . a problem to solve so that women subjected to abuse can be cast in a sympathetic light . . . and so that her problems can be addressed in the legal system’s preferred manner, through separation. Because, of course, if a woman stays with her partner out of love, the domestic violence service system has very little to offer her.”); *id.* at 99–100 (“Love as pathology reaches its apex with the concept of traumatic bonding.”).

82. See Kuennen, *Stuck*, *supra* note 3, at 171. There are a handful of exceptions where love *is* meaningfully explored as a reason for staying in a violent relationship. See GOODMARK, *supra* note 2, at 63–70; Katharine K. Baker, *Dialectics and Domestic Abuse*, 110 YALE L.J. 1459, 1474–75 (2001) (“[Women] do not necessarily want to be in a position where they can just leave. They want to be in relationships in which they forgive. They may even want to be in relationships that involve some relinquishment of self, autonomy, and power. And what is more, they are not alone. Women who are not in battering relationships and men who do not batter want these kinds of relationships too.”) (footnotes omitted); Mahoney, *supra* note 7, at 19–21 (observing that women’s response to violence in a relationship relies on numerous goals: their experience of the violence, economic security, love of partner, and view of life outside of the relationship, among others). See generally Cheryl Hanna, *Rethinking Consent in a Big Love Way*, 17 MICH. J. GENDER & L. 111 *passim* (2010).

83. Kuennen, *Stuck*, *supra* note 3, at 176.

84. Aya Gruber, *NeoFeminism*, 50 HOUS. L. REV. 1325, 1354 (2013) (“Yet it seems that when it comes to how the state should deal with violent men, even cultural feminists reject caring and cooperation. They do not universally or even generally support continued intimacy with abusers . . .”) (citations omitted).

85. I wonder if our feminist legal scholars’ discomfort with love has as much to do with our inability to explain it in the context of coercive control as it has to do with politics and strategy. I discuss love in the context of coercive control in Part II.C., *infra*.

86. See, e.g., Deborah Epstein et al., *Transforming Aggressive Prosecution Policies: Prioritizing Victims’ Long-Term Safety in the Prosecution of Domestic Violence*



To fully appreciate the degree of discomfort such sanitized words display, one need only imagine saying, “I feel emotionally attached to you,” or “I am deeply connected to you,” rather than, “I love you,” to one’s spouse or partner before hanging up the phone or turning in for the evening. Or imagine explaining to someone outside of the relationship how you feel about your partner by saying: “I feel very emotionally connected to her.”<sup>87</sup>

Our scholarship tiptoes around, and even apologizes for, the fact that women in abusive relationships may love their partners,<sup>88</sup> suggesting that we resign ourselves to “accept” the reality that the women we are advocating for do, indeed, love their partners.<sup>89</sup>

In nonabusive relationships, it is a norm for women (and men) to make decisions about their intimate relationships based on love, particularly when deciding whether to end their intimate relationships.<sup>90</sup> The question, then, is how do we as a society draw the line between abusive and nonabusive relationships so as to

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*Cases*, 11 AM. U. J. GENDER SOC. POL’Y & L. 465, 476–79, 493 (2003) (describing in detail the multiple “[r]elational [f]actors” that go into a woman’s decision-making regarding whether to preserve the relationship, using “emotional connection” and “emotional attachment,” though mentioning the word *love* one time, “a woman may love her partner but also be afraid of him”); Goldfarb, *supra* note 75, at 1500 (describing “*mutual emotional commitment*, companionship, intimacy, and sharing,” but never using the word *love*) (emphasis added); Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1113–14 (2009) (“The current [civil protection order] laws are particularly well situated to permit petitioners to construct a remedy that redefines a relationship that is tainted by abuse but nonetheless is meaningful—connected by children, economics, *emotional, and psychological ties.*”) (emphasis added) (footnote omitted); Kuennen, *Relational Contracts*, *supra* note 78, at 537 (“A victim may choose to stay in a relationship that she knows is dangerous because the *intimate connection* is worth the risk.”) (emphasis added).

87. Kuennen, *Stuck*, *supra* note 3, at 175.

88. See GOODMARK, *supra* note 2, at 98 (“The domestic violence literature tiptoes carefully around the concept of love. The literature accepts the idea that some women subjected to abuse do, in fact, continue to say that they love their partners despite the abuse. But the literature explains this love away, almost apologizing for the desire of women to continue their relationships.”).

89. See, e.g., LISA A. GOODMAN & DEBORAH EPSTEIN, LISTENING TO BATTERED WOMEN: A SURVIVOR-CENTERED APPROACH TO ADVOCACY, MENTAL HEALTH, AND JUSTICE 90 (2008) (“We need to ensure that every battered woman has the opportunity and ability to leave her relationship, receives sufficient counseling to make the most independent choice possible, and is fully informed about available alternatives. But *we also need to understand and accept that some women will decide to continue a connection* with an abusive partner . . . .”) (emphasis added); Goldfarb, *supra* note 75, at 1500–01 (describing the multidimensional emotions that abusive relationships produce, such as “mutual emotional commitment, companionship, intimacy, and sharing,” and thus concluding that the aspiration of many women to remain with their partners “*should not be dismissed as naïve or misguided*”) (emphasis added).

90. See discussion *supra* Part I.B; see also notes 50–55.

recognize staying for love as a legitimate reason to stay, rather than writing it off as maladaptive?

## II. DRAWING THE LINE BETWEEN ABUSIVE AND NONABUSIVE RELATIONSHIPS

This Part explores a continuum of aggression in intimate partnerships and analyzes the usefulness of lines that have been drawn regarding what types or levels of aggression are deemed acceptable, versus not. Subpart A provides a specific definition of the word “abusive,” which I have used loosely thus far in this Article. Subpart B relies heavily upon the work of two leading sociologists in the field: Evan Stark<sup>91</sup> and Michael Johnson,<sup>92</sup> both of whom discern among different types of aggression that occur in intimate relationships.

Both view coercive control as qualitatively different from other forms of IPV, and both estimate the prevalence of coercive control to be significantly lower than other forms of aggression in intimate relationships.

Relying on the work of Stark and Johnson, I argue in Subpart C that if the line between abusive and nonabusive relationships were moved away from a zero-tolerance point on the continuum—where law and policy currently draw it—and toward a type of IPV that Stark and Johnson call “coercive control,” law and policy could acknowledge love as a legitimate factor in stay–leave decisions for the majority of women who report IPV, i.e., those who report types of aggression in their relationships far shy of coercive control. It also allows us to discuss the significance of love to women experiencing coercive control, which I do in the conclusion to this Part.

### A. *Nomenclature*

So far in this Article I have used the terms “intimate partner violence” and “abuse” loosely to describe any act or array of aggression that might come to mind when one thinks of these concepts. From here on out, I will be more precise in my terminology.

For the purposes of this Part, and in the rest of the Article, I will continue to use the term “intimate partner violence” (or IPV) to mean the same: any form of aggression, physical or nonphysical,<sup>93</sup> between intimate partners. However, I will

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91. Stark’s breakdown of the types of aggression used by people who are or have been in intimate relationships employs terminology that I find to be accessible because of its lay, rather than clinical, nature. As I will discuss, once a “zero tolerance” for *any* physical aggression in relationships is abandoned, which I argue it should be, we can—and Stark does—discern between “fights,” “assaults,” and “coercive control” in relationships.

92. Michael Johnson’s typologies of intimate partner violence are more clinical in nature, but because they are increasingly used in the field and are gaining traction, I briefly review them. I then summarize the points upon which Johnson’s and Stark’s works diverge before focusing on two critical points where they agree.

93. Nonphysical aggression might include verbal degradation, threats, intimidation, the “silent treatment,” and any other imaginable act of aggression shy of the use of physical force.

use the word “abusive” to mean a level of aggression that is a tipping point between what is acceptable conduct in a relationship and what is not, i.e., “abusive conduct” refers to unacceptably aggressive conduct.

As we shall see, there are many types of aggression, both physical and nonphysical, that may fall under the umbrella of IPV, but whether one interprets them as abusive is a point of controversy and confusion.

### ***B. Places We Could Draw the Line***

#### *1. Zero Tolerance for IPV*

In society and in scholarship, “zero tolerance” is a prevalent view for how to treat IPV. Politicians exclaim this.<sup>94</sup> Public agencies tout this.<sup>95</sup> Advocates for battered women make this their mission.<sup>96</sup> Some feminist scholars argue this: “*Too* many people do not know that the *only* sharp line that matters, and should matter, in domestic relations, is between violence and nonviolence, not between bad violence and okay violence. No level of violence is acceptable; none should be tolerated.”<sup>97</sup>

An initial, analytical problem with zero tolerance for IPV is the lack of clarity regarding what counts as violence. In accord with a common dictionary

94. See, e.g., G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence and the Conservatization of the Battered Women’s Movement*, 42 HOUS. L. REV. 237, 238 (2005) (“With the death of Nicole Brown, politicians raced to the state house to invoke domestic violence laws, jumping on the ‘zero tolerance’ bandwagon.”); John Sanko, *Stopping Domestic Violence: Lawmakers Take Approach of Zero Tolerance As they Support Bill, Revamp Laws*, ROCKY MTN. NEWS, May 15, 1994, at 5A (statement of Rep. Diana DeGette, Colo.) (“We’ve basically completely revamped domestic-violence laws in Colorado . . . . The message to citizens is ‘We’re taking a zero tolerance in this type of activity.’ People who beat up their spouses, girlfriends or boyfriends are going to be punished swiftly and severely.”).

95. See, e.g., Jay R. Rooth, *Credibility Strategies for an Incredible Defense*, in STRATEGIES FOR DEFENDING DOMESTIC VIOLENCE CASES 50 (2012) (“Many local agencies in Florida have a zero tolerance policy, i.e., if law enforcement responds to a 911 call and it involves domestic violence, they must make an arrest.”); see also Contra Coast County Board of Supervisors, ZERO TOLERANCE FOR DOMESTIC VIOLENCE, <http://www.contracostazt.org/> (last visited Sept. 29, 2014) (“‘Zero Tolerance for Domestic Violence,’ an initiative of the Contra Costa County Board of Supervisors, is a public/private partnership designed to reduce domestic violence, family violence, elder abuse, and human trafficking in Contra Costa County. Authorized by the California Legislature as the first Zero Tolerance for Domestic Violence County . . . the initiative is aligning policies, practices and protocols, coordinating services, and creating a climate where violence and abuse are not tolerated.”)

96. See, e.g., SANCTUARY FOR FAMILIES ZERO TOLERANCE BENEFIT, [http://www.probono.net/ny/family/calendar/event.427815-Sanctuary\\_for\\_Families\\_Zero\\_Tolerance\\_Benefit\\_2012](http://www.probono.net/ny/family/calendar/event.427815-Sanctuary_for_Families_Zero_Tolerance_Benefit_2012) (last visited September 23, 2014) (naming its annual benefit after zero tolerance).

97. See ROBIN WEST, *CARING FOR JUSTICE* 209 (1997) (emphases in original); see also BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 120 (South End Press 2d ed. 2000) (“Viewing male violence against women in personal relationships is one of the most blatant expressions of the use of abusive force to maintain domination and control.”).

definition, violence is “the use of physical force to harm someone, to damage property, etc.”<sup>98</sup> At first blush, the definition appears to be straightforward. Advocates of a zero-tolerance approach argue that any use of physical force is abusive.<sup>99</sup> The law currently draws the same line.<sup>100</sup>

But let us return to the question posed by Martha Mahoney in this Article’s Introduction: is smashing up furniture in the presence of one’s partner an act of violence? Proponents of zero tolerance would argue that it is, and the common dictionary definition would support this position as well. But, if that is the case, and if Mahoney’s observation that “it is, relatively speaking, normal for a woman to watch her husband destroy the furniture”<sup>101</sup> is correct, are not most women in this country victims of IPV?

Perhaps zero-tolerance policies are meant to address only violence directed at a person, so that smashing the furniture would not count as violence. But if that is the case, what if the furniture smashing were done for the purpose of intimidating the witness? Surely the intent of the perpetrator and the effect on the witness are important factors.

Finally, a zero-tolerance policy’s emphasis on violence underappreciates nonphysical conduct, such as intimidation or coercion. Is a woman *not* a victim of IPV if her partner has never laid a hand on her but instead controls her money, limits her access to her family, and/or degrades her on a daily basis? “Violence is a distinctive behavior with a special link to injury, pain, and other forms of suffering. By subsuming all forms of abuse to violence, we conflate the multiple layers of women’s oppression in personal life, making nonviolent abusive acts seem highly subjective or soft core.”<sup>102</sup>

While zero tolerance has the strategic advantages of any sound bite, it is more confounding than clarifying as a social policy. It does not sufficiently move forward our understanding of the tipping point between behaviors that we might deem abusive. Martha Mahoney argued that abuse should be defined as a continuum of domination, in which the focus should be the perpetrator’s intent.<sup>103</sup> Sociologist

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98. This is the first full definition of violence in the Merriam-Webster online dictionary. MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/violence> (last visited March 11, 2014).

99. See *supra* text accompanying note 8.

100. GOODMARK, *supra* note 2, at 40 (observing that the law prohibits the use of physical violence and criticizing it for not including other types of aggression; only Nevada and Rhode Island define criminal domestic violence more broadly but even in these states the focus is on physical violence).

101. Mahoney, *supra* note 7.

102. STARK, *supra* note 4, at 86.

103. Mahoney, *supra* note 7, at 56 (describing “battering” as a (violent) point on a continuum of domination in relationships; she argues that the intent of the perpetrator should be the focus).

Evan Stark comes closest to doing just that in his discernment between fights, assaults, and coercive control.<sup>104</sup>

## 2. Stark's Typologies: Fights, Assaults, and Coercive Control

### a. Fights

Large-scale national surveys show that respondents report very high rates of IPV when they are asked to catalog *any* instances of force used to resolve conflicts in their relationships.<sup>105</sup> In addition, these surveys find that “mutual violence,”<sup>106</sup> where both men and women use force in relationships, is the most common dynamic in couples.<sup>107</sup>

Many people in relationships believe that some use of physical force is not only an acceptable way to resolve conflict, but that it is a *legitimate* way to resolve conflict.<sup>108</sup> Stark defines a “fight” as force that is used between relative equals, does not exceed community norms or the scope of the grievance, and does not cause serious injury.<sup>109</sup> On that basis, Stark argues that fights have been mistakenly and problematically equated with abuse.<sup>110</sup> To distinguish abuse from fights, Stark argues, “it is necessary to know not merely *what* a party does—their behavior—but its context, its sociopolitical as well as its physical consequence, its meaning to the parties involved, and particularly to its target(s) and whether and how it is combined with other tactics.”<sup>111</sup>

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104. Though I note that Stark views coercive control as qualitatively different from fights and assaults, he does not exactly provide us a “continuum.”

105. STARK, *supra* note 4, at 89.

106. *Id.* at 92.

107. *Id.* (noting that it is “incontrovertible that large numbers of women use force in relationships” and that the type of force women use includes the types of force classified as severe or abusive).

108. See Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. CHI. L. REV. 607, 607–09 (2000) (arguing that the average juror believes that some amount of violence within an intimate relationship is acceptable, and thus might be disinclined to convict in the case of intimate partner violence, and calling this a sticky norm that is not going to be easily changed by feminist law reforms reflecting values not yet adopted by society at large).

109. STARK, *supra* note 4, at 105 (describing fights as: (1) occurring between “relative equals”; (2) having some element of reciprocity; (3) bearing proportionality to the grievance; and (4) not violating what the community regards as a legitimate way to address differences).

110. *Id.* at 85 (“The equation of abuse with physical force in relationships has helped the domestic violence revolution access a range of professional and political agendas. But it has failed victimized women in critical ways . . . . Although everyone purports to be measuring the same phenomenon, the picture that emerges . . . differs dramatically depending on whether persons are asked about conflict, crime, or safety concerns . . . . One source of confusion is indecision about whether any and all use of force in relationships should be counted as violence.”).

111. *Id.* at 104.

Turning again to Mahoney's scenario, perhaps smashing up furniture is an acceptable way to resolve a conflict in a relationship. Applying Stark's definition, it does not necessarily exceed community norms—as stated by Mahoney, many women have witnessed it. Other examples may include the slamming of a door or the smashing of dishes. Or perhaps screaming an insult at another. None of these occurrences between partners causes bodily injury. But, without more information, we do not know the consequence on the witness, or whether it exceeded the scope of the grievance.

Let us assume first that the person doing the smashing struck out in anger or exasperation rather than to intimidate or control his partner, or that the witness did not feel threatened or fearful. This situation would be, according to Stark, analytically distinct from a second situation, one in which the nonviolent partner was afraid to move or respond.<sup>112</sup>

Mahoney observes that feminists' accounts of lesbian battering make precisely these distinctions. Situations in which someone struck out in anger but did not hit hard, or in which they hit again but there was no effective intimidation, would not rise to the level of "battering."<sup>113</sup> However, "battering" would include "the times the furniture was smashed up and threats uttered, and the nonviolent partner was afraid to move or respond."<sup>114</sup> Adding these factors—the purpose of the use of force and the effect on the target—advances our ability to discern between abusive and nonabusive aggression in relationships.<sup>115</sup>

#### b. Assaults

Unlike fights, which are used to resolve conflict, assaults are used to suppress conflict.<sup>116</sup> In assaults, "dominance is accomplished through raw power alone, forcing a partner to apply a calculus of physical pain and suffering to reassess

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112. I rely here upon Stark's general analytical framework for distinguishing fights, assaults, and coercive control, which is most succinctly captured in *Id.* at 104–06.

113. Mahoney, *supra* note 7, at 33.

114. *Id.*

115. In addition to the work of Stark and Mahoney, a number of judges, lawyers, and scholars have recognized the importance of a contextual approach to understanding aggression between partners. See generally Nancy Ver Steegh & Claire Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454 (2008); *id.* at 456–57 ("Consider the situation where partner A slaps partner B. First imagine that when the incident takes place there is no prior history of physical violence or of other abusive behaviors between A and B. Then imagine that, although this incident is the first instance of physical violence, A has previously undermined B's efforts to seek employment, denigrated B's parenting in front of the children, and isolated B from her family and friends. Then imagine a situation where A broke B's nose the week before and A is threatening to kill B and harm their children. The act of slapping is the same in each situation but the impact and consequences are very different."). For a concise summary of this body of literature, see Jane Wangmann, *Different Types of Intimate Partner Violence—An Exploration of the Literature*, AUSTRALIAN DOMESTIC & FAMILY VIOLENCE CLEARINGHOUSE ISSUES PAPER 22 (October 2011).

116. STARK, *supra* note 4, at 377.

the benefits of past or future behavior, including resistance. In assaults, only one party can win.”<sup>117</sup> Additionally, unlike in fights, assaults’ “targets *feel* assaulted, and their means, consequence or frequency are so disproportionate to the grievances involved that they violate what the community regards as a legitimate way to address differences.”<sup>118</sup>

Stark again cites the longitudinal, national surveys to support his distinction between fights and assaults. In those surveys, when asked about being hit, almost none of the men and only a tiny proportion of the women indicated that they required outside assistance.<sup>119</sup> These folks are talking about fights.<sup>120</sup>

Stark argues that people who indicate that they have sought outside assistance in crime and safety surveys are likely talking about assaults. Their partners’ actions violated their community norms to the extent that they anticipated that outsiders would view their grievance as legitimate, and would help them.<sup>121</sup> “As a practical matter,” Stark argues, “applying a sheer calculus of means and harms to a history of force in relationships can usually distinguish fights from assaults.”<sup>122</sup>

Both women and men assault their partners. While the body of research on women’s assaults of men is small, it shows that women assault their partners in the same context, and with similar motives and consequences, as men.<sup>123</sup>

Are assaults abusive? It depends upon the purpose of the perpetrator and the effect on the victim. In discussing his female clients, Stark noted that many “see violence as a legitimate way to stand up for themselves, maintain their self-respect, and to demonstrate that assaulting them has a cost.”<sup>124</sup> In this scenario, the intent of the perpetrator is one of leveling rather than controlling.

On the other hand, what if the victim felt controlled, even if this was not the perpetrator’s intent? Or what if the effect of the assault was a very serious injury? Stark concedes that differentiating between assaults and the next category of aggression—coercive control—is tricky business.<sup>125</sup> According to Stark, the key is the intent of the perpetrator to dominate and control his or her partner. If a specific

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117. *Id.* at 105.

118. *Id.* (explaining why distinguishing fights from assaults is straightforward).

119. *Id.*

120. *Id.* (concluding that, in the large, national surveys, “a good number of these [reported] assaults occur in the context of fights, a possibility that is supported by the extent to which couples report mutual violence”).

121. *Id.* (arguing that the “majority of those who report abuse to crime or safety surveys have sought outside assistance, suggesting they are primarily victims of assault or worse”).

122. *Id.* at 106.

123. *Id.* at 99.

124. *Id.*

125. *Id.* at 105.

assault is part of a larger pattern of ongoing tactics used coercively to control another, it tips for him into the realm of abusive.<sup>126</sup>

### c. Coercive Control

The aim of coercive control is dominance, not to cause physical harm. This point is fundamental. Coercive control targets autonomy, liberty, and personhood.<sup>127</sup> Its tactics are broad and insidious, well beyond the use of physical aggression alone. The tactics, as observed by women’s advocates and Stark, include: restricting access to money, family, and friends; threatening to commit suicide; putting a partner down and calling her names; making her think she is crazy; controlling what she does, who she talks to, what she reads, where she goes; treating her like a servant; inhibiting her from being involved in making any big decisions; acting like the “master of the castle”; and other tactics that exploit male privilege.<sup>128</sup>

These tactics create a condition of “unfreedom”—that is, “gendered in its construction, delivery and consequence.”<sup>129</sup> This state of unfreedom is called entrapment.<sup>130</sup> Importantly, physical violence may be used, but coercive control does not require an element of physical violence.<sup>131</sup> If violence is used at all, it is typically minor violence.<sup>132</sup> But because minor violence typifies both fights and coercive control, these patterns can only be distinguished in a historical context where the frequency of force over time is weighted alongside its interplay with tactics to intimidate, isolate, or control.<sup>133</sup> Stark concludes that “[w]omen’s experience of feeling entrapped in a coercively controlling situation is elicited from something other than violence, because the experience of feeling abused is

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126. *Id.* at 106 (explaining how professionals, including law enforcement, must inquire about minor violence within “a historical context where the frequency of force over time is weighed alongside its interplay with tactics to intimidate, isolate or control a partner . . . [B]ut prevailing emphasis on discrete incidents makes these distinctions impossible . . . and the most dangerous cases are then left at bay”).

127. *Id.* at 369 (“Violations of liberty are the central moral wrong in coercive control, regardless of whether violence is their means.”).

128. These are taken from the “Power and Control Wheel” of the Domestic Abuse Intervention Project. *Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROJECT, <http://www.theduluthmodel.org/pdf/PowerandControl.pdf> (last visited March 15, 2014).

129. STARK, *supra* note 4, at 205.

130. *Id.* (“The result [of coercive control] is a condition of unfreedom (what is experienced as *entrapment*) that is ‘gendered’ in its construction, delivery and consequence.”); see Joan S. Meier, *Notes from the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 HOFSTRA L. REV. 1295, 1318 (1993) (observing that Stark coined the term “entrapment” and arguing it best summarizes the experience of battered women).

131. STARK, *supra* note 4, at 367.

132. *Id.* at 106 (“[M]inor violence typifies both fights and coercive control.”).

133. *Id.* at 106–07



independent of the frequency of abusive episodes, and is shared by women who suffer relatively few assaults as well as by those who suffer hundreds.”<sup>134</sup>

Stark refers to entrapment as an enigma: “[W]omen who are no different from any of us to start, who are statistically normal become ensconced in relationships where ongoing violence is virtually inevitable.” He eloquently lays out the case that it is the confluence of societal institutions that supports male privilege, sexism, *and* an individual man who uses coercively controlling tactics.<sup>135</sup> Entrapment is “the unique experiential effect when structural exploitation, regulation, and other controls are personalized.”<sup>136</sup> As a result “entrapment . . . can be significantly reduced only if sexual discrimination is addressed simultaneously.”<sup>137</sup>

### 3. Johnson’s Typologies of IPV

Sociologist Michael Johnson also discerns between types of aggression used in intimate relationships. Like Stark, Johnson recognizes a category of coercive control that he calls “Coercively Controlling Violence,”<sup>138</sup> and defines it quite similarly to Stark. Johnson distinguishes three other typologies: (1) “Violent Resistance,” which is violence that both men and women use in reaction to partners who have a pattern of Coercive Controlling Violence for the purposes of getting the latter to stop or to stand up for themselves;<sup>139</sup> (2) “Situational-Couple Violence,” the type of “partner violence that does not have its basis in the dynamic of power and control”;<sup>140</sup> and (3) “Separation-Instigated Violence,” a type of violence that first occurs in the relationship at separation, related to the tensions and emotions that arise in that context, but is not ongoing.<sup>141</sup>

Johnson and Stark disagree on two points germane to this Article. First, Stark argues that Johnson’s category of situational violence does not sufficiently distinguish between two dynamics with very different significance: the “ordinary

134. *Id.* at 100 (citing Page Hall Smith et al., *Women’s Experiences with Battering: A Conceptualization from Qualitative Research*, 5 *WOMEN’S HEALTH ISSUES* 173 (1995)); see also Page Hall Smith et al., *Measuring Battering: Development of the Women’s Experience with Battering (WEB) Scale*, 4 *WOMEN’S HEALTH: RESEARCH ON GENDER, BEHAVIOR & POL’Y* 273 (1995).

135. STARK, *supra* note 4 at 113–14.

136. *Id.* at 370.

137. *Id.* at 14.

138. Sometimes Johnson calls this type of IPV “intimate terrorism.” See, e.g., Michael P. Johnson, *Differentiating Among Types of Domestic Violence*, in *MARRIAGE AND FAMILY* 282 (H. Elizabeth Peters & Claire M. Kamp Dush eds., 2009).

139. Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 *FAM. CT. REV.* 476, 479 (2008).

140. *Id.*

141. *Id.* at 479–80. With regard to situational violence Johnson elaborates: “It is often the case that Situational-Couple Violence continues through the separation process and that Coercive Controlling Violence may continue or even escalate to homicidal levels when the perpetrator feels his control is threatened by separation.” *Id.* at 480.

fighters that many couples view as legitimate ways to settle their differences, and frank assaults where violence is used to hurt, frighten or subordinate a partner, but control tactics are not.”<sup>142</sup> Second, Stark emphasizes that targets of coercive control experience entrapment; Johnson acknowledges, but does not emphasize, the phenomenon of entrapment.<sup>143</sup>

Nonetheless, Johnson and Stark clearly agree upon several important points. First, coercive control is a qualitatively different thing than the other forms of aggression; they do not exist on a continuum.<sup>144</sup> Thus, coercive control should be measured on a different moral yardstick than other forms of aggression.<sup>145</sup> Second, in heterosexual relationships, men are the primary perpetrators of coercive control.<sup>146</sup>

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142. STARK, *supra* note 4, at 104.

143. See, e.g., Kelly & Johnson, *supra* note 139 (neglecting to use the word “entrapment” in the text, but acknowledging elsewhere that women enduring coercively controlling violence become entrapped). I rely more heavily on Stark’s typologies because to my mind they are a degree more discerning, and because I believe that the experience of entrapment, as I argue later, is critical to, and is critically misunderstood by society and law and policy, changing attitudes and responses to IPV.

144. Kelly & Johnson, *supra* note 139, at 485; STARK, *supra* note 4, at 104 (agreeing with Johnson, Stark writes: “A key implication of Johnson’s terminology is that situational violence and intimate terrorism have different dynamics and qualitatively different outcomes and so should be judged by different moral yardsticks. They also require a different response. Abuse should no more be considered a simple extension of using force than a heart attack should be treated as an extreme instance of heartburn”).

145. STARK, *supra* note 4, at 104.

146. *Id.* at 102 (“[T]he pattern of intimidation, isolation, and control . . . is unique to men’s abuse of women and . . . is critical to explaining why women become entrapped in abusive relationships in ways that men do not and experience abuse as ongoing. These tactics do not typify all forms of abuse.”); Kelly & Johnson, *supra* note 139, at 481–82 (discussing the results of various surveys and stating that coercively controlling violence is largely male perpetrated). Regarding coercive control in same-sex relationships, STARK, *supra* note 4, at 396–97, discusses how, in his practice, he has worked with same-sex couples where “perpetrators combined physical abuse with rituals of dominance, exploitation, isolation, and humiliation that resembled the patterns evident in coercive control, relationships in which there are rules for behavior in public, where one partner is forbidden to work or visit his or her family, or where child care and/or homemaking are regulated”, and notes that stalking and “other forms of intimidation used in coercive control are also common” but is careful to note that there is no evidence in the literature yet that illuminates whether, if coercive control occurs among same-sex couples, it has “the same dynamics, consequences, or spatial dimensions or whether and how abusive dynamics are affected when race, class or age differences form its core rather than differences in gender identity” because there is a dearth of research. For recent empirical work regarding coercive control in same-sex relationships see Andrew Franklin & Jac Brown, *infra* note 158 (describing dynamics similar to those stated by Johnson) and Donovan & Hester, *supra* note 12, at 283–86 (describing dynamics similar to those stated by Stark, adding that “outing” is used as a control tactic, and describing expectations of people in first-time same-sex relationships who are at particular risk for IPV).

Finally, and most importantly, large-scale, general population surveys have not accurately captured the prevalence of coercive control.<sup>147</sup> For example, Stark observed that the National Violence Against Women Survey (“NVAWS”) fails to distinguish between prevalence and incidence of abuse, and thus there is no way to know for certain which cases of abuse identified in the study are ongoing.<sup>148</sup> His rough approximation, based on the data collected by the NVAWS and based upon his own empirical research, is that somewhere between 6.6%–8.8% of women in the U.S. experience coercive control.<sup>149</sup> This number is much lower than what is oft argued: that “one in five women” experience coercively controlling violence in their relationships.<sup>150</sup>

Johnson also finds fault with the NVAWS, and recently re-analyzed its results.<sup>151</sup> He focused specifically on the data regarding ex-husbands’ (rather than current husbands’) aggression.<sup>152</sup> He predicted, and found, that when looking at this group in particular, there was considerably more violence reported and especially more coercively controlling violence.<sup>153</sup> Specifically, he found that in the “ex-spouse data,” 30% of ex-husbands were violent, and 7% of the reported violence by ex-husbands qualified as Situational-Couple Violence and 22% qualified as Coercively Controlling Violence.<sup>154</sup> Johnson clarified that we “certainly would not want to assume that [these rates] represent the relative prevalence of violence of various types in intact marriages.”<sup>155</sup> However, he argued that the little to no coercively controlling violence reported by respondents in intact marriages might be a result of the fact that “female victims of intimate terrorism in a current relationship would be especially unlikely to agree to participate in survey research on violence.”<sup>156</sup>

While Stark and Johnson do not agree on precise numbers, both are clear that large-scale surveys such as the NVAWS fail to accurately capture the prevalence of coercive control. This is important because, as will be discussed in Subpart D, most people think of intimate partner violence as having to do with power

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147. Kelly & Johnson, *supra* note 139, at 481; STARK, *supra* note 4, at 88–90.

148. Email from Evan Stark, February 26, 2014 (on file with author).

149. Though he is careful to qualify that this estimation is very rough given other methodological problems with the NVAWS. *Id.*

150. *See infra* note 196 (discussing the number of scholars, including myself, who have overgeneralized the prevalence of coercive control based on the National Violence Against Women Survey).

151. Michael P. Johnson et al., Intimate Terrorism and Situational Couple Violence in General Surveys: Ex-Spouses Required, 20 VIOLENCE AGAINST WOMEN 186 (2014).

152. *Id.* at 189.

153. *Id.* at 192, 196.

154. *Id.* at 196.

155. *Id.* at 197.

156. *Id.* at 201.

and control,<sup>157</sup> when in fact this dynamic refers to coercive control, which comprises only a fraction of the reports of aggression between intimate partners.<sup>158</sup>

***C. Conflating All IPV with Coercive Control is a Barrier to Understanding Love Matters in the Context of IPV***

Practitioners, researchers, policymakers, and the law use the term “IPV” to mean different things.<sup>159</sup> As this Article has demonstrated, there is a wide array of conduct that qualifies as IPV, ranging from any use of physical force, to fights, to assaults, to coercive control. Also, in nonabusive relationships, love is deemed a legitimate factor in decisions to stay in relationships, but in abusive relationships, love is not considered to be a legitimate factor.

Based on the work of Stark and Johnson, I join those scholars who argue that the line between abusive and nonabusive relations should be drawn at coercive control, or at least closer to it. When discrete assaults are viewed in context, with an examination of the intent of the perpetrator and the effect on the target, a distinction can be drawn between episodic assault and coercive control.

This is not to argue, as a normative matter, that an episodic assault—particularly one in which there is a serious injury and in which the victim feels violated—should not be deemed criminal.<sup>160</sup> Rather, an episodic assault is distinct in kind and degree from an assault that is part and parcel of an ongoing pattern of tactics designed to diminish the autonomy and personhood of an intimate, or formerly intimate, partner. The latter is more severe and, as a number of scholars have persuasively argued, should be treated differently by the law.<sup>161</sup>

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157. Kelly & Johnson, *supra* note 139, at 478 (describing the National Domestic Violence Hotline definition, which discusses a pattern of behavior used to gain power and control, and stating that this is the definition “that comes to mind for most people when they hear terms such as wife beating, battering, spousal abuse, or domestic violence.”).

158. Very recent research does indeed support the conclusion that Situational-Couple Violence is far more common than coercive control. *See, e.g.*, Andrew Franklin & Jac Brown, *Coercive Control in Same-Sex Intimate Partner Violence*, 29 J. FAMILY VIOLENCE 15, 20 (2014) (finding very low rates of intimate terrorism—4.6%—consistent with Johnson’s research with regard to heterosexual couples); *see also* Janele M. Leone et al., *Women’s Decisions to Not Seek Formal Help for Partner Violence: A Comparison of Intimate Terrorism and Situational Couple Violence*, 29 J. INTERPERSONAL VIOLENCE 1850, 1858 (2014) (finding of the sample of women labeled “abused,” 34% were characterized as victims of intimate terrorism and 66% as victims of Situational-Couple Violence).

159. *See* Kelly & Johnson, *supra* note 139, at 477–78.

160. Assaults are crimes, whether perpetrated on an intimate partner, a family member, or a stranger. But an assault on a partner that is situational in nature and not part of a pattern of coercive control may not merit treatment as a crime of IPV, which would include the issuance of a mandatory criminal protection order and application of no-drop prosecution policies. *See supra* discussion Part II.B.2.

161. *See infra* Part IV and *infra* text accompanying note 210 (discussing Alafair Burke’s and Deborah Tuerkheimer’s definitions).

Moving the line from any use of physical force toward coercive control would allow people<sup>162</sup> who consider themselves to be in nonabusive partnerships some emotional and cognitive space. Space to acknowledge that their relationships might not be so different from many intimate relationships that could be classified (as a legal matter) as relationships marked by IPV. Martha Mahoney argued that, when we view others' relationships and hear about incidents of violence, we are shocked and consider those women to be battered women.<sup>163</sup> Yet when we think of instances of aggression in our own relationships, we think of them as normal parts of the relationship and, accordingly, oft implicitly, do not (or would not) consider ourselves victims of IPV.<sup>164</sup> If coercive control was the litmus test for what is and is not abusive, instead of the use of physical force, this might allow us the space to conceptualize love as a legitimate factor in the majority of abused women's decisions to stay.

But, what about love in the context of coercive control? When women are coercively controlled, and hence entrapped, as Stark argues, is what these women feel for their partners love?

Donovan and Hester argue that love, which is usually positively experienced, can serve to confuse victims about how to make sense of and name their experiences as abusive.<sup>165</sup> If, as in the case of coercive control, the abusive partner makes all of the rules in the relationship—this relationship serves me, and you are responsible for this relationship and for me<sup>166</sup>—the love women feel may be a response to the coercive control itself, in which the abusive partner's "practice of love" is a form of emotional violence.<sup>167</sup>

In these instances, and in the context of coercive control, "love" is not the same as most of us would define it. Recall that, although defining love has proven difficult to both the public at large and to social scientists in particular, one of the points upon which there is agreement is the notion of mutuality.<sup>168</sup> A unidirectional love in a context of domination and subjugation is a type of love that most of us question.

Stark does not. He explicitly views the capacity to love an abusive partner as a strength and not a weakness, and the cultivation of the capacity for love as a way to liberate oneself, at least emotionally.<sup>169</sup> "The 'love' women feel may have as much to do with them, keeping their positive emotions and possibilities alive, their

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162. By people, I mean to include the general public as well as the same in their roles as judges, lawyers, jurors, policymakers, and law enforcement personnel.

163. Mahoney, *supra* note 7, at 15–16.

164. *Id.*

165. Donovan & Hester, *supra* note 12, at 282.

166. *Id.* at 282–83 (describing the rules of relationship set forth by perpetrators of coercive control).

167. *Id.* at 283.

168. See *supra* Part I.A.

169. Email from Evan Stark, March 13, 2013 (on file with author) ("I see a woman loving an abusive partner as a strength, not a weakness, a 'test' of love if you will—isn't this what 'for better or worse' also means (not just in 'sickness and health').").

autonomy, as with the person they're attached to, and, to this extent, is an example of what I call 'control in the context of no control.'"<sup>170</sup> Donovan and Hester similarly argue, based upon their empirical data, that victims of coercive control use the love they feel to construct themselves as strong and to view their love as a source of strength.<sup>171</sup> Love, in the ways that both Stark, and Donovan and Hester describe, is not merely a strength but a survival mechanism.

Whether one views love as a source of strength, with a more expansive view of the multiple and distinct contexts within which violence between partners and love coexist, we can better consider, assess, and understand the value and meaning of love in all contexts. Acknowledging the existence and complexity of love, and victims' experience of love, across contexts affords the opportunity that the law currently misses. At the very least, acknowledging the complexity of love in a continuum of relationships (from nonabusive to coercively controlling) tempers a knee-jerk reaction to love in the context of abuse as crazy or masochistic.

### III. HOW FEMINIST LEGAL SCHOLARS UNWITTINGLY CONTRIBUTE TO BINARY NOTIONS

#### A. *Errors Caused by Conflating IPV with Coercive Control*

For several years now, sociologist Michael Johnson has argued that it is critical to discern between the types of force and violence we are talking about. In 2008, he wrote: "[I]t is no longer considered scientifically or ethically acceptable to speak of domestic violence without specifying the type of partner violence to which one refers."<sup>172</sup>

There are two primary groups of researchers who are interested in quantifying the prevalence of intimate partner violence. One group is comprised of family sociologists, while the other is comprised of feminist researchers.<sup>173</sup> These two groups measure IPV quite differently. Family sociologists focus on discrete episodes of physical force, finding that men and women commit acts of violence in intimate relationships at largely the same rate.<sup>174</sup> Feminist researchers, on the other hand, focus on the context and intent of the use of violence, finding that women are overwhelmingly the victims of violence used to secure power and control in relationships—the type that most closely resembles what Stark and Johnson call coercive control.<sup>175</sup>

Failure to be discerning results in significant errors—when researchers lump together differing types of IPV they “produce data that are an ‘average’ of the

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170. *Id.*

171. *See supra* Introduction.

172. Kelly & Johnson, *supra* note 139, at 477.

173. *Id.*; STARK, *supra* note 4, at 84.

174. Kelly & Johnson, *supra* note 139, at 477.

175. *Id.*; STARK, *supra* note 4, at 103–04 (noting that feminist researchers insist the problem requiring public attention involves female victims almost exclusively); *id.* at 104 (crediting Johnson for first observing that the two groups were measuring different phenomena).

characteristics or correlates of the types that are aggregated.”<sup>176</sup> Johnson gives the example of studies on the effect of intergenerational transmission of IPV.<sup>177</sup> It is commonly claimed that if IPV occurs in a man’s home when he is a boy, he learns that using violence against one’s partner is appropriate.<sup>178</sup> Johnson notes that researchers have yet to distinguish between types of violence when conducting their studies.<sup>179</sup> Thus the “average” violent relationship, in “most survey research, dominated by situational-couple violence, does not represent the relationship that is usually of most interest, the effect of childhood experiences on the likelihood of a man becoming a wife-beater [a coercively controlling violent partner].”<sup>180</sup>

Second, Johnson argues, “[S]ometimes research that deals with one type of [IPV] is used to draw conclusions about quite a different type.”<sup>181</sup> Here he gives the example of a researcher who based her finding—that as many women are coercively controlling as men—on data from general survey samples that measured situational violence.<sup>182</sup> Of this mistake he observed: “This is the error that produced decades-long and continuing debate over the gender symmetry of domestic violence. We need to differentiate among types of IPV if we want to advance our understanding of such violence and to intervene effectively.”<sup>183</sup>

### ***B. Examples of Errors in Feminist Legal Scholarship on IPV***

Turning to the legal scholarship regarding IPV, a number of scholars, including myself, are guilty of lumping together rather than discerning amongst types of aggression in intimate partnerships.<sup>184</sup>

As one recent example, in *Breakups*, Deborah Tuerkheimer brilliantly argues that the law fails to recognize many women who are in abusive relationships as victims of ongoing abuse; rather it imposes a prerequisite of geographic and emotional distance between parties—a breakup—before condemning stalking as a crime.<sup>185</sup> Her article is the first to examine how relationship status (pre- or post-breakup) is dispositive of whether stalking will be deemed a crime. I could not agree more with the main thrust of the article, which questions why a pattern of harassing, intimidating, and threatening conduct is criminalized only *after* the parties have separated, when in fact this conduct most commonly predates physical separation.

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176. Johnson, *supra* note 138, at 283.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* (discussing the research conducted by Suzanne Stenmetz in the late 1970s).

183. *Id.* at 284.

184. See GOODMARK, *supra* note 2, at 146, 146–50 (after describing the lumping-together, or essentializing of victims, Goodmark poignantly argues that feminist legal scholars have also essentialized IPV by characterizing IPV as always revolving around power and control, and that by essentializing both IPV and the men who perpetrate it, the legal system endangers women who are likely to stay with or return to their partners).

185. Deborah Tuerkheimer, *Breakups*, 25 YALE J.L. & FEMINISM 51, 72 (2013).

But the article also contributes to the problems previously highlighted: (1) the assumption that there is a commonly shared definition of IPV, which she identifies as coercive control;<sup>186</sup> (2) the implication that most victims of intimate partner violence experience coercive control; and (3) the use of statistics that describe one type of IPV to draw conclusions about another.

Tuerkheimer begins her article by asserting that the “most commonplace violence” is violence between intimate partners, and cites the first National Intimate Partner and Sexual Violence Survey (“NIPSVS”) for the premise that “more than one in three women in the United States has ‘experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.’”<sup>187</sup> She then argues, “[u]nlike other violence, intimate partner violence is not episodic, nor is it limited to the realm of the physical. Incidents of acute battering are connected by dynamics of power and control.”<sup>188</sup> The implication is that “more than one in three” women found to have experienced rape, physical violence, and/or stalking are currently victims of coercively controlling violence.<sup>189</sup>

But this is not the case. This particular measure (of “rape, physical violence, and/or stalking”) does not necessarily reveal a *pattern* of behavior, but episodes or incidents of behaviors—precisely what Tuerkheimer argues is not a proper measure of abuse.<sup>190</sup> Surveys, like NIPSVS, confuse incidence with prevalence of IPV.<sup>191</sup> In addition, they focus on physical aggression, rather than the nonphysical control tactics that define coercive control.<sup>192</sup>

As evidence of the latter point, the survey found that one in four men in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.<sup>193</sup> We know, based on the work of Stark and of Johnson, that this statistic cannot represent the number of men who are coercively controlled; indeed, Stark reports knowing of no documented case in which a woman coercively controlled a male intimate partner.<sup>194</sup>

186. *Id.* at 55 (“Domestic violence, also known as battering, intimate partner violence, intimate partner abuse, or simply abuse, is a pattern of violent conduct predicated on power and control.”). Tuerkheimer distinguishes this definition from the “common usages of the terms stalking and domestic violence, which the criminal law perpetuates.” *Id.* at 54.

187. *Id.* at 52, n.1.; According to 2011 figures from the first National Intimate Partner and Sexual Violence Survey, more than one in three women in the United States has ‘experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime.’ MICHELE C. BLACK ET AL., CTRS. FOR DISEASE CONTROL AND PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY 2 (2011).

188. Tuerkheimer, *supra* note 185, at 52.

189. *See* BLACK ET AL., *supra* note 187, at 2.

190. *Id.* (“When it is embedded in a relationship, violence spans time. Unlike other violence, intimate partner violence is not episodic, nor is it limited to the realm of the physical.”).

191. STARK, *supra* note 4, at 107–08.

192. Kelly & Johnson, *supra* note 139, at 481–82.

193. BLACK ET AL., *supra* note 187, at 2.

194. STARK, *supra* note 4, at 377. *But see* Johnson et al., *supra* note 151, at 202 (finding that “[d]ata regarding ex-spouses show that intimate terrorism is primarily but not



Prior to the NIPSVS survey, the most recent large-scale national survey was the National Violence Against Women Survey.<sup>195</sup> In my prior work, based on this survey, I have misstated statistics about coercive control.<sup>196</sup> I am in good company.<sup>197</sup>

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exclusively male-perpetrated”); *see also* Kelly & Johnson, *supra* note 139, at 482 (noting that there may be some cases in which women coercively control men, but that as of the date of this observation, the paucity of research could not lead to any conclusive evidence).

195. PATRICIA TJADEN & NANCY THEONNES, U.S. DEP’T OF JUSTICE, EXTENT, NATURE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE (2000), *available at* <http://ncjrs.gov/pdffiles1/nij/181867.pdf>.

196. *See* Tamara L. Kuennen, *Recognizing the Right to Petition for Victims of Domestic Violence*, 81 *FORDHAM L. REV.* 837, 839 (2012) (citing to the NVAWS, I argued that the “vast majority of [IPV] victims do not report the violence to the police” without differentiating amongst types of IPV. In fact, victims of coercive control versus victims of other types of IPV are more likely to call the police); Leone et al., *supra* note 158, at 1862 (finding that “70.2% of intimate terrorism victims sought some type of formal help versus 44.4% of situational couple violence victims”).

197. *See* Joanne Belknap et al., *The Roles of Phones and Computers in Threatening and Abusing Women Victims of Male Intimate Partner Abuse*, 19 *DUKE J. GENDER L. & POL’Y* 373, 384–85 (2012) (citing the NVAWS and arguing that most victims do not call the police, without differentiating amongst types of IPV); Alafair S. Burke, *Domestic Violence As A Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 *GEO. WASH. L. REV.* 552, 569 (2007) (citing to the NVAWS and arguing that generally, domestic violence is often driven by coercive control); Michelle Byers, *What Are the Odds: Applying the Doctrine of Chances to Domestic-Violence Prosecutions in Massachusetts*, 46 *NEW ENG. L. REV.* 551, 554 (2012) (citing to the NVAWS and arguing that both men and women who are victims of IPV are continually abused by the same perpetrator, without differentiating amongst the types of IPV); Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 *ST. LOUIS U. PUB. L. REV.* 7, 48 (2004) (citing to the NVAWS, arguing that the majority of intimate partner assaults are not reported to authorities because a majority of victims thought that the police “would not or could not do anything on their behalf,” without differentiating amongst types of IPV); Angela M. Killian, *Mandatory Minimum Sentences Coupled with Multi-Facet Interventions: An Effective Response to Domestic Violence*, 6 *U. D.C. L. REV.* 51, 69 (2001) (citing to the NVAWS, stating that a “victim of intimate partner violence is nothing more than a prisoner of her abuser[,]” without differentiating amongst types of IPV); Tom Lininger, *The Sound of Silence: Holding Batterers Accountable for Silencing Their Victims*, 87 *TEX. L. REV.* 857, 868 (2009) (discussing control as a primary motive behind IPV and citing the NVAWS to show that women who are victims of IPV tend to suffer at the hands of repeat offenders); Tanya M. Marcum & Catherine Davies Hoort, *Alert: Be on the Lookout for Protection Orders in the Educational Setting*, 30 *T.M. COOLEY L. REV.* 39, 49 (2013) (citing to the NVAWS, stating that “many victims of intimate partner violence do not obtain protection orders[,]” without differentiating amongst types of IPV); Jane K. Stoeber, *Enjoining Abuse: The Case for Indefinite Domestic Violence Protection Orders*, 67 *VAND. L. REV.* 1015, 1067 (2014) (citing to the NVAWS, arguing that “[a]lthough protection order holders generally experience an overall decrease in violence, multiple studies have still found high rates of protection order violations by abusive partners[,]” without differentiating amongst types of IPV); *Lawyers and Domestic Violence: Part I*, 24 *WYO. LAW.* 36, 37 (Oct. 2001) (citing to the NVAWS, stating that most violence is never reported to law enforcement and “remains shrouded behind the veil of family privacy[,]” without differentiating amongst types of IPV).

I fear that these overestimations have a snowball effect because when we fail to discern coercive control from other forms of IPV we overstate its prevalence. By overstating its prevalence, we inadvertently imply not only that all women who experience IPV are coercively controlled but also that all women are entrapped in their relationships. This is particularly problematic because of the connotations of the word “entrapment.”

For Stark, entrapment is about the *confluence* of a sexist society and the control tactics of an individual man.<sup>198</sup> For the public, however, entrapment connotes an individual woman who is frozen, paralyzed, and helpless.<sup>199</sup> She would leave her partner if only she could, if only she had the resources and the strength. Police, judges, lawyers, advocates, social workers, friends, neighbors, and family can provide her the necessary support, resources, and strength.<sup>200</sup> They can help entrapped women by helping them leave.<sup>201</sup> Leaving, then, is the only solution. When women love their partners and do not want to leave, they are not only viewed as aberrant, they are also not believed.<sup>202</sup> This act of denying them their own agency and autonomy would seem to conflict with feminist principles.

In sum, the importance of discerning the type of IPV that feminist legal scholars and advocates in the field wish to eradicate cannot be overstated. As eloquently put by Stark:

Accurate numbers are imperative not merely to retain support from an increasingly skeptical public but because a vast service infrastructure is in place that cannot function properly without them. If before it made little difference if we were standing in empirical quicksand . . . today accurate numbers are needed to determine how many personnel to enlist, what resources to allocate, whom to target for service and interdiction, and when, where, and how to intervene to maximize effectiveness. No one is harmed more seriously by the absence of agreement on the what, who, and how much of battering than its victims. If once talking about an anonymous mass, we now bear responsibility for millions of real people for whom a range of public or quasi-public institutions must be held accountable, billions in public and private dollars that could arguably be spent with greater effect elsewhere, and the investment of millions of person hours

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198. See *supra* Part II.B.2.c.

199. GOODMARK, *supra* note 2, at 33 (describing the lingering influence of Lenore Walker’s theory of learned helplessness and the damage it has wrought).

200. *Id.* at 81 (describing in detail the conflation of separation with successful termination as having oriented domestic-violence policy and law since the early days of the Battered Women’s Movement and arguing how law and policy development within the legal system unequivocally prioritizes separation as the only clear remedy to ending domestic violence).

201. *Id.* at 59 (describing Walker’s theory of learned helplessness as the first step toward defining women as passive and ineffectual, and too fearful to act to stop the violence).

202. *Id.* at 66–69 (describing skepticism of professionals when women do not act in conformity with stereotypes of victims as passive and desirous of leaving).

annually by real advocates, police, judges, physicians, psychologists, and social workers.<sup>203</sup>

#### IV. IF MATTERS OF LOVE REALLY MATTERED

##### A. *Advantages*

To avail themselves of the law's current protection, abused women are required to sever their intimate relations.<sup>204</sup> If the law valued love more, and separation less, both the criminal law governing IPV and the civil legal remedies available to women could be profoundly impacted.<sup>205</sup>

Currently, the criminal law fails to recognize many women who are in abusive relations as victims of abuse. As discussed earlier, in *Breakups*, Deborah Tuerkheimer compellingly argued this point.<sup>206</sup> If a woman has not broken up with her partner, she is perceived to be consenting to, if not desirous of the calls, texts, following, and other forms of communication that constitute stalking.<sup>207</sup> If the law placed a higher premium on protection within the context of love, rather than separation, a pattern of harassing, intimidating, and threatening conduct would be deemed criminal regardless of whether the parties had separated. Given that stalking conduct tends to predate physical separation, removing the separation requirement would also better protect victims.

Civil restraining orders, called "protection orders," prohibit a respondent from assaulting, harassing, and menacing the petitioner. These orders are the most widely used legal remedy by victims of IPV. As a practical matter, victims can only obtain such orders if they have broken up with their partners, because these orders typically prohibit any contact whatsoever from the respondent. Therefore, these orders are not a viable remedy if the petitioner is not ready or does not want to

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203. STARK, *supra* note 4, at 87.

204. As I have observed previously, the law provides a one-size-fits-all approach to IPV: separation of the parties. See Kuennen, *Relational Contract*, *supra* note 78, at n.418 and accompanying text. See also GOODMARK, *supra* note 2, at 81 (arguing that separation is a litmus test for determining whether a victim is worthy of assistance, and quoting Christine Littleton, *supra* note 15: "[The legal system] does not blame *all* battered women for their plight, only those who do not immediately sever their relationships and leave their batterers.>").

205. Baker, *supra* note 82, at 1478 (arguing that if the law took seriously the value of intimacy and relationships, this could have a concrete doctrinal impact for women experiencing abuse).

206. Tuerkheimer, *supra* text accompanying note 185.

207. *Id.* at 72 (observing that "[t]hrough the violent exercise of power and control occurs in virtually seamless fashion throughout the stages of relationship, women must leave in order for criminal law to take note. In functional terms, what this means is that prosecutors, perhaps anticipating the reaction of jurors to more imaginative charging decisions, charge defendants with stalking for exclusively post-separation conduct, despite the technical applicability of stalking laws to domestic violence").

terminate her relationship. If the law valued love more, and separation less, these orders could be tailored to allow contact but prohibit abuse.<sup>208</sup>

Similarly, criminal protection orders should be tailored to value love as well. These are injunctions that are automatically issued against defendants criminally charged with committing an act of IPV.<sup>209</sup> As with most civil protection orders, criminal protection orders prohibit all contact between the alleged perpetrator and victim. As Jeannie Suk argued, the issuance of these orders constitutes state-imposed, *de facto* divorce, wreaking havoc in the lives not just of women who love their partners and want to preserve their relationships, but of men who want the same but are subject to criminal conviction for remaining in contact with the victim.<sup>210</sup>

Finally, a number of scholars have argued for a more discerning definition of IPV that would target coercive control.<sup>211</sup> Rather than viewing IPV as discrete episodes of violence that occur between current and former intimate partners, the criminal law should instead condemn the pattern of ongoing threats and intimidation—both physical and nonphysical—that comprise coercive control. For the reasons stated in Part III, such a definition acknowledges the distinction between an ongoing strategy of subjugation that is not consistent with community norms versus sporadic fights which frequently occur in the context of intimate love.

Social-service interventions could also be impacted by acknowledging the existence of love in the context of IPV, rather than ignoring it. If love, and not financial, housing, or other external needs, prevents women who would otherwise leave their relationships from doing so, then perhaps the social-service interventions available may not be entirely sufficient.<sup>212</sup> For example, women experiencing abuse could be counseled about the fact that feelings of love are normal. This would help women decrease feelings of shame and secrecy about the fact that love is a salient factor, particularly for many women who have recently left their partners.<sup>213</sup> As one woman commented, social-service providers “[d]on’t tell you how to go back and deal with the person and I bet you nine out of ten of them go back, end up seeing the person again because you’re not learning how to deal with it at the time, you’re learning how to run away.”<sup>214</sup>

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208. Goldfarb, *supra* note 75.

209. See Suk, *supra* note 2, at 48.

210. *Id.* at 56.

211. GOODMARK, *supra* note 2, at 139; Burke, *supra* note 10; Erskine, *supra* note 10; Tuerkheimer, *supra* note 10.

212. Griffing et al., *supra* note 71, at 307 (“Despite the increasing availability of concrete services such as shelter and economic assistance, the frequency with which women still return to abusive relationships is considerable. This suggests that in some cases these resources, although necessary, may not be an entirely sufficient component of intervention programs for battered women.”).

213. *Id.* at 314–15.

214. GOODMARK, *supra* note 2, at 99 (citation omitted) (quoting a woman who sought outside assistance).

More broadly, social-service providers could measure their success in terms of empowering women to make the choices that are right for them, rather than encouraging separation as the only solution.<sup>215</sup> “Some battered women wish to maintain the relationships’ positive attributes while finding a way to stop or lessen the abuse. Facilitating women’s freedom of choice as a mechanism for empowerment implies accepting and respecting their choice to stay with their abuser as a viable alternative.”<sup>216</sup> Thus far, social-service interventions give lip service to empowerment as an important guiding principle, but the concept “seldom is carried out beyond the ideological and prescriptive levels.”<sup>217</sup>

### **B. Risks**

It is indisputable that there are risks involved when asking the law to consider love in the context of intimate partner violence. Any such movement must be cautiously approached, particularly at a time when the State seems willing to restrict women’s choices about terminating pregnancy, about sexual orientation, and about marriage—though the latter appears to be changing.<sup>218</sup> There is the question of a retreat by the state to the notion that IPV is a private, family matter that the state has no business interfering with.<sup>219</sup> There is fear of “modernized masochism”<sup>220</sup>—if women love their abusive partners, how do we explain this? And there is resistance to the notion of condoning any violence on any level between any parties.<sup>221</sup>

In addition, there is the possibility that the law will not get it right:

[A] central concern of women’s advocates is that research differentiating among types of intimate partner violence will lead to the reification or misapplication of typologies and that battering will, as a result, be missed—with potentially lethal results. Advocates also fear that typical information available to the court for decision making is too limited to make effective distinctions and that effective screening processes and appropriate assessment tools are not available or in place.<sup>222</sup>

For all of these reasons, as stated in the Introduction to this Article: “How could we possibly take seriously women’s accounts of love and hope without undermining the little protection from male violence women have been able to wrest

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215. *Id.* at 26 (arguing that social-service providers have, because of government grant requirements, changed their mission from helping women develop their own strategies for coping with abuse to encouraging women to leave their relationships).

216. Peled et al., *supra* note 63, at 13.

217. *Id.* at 12.

218. See STARK, *supra* note 4, at 364 (discussing proceeding with caution, but encouraging the act of proceeding).

219. See Kuennen, *Relational Contracts*, *supra* note 78 (discussing the historical treatment of domestic violence as a private, family matter in which the law has no business intervening).

220. See Tuerkheimer, *supra* note 185, at 94.

221. See, e.g., BELL HOOKS, *supra* note 97, at 118 (advocating for the elimination of all violence).

222. Kelly & Johnson, *supra* note 139, at 478.

from the legal system, without indeed increasing our already overwhelming vulnerability?”<sup>223</sup>

But we must remember that a fundamental tenet of feminism, if not *the* fundamental tenet, is listening to women’s voices.<sup>224</sup> Catharine MacKinnon described listening to and believing what women say as the “methodological secret” of feminism.<sup>225</sup> If women are saying loud and clear that they value love, that what they want is to be safe *in* their relationships, and that what they do *not* want is to “just leave” their relationships,<sup>226</sup> how could feminist scholars *not* take women’s accounts of love seriously?

### CONCLUSION

In this Article, I demonstrated that love matters to women in abusive relationships. I argued that, consequently, matters of love should mean something to both the legal regime redressing IPV and to feminist legal scholars seeking reform of IPV as a legal concept. But that currently love does not matter.

Specifically, I attempted to connect some dots. I argued that feminist legal scholars fail to be sufficiently specific about the type of IPV we wish to target. Instead, in our scholarship and arguments, we conflate coercive control with all forms of IPV, when in fact coercive control is but a fraction of what the law calls IPV. As a result, feminist legal scholars have contributed to: binary notions of what constitutes IPV, the unsettled question of who is a deserving victim, and the constitution and dynamics of intimate relationships generally (nonabusive versus abusive).

These dichotomies mystify, rather than illuminate, the complexity of intimate love as a context in which harm can occur. They make the coexistence of love and abuse something “other,” distant from feminist legal scholars our relationships, and the law.<sup>227</sup> And as a result, the legal response feminists have crafted views women who wish to preserve relationships with partners they love as not credible, blameworthy, and masochistic.

Currently, abused women who love their partners have no meaningful access to civil legal remedies and no voice in criminal prosecution. Unwittingly, feminist legal scholars and activists contributed to this problem. It is understandable why, 30 years ago, consideration of love might have been a barrier to enactment of

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223. See Littleton, *supra* note 15, at 47.

224. SCHNEIDER, *supra* note 63, at 71–73 (discussing the importance of accounting for women’s particular experiences when crafting law and policy).

225. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 5 (1987).

226. Baker, *supra* note 82, at 1472 (“[Women] do not necessarily want to be in a position where they can just leave. They want to be in relationships in which they forgive. They may even want to be in relationships that involve some relinquishment of self, autonomy, and power.”) (internal citations omitted).

227. This was the thrust of Martha Mahoney’s ground-breaking article. See Mahoney, *supra* note 7, at 15 (explaining how we view fights, conflicts, and even abusive incidents in our own relationships as part of the throes of the relationship, whereas when we hear a client tell us of an incident, we think of the client as “abused”).

legal remedies that would be responsive to the problem of IPV. Now, however, when women are consistently and repeatedly expressing desire for love *and* safety, there is a clear call for feminist legal scholars and activists to account for love.