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CRIMINOLOGY

THE SEARCH FOR RAPISTS' "REAL" MOTIVES

DAVID P. BRYDEN* & MAREN M. GRIER**

I. INTRODUCTION

Rape is a controversial subject, and never more so than when the topic is the perpetrators' motives.¹ Scholarly theorizing about rapists' motives

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** Associate, Briggs & Morgan, Minneapolis, Minnesota. We are indebted to Mary McLean, Dee Gibbons, and Laurie Newbauer for secretarial assistance. Emily Pollock, Morgan Holcomb, Therese Kurkowski, Sara Maple-Lenz, and Darcy Sherman did much of the research, supported by Deans Tom Sullivan, Fred Morrison, Guy Charles, and David Wippman. Suzanne Thorpe and Piper Walter of the Law Library provided indispensable assistance. Leslie Goldstein, Morgan Holcomb, Mary Koss, Neil Malamuth, Robert King, Roger Park, and Michael Zuckert read earlier drafts of all or part of the Article, providing valuable suggestions. We were enlightened by conversations with Richard Frase, Michael Tonry, and the late Paul Meehl, and by the comments of two anonymous peer reviewers for this *Journal*. Of course, none of these scholars necessarily endorses all of our conclusions, and we alone are responsible for any remaining errors. The authors also wish to acknowledge their great debt to Rebecca Bryden. Comments should be addressed to dpbryden@comcast.net.

¹ Many modern scholars study "sexual aggression" or "coercion" instead of rape, often defining these terms very broadly to include not only rape and other nonconsensual physical contacts but also lawful verbal pressure to engage in sexual activity. We realize that the legal definition of rape is an imperfect measure of coercion and varies somewhat from one state to another. But the concepts of aggression and coercion are even more flexible, and we prefer not to conflate acts whose gravity, legality, and moral acceptability differ radically, under a potentially misleading umbrella label such as "sexual aggression." See *generally* notes 320, 328, *infra*. Accordingly, we focus here solely on rape, but when discussing a study in which a much broader range of conduct was included we will use the author's label so as to alert our readers.

As we use the term, "rape" means non-consensual, heterosexual penetration. We have excluded statutory rape, homosexual rape (outside prisons), and non-forcible sexual extortion and deception because they raise too many additional issues and, in the case of

began in earnest in the 1950s and 1960s, when psychologists propounded several ideas. In the 1970s, feminists articulated their motivational theories, which were later challenged by those of evolutionary psychologists. Ever since the '70s, the central issue has been whether most rapists are primarily motivated by sexual desire or by ulterior aims such as subjugation of women. Although many scholars do not discuss this question, focusing instead on pornography and other possible non-motivational causes of rape, others regard motivations as exceedingly important.²

This continuing interest in rapists' motives has few parallels in mainstream criminology. With rare exceptions,³ modern criminologists usually examine non-motivational causes of crime such as the criminal's childhood, his personality, his peers, his alcoholism, and—at the societal level—demographic and economic trends as well as policing and sentencing policies. For many years, most criminologists have treated criminals' motives (in the sense of goals) as irrelevant to public policies.⁴

deception, are rarely illegal. See generally WAYNE R. LAFAVE, CRIMINAL LAW 846–78 (4th student ed. 2003).

² E.g., RANDY THORNHILL & CRAIG T. PALMER, A NATURAL HISTORY OF RAPE: BIOLOGICAL BASIS OF SEXUAL COERCION (2000); Antonia Abbey et al., *Cross-Sectional Predictors of Sexual Assault Perpetration in a Community Sample of Single African American and Caucasian Men*, 32 AGGRESSIVE BEHAV. 54 (2006); Katherine K. Baker, *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 HARV. L. REV. 563 (1997); Megan R. Yost & Eileen L. Zurbriggen, *Gender Differences in the Enactment of Sociosexuality: An Examination of Implicit Social Motives, Sexual Fantasies, Coercive Sexual Attitudes, and Aggressive Sexual Behavior*, 43 J. OF SEX RES. 163 (2006); Eileen L. Zurbriggen, *Social Motives and Cognitive Power-Sex Associations: Predictors of Aggressive Behavior*, 78 J. PERSONALITY & SOC. PSYCHOL. 559 (2000). Because non-motivational causes of rape often are thought to have probative value in discerning rapists' motives, and the concept of motive has various meanings, many works that do not explicitly stress motivational analyses nevertheless provide much evidence that is relevant to our topic. E.g., MARTIN L. LALUMIÈRE ET AL., THE CAUSES OF RAPE: UNDERSTANDING INDIVIDUAL DIFFERENCES IN MALE PROPENSITY FOR SEXUAL AGGRESSION (2005).

³ E.g., JACK KATZ, SEDUCTIONS OF CRIME: MORAL AND SENSUAL ATTRACTIONS IN DOING EVIL (1988). However, the subject of animal and human motives (for many sorts of behavior) is still studied extensively by evolutionary (and some other) psychologists. See generally MOTIVATION IN ACTION (Jutta Heckhausen & Heinz Heckhausen eds., 2008).

⁴ See, e.g., JAMES Q. WILSON & RICHARD J. HERRNSTEIN, CRIME AND HUMAN NATURE: THE DEFINITIVE STUDY OF THE CAUSES OF CRIME 39 (1985):

It is by no means clear that the most interesting or useful way to look at crime is by trying to discover the motives of individual criminals—why some offenders like to steal cash, others like stolen cash plus a chance to beat upon its owner, and still others like violent sex—any more than it is obvious that the best way to understand the economy is by discovering why some persons keep their money in the bank, others use it to buy tickets to boxing matches, and still others use it to buy the favors of a prostitute. The motives of criminal (and of human) behavior are as varied as the behavior itself; we come to an understanding of the general processes shaping crime only

Equally noteworthy is rape scholars' failure to offer any skeptical critique of the motivation-discerning enterprise. While vigorously criticizing the motivational theories of their disciplinary and ideological rivals, they express no doubts about the feasibility and value of motivational inquiries as such.

This Article has three purposes: (1) to describe briefly the historical contexts of the most influential theories about rapists' motives, with particular attention to the origins of feminist ideas in the 1970s; (2) to appraise the evidence concerning whether those motives are sexual or nonsexual; and (3) to evaluate the claim, explicit or implicit in generations of motivational speculation, that an understanding of rapists' motives has major descriptive and practical value.

Although it would be impossible within a single article to analyze the colossal body of literature about rape's possible causes, the line between motives and other causes is often indistinct; inevitably, our treatment of some topics will seem too cursory to one reader and too prolix to another. We wish to emphasize that our historical discussions are not digressions; they are important for all of our purposes. Scholars who criticize what they regard as erroneous theories about rapists' motives commonly attribute the alleged errors either to popular prejudices or to the faults of a rival school of thought—Freudians, feminists, or evolutionary psychologists. Many of these criticisms are telling, but they obscure pervasive faults of motivational analyses that transcend ideological, disciplinary, generational, and even to some extent methodological boundaries. To develop this thesis, we examine early as well as recent scholarly theories. Discussions of authors whose theories were published in the 1970s have the additional justification that many subsequent scholars have been strongly influenced by the motivational ideas espoused by the leading feminist rape scholars of that formative decade.

II. RAPISTS AS MENTAL PATIENTS

Prior to the 1970s, the leading authorities on rapists' motives were psychologists. After World War II, some of them wrote books about “sex

when we abstract from particular motives and circumstances to examine the factors that lead people to run greater or lesser risks in choosing a course of action.

These authors note that “[a]rguing about typologies is a major preoccupation of many students of crime,” and they equate this with a search for “motives,” but by this they mean criminals' personality types such as sociopathic rather than their motives in the sense of goals. *See id.* at 40.

offenders”⁵—a heterogeneous category that included rapists but also others such as consenting homosexuals, exhibitionists, pedophiles (along with statutory rapists who displayed no interest in very young children), men guilty of incest, and sometimes miscellaneous “deviates” such as fetishists whose activities were not per se criminal but were unusual and would occasionally lead to a crime such as burglary.⁶ At that time, relatively little social-scientific research had been done on possible causes of sex crimes. Without denying the roles of biological or cultural factors, psychotherapists naturally tended to emphasize their clinical impressions, often interpreted through the lens of Freudian motivational theories.

Freud’s prestige reached its peak after World War II,⁷ and he had speculated about the origins of some sexual abnormalities.⁸ Supplementing Freud’s specific etiological theories, some authors employed his general concept of unconscious motives, originating in childhood, to fashion their own neo-Freudian explanations of various crimes. In the usual Freudian manner, these theories treated the more obvious motives (such as obtaining money or sexual pleasure) as products of unconscious motives and therefore superficial.⁹

Freud himself had said hardly anything about rape,¹⁰ but some psychologists created theories based on their clinical observations. As for

⁵ E.g., BENJAMIN KARPMAN, *THE SEXUAL OFFENDER AND HIS OFFENSES: ETIOLOGY, PSYCHOLOGY, PSYCHODYNAMICS AND TREATMENT* (1954).

⁶ For a longer list, see *id.* at 10–20.

⁷ Freud’s popularity in America grew throughout the early twentieth century, but his ideas remained controversial, reaching the summit of their popularity roughly from 1945–1963. See generally 2 NATHAN G. HALE, JR., *THE RISE AND CRISIS OF PSYCHOANALYSIS IN THE UNITED STATES: FREUD AND THE AMERICANS 1917–1985*, at 136, 258 (1995).

⁸ E.g., Sigmund Freud, *Three Contributions to the Theory of Sex*, in *THE BASIC WRITINGS OF SIGMUND FREUD* 569 n.1 (A. A. Brill ed., 1938) (“[Exhibitionism] is strongly dependent upon the castration complex; it would emphasize again the integrity of one’s own (male) genitals and repeat the infantile satisfaction of the lack of the penis in the female.”). Freud noted that “[t]he sexuality of most men shows an admixture of aggression, of a desire to subdue, the biological significance of which lies in the necessity for overcoming the resistance of the sexual object by actions other than mere *courting*.” *Id.* at 569.

⁹ E.g., DAVID ABRAHAMSEN, *WHO ARE THE GUILTY?* 6–7 (1952) (asserting that pecuniary crimes are motivated by insecurity that creates a need for “success”; money and power are only instrumental to this underlying motive).

¹⁰ See JOHN FORRESTER, *THE SEDUCTIONS OF PSYCHOANALYSIS: FREUD, LACAN, AND DERRIDA* 63 (1990). Freud probably did not regard the desire to rape an adult woman as symptomatic of mental abnormality. As one psychoanalyst put it, “rape differs from sexual perversions insofar as the offender seeks a normal sexual object, an adult female, and a normal aim, genital intercourse.” Richard T. Rada, *Psychological Factors in Rapist Behavior*, in *CLINICAL ASPECTS OF THE RAPIST* 21, 23 (Richard T. Rada ed., 1978). Thus oral sex would be a perversion—as would pedophilia, sodomy, bestiality, fetishism, sadism, and

many sorts of disorders, bad parenting was a common explanation.¹¹ Noting that rapists tend to be hostile toward women, some authors attributed this to their excessively lenient, overbearing, rejecting, or inconsistent mothers and sometimes their harsh or remote fathers.¹²

Rapists, said some, are trying to overcome anxieties about their masculinity. These might be due to "virtually absent" fathers combined with dominant, overly protective mothers,¹³ doubts about their attractiveness to women,¹⁴ or repressed homosexual inclinations.¹⁵

Many authors invoked the concept of castration anxiety. Freud believed that when young boys first realize that girls do not have penises they assume that girls are created by fathers who castrated their sons.¹⁶ Of course, at a conscious level males outgrow this childish belief, but some unconsciously fail to resolve their castration anxiety. Rape, some Freudians

masochism—but forcible genital coupling, though wrong and illegal, would not. See generally Elizabeth Janssen, *Understanding the Rapist's Mind*, 31 PERSP. PSYCHIATRIC CARE 9, 11 (1995).

In a controversial footnote, Freud indicated that women sometimes resist rapists with less than their full strength because they unconsciously want intercourse. SIGMUND FREUD, *THE PSYCHOPATHOLOGY OF EVERYDAY LIFE*, 1901, at SE VIII 202–03 n.1 (James Strachey ed., Alan Tyson trans., Norton 1965). Forrester contends that feminist criticisms of this idea are unjust because Freud did not regard the victim's unconscious desire as relevant to the man's guilt. FORRESTER, *supra* note 10, at 77.

¹¹ Psychoanalysts commonly blamed parents, especially mothers, for their children's later maladies and misbehaviors—from asthma to schizophrenia to psychosomatic illnesses to crime. HALE, *supra* note 7, at 259, 265–66, 271, 283.

¹² See, e.g., Murray L. Cohen et al., *The Psychology of Rapists*, in VIOLENCE AND VICTIMS 113, 135 (Stefan A. Pasternack ed., 1975) (arguing that mothers of "Sex-Aggression Defusion" rapists are too lenient; fathers are cruel and sadistic); Richard T. Rada, *Sexual Psychopathology: Historical Survey and Basic Concepts*, in CLINICAL ASPECTS OF THE RAPIST, *supra* note 10, at 40 (noting that rapist's mother "has frequently been rejecting or inconsistent and undependable in supplying his basic nurturing needs," which creates his hostility toward women and a lasting desire for nurturance which creates a feeling of dependency that he attempts to deny by hypermasculine behavior); cf. ABRAHAMSEN, *supra* note 9, at 44 (arguing that a boy commits a crime to "spite the law" and "because he is against his parents who laid down the law to him").

¹³ Rada, *supra* note 10, at 39.

¹⁴ JAMES L. MATHIS, *CLEAR THINKING ABOUT SEXUAL DEVIATIONS* 121 (1972) ("[The rapist] must feel inferior in his masculine role and must conceive of himself as unable to conquer the female without force.").

¹⁵ Cohen et al., *supra* note 12, at 128–29 (stating that "sexual-aim" rapists are repressed homosexuals); *id.* at 137 (noting that "excessive defenses against homosexuality through exaggerated masculinity" are "predominate" among "aggressive-aim" rapists); Rada, *supra* note 10, at 41.

¹⁶ See 17 SIGMUND FREUD, *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD* 78 (assumes women are castrated), 232 (fears castration by father) (James Strachey et al. trans., 1953).

declared, is an effort “to cloak and negate the castration feelings by overriding them.”¹⁷ One scholar wrote that castration anxiety, resulting in an inability to resolve the Oedipus complex, leads to a feeling of being rejected by the mother, which in turn causes a rapist to “place[] his victim in an inferior, degrading role and so satisf[y] his need to be sexually dominant.”¹⁸

Relying on another Freudian concept, some authors asserted that rapists have a Madonna–prostitute complex.¹⁹ Men with this complex divide women into two types: those they love and consider worthy of respect (Madonnas), and those they regard as inferior and seek to defile and degrade (prostitutes). They only enjoy sex with the latter: “Where such men love, they have no desire, and where they desire, they cannot love.”²⁰ As a result, these men cannot be sexually satisfied with their wives or girlfriends, whom they love and respect. So they rape disreputable women toward whom they feel nothing but contempt but with whom they can find sexual satisfaction.²¹

These are but a sample of psychologists’ ideas about rape.²² Many of their etiological theories were not Freudian or even motivational, and they sometimes included biological and social causes, but since they rarely defined “motive,” it was often difficult to tell the difference between a motivational theory and a theory about non-motivational causes.²³

By the end of the 1960s, psychoanalytic thought was rapidly losing its cachet. One reason was that epistemological criticisms had accumulated.²⁴

¹⁷ E.g., Emanuel F. Hammer, *A Psychoanalytic Hypothesis Concerning Sex Offenders: A Study by Clinical Psychologic Techniques*, 18 J. CLINICAL & EXPER. PSYCHOPATHOLOGY 177, 177 (1957); Rada, *supra* note 10, at 11.

¹⁸ BARBARA TONER, *THE FACTS OF RAPE* 79 (1977).

¹⁹ Rada, *supra* note 10, at 42.

²⁰ *Id.* (quoting Freud).

²¹ *Id.*

²² For a fuller description, see *id.* at 3–58.

²³ For example, many discussions of bad parenting might be characterized either way, and some of those who said that many rapists are sociopaths included this in their typologies of motives. E.g., MANFRED S. GUTTMACHER & HENRY WEIHOFEN, *PSYCHIATRY AND THE LAW* 116–17 (1952) (classifying rapes due to “pent-up sexual impulse,” latent homosexuality, and misogynistic sadism as “sexual in origin,” but adding that “anti-social” rapists who commit various crimes are “not primarily” sex offenders). The last proposition is true in a sense, but not necessarily in the sense that the goals of all of their crimes are nonsexual and identical.

²⁴ On epistemological issues and scientific doubts, see 2 HALE, *supra* note 7, at 3, 6–7, 9, 26, 28, 30, 44, 51, 69, 156, 161–62, 164–65, 169, 171–72, 181–82, 198, 204–07, 236–40, 248, 259–64, 284–85, 300–02, 304–17, 361–72, 375, 385. Cultural changes had also undermined Freud’s stature. As understood by most early twentieth-century Americans,

Critics cited studies finding that when psychoanalysis cures patients, it does so regardless of the method employed—Freudian or non-Freudian.²⁵ This suggested that specifically Freudian concepts such as castration anxiety were therapeutically and perhaps descriptively invalid.

Psychoanalysts claimed that their clinical experiences validated their dogmas. Yet, as illustrated by their theories about rape, those experiences led them to various and sometimes seemingly inconsistent conclusions. Are rapists men whose mothers were too warm or too cold?²⁶ Are they latent homosexuals?²⁷ Are they trying to overcome castration complexes?²⁸ Do they worship their girlfriends as “Madonnas,” or are they angry (as one study concluded) at promiscuous girlfriends?²⁹ The usual answer was that there are several types of rapists, but the typologies and explanations differed from one author to another.³⁰

Freudianism offered a liberating worldview to those who felt stifled by religion and Victorian values; by the 1960s, however, religion's grip had loosened and the Victorian sexual code was gone. Freud had become a mainstream icon; his views about sexuality were no longer avant garde and—with respect to women and homosexuals—were increasingly criticized as sexist and heterosexist. See generally *id.* at 4, 57–59, 79–80, 97–99, 101, 277, 288, 348, 386.

²⁵ See generally *id.* at 314–15, 317–20, 323.

²⁶ See E. J. Kanin, *Male Sex Aggression and Three Psychiatric Hypotheses*, 1 J. SEX RES. 221, 223 (1965). (“Some writers . . . maintain the anti-female sentiments appear because the mother effeminizes the boy and consequently creates a faulty sex identification which psychologically burdens him when he attempts to emancipate himself and enter the male world. Others . . . [perhaps a majority] stress that rejecting mothers are most apt to give rise to sexually aggressive tendencies in their sons.”) (citation omitted). Kanin found that 53.4% of his sample of sexually aggressive college males expressed some degree of love for their mothers, in contrast to 70.6% of the nonaggressive ones. *Id.* at 224. But this study contains no data about respondents' attitudes towards their fathers, siblings, and people in general; the finding is subject to various interpretations. Kanin himself considered some alternative explanations of the aggressors' hostility toward women. *Id.* at 223–27.

²⁷ See note 15, *supra*. One analysis concluded that, although some rapists are “feminine identified,” the empirical evidence about whether rape was a defense against homosexual tendencies was negative. Ron Langevin & Reuben A. Lang, *The Courtship Disorders*, in VARIANT SEXUALITY: RESEARCH AND THEORY 202, 220–21 (Glenn D. Wilson ed., 1987).

²⁸ See notes 17–18 *supra*.

²⁹ Murray L. Cohen et al., *The Psychology of the Rapist*, in 3 SEMINARS IN PSYCHIATRY 307, 312–13 (Aug. 1971).

³⁰ Compare, e.g., GUTTMACHER & WEIHOFEN, *supra* note 23, with A. NICHOLAS GROTH, MEN WHO RAPE: THE PSYCHOLOGY OF THE OFFENDER (1979), and Cohen et al., *supra* note 12. Karl Popper taught that a theory isn't scientific unless it is falsifiable, that is, unless one can imagine an experiment that might disprove (“falsify”) a risky prediction based on the theory. See generally NASSIM NICHOLAS TALEB, FOOLED BY RANDOMNESS: THE HIDDEN ROLE OF CHANCE IN LIFE AND IN THE MARKETS 122–28 (2d ed. 2004); Karl Popper, *Intellectual Autobiography*, in 1 THE PHILOSOPHY OF KARL POPPER 3, 29–32 (Paul Arthur Schlipf ed., 1974); Karl Popper, *Intellectual Autobiography*, in 2 THE PHILOSOPHY OF KARL

Freudians maintained that skilled analysts know when a Freudian theory such as castration anxiety fits the facts revealed in psychotherapy. Freud himself claimed that experimental tests of his theories were unnecessary “because the wealth of reliable observations on which these assertions rest makes them independent of experimental verification.”³¹ But to the extent that analysts like Freud relied on their own impressions, their “reliable observations” were obviously subjective and self-serving. When analysts relied instead on patients’ confirmations of the analysts’ diagnoses, critics pointed to the many ways by which an analyst can subtly influence an analysand’s opinion in the desired direction.³² Besides, psychoanalysts often persisted in a diagnosis even after the patient had repeatedly refused to confirm it—he was, they claimed, “in denial.”³³ And even if the analysand’s symptoms disappeared after the analysis, how could the analyst know that this would not have occurred if they had discussed food or philosophy instead of dreams and childhood traumas? The dogmatism of the Freudians led some critics to conclude that psychoanalysis was more like sorcery than science.³⁴

POPPER 976–1013 (Paul Arthur Schlipp ed., 1974). Others have offered various refinements. E.g., Paul E. Meehl, *Theoretical Risks and Tabular Asterisks: Sir Karl, Sir Ronald, and the Slow Progress of Soft Psychology*, 46 J. CONSULTING & CLINICAL PSYCHOL. 806, 817–19 (1978).

Popper believed that psychoanalytical concepts were merely “pseudoscientific”: Unwilling to submit their conjectures to falsification, Freudians claimed that virtually any empirical observation was consistent with their theories. 1 POPPER, *supra*, at 31; 2 POPPER, *supra*, at 985.

³¹ THE EXPERIMENTAL STUDY OF FREUDIAN THEORIES xi (Hans J. Eysenck & Glenn D. Wilson, eds., 1973) (quoting Freud).

³² E.g., ADOLF GRÜNBAUM, THE FOUNDATIONS OF PSYCHOANALYSIS: A PHILOSOPHICAL CRITIQUE 138 (1984). Grünbaum argued (contrary to Popper) that Freud’s ideas were falsifiable, and not necessarily mistaken, but nevertheless gravely flawed. *Id.* at 94, 109–11, 189.

³³ According to Freud, the analysand often fails to recall “the essential part” of what he has repressed, and so “he acquires no sense of conviction of the correctness of the construction that has been communicated to him” by the analyst. The latter is “the ultimate epistemic arbiter . . .” 17 FREUD, *supra* note 16, at 18. Even in the case of consciously motivated behavior, says Grünbaum, there is no justification for treating the analysand as having “privileged cognitive access to the discernment of the motivational causes of his various actions . . .” GRÜNBAUM, *supra* note 32, at 29.

³⁴ 2 HALE, *supra* note 7, at 3, 201, 204, 206–07. For a partial defense of Freud’s concepts, see Drew Westen, *The Scientific Legacy of Sigmund Freud: Toward a Psychodynamically Informed Psychological Science*, 124 PSYCHOL. BULL. 333 (1998).

Aware of such accusations, some psychologists tried to minimize the subjective element in their constructs.³⁵ But even when they engaged in quantitative research, Freudians were not sufficiently self-critical. This was the thesis of Hans Eysenck and Glenn Wilson, who edited *The Experimental Study of Freudian Theories*, a collection of essays about experiments designed to test Freudian concepts.³⁶ While conceding that the diversity of those concepts (and the lack of sufficient research concerning some of them) made global judgments impossible, Eysenck and Wilson were sharply skeptical. They concluded that "perhaps the most pervasive fault" of studies purporting to confirm Freudian hypotheses was their failure to discuss alternative hypotheses:

Most workers in the field seem to believe that having made a deduction from Freudian theory, and carried out a study that more or less gives results in partial agreement with the prediction, this is the end of the study. They fail to consider the duty incumbent upon any scientist to consider alternative hypotheses which might equally well, or even better, explain the results found. Nor do they consider it their bounden duty to try to anticipate such alternative hypotheses, and incorporate proper controls into their experimental design which would make it possible to discriminate between Freudian and alternative hypotheses. This is an elementary point in experimental design and evaluation; it is curious that it has been practically universally disregarded in the writings of psychoanalytic psychologists, and that even somewhat critical writers . . . fail utterly to take it into account.³⁷

Among the other characteristic defects of Freudian studies were failure to review all of the available evidence and embracing contradictory positions.³⁸

Of particular interest to us are the Oedipus complex and castration anxiety, the foundation of popular psychoanalytic explanations of rape. The book included several experimental studies of these concepts (though not of the theories connecting them to rape). All of the authors of the studies had concluded that their results supported the Freudian theory. But Eysenck and Wilson showed that in every case alternative explanations, not

³⁵ E.g., ALBERT ELLIS & RALPH BRANCALE, *THE PSYCHOLOGY OF SEX OFFENDERS* (1956). This study's sample included virtually all of the first 300 persons convicted of illegal sex acts under a New Jersey law requiring mental examinations before sentencing. Although the study was better than most during that period, its sample did not include the unreported or unprosecuted majority of rapists, and only eight men convicted of forcible rape (and sixteen of serious sexual assaults not constituting rape) were included.

³⁶ EYSENCK & WILSON, *supra* note 31.

³⁷ *Id.* at 386.

³⁸ The authors also mentioned unsophisticated statistical methods and failure to replicate experiments. *Id.* at 386–90.

considered by the authors of the studies, were at least as plausible as the Freudian ones.³⁹

Although not discussed by Eysenck and Wilson, Emmanuel Hammer's study of sex offenders, published in 1957,⁴⁰ exemplifies some of their points and some that we will add. Hammer tried to determine whether castration anxiety motivates sex offenses. He compared sixty men committed to Sing-Sing prison for sexual felonies with a demographically comparable group of twenty whose felonies had been nonsexual. All eighty took several psychological tests.⁴¹ On the basis of the men's responses in these tests, Hammer and two other clinicians, without knowing which subjects were sex offenders, rated each man's feelings of castration and phallic inadequacy on a five-point scale: "When the two top categories were combined, it was found that 90 percent of the sex offenders had earned a rating of either marked or moderate castration feelings whereas only 55 percent of the contrast group had been similarly rated."⁴² After describing several examples of the offenders' castration anxieties, as revealed by the three psychologists' interpretations of their test results, Hammer concluded that "the clinical data tend to support the psychoanalytic hypotheses of castration feelings as the motivational mainspring behind sex offenses."⁴³ The sex offender, opined Hammer, is "powerless before the onslaught of these forces within himself."⁴⁴

Even without criticizing any of the tests used in this study, or citing later research, any modern rape scholar would certainly find flaws and limitations in Hammer's analysis. Our own comments are not offered as a thorough critique of the concept of castration anxiety or even as an entirely fair evaluation of Hammer's study, which was not subpar for its time. Our purpose, rather, is to create a baseline for measuring the subsequent progress of motivational theory.

1. Hammer never defined "motive." This omission, customary in psychoanalytic literature, made it difficult to determine precisely what he was saying about the causes of the subjects' crimes. He did not discuss, for

³⁹ *Id.* at 123, 136, 154–55, 167 (illustrating the flexibility of Freudian notions).

⁴⁰ Hammer, *supra* note 17.

⁴¹ These were the Rorschach Test, the Thematic Apperception Test, the House-Tree-Person Test, the Black Test, and in some instances the Bender-Gestalt Test. *Id.* at 178.

⁴² *Id.* at 179. Hammer explained the 55% rate for other felons on the ground that castration anxiety also motivates some nonsexual offenses, with guns and knives being phallic symbols. *Id.*

⁴³ *Id.* at 183.

⁴⁴ *Id.*

example, why some men with castration anxiety commit no crime or a different crime.

2. The study did not show, as Hammer claimed, that sex offenders are "powerless" to resist their criminal inclinations. That sort of deterministic leniency was characteristic of a healing profession that often took the mental "illness" metaphor too literally, attacking others' prejudices without recognizing its own. Often quite properly, psychologists abhorred the public's strict, moralistic approach to sexual behavior, and they denounced the retributive popular response to gruesome sex crimes as inhumane and unscientific. Unfortunately, they themselves often went to the opposite extreme, treating punishment of criminals as a barbaric relic of less enlightened times.⁴⁵

3. Like many other psychologists in that era, Hammer believed that child molestation and rape had a common source: "Rape, according to Freudian theory, is an attempt to cloak and negate the castration feelings by overriding them. Pedophilia is giving in to the feeling of a castration or phallic inadequacy by approaching a less challenging sexual object, namely, one who will not demand a high level of sexual competence"⁴⁶ Having discarded the premise that castration anxiety is the ultimate motive for both crimes, modern scholars rarely mix pedophiles and forcible rapists in one sample without reporting separate results.⁴⁷ There were only eleven rapists in Hammer's study, mixed with thirty-four heterosexual (and fifteen homosexual) pedophiles.⁴⁸ Rather than testing the psychoanalytic hypothesis of a common etiology, Hammer assumed its validity. Without that premise, his sample provided no basis for conclusions about rapists.

4. By focusing on castration anxiety, Hammer implied that rape has a single, most important cause and that this master cause (the motive) directs the rapist toward the crime rather than disinhibiting an independent desire for sexual pleasure. His rejection of alternative possibilities was not well reasoned. According to Hammer, clinical interviewing of the sex offenders "frequently revealed that there is little or no sexual pleasure connected with their sexual activity."⁴⁹ He did not consider whether its absence might be due to their feelings of guilt during the rape or fears of detection rather than

⁴⁵ See generally HALE, *supra* note 7, at 24, 85, 91, 93, 95.

⁴⁶ Hammer, *supra* note 17, at 177.

⁴⁷ See, e.g., Patrick Lussier et al., *Developmental Pathways of Deviance in Sexual Aggressors*, 34 CRIM. JUST. & BEHAV. 1441, 1452 (2007) ("[T]he three-factor model appeared to exhibit a better fit for sexual aggressors of children compared to aggressors of adults.").

⁴⁸ Hammer, *supra* note 17, at 178.

⁴⁹ *Id.* at 183.

because they lacked a desire for sexual gratification. He related that one of the rapists, prior to his rape, had simultaneously had four mistresses; “frequently he would visit all four in the same night.” This might be taken as evidence of an extraordinary sex drive, but Hammer added that this man “indicated . . . that he did not enjoy the sexual act *per se* and that he would have preferred staying home and reading a book. Hence, the compulsive sexual behavior presents itself as being in the service of the reduction of anxiety rather than aimed predominantly toward sexual gratification and enjoyment.”⁵⁰ The possibility that this remarkably bookish fellow had misdescribed his own motives, or was not a typical rapist, evidently did not occur to Hammer. Wasn’t the man’s behavior a better test of his motives than his introspections during a conversation with a psychologist? And what exactly does it mean for a man to reach orgasm yet “not enjoy the sexual act *per se*”?

5. Hammer’s sample consisted entirely of convicts.⁵¹ Mainly for reasons of convenience, this was customary in psychologists’ studies of rapists. Yet only a minority of rapes are reported to the police,⁵² and only a very small fraction result in a conviction.⁵³ In some respects, convicted rapists differ from the officially undetected ones. The convicts are much more likely to have been strangers to their victims;⁵⁴ impulsive and enraged;⁵⁵ equipped with a weapon;⁵⁶ guilty of various crimes;⁵⁷ and

⁵⁰ *Id.*

⁵¹ *Id.* at 183. He acknowledged that rapists in the general public might differ from convicts.

⁵² David P. Bryden & Sonja Lengnick, *Rape in the Criminal Justice System*, 87 J. CRIM. L. & CRIMINOLOGY 1194, 1195 (1997).

⁵³ *Id.* at 1210–18; see also Courtney E. Ahrens et al., *Understanding and Preventing Rape*, in FLORENCE L. DENMARK & MICHELE A. PALUDI, *PSYCHOLOGY OF WOMEN: A HANDBOOK OF ISSUES AND THEORIES* 509, 512 (2d ed. 2008). The phenomenon of “case attrition” pervades the criminal justice system and is not limited to crimes against women. Bryden & Lengnick, *supra* note 52, at 1208–10.

⁵⁴ Only about 20% of rapes are committed by strangers. RONET BACHMAN & LINDA E. SALTZMAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, *VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY 1* (1995) (Special Report). Yet as many as 80% of institutionalized rapists have been described as strangers to their victims. *E.g.*, R.J. McCaldon, *Rape*, 67 CANADIAN J. CORRECTIONS 42–58 (1967); Deena Metzger, *It Is Always the Woman Who is Raped*, 133 AM. J. PSYCHIATRY 405, 405 (1976).

⁵⁵ See *infra* text accompanying notes 235–237 (comparing Groth’s findings about convicts with Kanin’s about date rapists).

⁵⁶ In a sample of college women, researchers found significantly higher levels of threats of bodily harm, hitting and slapping, and use of weapons reported by survivors of stranger rape compared to acquaintance rape. H. Harrington Cleveland et al., *Rape Tactics from the Survivors Perspective: Contextual Dependence and Within-Event Independence*, 14 J. INTERPERSONAL VIOLENCE 532, 541, 543 (1999). Presumably because a conspicuous

psychopathic.⁵⁸ Although there are some similarities between the characteristics of incarcerated and officially undetected rapists, for instance in what has been called their "hostile masculinity," the differences are great enough to suggest that men with the symptoms detected by Hammer and his colleagues may have been overrepresented in his sample.⁵⁹

6. Concentrating on symptoms of the convicts' supposedly damaged psyches,⁶⁰ and dealing with offenders whose victims were sometimes boys,⁶¹ Hammer said nothing about rapists' attitudes toward women. But some psychologists believed that the castration complex causes rape by creating intense hostility toward women. For example, in *Crime and the*

weapon often deters resistance, women are more likely to be injured in violent encounters with intimates than with strangers, however. BACHMAN & SALTZMAN, *supra* note 54, at 5.

⁵⁷ "About a third of rape defendants had one or more additional felony convictions collateral to the conviction for rape. Collateral convictions were associated with an increased probability of receiving a prison sentence [after conviction]." BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT 14 (1997) (data concerning 1995). According to a 1994 estimate, 64% of those serving time in state prisons for forcible rape had prior convictions; 26% had prior convictions for violence; and 10% had prior convictions for rape or sexual assault. *Id.* at 22 fig.23. In a study of re-arrests of convicted rapists released from prisons, researchers found that 51.5% were re-arrested for a new crime within three years; only 7.7%, however, were re-arrested for rape, fewer than for assault (10.7%), robbery (8.5%), or a nonviolent crime (24%). *See id.* at 26 fig.27.

⁵⁸ Compare Ron Langevin et al., *Are Rapists Sexually Anomalous, Aggressive, or Both?*, in *EROTIC PREFERENCE, GENDER IDENTITY, AND AGGRESSION IN MEN: NEW RESEARCH STUDIES* 17, 29 (Ron Langevin ed., 1984) (noting that 78% of a sample of incarcerated rapists were diagnosed as suffering from a "personality disorder"), with Mary P. Koss et al., *Nonstranger Sexual Aggression: A Discriminant Analysis of the Psychological Characteristics of Undetected Offenders*, 12 *SEX ROLES* 981, 990 (1985). Contrary to studies of incarcerated rapists, these authors found that self-disclosed college rapists did not differ from non-rapists on measures of psychopathy. *Id.* at 991 ("Offenders who engage in sexual aggression with complete strangers may be more likely to demonstrate psychopathic characteristics typical of violent criminals such as impulsivity, tendency to use people as objects, inability to care about others, and extreme hostility.").

⁵⁹ Neil Malamuth has stressed that some characteristics of incarcerated men are also present in undetected rapists. Neil M. Malamuth, *Criminal and Noncriminal Sexual Aggressors: Integrating Psychopathy in a Hierarchical-Meditational Confluence Model*, 989 *ANNALS N.Y. ACAD. SCI.* 33 (2003); cf. Richard B. Felson, *Social Learning, Sexual and Physical Abuse, and Adult Crime*, 35 *AGGRESSIVE BEHAV.* 489 (2009). But Malamuth does not deny that the incarcerated group has a higher proportion of sadistically inclined, highly violent, and generally antisocial men (including psychopaths). E-mail from Professor Neil Malamuth of UCLA to senior author (Jan. 11, 2010, 4:48 PST) (on file with author). This is, of course, especially true when the incarcerated rapists are compared to samples of anonymously self-acknowledged college rapists. *See, e.g.*, Koss et al., *supra* note 58, at 990.

⁶⁰ *See* Hammer, *supra* note 17, at 183.

⁶¹ *See id.* at 181.

Mind, published in 1948, Walter Bromberg had linked castration anxiety (and resultant feelings of masculine inferiority) to rapists' desire to "place[] the sexual object in an inferior, degrading role through rape," which satisfies the rapist's "need for a position of sexual dominance" with "the corollary effect of belittling the sexual object." Rape is thus "an expression of hostility toward the objects of his lusts."⁶²

To make Bromberg's analysis thoroughly modern, it was necessary only to discard the concept of castration anxiety and explain rapists' hostility toward women by reference to a different ultimate cause.

III. RAPISTS AS THE KLANSMEN OF PATRIARCHY

During the 1970s, as part of their critique of patriarchy, feminists developed a set of theories about rape; they soon replaced psychologists as the recognized experts on its causes and motivations.⁶³ Instead of listening

⁶² WALTER BROMBERG, *CRIME AND THE MIND* (1st ed. 1948), as quoted in KARPMAN, *supra* note 5, at 348. Anticipating later feminist themes, Alfred Adler contended that dominance, including though not limited to patriarchal control of women, is a common and powerful male motive. His ideas on men's quests for power and dominance and incorrect belief in women's innate inferiority were well ahead of his time. See, e.g., ALFRED ADLER, *COOPERATION BETWEEN THE SEXES: WRITINGS ON WOMEN, LOVE & MARRIAGE, SEXUALITY AND ITS DISORDERS* 3–4 (Heinz L. Ansbacher & Rowenz A. Ansbacher, eds. 1978) (male strivings for power and superiority); *id.* at 9–11 (effect of same on boys); *id.* at 34 (child learns to regard aggression as masculine).

Apart from psychologists and feminists, the most eminent early authority on rape was Menachim Amir, whose *Patterns in Forcible Rape* became a standard reference. Like the feminists, Amir adopted a sociological perspective. But his sociological analysis differed markedly from theirs. After compiling data from police records, he concluded that rapes in Philadelphia were products of a subculture of violence, which leads to various anti-social behaviors. MENACHIM AMIR, *PATTERNS IN FORCIBLE RAPE* 325–31 (1971). Amir's sample of rapists consisted overwhelmingly of inner-city black youths, many of them complete strangers to the victim, and of course unreported rapes were not included. Thus, Amir's analysis reshaped but reaffirmed the conventional psychologists' belief that rapists are deviant outsiders. For a summary of other, roughly contemporaneous scholarly analyses of rape, see Rada, *supra* note 10, at 10–21.

⁶³ "Feminist" has several meanings, and some important differences exist among the various schools of feminist thought. See generally C. Quince Hopkins & Mary P. Koss, *Incorporating Feminist Theory and Insights into a Restorative Justice Response to Sex Offenses*, 11 *VIOLENCE AGAINST WOMEN* 693, 698–707 (2005). Even so, we believe that our generalizations reflect the consensus of the most influential feminist rape scholars during the 1970s. For our purposes, "feminist" refers to those scholars who emphasize the role of patriarchy, and particularly rapists' patriarchal attitudes, as a cause of rape. Whether this emphasis entails or correlates with nonsexual motivational theories is a question that we will discuss in this Article.

A major exception to the post-1980 decline in clinicians' influence is A. Nicholas Groth, whose conclusions have been very influential. But his motivational theories, though largely

to rapists, feminists listened to their victims, along with women who had been harassed or beaten by men. The feminists' backgrounds were not in treatment of individual deviancy but in protest against societal injustice. Like some of their allies in the civil rights and anti-war movements, they favored sociological analyses that located the ultimate source of social wrongs in systemic evils such as racism, imperialism, and patriarchy, not in the autonomous acts of flawed individuals.⁶⁴ From the feminist perspective, rape was not a type of sexual deviancy; it was a type of pervasive patriarchal violence against women. Accordingly, patriarchy—not childhood traumas—was the ultimate source of rape's causes.

Both psychologists and feminists criticized popular attitudes toward rapists, but from different perspectives. Psychologists deplored the media's lurid portrayals of "sex fiends."⁶⁵ In conversations with victims, feminist authors learned about a more diverse collection of rapists, including many whom the psychologists never saw—relatives, dates, supervisors, neighbors, fellow students, intimates, and other acquaintances who usually had escaped justice either because their rapes had not been reported or because the criminal justice system had failed to punish them. Deploping the popular idea that most rapists are crazy strangers, feminists declared that rapists are schooled in the everyday culture of patriarchy, which teaches men to be assertive, inculcates traditional sex roles, and objectifies women; far from being "deviates," they are all-too-normal.⁶⁶

based on clinical observations, strongly emphasize power as the most common "primary" motive; while almost entirely devoid of cultural theories, his analysis is more feminist than Freudian. See *infra* notes 261–281 and accompanying text (power-control rapists). The Freudian psychologists such as Rada lost their stature after the 1970s, if not earlier. They have been replaced by social psychologists and others of diverse affiliations, whose methodologies usually are more quantitative and whose conclusions sometimes support feminist positions.

⁶⁴ E.g., Susan Griffin, *Rape: The All-American Crime*, 10 RAMPARTS 26, 35 (1971) ("The same men and power structure who victimize women are engaged in the act of raping Vietnam, raping Black people and the very earth we live upon."). This perspective was confirmed by feminist activists' experience of male domination in the civil rights and anti-war movements, where they were valued mainly for their clerical and sexual services. That led to the formation of women's organizations where an anti-patriarchal ideology soon developed. On the evolution of this "second wave" feminism, see generally RUTH ROSEN, *THE WORLD SPLIT OPEN: HOW THE MODERN WOMEN'S MOVEMENT CHANGED AMERICA* 107, 116, 122, 126, 129 (2001).

⁶⁵ See, e.g., Rada, *supra* note 10, at 2.

⁶⁶ Some of the earliest feminist rape scholars criticized the stereotype of the rapist as a crazy stranger. E.g., DIANA E. H. RUSSELL, *THE POLITICS OF RAPE: THE VICTIM'S PERSPECTIVE* 12, 43, 115, 117–26, 191 (1984). This stereotype ignored rapes by acquaintances—who usually did not resemble the stereotype—and thus implied that their rapes were not "real rape." Feminists said that most rapists were psychologically normal and

The culture of that time was not only conducive to rape; it was shockingly lenient toward many rapists. Having stereotyped rapists as crazy strangers, the public failed to appreciate that rapes by acquaintances are “real rape.” In acquaintance cases, citizens, officials, and even the victim herself often blamed the woman more than the rapist.⁶⁷ As a result, responses to rape reports were sometimes insensitive, skeptical, or even hostile.⁶⁸ Victim-blaming was especially likely if the woman’s lifestyle or conduct immediately before the rape had violated traditional norms of female sexual restraint or prudence, as was increasingly common under the combined influences of evolving sexual mores and women’s liberation.⁶⁹

shaped by mainstream cultural norms. *Id.* at 69 (rapists are “normal men”); *cf.* Griffin, *supra* note 64, at 27 (arguing that our culture encourages rape; it “expects aggression from the male” and “passivity from the female”); *id.* at 32 (describing role of double standard, prejudice against victims who lack a “good reputation”); *id.* at 33 (arguing femininity creates “perfect victim”).

⁶⁷ See, e.g., RUSSELL, *supra* note 66, at 11 (putting the victim on trial); *id.* at 44 (victims suspected of collusion); *id.* at 48 (self-blaming); *id.* at 126 (male victim-blaming).

⁶⁸ See, e.g., *id.* at 22 (doctor joked about rape), *id.* at 47 (brother didn’t believe her); *id.* at 146 (husband angry at her); *id.* at 107 (police and courts don’t enforce the law); *id.* at 173 (hostile judge). In the early 1970s, two scholars found that in informal conversations about their research on rape, “[a]gain and again we were given opinions and told jokes by businessmen, academicians, physicians, strict psychoanalysts, and others to the effect that you can’t rape a woman unless she wants it or that a woman enjoys the rape experience.” LYNDIA LYTLE HOLMSTROM & ANN WOLBERT BURGESS, *THE VICTIM OF RAPE* 61 n.16 (1978). In appraising such anecdotes, one should distinguish between the debatable question of whether false rape reports were and are a significant problem and the question whether, even on that assumption, public and official skepticism was often excessive, as we believe it was.

We recognize the danger of assuming that a crime victim’s account is accurate in all respects, but on the subject of public and official leniency toward acquaintance rapists, while the details of some analyses are open to question, the general tendency toward leniency depicted by feminists in the 1970s is exactly what one would expect, given the paucity of women in the administration of justice and other positions of power. Moreover, the excessive leniency toward acquaintance rapists is corroborated by other sources and not disputed by non-feminist scholars. See generally Bryden & Lengrick, *supra* note 52, at 1255–74 (1997). The main uncertainty is about the proportion of rape reports that are false; this obviously is important in evaluating some accusations of undue official skepticism toward alleged victims, but in our judgment the anti-victim biases that feminists documented during the 1970s cannot be adequately explained solely on this ground. See generally *id.* at 1295–315.

⁶⁹ Russell observed in 1975 that “[m]ore women are rejecting unofficial curfews and male chaperones. They are walking alone at night, hitchhiking, going to places of entertainment alone or with other women.” RUSSELL, *supra* note 66, at 14. Meanwhile, there was “a general trend through the 1960s of more women engaging in premarital sex, with more rapid increases during the 1970s . . .” EDWARD O. LAUMANN ET AL., *THE SOCIAL ORGANIZATION OF SEXUALITY: SEXUAL PRACTICES IN THE UNITED STATES* 323 (1994).

Feminists flatly rejected the idea that rape is often victim-precipitated,⁷⁰ along with the complementary idea that males have urgent sexual cravings that, if over-stimulated by a provocative female, may become uncontrollable. Instead of retorting that men can control their sexual desires, feminists usually insisted that men's sexual needs are not more urgent than women's and that rape is not primarily a sexual act but rather a crime of violence.⁷¹

In criticizing various psychoanalytic theories about women, feminists did not invoke the epistemological principles espoused by philosophers of science like Popper⁷² or hard-boiled psychologists like Eysenck and Wilson; they argued that certain Freudian theories were inaccurate and harmful to women, not that freewheeling motivational speculation is inherently unscientific.⁷³ Freud had found sexual motives for ostensibly nonsexual acts; feminists found nonsexual motives for ostensibly sexual acts. Like the psychoanalysts who preceded them, feminists rejected the idea that rapists are motivated by sexual hedonism, and they agreed with several clinical observations about rapists—especially that they are hostile toward women and concerned about their masculinity.⁷⁴ But feminists did not attribute these characteristics to childhood traumas; instead, they adopted a sociological explanation: rape is “a political crime,” motivated by misogyny and a desire to subjugate women.⁷⁵

⁷⁰ E.g., SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 354–55 (1975). The academic subject of victim-precipitation is not limited to rape and need not involve leniency toward the criminal. But in the context of acquaintance rape (unlike, say, burglary) many people (including some scholars), tended to conflate questions of the victim's imprudence and the perpetrator's guilt. In response to the excessive leniency associated with the notion of victim-precipitated rapes, feminists generally reject the concept or contend that victim-precipitation is extremely rare, rather than arguing that the victim's imprudence and the perpetrator's guilt are different issues. See generally Bryden & Lengnick, *supra* note 52, at 1342–47.

⁷¹ See generally Bryden & Lengnick, *supra* note 52, at 1329–32. Concerning the urgency of male desire, Griffin deplored the “myth that men have greater sexual needs, that their sexuality is more urgent than women's.” Griffin, *supra* note 64, at 27. Clark and Lewis apparently dissented from Griffin's assertion, but their opinion was (and remains) atypical of feminist rape scholars who have explicitly addressed the question. See LORENNE M.G. CLARK & DEBRA J. LEWIS, *RAPE: THE PRICE OF COERCIVE SEXUALITY* 144 (1977).

⁷² See *supra* note 30.

⁷³ See, e.g., BROWNMILLER, *supra* note 70, at 320–21.

⁷⁴ Compare *supra* notes 12–18 and accompanying text, with *infra* notes 78–99, 187, 249 and accompanying text. The importance of rapists' hostility toward women in psychiatric explanations of rape is discussed and evaluated in Kanin, *supra* note 26, at 222–24. See generally *supra* notes 12–18 and accompanying text.

⁷⁵ See generally BROWNMILLER, *supra* note 70, at 194–197. Some of the most popular expositions of this thesis were GERMAINE GREER, *THE FEMALE EUNUCH* 245 (1972) (arguing

Susan Brownmiller popularized this idea in her celebrated *Against Our Will: Men, Women and Rape*,⁷⁶ the most influential book ever written about rape. Describing pre-modern rape law, Brownmiller argued persuasively that for most of recorded history rape law protected only the proprietary interests of the victim's father or husband; women's bodily integrity and sexual autonomy were not, as such, recognized by the law.⁷⁷

The most controversial portions of *Against Our Will* were about rapists' motives. In the book's most striking passage, Brownmiller declared that rapists (and indeed all men) seek to terrify all women: "From prehistoric times to the present, I believe, rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which *all* men keep *all* women in a state of fear."⁷⁸

The parallels between white supremacy and patriarchy were obvious to Brownmiller's generation of feminists; some of the differences were less so. Brownmiller drew an analogy between rape and lynching:

Women have been raped by men . . . for many of the same reasons that blacks were lynched by gangs of whites: as group punishment for being uppity, for getting out of line, for failing to recognize "one's place," for assuming sexual freedoms, or for behavior no more provocative than walking down the road at night in the wrong part of town and presenting a convenient, isolated target for group hatred and rage.⁷⁹

If accepted, this analogy seems to rebut all of the common types of victim-blaming by destroying their premise: that rapists want sexual gratification. Rape becomes a sin of malice, not of weakness, a crime of calculation, not of sudden passion. Like racists, rapists wish to maintain the supremacy of their group; therefore, a victim's supposedly provocative behavior is irrelevant. (No decent person attributed racist murders to the "provocative behavior" or "unconscious desire" of the victims, not even when, as with murdered civil rights workers or black youths who were accused of violating the taboo against interracial sex, the victims' activities

that rapists are motivated by hatred of women, not lust); Griffin, *supra* note 64, at 35 (arguing that rape is a form of "mass terrorism"); KATE MILLETT, *SEXUAL POLITICS* 43-44 (1969) (arguing that rape is a weapon of patriarchy).

⁷⁶ BROWNMILLER, *supra* note 70.

⁷⁷ *Id.* at 18-19. Her analysis concluded near the end of the thirteenth century in England, when the second Statute of Westminster established the concept of rape as a public wrong, punishable by death. *Id.* at 30. This improvement "read better on parchment than it worked in real life." *Id.* "An analysis of other ancient societies, which Brownmiller did not consider, confirms her view of rape as a property crime." Stephen P. Pistono, *Susan Brownmiller and the History of Rape*, 14 *WOMEN'S STUDIES* 265, 270 (1988).

⁷⁸ BROWNMILLER, *supra* note 70, at 15.

⁷⁹ *Id.* at 254-55.

were obviously—in a coldly descriptive sense—one of the causes of the crime.)

Brownmiller's generation celebrated sexual freedom, which might have created problems if many people continued to think that acquaintance rapes were simply sex that "got out of hand." Her analogy made it clear that that description was false. Since the rapist's motive is not sexual, there is no reason to feel sorry for him: he is not like a hungry man stealing a loaf of bread. As an agent of the ruling gender, not a victim of an unconscious psychological conflict, he shouldn't be thought of as aberrant or as a medical case. Because rapists enforce the rules of the patriarchal system, all men are ultimately beneficiaries of and responsible for rape. And since rape not only endangers all women but also fosters their subjugation, all women have a stake in curbing rape.

The analogy to lynching has an element of truth. Many rapists are hostile to women, and some features of our culture—such as traditional sex roles—have encouraged sexual coercion in certain circumstances. As with African Americans, single women's usual lack of individual and institutional clout made them more vulnerable to rape by acquaintances, while married women's lack of economic independence and legal protection made them vulnerable to spousal rape. As with lynching, even the most respectable men—including police and judges—were often too lenient toward the perpetrators. And in different ways and degrees, both crimes constrain the lawful activities of potential victims.

However, none of these sociological similarities demonstrates a *motivational* similarity. There is no credible evidence that rapists, however strongly they believe in male supremacy, are trying by their rapes to maintain a general patriarchal system in which women lack political and economic power. Unlike the members of lynch mobs, rapists' motives usually can be at least plausibly explained by physical desire, without positing that their goal is to maintain an inequalitarian social system. Published accounts of rape do not suggest that rapists, angered by efforts to empower women, select victims who are feminist activists, or female politicians, doctors, lawyers, or executives. Nor do they select "uppity" women who are said to have spurned *other* men's sexual advances.

All predators seek vulnerable victims. In some cases, a woman's violation of a traditional prudential norm—for instance, by walking alone in a dangerous area at night, getting drunk at a fraternity party, or accepting a ride from a stranger—increases her vulnerability. But no one reports that rapists become incensed when they hear that a woman in a nearby town has done such things and later track her down in order to punish her. Rapists do sometimes select women who at least appear to be sexually "loose," but that usually can be explained as a logical way to increase the likelihood either of

consent or of escaping public censure and punishment without supposing that the rapist wished to punish the victim for being unchaste.⁸⁰

The danger of rape does constrain women's freedom. But insofar as this is due to the danger of being raped by a total stranger, it is not a product of societal leniency. While undue leniency at least used to be a serious problem in cases involving unarmed acquaintance rapists, the public response to total-stranger rapists (those who prey on women who, in Brownmiller's words, are "walking down the road at night") generally has been punitive.⁸¹ Here again, the analogy to lynching was inapt.

The main exceptions to this generalization occur during wars and persecutions of ethnic minorities. Over forty percent of *Against Our Will* is devoted to such rapes, vastly more space than Brownmiller allots to tales of intra-racial acquaintance rapes by civilians. Excluding the introductory

⁸⁰ Bryden & Lengnick, *supra* note 52, at 1358.

⁸¹ As with any crime, cases of undue leniency (as well as mistaken convictions) can be found, but our generalization, though ignored by Brownmiller and most other early rape scholars, is not disputed by those who advert to the issue. See, e.g., SUSAN ESTRICH, *REAL RAPE* 3–6 (1987). The Chicago Jury Project's findings, published in 1966 and cited by BROWNMILLER, *supra* note 70, at 373–74, had included data that distinguished very sharply between "simple" rapes and "aggravated" cases. HARRY KALVEN, JR. & HANS ZEISEL, *THE AMERICAN JURY* 253 tbl.72 (1966). The aggravated cases were defined as ones

in which there is evidence of extrinsic violence or in which there are several assailants involved, or in which the defendant and the victim are complete strangers at the time of the event; *simple rape*, another term of art, includes all other cases, that is, the cases in which none of the aggravating circumstances is present.

Id. at 252. In simple rape cases, juries were extremely reluctant to convict on a rape charge, though often willing to convict the rape defendant of a lesser crime; judges often disagreed with the acquittals. In aggravated cases, the authors found no such evidence of jury bias. The rapes described in *Against Our Will* were nearly all of the aggravated type; they often combined two or even all three of the aggravating factors. See, e.g., BROWNMILLER, *supra* note 70, at 31–104 (discussing rapes committed by soldiers during military conflicts).

The greater willingness to convict stranger rapists has been found to exist even in cases in which the stranger's victim had violated a prudential norm of female conduct. See generally Bryden & Lengnick, *supra* note 52, at 1268–69. In a relatively recent study of eight Western countries, the average time served (in months) per rape conviction was found to be invariably much lower than for homicide but higher than for nonsexual assault as well as residential burglary, motor vehicle theft, and robbery. Alfred Blumstein, Michael Tonry, & Ashley Van Ness, *Cross National Measures of Punitiveness*, in *CRIME AND PUNISHMENT IN WESTERN COUNTRIES, 1980–1999*, at 347, 355 (Michael Tonry and David P. Farrington, eds., 2005). Statistics on the probability of commitment per conviction showed the same pattern. *Id.* at 354. The rate of convictions (per 1,000 recorded crimes) was a mixed picture, but in the United States that rate for rape was higher than for nonsexual assault, residential burglary, and motor vehicle theft. *Id.* 354. We mention these figures, not to cast doubt on accusations in the 1970s (or even perhaps today) of excessive leniency in certain types of acquaintance cases, an issue on which they are uninformative, but solely to rebut the analogy between rape and lynching.

personal statement and the endnotes, *Against Our Will* comprises 393 pages, hardly any of which describe—much less analyze—the most common type of rape: by an unarmed relative, or by an intimate or other acquaintance of the victim, of the same race.⁸² The longest chapter by far is about wartime rapes (eighty-two pages, almost twice as long as any other chapter); interracial rapes (chiefly by racist whites) comprise the second longest (forty-five pages), with an additional twenty pages on slaves and their masters in the American South. Rapes during “[r]iots, [p]ogroms and [r]evolutions” cover twenty-five pages; rapes of (and occasionally by) Native Americans get thirteen pages. All of these topics have historical significance; wartime rapes are still important. But they provided an even less representative sample of rapists than the incarcerated men studied by clinicians. They also fostered the impression that rape in general is a political crime, an impression that was heightened by Brownmiller’s almost exclusively nonsexual interpretations of rapists’ motivations.

She attributed many motives to soldier-rapists, declaring for instance that “a female victim of rape in war is chosen *not* because she is a representative of the enemy, but precisely because she is a woman and *therefore* an enemy.”⁸³ In a similar vein, she noted that “[w]ar provides men with the perfect psychological backdrop to give vent to their contempt for women.”⁸⁴ Soldier-rapists are expressing “anti-female sentiment.”⁸⁵ These statements are consistent with the book’s introductory description of rape as a conscious technique by which all men instill fear in all women. But she also offered several other nonsexual explanations of soldiers’ motives, without explaining how they related to her theory that the motive for all rape is subjugation of women. Soldier-rapists, in her various accounts, are motivated by desires to terrorize all enemy civilians;⁸⁶ obtain revenge;⁸⁷ intimidate, demoralize, humiliate, and subjugate the enemy men;⁸⁸ destroy “inferior” peoples;⁸⁹ impress their comrades;⁹⁰ celebrate martial victories;⁹¹ prove the rapists’ masculinity;⁹² and relieve boredom.⁹³

⁸² This may have been a consequence of her historical rather than empirical research. The rapes mentioned in historical works are, disproportionately, the most horrific ones, including those committed by brutal warriors full of ethnic hatred. Social-scientific studies of rape were much scarcer in 1975 than today and—for a popular audience—less dramatic than the often exceptionally gruesome rapes that Brownmiller discussed.

⁸³ BROWNMILLER, *supra* note 70, at 64.

⁸⁴ *Id.* at 32.

⁸⁵ *Id.* at 65.

⁸⁶ *E.g., id.* at 32, 37, 41.

⁸⁷ *Id.* at 32, 56, 65–67.

⁸⁸ *Id.* at 40, 56.

Some of these alleged motivations (ethnic hatred and revenge, for example) certainly exist; most of the others are at least mildly plausible.⁹⁴ But so, of course, is sexual desire. In her *ipse dixits* about soldier-rapists' motivations, Brownmiller did not discuss whether the putative nonsexual

⁸⁹ *Id.* at 49, 56.

⁹⁰ *Id.* at 107 ("They show each other what they can do.").

⁹¹ *Id.* at 33 ("[T]hey rape to prove their newly won superiority"); *id.* at 35 ("[Rape is] the act of a conqueror . . . [and] a hallmark of success in battle").

⁹² *Id.* at 35.

⁹³ *Id.* at 32.

⁹⁴ Whether out of concern for the victims, to ensure a modicum of civilian cooperation, or to avoid adverse publicity at home, some commanders have sought to minimize rape, though others have shrugged it off as inevitable in war. See, e.g., GILES MACDONOGH, *AFTER THE REICH: THE BRUTAL HISTORY OF THE ALLIED OCCUPATION* 26, 34 (2007) (noting that Soviet commanders generally turned a blind eye to rapes of Germans); *id.* at 56 (mentioning that after hearing of a gang rape, a local commander shot four of his own men); *id.* at 98 (noting threats to punish rapists were unsuccessful); *id.* at 102 (explaining that rape declined only when Soviet authorities realized it was damaging their relations with the civilian populace); *id.* at 240, 242 (noting that American authorities began to punish rapes and to seek good relations with German civilians). One should remember that murders of surrendering, disabled, or captured enemy males are also sometimes ignored by superior officers, not necessarily because of long-term ethnic animosity but because taking prisoners is militarily inconvenient, or "this is war," or "they do it to us," or to avoid bad publicity in the civilian media. See, e.g., RICK ATKINSON, *THE DAY OF BATTLE: THE WAR IN SICILY AND ITALY, 1943–1944*, at 117–21 (2007) (noting leniency toward Americans who executed Italian prisoners). Also during World War II, although the "most aggravated" rapes by Soviet troops were of German (and Hungarian) women, the Red Army in Austria "raped wherever they went"; their victims included some Russian, Ukrainian, and Yugoslav women. MACDONOGH, *supra* note 94, at 25–26. Concerning rapes of German women, MacDonogh stresses the Soviet desire for vengeance—to humiliate both the women and their male relatives. *Id.* at 26. But he also found evidence of a sexual motive: "Added to the semi-official sanction, the Red Army was sex-starved. Its soldiers had been fighting for four years, and in most cases they had not received compassionate leave. The raping became worse again after June 23, 1945, when many female soldiers were sent back to Russia." *Id.* at 26–27. Similarly, Beevor perceives both vengeance and sexual desire in allied soldiers' rapes. ANTONY BEEVOR, *THE FALL OF BERLIN 1945*, at 326–27 (2002). In the later stage of the conquest of Germany, "most [Soviet] soldier rapists did not demonstrate gratuitous violence, provided the woman did not resist." *Id.* at 326. However, another historian, after noting that the Soviet soldiers "shot [German] civilians by the thousand, men, women and children," concludes that their rapes had "very little to do with releasing months and years of sexual frustration and pent-up lust; other factors, notably hatred and aggression, were far more important." As evidence of this, he reports that "[r]ape was often accompanied by torture and mutilation and frequently ended in the victim being shot or bludgeoned to death." RICHARD J. EVANS, *THE THIRD REICH AT WAR* 710 (2009). In our opinion, by far the most plausible hypothesis is that the Soviet soldiers' motives were a mixture of sex and revenge, and that the brutality of the war plus the likelihood of official leniency—consistent with any theory about individual soldiers' motives—were extremely important causes.

motives are alternatives or only supplements to sexual desire, nor why, if the motives are mixed, she treated the nonsexual ones as more important.⁹⁵

Political or military leaders sometimes initiate mass rapes against a hated enemy. Brownmiller describes, for example, rapes of Jews by Nazis and of Chinese during the Japanese atrocities in Nanking. But even in this type of rape, where the leader's motive, at least, is patently political, no one has proved that the men who carry out the atrocities lack sexual desire. Even if they do, the circumstances usually suggest a racial or nationalistic motive rather than a wish to punish women as such. The enemy women are raped and sometimes beaten or murdered; the men are usually just beaten or murdered.⁹⁶

Brownmiller's political interpretation of rapists' motives was not limited to soldiers. For example, she treated sexual coercion by slaveholders as a political phenomenon—which of course it was, if one means only that, as owners of the female slaves, the masters were both legally entitled and practically able to exploit them sexually. But Brownmiller tried to go beyond this truism. She maintained that "the black woman's sexual integrity was deliberately crushed in order that slavery might profitably endure."⁹⁷ Rape, she said, provided a steady supply of

⁹⁵ She does not wholly ignore the general possibility of a sexual motive; in places, she seems to take it for granted, *see, e.g.*, BROWNMILLER, *supra* note 70, at 37 ("[T]he original impulse to rape does not need a sophisticated political motivation."), but in others she tries to rebut it. *E.g., id.* at 117, 152. And in most specific contexts, she describes what she believes to be a nonsexual motive, with no consideration of the possibility that the motive was sexual or mixed.

⁹⁶ *E.g., id.*, at 121–23 (noting that in pogroms Jewish women were raped while both sexes suffered nonsexual assaults and murders); *id.* at 126 (noting that mob violence against Mormons and blacks included but was not limited to rape); *id.* at 57–61 (noting that Japanese atrocities against Chinese in Nanking included murder as well as rape). There are, of course, countless examples: During the Red Army's advance through East Prussia, a German civilian recalls, "a man was worth less than the watch he wore." MACDONOGH, *supra* note 94, at 50 (internal citations omitted). A village girl was raped by an entire tank squadron, while a man was shot and fed to pigs. *Id.*

Rapes of enemy men do not appear in most accounts of rape during World War II and may be only a minute fraction of wartime rapes. *See, e.g., id.* at 79 (noting that French Moroccan troops occupying Stuttgart in World War II raped "perhaps 3,000" women and "eight men"). Perhaps male victims were more reluctant to report having been raped. More recently, there was a "sudden spike in male rape cases" by armed groups in the Congo, described as "yet another way for armed groups to humiliate and demoralize Congolese communities into submission," along with rapes of "hundreds of thousands" of women and massacres of both sexes. Jeffrey Gettleman, *Latest Tragic Symbol of an Unhealed Congo: Male Rape Victims*, N.Y. TIMES, Aug. 5, 2009, at A1.

⁹⁷ BROWNMILLER, *supra* note 70, at 153. In a variation of Brownmiller's analysis, bell hooks, a prominent African-American scholar, argued that the real motive for rapes of slaves

labor (from the illegitimate children thus conceived), reaffirmed the masculinity of slaveholders, and “reduced and twisted the black man’s concept of his role.”⁹⁸ As in the chapter on soldiers, Brownmiller did not pause to explain why she rejected the alternative sexual explanation. Did the slave owners feel no desire for sex with female slaves? Or did they for some reason repress that desire while using rape to crush and breed slaves?

Even when describing civilian, white-on-white rapes, Brownmiller highlighted the most gruesome examples, while at the same time rebuking psychoanalysts for focusing on atypically demented rapists.⁹⁹

Our criticisms are directed only at Brownmiller’s motivational theories; they are not meant to be an overall assessment of her messages and achievements. On some matters that are irrelevant to our present topic, we agree with her conclusions. For the purposes of this Article, however, the relevant point is that her dogmatic descriptions of rapists’ motives had the same basic defect that Eysenck and Wilson identified as the most common flaw of Freudian studies: a failure to give serious consideration to alternative explanations.

Whether her intuitions about the nonsexual nature of rapists’ motives were nevertheless correct is our next topic.

IV. THEORIES AND EVIDENCE

Rape scholarship has proliferated enormously since the 1970s.¹⁰⁰ The mainstream is now heavily social-scientific, consisting mostly of

was “to obtain absolute allegiance and obedience to the white imperialistic order” and thus was not to satisfy sexual lust but to demoralize and dehumanize black women. BELL HOOKS, *AIN’T I A WOMAN: BLACK WOMEN AND FEMINISM* 27 (1981). She criticized Brownmiller’s failure to discuss the effects of rapes on the subsequent status of black women. *Id.* at 51–52. Like Brownmiller, she failed to explain why the slave owners found it necessary or profitable to demoralize their female slaves in this way, nor why, as her account implies, they were not interested in forcibly obtaining sexual pleasure from them.

⁹⁸ BROWNMILLER, *supra* note 70, at 154.

⁹⁹ She repeatedly mentioned Albert De Salvo (“the Boston Strangler”), “a killer who strangled and stabbed eleven women, many of them elderly, and left their sexually mutilated bodies in garish postures with a nylon stocking knotted about the neck,” leading to a nationwide manhunt. BROWNMILLER, *supra* note 70, at 200 *passim*. DeSalvo epitomized the type of “fiend” that the media publicized, the public abhorred, the authorities pursued and the psychologists sought to understand. Despite her own references to such cases, Brownmiller criticized psychologists for exactly the same fallacy: “Although the psycho rapist, whatever his family background, certainly does exist, just as the psycho murderer certainly does exist, he is the exception and not the rule. The typical American perpetrator of forcible rape is little more than an aggressive, hostile youth who chooses to do violence to women.” *Id.* at 176.

quantitative studies of rapists' experiences, behavior, traits, and attitudes—especially toward women, sex roles, and rape.¹⁰¹ Typically, the authors do not draw motivational conclusions. On some major issues, progress has been exceedingly slow;¹⁰² as in other fields of social science, methodological problems abound. Even so, the better studies are serious scholarship. Unlike many non-quantitative theorists, the social scientists customarily include caveats about the limitations of their own methodologies.¹⁰³ With varying degrees of rigor, their discussions rely on familiar statistical procedures. The intention, though of course not always the result, is to arrive at objective conclusions whose acceptability transcends ideologies and vocations.¹⁰⁴ Increasingly, scholars stress the complexity of rape's causes.¹⁰⁵

¹⁰⁰ See generally Mary P. Koss, *Empirically Enhanced Reflections on 20 Years of Rape Research*, 20 J. INTERPERSONAL VIOLENCE 100 (2005).

¹⁰¹ For an outstandingly thorough description and analysis of the literature, see LALUMIÈRE ET AL., *supra* note 2. A valuable source of comparisons with other violent crimes is RICHARD B. FELSON, *VIOLENCE AND GENDER REEXAMINED* (2002). Other helpful summaries include MARY P. KOSS & MARY R. HARVEY, *THE RAPE VICTIM: CLINICAL AND COMMUNITY INTERVENTIONS* 1–41 (2d ed. 1991); Klaus Drieschner & Alfred Lange, *A Review of Cognitive Factors in the Etiology of Rape: Theories, Empirical Studies, and Implications*, 19 CLINICAL PSYCHOL. REV. 57 (1999); Patrick Lussier et al., *Developmental Pathways of Deviance in Sexual Aggressors*, 34 CRIM. JUST. & BEHAV. 1441 (2007); Vanessa Vega & Neil M. Malamuth, *Predicting Sexual Aggression: The Role of Pornography in the Context of General and Specific Risk Factors*, 33 AGGRESSIVE BEHAVIOR 104 (2007).

¹⁰² For example, despite massive research, pornography's effects are still debated. See *infra* note 431.

¹⁰³ For practical reasons, social-scientific researchers usually adopt suboptimal procedures, such as studying convicts or student volunteers instead of random samples of the general public, and the studies typically only show correlations, not necessarily causation. But on some topics researchers have employed various samples and methodologies; when their findings converge, conclusions can be drawn with greater confidence than would be warranted if only one type of study had been conducted. See, e.g., Drew A. Kingston et al., *The Importance of Individual Differences in Pornography Use: Theoretical Perspectives and Implications for Treating Sexual Offenders*, 46 J. SEX RES. 216 (2009).

¹⁰⁴ We are aware of the epistemological differences between social science and the natural sciences. See generally Meehl, *supra* note 30. But our comparison is with motivational dogmatists, not with chemists.

¹⁰⁵ E.g., Shelley L. Brown & Adelle E. Forth, *Psychopathy and Sexual Assault: Static Risk Factors, Emotional Precursors, and Rapist Subtypes*, J. CONSULTING & CLINICAL PSYCHOL. 848, 848 (1997); Mary P. Koss, *Evolutionary Models of Why Men Rape: Acknowledging the Complexities*, in *EVOLUTION, GENDER, AND RAPE* 191, 201 (Cheryl Brown Travis ed., 2003); Devon L. Polaschek & Tony Ward, *The Implicit Theories of Potential Rapists, What Our Questionnaires Tell Us*, 7 AGGRESSION & VIOLENT BEHAV. 385 (2002). Recognition of the possible inadequacies of samples of imprisoned rapists, though not universal, is now more common. See, e.g., Drieschner & Lange, *supra* note 101, at 58–

Theories about rapists' motives are now in a state of confusion. The gradual rise of evolutionary psychology over the past several decades has produced intense disputes between some of the advocates of evolutionary concepts, who allege that rapists' principal motives are sexual, and feminists who reject that characterization. We will discuss this controversy later in the Article.

For their part, feminist scholars have adopted various positions. Although Brownmiller remains an eminent authority, modern scholars ignore her declaration that rape is a conscious effort by all men to terrify and subjugate all women. That was a product of its time. Some feminists are frankly political, discussing whether women gain more by calling rape a crime "of violence," or "of sex," or "of both sex and violence."¹⁰⁶ Others assign different "primary" or "predominant" motives to different types of rape, with some rapists primarily sexually motivated and the rest primarily motivated by one of several nonsexual aims.¹⁰⁷ It is still true that "in general, non-feminist theories have emphasized the goal of sex, and feminist theories have emphasized the goals of dominating and controlling rape victims and women in general."¹⁰⁸ Yet feminist analyses regularly describe the causes of rape in ways that often appear to presume a sexual motive.¹⁰⁹ We will discuss this apparent contradiction later in the Article.

59; Lynn M. Pazzani, *The Factors Affecting Sexual Assaults Committed by Strangers and Acquaintances*, 13 VIOLENCE AGAINST WOMEN 717, 718 (2007).

¹⁰⁶ See generally Charlene L. Muehlenhard et al., *Is Rape Sex or Violence? Conceptual Issues and Implications*, in SEX, POWER, CONFLICT: EVOLUTIONARY AND FEMINIST PERSPECTIVES 119, 124 (David M. Buss & Neil M. Malamuth eds., 1996).

¹⁰⁷ E.g., Baker, *supra* note 2, at 566, 599, 603, 606–08, 610, 615 (discussing various allegedly predominant motives for rape).

¹⁰⁸ Muehlenhard, *supra* note 106, at 129; see, e.g., NAT'L RES. COUNCIL, UNDERSTANDING VIOLENCE AGAINST WOMEN 59 (1996) ("Violence against women is widely believed to be motivated by needs to dominate women [M]otives of power and anger are more prominent in the rationalizations for sexual aggression than sexual desires."); Jericho M. Hockett et al., *Oppression Through Acceptance? Predicting Rape Myth Acceptance and Attitudes Toward Rape Victims*, 15 VIOLENCE AGAINST WOMEN 877, 877 (2009) ("Feminist theories of rape motivation are based on research suggesting a relationship between dominance and sexual aggression."). Another author, while agreeing that feminist discussions of rapists' motives have been dominated by nonsexual theories, adds that "these were political slogans, not scientific propositions"; they were "deemed necessary to reverse popular misconceptions about rape." Jerry A. Coyne, *Of Vice and Men: A Case Study in Evolutionary Psychology*, in EVOLUTION, GENDER, AND RAPE, *supra* note 105, at 171, 176.

Radical feminists, who perceive strong similarities between rape and all other heterosexual intercourse under patriarchy, may seem to be an exception to Muehlenhard's generalization, but that is arguable. See THORNHILL & PALMER, *supra* note 2, at 126–27.

¹⁰⁹ See *infra* notes 465–470 and accompanying text.

Another mystery is the continuing failure of most motivational theorists to define motive and feminists' frequent use of vague and evasive locutions. One author will concede only that sex is "involved" in rape; another will say rape is "not about" (or "not entirely about") sex—formulations that might refer to the perpetrator's (conscious or unconscious) goal, the causes of the crime, the effect on the victim (or women generally), the author's attitude, or all of these.¹¹⁰ For example, when her motivational theories were assailed by evolutionary psychologists, Brownmiller replied that they had misunderstood her: "I never said that rape was not involved with sex. Obviously, it uses the sex organs. What the women's movement did say, starting in the 1970s, was that rape is not sexy, you see."¹¹¹ But the issue was never whether rape "uses the sex organs" or whether being raped by an enemy soldier is "sexy"; it was whether rapists have patriarchal or ethnic rather than sexual motives.

Any effort to eliminate the semantic contortions in motivational scholarship should begin by acknowledging that the meaning of motive is elusive.¹¹² For the sake of clarity and consistency, we will adopt what we

¹¹⁰ See generally Owen D. Jones, *Law and the Biology of Rape: Reflections on Transitions*, 11 HASTINGS WOMEN'S L.J. 151, 165–69 (2000). For examples of efforts to define the concept of motive more precisely, see David Lisak & Susan Roth, *Motivational Factors in Nonincarcerated Sexually Aggressive Men*, 55 J. PERSONALITY & SOC. PSYCHOL. 795, 796 (1988); Zurbriggen, *supra* note 2, at 559.

¹¹¹ Quoted in NICOLA GAVEY, JUST SEX?: THE CULTURAL SCAFFOLDING OF RAPE 32 (2005). Gavey believes that this was a "clarification" of the "frequently misunderstood position" of feminists. Does she mean that Brownmiller and other feminists have been saying all along that rapists are primarily sexually motivated?

¹¹² According to one scholar, a motive is "a recurrent concern for a goal state based on a natural incentive—a concern that energizes, orients, and selects behavior." DAVID C. MCCLELLAND, HUMAN MOTIVATION 590 (1985). McClelland distinguishes between motives and values—"the ideas people have about what is important in life or to them"—which sometimes are more influential. *Id.* at 592, 601. He notes that many determinants of behavior—including beliefs and expectations—are not motivational. *Id.* at 4, 6, 33. Another authority defines motives as "the factors that direct and energize the behavior of humans and other organisms." ROBERT S. FELDMAN, ESSENTIALS OF UNDERSTANDING PSYCHOLOGY 301 (6th ed. 2005). Unlike "goal," this definition might be interpreted to include some personality traits such as aggressiveness as well as beliefs and expectations.

No clear and concise definition of this word captures all of its meanings. Differently phrased, our definition appears in most dictionaries. *E.g.*, RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 1254 (2d ed. 2001). But dictionaries also list other perhaps broader meanings. These include "an inward prompting or impulse," 9 OXFORD ENGLISH DICTIONARY 1131 (J.A. Simpson & E.S.C. Weiner, eds., 2d ed. 1989), *available at* <http://dictionary.oed.com>, "an inner urge," RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY, *supra*, a "stimulus," WEBSTER'S THIRD INTERNATIONAL DICTIONARY UNABRIDGED 1475 (Philip Babcock ed., 2002), "an emotion, desire or appetite," WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1475 (Philip Babcock Gove ed., 1976), ENCARTA

regard as the single best definition, but the concept of motive has multiple meanings and innuendoes that we will discuss later in the Article.

With that proviso, we define a motive as a conscious or unconscious goal. Many partial causes of conduct, including some mental states such as stress, are not motivational—at least not in our sense. Personality traits and attitudes are often among the causes of an act, without necessarily furnishing its goal. Aggressiveness and lack of empathy, for example, are traits, not goals. (This is true even if the rapist has those traits only in certain contexts, such as when interacting with women, though in that case a motivational theory may be a plausible alternative, making the distinction more difficult to apply.)

Goals and other causes of conduct are interwoven. For example, a non-goal characteristic may help to create a goal, as for instance when a ruthless, sexually insecure gangster kills someone who winked at his wife. Although ruthlessness is not a goal, relieving sexual insecurity might be so described, in which case it could be thought of as the unconscious motive underlying a conscious motive of revenge. But if the killer had lacked the necessary boldness and ruthlessness he would not have considered killing his victim and his sexual insecurity might not have caused him to do anything that could be characterized as revenge.

A criminal's ideology may create his goal (as in a racist murder), but it may instead be disinhibitory (where the actor has an independent aim such as obtaining money or sex). Other commonly recognized disinhibitors include a potential victim's vulnerability, the criminal's expectation that there will be no serious social and official sanctions, intoxication, and anger.¹¹³ As all of these examples illustrate, a criminal's goal is not the exclusive or even necessarily the most important cause of his crime.

We will treat a desire for sexual gratification as a (not necessarily exclusive) "sexual motive." In cases of possible mixed motives, we will not try to establish a hierarchy unless we surmise that one of the motives

WORLD ENGLISH DICTIONARY 1180 (1999), and "[a] moving or inciting cause" 9 OXFORD ENGLISH DICTIONARY, *supra*, at 1132. Cf. THORNHILL & PALMER, *supra* note 2, at 66 (noting that the low "cost" of rape in a particular situation can be a "motive" for the crime); Brown & Forth, *supra* note 105, at 848, 851–52 (1997) (equating "motivations" with emotional states during the twenty-four hours prior to the rape, including anger, depression, alienation, general frustration, sexual frustration, stress, and feelings of boredom and tiredness).

¹¹³ Revenge, unlike anger, is a goal, and therefore our definition requires some difficult distinctions between angry men who sought sex mainly in order to obtain revenge and those whose anger simply disinhibited them from using force to satisfy their sexual desires. See *infra* text accompanying notes 221–234. Concerning intoxication, see generally LALUMIÈRE ET AL., *supra* note 2, at 138–40.

was a necessary cause of the rape, while in our judgment the other, though it may have heightened the rapist's pleasure, probably was not.

Now let us compare a "moderate feminist" position concerning rapists' motives with a "moderate traditional" position. A moderate feminist might say that, though sexual gratification is one of rapists' goals, the primary motive is usually or often nonsexual—for example, the rapist's hostility toward women, his desire to control or dominate them or to prove his masculinity, ethnic animosity, or eagerness to be accepted as part of a gang.¹¹⁴

Compare this with Judge Richard Posner's moderate version of the sexual-motive theory:

[M]ost rapists want to have sex, not to make a statement about, or contribute to the subordination of women. This is not to deny that rape attracts the violent (those prone to use force to achieve their goals) and the sadistic (who may derive an extra filip of pleasure from the rape victim's agony)¹¹⁵

Notice that the moderate feminist version acknowledges that at least some rapists seek sexual gratification, while Judge Posner's generalization only includes "most" rapists and he concedes that rapists tend to be violent men and sometimes sadists. Although Judge Posner does not explicitly mention most of the nonsexual motives in our hypothetical feminist's list, we suspect that he would say that they usually provide, at most, "an extra filip of pleasure."

Judge Posner does not describe sexual desire as irresistible and therefore a ground for leniency; he believes that potential rapists are as deterrable as thieves.¹¹⁶ The main difference between his position and our description of a moderate feminist's position is that feminists typically say or imply that rapists' sexual goals are usually instrumental to or less influential than nonsexual goals; Posner maintains that the violence in rape is usually instrumental to a sexual goal.

In examining the evidence about this issue, we need to separate three questions: Do rapists seek sexual gratification? Do they also or instead have (perhaps unconscious) nonsexual aims? If multiple motives are likely,

¹¹⁴ E.g., Baker, *supra* note 2, at 566, 599, 604 (sexual motive); *id.* at 606–19 (other motives). Another author says that rapes are "sometimes . . . partly about sex" and proceeds to list other things that they are "about": contempt for women's bodily integrity; a feeling of sexual entitlement; sexual repulsion, rage, and fear; domination; or "a homosexual event by which one group of men express its domination over another group of men." Thus, rape is a "multidimensional phenomenon, offering a large amount of variation." Michael Kimmel, *An Unnatural History of Rape*, in *EVOLUTION, GENDER, AND RAPE*, *supra* note 105, at 221, 224.

¹¹⁵ RICHARD A. POSNER, *SEX AND REASON* 385–86 (1992).

¹¹⁶ *Id.* at 386.

do we have any basis for concluding that one is more influential than another?

We will devote most of our attention to the most popular and comprehensive theories, beginning with evidence in favor of a sexual goal, then turning to evidence of nonsexual goals.

A. RAPISTS' SEX LIVES

Motivational theorists of every persuasion commonly cite evidence about rapists' sex lives.¹¹⁷ One obvious question is whether rapists have experienced long-term, objectively defined "mate deprivation." This is sometimes true. Although the motives of soldier-rapists are not exclusively sexual, no one denies that soldiers in combat have few opportunities for consensual heterosexual encounters. Anthropologists have disagreed about whether rape in primitive tribes is due to extreme sexual deprivation or inequalitarian gender hierarchies (the currently accepted explanation).¹¹⁸

However this may be, studies of American civilian rapists do not support the idea that they are "sex-starved" in the sense of long-term inability to find willing mates. On the contrary, in many respects their sex lives are extraordinarily active.¹¹⁹ They are more likely than others to have been sexually precocious,¹²⁰ to have had many sexual partners,¹²¹ and to

¹¹⁷ For arguments in favor of the proposition that rapists are motivated by sexual desire, see FELSON, *supra* note 101, at 149–60.

¹¹⁸ LALUMIÈRE ET AL., *supra* note 2, at 10–11. A prominent evolutionary psychologist supported the former explanation. DONALD SYMONS, *THE EVOLUTION OF HUMAN SEXUALITY* 281 (1979).

¹¹⁹ Paul Gebhard et al. completed a pioneering study in 1965. PAUL H. GEBHARD ET AL., *SEX OFFENDERS: AN ANALYSIS OF TYPES* (1965). Although this study's methodology has been criticized, see Rada, *supra* note 10, at 3, its findings were substantially similar to those of more recent researchers employing different methodologies. Comparing convicted rapists with men who had no such record, the Gebhard study included several findings that appear in subsequent research but also some that usually do not. Examples of the latter were that the rapists were more likely to have practiced both active and passive oral sex (in both they had nearly double the control group's rate), GEBHARD, *supra*, at 185; to have had sexual contacts with animals (nearly 19% compared to the control group's 8%), *id.* at 192; to prefer sexually experienced brides, *id.* at 187; to have frequent marital coitus, *id.* at 188; to have committed adultery with a non-prostitute (77% of those who had ever been married had had extramarital coitus), *id.* at 189; and in every age period to masturbate, *id.* at 182.

¹²⁰ E.g., Lussier et al., *supra* note 101, at 1449, 1456. "Aggressive and antisocial behavior and poor psychosocial adjustment in both boys and girls are associated with early sexual intercourse." LALUMIÈRE ET AL., *supra* note 2, at 70. See generally *id.* at 72.

¹²¹ See generally LALUMIÈRE ET AL., *supra* note 2, at 75. Cf. Abbey et al., *supra* note 2, at 59, 63; Yost & Zurbriggen, *supra* note 2. In a sample of 1,846 college men, the "sexually assaultive" ones (essentially rapists) had had a mean of fourteen sexual intercourse partners, compared with means of eight for "sexually abusive" (used force but only for kissing or

like casual sex.¹²² There is also evidence that they are more likely to use prostitutes,¹²³ masturbate,¹²⁴ have sexual fantasies,¹²⁵ use pornography,¹²⁶ visit strip clubs,¹²⁷ have frequent sexual intercourse,¹²⁸ have high numbers of orgasms in a given period,¹²⁹ and engage in several deviant sexual practices such as exhibitionism.¹³⁰ These behaviors are sometimes studied together as measures of a construct called "sex drive" or "sexualization."¹³¹ Some authors interpret the findings of the studies as evidence that rapists are more obsessed with sex, less able or willing to control their sexual impulses, or subject to more frequent or more intense physical desires for sexual gratification.¹³² One may then infer that their rapes were sexually motivated.

The sexualization evidence is impressive, but several caveats are necessary. So far, efforts to find a hormonal cause of rape such as an elevated testosterone level have been unsuccessful.¹³³ The samples used in

petting or attempted rape) and five for "non-aggressive" (no force, threat, or extreme verbal pressure) men. Mary P. Koss et al., *supra* note 100, at 984–85.

¹²² Abbey et al., *supra* note 2, at 59, 63.

¹²³ Lussier et al., *supra* note 101, at 1449, 1456–57 (noting the high level of sexualization found to be related to sexual aggression in adulthood).

¹²⁴ Eugene J. Kanin, *Date Rape: Unofficial Criminals and Victims*, 9 VICTIMOLOGY 95, 98–99 (1984); Lussier et al., *supra* note 101, at 1449.

¹²⁵ E.g., Lussier et al., *supra* note 101, at 1449 (item in "[s]exualization" or impersonal sex scale), 1456–57 (high level of sexualization found to be related to sexual aggression in adulthood).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ GEBHARD, *supra* note 119, at 188 (frequency of marital intercourse).

¹²⁹ In a "convenience" sample of male college volunteers, Kanin found that the self-acknowledged rapists reported an average of 1.5 orgasms per *week* while those who denied having raped reported only 0.8 per *month*. Kanin, *supra* note 124, at 99. In an earlier study, he found that the mean number of ejaculations per week, from any source including masturbation, estimated by the subjects to be necessary for their "satisfaction" was 3.67 for the sexually aggressive males and 2.69 for the nonaggressive. Kanin, *supra* note 26, at 228; cf. Martin P. Kafka, *Hypersexual Desire in Males: An Operational Definition and Clinical Implications for Males with Paraphilias and Paraphilia-Related Disorders*, 26 ARCHIVES SEXUAL BEHAV. 505, 518–19 (1997).

¹³⁰ Lussier, *supra* note 101, at 1446.

¹³¹ *Id.* at 1448–49. The behaviors tend to co-occur. *Id.* at 1446.

¹³² Even in the most careful studies these hypotheses are not always evaluated individually. See, e.g., Lussier et al., *supra* note 101, at 1445 (referring to "inability to control sexual behavior" and also "strength and frequency of the sexual drive"), 1447 (noting that the sexualization concept includes paraphilia), 1456 (noting that sexualization is related to sexual aggression in adulthood). "Failure to control" would be preferable to "inability to control," with its unproven deterministic connotation.

¹³³ See generally LALUMIÈRE ET AL., *supra* note 2, at 132–34.

some studies of sexualization are not limited to rapists with adult victims.¹³⁴ More important, the most common findings—that rapists are more sexually precocious and inclined to prefer casual encounters to monogamous relationships—do not necessarily mean that they have abnormally strong or frequent physical cravings for sex. Sexual precocity may be due to a poor family or peer environment, lack of moral and prudential inhibitions, and general delinquency, for example.¹³⁵ A man's sexual practices are affected

¹³⁴ E.g., Kafka, *supra* note 129, at 508, 514 (noting that sample included males seeking treatment for diverse paraphilias; only five rapists included). Concerning the differences between “sex offenders” with sexually mature victims and those with younger victims, see Lussier et al., *supra* note 101, at 1452. The model used in Lussier's study, employing sexualization as one of three factors in sexual offending, “appeared to exhibit a better fit for sexual aggressors of children compared to aggressors of adults.” *Id.* In many respects, the attributes of child molesters differ from those of rapists with older victims. See generally LALUMIÈRE ET AL., *supra* note 2, at 79–80.

¹³⁵ Aggressive and antisocial behavior and poor psychosocial adjustment in both boys and girls are associated with early sexual intercourse. LALUMIÈRE ET AL., *supra* note 2, at 70, 72.

Sexualization has usually been studied separately from other possible causes of rape. Departing from this practice, the authors of one study concluded that impersonal sex is in part a manifestation of “a high sex drive” but also partly a manifestation of “a high antisocial tendency.” Lussier et al., *supra* note 101, at 1457. An earlier study had shown that, while measures of sexualization tend to be related to sexual crimes in adulthood, this role is modest after controlling for behavioral antecedents of “externalization.” Patrick Lussier et al., *Criminal Propensity, Deviant Sexual Interests and Criminal Activity of Sexual Aggressors Against Women: A Comparison of Explanatory Models*, 43 *CRIMINOLOGY* 249 (2005). Externalization refers to four types of behavioral manifestations that tend to co-occur: authority-conflict behaviors such as being defiant at home, work or school; risky behaviors jeopardizing one's own or another's health; sneaky, dishonest behaviors; and aggressive, violent behaviors. “[T]hese domains of deviance share significant variance but demonstrate unique variance as well.” Lussier et al., *supra* note 101, at 1443.

For a skeptical response to the “sex drive” theory, see Neil Malamuth, *An Evolutionary Based Model Integrating Research on the Characteristics of Sexually Coercive Men*, in 1 *ADVANCES IN PSYCHOLOGICAL SCIENCE: SOCIAL, PERSONAL & CULTURAL ASPECTS* 151, 167 (John G. Adair, David Bélanger & Kenneth L. Dion, eds., 1996) [hereinafter *An Evolutionary Based Model*] (“[T]he data appears more consistent with a short-term mating strategy or an impersonal sexual orientation (e.g., desiring more variety of sex partners) rather than differences in sex drive.”). Malamuth and his co-authors have found that sexual promiscuity in combination with “hostile masculinity” (though not alone) is predictive of sexual aggression. Vega & Malamuth, *supra* note 101, at 108, 115; Neil M. Malamuth et al., *Characteristics of Aggressors Against Women: Testing a Model Using a National Sample of College Students*, 59 *J. CONSULTING & CLINICAL PSYCHOL.* 671, 680 (1991). Cf. Catherine So-Kum Tang, Joseph W. Critelli & James F. Porter, *Motives in Sexual Aggression: The Chinese Context*, 8 *J. INTERPERSONAL VIOLENCE* 435, 439 (1993) (finding that among Chinese college males, “aggressive drive” but not “sex drive” correlated with sexual aggression).

by his personality and values—for instance, his anti-social tendencies,¹³⁶ lack of moral scruples and self-centeredness,¹³⁷ attractiveness to some types of women, intolerance of restrictions on his sexual liberty, and so on. All of these are as consistent with love of power, control, and domination of women (feminists' usual motivational hypotheses) as with an abnormally strong physical desire for sex.¹³⁸ Some of the other items on sexualization scales, such as consumption of pornography and visits to strip clubs, are also subject to multiple interpretations. Even the most probative items, such as frequency of orgasms, may be affected by factors other than the strength of one's sex drive—for example, religious attitudes toward masturbation and premarital sex. Until these matters are resolved, we are not prepared to say that the sexualization studies, suggestive though they are, suffice to show that most rapists' motives are primarily sexual.

Although the evidence is mixed, some studies have found that rapists, even if they have had many sexual encounters, tend to feel dissatisfied with their sex lives.¹³⁹ This could be for any of several reasons. Despite their sexual "success" by some objective measures, many rapists claim that

¹³⁶ Sexual promiscuity is one of the behaviors associated with male anti-social behavior. LALUMIÈRE ET AL., *supra* note 2, at 69–72. Although evolutionary psychologists have plausibly argued that male promiscuity has an evolutionary basis, see *infra* notes 337–345, that thesis is independent of the idea that rapists have a higher level of physical desire than non-rapists.

¹³⁷ To the extent that highly promiscuous men's consensual encounters are with women who appear to hope, perhaps with encouragement (and even dishonesty) by the man, that the relationship will evolve into something more enduring, traits such as dishonesty, self-centeredness, and lack of empathy presumably facilitate such men's sexual lifestyles. Several studies have found that empathetic men, even if they possess other risk factors for rape, are unlikely to commit the crime. LALUMIÈRE ET AL., *supra* note 2, at 73; Karol E. Dean & Neil M. Malamuth, *Characteristics of Men Who Aggress Sexually and of Men Who Imagine Aggressing: Risk and Moderating Variables*, 72 J. PERSONALITY & SOC. PSYCHOL. 449, 453–54 (1997) (describing the relationship between self-centeredness and aggressive behavior). This does not disconfirm the high sex-drive hypothesis, but it shows that no explanation of rape's causes or rapists' goals should be treated as exclusive, and it suggests the possibility that some of the indicators of socio-sexuality (notably promiscuity) may be due at least in part to factors other than an abnormally frequent or intense desire for sex.

¹³⁸ A socio-sexual orientation has been found to be "linked with higher levels of rape myth acceptance and adversarial sexual beliefs; more conservative attitudes toward women; higher levels of power motivation and lower levels of affiliation–intimacy motivation and past use of sexual aggression." Yost & Zurbriggen, *supra* note 2 (sample included only five rapists). Again, these findings do not disconfirm the elevated sex drive hypothesis, but they illustrate alternative causal possibilities.

¹³⁹ Eugene J. Kanin, *Sexually Aggressive College Males*, 12 J. C. STUDENT PERSONNEL 107, 109 (1971); Rada, *supra* note 10, at 39.

women have often rejected them.¹⁴⁰ Although we do not know whether in fact this is more often true of rapists than of other men, it is not inconsistent with having had many mates. Perhaps rapists (or the convicted ones) tend to be bolder and more direct—inclined to proposition women even when a favorable response is uncertain or unlikely.¹⁴¹ Or perhaps they are more irritated by the sexual rejections and delays that other men unhappily but peacefully accept.¹⁴² They may have unusually high sexual aspirations. Rada decided that many incarcerated rapists feel sexually inadequate: They “have had numerous, apparently adequate, voluntary sexual relationships”; their feelings of inadequacy “are truly neurotic, unjustified either by their history of sexual performance or their ability to compete aggressively with other men for women, jobs, and so on.”¹⁴³ Kanin found that self-reported college (acquaintance) rapists, though more experienced than non-rapists, were also more likely to rate their sexual achievements as unsatisfactory. He attributed this to their high erotic aspirations due to pressure from their peers to “sexually succeed.”¹⁴⁴

¹⁴⁰ Malamuth, *An Evolutionary Based Model*, *supra* note 135, at 172. Others claim that women have left them with deeply hurt feelings. Kanin, *supra* note 26, at 225–26. This too is obviously subject to multiple interpretations including an effort to absolve themselves of guilt, sexist expectations of women, the kinds of women they associate with, and their feelings about relationships in general.

¹⁴¹ Cf. Lana E. Stermac & Vernon L. Quinsey, *Social Competence Among Rapists*, 8 BEHAV. ASSESSMENT 171, 184 (1986) (suggesting “that rapists’ interpersonal functioning may be affected by a complex interaction of several variables, specifically anxiety and assertiveness”).

¹⁴² *Id.* at 183.

¹⁴³ Rada, *supra* note 10, at 39 (incarcerated men); accord D.J. WEST, C. ROY & FLORENCE L. NICHOLS, UNDERSTANDING SEXUAL ATTACKS: A STUDY BASED UPON A GROUP OF RAPISTS UNDERGOING PSYCHOTHERAPY 144 (1978) (finding no difference between rapists and nonsexual offenders or non-offenders in measures of anger or annoyance). Twelve rapists “all complained of serious dissatisfaction with their sex lives, on the emotional plane if not in physical performance.” *Id.* at 81. However, they were also “chronically maladjusted” in a more general way, and with no control group of non-rapists it is unclear what inferences to draw. *Id.* Moreover, this sample of incarcerated men was highly unrepresentative of rapists in general. *Id.* at xiii, xiv, 1.

¹⁴⁴ Kanin, *supra* note 139, at 107, 109; accord Eugene J. Kanin, *An Examination of Sexual Aggression as a Response to Sexual Frustration*, 29 J. MARRIAGE & FAM. 428, 428 (1967). “A prior study of the same population of males found that subjective estimates of the number of orgasms per week that would bring sexual satisfaction was indeed significantly higher for the aggressive group.” Kanin, *supra*, at 431. Noting “the differential sexual orientations observed in cross-cultural and social class investigations,” Kanin rejected the possibility of a biological explanation of his findings. *Id.* Another study found no difference in sexual frustration between aggressors and non-aggressors. Lisak & Roth, *supra* note 110, at 797–98, 800–01.

The concept of lack of access to consensual partners ("mate deprivation") is more ambiguous than most scholars have recognized. While American rapists tend to have had more partners than non-rapists have had, it is possible that they also tend to experience more *temporary* disruptions in their opportunities for consensual sex. Much evidence indicates that (just as one would expect) they are more likely than other men to have unstable, acrimonious relationships with their consensual sexual partners.¹⁴⁵ These troubled relationships may cause (or be caused by) anger and hostility toward their current partners or women in general. They may also lead to irregularities in their consensual couplings. If so, rapists' obsessive and adventuresome sex lives, though abnormally "successful" by some objective measures, may sometimes conceal a high rate of temporarily unsatisfied sexual desire.¹⁴⁶

¹⁴⁵ E.g., Cohen et al., *supra* note 12, at 120; cf. Lisak & Roth, *supra* note 110, at 800 (finding that rapists and non-incarcerated, sexually aggressive men are more likely than non-sexually aggressive men to have felt "deceived, betrayed, and manipulated" by women). Other scholars have concluded that the most savage type of rapist has

a long history of difficulty in heterosexual object relations in conjunction with an active sexual life . . . marked by episodic mutual irritation, and, at times, violence. They tend to experience women negatively as hostile, demanding, ungiving, and unfaithful," and they select women who in fact possess such attributes, though the women can be described less pejoratively as "assertive, active, and independent"

Cohen et al., *supra* note 12, at 120. These women often have children or are pregnant by other men—likely sources of friction. *Id.* at 121. Cf. Zurbriggen, *supra* note 2, at 561 (reporting that men with a "power motive"—defined as inclined to behavior that has an impact on others or the world—tend to have unsatisfactory intimate relationships).

¹⁴⁶ See Malamuth, *An Evolutionary Based Model*, *supra* note 135, at 165, 172. There is some evidence contrary to the hypothesis in our text, however. A study of incarcerated rapists' emotions during the twenty-four-hour period before the rape found that only 8.3% had experienced "sexual frustration." The most common emotional states were "neutral" (36.7%), "anger" (33.3%), "alienation" (26.7%), or "positive" (happiness, joy, or excitement) (25.0%). Brown & Forth, *supra* note 105, at 852–53. The authors concluded that their subjects were "motivated more often by opportunity than by nonsadistic-sexual factors." *Id.* at 854. However, opportunity is not a goal, and the emotional states in this study are all consistent with an ordinary level of sexual desire; it is unclear that the subjects equated sexual "frustration" with sexual desire. Depending on how the subjects interpreted "frustration" and "neutral," the "sexual factors" dismissed by these authors may not have included an ordinary level of sexual desire. By our definition, a rapist who feels such desire and seizes an opportunity to satisfy it by force has a sexual motive. See also John Briere & Neil M. Malamuth, *Self-Reported Likelihood of Sexually Aggressive Behavior: Attitudinal Versus Sexual Explanations*, 17 J. RES. PERSONALITY 315, 319–321 (1983). This study found that male psychology students who admitted that they would rape if they could get away with it did not differ from the ones who did not on several measures of sexual attitudes, relationships, and satisfaction. The authors concluded that "[t]hese data support the view of Brownmiller (1975) and others, who relate rape primarily to aggressive rather than sexual motives." *Id.* at 321. Assuming *arguendo* that these findings also apply to actual rapists,

Whatever their conclusions about rapists' motives, scholars seem to assume that the decisive question is whether rapists' sex lives, feelings, or desires are abnormal.¹⁴⁷ In some particulars, they do tend to be abnormal, but that is not a prerequisite to concluding that the rapists have a sexual goal. Young men's *normal* sexual cravings are both intense and frequent. With sex as with food, a lifetime of enjoyable experiences does not allay a man's immediate craving; only a brief "deprivation" is necessary before the desire returns.

Feminists often note that most rapists have access to consensual sex.¹⁴⁸ This is consistent with a sexual motive for the rape. If a rapist felt sexual desire and had no compunctions about infidelity or force, the fact that his sexual urge was "only" normal and that he already had a partner (and had had many others) does not disprove a sexual goal—even if his sexual relationship with his current partner was good and she was readily available.¹⁴⁹ In other contexts, we recognize this. If, instead of raping his victim, a rapist had committed adultery or visited a prostitute, few would suggest that his motive must not have been sexual, since his wife was waiting at home and he had slept with many other women.¹⁵⁰

why can't rapists have sexual desire and a sexual goal without a sexual abnormality (such as a higher level of sexual dissatisfaction than non-rapists have)?

¹⁴⁷ One frequently cited study concluded that the findings concerning "sexual variables" and sexist ideologies of men with high and low rape proclivities supported Brownmiller and undercut a sexual interpretation of the causes (they do not here say motives) of rape. Neil M. Malamuth, James V.P. Check & John Briere, *Sexual Arousal in Response to Aggression: Ideological, Aggressive, and Sexual Correlates*, 50 J. PERSONALITY SOC. PSYCHOL. 330, 338 (1986). We believe it would be preferable to say that the findings indicated that certain sexual *abnormalities* are not characteristic of rapists, a finding that does not provide much support for Brownmiller's nonsexual theories about rapists' motives.

¹⁴⁸ E.g., Lynn Hecht Schafran, *Why Empirical Data Must Inform Practice*, in *VIOLENCE AGAINST WOMEN: LAW AND LITIGATION* Ch. 1, § 1:28, p. 1–32 (David Frazee, Ann M. Noel & Andrea Brenneke eds. 1998).

¹⁴⁹ One authority found that about sixty percent of the (incarcerated) rapists in his study were married at the time of their offense. RON LANGEVIN, *SEXUAL STRANDS: UNDERSTANDING AND TREATING SEXUAL ANOMALIES IN MEN* 393 (1983). This tells us little about their motives. The patrons of prostitutes and adult entertainment are often married. SYMONS, *supra* note 118, at 280.

¹⁵⁰ After interviewing 5,300 American men, Kinsey et al. decided that adultery is due to the man's desire for a variety of partners, "without respect to the satisfactory or unsatisfactory nature of the sexual relations at home" or the availability of other outlets. ALFRED C. KINSEY, WARDELL B. POMEROY & CLYDE E. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* 590 (1948). Even if a rapist is a highly skillful seducer, which of course is not true of all men who have a current relationship, he may be unwilling to postpone sex until his next consensual intercourse.

Granted, any account of rape's *causes* must include some factors other than sexual desire. But like other causes, a sexual goal may be necessary even if it is not sufficient and even if it is equally present in non-offenders, who may fail to commit the crime because, for example, they are less angry, aggressive, sexist, selfish, callous, or reckless. In an analysis of why a man raped, one must consider not just his goals but also his lack of men's normal inhibitions against achieving these goals by immoral, illegal means.¹⁵¹

Why have so many scholars equated sexual motives with sexual abnormalities? The most likely explanation is that social-scientific research about the causes of rape usually compares data about rapists (or men who anonymously acknowledge a willingness to rape under certain circumstances) with data about non-rapists, in order to establish the attitudes, traits, experiences, and other factors that cause (or at least correlate with) rape proclivity. By its nature, such an inquiry is a quest for rapists' distinctive abnormalities. This is true even if the abnormality, such as an unusually strong tendency to believe in "rape myths," is thought to be supported by mainstream culture and to differ only in degree from normal male attitudes.

Put differently, the point is that those who study the causes of rape are trying to establish why, of all the men who desire sex, some resort to force while most do not. When that is the question, a normal level of sexual desire cannot be the answer. But it can be the answer, or one of the answers, to a question about the rapists' goals.

B. AGE AND ATTRACTIVENESS OF VICTIMS

Rape victims are sometimes shockingly young or old.¹⁵² One might infer that rapists do not seek sex. That inference confuses what is

¹⁵¹ Most of the voluminous social-scientific evidence about rapists' lives, opinions, and characteristics is, we submit, better characterized as suggesting reasons why they were willing to use force to obtain their goal than as indicative of their goals. This is obviously true, for example, of their lack of empathy and frequent intoxication, but also, we think, of their backward opinions about women, sex roles, and rape. For summaries of these characteristics, see generally Drieschner & Lange, *supra* note 101; Lussier et. al, *supra* note 101; Vega & Malamuth, *supra* note 101. To the list of disinhibitory factors, one should add any expectation of public and official leniency. See generally Bryden & Lengnick, *supra* note 52.

¹⁵² E.g., BROWNMILLER, *supra* note 70, at 82, 137. Of imprisoned rapists with lone victims, 15.2% reported that the victim was age twelve or younger. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SEX OFFENSES AND OFFENDERS: AN ANALYSIS OF DATA ON RAPE AND SEXUAL ASSAULT 24 tbl.3 (1997). Apart from pedophiles, this probably reflects the greater vulnerability of children and the public's extreme abhorrence of sexual

acceptable with what is preferred. Males can be aroused by a mere photograph, a sheep, or even just a fantasy. That some can be aroused by a child may be more revolting but is not more amazing. To most men, the very young and the elderly are *relatively* unattractive, but they are not wholly unlike sexually mature young women. Little girls are often described as “pretty,”¹⁵³ and if it seems ridiculous for a man to want sex with an immature child, is it not even more ridiculous for him to want to maintain patriarchy by dominating her? Countless men have consensual sex with elderly women, but no one claims that they must lack a sexual motive or that they do not find younger women more attractive. Pedophiles aside, the most likely reason for a forcible rapist to have chosen a very young or elderly victim is that she was more available or vulnerable.

In any event, elderly and sexually immature victims are atypical. Female victims of rape and sexual assault are heavily concentrated in the age groups that males find most attractive for consensual sex, peaking between the ages of sixteen and twenty-four; after that, in older age groups, victimization declines steadily, especially after the age of fifty.¹⁵⁴ However, youths are overrepresented among victims of all violent crimes,¹⁵⁵ and such inter-crime variations as exist may be due to differences in perpetrators’ access to women of various ages. Access may be affected by the woman’s marital status, her interest in dating, the feasibility of committing the crime in a public location, and so on.¹⁵⁶

contacts between adults and very young children, not the proportion of forcible rapists who are indifferent to their victims’ sexual attractiveness. Even when a preference for young children exists, it seems more consistent with a warped sexual motive than with a desire to hurt or subjugate adult women.

¹⁵³ Childlike features have been found to be attractive to both sexes except “where they conflict with the gender-identified ones like a large jaw for men or prominent cheekbones for women.” DEIRDRE BARRETT, *SUPERNORMAL STIMULI: HOW PRIMAL URGES OVERRAN THEIR EVOLUTIONARY PURPOSE* 37 (2010). *See generally id.* at 35–38.

¹⁵⁴ BUREAU OF JUSTICE STATISTICS, DEP’T OF JUSTICE, *CRIMINAL VICTIMIZATION IN THE UNITED STATES, 1995*, at 11 tbl.4 (2000) (finding a peak between the ages of sixteen and eighteen). *See generally* LALUMIÈRE ET AL., *supra* note 2, at 144.

¹⁵⁵ *See id.*

¹⁵⁶ Especially in the younger age group, single women are much more likely to be raped than are married women. *See generally* LALUMIÈRE ET AL., *supra* note 2, at 144. To minimize such variables, Felson and Krohn compared the ages of female victims in robberies that included a rape with the ages of female victims of simple robberies. They found that “the mean age of female victims of robbery/rape (27.9) was significantly lower than the mean age of female victims of robbery (35.0) . . .” and that therefore robbers are more likely to rape their victims if they are young. Richard B. Felson & Marvin Krohn, *Motives for Rape*, 27 J. RES. CRIME & DELINQ. 222, 232 & tbl.2 (1990).

Many rapists say that they seek attractive victims.¹⁵⁷ Distrustful as one may be of rapists' accounts of their own motives, this particular claim is corroborated by several of Brownmiller's descriptions of wartime rapes. She mentions the Byzantine emperor Alexius, said to have recruited warriors by talking about the "beauty" of the enemy women.¹⁵⁸ At a number of points, she refers to rapes by soldiers or racists who chose the "young" or "attractive" local women.¹⁵⁹ One supposes that these rapists had at least equal access to older women, who are plentiful in war zones and among persecuted ethnic groups. Yet Brownmiller relates, in passing and without comment, that when able to do so they chose young, attractive women.¹⁶⁰

¹⁵⁷ One study found that of seventy-three convicted, unusually violent rapists, 46.6% said that they had selected their victim "because they saw her as sexy (for example, she may have been dressed in clothes they found sexually arousing)"; 42.5% said that they picked the victim "because they found her physical appearance attractive"; 82.2% because she was "available"; and 71.2% because she was defenseless. (Obviously, the rapists were allowed to give more than one reason.) Queen's Bench Found., *The Rapist and His Crime*, in CRIME IN SOCIETY 767, 770, 774-75 (Leonard D. Savitz & Norman Johnston eds., 1978). Some avoided "heavily built" women. *Id.* at 782. These were men who had used more violence or threat of force than necessary to accomplish the rape. *Id.* at 767-68. Yet even these exceptionally violent rapists, while selecting primarily on the bases of availability and vulnerability, often claimed that they gave some weight to the victim's appearance.

¹⁵⁸ BROWNMILLER, *supra* note 70, at 35.

¹⁵⁹ Thus, during World War I, "[w]hen the Germans ruined a village near Ham, they carried away some fifty-four girls and women between the ages of fourteen and forty." *Id.* at 45 (quoting NEWELL DWIGHT HILLIS, GERMAN ATROCITIES: THEIR NATURE AND PHILOSOPHY 54-56 (1918)). "[T]he Nazis made nightly swoops through the ghetto in search of young Jewish girls . . ." *Id.* at 52 (emphasis added). "The Germans seized the most beautiful and most healthy girls . . ." *Id.* "In [a Soviet city] . . . drunken German soldiers assaulted and carried off all the women and girls between the ages of 16 and 30." *Id.* at 55. "Drunken German soldiers dragged the girls and young women of Lvov into Kesciuszko Park, where they savagely raped them." *Id.* "Under the pretext of finding out Vietcong information [South Vietnamese interrogators] would pick out an attractive young girl in a village, . . . take her to the interrogation center," and then rape her. *Id.* at 89 (quoting Brownmiller's interview with Peter Arnett, war correspondent for the Associated Press). Although Brownmiller also notes cases in which rape victims were elderly, she offers no rebuttal to the obvious inference that soldier-rapists prefer youthful, sexually attractive victims when they are equally available. Elsewhere she cites a study finding that the victims of prison rape "looked young for their years . . . and were noticeably better looking than their predators." *Id.* at 266. However, she again fails to discuss whether this disconfirms her nonsexual interpretation of prison rape.

¹⁶⁰ We have found no accounts of soldiers' rapes that reveal whether any of the rapists chose an elderly or very young victim when a youthful but sexually mature one was immediately available to him, or raped anyone when he felt no sexual desire.

C. EFFECTS OF CASTRATION

Although rarely done today, castration (surgical removal of the gonads) was employed for many years by European countries as a cure for habitual sex offenders.¹⁶¹ Some castrates remain capable of intercourse, but the operation usually eliminates or substantially reduces the man's libido and potency.¹⁶² Reported post-operative recidivism rates have been dramatically lower than for non-castrated sex offenders.¹⁶³

¹⁶¹ For a discussion of this topic, see generally LALUMIÈRE ET AL., *supra* note 2, at 134, 173–74, 194–95. For an early study of castration in Switzerland, see Marie E. Kopp, *Surgical Treatment as Sex Crime Prevention Measure*, 28 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 692 (1938).

¹⁶² E.g., JOHAN BREMER, *ASEXUALIZATION: A FOLLOW-UP STUDY OF 244 CASES* 67 (1959) (reporting that, in two-thirds of castrates studied who were sexually active before surgery, “all sexual interest, reactivity and activity have essentially disappeared in the course of the first year after the [castration]”); Reinhard Wille & Klaus M. Beier, *Castration in Germany*, 2 ANNALS OF SEX RES. 103, 127 (1989) (“All castrates showed reduced sexual interest and activity, reduced erotic fantasies, and reduced capability of spontaneous or stimulated erections.”); Nikolaus Heim & Carolyn J. Hursch, *Castration for Sex Offenders: Treatment or Punishment? A Review and Critique of Recent European Literature*, 8 ARCHIVES SEXUAL BEHAV. 281, 286 (1979) (summarizing study finding that 65% of the castrates reported that their libido and potency were gone quickly after the surgery, 17% said that there was a “considerable fading and finally the extinction of sexual drive,” and most of the remaining subjects (18%) could still achieve intercourse). “Only at a castration age over 30 was there a rapid extinction of sexual drive.” *Id.* But see Nikolaus Heim, *Sexual Behavior of Castrated Sex Offenders*, 10 ARCHIVES SEXUAL BEHAV. 11, 17–18 (1981) (finding that 31% of castrates studied were still able to have sex, rapists were more sexually active after castration than pedophiles and homosexuals, and effects were stronger in older age groups). Although Heim concludes that therefore castration's reliability is doubtful, most researchers believe otherwise. “Experts admit that, while many castrated men can still engage in sexual intercourse, the ultimate aim of the act of castration is fulfilled in that offenders have less of an urge to commit such crimes.” Stacy Russell, *Castration of Repeat Sexual Offenders: An International Comparative Analysis*, 19 HOUS. J. INT'L L. 425, 454 (1997) (citing John M.W. Bradford, *Organic Treatments for the Male Sexual Offender*, 3 BEHAV. SCI. & LAW 360–65 (1985)).

¹⁶³ E.g., Heim & Hursch, *supra* note 162, at 284–85 (summarizing a study finding that of 1,036 castrated sex offenders, only 2.6% reoffended, compared with 39.1% of 638 non-castrates); *id.* at 288–90 (finding that the recidivism rate for a group of “severely imbecilic, psychopathic, or even schizophrenic” sex offenders dropped from 76.86% before castration to 7.44% after castration, while 52% of those who refused castration recidivated); Georg K. Stürup, *Sex Offenses: The Scandinavian Experience*, 25 LAW & CONTEMP. PROBS. 361, 374 (1960) (reporting that 147 castrates had a 3.5% recidivism rate for sex offenses and 9.2% for other crimes; rates for 81 non-castrates were 29.6% for sex offenses and 21% for other crimes); Wille & Beier, *supra* note 162, at 125 tbl. 12 (finding that ninety-nine castrates had sex offense recidivism rate of 3% and 25% for non-sex offenses; thirty-five non-castrates' rates were 46% for sex offenses and 43% for non-sex offenses).

Some evolutionary psychologists have cited these results as evidence of rapists' sexual motivation.¹⁶⁴ They may well be right, but the studies of castration's effects are seriously deficient. They almost always lump together all "sex offenders," mixing rapists with, for example, exhibitionists, homosexuals, and child molesters.¹⁶⁵ As a result, we do not know what proportions of the castrates and the control groups of non-castrates were rapists; nor do we know the rapists' recidivism rates with and without castration.¹⁶⁶ To be sure, if we assume that many forcible rapists were included in a sample, a dramatic decline in the overall sexual recidivism rate might provide reasonable assurance that rapists' post-operative sexual recidivism rates were very low.¹⁶⁷ But the absence of separate tabulations is disturbing, especially since one usually cannot tell whether the proportions of various types of offenders were similar in the castrated and non-castrated groups.¹⁶⁸

¹⁶⁴ THORNHILL & PALMER, *supra* note 2, at 165–67 (pointing to "considerable evidence to suggest that [castration or hormonal treatments] reduce sexual crimes" and criticizing social scientists' "adherence to the dogma that rapists are not sexually motivated"). On the biology of sexual desire, see generally Heckhausen & Heckhausen, *supra* note 3, at 268–69.

¹⁶⁵ See, e.g., W.L. Marshall et al., *Treatment Outcome with Sex Offenders*, 11 CLINICAL PSYCHOL. REV. 465, 470 (1991) (noting European studies in which "the population of castrated offenders is not specified in sufficient detail" to support conclusions about different types of offenders). But see Heim, *supra* note 162, at 12 (describing thirty-nine sex offenders who agreed to castration, of whom twelve were rapists, twenty pedophiliacs (heterosexual, homosexual, and bisexual), six homosexuals, and one sexual murderer); Wille & Beier, *supra*, note 162 (providing data about types of offenders but no separate recidivism rates).

¹⁶⁶ See, e.g., Kopp, *supra* note 161, at 700–01 (reporting post-operative sexual recidivism rates without distinguishing among types of sex offenders, of whom exhibitionists were the most common, followed by rapists, persons with "perversion of sexual desire," and offenders committing crimes against the morals of minors; reporting no data about how often castrates committed other types of offenses).

¹⁶⁷ See, e.g., Heim, *supra* note 162, at 16 (finding that "castrated rapists are sexually active (masturbation and coitus) significantly more often than castrated homosexuals or castrated pedophiliacs"). There were only twelve rapists in this study, however. *Id.* at 12.

¹⁶⁸ The European statutes typically provided that castration was elective. Walter J. Meyer III & Collier M. Cole, *Physical and Chemical Castration of Sex Offenders: A Review*, 25 J. OFFENDER REHAB. 1, 5 (1997). Since the purpose was to reduce the danger of recidivism sufficiently to warrant release of the offender, his choice of this option would presumably be affected by the length of his sentence as well as his willingness to be desexualized. In the former respect, and probably also in the latter, there no doubt were significant differences among different types of sex offenders. For a description of several European countries' practices, including replacement of surgical castration by chemical treatments, see Alison G. Carpenter, Comment, *Belgium, Germany, England, Denmark and the United States: The Implementation of Registration and Castration Laws as Protection Against Habitual Sex Offenders*, 16 DICKINSON J. INT'L L. 435 (1998).

Similar issues arise concerning the castrates' nonsexual recidivism. Nearly every study shows that in addition to its spectacular lowering of "sex offense" recidivism, castration reduces (to a lesser extent) sex offenders' likelihood of committing a nonsexual crime.¹⁶⁹ Again, these overall figures are not subdivided by the nature of the original sex offense, and they do not reveal the type of nonsexual crime committed after castration or the gender of the victim. Consequently, one cannot tell how much of the reduction in sex-crime recidivism was due to a possible reduction in general aggressiveness produced by castration¹⁷⁰—evidenced perhaps by a corresponding decline in violent nonsexual crimes—rather than to the reduction in sexual desire. The answer may differ from one sex crime to another.

For the same reasons, it is also unclear whether any reductions in the castrated rapists' propensity to rape were matched by increases in their propensity to commit nonsexual attacks on women, a phenomenon that might be masked by overall declines in recidivism rates for nonsexual crimes. If this were the case, it might be because the rapes were largely motivated by a desire to harm women, which found new outlets after castration.¹⁷¹ We doubt this, but we cannot say that the studies disprove it. Of course, an animus against women might itself have a sexual origin.

We will now consider arguments advanced by scholars who believe that rapists have nonsexual motives.

¹⁶⁹ One author states that "it has been found that the operation, through reducing sexual drive, can make offenders feel calmer, happier and more passive" and "able more easily to suppress violent and aggressive urges." Karen Harrison, Comment, *The High-Risk Sex Offender Strategy in England and Wales: Is Chemical Castration an Option?* 46 HOWARD J. CRIM. JUST. 16, 18 (2007). But another authority claims that "[n]o general effect of pacification has been encountered at all, no sedative influence on exaggerated affections, no harmonization of emotional life, no 'resocializing' influence on asocial or antisocial behaviour beyond the sexual sphere." BREMER, *supra* note 162, at 318. A study of thirty-eight rapists, eighteen of whom were castrated, found that none of the castrates committed another sex offense, but 33% committed a nonsexual crime. Of the non-castrated rapists, 10% committed another sex crime and only 5% a nonsexual crime. Heim & Hursch, *supra* note 162, at 296 (summarizing the findings in Stürup, *supra* note 163).

This is intriguing because, contrary to studies of sex offenders in general (see *supra* note 163), it suggests that castrated rapists switch to other crimes. But the study does not reveal what proportion of the victims were female nor whether the crimes were violent. In view of these ambiguities and the small size of the sample, the implications are uncertain.

¹⁷⁰ Compare Harrison, *supra* note 169, at 18, with BREMER, *supra* note 162, at 318.

¹⁷¹ Groth surmised that this would occur, but offered no evidence that it does. GROTH, *supra* note 30, at 10.

D. PREMEDITATION

As evidence of rapists' nonsexual motives, Brownmiller mentioned that rape is often premeditated.¹⁷² Few modern feminists make this argument, however, and it is surely fallacious. Although raping a stranger often requires at least a modicum of planning and reconnaissance, that is much less true when raping a date or an intimate.¹⁷³ More important, planning merely negates impulsivity; it is consistent with a sexual goal and of course often precedes consensual encounters.¹⁷⁴

Brownmiller's reference to premeditation was designed to show that rape should not be characterized as an explosion of uncontrollable lust.¹⁷⁵ We agree with that conclusion, but on the ground that rapists' lust is (so far as anyone knows) controllable, not on the ground that it does not exist.¹⁷⁶

E. PAIR AND GANG RAPES

Only about one out of ten rapes involves multiple offenders.¹⁷⁷ Yet these rapes, because they are especially appalling and (at least to some)

¹⁷² BROWNMILLER, *supra* note 70, at 183.

¹⁷³ Brownmiller's assertion that rape is usually premeditated was based on Amir's study of mostly stranger rapists. *Id.* (citing AMIR, *supra* note 62, at 140–43, 213–14). But even stranger rapes are not always planned. According to one study, "anger rapes" of strangers are not premeditated. GROTH, *supra* note 30, at 15. Nevertheless, in that author's view they are not primarily sexually motivated. *Id.* at 13–25. "Power rapes," which he regards as the most common type, may be either planned or opportunistic, and again are in his view not primarily sexually motivated. *Id.* at 27–28. Of the seventy-one self-disclosed college date rapists studied by Kanin, "no one reported to have planned the rape. They all virtually planned or hoped for a seduction but not one respondent would agree that rape was considered a premeditated option to seduction failure." Kanin, *supra* note 124, at 98.

¹⁷⁴ Craig T. Palmer, *Twelve Reasons Why Rape Is Not Sexually Motivated: A Skeptical Examination*, 25 J. SEX RES. 512, 516 (1988).

¹⁷⁵ BROWNMILLER, *supra* note 70, at 183 ("Far from being a spontaneous explosion by an individual with pent-up emotions and uncontrollable lusts, [Amir] discovered the act was usually planned in advance and elaborately arranged by a single rapist or a group of buddies.").

¹⁷⁶ Until the eternal issue of free will is resolved, the best evidence of whether a behavior is controllable is whether many who appear to be similarly situated control it, which is certainly true of an intense desire to have sex with an unwilling woman.

¹⁷⁷ BUREAU OF JUSTICE STATISTICS, *supra* note 57, at 4 fig.4 (91.1% of rapes and other sexual assaults involved only one perpetrator). Of 348 convicted rapists, one study found that in thirty cases (9%) the offense involved more than one assailant; of these, 80% were pair rapes. GROTH, *supra* note 30, at 111.

suggestive of nonsexual motives, are prominent in feminist discussions of rape.¹⁷⁸ They therefore deserve careful consideration.

In her engrossing and oft-cited study of *Fraternity Gang Rape*, Peggy Reeves Sanday described a number of gang rapes of drunken women by fraternity men.¹⁷⁹ She attributed these rapes to several causes: entrenched sexual inequality, the exalted position of fraternities on the campus, the sexist attitudes that often pervade their culture, male bonding, excessive drinking by the rapists and their victims, and the isolation of fraternities (and athletic teams), which “may enhance a sense of privilege and entitlement that spills over into interpersonal violence against outsider males or violence against female party guests that takes the form of sexual abuse.”¹⁸⁰ Although Sanday’s methodology was anecdotal, all of these are at least plausible conjectures.¹⁸¹

About the fraternity rapists’ motives, Sanday’s theory is much more startling. She asserts that their sexual act “is not concerned with sexual gratification but with the deployment of the penis as a concrete symbol of masculine social power and dominance.”¹⁸² These rapists are, she concludes, latent homosexuals:

In group sex, homoerotic desire is simultaneously indulged, degraded, and extruded from the group. The fact that the woman involved is often unconscious highlights her status as a surrogate victim in a drama where the main agents are males interacting with one another. The victim embodies the sexual urges of the brothers; she is defined as “wanting it”—even though she may be unconscious during the event—so that the men can satisfy their urges for one another at her expense. By defining the

¹⁷⁸ One scholar described eight rape cases to illustrate her list of rapists’ various “predominant” motives for rape; four of them involved more than one offender. Baker, *supra* note 2, at 570–73.

¹⁷⁹ PEGGY REEVES SANDAY, *FRATERNITY GANG RAPE: SEX, BROTHERHOOD, AND PRIVILEGE ON CAMPUS* (2d ed. 2007).

¹⁸⁰ *Id.* at 6.

¹⁸¹ Obviously, there are questions of typicality, of whether changes have occurred in the cultures of fraternities, and of whether the fraternity rapists were rape-prone well before they joined the fraternity. Empirical studies have yielded mixed findings. See generally Sarah K. Murnen & Marla H. Kohlman, *Athletic Participation, Fraternity Membership, and Sexual Aggression Among College Men: A Meta-Analytic Review*, 57 SEX ROLES 145 (2007). “Membership in both male groups was associated to a moderate extent with attitudes related to sexual aggression, and to a smaller extent with self-report of sexual aggression.” *Id.* at 153. Although the topic is popular, few longitudinal studies have been done. *Id.* at 154. But see Eugene J. Kanin, *Reference Groups and Sex Conduct Norm Violations*, 8 SOC. Q. 495, 500–01 (1967) (finding that sexually aggressive fraternity men had been aggressive before college). Cf. Arrick Jackson et al., *Routine Activity Theory and Sexual Deviance Among Male College Students*, 21 J. FAM. VIOLENCE 449, 456 (2006) (finding males with a history of deviance before college were more likely to be sexually aggressive in college).

¹⁸² SANDAY, *supra* note 179, at 40.

victim as "wanting it," the men convince themselves of their heterosexual prowess and delude themselves as to the real object of their lust. If they were to admit to the real object, they would give up their position in the male status hierarchy as superior, heterosexual males. The expulsion and degradation of the victim both brings a momentary end to urges that would divide the men and presents a social statement of phallic heterosexual dominance.¹⁸³

Although some psychotherapists used to propose similar theories, no one has demonstrated that rapists of any type are more likely than other men to have repressed homosexual desires.¹⁸⁴ Sanday never explains how the rapists would have behaved differently if they had simply wanted to obtain immediate sexual gratification.¹⁸⁵ She mentions that, from the men's point of view, a major object of the fraternity parties was to facilitate heterosexual encounters by consumption of alcohol.¹⁸⁶ She produces no evidence that the fraternity rapists were more homosexually inclined than the non-rapists. However much the rapists' behavior may have been caused by the fraternities' warped values, an ordinary craving for heterosexual physical pleasure is consistent with (and the most parsimonious explanation of) all of the facts that Sanday reports.

A more common theory is that gang rapists are motivated by the group's camaraderie and their need to prove their masculinity to each other.¹⁸⁷ One clinician concluded that instigators of gang rapes are just as likely to commit individual rapes, but followers (comprising 43% of all gang rapists) are not—they go along to confirm their masculinity and to gain acceptance in the peer group.¹⁸⁸

This is a likely motivation for many misdeeds by groups of young men. But in some contexts, including rape, the members of the group can be expected to derive pleasure from the crime independently of their

¹⁸³ *Id.* at 42.

¹⁸⁴ *Cf.* Kanin, *supra* note 26, at 230 (stating that psychoanalytic proponents of the "latent homosexuality" hypothesis portray sexually aggressive males as passive and nonaggressive in their usual behavior).

¹⁸⁵ In her opinion, homoeroticism is obvious in both fraternity gang rape and some fraternity rituals. SANDAY, *supra* note 179, at 12, 41, 68–69, 78–80, 82. "[B]y sharing the same sexual object, the brothers are having sex with each other as well." *Id.* at 125. Her theory is that in typical fraternities the "men must be careful not to act out sexual feelings for a loved brother lest it compromises [sic] their status as privileged, heterosexual males, nor can they show loyalty or love for a party woman lest this weaken the fraternal bond." *Id.* at 64–65. She contrasts the predatory sexism and homophobia of some fraternities with the respect for women and welcoming attitude toward homosexuals and bisexuals in an exceptionally progressive fraternity. *Id.* at 228–29.

¹⁸⁶ *Id.* at 30.

¹⁸⁷ *E.g.*, Baker, *supra* note 2, at 606–07.

¹⁸⁸ GROTH, *supra* note 30, at 113–14.

motives for doing it together. In those cases, the influence of the group may be disinhibitory rather than motivational, or it may create a supplemental goal rather than an exclusive or primary one. We do not know whether, if they dared to rape alone, or could quickly find a willing woman, gang rapists would prefer that to a gang rape. There are, after all, many other ways to demonstrate virility, enjoy male fellowship, and win peers' approval. We usually have no evidence that, if the leader had proposed a nonsexual assault on a woman, the "followers" would have participated. To our knowledge, no scholar has seriously considered any of these possibilities.

We mention such uncertainties, not to dogmatize in favor of a solely sexual motive, but to argue against the dogmatic conclusion that groups of rapists are primarily motivated by nonsexual goals.

F. INTERRACIAL RAPES

Although most rapes are intraracial,¹⁸⁹ many scholars have discussed possible motives for interracial rapes, particularly by black offenders.¹⁹⁰ As in other genres of motivational scholarship, one often cannot tell whether an author regards sexual desire as too obvious to mention, or as less important than ulterior motives, or perhaps even as wholly absent.¹⁹¹

¹⁸⁹ This is uncontroversial. See, e.g., Scott J. South & Richard B. Felson, *The Racial Patterning of Rape*, 69 SOC. FORCES 71, 75 (1990).

¹⁹⁰ Because our topic is motives, we do not discuss the extensive literature on other aspects of the intersections of race, gender, and rape such as discriminatory sentencing practices. Because white-on-black rapes are less common today than black-on-white rapes, and the epistemological issues in motivational analyses are basically the same, we have omitted that topic. See *infra* note 202. Suffice it to say that we have found no credible evidence that white rapists' goals are often racial.

¹⁹¹ In his dated but still interesting and relevant discussion of interracial sex, Calvin C. Hernton, himself an African American raised in the Old South, observed that in America "[t]he race problem is inextricably connected with sex." CALVIN C. HERNTON, *SEX AND RACISM IN AMERICA* 4 (1965). In an impressionistic but often persuasive manner, he described how the sexual attitudes of whites and blacks had been warped by racism. He made no distinction in this regard between consensual sex and rape. He acknowledged that "rape has many motives," but concluded that the occasional black rape of a white woman is "basically racial," adding that "in every black man who grows up in the South, there is a rapist, no matter how hidden." *Id.* at 67. The last two propositions are obviously ambiguous. Hernton's "racial" analyses of young black men's feelings toward white women often include or assume sexual desire. See, e.g., *id.* at 2 (noting that the Negro man is "secretly tormented every second of his wakeful life by the presence of white women in his midst, whom he cannot or had better not touch"); *id.* at 60 (noting that the black male feels "castrated" because "he must act like a eunuch when it comes to white women"); *id.* at 76 (noting black acceptance of white myth that white women are "jewel[s]"). It is one thing to say that white supremacy affected every aspect of blacks' relationship with white women,

The common element in theories about black offenders' ulterior motives for raping whites has been the plausible conviction that white power, culture, and racism have warped black men's sexuality in ways that incline them to seek out white women, whether for consensual sex or for rape.¹⁹² Scholars have noted, for example, that our society idealizes white feminine beauty while at the same time enforcing a (now much diminished) taboo against interracial sex.¹⁹³ Perhaps black-on-white rape is motivated in part by some black men's resultant curiosity about white women's sexuality, or their quest for greater sexual liberty, or their adoption of the pervasive white culture's concept of feminine beauty. All of these theories, however, seem to assume that the rapists desire sexual gratification, though the first two hypotheses posit additional goals.

Another theory is that impoverished black men, denied opportunities to prove their masculinity by legitimate economic achievements, turn to sex (in general or with whites) in order to enhance their status among their black male peers.¹⁹⁴ This too seems to assume a desire for sexual gratification: presumably, sexual achievements inspire peers' admiration because they too feel sexual desire and admire a man who is able to get what they all want. Again, this is not to deny the possibility of additional goals.

According to some authors, the black rapist's goal is to obtain revenge against white men for their oppression of blacks, by attacking the white men's most cherished possession—their women.¹⁹⁵ The most famous

especially in that time, and quite another to deny that they sought sexual gratification in their intercourse with white women, just as white men did.

¹⁹² See, e.g., LYNN A. CURTIS, VIOLENCE, RACE, AND CULTURE 78–79 (1975); HERNTON, *supra* note 191.

¹⁹³ These and other possible motives are mentioned in HERNTON, *supra* note 191, at 65 (curiosity about why white women are so special); *id.* at 61–62 (moving North partly in order to encounter white women); *id.* at 64 (idealization of white women). Seeking to explain data indicating that black-on-white rape is more common than white-on-black, some social scientists have adopted similar theories. E.g., Gary D. LaFree, *Male Power and Female Victimization: Toward a Theory of Interracial Rape*, 88 AM. J. SOC. 311, 324 (1982).

¹⁹⁴ E.g., CURTIS, *supra* note 192, at 69. In the black ghetto, "great prestige and maturity are attached to intercourse," which has "psychological and social import for a dude far above any sense of biological urgency." *Id.* Curtis observes that for poor black males sex is less constrained than economic advancement as a means of proving masculinity, *id.* at 71, but provides no evidence that a desire for prestige leads black men to have sex when they would otherwise prefer to do something else.

¹⁹⁵ E.g., *id.* at 78. In Curtis's version, this revenge motive is combined with black men's "emerging sense of identity and confidence" imparted by the Civil Rights Movement. *Id.* In Hernton's version, subjugated black men's hatred of whites is engendered by lack of confidence. HERNTON, *supra* note 191, at 59. Hernton often describes this hatred as one of

“evidence” of this is a statement by Eldridge Cleaver, a black radical who was imprisoned during the racial turmoil and violence of the 1960s. In *Soul on Ice*, Cleaver declared that he had raped white women as an “insurrectionary act,” not out of lust.¹⁹⁶ His earlier rapes of black women might have been taken as disproving this self-serving remark, but Cleaver assured his readers that those rapes were just for practice.¹⁹⁷ Brownmiller later criticized Cleaver for justifying rape, but she did not question the existence of his alleged political motive,¹⁹⁸ which anticipated her own emphasis on nonsexual motives. Other supporters of the racial vengeance theory include some social scientists.¹⁹⁹

Common sense indicates that racial hostility must occasionally be one of the rapist’s emotions in an interracial case, but no one has shown that vengeance against whites is a common goal or that it is more causally influential than sexual desire or any of the other non-racial goals that have been attributed to white men who rape white women.

The most methodologically sophisticated study of interracial rape, by Scott J. South and Richard B. Felson, found little evidence that black-on-white rapes are motivated or caused by racial animosity.²⁰⁰ The major source of data for this study was the National Crime Survey’s Cities Sample, based on interviews of household members in each of twenty-six cities.²⁰¹ The interviews collected information about all criminal victimizations experienced in the preceding twelve months, including characteristics of the victim, the criminal incident, and—for face-to-face

the motives for violating the taboo against interracial sex. *E.g.*, *id.* at 67. But that motive is said to be mixed with envy, love, fear, impotence, and desire, along with other emotions. *Id.*

¹⁹⁶ ELDRIDGE CLEAVER, *SOUL ON ICE* 14 (1968).

¹⁹⁷ *Id.*

¹⁹⁸ See BROWNMILLER, *supra* note 70, at 248–49, 251–52; see also Andrew E. Taslitz, *Race and Two Concepts of the Emotions in Date Rape*, 15 WIS. WOMEN’S L.J. 3, 40 (2000). After quoting Cleaver, Katharine Baker attributes lynching of black rapists to white men’s realization “that rape was intended to be used as a weapon against white men and white women.” Baker, *supra* note 2, at 608. Certainly any black who raped a white woman was undermining white supremacy, and that may well be why Southern whites were so brutally obsessed with the remote danger that blacks would rape white women, but many effects of behavior are not among the actor’s goals: If an employee loafs on the job, we usually do not assume that his aim was to reduce his employer’s profits, even though, from the employer’s point of view, that effect is the most important aspect.

¹⁹⁹ *E.g.*, CURTIS, *supra* note 192, at 78 (“In its purest form, this argument sees rape of white women as the penultimate way for a black man to serve up revenge on his white male oppressor, [who is terrified by the prospect of black-on-white sex].”).

²⁰⁰ South & Felson, *supra* note 189, at 89–90; see also Robert M. O’Brien, *The Interracial Nature of Violent Crimes: A Reexamination*, 92 AM. J. SOC. 817 (1987).

²⁰¹ South & Felson, *supra* note 189, at 77.

crimes such as rape—the races and certain other characteristics of the offender.²⁰² The study also incorporated census data about the characteristics of the cities in which the victims resided.²⁰³

These were the most relevant findings:

1. “[A] [b]lack rapist [was] less, rather than more, likely to choose a white victim in cities that ha[d] experienced a large number of racial disturbances.”²⁰⁴
2. The degree of black economic deprivation in a city did not affect the likelihood that a white woman would be raped by a black man.²⁰⁵
3. Black robbers were not more likely to rape their white female robbery victims than they were to rape their black ones.²⁰⁶
4. Multiple offender rapes, which in other contexts are often thought to evince nonsexual motives,²⁰⁷ and which one might expect to be common in racially motivated attacks, are “not significantly more likely to be interracial.”²⁰⁸
5. The only variables that strongly increased the likelihood that a black rapist would have a white rather than a black victim were a low degree of residential segregation by race and a high proportion of whites in the city’s population.²⁰⁹

²⁰² *Id.* South and Felson excluded cases in which the offender was white and the victim black; “only 20 rapes, after adjusting for missing data, fit this description.” *Id.* Gary LaFree had previously excluded white-on-black rapes for the same reason. LaFree, *supra* note 193, at 318. South and Felson also excluded cases in which either the offender or the victim was neither black nor white. South & Felson, *supra* note 189, at 77.

²⁰³ South & Felson, *supra* note 189, at 78.

²⁰⁴ *Id.* at 83. The number of race-related civil disorders that occurred in 1968–1969, *see id.* at 90 n.5, was taken to be a measure of the extent to which a city’s “black community was politicized at that time”—the “willingness among blacks in a city to act on their grievances, even though the sources of those grievances may have been shared by all communities . . .” *Id.* at 78–79.

²⁰⁵ *Id.* at 81. In measuring economic deprivation, the study relied on census data concerning the black poverty rate, the black male unemployment rate, and the ratio of white to black median family incomes. *Id.* at 78.

²⁰⁶ *Id.* at 87. The authors concluded that, to the extent that there was a difference, the robbers were more likely to rape black robbery victims. *Id.* They conceded, however, that this might be because the black robbers regarded it as more risky to rape a white woman. *Id.* at 91 n.13.

²⁰⁷ *See supra* text accompanying notes 177–188.

²⁰⁸ South & Felson, *supra* note 189, at 83.

²⁰⁹ *Id.* at 83–84.

As the authors concluded, these findings support the hypothesis that “structural features of the urban community” that increase the likelihood of interracial contacts with whites are important causes of black-on-white rape.²¹⁰ That finding is consistent with both sexual and nonsexual motivational theories. But as the authors also noted, a city’s racial tensions and disparities evidently do not affect the likelihood that black rapists will rape white rather than black women; except for economic deprivation, they were found to have the opposite effect.²¹¹

The data on robber-rapists suggest that, if black men who rape white women have a nonsexual motive, it is rarely racial in nature.²¹² That inference is supported by other studies, which have found that black-on-white rapes are not more violent than other rapes²¹³ and that black rapists’ most common stated reason for raping a white woman is “[s]exual access to white women,” not racial hostility.²¹⁴

G. DESIRE TO HURT OR HUMILIATE

Given the often severe (at least psychological) consequences of rape,²¹⁵ one naturally wonders whether, for some rapists of all races, the sex is merely instrumental to their desire to hurt, humiliate, or degrade the victim or women in general. Or is rapists’ infliction of suffering instrumental to their brutal quest for sex?

According to one estimate, clinically diagnosable sadists comprise only 5% of incarcerated rapists,²¹⁶ among (officially) undetected rapists, the

²¹⁰ *Id.* at 89–90.

²¹¹ *Id.* at 83.

²¹² Given that most rapes are by intimates or acquaintances, progress in race relations may increase the rate of interracial rape while decreasing the proportion of those rapes in which a racial animus exists.

²¹³ LaFree, *supra* note 193, at 325. Although LaFree acknowledged that his finding concerning violence was contrary to what one would predict on the basis of the revenge theory, he interpreted some of his other findings as indirectly supportive of that theory when compared to the alternative hypothesis that black-on-white rape is due to “increased social interaction between black men and white women.” LaFree, *supra* note 193, at 311.

²¹⁴ See DIANA SCULLY, UNDERSTANDING SEXUAL VIOLENCE: A STUDY OF CONVICTED RAPISTS 148 (1990) (noting also that sexual curiosity was evident in the interviews with rapists). As always, offenders’ self-analyses of their motives should be accepted only with caution, but in this case the self-analyses are consistent with the objective data that we have mentioned and indeed may understate the role of sexual desire.

²¹⁵ See, e.g., KOSS & HARVEY, *supra* note 101, at 42–82.

²¹⁶ GROTH, *supra* note 30, at 58. Groth noted that some sadistic rapes may be undetected because they are treated simply as murders. *Id.* But detected sadistic rapists, since they often cause death or serious physical injuries, are presumably overrepresented in samples of incarcerated men, so the net effect is uncertain.

proportion may be much smaller. A sadistic rapist obtains sexual pleasure from his victim's pain and suffering and often tortures or even murders her.²¹⁷

Other rapists often inflict some sort of physical injury. In a national survey, the Bureau of Justice Statistics found that "[a]bout 40% of rape victims suffered a collateral injury" On the other hand, only "5% suffered a major injury such as severe lacerations, fractures, internal injuries, or unconsciousness."²¹⁸

Standing alone, these figures are not conclusive evidence of rapists' motives. Even the least violent rapes may be expected to cause severe anguish and, in some cases, terror. Conversely, instrumental force can create bruises and injuries especially if the victim resists in some (at least verbal) way, as most do.²¹⁹ Even extreme violence does not always signify a nonsexual goal. Some rapists are merciless thugs whose seemingly gratuitous violence may be designed to induce immediate, unquestioning, and in some cases lasting obedience to their sexual demands.²²⁰

In other cases of extreme violence, the rapist is often enraged. Many would classify rage as a disinhibitor; it isn't a goal. But revenge is a goal. Therefore, for the purpose of motivational analysis, the question is how to characterize these rapes by enraged men. A. Nicholas Groth, a psychologist whose influence on feminist motivational analyses has been second only to Brownmiller's, was the foremost exponent of the revenge theory. In *Men*

²¹⁷ *Id.* at 44–58. This clinical definition of sadism obviously excludes most cruel men who might more loosely be called "sadistic." Perhaps rapists' sadistic tendencies should be measured on a continuum, rather than distinguishing so sharply between "sadists" and "non-sadists." But this would necessitate a different research design and would tend to negate the simple labels favored by most motivational theorists.

²¹⁸ BUREAU OF JUSTICE STATISTICS, *supra* note 57, at 12.

²¹⁹ Victims reported "self-protective actions" of some type in 71.7% of rape and sexual assault victimizations; in 19.3% of all victimizations, they physically resisted or captured the offender. *Id.* at 5. Since an extraordinarily violent attack may be a cause of (rather than a response to) the victim's physical resistance, it often is difficult after the fact to reconstruct the direction of the causal arrow. See generally David P. Bryden, *Redefining Rape*, 3 BUFF. CRIM. L. REV. 317, 367–68 (2000) (noting that the most sophisticated studies indicate that violence causes resistance more than vice-versa). Many rapes that are "violent" in the sense that the perpetrator brandishes a weapon or verbally threatens to harm the victim will not involve injuries because she is too terrified to resist physically, while others in which the perpetrator is enraged but has no weapon may lead to vicious attacks that provoke physical resistance and cause injuries.

²²⁰ For an example of a victim who interpreted a rapist's brutality toward her as an effort to instill lasting sexual submissiveness, see *infra* text accompanying note 291; cf. *State v. Alston*, 312 S.E.2d 470, 472 (N.C. 1984) (threat to "fix your face" in retaliation for sexual refusal).

Who Rape, he concluded that non-instrumental force was present in fewer than half of the cases that he studied;²²¹ that these typically involved enraged men;²²² that such cases were probably overrepresented in his sample of incarcerated rapists;²²³ that some of them were angry about matters that had nothing to do with women;²²⁴ and that some of the others were angry because they felt sexually frustrated.²²⁵

Typically, says Groth, the enraged rapist's predominant mood is a combination of resentment, distress, frustration, depression, and anger; the offense itself is an explosive discharge of pent-up fury, in response to some upsetting event.²²⁶ "The common theme appeared to be one in which the offender felt that he had been wronged, hurt, put down, or treated unjustly in some fashion by some individual, situation, or event." According to Groth, this sort of rapist seeks revenge for "what he perceives to be wrongs done to him by others, especially (but not exclusively) women."²²⁷ The rape victim is sometimes the source of his anger, but in other cases, it is another person or situation—for example, his parents or his wife, losing his job or being fired, or debts.²²⁸ The rape victim is then simply a convenient object for the rapist's displaced rage. Instead of battering her, he rapes her because "a man considers rape the ultimate offense he can commit against another person."²²⁹

²²¹ This follows from his description of power-control rapists as using only instrumental force and as being a majority of their sample. GROTH, *supra* note 30, at 25, 58. Other studies also have found that most rapists do not inflict severe physical injuries. Analyzing rapes reported to the Toronto police, Clark and Lewis found that 68% of the police reports did not refer to physical violence. CLARK & LEWIS, *supra* note 71 at 67. Of those that did, the victim had been rendered unconscious in 1%, badly beaten in 3%, choked in 8%, and punched, slapped, or kicked in 17%. *Id.* When interpreting such figures, one should bear in mind that the most violent rapes are probably overrepresented in samples like this of reported rapes.

²²² These (and sadists) were the only types described as using more force than necessary to achieve purely sexual gratification. GROTH, *supra* note 30, at 13, 44-49.

²²³ *Id.* at 58.

²²⁴ But women usually were involved. *Id.* at 16.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* at 14. Other clinicians also have attributed the most savage ("aggressive-aim") rapes to angry men; they believe that the sex in such cases is instrumental to a desire to "humiliate, dirty, and defile the victim" and like Groth they describe the anger as "clearly a displacement of intense rage on a substitute object." Cohen et al., *supra* note 12, at 120. More Freudian than Groth, these authors add that "[t]he source of this rage is most frequently the mother or her representatives in the present, the wife or girl friend"; they agree with Groth that the rape victims "are always complete strangers." *Id.* After describing

Displaced anger is a familiar phenomenon: angry about something that happened at the office, you criticize your spouse for some imaginary or minor affront. But impulsively raping a total stranger against whom you have no even imagined grievance, primarily in order to punish a third party—not always female—is, to put it mildly, a less common response to stress.

Although a man's hostility and anger can coexist with sexual desire,²³⁰ Groth gave several reasons for rejecting the hypothesis that enraged rapists have a sexual motive, disinhibited by their anger.²³¹ Characteristically, they do not report sexual arousal or excitement; at first, some are impotent, requiring masturbation or fellatio to achieve an erection; and they usually derive no sexual satisfaction from the rape—only disgust.²³² Unlike all of the other rapists (except the sadists), the enraged rapists used "far more" force than would have been required if their goal had been merely to have intercourse—"grabbing her, striking her, knocking her to the ground, beating her, tearing her clothes . . ."²³³ Not only that: such men often force their victims to perform acts that they may regard as particularly degrading, "such as sodomy or fellatio," and they express their contempt for their victims "through abusive and profane language."²³⁴

However one resolves the issue of motivational primacy, it seems clear that this type of rapist is atypical. According to Groth, they are always strangers, who act impulsively and inflict much more damage than most rapists; if so, they are almost certainly overrepresented in studies (like Groth's) of convicts.²³⁵ Kanin found relatively little evidence of extreme

various traits of such men, including hypermasculinity, these authors conclude that "castration anxiety" underlies their rapes, another Freudian concept that Groth avoids. *Id.* at 123.

²³⁰ Many men have had reportedly consensual sex with their girlfriends or wives despite their anger. J. Gayle Beck & Alan W. Bozman, *Gender Differences in Sexual Desire: The Effects of Anger and Anxiety*, 24 ARCHIVES SEXUAL BEHAV. 595 (1995).

²³¹ Cohen et al. describe a class of "aggressive aim" rapists whose characteristics are in most respects identical to those of Groth's anger-revenge rapists, and they agree that in these cases the attack "is not the expression of a sexual wish but is in the service of the aggression, serving to humiliate, dirty, and defile the victim." Cohen et al., *supra* note 12, at 120. The more obvious disinhibitor explanation is probably why some typologies of rapists' motives do not include anger that leads to displaced revenge. *E.g.*, GUTTMACHER & WEIHOFEN, *supra* note 23, at 116–17. Anger is not a motive in the sense of a goal, but revenge of course is a (not necessarily exclusive) goal.

²³² GROTH, *supra* note 30, at 14–15.

²³³ *Id.* at 13–14.

²³⁴ *Id.* at 14.

²³⁵ Groth concedes this. *Id.* at 58. In their study of college "sexual aggressors," Lisak and Roth found evidence of "anger" but did not discuss "revenge," did not mention whether

anger (and none of nonsexual "revenge") during date rapes by a convenience sample of college men.²³⁶ His explanation of the discrepancy was that incarcerated rapists are unrepresentative of rapists in general. But since his college volunteers were also a poor sample,²³⁷ it seems best to reserve judgment about how often rapists are intensely angry about something other than the victim's refusal to have sex. The key point is that, even with a sample in which the most angry and violent rapists were almost certainly (and probably greatly) overrepresented, Groth found that most rapists do not inflict what appear to be non-instrumental injuries.

Some feminists contend that even rapists who do not use non-instrumental force often enjoy their victims' humiliation.²³⁸ However, there is considerable evidence to the contrary. Many anecdotal reports reveal that even stranger rapists often find rape more pleasurable if the victim, at their insistence, simulates sexual excitement or if they persuade themselves that she enjoyed the rape.²³⁹ This fantasy or delusion, while absurd in the circumstances, is not altogether surprising, since the victim's pleasure would presumably make the perpetrator feel less guilty and more sexually competent, and a stranger rapist's victim will sometimes be afraid to offer physical resistance. Moreover, controlled studies have found a correlation between self-reported likelihood of raping and a belief that rape is harmless or even enjoyable to the victim.²⁴⁰ A phallometric study of responses to rape scenes in which the perpetrator engaged in unusually degrading conduct found that the rapists were not more aroused by such depictions

any of the college men had inflicted the severe physical injuries that Groth described as typical in rapes by the enraged incarcerated men in his sample, found it difficult to separate anger motives from power motives, and found that only one type of anger motivation successfully discriminated between aggressors and non-aggressors. Lisak and Roth, *supra* note 110, at 798–800.

²³⁶ Kanin, *supra* note 124, at 100. Eighteen percent "quickly responded to coital rejection with high level anger responses"; about thirty-one percent later "developed . . . a resentment and low level anger response to their having been 'led on' or to their belief that the rejection was not genuine." The rest described their reactions as bewilderment, anxiety, and confusion. *Id.*

²³⁷ Volunteers from an elective college course were hardly an ideal sample of American rapists; they may not have been typical even of college rapists.

²³⁸ E.g., Juliet L. Darke, *Sexual Aggression: Achieving Power through Humiliation*, in *HANDBOOK OF SEXUAL ASSAULT: ISSUES, THEORIES, AND TREATMENT OF THE OFFENDER* 55 (W.L. Marshall, D.R. Laws & H.E. Barbaree eds. 1990).

²³⁹ E.g., CLARK & LEWIS, *supra* note 71, at 102–04; RUSSELL, *supra* note 66, at 110.

²⁴⁰ Briere & Malamuth, *supra* note 146, at 315; Margaret Hamilton & Jack Yee, *Rape Knowledge and Propensity to Rape*, 24 J. RES. PERSONALITY 111, 111 (1990).

than the non-rapists.²⁴¹ Rapists have only a "low" level of arousal to nonsexual violence against women, similar to their response to neutral scenarios and to non-rapist control groups.²⁴²

In a novel kind of motivational research, men were asked to rate the attractiveness of various models whose photographs they had been given. Each model assumed, for different photographs, a happy expression or one of fear or disgust. The men with high self-reported rape proclivities were more likely than controls to choose a photograph expressing a negative emotion, but solid majorities of both groups chose a model with a happy expression.²⁴³

²⁴¹ A. Eccles, W. L. Marshall & H.E. Barbaree, *Differentiating Rapists and Non-Offenders Using the Rape Index*, 32 BEHAV. RES. & THERAPY 539, 544 (1994). In studies measuring men's physical arousal to pornography, the subjects' rape proclivity is determined by a rape conviction or responses to questionnaires. The pornography depicts consensual sex, a rape in which the victim eventually became sexually aroused, or a rape in which she continually abhors the experience. Unfortunately, the rape scenarios vary in degrees of violence; in addition, it is often impossible for a reader to determine whether the rape scenario depicted continual rather than merely initial abhorrence. Although legally and morally irrelevant, this is relevant to motivational inferences. Some studies find that the men with high rape proclivity prefer rape scenes to consensual ones; others find that they prefer consensual scenarios or like both types equally well, being neither attracted to nor inhibited by the use of force. E.g., D.J. Baxter et al., *Sexual Responses to Consenting and Forced Sex in a Large Sample of Rapists and Nonrapists*, 24 BEHAV. RES. & THERAPY 513, 516–17 (1986) (both rapists and non-rapists were more aroused by scenes of consensual sex than by violent rape scenes); Jeffrey A. Bernat et al., *Sexually Aggressive and Nonaggressive Men: Sexual Arousal and Judgments in Response to Acquaintance Rape and Consensual Analogues*, 108 J. ABNORMAL PSYCHOL. 662 (1999). One study found that even men with a low likelihood of raping are as aroused by rape scenes in which the victim becomes aroused as they are by consensual scenes. Men with a higher likelihood of raping were more aroused by the latter. Neil M. Malamuth & James V. P. Check, *Sexual Arousal to Rape Depictions: Individual Differences*, 92 J. ABNORMAL PSYCHOL. 55, 58 (1983); cf. Marnie E. Rice et al., *Empathy for the Victim and Sexual Arousal Among Rapists and Nonrapists*, 9 J. INTERPERSONAL VIOLENCE 435, 435–39, 442 (1994) (using a very small sample, rapists found to be more aroused by rape enjoyed by victim than by consensual sex or continuously abhorred rape). Sexual arousal from forcible scenes has been found to correlate with a belief that women enjoy force. Malamuth et al., *supra* note 147, at 337. For additional references and analyses, see generally LALUMIÈRE ET AL., *supra* note 2, at 108–10, 112–17, 121, 123.

²⁴² Martin L. Lalumière et al., *Are Rapists Differentially Aroused by Coercive Sex in Phallometric Assessments?*, 989 ANNALS N.Y. ACAD. SCI. 211, 217 (2003); cf. Malamuth, *supra* note 135, at 49 ("The limited research available at this point does suggest that sexual aggressors hold attitudes more accepting of the use of sexual and of nonsexual physical aggression, generally, but not particularly of sexual aggression or other acts of violence against women . . .").

²⁴³ Alfred B. Heilbrun, Jr. & Maura P. Loftus, *The Role of Sadism and Peer Pressure in the Sexual Aggression of Male College Students*, 22 J. SEX RES. 320, 326–28 (1986).

According to a study of reported rapes, the vast majority of the sexual acts committed by the perpetrators were not indicative of a desire to humiliate the victim. In 96% of the cases, the rape included vaginal intercourse, in 22% fellatio, 5% cunnilingus, and 5% anal intercourse.²⁴⁴ These percentages are within the ranges one might expect if most or all of the rapists wanted sex; they differ considerably from what one would expect of rapists whose sexual acts were designed to maximize their victims' humiliation.²⁴⁵ The absence of humiliating sexual acts is even more noticeable if one focuses on the single-assailant rapes, which had much lower rates of sadistic or humiliating sexual behavior than the multiple-assailant rapes.²⁴⁶

In short, although rapists often inflict severe psychological and sometimes physical harm, in most cases they seem to do so because they are either oblivious or indifferent to the victim's suffering rather than because their goal was to make her suffer. However negative their opinions about women, however patriarchal their prejudices about sex roles, there is no reason to suppose that most rapists would have been disappointed if their victims had greeted them with open arms.²⁴⁷

²⁴⁴ Linda Lytle Holmstrom & Ann Wolbert Burgess, *Sexual Behavior of Assailants During Reported Rapes*, 9 ARCHIVES OF SEXUAL BEHAV. 427, 431 tbl.1 (1980). Most of the other sexual acts found to have occurred, while they may have felt extremely humiliating to the victim, may well have been sexually motivated—for instance, requiring her to dance nude (1%). *Id.* But sadistic motives appear in some cases, such as inserting an object into the victim's vagina (1%), urinating on the victim or her underwear (4%), and biting or burning her breast (percentage uncertain because combined with touching or pulling her breast, which are not necessarily sadistic). *Id.* Among reported rapes in Toronto in 1970, 76.7% involved no sexual acts other than vaginal penetration; in almost half of the cases in which another act occurred, it was fellatio. CLARK & LEWIS, *supra* note 71, at 69.

²⁴⁵ However, Holmstrom and Burgess' statistics do not include beating, knifing, and other nonsexual behavior during the rape that may in some cases have been motivated by sadism, rather than anger or a desire to quell resistance. See Holmstrom & Burgess, *supra* note 244, at 431 tbl.1.

²⁴⁶ For single assailants ($N = 78$) the rates were: vaginal intercourse 94% (100% for multiple assailants); fellatio 17% (MA: 35%); breasts pulled, bitten, touched, or burned 9% (MA: 18%); anal intercourse 4% (MA: 9%); urinating on victim or on her underwear 3% (MA: 6%); semen placed on victim's body 0% (MA: 6%). *Id.*

²⁴⁷ We grant that there are some for whom force seems essential to their pleasure. Cohen, *supra* note 12, at 133; Rada, *supra* note 10, at 25. The issue is typicality. It has been argued that the victim's terror demonstrates that the rapist's motive is not sexual. Cheryl Brown Travis, *Theory and Data on Rape*, in EVOLUTION, GENDER, AND RAPE, *supra* note 105, at 209, 211–12. But a criminal's indifference to the suffering of his victim and her relatives does not suffice to show that he committed the crime in order to inflict that suffering—consider, for example, a swindler who obtains an elderly couple's savings or an armed addict who terrifies a pharmacist from whom he seeks drugs. Such criminals may sometimes have ulterior motives, but their victims' suffering is very weak evidence of that.

When a rapist was indeed trying to maximize his victim's suffering, one should not assume that he lacked concurrent sexual desire; even if he was a sadist, we need to account for the fact that he didn't just torture her. Hostility toward women can of course be intertwined with or even caused by ordinary sexual desire. As Lorene Clark and Debra Lewis pointed out long ago, some men resent their need to bargain with women for sex.²⁴⁸ When such men rape, their hostility toward women, perhaps itself inflamed by that resentment, does not disprove their desire for sexual gratification.

H. PROVING MASCULINITY

We will now discuss several closely related motivational ideas, according to which rapists want to prove their masculinity and obtain dominance, power, and control over women. These are the most popular feminist motivational hypotheses.

Although authors use these concepts more or less interchangeably, the proving-masculinity hypothesis merits a separate discussion. Like the other three theories, it is durable (adopted by both psychologists and feminists),²⁴⁹ intuitively plausible, and apparently well-grounded in everyday observations of male behavior—from driving too fast to becoming a surgeon. More often than women, men are physically aggressive, domineering, daring, and violent.²⁵⁰ Even the most respectable and law-abiding men often have at least a sneaking admiration for some of these masculine qualities, as displayed by, say, a soldier or an athlete. Rape exemplifies the same qualities at their worst, so it seems virtually certain that some rapists are trying to prove their masculinity—to others, to themselves, or both.

Can we identify these men? Many studies have found correlations between macho attitudes or traits and rape proclivity.²⁵¹ For example, on

²⁴⁸ CLARK & LEWIS, *supra* note 71, at 137: "The root of misogyny . . . lies in men's resentment at having to bargain with women for sexual gratification." This was a remarkably unorthodox statement, but other feminists' condemnations of rapists' sense of "sexual entitlement" may be elliptical references to the same phenomenon, despite the implication that rapists feel sexually empowered rather than disempowered. Common experience furnishes many examples of people of both sexes who compensate for lack of one type of power by resorting to another type.

²⁴⁹ See, e.g., BROWNMILLER, *supra* note 70, at 22, 88–89, 180–81; *supra* notes 13–17, and accompanying text.

²⁵⁰ For contrasting but not contradictory definitions of masculinity, see SUSAN BROWNMILLER, *FEMININITY* 16 (1984); HARVEY C. MANSFIELD, *MANLINESS* ix–x, xii, 58, 60, 70, 76, 78 (2006).

²⁵¹ See generally, LALUMIÈRE ET AL., *supra* note 2, at 71 (noting that hypermasculinity and machismo are associated with both sexual and nonsexual misbehaviors); Sarah K.

the basis of a scale measuring respondents' attraction to "dominance relative to nurturance," Dean and Malamuth found a significant correlation between dominance and sexual aggression.²⁵² Other scholars have found that sexually aggressive men are less empathetic than other men;²⁵³ their level of "relationship intimacy" is lower;²⁵⁴ and according to one study they tend to approve of assertive behavior even in nonsexual, nonviolent contexts where the victim is another man.²⁵⁵ Summarizing findings about rapists' personalities and attitudes, a leading analysis concludes that they tend to be insecure, defensive, hypersensitive, and hostile-distrustful towards women.²⁵⁶ They are more likely to condone the use of force in relationships, to hold false beliefs about rape, and to believe that male-female relationships are fundamentally exploitive.²⁵⁷

From these findings, any combination of several inferences might be drawn: for example, that rapists tend to have sexist, patriarchal attitudes; that they tend to be stereotypically masculine—at least ideologically; or that they rape in order to prove their masculinity. The first two are warranted, but the last is more speculative, especially when accompanied by the innuendo that rapists are more desirous of proving their masculinity than of obtaining sexual gratification.

Consider an analogy. With his bills piling up, Joe asks his boss for a pay raise. When the boss denies the request, Joe threatens to quit. Assume that he makes the threat because he thinks that that is how "real men" behave. Even on that not-necessarily-true assumption, we cannot say that he values the opportunity to prove his masculinity more than the money. If that were so, he presumably would have been disappointed if his boss had immediately granted the requested raise. We have no basis for making that

Murnen et al., *If "Boys Will Be Boys," Then Girls Will Be Victims? A Meta-Analytic Review of the Research That Relates Masculine Ideology to Sexual Aggression*, 46 *SEX ROLES* 359 (2002). Some of the traits and attitudes are general; some involve backward or negative attitudes about women, sex roles, or rape. See generally Vega & Malamuth, *supra* note 101. However, the correlations with rape proclivity may not always be causal in nature.

²⁵² Dean & Malamuth, *supra* note 137.

²⁵³ Studies have found that men who were in other respects "high risk" for sexual aggression were unlikely to aggress if they were "sensitive to others' feelings" (empathetic) rather than self-centered. *Id.* at 453–54; Abbey et al., *supra* note 2, at 60–61.

²⁵⁴ Malamuth, *An Evolutionary Based Model*, *supra* note 135, at 165.

²⁵⁵ W. L. Marshall, H. E. Barbaree & Yolanda Maria Fernandez, Some Aspects of Social Competence in Sexual Offenders, 7 *Sexual Abuse: A Journal of Research and Treatment* 113, 125 (1995). This is not inconsistent with Malamuth's finding that evidence of "hostile masculinity" is less predictive of aggression toward males than of rape. Malamuth, *An Evolutionary Based Model*, *supra* note 135, at 171.

²⁵⁶ Vega & Malamuth, *supra* note 101, at 105.

²⁵⁷ *Id.* at 107.

counterintuitive assumption. Obtaining the raise probably was his top priority. But it remains possible that one of his reasons—perhaps the main one—for wanting the raise was that it would certify recognition of his “masculine” competence at work, or relieve his feeling of masculine inadequacy due to his low income, his previous failures at work or play, or whatever.

The proving-masculinity hypothesis, once broached, is difficult to contain. All sorts of typically male behavior—including opposites—can be glibly attributed to the man’s desire to prove his masculinity. Are men who do *not* threaten to quit sometimes trying to prove their masculine self-assurance? Substitute sex for money, and analogous conundrums are evident.

How does one determine whether a rapist who subscribes to—and perhaps practices—a hypermasculine ideology raped in order to prove his masculinity rather than because he *was* hypermasculine? Although conceptually distinct, the two are usually difficult to disentangle. If a puny, bookish boy, devoid of athletic ability, and bullied by more masculine boys, were to subscribe to *Soldier of Fortune*, lift weights, and rape girls, it would be easy to conclude that he wasn’t masculine but wished to be. Unfortunately for our purposes, most real rapists do not closely resemble this hypothetical one.²⁵⁸ Nevertheless, some clinicians have concluded that incarcerated rapists are extraordinarily concerned about their masculinity.²⁵⁹

²⁵⁸ Mike Tyson, formerly the heavyweight boxing champion of the world, was convicted of raping an acquaintance. *Tyson v. State*, 619 N.E.2d 276 (Ind. Ct. App. 1993). How can we know whether he was trying to prove his masculinity or was just too “masculine?” Are men who never rape or use prostitutes trying to prove their masculinity (to themselves) by showing self-control and sexual competence?

We do not mean to imply that the proving-masculinity hypothesis never can be valid in cases like Tyson’s. As Twain said of Wagner’s music, the theory is “better than it sounds.” One can imagine a genius, not content to be acclaimed as the world’s greatest physicist, who strives mightily to prove his brilliance in another context by winning a game of chess, or even in his usual context by demolishing the theories of a rival physicist. Our point is simply that the omni-plausible proving-masculinity hypothesis should not be accepted without a careful consideration of alternative hypotheses.

In most cases, macho attitudes are probably disinhibitory rather than motivational. See Donald L. Mosher & Ronald D. Anderson, *Macho Personality, Sexual Aggression, and Reactions to Guided Imagery of Realistic Rape*, 20 J. RES. PERSONALITY 77, 91 (1986).

²⁵⁹ E.g., WEST, ROY & NICHOLS, *supra* note 143, at 82. But their sample was highly unrepresentative, no control group was included, and their case histories describe men who clearly wanted sex, while the evidence of an additional motive is less clear. See, e.g., *id.* at 26–30. In the general population, there is no evidence, and it seems unlikely, that the males who are regarded as “sissies” by most males are more likely to have raped than the more masculine ones. Black youths, on average a stereotypically masculine group, are overrepresented among arrested rapists. HENRY RUTH & KEVIN R. REITZ, *THE CHALLENGE*

Although these studies are flawed by the usual defects of their genre (unrepresentative samples, lack of adequate comparison groups, subjective interpretations),²⁶⁰ they certainly have some probative weight.

Of course, being masculine and wishing to prove it are not mutually exclusive. It is common knowledge that certain men—for instance street toughs and football players—tend both to be hypermasculine and to feel a recurrent need to demonstrate it. Even in those contexts, however, it is usually impossible to tell whether a particular act was due to the actor's desire to prove his masculinity or to the fact that he is hypermasculine, or both. Similar difficulties arise in rape cases.

Some rapes occur in ongoing, disharmonious relationships. In some of these cases it is plausible, albeit usually speculative, to suppose that the rapist wanted immediate sex but also wished to show the victim that resistance to his future sexual requests would be futile. Any such "teach her a lesson" motive seems to be instrumental to a desire for sex on demand.

There is no doubt that a man's ability to obtain what most men want, whether sexual or not, is conducive to self-satisfaction and admiration by others. Also, some rapists may feel that by refusing to take no for an answer they have demonstrated their virility. But both of these propositions are consistent with a primarily sexual goal.

I. POWER, CONTROL, AND DOMINATION

Along with proving masculinity, these three motives are the most popular nonsexual theories. In some authors' versions, they are mixed with but ranked above sexual desire. Groth concluded that "in *all* cases of forcible rape, three components are present: power, anger, and sexuality. The hierarchy and interrelationships among these three factors, together with the relative intensity with which each is experienced and the variety of ways in which each is expressed, vary from one offender to the other."²⁶¹ As this passage indicates, Groth acknowledged that rapists seek sexual gratification.²⁶² The crime, however, "is concerned much more with status, hostility, control, and dominance than with sensual pleasure or sexual

OF CRIME: RETHINKING OUR RESPONSE 33 fig.1.6 (2003). Perhaps, however, rapists tend to be more masculine than most males in their age group but less so than many of their acquaintances and for that reason more worried about their masculinity than most men, or even most incarcerated men.

²⁶⁰ See e.g., *supra* notes 143–259 and accompanying text.

²⁶¹ GROTH, *supra* note 30, at 12.

²⁶² See also *id.* at 60.

satisfaction.”²⁶³ In most rapes, “power appears to be the dominant factor motivating the offender.”²⁶⁴ The power rapist is not trying to harm his victim “but to possess her sexually.”²⁶⁵ Since “[h]is goal is sexual conquest” he “uses only the amount of force necessary to accomplish this objective,” which Groth sometimes calls “capture and control.”²⁶⁶

On the basis of his clinical examinations of incarcerated men, Groth described the power-control rapist as a sad loner who lacks emotional attachments, worldly success, and self-esteem.²⁶⁷ Dissatisfied with his life and unable to tolerate stress, he rapes in a desperate effort “to restore his sense of power, control, identity and worth . . .” His intent “is to assert his competency and validate his masculinity” by sexual conquest.²⁶⁸ This is

²⁶³ *Id.* at 13.

²⁶⁴ Groth says power was the primary motive in fifty-five percent of the rapes that he studied but adds that, since most of the men in his sample were incarcerated, “power” rapists “may very well be” underrepresented (and “anger” rapists, who characteristically do not plan their attacks, may be correspondingly overrepresented) in his sample. *Id.* at 58. The overrepresentation of enraged rapists in Groth’s sample of incarcerated men must also have been inflated by their greater violence and the fact that in Groth’s typology they are strangers to their victims. *See supra* notes 221, 222, 233 (anger rapists are typically very violent), 235 (they are strangers to their victims).

²⁶⁵ *See* GROTH, *supra* note 30, at 25.

²⁶⁶ *Id.* A number of clinicians have either interpreted the “control” motive differently or failed to discern it. Rada, for example, concluded that rapists often want control over their victims and to a much lesser extent over men. But he attributed this to the fact that the “rapist frequently lacks, or feels that he lacks, the ability to establish a satisfying love relationship with a woman.” Rada, *supra* note 10, at 25. Unlike other men in this situation, he “responds in rage and frustration with a vain attempt to control by force what he feels inadequate or unable to obtain on a voluntary basis.” *Id.* In other words, he wants to control women by raping them for a “love relationship” instead of for sex? Some love relationship! Another study of inmates describes several types of rapists, with no suggestion that any type’s underlying motive was “power” or “control.” Cohen et al., *supra* note 29, at 312–25. “Here the act of rape is clearly motivated by sexual wishes, and the aggression is primarily in the service of this aim.” *Id.* at 317. In this sample, the victim was “always a stranger,” presumably because acquaintance rapes with no weapon or severe physical injury rarely led to incarceration. Nothing in the authors’ description of these rapists’ backgrounds, traits, and behavior during the rape suggests a desire for “control” or “power” except insofar as these are conducive to other goals such as sexual gratification.

Guttmacher and Weihofen’s typology also does not mention power or control rapists; like Cohen, they include sex as one of the “basic” motivations and even describe sadistic rapists as sexually motivated, though noting that they often hate women. GUTTMACHER & WEIHOFFEN, *supra* note 23, at 116–17.

²⁶⁷ *See, e.g.,* GROTH, *supra* note 30, at 30 (feels inadequate, insecure, vulnerable); *id.* at 32 (father called him a sissy); *id.* at 33 (no friends, unhappy); *id.* at 36 (felt he had nothing to offer a girl, depressed, dull life); *id.* at 37 (no friends, unhappy); *id.* at 36–37 (no friends of either sex, no confidence); *id.* at 41 (has never loved anyone).

²⁶⁸ *Id.* at 31. *See also id.* at 6–7 (low tolerance for stress).

reminiscent of the castration complex, minus some of its Freudian trappings, and of Brownmiller too, minus her discussions of patriarchy.

Assuming *arguendo* that most rapists' personalities fit Groth's description,²⁶⁹ it does not follow that his motivational theories are correct, even for the incarcerated rapists that he studied. Since the power rapist's "goal is sexual conquest," why isn't his "motive" simply sexual? Instead of positing a nonsexual motive, one might surmise that these rapists' willingness to use instrumental force was heightened by their personalities and moods. Perhaps they wanted power over—and domination and control of—women, but only for instrumental purposes such as obtaining sex from them on the rapists' own terms.²⁷⁰

Men Who Rape provides many vivid anecdotes, but in nearly all of these the concept of a desire for power appears to be superfluous.²⁷¹ An example:

The fantasies began with going out to a nightclub or bar and picking up a girl, and these changed to increasingly more drastic attempts. I'd think about either going to big parking lots or to a quiet area where there might be girls walking and confronting them. I began to have the thought that perhaps sometime if I did this, that the woman would agree or perhaps almost attack me—perhaps just my appearance or whatever would just turn her on and she would almost literally attack me in a complete state of sexual excitement, that she would rape me as if I were just what she had been waiting for. I would fantasize about confronting a girl with a weapon, a knife or a gun, and that she would tell me that I didn't need it and that she wanted me, and that she

²⁶⁹ Given the apparent limitations of his sample, this is far from clear.

²⁷⁰ As Symons notes, "Sex and power are not antithetic; human motives are complex, intertwined, and often conflicting, and perhaps no human act results from a single, pure impulse." Using quotations from rapists that might be thought to display a "power" motive, he argues persuasively that this was fused with a sexual motive. SYMONS, *supra* note 118, at 282–83. Most of those who discuss power and related motivations either ignore this fundamental truth or take it for granted—it is usually difficult to tell which. Consider, for example, this ambiguous statement: "The male struggle to dominate women who do not act submissively could lead to acceptance of use of force to dominate women sexually." This hypothesis was under a heading titled "The feminist perspective." Kathryn B. Anderson et al., *Individual Differences and Attitudes Toward Rape: A Meta-Analytic Review*, 23 PERSONALITY & SOC. PSYCHOL. BULL. 295, 300 (1997). If the desire to dominate is, in this context, in order to obtain sex, why is this a "feminist" perspective? Or are the authors speaking of domination for its own sake?

²⁷¹ See, e.g., GROTH, *supra* note 30, at 30 (claims he raped because he was afraid that the victim would reject any proposition). An arguable exception is the story about a woman who talked a would-be rapist into walking her home instead of raping her. *Id.* at 31. Groth interprets this as evidence that his main desire was to assert his masculinity; he does not mention the possibility that the man was overcome by sympathy, guilt, or fear.

wanted me sexually. She would say, "No, you don't need it, you don't need a gun, you don't need any of this, you're enough."²⁷²

This man seems to have psychological problems, but his fantasy suggests the normal male craving for consensual sex with uninhibited women—not a desire to wield power over them for its own sake. He fantasizes that the sexually excited women will "almost literally" overpower *him*.

Even when a rapist's fantasy includes forcible intercourse, the "characteristic scenario," Groth tells us, "is one in which the victim initially resists the sexual advances of her assailant; he overpowers her and achieves sexual penetration; in spite of herself, the victim cannot resist her assailant's sexual prowess and becomes sexually aroused and receptive to his embrace."²⁷³ In this fantasy, hypermasculinity and a desire for sexual domination are apparent, but the ultimate goal seems to be mutually enjoyable sex. By what criterion are the "nonsexual" aspects of the fantasy more "primary"?²⁷⁴

The accounts of so-called power rapists' behavior and feelings during their rapes are also consistent with—indeed suggestive of—a sexual goal. Some of these men claim to have difficulty determining when a woman's refusal is only pro forma;²⁷⁵ some asked their victims to evaluate their

²⁷² GROTH, *supra* note 30, at 26; *cf. id.* at 42 ("I wish there were more aggressive girls around."). A more recent study of sexual fantasies treats a fantasy about lustful desire followed by forcible rape as a "domination" fantasy, defined as one in which "the self exerted power over another person in the fantasy." Eileen L. Zurbriggen & Megan R. Yost, *Power, Desire, and Pleasure in Sexual Fantasies*, 41 J. SEX RES. 288, 291, 293–94 (2004) (fantasy about woman swimming in a bikini). This fantasy seems to have been about sexual desire, and the domination, consisting solely of the rape itself, appears to have been instrumental to that desire. The same study found that "[m]en's fantasies mentioned a partner's sexual desire more frequently than did women's fantasies." *Id.* at 292.

²⁷³ GROTH, *supra* note 30, at 26. Similar fantasies of force followed by mutual delight were described as characteristic of "sexual aim" rapists by Cohen et al., *supra* note 12, at 127–28.

²⁷⁴ That issue has been studied more rigorously by researchers who have employed phallometric devices, but with somewhat inconclusive results. See *supra* notes 241–242 and accompanying text (arousal to various pornographic scenes).

²⁷⁵ One rapist said that he had ignored other women's protests and found that they enjoyed it. GROTH, *supra* note 30, at 40; *cf. id.* at 38. The pervasive ambiguities of these rapists' comments are illustrated by the same man's claim that he wanted his victim to say "no" because that would be more stimulating, but he also wanted the "no" to be insincere, so that the woman enjoyed the experience and actively participated. "I would have felt like the dominant person, the one in charge." *Id.* at 41. Others quoted by Groth seem to have been perfectly happy to let the woman be in charge, so long as she was eager. *Id.* at 26, 42. Another rapist had a fantasy of tying up a woman, who enjoyed it, didn't resist, and had an

sexual performance, or said, “I know you like this,” or tried to arrange post-rape trysts.²⁷⁶ Some claim to have been surprised and disappointed when they realized that their victims were not having fun.²⁷⁷

Manifestly out of touch with reality, these men seem to have wanted sex and ardently wished to believe that, though forcible, it was, or became, mutually enjoyable. If so, why describe their rapes as only “pseudo-sexual”?²⁷⁸

Men Who Rape gives many justifications for this label. Groth reports that sexual dysfunctions such as impotence are common during rapes,²⁷⁹ but he does not mention the possibility that these are due to intoxication or drugs, haste, guilt, anxiety, or the victim’s screams or other resistance. He quotes rapists who said that the crime didn’t satisfy them,²⁸⁰ but nothing in their lives seems to satisfy these men—including their power and control during the rape.

For a sexually motivated rapist, why would overpowering a terrified woman, then fleeing to avoid arrest, be a satisfying experience? Would Groth say that if a man reports that he found masturbation “unsatisfying” this indicates that his motive for it was not primarily sexual? The more

orgasm. *Id.* at 37. And still another raped a woman who he said had never turned him down before, which implies an ordinary sexual motive. *Id.* at 39–40.

²⁷⁶ GROTH, *supra* note 30, at 29 (asked whether he was as good as her husband); *id.* at 30 (“[H]is desperate need to reassure himself of his virility and sexual competency often results in his attributing his own wishes to his victim.”); *id.* at 42 (wanted sex, tried to set up a post-rape meeting). Other scholars have reported similar delusions in their samples of incarcerated rapists. GEBHARD ET. AL., *supra* note 119, at 178–79, 183; Cohen et al., *supra* note 12, at 133 (“Sex-Aggression Defusion” rapists see the victim’s “struggle and protestation not as a refusal but as part of her own sexual excitation . . . even when the victim is literally fighting for her life and the offender has to brutally injure her to force her to submit to intercourse.”). Whether these men rape because they need reassurance or need reassurance because they rape, or both, has not been demonstrated.

This phenomenon may be rarer, or more common, among acquaintance rapists. The most grossly deluded men are probably overrepresented in samples from prisons; on the other hand, the line between seduction and rape is often much finer in a dating situation than in the anecdotes about deluded but clearly forcible strangers that are so often mentioned in the rape literature. Consequently, the requisite wishful thinking is less extreme and probably much more common.

²⁷⁷ GROTH, *supra* note 30, at 27.

²⁷⁸ That is Groth’s description of all rapes. *Id.* at 2.

²⁷⁹ *Id.* at 84–93. Craig Palmer regards the evidence of this as inconclusive. Palmer, *supra* note 174, at 519.

²⁸⁰ GROTH, *supra* note 30, at 26–27 (lost interest when he discovered that victim didn’t enjoy it); *id.* at 41 (could have picked up women instead but mistakenly thought he would enjoy it more by “taking advantage of the situation”); *id.* at 42 (says he wanted to have sex but was afraid and did not enjoy it); *id.* at 84 (not “sexually gratifying”).

reasonable interpretation would be that it's a poor substitute for sex with a willing partner. That may also be true of the rapes that his subjects committed.

The book's remaining arguments are also weak:

Although the power rapist may report that his offense was prompted by a desire for sexual gratification, careful examination of his behavior typically reveals that efforts to negotiate the sexual encounter or to determine the woman's receptiveness to a sexual approach are noticeably absent, as are any attempts at lovemaking or foreplay. Instead, the aim of the offender is to capture, conquer, and control his victim. Sexual desire, in and of itself, is not the primary or paramount issue operating in this assailant. If it were, there are a number of opportunities available in our society for consensual sex. In fact, sexual assaults always coexist with consenting sexual relations in the life of the offender. In no case have we ever found that rape was the first or only sexual experience in the offender's sexual history, or that he had no other alternatives or outlets for his sexual desires. To the question, "If what you wanted was sex, why didn't you just go to a prostitute?" the power rapist is likely to reply, "A real man never pays for it," revealing that one of the dynamics in the assault is reaffirmation of his manhood.²⁸¹

Echoing traditional psychoanalytic theories, Groth concludes that such offenders feel insecure about their masculinity or conflicted about their identity.²⁸²

That rapists often have other sexual outlets is, as we have seen, not a valid reason for supposing that they lack a sexual goal.²⁸³ Even a man who has never raped anyone, if asked why he doesn't use prostitutes as a convenient source of sexual variety, might reply that a real man would never pay for it. That macho sentiment would not show that his sex life was motivated by an ulterior goal.

Also inadequate is Groth's observation that "efforts to negotiate the sexual encounter or to determine the woman's receptiveness to a sexual

²⁸¹ *Id.* at 28.

²⁸² GROTH, *supra* note 30, at 28; *cf.* Rada, *supra* note 10, at 241 ("Rape is a crime of control, power and dominance. The primary motive in the rapist is the desire to control the victim . . . and, by extension, all women. In this sense, the aggressive component appears to be more dominant in rape than the sexual component."). Rada contends that the man chooses rape because "sex represents to him the foremost example of personal control that a woman has." *Id.* He never asks why the rapist cares more about this type of control than her control over other matters such as the food she eats, her female friends, etc. And why assume that the rapist "by extension" wants to control "all women"? Or does this mean "all women with whom he has or seeks a sexual relationship"?

In an obvious reference to Freudian concepts, Rada attributes this desire for "dominance . . . and control" to "unresolved conflicts originating during the anal period of development." *Id.* at 25.

²⁸³ *See supra* text accompanying notes 119–132.

approach are noticeably absent, as are any attempts at lovemaking or foreplay.”²⁸⁴ The book does not describe these men as date rapists; since they apparently were mostly incarcerated, a majority were probably stranger rapists or unusually violent acquaintance rapists. Why would a man who breaks into a woman’s home begin by trying “to determine the woman’s receptiveness to a sexual approach”? Some stranger rapists do proposition their victims,²⁸⁵ but others’ failure to do so proves only that they were realistic.²⁸⁶ And does Groth mean to suggest that men cannot be sexually aroused or satisfied without foreplay?

Allegedly, the power–control rapist “very often” kidnaps or in some fashion confines his victim “and she may be subjected to repeated assaults over an extended period of time.”²⁸⁷ There is no evidence that a substantial proportion of rapists do this; it may occur most often in cases of marital rape,²⁸⁸ where the post-coital control may be due to sexual jealousy and a desire for exclusive sexual access. Be that as it may, one wonders why, if the rapists mainly wanted nonsexual “control over their victims,” they didn’t simply confine them; why did they subject them to “repeated” sexual assaults instead of battering them into submission?²⁸⁹

²⁸⁴ GROTH, *supra* note 30, at 28. For a cogent rebuttal, see Palmer, *supra* note 174, at 518–19.

²⁸⁵ See, e.g., GEBHARD ET AL., *supra* note 119, at 194–95 (in a sample of rapists 72% of whom had been strangers to their victims, about half had first made sexual overtures).

²⁸⁶ Studies of sexual aggression by college men provide some evidence that acquaintance rapists—the majority—usually begin by trying to obtain consent. Kanin, *supra* note 144, at 107 (seventy-one percent of sample engaged in genital petting “prior to the aggressive act”); Kanin, *supra* note 124, at 99. In the latter study of seventy-one self-disclosed college rapes, 100% were preceded by some consensual sexual activity, about 84% by “some sort of genital play” which was “overwhelmingly oro-genital and largely reciprocal.” We strongly doubt that all of these findings are typical of acquaintance rapists, but our point is that, whether or not they proposition their victims, most rapists probably would have been delighted to obtain consent; no commonly reported behavior suggests otherwise. Apparently, no one has investigated how often men rape when it appears that they could readily have obtained immediate consent from their victims; our impression, after reading countless descriptions of rapes, is that this is almost never true except perhaps in the case of clinically diagnosable sadists. If we are right, how can some nonsexual goal be described as exclusive or even “primary” in more than a relative handful of cases at most?

²⁸⁷ GROTH, *supra* note 30, at 26.

²⁸⁸ THORNHILL & PALMER, *supra* note 2, at 61–62.

²⁸⁹ GROTH, *supra* note 30, at 26. Psychologists tell us that a strong desire for control is a basic human motive. DANIEL GILBERT, *STUMBLING ON HAPPINESS* 21–22 (2006). Similarly, Ellis maintains that “two drives . . . underlie most rapes—the sex drive, and the desire to possess and control.” LEE ELLIS, *THEORIES OF RAPE: INQUIRIES INTO THE CAUSES OF SEXUAL AGGRESSION* 57 (1989). But his examples of the control motivation seem to be instrumental to other ends such as obtaining food, water, shelter, and sex. See *id.* at 58.

Despite all these unanswered questions, many scholars have agreed that rapists want proof of their masculinity, or dominance, or power and control more than sex. They usually do not consider, or offer inadequate rebuttals of, alternative theories. For example, Holmstrom and Burgess assert that rapists seek both "proof of conquest" and "control."²⁹⁰ They quote a rape victim, apparently without noticing that by control she meant sexual control:

He messed me over the street way. I'm not supposed to tell. He said he'd beat me if I tell. And he gave me a sample tonight to show me. You know, they work you over—to control you—so they can have you sexually any time they want. He hit me on the ear, pulled my hair; hit me in the back by my kidneys—very strategic. But it's not the physical part that's the thing—it's mental to control you.²⁹¹

Another topic is marital rape. Many marital disputes can be described as about "power," "dominance," or "control." Typically, it is difficult to determine whether these are independent, general goals or merely instrumental to more specific goals. To explain why a wife wishes to control her husband's drinking, his male associates, and his consumption of ice cream, we need not posit that she has a pervasive desire for control; she may, but she may instead—or in addition—have specific goals such as protecting herself from abuse, keeping him out of trouble, and maintaining his good health. Even the control exercised by a severely patriarchal husband is limited to certain realms that matter to him. One such realm, obviously, is sex. If he rapes his wife because he believes that he is entitled to sex from her whenever he wants it badly, or on that occasion, then he has a callously selfish attitude but an at least superficially sexual goal. A conceivable additional goal is to show her that thereafter he will not tolerate arguments about whether to have sex. This goal, too, seems to be instrumental to a sexual goal. Perhaps, as R. Lance Shotland surmised, some marital rapists have an even broader goal, to "show total dominance over any disagreement, whether sexual or nonsexual."²⁹² On that theory, one might say that general power or control is one of the main goals, though not necessarily more important than the immediate sexual goal. But there is no evidence that even the most patriarchal marital rapists are trying, by their rapes, to resolve nonsexual conflicts with their wives. They may sometimes

²⁹⁰ Lynda Lytle Holmstrom & Ann Wolbert Burgess, *Sexual Behavior of Assailants During Reported Rapes*, 9 ARCHIVES OF SEXUAL BEHAV. 427, 435 (1980).

²⁹¹ *Id.*

²⁹² R. Lance Shotland, *A Theory of the Causes of Courtship Rape: Part 2*, 48 J. SOC. ISSUES 127, 137 (1992). For a more complete analysis of the control motive than we have presented, see FELSON, *supra* note 101, at 95–106.

be disinhibited by anger or frustration arising out of nonsexual disputes, but that is a different matter.

Some scholars have tried to demonstrate the importance of the alleged power (often called “dominance”) motive by using scales, questionnaires, and statistical analyses. At least superficially, these studies are much superior to the more dogmatic or impressionistic analyses of clinical and early feminist motivational theorists. One of their seeming advantages is definitional clarity: “motive” means whatever the scales measure. Quantification also makes motivational conclusions less binary: instead of deciding that a particular motive does or does not exist, one can treat the existence of sadistic tendencies, for example, as a question of degree. But a quantitative methodology, however optimal, does not eliminate verbal labels, discussions, and conclusions, all of which create the familiar dangers of ambiguous or misleading characterizations and unwarranted inferences.²⁹³ If, for example, the technical meaning of “motive” (as defined by a scale) departs from and ostensibly clarifies that concept, then the study’s “motivational” findings, when translated into words and cited by other authors, may mislead some readers precisely because they lack some of the vague or imprecise meanings of ordinary usage.

Insofar as the authors of these quantitative studies claim or imply that the results demonstrate that rapists desire dominance or power more than the physical pleasure of sex, we believe that their proofs are insufficient. A good example is David Lisak and Susan Roth’s study, *Motivational Factors in Nonincarcerated Sexually Aggressive Men*.²⁹⁴ These authors used student volunteers instead of convicts, and they employed scales to measure precisely the students’ self-acknowledged sexual aggressions against women and the “motivational” differences between the aggressors and nonaggressors in their sample. Like Groth, they concluded that sexual aggressors have a power motive.²⁹⁵ This conclusion was based on the following findings:

These men are distinguishable from nonsexually aggressive men in several ways: They perceive themselves as having been more often hurt by women, as having been deceived, betrayed, and manipulated. They appear to be more attuned to power dynamics between men and women; more often feel put down, belittled, ridiculed, and mothered by women; and more often feel the need to assert themselves because of this.²⁹⁶

²⁹³ See, e.g., *supra* text accompanying notes 131–138.

²⁹⁴ *Supra* note 110.

²⁹⁵ *Id.* at 800.

²⁹⁶ *Id.*

These findings are broadly consistent with those of other researchers, and we do not question them. But we see no inconsistency between any of the feelings summarized in this passage and the hypothesis that the aggressors sought sexual gratification and would have been at least equally happy to obtain it without resorting to aggression.

Antonia Abbey and her colleagues interviewed a random sample of 163 unmarried men in a large metropolitan area.²⁹⁷ They found that the number of "sexual assaults,"²⁹⁸ committed by the men²⁹⁹ was associated with the direct or indirect effects of all of the variables that the study measured: childhood sexual abuse, adolescent delinquency, alcohol problems, enjoyment of sexual dominance, positive attitudes about casual sexual relationships, and pressure from peers to engage in sexual relationships.³⁰⁰

To determine the degree to which their subjects sought dominance in their sex lives, the authors used a scale containing statements like "I have sexual relations because I like the feeling that I have someone in my grasp," and "I have sexual relations because I like the feeling of having another person submit to me."³⁰¹

Contrary to the authors' expectations, they found that the dominance motive was not directly related to sexual assault perpetration. "Instead sexual dominance only had indirect effects on sexual assault perpetration that were mediated through its links to attitudes about casual sexual relationships and peer pressure to engage in sex," both of which "were directly linked to the number of sexual assaults perpetrated."³⁰² The sexual dominance motive served "as a linchpin, with most of the effects of childhood sexual abuse, alcohol problems, and delinquency being funneled through it."³⁰³

This is how the authors interpreted their findings:

²⁹⁷ Abbey et al., *supra* note 2, at 54.

²⁹⁸ Broadly defined to include a spectrum of behaviors ranging from rape to "verbal coercion." *Id.* We discuss the concept of verbal coercion in connection with the next study we examine.

²⁹⁹ Determined by anonymous self-reports. *Id.*

³⁰⁰ *Id.* at 61.

³⁰¹ Originated in 1979 by Paul Nelson, this scale has been used in several studies. *Id.* at 59.

³⁰² *Id.* at 61. As was some of the effect of "alcohol problems." *Id.* at 60 tbl.1.

³⁰³ *Id.* Another major finding was that "[m]en with high levels of empathy committed relatively low levels of sexual assaults, regardless of their level of sexual dominance, while those with low levels of empathy committed increasing numbers of sexual assaults as their level of sexual dominance increased" *Id.*

Although these findings were cross-sectional, they suggest a chain of events in which men who experience childhood sexual abuse learn to view sex as a venue for gaining and displaying power over others. Heavy drinking problems and engaging in adolescent delinquency also encourage viewing sex as a source of power rather than of emotional intimacy. This focus on sexual dominance encourages having multiple casual relationships and being comfortable using verbal and physical strategies to force sex on unwilling dating partners.³⁰⁴

It is intuitively plausible that men who enjoy dominating women during consensual sex are more likely to rape than those who do not. Nevertheless, we have two basic reservations about this passage. In the first place, we are uncertain whether domination was, as the authors claimed, a goal that the sexual aggressors sought in their sex lives. Unquestionably, men often seek to dominate others of both sexes; there is evidence that sexually aggressive men tend to be domineering toward women even in nonsexual contexts.³⁰⁵ Rape by definition is an act of domination. But, as with the proof-of-masculinity hypothesis, there is a difference between possessing a trait and seeking to acquire or demonstrate it. We sympathize with any reader who regards this distinction as hairsplitting, but if motives are goals and traits are not, then fine distinctions are required in motivational analyses.

Abbey and her co-authors tried to solve the problem by using a popular scale that purports to measure the extent to which respondents enjoy dominance during all sexual intercourse. But there is, we submit, another plausible interpretation of the answers given to questions on this scale. When a man says that he has sexual relations "because I like having someone in my grasp" or "because I like the feeling of having another person submit to me," he may be expressing the same feelings that a more sensitive, educated, or politically correct man would express in more acceptable language: "I welcome opportunities for shared sexual intimacy; our moment of decision is the delightful first stage of a caring experience." Endorsement of the coarsely masculine phraseology in the dominance scale may reflect a tendency to use more offensive language about sex rather than the existence of a different reason for wanting sex. The use of inequalitarian expressions may be due to some combination of the man's sexist attitudes, his socioeconomic class,³⁰⁶ his general selfishness, and his irritation about

³⁰⁴ *Id.* at 63.

³⁰⁵ Neil M. Malamuth & Nancy Wilmsen Thornhill, *Hostile Masculinity, Sexual Aggression, and Gender-Based Domineeringness in Conversations*, 20 *AGGRESSIVE BEHAV.* 185, 186 (1994).

³⁰⁶ *Cf.* Anderson et al., *supra* note 270, at 308 (noting a decrease in socioeconomic status found to be associated with increase in acceptance of rape myths).

women's power to deny his sexual requests (with corresponding happiness when they "submit" and he has them within his "grasp"). An analogy: respectable people used to describe men's sexual encounters as "conquests." That description seems to have become somewhat less common. If so, does its declining popularity reflect a change in men's sexual goals, their sexual practices, or the language they use to describe sexual intercourse? Of these three possibilities, the first seems to us the least plausible.

Our second reservation about the authors' conclusions has to do with the relative importance to rapists of their sexual and nonsexual goals. Let us assume that rapists' interest in domination is not merely instrumental or semantic. Is it more important to them than sexual gratification? The authors imply that the alternative to a "power" motive is an "emotional intimacy" motive. We are not aware of any credible evidence that sexually egalitarian, unaggressive men engage in sexual relations mainly as a means of obtaining emotional intimacy rather than physical pleasure. None of the scales in this study measured the degree to which the subjects enjoy physical stimulation and orgasm during intercourse—for all we know they enjoy these much more than the domination. Again, the subject's verbal responses to questions about whether they have sex simply for physical pleasure might reflect their socioeconomic status, education or political correctness rather than their true motives.

Over a span of several decades, psychologists have conducted many studies of what they call "implicit theories" that are associated with various behaviors.³⁰⁷ An implicit theory has been defined as "a number of interlocking beliefs and their component concepts and categories." In a person's mind, it functions like a scientific theory and is "used to explain empirical regularities (e.g., other people's actions) and to make predictions about the world."³⁰⁸ Polaschek and Ward concluded that five implicit theories about women increase the likelihood that a man will commit a sexual assault: women are inherently different from men and unknowable; women exist to meet men's sexual needs; the male sex drive is uncontrollable; men are entitled to have their sexual needs met; and people are untrustworthy.³⁰⁹ Three of these implicit theories suggest a sexual goal, and none is inconsistent with that hypothesis.

Another line of research is about "implicit motives," defined as "the nonconscious motivational needs that orient, select, and energize

³⁰⁷ Polaschek & Ward, *supra* note 105, at 390–92.

³⁰⁸ *Id.* at 387.

³⁰⁹ *Id.* at 394–98.

behavior.”³¹⁰ “Power” is an often-studied implicit motive. Eileen Zurbriggen investigated its role in sexual aggression. While granting that sexual aggressors have a sexual goal, she sought to determine whether the implicit power motive would predict self-reports of aggressive sexual behavior.³¹¹ She found that this motive was indeed “able to predict part of the variance” in sexual aggression.³¹² This, she concluded, “offers empirical support for the hypothesis advanced by feminist theorists that a fusion of power and sexuality can have negative consequences.”³¹³

Drawing on a large body of research about diverse topics, Zurbriggen defined a power motive in the accepted way “as a concern with having impact on other people or on the world at large”; this “can be channeled in either a pro-social or an antisocial direction.”³¹⁴ Researchers have discovered that this sort of power motive correlates with many types of behavior, especially among men: physical and verbal aggression; an exploitive negotiating style; and several indicators of “profligate sexuality”—greater numbers of sexual partners, earlier age of first intercourse, and use of pornographic magazines.³¹⁵ On the other hand, it also correlates with membership in voluntary organizations; inspirational leadership; and the performance (and subjective ratings) of political leaders.³¹⁶ It includes all sorts of activists, from Hitler and rapists to the Good Samaritan, Mother Teresa, and campaigners for any political cause. Thus, the power motive is not a goal in the ordinary sense; indeed, people with the opposite goals—for instance, pro- or anti-war—can both have this so-called motive.

To measure the implicit power motive, Zurbriggen used a standard method, in which participants are instructed to write imaginative, fictional

³¹⁰ Joyce S. Pang & Oliver C. Schultheiss, *Assessing Implicit Motives in U.S. College Students: Effects of Picture Type and Position, Gender and Ethnicity, and Cross-Cultural Comparisons*, 85 J. PERSONALITY ASSESSMENT 280, 280 (2005).

³¹¹ Zurbriggen, *supra* note 2.

³¹² *Id.* at 577. Her sample consisted of seventy-nine men and seventy-nine women, all primarily heterosexual, recruited in Ann Arbor, Michigan. *Id.* at 563. In the interest of concision, our discussion includes only the aspects of her study that we thought most relevant to our topic, and sufficient to make our main points, but her study included women as well as men, and obtained data about an “affiliation-intimacy motive” as well as “cognitive power-sex associations.” *Id.* at 561–64.

³¹³ *Id.* at 578.

³¹⁴ *Id.* at 561.

³¹⁵ In other words, what some call “socio-sexuality.” See *supra* text accompanying notes 119–132.

³¹⁶ Zurbriggen, *supra* note 2 at 561; Studies also have suggested that this motivation “is detrimental to intimate, romantic relationships, at least for men.” *Id.*

stories about certain picture cues—for instance, a picture of a man at a desk or a couple on a bridge. Every sentence written in each participant's story was then scored for power motivation, which was revealed “whenever there is an indication of impact, control, or influence”—for instance, by attempts to persuade, mention of prestige or reputation, control or regulation, offering unsolicited help, or strong, forceful actions that inherently affect others.³¹⁷

Zurbriggen's concept of sexual aggression is, like her concept of motive, a term of art whose technical meaning differs from ordinary usage. As used by Zurbriggen and some other modern rape researchers, “sexual aggression” is not limited to rape or other physical coercion or even to nonconsensual sex. To determine whether those who have high power motivation tend to be more “sexually aggressive,” Zurbriggen used two measures of sexual aggression. One, the “coerce scale,” included ten items. Only one of these described what almost certainly was a rape: “I have gotten a little drunk and forced the person that I'm with to have sex with me.”³¹⁸ A more ambiguous proposition described behavior that would constitute rape under some but not all circumstances: “I have gotten someone drunk or high so they would be less able to resist my advances.”³¹⁹ The remaining eight propositions all refer to lawful, mostly trivial, and sometimes even morally acceptable types of responses to companions who refuse sexual overtures: calling them an angry name and pushing them away; giving them the “silent treatment”; gripping them tightly and giving them an angry look; belittling their manhood or womanhood; threatening to leave or end a relationship; telling someone you “were making out with” that “they couldn't stop and leave me frustrated”; telling them that their refusal was changing the way that you felt about them; and, finally, dating

³¹⁷ For a more complete description, see *id.* at 563–64.

³¹⁸ *Id.* at 565 tbl.1 (reporting that eleven percent of all the male respondents had done this at least once). The only possibly significant ambiguity that we perceive is the meaning of to “have sex.” Perhaps some respondents included nonconsensual but non-penetrative acts.

³¹⁹ *Id.* A much higher proportion (31.6%) said that they had done this. *Id.* But in this proposition there is no explicit indication that sex of any sort occurred, though that is perhaps implied, nor whether the degree of cognitive impairment reached the level that would justify a judgment that the woman was legally incapacitated and therefore incapable of validly consenting (which is often difficult to judge), nor even whether she ever regretted the event, which—though not a prerequisite to legal guilt—is clear in all truthful reports of adult rape and of course strongly affects most people's feelings about whether the sex was harmful.

someone younger than yourself “because I thought it would be easier to get them to give me what I wanted sexually.”³²⁰

As one would expect, the seven items on the “seduce scale” were even less aggressive than those on the coerce scale. The most prevalent seductive behavior (88.6%) was to “whisper ‘sweet nothings’” in order to “get someone in the mood.” The next most prevalent (72.2%) was to take “someone to a romantic spot in hopes that they would sleep with me.”³²¹ Without explanation, Zurbriggen classifies these, too, as forms of “[a]ggressive [s]exual [b]ehavior.”³²²

The study found “no gender difference in power motivation” and no statistically significant difference between the sexes in mean scores on the coerce scale.³²³ In general, high levels of power motivation were associated with higher scores on both the coerce and seduce scales;³²⁴ the findings for power motives were similar across these two scales.³²⁵ Finally, and most importantly, “[p]ower motivation was an important predictor of sexual coercion and seduction in men but not in women.”³²⁶

We wonder why Zurbriggen concluded that her study provides support for distinctively “feminist” theories about power and sexuality. If we focus on the items in her scales rather than on her abstract labels for those scales, her central motivational finding was that men who have a do-something, activist mentality (the “implicit power motive”) are more likely to use various techniques, mostly lawful, trivial, and sometimes even morally acceptable,³²⁷ in their efforts to obtain sex from reluctant women. These

³²⁰ *Id.* We have no general objection, for example, to a threat to terminate a relationship that the speaker, whether male or female, finds sexually unsatisfactory, either because the other party refuses sex, or repeatedly requests sex, or does not perform sex in ways desired by the speaker. If in a particular case it is morally acceptable to end the relationship for such reasons, then it should be at least equally so to give the other party advance notice (a “threat”) that the incompatibility is jeopardizing the relationship. The word “threat,” though often used pejoratively, denotes a wide spectrum of common and mostly morally acceptable utterances. If giving someone “the silent treatment” or telling them that their conduct is “changing the way that you feel about them” is “coercion,” then coercion by both sexes for various purposes is both ubiquitous and often justifiable.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.* at 567.

³²⁴ *Id.* at 570. For affiliation-intimacy motivation, women scored significantly higher than men, and women’s level of that motivation was significantly greater than their level of power motivation. For men, there was no significant difference between their levels of the two motivations. *Id.* at 567.

³²⁵ *Id.* at 573.

³²⁶ *Id.*

³²⁷ *See, e.g., supra* note 320.

range from rape of a drunken woman, a grave crime, to taking their companions to romantic places or whispering "sweet nothings." Women, though equally likely to have an activist personality, are less likely to manifest it by trying to force, pressure or induce their companions to have sex. We doubt that these findings will surprise anyone; they do not contradict the teachings of any school of thought about rapists' goals.

We do not agree with Zurbriggen's extremely capacious concept of "sexual aggression."³²⁸ Granted, there are some family resemblances between rape and certain lesser forms of aggression such as street harassment. It is plausible to suppose that when a society tolerates sexual harassment of women this contributes to a rape-supportive environment. But this does not justify lumping rape together with the other items in Zurbriggen's scales and calling the bundle "coercion" or "aggression." Pressures and inducements are ubiquitous in social interactions, for every imaginable purpose. If a woman selects her clothing for some ulterior purpose such as impressing a prospective employer, is that a type of "aggression"? If she threatens to terminate a relationship unless her male partner agrees to marry her, is that "coercion"? Should it be listed on the same scale as spousal murder?

Theories about the primacy of one motive over another are mostly speculative. Subjects' introspections about their goals—even when anonymous—are a questionable source of insight. But sometimes a rapist's behavior makes his priorities reasonably clear. His failure to proposition his victim does not disprove the possibility of a sexual goal.³²⁹ But if he

³²⁸ Scales measuring verbal pressures or inducements to have sex are versions, sometimes modified, of a survey devised several decades ago. M.P. Koss & C.J. Oros, *Sexual Experiences Survey: A Research Instrument Investigating Sexual Aggression and Victimization*, 50 J. CONSULTING & CLINICAL PSYCH. 455, 455 (1982). Our objection is not to studying noncriminal verbal pressures and inducements but to some scholars' assumption that they are all both immoral and important and to listing them with rape in a scale with a misleading pejorative label such as "coercion" or "aggression." The confusion caused by this practice can be found even in some of the best rape scholarship. For example, one excellent book has a chapter titled "Rape Across Cultures and Time." LALUMIÈRE ET AL., *supra* note 2, at 10. Possibly because legal definitions of rape vary, and are sometimes indefensibly narrow, this chapter substitutes "sexual coercion" for "rape," but the authors then define sexual coercion as "any physical sexual contact performed without a person's consent using any coercive methods (e.g., using a position of authority or verbal pressure)." *Id.* So, telling someone that if she wishes to postpone all sexual relations until marriage you will stop dating her is a type of "sexual coercion"?

³²⁹ If he is a total stranger, he may realize that there is virtually no chance that she will voluntarily consent. On a date, he may figure that she would reject an explicit proposition but would acquiesce if he "just did it." Or he may at some level recognize that genuine consent is absent (for example, because she is drunk) but believe that he can get away with

does proposition her then presumably nonconsensual intercourse was not one of his goals. Unfortunately, there have been hardly any studies that tried to determine (ideally by asking victims) what proportion of various types of rapists try to obtain consent before resorting to force. In their large sample of convicted rapists, Gebhard and his associates found that half of the men "had made at least some of the overtures males customarily make in attempting to obtain a sexual relationship, or, to put it another way, half of the time there were attempts to gain a voluntary rather than a forced relationship."³³⁰ We are reluctant to trust rapists' accounts, but if true this finding is impressive when one considers that 72% of Gebhard's sample had been strangers to their victims, and as such presumably had no good reason to expect a favorable response.³³¹

In cases involving intimates or acquaintances, the possibility that the woman will consent is on average much greater and the proportion of rapists who begin by trying to obtain consensual sex must be correspondingly higher.³³² While this does not preclude the possibility of additional motives—for the sex as well as the force—it suggests that most rapists would have been pleased if their victims had consented. In our opinion, that is the best test of whether a rapist's motive for ignoring his victim's wishes was primarily sexual.

Our analysis of the evidence about rapists' motives will now conclude with the most recent comprehensive theory about rape.

it. All of these hypotheses are consistent with a sexual goal, although one can also imagine other possible goals, whose plausibility depends on other evidence.

³³⁰ GEBHARD ET AL., *supra* note 119, at 195. Seventy-two percent of the victims were strangers to the offender. *Id.* at 194.

³³¹ *Id.* at 194. There may be somewhat less danger of an honest mistake about one's behavior than one's motives. But perhaps some of the rapists wished to appear, or to think of themselves as, psychologically normal.

³³² Cf. James F. Porter, Joseph W. Critelli & Catherine S.K. Tang, *Sexual and Aggressive Motives in Sexually Aggressive College Males*, 21 ARCHIVES SEXUAL BEHAV. 457 (1992); Karen Rapaport & Barry R. Burkhart, *Personality and Attitudinal Characteristics of Sexually Coercive College Males*, 93 J. ABNORMAL PSYCH. 216 (1984). Eugene Kanin compared college men who had attempted to have forcible sex with a control group who had not. He found that the forcible men were much more likely to have employed various non-forcible—albeit sometimes immoral—techniques to obtain sex: attempting to get their companions intoxicated, falsely professing love or promising marriage, and threatening to stop dating. Kanin, *supra* note 139, at 108–09. Depending on the degree of intoxication, the first might lead to a rape; the second would be immoral but not criminal; and the third in our view is not immoral—he is entitled to seek a more compatible partner and to inform her of that possibility, just as she would be if she found the relationship unsatisfactory.

V. RAPISTS AS EVOLUTION'S FITTEST

Throughout the twentieth century, the conventional scholarly view of human behavior held that our ideas, behavior, customs, and institutions are products of our environments, not of "human nature." The exponents of this worldview included the most renowned American social scientists, psychologists, and of course feminists.³³³ But other scholars conducted research on genetic causes of conduct. For our purposes, the most relevant type of research began between 1963 and 1974, when several scientists laid the foundations of an evolutionary understanding of the mind. Much of this literature is about evolution's effects on other species, but evolutionary psychologists have also proposed fascinating, often extremely controversial explanations of all sorts of human behavior—politics, morality, guilt, friendship, ambition, leadership, love, sex, and religion.³³⁴

The basic idea of evolutionary psychology is that our minds, like our bodies, were shaped by evolution.³³⁵ Certain behaviors (called "adaptive") were conducive to individual reproductive success over our evolutionary time span.³³⁶ Because those who engaged in adaptive behaviors were by definition more likely to pass on their genes, a tendency toward such behaviors eventually became innate. This does not mean that adaptive behavior is either desirable or inevitable. Our conduct is determined by the interactions between our innate traits and the environments that we encounter. Behavior that was adaptive in ancestral environments may no longer be so (our love of sweets is a familiar example), and adaptive conduct is sometimes immoral. Fortunately, we can resist our innate inclinations, and environmental changes—personal, situational, legal, cultural, political—can counteract (or instead encourage) them.

Evolutionary psychologists say that the reproductive differences between men and women led to different psychological adaptations.³³⁷ For men, the minimum investment necessary for reproductive success—a brief

³³³ See generally STEVEN PINKER, *THE BLANK SLATE: THE MODERN DENIAL OF HUMAN NATURE* (2002).

³³⁴ See generally STEVEN PINKER, *HOW THE MIND WORKS* (1997); SYMONS, *supra* note 118; ROBERT WRIGHT, *THE MORAL ANIMAL: EVOLUTIONARY PSYCHOLOGY AND EVERYDAY LIFE* (1994); Owen D. Jones, *Sex, Culture, and the Biology of Rape*, 87 CALIF. L. REV. 827 (1999). For summaries of studies that relate motivation and behavior to biological factors, see generally Heckhausen & Heckhausen, *supra* note 2.

³³⁵ PINKER, *supra* note 334, at 42; THORNHILL & PALMER, *supra* note 2, at 15; WRIGHT, *supra* note 334, at 9.

³³⁶ See generally THORNHILL & PALMER, *supra* note 2.

³³⁷ See, e.g., SYMONS, *supra* note 118, at 207; THORNHILL & PALMER, *supra* note 2, at 31–52.

copulation—was exceedingly slight. As a result, a man's genes were most likely to multiply if he was promiscuous, casually mating with many fertile partners. That is why an ability to enjoy impersonal sex became part of men's natures, along with a preference for youthful (fertile) mates.

In females, the genetic logic supposedly created different tendencies. While men can sire thousands of offspring in a lifetime, women can produce only about twenty; so their genes gained much less advantage from promiscuity.³³⁸ If only because of pregnancy and nursing, the minimum cost to a woman of having a child is much higher than to a man. For females the adaptive strategy was to choose mates carefully, seeking men who would assist the mother and child through enduring commitments and provision of resources. As a result, women evolved to be more reserved and selective in their choices of mates.³³⁹

In *A Natural History of Rape: Biological Bases of Sexual Coercion*, biologist Randy Thornhill and anthropologist Craig Palmer presented an evolutionary explanation of rape.³⁴⁰ The book is unusual in that its co-authors disagree about a fundamental issue. Thornhill believes that a conditional inclination to obtain sex by force when genetically advantageous is the direct result of an adaptation specifically for that purpose; Palmer believes that rape is a by-product of adaptations that served other purposes—particularly male hyper-sexuality and promiscuity, which were adaptive because they increased men's (presumably mostly consensual) mating.³⁴¹ The authors agree that the evidence does not justify a "strong conclusion" about which of these hypotheses is correct.³⁴² But both hypotheses assume that rapists seek sexual gratification. While conceding that mixed motives sometimes exist, Thornhill and Palmer describe the feminist emphasis on nonsexual motivations as "political."³⁴³

Predictably, this book provoked a spate of vehement and at times vitriolic criticism.³⁴⁴ Some of the criticisms were justifiable and some were

³³⁸ Malamuth, *An Evolutionary Based Model*, *supra* note 135, at 167.

³³⁹ THORNHILL & PALMER, *supra* note 2, at 37, 39–40. For a reply to the "resources" point, see Alice H. Eagly & Wendy Wood, *The Origins of Sex Differences in Human Behavior*, in *EVOLUTION, GENDER, AND RAPE*, *supra* note 105, at 265.

³⁴⁰ *Id.* The earliest major efforts to explain rape in evolutionary terms occurred in the 1970s and 1980s, shortly after the canonical feminist works on rape. *Id.* at xv.

³⁴¹ *Id.* at 61.

³⁴² *Id.* at 191.

³⁴³ *Id.* at xi, xiii, 114–15.

³⁴⁴ For a collection of feminist responses, see TRAVIS, ed., *supra* note 105. Thornhill and Palmer replied to some of the criticisms. Craig T. Palmer & Randy Thornhill, *Straw Men and Fairy Tales: Evaluating Reactions to A Natural History of Rape*, 40 J. SEX RES. 249

not; the cogency of Thornhill and Palmer's analyses varies considerably from one issue to another. Most fundamentally, they contend that discussions of rape's causes and motives should include evolved sexual traits, not just culture: men do not rape solely because they have been taught to do so. As a corollary, Thornhill and Palmer reject the notion that rapists' motives are chiefly nonsexual. Their arguments in support of these twin propositions are excellent, and when integrated with social-scientific findings and theories about social causes of rape, references to possible evolutionary adaptations have not created an uproar.³⁴⁵

The by-product hypothesis is eminently plausible. As applied to physical characteristics such as men's typically greater size and upper-body strength, it is rarely disputed. In the psychological realm, three relevant characteristics are men's hyper-sexuality (intense and autonomous sexual desire, ability to enjoy impersonal sex, and promiscuity), aggressiveness, and propensity to employ violence. If one or more of these is an adaptation, albeit perhaps greatly affected by environmental factors such as culture and childhood experiences, then to that extent rape is a by-product.

Some scholars attribute the differences between men's and women's sexual attitudes³⁴⁶ entirely to cultural causes.³⁴⁷ Culture certainly has played a very large role; the issues are whether that role is exclusive and whether culture itself is ultimately caused by adaptations. Space does not permit an adequate discussion here, but in our view the relevant differences between the sexes are not entirely due to cultural influences. To be sure, some of those differences are much more malleable than was once thought; further changes may occur. Yet, despite women's liberation, more effective contraception, and the "sexual revolution," men remain far more inclined toward impersonal, promiscuous sex. No doubt traditional attitudes and women's greater needs for safety and respectability strongly affect this,³⁴⁸

(2003). For a rebuttal of several fallacious types of arguments against the evolutionary hypotheses, see Jones, *supra* note 334, at 873–94.

³⁴⁵ See, e.g., Malamuth, *supra* note 135; cf. Koss, *supra* note 105, at 191.

³⁴⁶ A meta-analysis of the literature about psychological differences between the sexes concludes that while the numerous alleged differences are generally nonexistent or small, there is a "strikingly large" difference in "attitudes about sex in a casual, uncommitted relationship." Janet Shibley Hyde, *The Gender Similarities Hypothesis*, 60 AM. PSYCHOLOGIST 581, 586 (2005).

³⁴⁷ E.g., Cheryl Brown Travis, *Talking Evolution and Selling Difference*, in EVOLUTION, GENDER, AND RAPE, *supra* note 105, at 3, 20.

³⁴⁸ The danger to a woman from sex with a virtual stranger includes the possibility that he will be inconsiderate, perhaps vicious. Balanced against the possibility of momentary pleasure, even the very slight risk of a murderous assault usually suffices to explain

but some of the evidence is difficult to explain entirely on these grounds. For example, men are still much more likely to use prostitutes and pornography.³⁴⁹ Those gender differences are conspicuous among homosexuals as well as heterosexuals and in private as well as public behavior.³⁵⁰ To the extent that they are innate, they are plausibly attributable to adaptations and have a place in any comprehensive explanation of rape. (Without men's ability to be aroused by impersonal sex, they would not rape—at least not strangers—just as they would not use prostitutes and pornography.)

While the by-product theory is a reasonable answer to the most extreme cultural determinism,³⁵¹ its explanatory power should not be overstated. Sexual gratification may be by far the most common *goal* of rapists, but sexual desire obviously is not a sufficient *cause*. It is a mistake to assume that correctly identifying a rapist's goal is tantamount to discovering "the" cause of his conduct. (Thornhill and Palmer do not make this error, but their heavy emphasis on the motivational question may lead some of their less informed readers astray.) Normal male hyper-sexuality does not even begin to explain why, of the countless males who feel sexual desire at any given moment and lack immediate access to a willing female,

women's characteristic sexual reserve toward total and near-total strangers, but acquaintances are a different matter.

³⁴⁹ SYMONS, *supra* note 118, at 170–84 (visual stimuli); THORNHILL & PALMER, *supra* note 2, at 132–33 (prostitution); Gert Martin Hald & Neil M. Malamuth, *Self-Perceived Effects of Pornography Consumption*, 37 ARCHIVES SEXUAL BEHAV. 614, 615 (2008) (men more attracted to pornography). Admittedly, patronizing prostitutes is at least sometimes more dangerous for women, and their dislike of pornography that demeans women does not signify distaste for sexually explicit materials as such. But much pornography does not demean women except to the extent that impersonal sex is thought to be inherently demeaning to them, a proposition that begs the question of why they feel more demeaned than men do by impersonal but egalitarian depictions of sex. Some pornographic scenes are disgustingly crude, to many men as well as to women, but, again, that is not always true, and one must ask why that reaction is more common among women.

³⁵⁰ SYMONS, *supra* note 118, at 73, 200–05, 293–305; cf. FRANS DE WAAL, OUR INNER APE: THE BEST AND WORST OF HUMAN NATURE 89 (2005) ("Hook up college students to a fake lie detector machine, and young women report almost twice as many sex partners as women feeling no such pressure. In fact, they report as many partners as their male counterparts. So men and women may be far more similar than sex surveys have made us believe."). But one's number of partners is not determined solely by one's inclinations; the availability of willing mates is a limiting factor that reduces heterosexual men's numbers of partners much more than women's (or homosexual young men's). That is why Symons compares lesbians with gay men, who generally can find immediately willing amateur partners much more easily than can heterosexual men. In this comparison, the gay men are on average far more promiscuous than the lesbians. SYMONS, *supra* note 118, at 198–201.

³⁵¹ Thoroughgoing cultural determinism is at least implicit in some feminist discussions of rape's causes. See, e.g., THORNHILL & PALMER, *supra* note 2, at 140–43, 146–47.

only a miniscule percentage resort to rape.³⁵² An answer to that question requires a discussion of, among other things, rapists' lack of non-rapists' inhibitions, a phenomenon that normal male hyper-sexuality and female reserve do not explain.³⁵³ Thornhill and Palmer believe that all causes of rape will eventually be traced to interactions between adaptations or by-products and the environment,³⁵⁴ and they do mention some non-goal causes, but their best-supported evolutionary explanation is of all men's hyper-sexuality, not of rapists' lack of men's usual inhibitions against satisfying sexual desire by overpowering women.

Thornhill posits a psychological mechanism that calculates the individual man's net reproductive benefits from a potential rape, as determined by the likely genetic consequences in ancestral environments.³⁵⁵ The potential benefit was a child carrying his genes.³⁵⁶ The potential genetic costs included possible death or serious injury at the hands of the victim and her allies³⁵⁷ plus, perhaps, losses due to neglect of his children.

As some prominent evolutionary psychologists have recognized, the evidence supporting this hypothesis is far from adequate.³⁵⁸ To be sure, forcible copulation has been observed in some non-human species, and if carefully defined this concept is meaningful even in the lives of birds.³⁵⁹

³⁵² No one mentions this truism; scholars have focused instead on data about the incidence and prevalence of rape, which are less obvious and for most purposes more significant. See, e.g., Mary P. Koss, Christine A. Gidycz & Nadine Wisniewski, *The Scope of Rape: Incidence and Prevalence of Sexual Aggression and Victimization in a National Sample of Higher Education Students*, 55 J. CONSULTING & CLINICAL PSYCHOL. 162 (1987).

Thornhill and Palmer rebut the idea that some primitive societies have been literally "rape-free," but not the much more significant proposition that there are some very large variations in the rape rate from one culture to another. THORNHILL & PALMER, *supra* note 2, at 140–43.

³⁵³ For discussions of studies that shed light on some possible nonmotivational causes of rape, see generally, LALUMIÈRE ET AL., *supra* note 2; Drieschner & Lange, *supra* note 101; Vega & Malamuth, *supra* note 101.

³⁵⁴ See THORNHILL & PALMER, *supra* note 2, at 4, 55 (arguing that evolution explains why proximate causes such as culture exist).

³⁵⁵ The book discusses six "potential rape adaptations of men," THORNHILL & PALMER, *supra* note 2 at 64–78, and also devotes a chapter to an evolutionary explanation of rape victims' pain and anguish. *Id.* at 85–104.

³⁵⁶ *Id.* at 66.

³⁵⁷ *Id.*

³⁵⁸ See, e.g., SYMONS, *supra* note 118, at 284. Thornhill and Palmer acknowledge these disagreements and concede that the issue is still open. THORNHILL & PALMER, *supra* note 2, at 191.

³⁵⁹ For a discussion of the difficulties of distinguishing between "nonconsensual" and "consensual" sex in some species of animals, see SYMONS, *supra* note 118, at 277–78. But the distinction can sometimes be made. See LALUMIÈRE ET AL., *supra* note 2, at 31, 33. See

But Thornhill and Palmer mention only a couple of species—all insects—that are known to possess adaptations whose sole purpose is to facilitate sexual coercion, and these are all morphological rather than psychological.³⁶⁰ Human rape, unlike scorpionfly “rape,” is not a predictable consequence of a male’s sexual deprivation.³⁶¹

The rest of Thornhill’s evidence is also, as he concedes, too thin to justify any firm conclusions. On the genetic benefit side, one possibility is the standard “mate deprivation” hypothesis: rapists are men who lack alternative reproductive options either because women are not available or because, lacking resources, they are unattractive to women.³⁶² Thornhill and Palmer concede that there are problems with this theory, noting that rapists tend to “lack enduring and committed sexual relationships” rather than sexual access.³⁶³ They call for further research on rapists’ sex lives.³⁶⁴

Another possibility is that males have a “beauty-detection” mechanism specifically designed to maximize the genetic benefits of rape.³⁶⁵ For consenting sex, say Thornhill and Palmer, males appear to prefer females at the age of their “peak reproductive value” (future reproduction potential); rape victims’ ages, on the other hand, correlate “slightly better” with the age of “peak fertility” (early to mid-twenties).³⁶⁶ Again, Thornhill and Palmer requested further research on this, as well as on the possibility that rapists have higher sperm counts.³⁶⁷

generally id. at 31–58. Even when it can, the causes of human rape will not be identical to the causes of sexual coercion in other species because, for example, other species do not become intoxicated and do not believe “rape myths.” While the existence of forcible copulation among some non-human species does show that sexual coercion occurs in some species without cultural encouragement, this fact has little value in assessing the degree to which variable features of human culture increase the rape rate.

³⁶⁰ THORNHILL & PALMER, *supra* note 2, at 63–64.

³⁶¹ *Id.* Even in the animal world, forcible copulation cannot be universally explained as due to lack of access to mates. LALUMIÈRE ET AL., *supra* note 2, at 48–51. This is not to say that another evolutionary explanation cannot be found; only that the “mate deprivation” hypothesis requires exceptions or refinements.

³⁶² THORNHILL & PALMER, *supra* note 2, at 67.

³⁶³ *Id.* at 68–70.

³⁶⁴ *Id.* at 70.

³⁶⁵ *Id.* at 71.

³⁶⁶ *Id.* at 74.

³⁶⁷ *Id.* Concerning victims’ ages, they note that research should eliminate possible confounding variables such as differences in vulnerability at various ages. *Id.*; *see also id.* at 72 (why some genetically-motivated rapists might choose victims under twelve); *id.* at 74 (sperm counts). Thornhill and Palmer believe that raping a pair-bonded partner may be an unconscious sperm-competition tactic when the victim’s unwillingness is associated with infidelity, as evidenced by the fact that such rapes are particularly likely to occur after a breakup in which concern about infidelity is “directly implicated.” *Id.* at 77–78. They do

Thornhill and Palmer fail to demonstrate that potential rapists today are influenced by the genetic costs of rape in ancestral environments rather than by the personal costs in modern environments. They mention that rape rates rise during wars, when the risk of punishment declines,³⁶⁸ but this shows only that some potential rapists, like other potential criminals, respond to major changes in the likelihood of detection and punishment, a banal proposition. Thornhill and Palmer surmise that males may possess an adaptation that enables them to evaluate the vulnerability of a potential rape victim,³⁶⁹ but most aroused males do not rape vulnerable females, so the hypothetical adaptation would not suffice to explain rape. Obviously recognizing this, Thornhill and Palmer posit further possible adaptations and cues that may activate adaptations. They believe that a bad childhood environment (for example, an absent father) may function as such a cue.³⁷⁰ So, presumably, could any of the environmental factors that feminists or others have discerned.

If the direct-adaptation theory were merely a scientific hypothesis, coupled with a research agenda, skeptics would have no just cause for complaint.³⁷¹ To their credit, Thornhill and Palmer mention evidence on both sides of some of the issues that they discuss. But there is a large difference between the level of proof necessary to justify further research and the level necessary to demonstrate that evolutionary analyses are more enlightening than other kinds of research. Evolutionary psychologists have shown that they deserve a place at the table, but they haven't yet shown that they own the house. Thornhill and Palmer made confident, grandiose

not discuss possible alternative explanations such as increased anger and sexual frustration due to the same relationship problems.

Thornhill and Palmer also broach the possibility that men have an adaptation that promotes quicker arousal and ejaculation during rape (to reduce the possibility of detection by allies of the victim). Finally, they assert that the rape-adaptation hypothesis predicts that gaining physical control over an unwilling partner is sexually arousing because it facilitates rape. *Id.* at 75.

³⁶⁸ *Id.* at 66.

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 80–81.

³⁷¹ Many of Thornhill and Palmer's critics alleged that their theories were unscientific. See, e.g., EVOLUTION, GENDER, AND RAPE, *supra* note 105, at 182, 184–85, 222–23, 241–42, 248, 272, 383, 389. We see their point, but if the standard of comparison is previous motivational speculation, this accusation is grossly unfair. Thornhill and Palmer replied that portions of the book discussing possible rape-specific adaptations were presented as hypotheses for which the evidence was, as they had conceded, inconclusive. Palmer & Thornhill, *supra* note 344, at 251. This is true of many of their discussions of specific possible adaptations but not of the overall tenor of the book.

claims about the value of evolutionary perspectives, but as we will soon see their supporting arguments were often flimsy.

VI. RAPISTS' MOTIVES: WHY DO THEY MATTER?

The commonest stupidity, some say, is to forget what one is trying to do.³⁷² Why are debates about rapists' motives so fierce? Why is it necessary to resolve the perplexing issues created by possible unconscious motives, mixed motives, allegedly primary motives, and distinctions among motives, traits, and disinhibitors? Even without motivational questions, rape research is full of important, unresolved issues. Why add this additional layer of complexity? Rapists' goals are of course part of the causal network, but why treat them as extraordinarily important?

There are many possible answers to that question.

A. WHO DID IT?

By ascertaining the motive for a crime, police sometimes shorten their list of potential suspects. Accused of certain crimes—for example, perjury or murder—a suspect may say that he had no motive to do it. Something analogous occasionally occurs in a rape case—for example, evidence of sadism might affect the choice of suspects, or the unusually violent character of the rape might corroborate suspicions about a man who was known to have been under great stress or to have an explosive temper or an animus against the victim. But such commonsensical deductions do not require familiarity with academic theories about rapists' motives. It is difficult to imagine a competent detective who would exclude an otherwise plausible rape suspect on the ground, for example, that “Knutsen has no desire to dominate and control women sexually.”

B. MORAL CULPABILITY

People often evaluate an actor's culpability by reference to his motive. This practice is obviously sound in many contexts, and we will not try to assess its general validity. For our purpose, suffice it to say that none of the major schools of scholarly thought about rapists' motives bases its ethical conclusions on motivational distinctions. Freudians, while tending to be excessively lenient toward all rapists, made no motivational exceptions to that tendency. Feminists, much as they have emphasized nonsexual motives, never say that a sexually motivated rapist deserves greater public

³⁷² Lon Fuller & William R. Perdue, *The Reliance Interest in Contract Damages*, 46 YALE L.J. 52, 52 (1936) (attributed to Nietzsche).

sympathy than one who raped because he wanted to dominate his victim. Evolutionary psychologists, while stressing that rapists are sexually motivated, do not conclude that they therefore deserve lenient treatment.

C. SHOULD COURTS ADMIT EVIDENCE OF THE DEFENDANT'S OTHER RAPES?

In many criminal cases, the most important legal issue is whether to admit the prosecution's evidence that the defendant has committed other crimes.³⁷³ The traditional rule is that evidence of a person's character (such as his prior crimes) is not admissible "to prove the character of a person in order to show action in conformity therewith."³⁷⁴ In other words, the prosecution may not use the defendant's other crimes as evidence that he has a criminal character and therefore might well have committed the charged crime. The rule's main rationale is that the probative value of the evidence is outweighed by the danger that jurors will be unduly influenced or confused by the testimony about other alleged crimes.³⁷⁵

Such evidence may be admitted, however—unless the judge decides that it is too prejudicial—for non-character purposes "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident"³⁷⁶ Although judicial interpretations of these categories have been extremely varied, the soundest approach usually is to treat them as examples of some types of evidence that may not involve character reasoning rather than as categorical "exceptions" to the general rule.³⁷⁷

Rejecting this approach, Congress decided that other-crime evidence should be freely admissible in sexual assault and child-molestation cases

³⁷³ See generally David P. Bryden & Roger C. Park, "Other Crimes" Evidence in Sex Offense Cases, 78 MINN. L. REV. 529, 565 (1994). For an outstanding discussion of character evidence in general, see Roger C. Park, *Character at the Crossroads*, 49 HASTINGS L.J. 717 (1998).

³⁷⁴ FED. R. EVID. 404(b).

³⁷⁵ Bryden & Park, *supra* note 373, at 561–65.

³⁷⁶ FED. R. EVID. 404(b).

³⁷⁷ See generally Bryden & Park, *supra* note 373, at 534–56. Admittedly, some reasonable decisions admitting other-crime evidence cannot be justified on this basis. A leading example of this is courts' willingness to admit evidence of a prior crime whose *modus operandi* was both highly unusual and similar to that of the charged crime. In such cases, character reasoning is tacitly allowed, but in well-decided cases the probative value of the evidence is enhanced by the striking similarity of the crimes. See generally *id.* at 544–46. Bryden and Park argue that the defendant's prior rapes should be more freely admissible in acquaintance-rape than in stranger-rape cases, though they acknowledge that this would create a novel exception to the rule against character reasoning. *Id.* at 575–83.

tried in federal courts; in 1995, these became the only federal crimes to which the rule against character reasoning did not apply.³⁷⁸ Some state courts have copied the federal law.³⁷⁹

Evidence law scholars, including some feminists, criticized this development.³⁸⁰ Writing in the *Harvard Law Review*, Katherine Baker proposed a different reform, based on a typology of rapists' motives.³⁸¹ One of the traditional grounds for admitting other-crime evidence is to show the defendant's motive for committing the crime. For example, suppose that Joe is accused of murdering Fred. The prosecution might be allowed to introduce evidence that Fred had witnessed another murder by Joe; the legitimate purpose of the evidence would be to show that Joe had a motive to commit the charged murder, not to show that he is a murderer.³⁸² Baker suggests that motive evidence can play an analogous role in rape cases. She believes that evidence of the defendant's other alleged rape or rapes should be admissible whenever the "predominant" motives of the charged crime and the other crime were identical:

For too long, juries have essentially ignored the question of why men rape. Instead, juries have assumed, wrongly, that rapists rape because they are crazy and because women ask for it. This neglect of the "why" question is somewhat odd, given the importance of motivational questions in criminal trials. For many crimes, of course, motive is obvious. People rob banks, snatch purses, cheat on their taxes or blackmail others for money or personal gain. For some crimes however, particularly crimes that do not involve pecuniary reward, motive can be much more difficult to discern. It is for this reason that . . . [the federal rule on uncharged crimes] incorporates a motive exception into the general rule excluding prior act evidence. Understanding why a defendant might have done an act is critical to determining whether he did it. If prior acts indicate motive that is not otherwise obvious, those prior acts may be admissible under the motive exception³⁸³

Her list of rapists' predominant motives includes sex;³⁸⁴ proof of "strength, virulence, and masculinity to other men;"³⁸⁵ creation of "power over, or distinction from, other men;"³⁸⁶ establishing "control over their

³⁷⁸ Baker, *supra* note 2, at 569.

³⁷⁹ *Id.* at 606.

³⁸⁰ *E.g., id.* at 564–65.

³⁸¹ *Id.* at 598–624.

³⁸² Bryden & Park, *supra* note 373, at 542.

³⁸³ See generally Baker, *supra* note 2, at 565.

³⁸⁴ *Id.* at 566, 599, 603.

³⁸⁵ *Id.* at 606–07.

³⁸⁶ *Id.* at 607. These men rape not "because they want or need . . . [the sex or the woman] but because . . . [the victim] belongs to a man whom they wish to insult." *Id.* That is "why rapes during war time often take place in public or are committed in front of civilian

victims;”³⁸⁷ anger or sadism;³⁸⁸ or feeling “powerless and frustrated in the world” (in which case the prior rapes, if sufficiently frequent, should be admissible to show that for the defendant rape “is a special means of violent expression”).³⁸⁹

To illustrate how her proposal would work, Baker mentions rapes by soldiers:

[The other rapes] should be admitted to show that these men use rape as a tool to denigrate the enemy. The rapist engaged in such a war has added incentive to rape because his rape will bring him a benefit that consensual sexual encounters, or rapes outside of the context of war, will not. This motive does not indicate that all prior acts of rape should come in against a soldier. The prior acts should only come in to the extent that they show that the soldier used rape to conquer the enemy. Prior acts suggesting that the accused raped previously—because he wanted sex or because he wanted the status that would inure to him in a group—are irrelevant under this theory.³⁹⁰

Why not adopt the same approach in, say, theft cases? Baker contends that this is unnecessary: While rapists’ motives are often unclear, “[f]or

witnesses, and it explains why rape and war have gone hand in hand since there has been war.” *Id.* at 607–08. The same is true, she says, of many interracial rapes. *Id.* at 608. She does not provide evidence that either of these types of rapists do not “want or need” sex, nor does she discuss alternative explanations of rapes in front of witnesses such as the natural tendency of females in conquered nations to hide in their families’ homes, the possible inconvenience of taking the victim to a more private location, rapists’ likely assumption that crimes against enemy civilians will not be punished even if done in front of enemy civilians and the likelihood that the soldier-rapists want sex but enjoy the ancillary pleasure of humiliating enemy men.

³⁸⁷ *Id.* at 610. She says that this explains “much” marital rape: The husband rapes in order to assert “control over a wife who is somehow defying his command.” *Id.* at 611. One example is when the wife has annoyed him; another is when she doesn’t want to have sex. *Id.* Although it is conceivable, we have found no evidence that husbands rape their wives “primarily” as punishment for the latter’s annoying spending habits, nagging, or other nonsexual behavior. It seems more plausible that the annoyance serves as a disinhibitor of a desire for immediate sex. After quoting some men who say that women have great power (in context, apparently a reference to their power to determine whether sex occurs), Baker claims that for these men “rape is different than sex” because they “would rape to assert control, albeit sexual, over a very specific subject—their victim.” *Id.* at 610–11. But why would a man care whether he has “sexual control” over a woman if not for sex?

³⁸⁸ *Id.* at 611.

³⁸⁹ *Id.* at 619.

³⁹⁰ *Id.* at 615. She recognizes that soldier-rapists may have mixed motives, but at one point implies that she does not regard sex as one of them. *See id.* at 616 n.297. In the My Lai massacre in Vietnam, “The soldiers wanted sex because it was a good, like any other, that they could take from the enemy.” *Id.* at 606. This is ambiguous as to whether they also sought sexual pleasure, but she had previously said that the commoditization of sex in our culture makes men feel entitled to treat sexual desire as something to be satisfied, like hunger, whenever it arises. *Id.* at 603, 604, 606.

many crimes . . . [such as theft] motive is obvious.”³⁹¹ She is right that a thief’s conscious desire, to obtain property, is usually obvious. But isn’t that also true of the rapist’s conscious desire to obtain sex? (He may have multiple conscious desires, but so may thieves and other criminals.) A rapist’s motive becomes less than obvious only if we mean possible additional (and perhaps unconscious) desires. But if that is the meaning then other criminals’ motives may also be diverse and sometimes obscure. *Pace*, Professor Baker, one can easily draw up a list of thieves’ possible ulterior motives: thrills, envy, sex (stealing women’s underclothes),³⁹² a schoolboy prank, proving masculinity (“I wanted to be accepted as part of the gang”), status (“the money was just a way of keeping score”), anger (one of the “motives” in Baker’s rape typology), and hatred (for instance, during a war). We could add, as Baker does for rape, a category designed to cover men who steal “because they feel powerless and frustrated in the world.” Murder, arson, kidnapping, and nonsexual assault could be similarly divided into a series of disparate “predominant motives.” This would eviscerate the remnants of the rule against character reasoning—a result that Baker hopes to avoid.

Her proposal would also be exceedingly difficult to administer. Under existing law, proof of the defendant’s motive usually is confined to a single, conscious goal.³⁹³ As we have seen, there is no expert consensus about rapists’ possibly mixed and unconscious motives, nor about which are “predominant.” One shudders at the prospect of trial judges struggling to decide whether one of the defendant’s alleged rapes was predominantly for sexual gratification, while another was predominantly meant to prove the rapist’s masculinity, and a third was to “control the victim” or to express a feeling of powerlessness.³⁹⁴ It seems likely that in most cases the judge would conclude that the crimes had the same motive, would admit the evidence, and then would instruct the jury, unrealistically, to consider the other crime only as evidence of the defendant’s motive, not his criminal character.³⁹⁵

³⁹¹ *Id.* at 598.

³⁹² This is sometimes a precursor of rape. WEST ET AL., *supra* note 143, at 36, 39, 48, 53, 55.

³⁹³ See, e.g., Bryden & Park, *supra* note 373, at 542–44 (discussing examples of single-goal motives).

³⁹⁴ The *modus operandi* exception, though a matter of degree and sometimes interpreted too broadly, is more objective and so easier to apply than a motivational criterion. Some courts exclude *modus* evidence in consent-defense cases, an irrational rule whose abolition would achieve some of the results that Baker seeks. See *id.* at 545–46.

³⁹⁵ This problem is less disturbing in, for example, a murder case in which there is no eyewitness and no apparent motive for the defendant to have killed the decedent. Evidence

D. PREDICTING, TREATING, AND PREVENTING SEXUAL AGGRESSION

Knowing someone's motive sometimes enables us to predict his behavior. For rapists, predictions about the risk of recidivism are made in several contexts including sentencing, parole, and civil commitment of "sexually violent predators." Many scholars have studied this complex subject.³⁹⁶ It seems clear that as a rule, objective ("actuarial") data—such as the offender's criminal history, marital status, and scores on measures of psychopathy and penile arousal to rape scenes—are superior to subjective clinical assessments of rapists' motives.³⁹⁷

Motivational analyses are also irrelevant to sensible decisions about most treatment options. Despite the optimism of some scholars,³⁹⁸ no treatment has won general approval.³⁹⁹ Freudians regard excavation of the analysand's unconscious motive as a prerequisite to successful therapy.⁴⁰⁰ Psychoanalysts do sometimes uncover an unconscious motive for a patient's bizarre conduct.⁴⁰¹ But no modern scholar claims that the long and expensive process of classical psychoanalysis can appreciably affect the

that the decedent had witnessed another murder by the defendant would be much more valuable than most prior-crime evidence and would not require character reasoning, though the jury might misuse it for that purpose. Without the evidence, a conviction might be impossible to obtain. In a rape case, by contrast, the victim almost always testifies that the defendant was the perpetrator. To be sure, there are some cases in which the defendant seems so attractive that jurors wonder why he "needed to rape." See CLARK & LEWIS, *supra* note 71, at 143. But a prior rape usually would not answer that question; in most cases its only value would be to show either a similar *modus operandi* or merely that for whatever reason he does sometimes rape—the latter, at least, is character reasoning.

When the defendant's attractiveness seems to be a potential obstacle to conviction, perhaps an expert witness should be allowed to testify that attractive men do sometimes rape. See Aviva Orenstein, *No Bad Men!: A Feminist Analysis of Character Evidence in Rape Trials*, 49 HASTINGS L.J. 663, 707 (1998) (arguing for the use of expert witnesses to, for instance, "refute the myth that only desperate, poor, sex-starved, anti-social deviants commit rape").

³⁹⁶ See generally LALUMIÈRE ET AL., *supra* note 2, at 161–69.

³⁹⁷ See *id.* at 166–69; Robert A. Prentky, *A 15 Year Retrospective on Sexual Coercion: Advances and Projects*, 989 ANNALS N.Y. ACAD. SCI. 13, 21–22 (2003).

³⁹⁸ E.g., Cohen et al., *supra* note 12, at 124.

³⁹⁹ See, e.g., Koss, *supra* note 100, at 106 (noting that current treatment methods have only "modest impacts at significant cost"); Shadd Maruna & Ruth E. Mann, *A Fundamental Attribution Error? Rethinking Cognitive Distortions*, 11 LEGAL & CRIMINOLOGICAL PSYCHOL. 155, 166 (2006) (arguing that the popular technique of insisting that sex criminals take full responsibility for past crimes is overrated and may even be counterproductive)..

⁴⁰⁰ "In order to make headway in criminology—to prevent crimes and treat criminals effectively . . . we must determine the motivation behind the criminal act." DAVID ABRAHAMSEN, *THE PSYCHOLOGY OF CRIME* 185 (1960).

⁴⁰¹ See, e.g., Westen, *supra* note 34, at 347.

rape rate.⁴⁰² If an incarcerated rapist is hostile to women, or has harmful opinions about sex roles or rape, this may well have been one of the causes of the rape. But even assuming *arguendo* that attitudinal therapy might be effective, it need not presume a nonsexual motive: the treatment would be equally appropriate if his goal was sexual and his opinions or attitudes functioned as causally necessary disinhibitors or supplemental motives. Indisputably, rapists dominate, control, and wield power over women. Whether these are desired as ends or only as means is an intriguing but for policy purposes pointless question.⁴⁰³

Trying to reduce post-release recidivism by convicted rapists, some states have authorized chemical treatments, most often anti-androgens, designed to lower testosterone levels.⁴⁰⁴ Opponents of this “chemical castration” sometimes argue that, since rapists are not sexually motivated, the treatments cannot prevent recidivism.⁴⁰⁵ Thornhill and Palmer cite this misguided argument as an example of the potentially adverse effects of

⁴⁰² Feminists usually propose cultural changes instead. *See, e.g.*, TRANSFORMING A RAPE CULTURE (Emilie Buchwald, Pamela Fletcher & Martha Roth, eds., 1993). For incarcerated rapists, various treatments have been tried, but no consensus exists in favor of any of them. NAT'L RES. COUNCIL, *supra* note 108, at 134. For an unusually optimistic review of the literature, see W.L. Marshall & W.D. Pithers, *A Reconsideration of Treatment Outcome with Sex Offenders*, 21 CRIM. JUST. & BEHAV. 10 (1994). These authors believe that treatments of sex offenders can be effective if they are “comprehensive, cognitive-behaviorally based, and include a relapse-prevention component.” *Id.* at 10. For discussion of a nontraditional alternative to criminal sanctions, see Hopkins & Koss, *supra* note 63.

⁴⁰³ Some scholars have proposed variable treatments for rapists with different clusters of “implicit theories,” revealed during interviews, that “underlie rapists’ offense-supportive beliefs/feelings/motives.” Anthony R. Beech, Tony Ward & Dawn Fisher, *The Identification of Sexual and Violent Motivations in Men Who Assault Women: Implications for Treatment*, 21 J INTERPERSONAL VIOLENCE 1635, 1649–51 (2006). In these authors’ sample of incarcerated rapists, the most common implicit theory, present in 79% of the forty-one cases, was a “generalized hostility toward others,” manifested by viewing “other people as being unreliable and [as] having treated them abusively and unjustly,” which “resulted in entrenched feelings of resentment and anger and the adoption of retaliatory interpersonal strategies.” *Id.* at 1641. Other implicit theories were “Women as Sex Objects” (51%); “entitlement” (belief that males are entitled to sex if they want it) (44%); “Male Sex Drive is Uncontrollable” (15%); and “Women Are Unknowable and/or Women Are Dangerous” (9%). *Id.* at 1641–43. Whatever their value in determining appropriate treatments, *see id.* at 1649–51, most of these attitudes are not precisely goals, though they are suggestive of goals and may have been disinhibitors. One with a generalized hostility may have a retaliatory goal, but he may simply or also want sex, as the other findings seem to indicate. That issue need not be resolved in order to try to reduce his hostility and resentment on the assumption that they have some sort of causal role.

⁴⁰⁴ *See generally* LALUMIÈRE ET AL., *supra* note 2, at 132–34, 174–75, 177.

⁴⁰⁵ For examples, *see* Thornhill & Palmer, *supra* note 2, at 165–67.

feminists' failure to recognize that rapists are sexually motivated.⁴⁰⁶ We agree that the "not about sex" objection is specious. If the treatments reduce both sexual desire *and* alleged "nonsexual" desires such as the urge to dominate women, a possibility that no one seems to have considered, then rapists' motives are irrelevant. In any event the efficacy of a treatment should be determined empirically, not by deductions from a questionable motivational premise. Much empirical research has been done, and some of the findings raise serious doubts about the value of chemical treatment programs. In the first place, the drugs have unpleasant side effects; most men strongly dislike taking them.⁴⁰⁷ In addition, professionals have argued that the treatment is inappropriate for the substantial proportion of rapists who have committed diverse nonsexual offenses.⁴⁰⁸ The effects of anti-androgen drugs are completely reversible whenever the rapist, after his release, either discontinues usage or takes widely available drugs that counteract their effects.⁴⁰⁹ While the question is still open, studies of post-release recidivism by treated and untreated rapists do not inspire much confidence in this type of treatment.⁴¹⁰ Given all these implementation problems, the obstructive role of nonsexual motivational theories may have been a relatively minor impediment.

Under "hate crime" laws, a criminal's sentence must or can be increased if his crime is found to have been motivated by an animus against the victim's racial, ethnic, or religious group; many of these laws now include additional categories such as sexual orientation and (more often) gender.⁴¹¹ Many feminists advocate the use of hate crime laws in rape cases.⁴¹² They argue that there are many similarities between gender-

⁴⁰⁶ *Id.*

⁴⁰⁷ LALUMIÈRE ET AL., *supra* note 2, at 174–75.

⁴⁰⁸ *Id.* at 174.

⁴⁰⁹ *Id.* Testosterone and other anabolic steroids are commonly used by body-builders and other athletes and "are easily available from the illicit market." *Id.*

⁴¹⁰ *See id.* at 175.

⁴¹¹ For thoughtful discussions of the varying provisions and general desirability of such laws, compare FREDERICK M. LAWRENCE, PUNISHING HATE: BIAS CRIMES UNDER AMERICAN LAW (1999) (pro) with JAMES B. JACOBS & KIMBERLY POTTER, HATE CRIMES: CRIMINAL LAW & IDENTITY POLITICS (1998) (con). Some more recent developments are covered in Anna L. Bessel, Note, *Preventing Hate Crimes Without Restricting Constitutionally Protected Speech: Evaluating the Impact of the Matthew Shepard & James Byrd, Jr. Hate Crimes Prevention Act on First Amendment Free Speech Rights*, 31 HAMLINE J. PUB. L. & POL'Y 735 (2010). As virtually every American state has enacted some such law and space does not permit a more extensive discussion, or analysis is limited to whether the laws should be applied in rape cases.

⁴¹² *E.g.*, Kathryn M. Carney, Note, *Rape: The Paradigmatic Hate Crime*, 75 ST. JOHN'S L. REV. 315 (2001).

animated violence and more traditional hate crimes: for example, the characteristics of the targeted group are immutable;⁴¹³ the victims are interchangeable (since the animus is against their group rather than themselves);⁴¹⁴ the crime is often committed in an exceptionally violent fashion;⁴¹⁵ victims are reluctant to report the crime (because of shame or a sense of futility);⁴¹⁶ the individual victim's suffering is very severe;⁴¹⁷ and the attack often causes anguish and fear among other members of the group.⁴¹⁸

Even if the analogy to more traditional hate crimes is valid in at least some respects, the proposal to treat rape as a hate crime is unwise. It is important to bear in mind that hate crime⁴¹⁹ issues are not abstract questions; they are about sentencing policy. The "key factor" in a hate crime case is the perpetrator's motive.⁴²⁰ Should that affect a rapist's sentence? As we have seen, the existence and causal primacy of ulterior motives in rape cases are usually uncertain.⁴²¹ Given the prosecution's burden of proof, the bold speculation that permeates much of the motivational literature is unlikely to satisfy appellate courts. In reviewing findings of a gender animus, they will probably⁴²² rely heavily on two objective factors: the brutality of the rape (including any unusually humiliating acts) and the rapist's previous crimes against women.⁴²³ Of

⁴¹³ See *id.* at 340–41.

⁴¹⁴ See *id.* at 340–43.

⁴¹⁵ See *id.* at 344–46.

⁴¹⁶ See *id.* at 343.

⁴¹⁷ See *id.* at 344.

⁴¹⁸ See *id.* at 343.

⁴¹⁹ Because crimes motivated by hatred for the victim as an individual are not covered by these laws, Lawrence prefers the term "bias crimes." LAWRENCE, *supra* note 411, at 9. But of course not all crimes motivated by bias (for example, pro- or anti-war) are covered; we believe that the popular "hate crime" label is less misleading.

⁴²⁰ LAWRENCE, *supra* note 411, at 3. Lawrence says "[a] bias crime [the term he prefers to "hate crime"] is a crime committed as an act of prejudice." *Id.* at 9. He distinguishes this from most crimes, which are either instrumental to a desire for some ordinary goal such as obtaining money (e.g., an assault on a bank teller) or due to animosity toward a specific individual (crimes motivated by a desire for revenge against him or her as an individual). *Id.* Lawrence favors the inclusion of "gender" in hate (or "bias")-crime laws. *Id.* at 14–17. But concerning rape he says only that legislatures should consider "whether the crime is primarily one with gender-based motivation." *Id.* at 17.

⁴²¹ To at least some degree, this problem is inherent in motivational inquiries, including those in, for example, interracial assaults.

⁴²² There is as yet insufficient caselaw on rape as a hate crime to prove our point.

⁴²³ Another likely factor is the rapist's use of abusive language toward the victim: "bitch," "filthy whore," and the like. But what if he is also abusive toward vulnerable men

course, trial judges are already empowered to take account of these aggravating factors when they fix sentences, without a prior determination of the convicted rapists' motives; similarly, legislatures presumably take account of them in fixing the maximum sentence for rape. (It is no secret that rapists sometimes inflict grievous injuries, may have committed prior offenses, and may have terrified other potential victims.) All else being equal, we see no reason to impose longer rape sentences on men who seem to have an animus against women than on those who are "merely" selfish, callous, and aggressive sexual (and often general) predators. In either case, the rapist may cause great anguish to his victim and other women; whether potential victims fear him will be determined by what he did, where he did it, and how much publicity it received—not by his motive.

As a technique for enhancing sentences, the concept of hate crimes is most attractive in cases in which the perpetrator would otherwise be guilty, at most, of a minor offense whose maximum sentence, though perhaps reasonable in nearly all other cases, may be grossly inadequate when the crime was clearly motivated by, for example, a racial animus. Consider, for example, burning a cross in an African-American family's yard (vandalism or trespass).⁴²⁴ The effects of this act on the immediate victims, other African Americans, and sometimes an entire city's racial tensions, are vastly greater than those that the legislature had in mind when it fixed the low maximum penalty. This is not true of rape, which is one of the most severely punished crimes.

Standing alone, a collection of rape (or other) cases in which the sentence seems to have been much too light proves little; it may reflect only the exigencies of plea bargaining, including genuine weaknesses in the prosecution's evidence. The average time served by convicted rapists is much lower than for homicide but higher than for nonsexual assault and other common crimes.⁴²⁵ If in a particular jurisdiction the sentencing laws or practices are too lenient in rape cases, the legislature can study and remedy the problem more systematically than the courts can. For those who believe that rape by its very nature reveals an anti-female animus, and that it has severe effects on women's progress toward equality, the best solution may be to consider raising the minimum sentence, taking due account of the minimums for other crimes. This seems preferable to

who refuse to comply with his various nonsexual demands? What if his criminal record suggests that he has an antisocial personality and victimizes both sexes?

⁴²⁴ See *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992). We cannot here do justice to the First Amendment issues that arise in some hate crime cases such as *R.A.V.* and that have been thoroughly discussed elsewhere. See generally LAWRENCE, *supra* note 411, at 80–109.

⁴²⁵ Blumstein et al., *supra* note 81.

addressing the problem indirectly by sporadic and probably inconsistent⁴²⁶ sentence enhancements based on findings about individual rapists' motives.

Time and again, proponents of motivational theories have tried but failed to show that their ideas provide new insights about rape-prevention policies. Groth, for example, argued that his nonsexual motivational typology enabled him to dispel "myths" about rape prevention. In discussing whether pornography causes rape, he tried to resolve the empirical issue by deductions from his motivational typology. He began by stating that "[p]ornography does not cause rape; banning it will not stop rape."⁴²⁷ But a few lines later he modified this view:

[W]e regard something as pornographic when it represents some type of sexual encounter in which the participants do not occupy the status or position of consent, power, or control. In this respect, pornography is a medium equivalent to the crime of rape. It is the sexual expression of power and anger. From a cultural perspective, pornography is one of the dimensions that must be addressed in efforts to resolve the complex problems of rape⁴²⁸

What this seems to mean is that not all sexually explicit materials are a cause of rape, but they may be if they depict coercive or other "unequal" encounters. On that theory, one might decide to censor only scenes that treat women as subordinate. But one who believes that rapists are sexually motivated could arrive at the same result if he believed that rapists' willingness to use instrumental force is affected by cultural messages, including those in pornography. Such a scholar might suppose, for example, that pornography depicting women as enjoying rape creates or reinforces a criminogenic myth.⁴²⁹ One might conclude that even pornography that contains no rape scenes, and in which the parties are portrayed as equals, may encourage a potential rapist's deluded belief that women secretly crave sex with virtual strangers. That hypothesis is certainly consistent with a sexual theory about rapists' motives. Did Groth

⁴²⁶ Although it is too early to say that this possibility has become a reality in the context of sentence-enhancement of convicted rapists, appellate opinions about "animus" in other contexts, and the absence of a cogent rationale for variable sentences based on rapists' motives rather than their deeds provide substantial grounds for pessimism. See J. Rebekka S. Bonner, Note, *Reconceptualizing VAWA's "Animus" for Rape in States' Emerging Post-VAWA Civil Rights Legislation*, 111 YALE L.J. 1417 (2002). According to one study, many prosecutors of both sexes find the idea that rapists are motivated by an animus against women puzzling or unnecessary, though that may be due to its legal novelty. See generally Beverly A. McPhail & Diana M. DiNitto, *Prosecutorial Perspectives on Gender-Bias Hate Crimes*, 11 VIOLENCE AGAINST WOMEN 1162 (2005).

⁴²⁷ GROTH, *supra* note 30, at 9.

⁴²⁸ *Id.*

⁴²⁹ See notes 238–242 and accompanying text.

mean to imply that this implicit theme is harmless because rapists' principal desire is for revenge or power rather than sex?

An anti-censorship thinker may believe that the causes of rape are so embedded in the perpetrators' psyches, or general American culture, that hard-core pornography's influence is either relatively trivial or ineradicable without massive social costs.⁴³⁰ This too would be consistent with both sexual and nonsexual motivational theories. We conclude that Groth's motivational theories, even if true, do not improve our understanding of what to do about pornography, a complex empirical, political, and legal issue.⁴³¹

Thornhill and Palmer are confident that evolutionary explanations have "unique power" and "enormous practical potential" to reveal effective anti-rape strategies.⁴³² In support of this claim, they note, first, that evolutionary theory is more all-encompassing than social-scientific theories about "proximate" (immediate) causes such as culture; evolution, they contend, is the ultimate cause of these causes.⁴³³ Of course, the same could be said about any public policy problem: an evolutionary explanation is more all-encompassing than the explanations of, for example, specialists in economics, health care, or Middle Eastern policies. This does not necessarily mean that anyone will obtain new practical insights by studying evolutionary psychology, even assuming that all of its hypotheses are true. As Thornhill and Palmer acknowledge, ultimate causes cannot be changed. They believe, however, that knowledge of ultimate causes can play a leading role in identifying proximate causes, because some alleged proximate causes are inconsistent with evolutionary principles.⁴³⁴

They provide hardly any evidence that this is a fruitful approach to rape prevention. None of their ideas about how to prevent rape are new (except in minor details) and none become much more persuasive in light of an evolutionary analysis. For example, they want to curtail unsupervised dating in isolated environments such as homes, automobiles, and sexually integrated dormitories.⁴³⁵ Assuming for the sake of argument that this

⁴³⁰ See, e.g., POSNER, *supra* note 115, at 381 (arguing that the diversion of scarce law enforcement resources from other tasks is not warranted by proven effects of pornography).

⁴³¹ For a meta-analysis of the voluminous research on pornography's effects, see Neil M. Malamuth, Tamara Addison & Mary Koss, *Pornography and Sexual Aggression: Are There Reliable Effects and Can We Understand Them?*, 11 ANN. REV. SEX RES. 26 (2000). See generally LALUMIÈRE ET AL., *supra* note 2, at 146–50.

⁴³² THORNHILL & PALMER, *supra* note 2, at 12–13.

⁴³³ *Id.* at 4, 12, 153–54.

⁴³⁴ *Id.* at 4–5.

⁴³⁵ *Id.* at 185–86.

bravely old-fashioned proposal is wise and politically feasible, why do Thornhill and Palmer think that it illustrates the value of evolutionary analyses? Irrespective of their motives, rapists usually need isolated victims. The issue is whether the rape-prevention advantages of sex segregation (or parental supervision) in a particular context are outweighed by other values, particularly liberty and gender equality. Thornhill and Palmer balance the interests differently from many modern Americans, but evolutionary theories add nothing to their case.

Agreeing with feminists, Thornhill and Palmer say that we should have more female lawmakers and law-enforcers, but they offer a different justification: that men and women have evolved different attitudes toward rape.⁴³⁶ Maybe they have, although the more pedestrian explanation that the perpetrators are male and the victims usually female is more certainly true. The conventional justifications for gender diversity—enhanced career opportunities for women and elimination of official sexism—are amply sufficient, so again evolutionary theory is superfluous. We don't need to know *why* men and women tend to have different attitudes toward rape in order to recognize that they often do and to reach the obvious conclusions.

Thornhill and Palmer believe that rearing boys in environments with enduring personal relationships, and particularly live-in fathers to teach them how to behave toward women, “might well” reduce the incidence of rape.⁴³⁷ Without relying on evolutionary theories, other authors have defended the traditional belief that fathers play an important role in socializing boys.⁴³⁸ Thornhill and Palmer speculate that this may be traceable—like all proximate causes of conduct—to adaptations,⁴³⁹ but they give no reason for supposing that evolutionary research will enhance our understanding of the value of paternal guidance or of how to ensure that it exists.

Thornhill and Palmer mention the tendency of males to misconstrue female behavior, unreasonably perceiving signs of sexual interest. They believe that this tendency may have been adaptive and propose to warn

⁴³⁶ *Id.* at 159.

⁴³⁷ *Id.* at 154, 176–77.

⁴³⁸ *E.g.*, DAVID T. LYKKEN, *THE ANTISOCIAL PERSONALITIES* (1995). Thornhill and Palmer say that “[e]volutionary theory would be crucial [to research on this question], since it predicts that the developmental events of interest will occur in response to specific cues that, in our history as a species, were most reliably correlated with reduced consensual sex with females.” THORNHILL & PALMER, *supra* note 2, at 154. But they do not explain why the existing literature about the father's role is inadequate nor why evolutionary research is the best way to fill any gaps.

⁴³⁹ THORNHILL & PALMER, *supra* note 2, at 174–75.

teenagers about it.⁴⁴⁰ The "not about sex" dogma, if interpreted to mean that rapists feel no sexual desire, may pose a problem. But Thornhill and Palmer furnish no evidence that feminist teachings about rapists' motives have made women more careless.⁴⁴¹ We doubt that many women have been raped because, having been taught that rapists want power rather than sex, they inferred that sexually provocative behavior, in an isolated place, with no intention of consensual intercourse, is never dangerous. Most types of risky behavior—for instance, going to a stranger's apartment, hitchhiking,⁴⁴² becoming intoxicated in the wrong circumstances,⁴⁴³ or associating with the kind of man prudent women would avoid—are dangerous because they increase the woman's vulnerability—irrespective of the rapist's motive.

As another example of the utility of evolutionary psychology, Thornhill and Palmer mention the old Freudian notion that some women unconsciously wish to be raped. They believe that this idea never would have been accepted if psychologists had realized that rape nullifies women's adaptive desire for careful mate selection.⁴⁴⁴ Perhaps, but couldn't an evolutionary psychologist posit that women sometimes test men's genetic fitness by mild resistance, consciously sincere but unconsciously only token?⁴⁴⁵

Thornhill and Palmer's other efforts to deduce public policy from evolutionary concepts are equally unhelpful. Calling for further research, they declare that, "Evolutionary theory points to the need to discover the

⁴⁴⁰ *Id.* at 175–76, 179–83.

⁴⁴¹ The relationship between particular forms of victim imprudence and rape has been analyzed elsewhere. *See, e.g.,* Bryden & Lengnick, *supra* note 52, at 1328–77. In evaluating Thornhill and Palmer's argument, we would exclude female conduct that (1) is equally dangerous if rapists are not sexually motivated, or that (2) while it may increase the statistical likelihood of rape, is something that a reasonably prudent and well-informed woman would not regard as too dangerous. Dating men, attending coeducational schools, and having premarital intercourse are among the many examples. With these exclusions, the list of behaviors that teenage girls might usefully be warned against becomes very short and obvious. In any case, it seems sufficient to describe the danger without controversial speculation about its possible evolutionary origin, as parents have done for ages.

⁴⁴² Bryden & Lengnick, *supra* note 52, at 1365–66.

⁴⁴³ *Id.* at 1347–51.

⁴⁴⁴ THORNHILL & PALMER, *supra* note 2, at 183. Researchers have found that rape fantasies are common among women, but that they are not associated with sexual victimization. Zurbriggen & Yost, *supra* note 272, at 289.

⁴⁴⁵ This has in fact been suggested. LALUMIÈRE ET AL., *supra* note 2, at 89. A cultural theory about token resistance is that in a culture that prizes female sexual restraint, women sometimes must feign reluctance in order to preserve their reputations and self-esteem. The debate would then be about whether that phenomenon is ultimately due to adaptations.

factors that affected the benefits and costs of rape to adult males in human evolutionary history.”⁴⁴⁶ Does this mean that the prospect of imprisonment cannot deter rapists unless it resembles one of the risks of rape in ancestral environments? What possible cost of rape in ancestral environments would tell us something new about the much-studied subjects of deterrence and sentencing?⁴⁴⁷

Finally, Thornhill and Palmer contend that “the reason the movement to reform rape laws has met with only limited success is that the reformers are trying to change attitudes toward rape in the absence of an understanding of the evolved psychological mechanisms that produce those attitudes.”⁴⁴⁸ They suggest that the main impediment to reforms may have been male psychological adaptations, specifically men’s suspicious attitude toward uncorroborated rape accusations.⁴⁴⁹ This suspicion, they believe, can be traced to men’s inability to know for certain that they are the true fathers of their ostensible offspring.⁴⁵⁰ If another man sired the child, then the putative father’s genetic interests would be disserved by his investment in rearing it. (From a genetic standpoint, he should abandon his mate and find one who is more faithful.) An acute fear of cuckoldry was therefore adaptive, and it explains men’s notoriously extreme sexual jealousy. That adaptation, say Thornhill and Palmer, may be the unconscious motive behind men’s reluctance to believe rape reports—except when the circumstances nullify the possibility that the encounter was consensual, as they do when the perpetrator was a stranger to the victim or used extreme force. That may be why male lawmakers devised various rules of traditional rape law such as the requirement that the victim’s testimony be corroborated by other evidence; the (pre-shield law) rules allowing the

⁴⁴⁶ THORNHILL & PALMER, *supra* note 2, at 154.

⁴⁴⁷ Thornhill and Palmer posit that the best deterrents of rape would be “environmental conditions that were particularly severe obstacles to the reproductive success of our ancestors of the same age and the same sex.” *Id.* at 164. A long incarceration, for example, “at least partially removes the offender from the everyday male–male status pursuits that young men spend so much time practicing.” *Id.* at 165. This may come as a surprise to those who have described rivalries among prison gangs. Thornhill and Palmer give no examples of improved evaluations of deterrence, sentencing practices, or prison management based on evolutionary insights.

⁴⁴⁸ *Id.* at 156.

⁴⁴⁹ “[W]e hypothesize that these male psychological adaptations are the main obstacles to attempts to reform rape laws.” *Id.* at 157.

⁴⁵⁰ *Id.* at 157–58.

defendant to introduce evidence about the alleged victim's sexual history; and the traditional "resistance requirement" in rape law.⁴⁵¹

Assuming that this ingenious theory is entirely correct,⁴⁵² what follows? According to Thornhill and Palmer, an understanding of the evolutionary source of the rules would have facilitated reforms by improving reformers' arguments and making male lawmakers more aware of their own anti-victim biases.⁴⁵³

The efficacy of rape law reforms is a complex topic, which requires some distinctions that Thornhill and Palmer fail to make.⁴⁵⁴ Concerning enactment of reforms, suffice it to say that, while some desirable reforms have not been adopted by all (or in some cases most) states,⁴⁵⁵ and others may not have significantly altered case outcomes,⁴⁵⁶ feminists achieved much, including abolition or major revision of nearly all of the rules that reflected suspicions about the truthfulness of rape reports: the corroboration requirement; the prompt complaint rule; the traditional jury instruction warning about the danger of false rape accusations; and the most permissive rules concerning admission of evidence about the accuser's sexual history.⁴⁵⁷ Even more important, juries seem to have become substantially more willing to convict acquaintance rapists—not necessarily because of

⁴⁵¹ *Id.* at 158. For a discussion of the force-resistance requirement, see Bryden, *supra* note 219, at 355–87.

⁴⁵² Although it is a plausible explanation of male sexual jealousy, that jealousy may not be a reason for any of the objectionable legal rules in rape cases, which may have been due simply to the mostly unconscious prejudice of lawmakers in favor of classes to which they belong—in this case the male sex—coupled with understandable but often excessively severe concerns about the danger of false accusations and the adequacy of the prosecution's proof. See generally ESTRICH, *supra* note 81, at 42–56 (providing criticism of traditional evidentiary rules in rape cases). It is a familiar truth that when a regulated group dominates the enforcement process excessive leniency occurs. As in other contexts, prejudices formed when young can be expected to endure well past the point at which they no longer serve the individual interests of older lawmakers.

⁴⁵³ THORNHILL & PALMER, *supra* note 2, at 159.

⁴⁵⁴ See generally Bryden, *supra* note 219, at 411–26 (discussing reformers' unrealistic expectations); Bryden & Lengnick, *supra* note 52, at 1285, 1378, 1381, 1384 (distinguishing between effects of legal reforms and improvements in public and official attitudes).

⁴⁵⁵ See generally Bryden, *supra* note 219, at 387–96 ("no means no"), 435–56 (nonforcible sexual extortion).

⁴⁵⁶ See, e.g., Bryden & Lengnick, *supra* note 52, at 1283–94, 1377–84.

⁴⁵⁷ See generally LAFAYE, *supra* note 1, at 878–84; Bryden, *supra* note 219, at 319–20. Complete abolition of all of the undesirable rules was not universal, however. Michelle J. Anderson, *The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault*, 84 B.U. L. Rev. 945, 949–50 (2004).

the legal reforms, but because they now take acquaintance rape more seriously.⁴⁵⁸

Although the law of rape still needs some changes,⁴⁵⁹ we doubt that politicians who reject women's groups' charges that the old rules are sexist will be swayed by academic speculation about the evolutionary origins of that alleged sexism. Thornhill and Palmer themselves supply evidence that evolutionary theories are a double-edged sword. Having attributed male skepticism about rape reports to an adaptation that led to fear of cuckoldry, they proceed, inexplicably, to justify the skepticism by claiming that women tend to be deceitful. Lacking males' ability and inclination to get their way by violence, females allegedly developed other strategies—for example, lying about sexual matters, *including rape*! In response, men may have “an evolved intuition that women sometimes lie for their own gain” about sex.⁴⁶⁰ To summarize, then, men have an adaptive sexual jealousy, which causes them to be unduly suspicious of rape reports, but they may also have an adaptive and accurate suspicion that women often lie about rape. Thornhill and Palmer do not explain how that combination of theories will persuade legislators and judges to reform rape law.

While feminists deserve great credit for the achievements of their anti-rape campaign, there is no evidence that their nonsexual motivational theories provide insights about how to curb rape. Indeed, dogmatism about

⁴⁵⁸ See, e.g., Bryden & Lengnick, *supra* note 52, at 1263 (citing New York sex-crimes prosecutor's remarks that acquaintance rape convictions have become easier to obtain). For this reason, we disagree with those who believe that the feminist-inspired reforms have “failed” because public attitudes have not changed. E.g., Ilene Seidman & Susan Vickers, *The Second Wave: An Agenda for the Next Thirty Years of Rape Law Reform*, 38 SUFFOLK U. L. REV. 467, 468, 470–71, (2005); see also Stephen Schulhofer, *Rape Law Reform Circa June 2002: Has the Pendulum Swung Too Far?*, 989 ANN. N.Y. ACAD. SCI. 276, 280–81 (2003) (recounting appellate cases that reveal that modern juries are convicting rapists in some cases that formerly would not even have been prosecuted). Our impression is that feminists have largely achieved their chief instrumental goal (less leniency toward accused acquaintance rapists), mostly because public attitudes have changed, rather than because of the apparently minimal contribution of specific legal reforms in any particular state, though national publicity about reforms may have contributed to improved public attitudes and deterrence of potential rapists. The degree of success cannot be measured accurately by mere conviction rates, which reflect other factors such as the quality of the evidence and prosecutors' willingness to try difficult cases. A decline in the conviction rate might be due to feminists' success in persuading overburdened prosecutors to proceed in rape cases even when they fear that—because of jurors' biases or the burden of proof—they lack sufficient evidence to persuade jurors beyond a reasonable doubt; an increase might be due to fewer prosecutions because of pressure exerted by a heavier caseload.

⁴⁵⁹ See note 455, *supra*.

⁴⁶⁰ THORNHILL & PALMER, *supra* note 2, at 159–60. For an appraisal of arguments and evidence on both sides of this issue, see Bryden & Lengnick, *supra* note 52, at 1295–315.

rapists' supposedly nonsexual motives has led some scholars to oppose possibly beneficial reforms. We have mentioned misguided efforts to resolve controversies about pornography and chemical treatment of convicted rapists by deductions from motivational theories.⁴⁶¹ Another example is Brownmiller's claim that prison rapes are quests for domination, not sex, and that therefore conjugal visits cannot alleviate the problem.⁴⁶² Although existing studies are inadequate, much of the available evidence indicates that conjugal visits do reduce prison rape; authorities are divided about whether this is at least partly because of the opportunity they provide for sexual release.⁴⁶³ As always, it is a mistake to try to resolve the empirical issue by deductions from questionable motivational theories.

Feminist ideas about the centrality of patriarchal culture as a cause of violence against women are generally consistent with the proposition that rapists have a sexual goal. For example, feminists often deplore the sexualized violence in our popular culture, but there is no inconsistency between supposing that rapists have a sexual goal and believing that media violence increases their (on this hypothesis instrumental) aggressive tendencies. Similarly, the feminist-inspired studies of correlations between rape proclivity and improper attitudes toward women and rape are

⁴⁶¹ See *supra* text accompanying notes 427–431 (pornography) and 405–406 (hormonal and chemical treatment of convicts).

⁴⁶² "Prison rape is generally seen today for what it is: an acting out of power roles within an all-male authoritarian environment in which the younger, weaker inmate, usually a first offender, is forced to play the role that in the outside world is assigned to women." BROWNMILLER, *supra* note 70, at 258. A prison rapist does "need sex," but only because it is the only way "within the confines of prison" to "exercise . . . power." *Id.* She approvingly quotes an authority who said that "[h]omosexual rape in prison could not be primarily motivated by the need for sexual release . . . since autoerotic masturbation would be 'much easier and more normal.' Rather than sex, 'conquest and degradation did appear to be a primary goal." *Id.* at 266. But she mentions without comment that, according to the same authority, "[m]en who were raped in prison looked young for their years, appeared unathletic and were noticeably better looking than their predators." *Id.* In other words, they looked more like pretty, young females. The question, then, is whether this was because the prison rapists wanted a facsimile of sex with a woman or because such men are easier to dominate for a sexual purpose, or because domination was the rapists' main goal. Instead of recognizing this unresolved empirical question, Brownmiller dogmatically rejects proposals to allow conjugal visits in order to reduce prison rape, on the ground that the availability of a heterosexual outlet is irrelevant to "the need of some men to prove their mastery through physical and sexual assault, and to establish, most strikingly within the special crucible of the male-violent, a coercive hierarchy of the strong on top of the weak." *Id.* at 267.

⁴⁶³ See Rachel Wyatt, Note, *Male Rape in U.S. Prisons: Are Conjugal Visits the Answer?*, 37 CASE W. RES. J. INT'L L. 579, 598, 601, 603 (evidence that conjugal visits reduce rape), 599–600, 602 (variety of opinions about whether sexual gratification is the explanation) (2006).

consistent with the conclusion that rapists have a sexual goal, disinhibited by various traits and beliefs including sexist attitudes and sometimes fused with other goals.⁴⁶⁴ Whether or not rapists enjoy domination for its own sake or mostly only instrumentally, they do dominate women sexually. On either motivational hypothesis, one can logically justify (or be skeptical about) educational or other measures designed to promote egalitarian values.

Not only are feminist theories consistent with the hypothesis that rapists have sexual goals; they often require that assumption. As we have seen, when explicitly discussing rapists' "motives," feminists tend to minimize the goal of sexual gratification. Yet their standard analyses of rape's cultural causes tacitly assume that many if not all rapists have a sexual goal. This is a typical passage:

Masculine sex-role socialization is a cultural precondition of rape because, first, it reduces women in men's minds to the status of sex objects, and second, it instructs men to be prepared for strong, even if deceitful, resistance Thus, in pursuing "normal" sexual relationships, men often find themselves in a situation where a reluctant female has to be overcome, not only because that's what "real men" do, but because that's what "real" women want. In other words, "normal" and "coercive" sexual encounters become so fused in the masculine mystique that it becomes possible to see rape as not only normal, but even desired by the victim.⁴⁶⁵

This would be incoherent if rapists did not (at least often) seek sexual gratification.⁴⁶⁶ Similarly, feminists often attribute rape to culturally transmitted "sexual scripts" that prescribe the male role as active and the female as passive; some claim that these scripts "delineate a justifiable rape."⁴⁶⁷ Other feminists describe "the commoditization of female sexuality" as one of the causes of rape.⁴⁶⁸ Feminists of course decry the male "myth about the nature of female sexuality," the idea that "all women secretly want to be raped."⁴⁶⁹ Unless the rapist wants what he perceives as

⁴⁶⁴ See, e.g., Vega & Malamuth, *supra* note 101.

⁴⁶⁵ STEVEN BOX, POWER, CRIME AND MYSTIFICATION 146 (1983).

⁴⁶⁶ Cf. Diana Scully & Joseph Marolla, *Rape and Vocabularies of Motive: Alternative Perspectives*, in RAPE AND SEXUAL ASSAULT: A RESEARCH HANDBOOK 294, 307-08 n.1 (Ann Wolbert Burgess, ed., 1985) ("[I]t is illogical to argue that rape is an extension of normal male sexual behavior and, at the same time, to deny that sex plays any part in rape.").

⁴⁶⁷ NAT'L RES. COUNCIL, *supra* note 108, at 66. A similar theory is that, because of cultural indoctrination, many rapists perceive as merely "sex" what the woman experiences as rape. Carol Bohmer, *Acquaintance Rape and the Law*, in ACQUAINTANCE RAPE: THE HIDDEN CRIME 317, 321 (Andrea Parrot & Laurie Bechhofer, eds., 1991). If so, these rapists must have a sexual goal.

⁴⁶⁸ E.g., CLARK & LEWIS, *supra* note 71, at 120.

⁴⁶⁹ Griffin, *supra* note 64, at 27.

basically consensual sex, why would this myth influence him? Likewise, the idea that men rape because they "are socialized to believe that they are 'entitled' to satisfy their desire for sex"⁴⁷⁰ obviously assumes a sexual motive. Additionally, the feminist maxim that "no means no" is pointless if men on the brink of rape are not after sex: to a man whose primary motive is nonsexual control or subjugation, the sincerity of his victim's refusal must be irrelevant, if not provocative. Ineluctably, we are led to a supremely ironical conclusion: rejection of the idea that rapists usually have a sexual goal would require massive revisions in feminist theories about rape's causes.

Some may assume that, since sexual desire is innate, a sexual explanation of rapists' motives is inherently pessimistic. If motives are defined simply as goals, this is a non sequitur. Sexual desire may be the most common or even universal goal, and it may be a necessary cause, but it plainly is not a *sufficient cause* of rape; whether it leads to rape must be determined by additional causes. Some likely causes may be intractable, but others—including the societal leniency, sex roles, hypermasculinity, gender inequalities and media violence that feminists have deplored—vary cross-culturally and over time.

For practical purposes, it does not matter, for example, whether the cluster of attitudes dubbed "hostile masculinity"⁴⁷¹ is thought of as helping to cause rape by furnishing a goal or by disinhibiting men whose goal is sexual. In either case, if it is a necessary cause of some rapes then its reduction will reduce rape's incidence. And in either case one may be optimistic or pessimistic about the feasibility of reducing it.

E. ARE MOTIVES BY DEFINITION EXTRAORDINARILY IMPORTANT?

Feminists have advanced two justifications for their opposition to the idea that rapists have a sexual motive: that it is largely false and that it encourages leniency toward rapists.⁴⁷² If motives are defined as goals, we

⁴⁷⁰ Ethel Tobach & Rachel Reed, *Understanding Rape, in* EVOLUTION, GENDER, AND RAPE, *supra* note 105, at 105, 114. Other scholars believe that prior sexual intimacies between the rapist and his victim "may increase a man's belief that he has a right to such intimacy any time he desires it" and may also lead him to believe, falsely, that the rape is harmless. NAT'L RES. COUNCIL, *supra* note 108, at 61. This too assumes a sexual goal.

⁴⁷¹ Vega & Malamuth, *supra* note 101, at 105.

⁴⁷² Examples are legion. *E.g.*, HOLMSTROM & BURGESS, *supra* note 68, at 262 ("The first and most important task, therefore, is to *delegitimize rape*—to make it be seen as unacceptable behavior. This means changing the social definition of rape. It means seeing rape as an act of aggression and violence motivated primarily by power or anger, rather than by sexuality."); Griffin, *supra* note 64, at 27 (myth that men's sexuality is more urgent than

submit that the first reason is inaccurate and that the second, even if true, is irrelevant to the validity of what purports to be a factual proposition.⁴⁷³

A more challenging question is whether, as we have assumed so far, motives and goals are synonymous. As we noted when we adopted goal as our favorite concise definition, “motive” has multiple meanings.⁴⁷⁴ They are all at least somewhat imprecise and at times conflicting. This definitional uncertainty—overlooked by nearly all of those who speculate about motives—contaminates most of the motivational literature. For example, we have often distinguished between goals and disinhibitors, treating the victim’s vulnerability and the rapist’s personality, feelings of stress, and hostility toward women as always or usually disinhibitors rather than goals. Under some dictionary definitions of motive, this distinction may at times be untenable.

Some definitions include “a prompting force” that influences action.⁴⁷⁵ With this definition, do any of our disinhibitors become motives? We have found no author who classifies intoxication as a motive, but “opportunism,” the “low cost” of rape to the rapist in certain circumstances (such as war), an anti-social personality (“sociopath”), and “economic insecurity” have all been called motives by one or more reputable scholars.⁴⁷⁶ None of these is a goal, though “economic insecurity” could be rephrased as “a desire for economic security.” And perhaps some of the others could be called “prompting forces.”

Those who refer to a person’s motive—whether in ordinary speech or in scholarly discourse—nearly always imply that it is an extraordinarily important cause—a “mainspring,” as E.F. Hammer put it.⁴⁷⁷ Having

women’s); BROWNMILLER, *supra* note 70, at 183; cf. Muehlenhard, *supra* note 106 (discussing which characterization of rape will best serve women’s interests).

⁴⁷³ We are also uncertain to what degree it is still accurate. Jurors’ sympathy for men accused of acquaintance rape appears to have declined substantially since the 1970s. See, e.g., Bryden & Lengnick, *supra* note 52, at 1263. A public opinion survey indicates that a sea change in self-reported attitudes toward women occurred between 1972 and 2004. Equal Role for Women, AMERICAN NATIONAL ELECTION STUDIES, http://www.electionstudies.org/neguide/toptable/tab4c_1.htm (last visited Nov. 5, 2010).

⁴⁷⁴ *Supra* note 112, and accompanying text.

⁴⁷⁵ See *supra* note 112.

⁴⁷⁶ See, e.g., Malamuth, *An Evolutionary Based Model*, *supra* note 135, at 584, (opportunism); WILSON & HERRNSTEIN, *supra* note 4 (sociopathy); THORNHILL & PALMER, *supra* note 2, at 66 (low cost of rape in some situations); Gwen Hunnicutt, *Varieties of Patriarchy and Violence Against Women: Resurrecting “Patriarchy” as a Theoretical Tool*, 15 VIOLENCE AGAINST WOMEN 553, 561 (2009) (economic insecurity).

⁴⁷⁷ Hammer, *supra* note 17, at 183. The nebulous most-important-cause connotation existed centuries before Freud. See SAMUEL JOHNSON’S DICTIONARY OF THE ENGLISH LANGUAGE 478 (1755) (Alexander Chalmers ed., 1994). Johnson defined a motive as “[t]hat

identified what they regard as the mainspring of rape, many motivational theorists proceed to use it as the basis for deductions about public policy: the "motive" then becomes paramount not only descriptively but also prescriptively.⁴⁷⁸

The vagueness of the concepts of motive and "primary" raises the stakes of motivational controversies while obscuring their meaning. Seen in this light, the disagreement about rapists' "motives" may be due less to conflicting perceptions about their goals than to disagreement about the importance of their goal of sexual gratification—not just relative to other possible goals but also relative to possible non-goal causes such as sexist attitudes and patriarchal culture.

No general answer to the most-important-cause question is accurate in all contexts and for all purposes. For purely descriptive purposes, both biological and environmental factors are certainly significant. Rapists' sexual desire and their victims' lack of desire for them are rape's most obviously necessary causes. But, as we have noted, rape is extremely rare relative to unsatisfied sexual desire; that desire, even when understood in evolutionary terms, only begins to explain the crime.

Mere description has never been the sole interest of any school of motivational theory; the motivational attributions express and are commonly thought to support a comprehensive vocational or ideological perspective that includes ideas about rape prevention. This tidy merger of descriptive and prescriptive issues is polemically useful, but on close

which determines the choice; that which incites the action." This definition implies that motives are more influential than non-motivational causes such as lack of normal inhibitions, unless that lack is itself a type of motive, as it might be under Johnson's definition, as might the victim's vulnerability or the absence of effective legal sanctions.

⁴⁷⁸ Some distinguished rape scholars sometimes use "motive" as a misleading label in their taxonomies of rapists. The best example is Knight and Prentky's painstaking taxonomy of rapists' characteristics. They identified nine types of rapists, each with one of four "primary motivations": "opportunistic," "pervasively angry," "sexual," or "vindictive." Raymond A. Knight & Robert Prentky, *Classifying Sexual Offenders: The Development and Corroboration of Taxonomic Models*, in HANDBOOK OF SEXUAL ASSAULT: ISSUES, THEORIES, AND TREATMENT OF THE OFFENDER, *supra* note 238, at 23. These labels were not derived from the rapists' goals. Thus, "opportunistic" rapists "are seeking immediate sexual gratification." *Id.* at 44 (they have "poor impulse control"). Even the "vindictive" rapists, though they "intend to degrade and humiliate their victims," also have "a sexual component in their assaults," as do sadists, who are classified as a subtype of sexually motivated rapists. *Id.* at 44–45. The "sexually motivated" category was limited to those who had "some form of enduring [and presumably abnormally strong] sexual preoccupation, however distorted by fusion with aggression, dominance needs, coercion and felt inadequacies . . ." *Id.* In other words, most or all of the rapists had a sexual goal but they differed in other respects indicated by the taxonomy and in some cases had mixed goals.

examination it falls apart. As we have argued, those feminists who treat rapists' sexual goals as nonexistent or relatively unimportant are ignoring, without repudiating, many feminist theories about the causes of rape. Yet Thornhill and Palmer's effort to deduce rape-prevention policies from the premise that rapists are sexually motivated was also almost entirely unconvincing. However strongly a scholar may believe that all human conduct must directly or indirectly reflect evolutionary adaptations, the fact remains that adaptations cannot be changed by public policies. In the rape-prevention context, the most important of the plausible causes of rape seem to be variable social factors, including those that feminists have emphasized—for instance, public attitudes towards victims, the status of women, sex roles, and the likelihood of punishment.⁴⁷⁹ This leaves room for many arguments about specific social theories and policies: some alleged social causes may be illusory, some may be resistant to change, and some may have been under-emphasized by feminists. Patriarchy's effects on the incidence of rape may be a more complex question than most authors have thought.⁴⁸⁰ But such possibilities do not gainsay our generalization.

VII. CONCLUSION

We began by posing two questions: What are rapists' motives? And are motivational issues as important as some scholars claim? No single line of research is conclusive, but we believe that the weight of the evidence indicates that sexual gratification is rapists' most common (if not universal) goal. Some of the other alleged goals are at least plausible, but there is no reason to believe that they are often more influential than the sexual goal.

As social scientists have gradually become the most prominent authorities on causes of rape, the anecdotal, impressionistic, and dogmatic qualities of many clinical and early feminist motivational analyses have become much less common. Social scientists are generally attentive to a host of standard methodological issues including the limitations of their samples. We doubt that anyone today would draw conclusions about rapists' motives from a study whose subjects were mostly child molesters,

⁴⁷⁹ None of this is inconsistent with an evolutionary understanding of men's (including rapists') sexual desire. This is illustrated by the writings of Neil Malamuth, who has integrated evolutionary (sexual) factors in an etiological theory that includes rapists' opinions and personalities. See Malamuth, *supra* note 135; Neil M. Malamuth, *The Confluence Model of Sexual Aggression*, in *SEX, POWER, CONFLICT: EVOLUTIONARY AND FEMINIST PERSPECTIVES*, *supra* note 106, at 269.

⁴⁸⁰ FELSON, *supra* note 101, is the foremost exposition of the view that rape is better understood as caused by the same factors that produce other crimes of violence rather than as a product of patriarchy and sexism. We hope to discuss that idea in our next publication.

as E.F. Hammer did in 1957.⁴⁸¹ Welcome though it is, this type of improvement has not cured several abiding weaknesses of motivational scholarship. It is useless to argue about motives without defining the term. Yet few motivational theorists have done so, a problem that has been compounded by the frequent use of ambiguous qualifiers like "primary." Ostensibly, these ambiguities disappear in studies that measure motives by reference to the subjects' answers to questions about their opinions, preferences, and behaviors. "Motive" then means whatever the scale used in the study measures. But it is unclear what the "dominance" scale measures.⁴⁸² And the "power motive" scores measure activist inclinations that rapists and anti-rape lobbyists both possess—not, we think, a promising way to improve our understanding of either group.

Any author who wishes to define motive should address the question of whether an actor's motive is by definition or in fact more important (and in what sense) than the other causes of the act in question. Naturally, most motivational theorists continue to at least imply that rapists' goals are extremely important. For the purposes of public policy, this is rarely true. No one has offered a persuasive justification for distinguishing between men who control and dominate women sexually in order to enjoy sex and men who control and dominate them sexually in order to enjoy control and domination. Does any scholar believe that the former are less blameworthy or dangerous?

Even if evolutionary psychologists are correct in asserting that adaptations are the ultimate causes of all human behavior, no one denies that proximate causes such as culture are the only causes that conceivably can be reduced by new public attitudes or policies.

The most publicized scholarly theories about rapists' ulterior motives have generally been weakly supported but sensational. Rapists are trying to overcome their anxieties about being castrated! No, they rape because they hate women and want to maintain patriarchy! No, they have a rape-specific evolutionary adaptation! None of these ideas enjoys trans-ideological support. Yet they command our attention because motives are commonly thought to be super causes that demonstrate the superiority of a vocational or ideological worldview.

In principle, the flaws of motivational scholarship are avoidable. We could begin by defining a motive as a goal, which is "primary" only if it is causally necessary, while the rapist's other goals, if any, are not. We might then say that sexual gratification is rapists' most common primary goal,

⁴⁸¹ See *supra* text accompanying notes 42–44.

⁴⁸² See *supra* text accompanying notes 301–305.

while acknowledging that additional goals sometimes exist, and that there is no single master cause of rape but rather a network of causes, among which the absence of an inhibition may be at least as important as the presence of a goal. Even when most plausible, we might note, motivational conclusions are usually more or less speculative and rarely important in reaching sound conclusions about public policies.

What then? Without their (at least implicit) promises to uncover hidden mainsprings of rape, and thereby to reveal the best strategies for preventing it, motivational analyses would no longer be particularly interesting. They have been alluring, less because of their new and proven revelations, which are modest, than because of their faults, which are great.